

About the Book :

Aircraft operating leasing, a pivotal component of the aviation industry, has seen significant evolution within the framework of international air law. This comprehensive analysis delves deep into its intricacies, starting with a synopsis that provides an overview of the subject. The subsequent chapters shed light on the global landscape of business aviation and the foundational conventions and protocols governing aircraft leasing. A notable focus is given to the Cape Town Convention's influence on aircraft financing, followed by an examination of the "Protection and Enforcement of Interests in Aircraft Objects Bill, 2022." The analysis culminates in a conclusion, synthesizing the insights garnered throughout the chapters.

About the Author :

Capt. Somesh Babu Maddula is a figure of multifaceted expertise and unparalleled dedication. His educational journey, rich with diverse qualifications and experiences, sets the backdrop for his accomplished professional life.



Initiating his academic path at Jawahar Navodaya Vidyalaya, a central government-sponsored institution, Somesh laid a robust foundation. He pursued a diploma in mechanical engineering, which was complemented by his Chartered Engineering degree from the Institution of Mechanical Engineers (India), a qualification equivalently esteemed to mechanical engineering. His thirst for knowledge didn't stop there; he delved into the world of human behavior and cognition with a B.Sc. in Psychology. Following this, he expanded his horizon in the managerial domain with an MBA and further fortified his legal expertise with an LL.B followed by an LL.M in Business Law.

Professionally, Capt. Somesh's journey is equally impressive, boasting over 22 years of work experience. His early career saw him associated with industry giants like ITC LTD PSPD and Saint-Gobain Vetrotex Ltd. However, the skies called to him, and he transitioned to the aviation industry, where he has dedicated over 19 years. Being an ATPL holder accredited by DGCA (India), he currently dons the role of a pilot in a renowned airline.

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Aircraft Leasing Operations under International Air Law



Capt. Somesh Babu Maddula

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Aircraft Leasing Operations under International Air Law

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ISBN: 978-93-92504-39-6



Published by :

Research Culture Society and Publication

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Research Culture Society and Publication


(Reg. International ISBN Books and ISSN Journals Publisher)

Email: RCSPBOOKS@gmail.com / editor@ijrcs.org

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Aircraft Leasing Operations under International Air Law

- Capt. Somesh Babu Maddula

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Published and Printed at : (First Edition – October, 2023)

Research Culture Society and Publication / Research Culture Society

(Reg. International ISBN Books and ISSN Journals Publisher)

India : C – 1, Radha Raman Soc, At & Po - Padra, Dis - Vadodara, Gujarat, India – 391440.

USA : 7886, Delrosa Avenue, Sanbernardino, CA 92410.

Canada : Loutit Road, Fort McMurray, Alberta, T9k0a2.

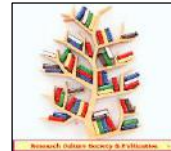
Greece : Mourkoussi Str, Zografou, Athens, 15773

Email: RCSPBOOKS@gmail.com / editor@ijrcs.org

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MRP : Rs. 400 /-

ISBN: 978-93-92504-39-6



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Preface

I am thrilled to present this book on Aircraft Leasing Operations under International Air Law. This book is the culmination of my passion for aviation and my desire to share my knowledge with others. I would like to take this opportunity to express my heartfelt gratitude to all those who have supported me throughout this journey.

First and foremost, I would like to thank my incredible teachers who have imparted their knowledge and expertise to me. Their guidance and encouragement have been invaluable in shaping my understanding of the subject matter.

I would also like to extend my deepest appreciation to my parents for their unwavering support and encouragement. Their love and belief in me have been a constant source of inspiration.

To my amazing spouse, friends, and well-wishers, I am deeply grateful for their unwavering support and encouragement. Their belief in me has been a constant source of motivation.

Finally, I would like to thank the readers of this book. It is my sincere hope that this book will be a valuable resource for those interested in the aviation industry. I have poured my heart and soul into this book, and I am confident that it will provide readers with a comprehensive understanding of aircraft leasing operations under international air law.

Thank you all for your support and encouragement. I hope you enjoy reading this book as much as I enjoyed writing it.

Please note that this book has been submitted as a component of my Master of Laws (LL.M) thesis in Business Law. Any references or uses of this material should duly acknowledge its academic context and its association with my postgraduate studies

About The Book

Aircraft Leasing Operations under International Air Law is a comprehensive guide that provides readers with a detailed understanding of the aviation industry, conventions and protocols, and the impact of the Cape Town Convention on aircraft financing. This book is an essential resource for anyone interested in the aviation industry, including students, professionals, and enthusiasts.

The book is divided into seven chapters, each of which covers a specific aspect of the aviation industry. Chapter 1 provides a synopsis of the book, outlining the key topics covered in each chapter. Chapter 2 provides an introduction to the aviation industry, including its history, growth, and current state. This chapter also covers the various types of aircraft and their uses. Chapter 3 provides a comprehensive overview of business aviation worldwide, including its history, growth, and current state. This chapter also covers the various types of business aircraft and their uses. Chapter 4 covers the Convention and Protocol, which is an international treaty that governs the financing and leasing of aircraft. This chapter provides readers with a detailed understanding of the key provisions of the Convention and Protocol and their impact on aircraft financing. Chapter 5 covers the impact of the Cape Town Convention on aircraft financing. This chapter provides readers with a detailed understanding of the key provisions of the Convention and their impact on aircraft financing. Chapter 6 covers the Protection and Enforcement of Interests in Aircraft Objects Bill, 2022, which is a proposed law that seeks to protect the interests of aircraft lessors and financiers. Finally, Chapter 7 provides a conclusion to the book, summarizing the key topics covered in each chapter and providing readers with a comprehensive understanding of the aviation industry, conventions and protocols, and the impact of the Cape Town Convention on aircraft financing.

In conclusion, Aircraft Leasing Operations under International Air Law is an essential resource for anyone interested in the aviation industry. This book provides readers with a comprehensive understanding of the aviation industry, conventions and protocols, and the impact of the Cape Town Convention on aircraft financing. Whether you are a student, professional, or enthusiast, this book is a must-read for anyone interested in the aviation industry.

About the Author



Capt. Somesh Babu Maddula is a figure of multifaceted expertise and unparalleled dedication. His educational journey, rich with diverse qualifications and experiences, sets the backdrop for his accomplished professional life.

Initiating his academic path at Jawahar Navodaya Vidyalaya, a central government-sponsored institution, Somesh laid a robust foundation. He pursued a diploma in mechanical engineering, which was complemented by his Chartered Engineering degree from the Institution of Mechanical Engineers (India), a qualification equivalently esteemed to mechanical engineering. His thirst for knowledge didn't stop there; he delved into the world of human behavior and cognition with a B.Sc. in Psychology. Following this, he expanded his horizon in the managerial domain with an MBA and further fortified his legal expertise with an LL.B followed by an LL.M in Business Law.

Professionally, Capt. Somesh's journey is equally impressive, boasting over 22 years of work experience. His early career saw him associated with industry giants like ITC LTD PSPD and Saint-Gobain Vetrotex Ltd. However, the skies called to him, and he transitioned to the aviation industry, where he has dedicated over 19 years. Being an ATPL holder accredited by DGCA (India), he currently dons the role of a pilot in a renowned airline.

Capt. Somesh's vast knowledge and experience have found their way into the written word. He's the esteemed author of the book titled "Aircraft Leasing Operations under International Air Law," an insightful exploration into the intricate dynamics of aviation leasing under the purview of global air law. Furthermore, his previous Book "I, Me & Myself" is a testament to his introspective nature, providing readers with a deeper dive into the man behind these myriad achievements.

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LIST OF ABBREVIATIONS AND ACRONYMS

AERA – Airports Economic Regulatory Authority of India
AAI – Airports Authority of India, Arrival Aircraft Interval
AI – Air India
ACI – Airports Council International
ATC – Air Traffic Control
ATM – Air Traffic Management
ATS – Air Traffic Service
AWG- Aviation Working Group
APU - Auxiliary Power Unit
ARC - Airworthiness Review Certificate
BCAS – Bureau of Civil Aviation Security
CTC - Cape Town Convention
DGCA – Director General of Civil Aviation of ECAC Member States
EOD - Events of Default
EU - European Union
EETC - Enhanced Equipment Trust Certificate
ICAO – International Civil Aviation Organization
IATA – International Air Transport Association
FAA – Federal Aviation Administration
LCC- low-cost carrier
IDERA- Irrevocable Deregistration and Export Request Authorization
GIFT City- Gujarat International Finance Tec-City
IFSC - Indian Financial System Code
LLP - Life Limited Part
OEM - Original Equipment Manufacturer
MRO - Maintenance, Repair and Overhaul Organization

CHAPTER 1: SYNOPSIS

1.1 Statement of Purpose

Aeronautical travel is becoming increasingly popular as the business thrives in a rapidly changing world. Passenger traffic has grown above trend for the seventh year in a row, thanks partly to historically high aircraft utilization rates. Aviation is slowly resuming its upward trajectory as global economies recover from the COVID-19 epidemic¹. As a result of more lax regulations, India has become a major player in the global aviation industry, with unprecedented double-digit growth in the last few years. To help India become an aviation hub and develop India's aircraft leasing and financing business, the Government of India formed a Working Group on Developing Avenues for Aircraft Financing and Leasing Activities in India. To bring India's offshore aircraft leasing market onshore, the Working Group chose Gujarat International Finance Tec-City (GIFT City), an IFSC in Gujarat.

1.2 Research Problem

It is necessary to have a sophisticated technical management system in place for the leasing sector. In order to have a greater understanding of aircraft leasing and its legal ramifications, companies might employ experts from the outside and conduct training activities. In the event of a disagreement, the government should examine the presence of a complicated leasing procedure and the conditions of agreements. To avoid protracted court fights, the parties must establish a reliable procedure for resolving disagreements.

1.3 Scope of Research

By the next decade, aircraft lessors are forecast to expand their share of new delivery finance from around 40 percent to about 50 percent² (Forsberg, 2013). The scope of this research is to provide a critical review of aircraft leasing contracts in the context of international air law. The research will bring forth the common terms used in lease agreements, different types of leases, conditions, remedies, and other contractual provisions.

Aircraft leasing is a growing industry and one that presents a number of challenges for both the lessee and lessor. In order to ensure that aircraft leasing contracts are executed in a legal and

¹ Boeing, Current Aircraft Finance Market Outlook 2019 (2019).

² Dick Forsberg, Avalon's 2013 Outlook: "The Dawn of a Golden Age in Aviation", as Asian Banks in the Ascendance (2013), available at <https://centreforaviation.com/analysis/reports/avolons-2013-outlook-the-dawn-of-a-golden-age-in-aviation-as-asian-banks-in-the-ascendance-93562>

fair manner, it is important to understand the legal framework within which these contracts are based. The aim of the research is to provide an understanding of the legal framework within which aircraft leasing contracts are executed and to identify any potential challenges that may arise in relation to these contracts. The research will focus on the challenges that aircraft lease agreements present for both the lessee and lessor. In context with existing Indian laws, the research will also provide an analysis of the advantages and disadvantages of aircraft leasing. The research will take into account a number of key issues, including the review of the Cape Town Protocol, which is an international treaty that seeks to regulate the leasing of aircraft. The various steps taken by Indian government being a signatory to Cape Town protocol & convention will also be looked into. The Research will also consider the implications of the protocol on Indian airlines, as well as other lessees operating in India if Protection and Enforcement of Interests in Aircraft Objects Bill 2022, India is enacted into law.

1.4 Introduction

As the number of people using air travel increased worldwide, it began to play a larger role in economic development. Since individuals prefer to change to quicker and more costly forms of transportation, such as air transportation, as their wealth rises, air travel's involvement in the transportation system is expected to continue to grow. There are commercial airlines that fly passengers and cargo all over the world. They take exceptional care of their airplanes since they are such an important part of their company. An airline may need to buy or rent new aircraft from time to time in order to extend its operations or to replace older units that are no longer operationally safe or economically feasible³, deciding what type and how many planes to buy can be difficult. An airline or route may not be a good fit for a particular aircraft type because of its unique capabilities and features. When purchasing a new aircraft, the purchase price and operational costs may run into the tens or even hundreds of thousands. After that, the industry looks into aircraft leasing to reduce the high cost of purchasing a new plane⁴.

A lessee may use an asset or property the lessor holds under a lease agreement between the lessor and lessee. An agreement between the lessor and lessee is normally for a certain amount of time, known as the 'lease term,' during which the lessee is required to pay a steady stream of monthly payments. In most cases, either side cannot terminate a lease agreement until specific

³ Kalyan T. Talluri & Garrett J. van Ryzin, *The Theory and Practice of Revenue Management* (2004).

⁴ Ryanair, *Annual Reports 2012-2017* (2012-2017), available at <https://investor.ryanair.com/results/>.

circumstances are met, such as non-payment or bankruptcy⁵. In certain cases, a lease agreement may allow for early termination of the contract at a set period with or without penalty. Unless the lessor offers the lessee the option to buy the asset, the lessee is typically compelled to return the item to the lessor at the end of the lease period. Purchase options are normally calculated using a formula and may be based on fair market value or simply on a number that is not significant to you.

1.5 Research Objective

1. To give an overview of the aircraft operating lease.
2. To analyze the variety of lease arrangements in aviation.
3. To identify different approaches and regulations of the lease arrangement.
4. To identify the impact of Cape Town protocol & convention on lease arrangements.
5. To identify the steps taken by Indian government as a signatory to cape town convention.

1.6 Research Questions

1. What is the Aircraft Operations Leasing Process?
2. How to analyze the diversity of lease arrangements in aviation?
3. What are the different approaches and regulations of lease arrangement?
4. What is the impact of Cape Town protocol & convention on lease arrangement?
5. What steps are taken by Indian government as a signatory to Cape Town convention?

1.7 Methodology

The research for this article was conducted using a combination of doctrinal and empirical research methods. The doctrinal approach was used to analyze the legal provisions that affect aircraft leasing in while the empirical approach was used to compare aircraft leasing. This study drew on secondary sources such as hard and soft copies of departmental annual reports and information from journals and websites. Because time and money were limited, the researcher in this study strictly followed the doctrinal research approach. After careful consideration, the piece will incorporate data from both primary and secondary sources. To conclude, a variety of data collecting techniques were used simultaneously.

⁵ A. Ö. Karagülle, The Evaluation of Fleet Structures in Turkish Aviation Industry from Strategic Management Point of View, 58 *Procedia - Soc. & Behave. Sci.* page 93-97 (2012).

1.8 Literature Review

BOEING Company - CURRENT AIRCRAFT FINANCE MARKET OUTLOOK 2019 REPORT

This report provides an overview of the aircraft leasing market, including an analysis of the key trends and factors driving its growth. It also provides a detailed description of the major types of leasing contracts available and discusses the various benefits and drawbacks associated with each type. Finally, this report offers a critical review of the Cape Town Protocol, which is one of the key agreements governing aircraft lease arrangements between airlines and leasing companies.

THE THEORY AND PRACTICE OF REVENUE MANAGEMENT, KLUWER, NORWELL, MA, 2009

This book provides the reader with an in-depth understanding of how airlines manage their revenues. It covers a wide range of topics, including: airport economics; passenger demand analysis; fare structures and marketing strategies; aircraft utilization and fleet management; airport capacity planning; and cargo transportation. There are five major sections to this book, and within those sections are several chapters. The first part, entitled "The Economics of Air Travel," introduces the basic concepts involved in revenue management. Part II, "Analysis of Passenger Demand," covers topics such as market segmentation and forecasting techniques. Part III, "Fare Structure Analysis" looks at how to set appropriate fares and how to maximize ticket sales through marketing campaigns. Parts IV and V deal with aircraft utilization and fleet management respectively. The final part, "Capacity Planning for Airports," discusses issues such as airport expansions and layout design considerations.

THE EVALUATION OF FLEET STRUCTURE IN TURKISH AVIATION INDUSTRY FROM STRATEGIC MANAGEMENT POINT OF VIEW. *PROCEDIA- SOCIAL AND BEHAVIOUR SCIENCES*, V. 284, N. 1, JANUARY 2011,

This article evaluates the strategic management of aircraft fleets in the Turkish aviation industry. The analysis is based on a case study of one major airline, which provides an overview of the company's fleet composition, utilization, and marketing strategies. A number of factors were taken into account in the analysis, including the company's financial performance, competitive environment, and stakeholder considerations. The article concludes with some recommendations for future strategic management of aircraft fleets. The study provides an understanding of the factors that influence fleet strategy and provides recommendations for future management decisions in finance & lease of aircrafts.

AIRCRAFT LEASING- A PROMISING INVESTMENT MARKET FOR INSTITUTIONAL INVESTORS KGAL GROUP INC, 1 MARZO 2016

In the report from KGAL Group, Inc.⁶, the company states that institutional investors continue to demonstrate strong interest in aircraft leasing as an investment vehicle. The analysis of aviation data from the past five years reveals that aircraft leasing has consistently outperformed other asset classes, with an average annual return of 10.5%. And given the current environment of low interest rates and increasing economic uncertainty globally, this is likely to continue into the future. It provides detailed information on the successes and challenges of this popular investment strategy, and it's sure to help you make an informed decision.

ICAO GUIDANCE MATERIAL AND BEST PRACTICES FOR AIRCRAFT LEASES EFFECTIVE MAY 2017

This document is a compilation of ICAO guidance material on aircraft leasing. It was created to help airlines adhere to best practices when leasing aircraft. This document covers topics such as pricing, contracting, and financial management. By understanding these concepts, airlines can ensure that their aircraft leasing transactions are conducted in a smooth and efficient manner.

PROTECTION AND ENFORCEMENT OF INTERESTS IN AIRCRAFT OBJECTS BILL 2022, INDIA

To further protect the interests of aircraft owners and operators, the bill proposes revisions to the Indian Contract Act of 1872, the Transfer of Property Act of 1882, and the Foreign Exchange Management Act of 1992. The legislation creates a PEO authority with the jurisdiction to enforce financial interests in aviation objects and to oversee aircraft ownership and management.

Another key issue that this policy will address is the enforcement of financial interests in aeronautical equipment. If an owner or operator thinks that another party has violated their financial interests in an aircraft item, it may be difficult to pursue legal action under the current legal system. For example, if a vendor feels that a buyer has failed to pay for an aeronautical item, the seller may be unable to take legal action against that buyer. When there is no method to recoup losses, it may be disastrous for company owners.

Overall, this bill represents a significant step forward in protecting the interests of both owners

⁶ KGAL Group, Aircraft Leasing - A Promising Investment Market for Institutional Investors (2016), available at www.kgal-group.com.

and operators of aircraft objects. By providing uniformity and clarity across different laws relating to aircraft ownership and management, as well as financial interest protection, this bill will help to ensure that these entities are treated fairly and with respect.

AIRCRAFT OPERATING LEASING: A LEGAL AND PRACTICAL ANALYSIS IN THE CONTEXT OF PUBLIC AND PRIVATE INTERNATIONAL AIR LAW HANLEY, D.P. AND WALSH, P. (2018).

This article discusses the legal and practical aspects of aircraft operating leasing, focusing on private international air law. The authors discuss the various rights and obligations that a lessee has under different types of lease agreements, including public international air law leases. They also provide tips for avoiding common pitfalls in leasing an aircraft.

1.9 Future Outcomes

The aviation sector is expanding at a tremendous pace. The ever-increasing number of planes in airlines' fleets demonstrates this. The procurement of an airplane is a time-consuming and expensive undertaking. Leasing an airplane is an option in addition to buying one. However, the airline is responsible for operating the planes and does not own them, a type of outsourcing. The growth of aircraft leasing in India has also generated a number of challenges. One such challenge is that Indian law is not well-suited to deal with lease agreements. This is because lease agreements are often longer than traditional purchase or rent agreements, and there are sometimes additional obligations that the lessee must fulfil (such as maintenance). Additionally, Indian law does not always recognize the legal status of leased aircraft. Nonetheless, despite these challenges, aircraft leasing in India remains an increasingly important industry. In fact, it is estimated that the aviation market in India will reach US\$60 billion by 2025! This growth reflects not only the increasing demand for air travel but also the growing flexibility and adaptability of leasing companies to meet customer needs.

CHAPTER 2: INTRODUCTION

Over the past 45 years, the net post-tax profit of the worldwide airline industry has averaged a meagre 0.1% of revenues. Over this period, shareholders have seen no return to compensate them for their risk-taking, even destroying value at a rate of USD 19 billion per year between 2000 and 2009 (Bisignani, 2011).⁷

In 2017, the aviation industry reported a return on invested capital of 9.9 percent for 2016, which was higher than the industry's expected cost of capital of 6.6 percent. This was just the second time in history that airlines worldwide have achieved this threshold, with the first occurrence being in 2015. With a net profit of USD 34.8 billion in 2016 on sales of USD 705 billion, the sector has very little safety net in the event of price hikes, economic shocks, or other unanticipated events. It was not until 2016 that the aviation business finally gave its investors a reasonable return on their cash (IATA, 2017b)⁸. Who in his or her right mind would put money into this sector and hope for a decent return?

A century ago, a farmer would buy a cow and own a small pasture in which that cow would graze. The family would tend to this investment to ensure it would last as long as possible, not fall sick and produce milk daily. After serving its purpose, the cow would be slaughtered in the owner's backyard.

Today, farmers go to a bank, borrow money on which interest is charged, buy cattle through a breeder, sizeable mortgage plots of land, buy imported feed from big agrochemical companies, use unionized labor to run the daily business, outsource expensive veterinary services to ensure health and compliance regulations are met. They invest in highly standardized milking and processing equipment if the product is commercialized. They are paid a minimum price for milk and meat is sold almost at cost to bulk distributors after the animal has been butchered in an approved facility. In many countries, the government subsidizes the highly leveraged farming industry at the taxpayers' expense. National interest is perceived as being at stake.

Aviation works in a highly regulated business environment, where compliance with its regulations is paramount. Maintenance is vital to safety, and all other activities from financing to catering are essential to the final consumer product, a contract of carriage sold as a flight

⁷Bisignani, G. (2011). International Air Transport Association Vision 2050. Retrieved from [http://www.hbs.edu/faculty/Publication Files/IATA_Vision_2050_d4f5285f-63ed-4793-86e3-a3f6b0fd62cc.pdf](http://www.hbs.edu/faculty/Publication%20Files/IATA_Vision_2050_d4f5285f-63ed-4793-86e3-a3f6b0fd62cc.pdf)

⁸ IATA. (2017b). Annual Review 2017

ticket. In the case of full service or legacy carriers, most of these specialized services are outsourced or spun off from the original airline for various reasons, including compliance, financial, liability or regulatory reasons. All these actors, such as compliance-related services (CRS), travel agents, and lessors, are feeding on the airlines with substantial results, draining their cash and possibly keeping them barely alive.

The overall air transport value chain is critical since the leasing industry benefits from it. It is critical to remember that the final product is airfare. Passengers do not purchase leasing agreements. Leasing is only one of the many co-products of the aviation industry. Cash flow giants, airlines today are less inclined to load their already highly leveraged balance sheet with illiquid assets and prefer the flexibility of fleet adjustment given by leasing companies. Only a handful of airlines are rated "investment grade" by rating agencies. Leasing companies have a higher investment grade giving them access to cheaper financing and allowing bulk orders with manufacturers at highly discounted conditions. The aviation industry is closely related to Gross Domestic Product (GDP) and follows a cyclical trend of contraction and expansion (FRED Economic Data, 2015). The NPV for the investor is very sensitive to variables including the cost of capital, the kind of aircraft, and the timing of the investment and divestiture. Aircraft prices tend to fluctuate with market conditions, and aircraft appraisals may be made more difficult by big orders of aircraft receiving substantial, unreported discounts. Aircraft have an economic life of approximately 25 years, punctuated by different service intervals.

As the number of people using air travel increased worldwide, it began to play a larger role in economic development. Since individuals prefer to change to quicker and more costly forms of transportation, such as air transportation, as their wealth rises, air travel's involvement in the transportation system is expected to continue to grow. There are commercial airlines that fly passengers and cargo all over the world. They take exceptional care of their airplanes since they are such an important part of their company. An airline may need to buy or rent new aircraft from time to time in order to extend its operations or to replace older units that are no longer operationally safe or economically feasible deciding what type and how many planes to buy can be difficult. An airline or route may not be a good fit for a particular aircraft type because of its unique capabilities and features. When purchasing a new aircraft, the purchase price and operational costs may run into the tens or even hundreds of thousands. After that, the industry looks into aircraft leasing to reduce the high cost of purchasing a new plane (Ryanair,

2012-2017).⁹

The lessee has the right to use the lessor's assets and properties under the conditions of the lease agreement between the lessor and lessee. Lessors and lessees often engage into agreements for certain time periods (the "lease term") in which the lessee is responsible for paying regular monthly payments to the lessor. In most cases, either side cannot terminate a lease agreement until specific circumstances are met, such as non-payment or bankruptcy. In certain cases, a lease agreement may allow for early termination of the contract at a set period with or without penalty. Unless the lessor offers the lessee the opportunity to buy the asset, the lease typically compels the lessee to return the item to the lessor at the end of the lease period. Purchase options are normally calculated using a formula and may be based on fair market value or simply on a number that is not significant to you.

2.1 The Aviation Economic Cycles

From the lessor's point of view, the acquisition strategy of aircraft type and its NPV at purchase is highly dependent on timing (cyclical industry) and expected residual value at divestment. Some factors are known and can be modelled, but the unknown future impact of the arrival of Russian and Chinese aircraft in 2020 in the market can only be guessed. In forming an investment policy to maximize return, choosing the right aircraft (value retention, liquidity, return, popularity, geographical distribution etc.) should be the lessor's core strategy.

Cycles in the aviation industry have been well documented throughout history. As a rule, airlines go bust when demand is low such as in recessions. Operators tend to default in groups and sensitively modify the supply/demand equilibrium affecting the resale value at that particular time, further depressing asset (aircraft) values if a sale is needed to reduce an airline or a lessor's book exposure. Lessee's default risk, interest rates and asset price volatility are closely correlated. At the time of writing, the economy is flooded with liquidity due to current monetary policies and historically low-interest rates. In September 2018, Emirates' CEO Tim Clark reported dealing with a strong US dollar, weakness of many emerging economies, and higher fuel prices while "evaluating capacity growth for 2019".

⁹ Ryanair. (2018).²⁰Financial Statement 2018

The value of an aircraft and its NPV

Aircraft valuation starts with the manufacturer's list price, on which a discount will be applied. These discount figures are undisclosed but can be calculated from the manufacturer's financial report and estimated during the period under review over the whole production. For single aisle, the average list price discount has been estimated at around 43% during the last eight years.

In 2013, Ryanair placed an order for 175 aircraft worth USD 15.5 billion at the list price. The industry benchmark Boeing 737-800, a 189-seat jet, is listed at USD 89.1 million. Large orders attract steep discounts, and industry appraisers valued each unit at about USD 40 million on this deal. Market values calculated by appraisers on the Boeing 737 MAX and the Airbus 320neo (featuring the latest fuel-efficient technology and listed in 2017 at around USD 110 million) confirmed the discount by reflecting over 50% depreciation in the first year¹⁰.

The theoretical value of an aircraft is the NPV of the combined future cash flows generated by leasing it over its useful life. Technically and economically, it may be different since when a positive net cash flow cannot be generated anymore due to maintenance costs, the economic life of the aircraft ends. The cash flows will also diminish over time as the aircraft ages, becoming less attractive and more sensitive to external factors such as oil price fluctuations and technical and performance requirements, amongst other variables. As it becomes less desirable for 1st tier airlines, the lessor faces six basic:

1. Choices depending on the economic cycle, the age of the aircraft and the timing of the decision:
2. Release for another term (generate income and defer capital gain)
3. Sell the aircraft (capital gain)
4. Mothball the aircraft (defer the capital gain/but incur maintenance/storage costs)
5. Conversion to freighter (incur conversion costs but generates future income)
6. Part out the aircraft (capital gain)
7. Scrap the aircraft (loss)

¹⁰Convey, R. T. (2018). Optimum Conversion Solutions. International Society of Transport Aircraft Trading, Jet Rader (Spring), 69

According to Boeing¹¹, the average life of a commercial passenger jet is 25 years, and freighters reach 37 years (or two more D checks). The above choices will impact the residual values used for the computation of the expected NPV at the time of acquisition. An aircraft in high demand, produced on a large scale and geographically well distributed, will fetch a higher resale price either parted out or as a whole unit on a new/different lease contract.

2.2 The Leasing

A financial lease of an aero plane involves three parties: the lender (who provides funds to the leasing firm), the lessor (owner of the aircraft), and the lessee (renter) (the operator). Leasing firms need rent payments to at least cover their cost of capital.

Common options for lease agreements

1. Operating lease
2. Financial lease
3. Export Credit Agency (ECA) deals
4. Airline Enhanced Equipment Trust Certificates (EETC), operational lease securitization, export credit bonds, and other forms of secured bonds
5. Islamic finance and other forms of specialized or tax-focused tailor-made agreements

2.2.1 Operating lease

Leasing an airplane is the most convenient option. Lessee and Lessor enter a lease agreement for a certain term and rental rate. The aircraft is recorded as an asset on the lessor's financial sheet, depreciated, and often financed via debt. The airline's balance sheet does not reflect the asset.

Payments for a leased space are normally made monthly or quarterly by the lessor. A normal lease agreement lasts four to eight years, after which the airline must return the aircraft to the leasing firm. The airline may alter its fleet more easily using this strategy. The inclusion of a call option is a viable idea.

¹¹ Ackert, S. (2012). Basics of Aircraft Market Analysis. Aircraft Monitor, March (1), 29. Retrieved from http://www.aircraftmonitor.com/uploads/1/5/9/9/15993320/basics_of_aircraft_market_analysis_---v1.pdf

Leases to Operate in Japan, with or without a Call Option

Japanese investors (including SMEs) typically own the aircraft under JOLs (Japanese Operating Leases). Tax deferral and potential profit are two main draws for Japanese investors in JOLs. JOLs often use debt as leverage.

The normal duration of a JOL contract is 12 years. Airlines will typically have a call option (JOLCO) where they may purchase the aircraft after the lease if they want. Investors have a high expectation of purchase, so airlines must tread carefully if they wish to return to this market. Because the asset will stay on the lessor's balance sheet regardless of the result of the call option, the lease is not a financial instrument.

2.2.2 Financial lease (aircraft-backed loans)

Loans from financial institutions are a common source of funding for the airline industry (and the leasing industry). Different types of mortgages and lease-purchase agreements are available for borrowing money (which are different from operating leases as the airline gradually pays off the loan until they own the aircraft). For operators, taking out a loan for the full worth of an airplane is very unusual. Usually, airlines will put up 15% of the total cost of the plane, with banks covering the other 85%. Syndicating bigger agreements allows banks to distribute the risk across a greater number of investors. From small, individual aircraft loans to massive, portfolio-funding syndicated arrangements worth billions of dollars. The airline's balance sheet reflects the airplanes as an asset that may be written off over time. There is a monetary obligation due to the loan. Depreciation is seldom utilized as a tax strategy for airlines since they rarely turn a profit.

2.2.3 Export Credit Loans (finance lease)

When it comes to asset-based aircraft transactions, the majority of government credit export agencies rely on a finance lease arrangement. Establishing a special purpose company (SPC) or vehicle (SPV) in a tax haven allows it to serve as:

1. the borrower under the credit agency-assisted financing
2. the financier of the aircraft
3. The financier's aircraft lessor to the operator

The SPC/SPV owner agrees to give the credit bureau precedence in the event of a default. This is especially crucial in developing economies, where access to capital may be limited. Rather than considering the operator's location, this government aid looks at where the plane or its parts were made. They are inexpensive to borrow money, but they take more time and effort to

work with and comply with than leasing businesses do (OECD 2011 Aircraft Sector Understanding). Suitable for long-term airline fleet growth or leasing firm purchase but not for a rapid fleet change. The SPC acquires the remaining funds for the aircraft's purchase price from commercial, financial institutions or other sources, and the Loan-to-Value (LTV) of the borrowed money does not exceed 85% of the net invoice. Even if the value of the aircraft serving as security has already been entirely mortgaged, the remaining 15 percent might be a deal breaker if the borrower has no rating. As the plane's owner, the SPC signs a lease agreement with the lessee.

1. Aircraft backed bonds

Following deregulation in the 1990s, they were introduced. The bond issued by airlines (usually enhanced equipment trust certificates or EETCs), operating lessors, and manufacturer securitizations all fit this category. One lessor is used in airline contracts (the airline itself). Multiple lessees provide a variety of aircraft leasing securitizations.

2.2.4 Certificates for Improved Trusted Assets for Equipment (EETC)

In EETC aircraft lease securitizations, a special purpose vehicle (SPV) controlled by a wholly-owned subsidiary of the sponsor airline is often employed. The airline then rents the SPV's aircraft fleet. The deal is similar to the sponsor airline issuing corporate bonds, except that the operator may get a higher rating on the EETCs than on its corporate bonds. Interest on a leased aircraft may be delayed for up to 18 months if the lessee defaults, but the securitization features guarantee principal and interest payment throughout this time.

2.2.5 Specialized deals

Dubai Aerospace Equipment, a leasing company backed by Dubai's Sovereign Fund, and other Islamic Funds, provide financing compliant with Islamic laws, for example. Deals can be as creative as the lender wishes as long as they comply with the regulations and jurisdiction in which they take place or compete. Due to the international nature of air travel tends to be rare as they become very complex and time-consuming.

Tax-oriented deals also exist under sale-leaseback operations or off-balance sheet loans and are tax jurisdiction-dependent.

2.2.6 Sale and lease Back

The "sale-and-leaseback" model, which is widely used by airlines, is one of the primary methods of aircraft acquisition for Lessors. Before entering into a sale-and-leaseback agreement, the airline must consider the following factors:

- New aircraft orders may be financed off-balance-sheet (through operating lease) for the

airline.

- Possibility of generating extra income through the realization of gain or equity upon the sale of a new or previously owned aircraft

- Lessor is responsible for the asset's residual value and selling it off at the conclusion of the lease.

A "Sale-and-Leaseback" transaction, as the name implies, consists of two different transactions. An Operating Lease is taken into after a Purchase and Sale. Operating Leasing will provide a continuous leasing framework for the term of the Lease and will have far-reaching implications for the airline, while the Sale/Purchase transaction will have a limited lifespan. The airline must pay particular attention to the commercial and operational components of the Operating Lease over the long term for reasons that will become evident as you read this article, while the legal and finance teams focus on the "front end" portions of the Sale/Purchase transaction.

The absence of substantial delivery conditions, and hence the delivery inspection of the aircraft, is the fundamental distinction between a sale-and-leaseback contract and a "regular operating lease," particularly in used aircraft transactions. As a result, the airline confronts several challenges:

Regardless of the "as is," all-inclusive delivery conditions under which aircraft are typically delivered under a Sale/Leaseback arrangement, the lease will typically include a specific set of redelivery restrictions designed to preserve the Lessor's asset value and re-marketability upon lease termination. The airline must be satisfied that it can meet these redelivery criteria at the conclusion of the lease. During the lease period, the Lessee will be subject to additional compliance requirements and operational constraints, such as those relating to subleasing, component replacement, maintenance and certification standards, operating locations, financial and technical reporting, and so on. If an airline's aircraft is leased rather than owned, everyone inside the organization must be aware of the ramifications and be prepared to debate them.

It is common for airlines to benefit from a sale-and-leaseback arrangement. The procedure may be performed on both brand-new aircraft (that have yet to be delivered) and veteran jets in the airline's fleet.¹²

¹² IATA Guidance Material and Best Practices for Aircraft Leases Effective May 2017, 49-50

2.3 Growth and Forecast

McDougall and Dong's user-cost method aimed to forecast the need for new general aviation airplanes¹³. Mattheiss and Hersch, looking into the discrete choice analysis, have discovered that the market for business jets treats data on product qualities like that of the market for personal autos¹⁴.

The NBAA guidebook predicts that between 2010 and 2031, the number of operational GA aircraft would rise from 224,172 to 270,920, a yearly increase of 0.9%.

Over the forecast period, the market for turbine-powered airplanes is predicted to increase by 3%, while the market for turbine jets is predicted to increase by 4.2%.¹⁵

The FAA projects that business usage of GA aircraft will expand at a higher rate than recreational use because to rising corporate profits and persistent worries about security and flight delays. Over the 21-year forecast period, the number of operational GA aircraft is predicted to rise from 224,172 in 2010 to 270,920 in 2031, a CAGR of 0.9%. Among aircraft, turbine-powered ones (including rotorcraft) are the priciest and most complex to build. As a result, their fleet size is predicted to increase at a slower pace than the turbine jet category, which is predicted to increase at a rate of 4.2 percent annually during the forecast period.¹⁶

According to Euro control's 2010 briefing, BA was one of the most robust market categories, with flight growth of 5.5%. Growth occurred in the major three, France, Germany, and the United Kingdom. Germany's rate was the highest, at 8.1%. Most of the increase in business travel to Turkey came from within-country travelers. However, although 19-seaters continued to see the most action, 6-seaters had the largest growth in terms of flights.¹⁷

In 2011, BA expanded by around 2.3%, returning it to levels last seen in 2006. Monthly fluctuations were noticeable, with readings around 9% at the beginning of the year and a precipitous drop to -5.1% at the end of 2011. British Airways' total flight proportion has remained relatively unchanged from 2010 at around 7.1%. Business flights inside Germany

¹³ Cho, Gerald McDougall and Dong W. (1988). Demand Estimate for new General Aviation Aircraft: A user cost approach. *Applied Economics*, 315-324

¹⁴ McDougall, Philip L Hersch and Gerald. (1993). The Demand for Corporate Jets: A Discrete Choice Analysis. *Applied Economics*, 661-666

¹⁵ NBAA. (2010). *Business Aviation Factbook*. National Business Aviation Association

¹⁶ FAA. (2011). *FAA Aerospace Forecasts FY 2011-2031*. Federal Aviation Authority

¹⁷ Euro control. (2011, May 19). *Business Aviation in Europe*. Retrieved from [www.eurocontrol.int: http://www.eurocontrol.int/sites/default/files/content/documents/official-documents/factsand-figures/statfor/business-aviation-europe-2010.pdf](http://www.eurocontrol.int/sites/default/files/content/documents/official-documents/factsand-figures/statfor/business-aviation-europe-2010.pdf)

have increased significantly, making this flow Europe's second-busiest behind French domestic. While the proportion of BA departures from France, the United Kingdom, and Switzerland has remained consistent in 2011 (and previous years), the same cannot be stated for Italy and Spain due to drops in business travel.¹⁸

An increase of little over 3,000 feet, or 20%, in the number of civil business jets in operation worldwide may be attributed to the past three years. However, in the United States, growth has averaged just 50%. India (from 51 to 106 business jets in operation) and China (from 57 to almost 100 aircraft in service) are two nations that have had particularly significant expansion in this market. The same can be said for emerging European countries like Bulgaria, , Hungary, Romania, the Czech Republic, and Poland all of which have made major strides in this area (where the number of jets has increased from 32 to 72). A large number of planes from these nations are registered in the United States so that their governments may remain anonymous. Business jets based in Aruba, Bermuda, the Isle of Man, and the Cayman Islands have expanded from 278 in 2007 to over 500 in 2018, a growth rate of more than four times. There are several private commercial planes owned by Russians and other nationals of the Commonwealth of Independent States that have found refuge in Aruba (CIS).

They may avoid high import tariffs on new aircraft and the hassle of arranging domestic financing by relocating their operations to a tax haven.¹⁹

More than half of all new aircraft orders recently came from just four regions: China, India, Russia, and Europe. Europe drove the majority of this international demand, but the growing economies of China, India, and Russia also showed significant enthusiasm for airplanes.²⁰

However, the business jet industry has split in two divergent directions. Business jets with a larger cabin and longer range are outselling their smaller, lighter counterparts. All business jets have had cuts in output from 2008 levels, although lighter and medium planes have seen steeper cuts than bigger jets. In addition, although demand is on the upswing for the bigger models, the smaller ones are still struggling.²¹

When the book-to-bill ratio in business aviation begins to rise, it's a good sign that the industry

¹⁸Euro control. (2012, March 20). Business Aviation in Europe. Retrieved December 19, 2012, from Euro control: <http://www.eurocontrol.int/sites/default/files/content/documents/officialdocuments/facts-and-figures/statfor/business-aviation-europe-2011.pdf>

¹⁹ Simpson, R. (2010, September). Emerging Markets-Opportunity or Challenge for Business Aviation? Fly Corporate

²⁰ Business Aviation Insider. (2010, March/ April). Overseas Markets: Industry Trends Explored. Business Aviation Insider, pp. 16-17

²¹ Forecast International. (2010). The Market for Business Jet Aircraft. Forecast International

is on the upswing. A number of rapidly developing countries, including China, India, and Brazil, as well as a more robust economy in the United States, helped bring the global economy back to health in 2010. However, slow development in Europe was and is a major issue. The majority of important metrics related to business jets are trending upward. Second hand planes are selling at rates similar to those seen before the recession, and as a consequence, the supply of used planes is dwindling. The number of flights taken by business jets has increased. There will not be much of an uptick in shipments in 2011, but the market is showing signs of life, so we may anticipate a rebound in business aircraft deliveries in 2012.²²

According to the most current General Aviation Manufacturers Association (GAMA) figures, 42.1% of business jet deliveries in 2010 went to customers in North America. This was a decrease from 49.4% in 2009. In 2010, Europe accounted for 22.8% of shipments, followed by Latin America (14.3%), Asia Pacific (11.8%), the Middle East and Africa (9.0%), and the Orient (9.0%). The Global Association for the Advancement of Artificial Intelligence (GAMA) plans to increase its usage of GA to foster trade and develop international companies.²³

Research conducted by Ronald Berger, partner at strategy consultants BA, predicts that the global market for turbojet business aircraft would increase at a CAGR of 6.9% from 2016 to 2020, reaching USD 30.7 billion by that time.

The largest increases have occurred in the super-midsize and large categories, perhaps due to fleet turnover and improved utilization. The initial excitement of the Very Light category has faded. China's annual growth rate of 20.4% will be higher than the market average, although North America and Europe will still display the largest absolute growth. Economic recovery and environmental concerns are the primary drivers of the expansion. As residual values grow, the used-car market will shrink. When it comes to price and customization, new types of businesses will bridge the gap between outright purchase and commercial air travel.²⁴

From 2016 to 2020, the global market for turbojet business aircraft is projected to increase at a CAGR of 6.9%, reaching USD 30.7 billion. This data comes courtesy of research conducted by Ronald Berger, a partner at strategy consultants BA. It was flat for Turbine Helicopters year over year. The third quarter's volume of pre-owned Business Aircraft transactions dipped under

²² Bombardier. (2011). Bombardier Business Aircraft: Market Forecast 2011-2030. Bombardier

²³ GAMA. (2010). General Aviation: Statistical Data book and Industrial Outlook. Washington DC: General Aviation Manufacturers Association

²⁴ Ronald Berger Strategy Consultants. (2011). Business Aviation Study 2020: Development of Business Aviation Industry after crisis. Hamburg

the 20-year average. According to the latest data from Amstar (2012 Market Update), Business jet growth is expected to continue, according to Bombardier's analysis of market trends. Factors like rising disposable income, expanding markets for international commerce and replacement products, rising business jet use, and a more open global economy contribute to market expansion. The forecast for business jet deliveries over the next 20 years is 24,000 deliveries at a value of \$648 billion. Between 2012 and 2021, 9,800 shipments totaling \$266 billion are predicted, while the succeeding 14,200 shipments totaling \$382 billion are anticipated between 2022 and 2031. The number of business jets in operation is expected to rise from 15,200 in 2011 to 31,500 in 2031, according to an estimate by aircraft manufacturer Bombardier (a number that takes into account retirements). According to Bombardier (2012)²⁵ Honeywell saw expansion in the BRIC countries. According to a poll, big purchases were on many people's minds in 2011. This has been reduced to 46% in conjunction with a tightening profile. Nearly a third of those surveyed planned to become buyers within the next two years. Forty percent of respondents this year said they planned to purchase aircraft within the following two years. The science of uncertainty is present, with 2017 serving as the climax for most transactions. The data from large nations indicate some dampening²⁶ of fervor, but it is still far greater than those from other areas.

Asia is the main source of the upcoming demand. To keep up with expanding demand, China must now produce 300–400 brand new aircraft yearly. With around 400 wide-body aircraft already based there, the Middle East is poised to become an important consumer market as well. OEMs and the industry as a whole will face more difficulty as a result of this. As the sector works toward meeting its pledges to attain a net carbon emission limit by the year 2020 and end carbon output by the year 2050, environmental constraints will become more stringent.²⁷

2.4 Productivity

One of the most important aspects of buying planes is finding a way to put them to work for your business. Previously, Mattheiss and Olson had looked at how significant GA was in

²⁵ Bombardier. (2012). Bombardier Business Aircraft Market Forecast 2012-2031. Montreal: Bombardier

²⁶ Honeywell. (2012, October 28). Global Business Aviation Forecast. Retrieved December 19, 2012, from aerospace.honeywell.com: <http://aerospace.honeywell.com/markets/businessaviation/2012/10-October/global-business-aviation-forecast>

²⁷ Booz & Co. (2011, December 31). Aviation Infrastructure 2011. Retrieved December 19, 2012, from Booz and Co.: <http://www.booz.com/media/uploads/BoozCo-Aviation-Infrastructure-Reader2011.pdf>

manufacturing hubs and found no significant association²⁸. Cost-benefit analyses of BA have consistently shown the service's worth to everyone, from multinational corporations to sole proprietors. Travel time savings, greater job productivity, less mental tiredness, and enhanced physical endurance are some concrete advantages that have been quantified by analyzing business aircraft operations. Asia is expected to be the primary driver of increased demand. To keep up with demand, China needs to produce 300–400 brand new aircraft yearly. Nearly 400 wide-body aircraft call the Middle East home, so the region is bound to be a sizable consumer market as well. The OEMs and the whole industry will have a tougher time getting things done because of this. As the industry tries to fulfil its pledges to attain a net carbon emission limit by the year 2020 and to decrease carbon production by the year 2050, it is reasonable to anticipate that environmental restrictions will become more stringent. According to the results of a research.²⁹

Harris Interactive was asked to do "The Real World of BA: A Survey of Companies Using GA Aircraft," which was then published as a result of their work. Both the National Business Aviation Association and the General Aviation Manufacturers Association asked for the study to be done (GAMA). The goal of the study was to learn more about the types of people who fly on commercial turbine-powered planes and why they do so. The Business and Commercial Operations Guide, which came out in 2010, talks about all of these things, including how much money is spent on maintenance, infrastructure, and other recurring costs related to the many different types of business aircraft.³⁰

2.5 Economic Contribution

According to research on the economic effects of enhancing general aviation airports, the service industry in Massachusetts accounts for the biggest share of respondents (35 percent). This industry includes professionals like consultants, attorneys, physicians, and advertising agencies. The manufacturing sector produced the following 19%.³¹ The FAA compiled a comprehensive list of the many different ways that GA aircraft are used, including their usage for ranching, aerial advertising, and more, in their GA and Taxi Survey.³²

²⁸ Olson, T. H. (1972, Feb). The Industrial Air Park: Still Untested. *Business Horizons*

²⁹ Anderson Consulting. (2001). *Business Aviation in today's Economy*. New York: Anderson Consulting

³⁰ BCA. (2010, August). 2010 Operations Planning Guide. *Business and Commercial Aviation* (August), pp. 86-109

³¹ Weisbrod, G. (1991). Economic Impact of Improving GA airports. *Transportation Quarterly*, 45(1), 67-83

³² FAA. (2004). *General Aviation and Air Taxi Activity Survey*. Washington: FAA

A ground breaking study was conducted in 2006 for GAMA using regional economic models generally accepted by economists and data from the U.S. Department of Commerce to calculate the hourly cost of GA activities. According to a 2006 study (Allen, Blond, & Gellman).³³

In conjunction with Nottingham University, Rolls Royce's Vivace project studied the aviation industry's value chain OEMs of both airframes and engines are part of the aerospace manufacturing and service value chain, as are the supply networks that offer OE and AM spare parts and services to airlines, which in turn give value to passengers. Some problems in this value chain are highlighted, and solutions are discussed in the study. To this end, we examine the business model used at each value chain level, paying special attention to how it may affect the Aero-engine manufacturer's performance.³⁴

The Central Aviation Authority (CAA) in the United Kingdom saw the need to learn more about GA and conducted research. The results of the study showed that some people see GA as nothing more than a luxury hobby for the well-to-do. This, however, obscures the true picture. Two sections of the GA industry that are seeing significant growth are the BA market and the lower end of the market (such as microlights and helicopters). The BA industry is responsible for a major chunk of the global economy's growth. About 8% of commercial aviation in the UK may be attributed to GA. The economic importance of GA is rising, and it is now a sizable market. It also serves as a crucial catalyst for more commercial activity.³⁵

Access an overview of the current situation of GA in Europe, as well as a comparison and study of GA in the EU and the US, with the Reports on the European Business and Personal Aviation Database. Key features of modern personal aircraft, such as price and direct operating cost, are compiled after an analysis of the Aircraft Database and presented. The paper also analyses the distributions of the key features of airports and landing facilities throughout Europe.³⁶

In a discussion paper published in 2007, the European Commission lays out the many aspects of GA in the European Community and how they relate to the larger civil aviation framework. This article covers the impact GA has on the capacity of the air transportation system and the environment, in addition to its contribution to the competitiveness of the EU economy and its

³³ Allen, W. B., Blond, D. L., & Gellman, A. J. (2006). General Aviation's Contribution to US Economy. Washington: GAMA

³⁴ Doug Scott, Erick Hedenryd and David Buxton. (2006). Current Aero Industry Business Models. VIVACE Project

³⁵ CAA. (2006). Strategic Review of General Aviation in United Kingdom. London: Civil Aviation Authority

³⁶ Baron, A. (2007). Report on European Business and Personal Database and Findings. European Personal Air Transportation System

relevance for the social life of European inhabitants. It also delves into the current safety, security, and economic regulations that the European Union has in place that are pertinent to GA. (European Commission, 2007).³⁷

2.6 Regulatory and Liability

An essay by Truitt and Tarry published in the Transportation Journal argues that product liability was not the only cause in the slowdown of GA's growth that required the amendment of that statute in 1994. They examined trends across decades and came to the conclusion that development follows the product life cycle curve. If we look at the number of aircraft produced, we can see that it has gone up. It also shows notable cyclical characteristics that coincide almost precisely with economic growth. During a boom, output and sales may rise dramatically, whereas during a recession, they may fall.³⁸

The Directorate General of Civil Aviation in India maintains a database of charter and other non-scheduled airlines and airports (DGCA). The guidelines for applying for a permit to operate Non-Schedule Air Transport Services in India have been made public by the country's aviation regulator, the Directorate General of Civil Aviation (DGCA). A Charter operation is defined as a for-profit flight when the client or aircraft negotiates the departure and arrival times and places in advance. Individuals are unable to purchase tickets for this service. This stipulation also specifies what must be done before aircraft may be purchased.³⁹

By publishing a "green paper" on Australia's National Aviation Policy, the government has outlined its goals for a fundamental policy shift. Australia's thriving economy employs a wide range of people in meaningful, high-skilled professions that pay well, are competitive on the international stage, and remove all obstacles to full participation. The Australian government has promised to launch a serious programme of structural transformation to help lessen the immediate consequences of global economic uncertainty.⁴⁰

³⁷ European Commission. (2007). General Aviation in European Community. Directorate F- Air Transport. Brussels: European Commission, Directorate General Energy and Transport

³⁸ Tarry, Lawrence J Truitt and Scott E. (1995). The Rise and Fall of General Aviation Product Liability. Market Structure and Technological Innovation. Transportation Journal, 52-70

³⁹ DGCA. (2021, May 21). CAR Section III, Series C. part -III. Requirement for Grant of Permit to Non-Scheduled Air transport Services, New Delhi, India: Government of India

⁴⁰ Australian Government. (2008). National Aviation Policy. Government of Australia. Canberra: Australian Govt

2.7 Financing and Insurance

It is not as out-of-the-ordinary as you may think to finance a business jet. It is quite similar to traditional financing for equipment but with additional moving parts. After acquiring these agreements without originating them, several middle market finance providers found that the terms and conditions were not drastically different from those of standard equipment financings. Financial institutions started employing skilled asset managers, lawyers, and other resources, making the associated worries more manageable.⁴¹ On March 1, 2006, a treaty known as the Cape Town Convention (CTC) entered into force, drastically altering the laws regulating some aircraft financings. The Cape Town Convention applies to all forms of contractual agreements, including loans, leases, and sales agreements.⁴²

Similarly, insurers in the Indian GA market are starting to compete for customers by offering various policies. Insurers have expanded their coverage of the aviation sector to include not just airlines and planes but also airports and aircraft manufacturers, reflecting the industry's increased risk profile. Since the total insured limitations are low, many Indian insurers can cover GA (the usual aircraft with fewer than 61 seats). The premium payments for general annuity purchases in India were significantly lower in 2008 in comparison to their global and regional counterparts. Buyers took advantage of the slow market and extra capacity by negotiating aggressively, explaining the price disparity. Many buyers have switched insurance companies as a direct result of this procedure.⁴³

To create a series of articles for Business Week on how to buy and finance a business aircraft, Mark Pataky spoke with David Wyndham, Vice President of Conklin & de Decker, and other professionals in the sector. Mark investigates the nonstandard manner in which corporations buy Business Aircraft.⁴⁴ As reported by Aon Risk Solutions, lead hull and liability premiums were relatively stable in 2011 despite increased exposure brought on by airlines increasing fleet expenditures and passenger predictions in response to improved economic confidence in a number of regions around the world.⁴⁵

⁴¹ Edward K Gross, Rhonda Maggiacomo and Adam L Schless. (2006, Spring). Business Aircraft Financing. *Journal of Equipment Lease Financing*, 24(2), 1-21

⁴² Cape town Convention. (2001, November 16). Convention on International Interests in Mobile Equipment. Retrieved from International Institute for Unification of Private Law: <http://www.unidroit.org/english/conventions/mobile-equipment/mobile-equipment.pdf>

⁴³ Pawar, A. (2008). *Indian Insurance Market Overview 2008*. Mumbai, Maharashtra, India

⁴⁴ Patiky, M. (2010). *Business Aircraft Acquisition and Financing Guide*. Business Week

⁴⁵ Aon Insurance. (2011). *Aon Airline Insurance Market Indicators*

2.8 Infrastructure

The research conducted by the International Civil Aviation Organization investigates the ways in which airports are restricted in the number of passengers that they are able to transport, as well as the measures that have been taken to address these restrictions (such as congestion fees and slot allocation), the impact of airport organizational structures, environmental concerns, and safety concerns.⁴⁶

Esler points out a number of things that need to be thought about, such as the level of noise during construction, the effect on the environment, safety concerns, the integration of the airspace, zoning and land-use planning, community relations, and the capacity. Government and industry aviation analysts expect corporate and commercial flight traffic to quadruple (or more) during the next two decades, leaving airport managers throughout the United States concerned about access and parking for the resulting influx of aircraft.⁴⁷

A major driving force behind this shift has been public sector budget restrictions, which have enticed private investors with the promise of rapid expansion of both income and productivity. For the longer-term investor, the engagement of government regulators might be appealing since it provides the certainty of stability. When compared to more conventional forms of private involvement like management contracts or outright sales, the additional control offered by the Build-Operate-Transfer (BOT), lease, and divestiture models is enticing investors and businesses. In 2007, airports in Bangalore and Hyderabad chose for Public-Private Partnerships as their privatization model of choice, while those in Delhi and Mumbai followed the joint venture path. (PPP). The government is aggressively seeking private sector engagement in further developing many rural airports. Single European Skies (SES) is analyzed in terms of its strategic and financial ramifications, airline bankruptcies and their potential solutions, the quest of sustainable aviation, a new airport security model, and the evolving nature of airport investors.⁴⁸

Kevin Michaels, speaking at a supplier conference in Phoenix, said that the MRO market was now worth about \$6.2 billion and was projected to more than triple to \$12.6 billion by 2018.

⁴⁶ICAO. (2005). Study on International General and Business Aviation access to Airports. ICAO Secretariat

⁴⁷ Esler, D. (2007, April 03). Are Business Aviation's Hubs ready for the future? Business and Commercial Aviation, pp. 70-73

⁴⁸ Booz & Co. (2011, December 31). Aviation Infrastructure 2011. Retrieved December 19, 2012, from Booz and Co.: <http://www.booz.com/media/uploads/BoozCo-Aviation-Infrastructure-Reader2011.pdf>

The MRO industry in the Middle East is growing at a CAGR of 12.3. In second place is Asia and the Pacific, with a compound annual growth rate of 11.3%. The main parts of the business aircraft alteration sector are interior renovations, repainting, upgrades to the avionics, and upgrades to the electronics in the cabin.⁴⁹

After the attacks of September 11, 2001, the Government Accountability Office (GAO) of the United States presented a report to the Subcommittee on Homeland Security of the House of Representatives. In the report, the GAO emphasized the necessity for increased government monitoring as well as engagement from the private sector. Three-quarters of all planes that fly in the United States are general aviation. These planes can perform various tasks at any of the roughly 19 thousand general aviation airports around the country. However, there are around 300 ports on the sea and rivers and 453 commercial airports. The general aviation sector is responsible for 1.3 million employment and an annual economic output of \$100 billion, according to the National Air Transportation Association.⁵⁰

In 2005, Breiling Associates commissioned research to investigate the private usage of business aircraft across Europe. For both recreational and professional aviators, training is a crucial component. An established training company may be contracted to provide a continual program of inspections and recurrent training for a private owner/operator who purchases a new aircraft.⁵¹

The difficulty of increasing security at GA without significantly slowing down air commerce or reducing the ability to travel by air persists, despite the fact that GA plays a relatively minor but essential part in the economy of the United States. Because of the complexity of GA and the general lack of awareness on the risk and vulnerability of different GA activities, policymakers have received conflicting signals on the magnitude of the security threat presented by GA. Despite the fact that several recent high-profile infringements of GA security suggest to ongoing weaknesses and inadequate intelligence information, which indicates a sustained terrorist interest in utilizing GA aircraft, it is abundantly clear that the security risk involved with GA airports, aircraft, and operations varies substantially.⁵²

⁴⁹ Michaels, K. (2010). Outlook for Business Aviation MRO Market. 15th Annual Regional and Business Aviation Suppliers Conference

⁵⁰ Government Accountability Office. (2004). General Aviation Security. Washington: US Govt

⁵¹ Associates, Breiling. (2005). Private Operations of Business Aircraft- A Review. Breiling Associates

⁵² Elias, B. (2009). Securing General Aviation. Washington: Congressional Research Service

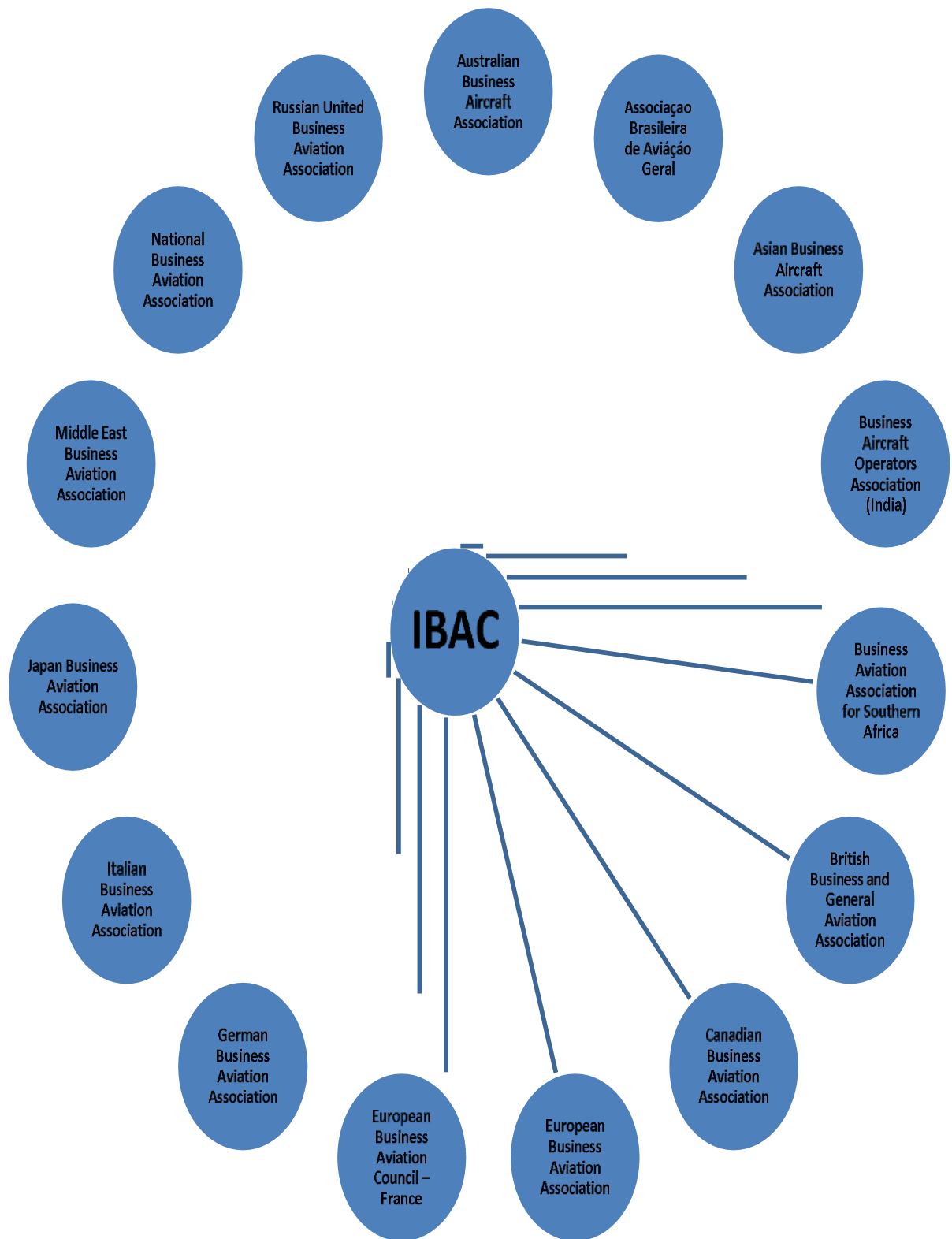
CHAPTER 3: BUSINESS AVIATION WORLDWIDE AT A GLANCE

3.1 Introduction

There is no other organization that works as hard as the International Business Aviation Council does to improve the safety and security of aviation on a global scale. This is because the IBAC is the only organization of its kind (IBAC). In the year 1981, a group of five individuals in London created the firm that would subsequently be known by their respective names. The total number of organizations that were involved amounted to the National Business Aviation Association (NBAA), the German Business Aviation Association (GBAA), the Canadian Business Aviation Association (CBAA), the European Business Aviation Association (EBAA), and the British Business and General Aviation (BBGA) (NBAA). The International Civil Aviation Organization has close relations with the International Business Aviation Council, which helps to strengthen such ties (ICAO). This group represents British Airways' interests before the International Civil Aviation Organization (ICAO) and helps to the development of international standards for civil aviation. Additionally, it works to improve safety standards in the aviation industry (SARPs).

IBAC has been issued an invitation to send observers to meetings of organizations that fall under the administration of the International Civil Aviation Organization, such as the Committee on Aviation and Environmental Protection (CAEP), the Preparation and Design Regional Groups (PIRGs), and others (ICAO). Together with the International Air Transport Association and the International Federation of Airlines Pilots Association, the IBAC is watching out for British Airways (IFALPA). (IBAC, 2011).

Figure 1: Shows the many BA organizations across the globe.



3.2 Americas

3.2.1 North America

The commercial aviation landscape is diverse, from little propeller planes to massive jets and helicopters. Some American piston planes are hardly smaller than a vehicle and may go hundreds of miles without refueling. Some other planes can easily carry over a dozen passengers and cover oceans. Most American business jets feature a cabin roughly the size of a large SUV, can typically carry six people, and have a range of around one thousand miles. Depending on the plane's design, they might travel at altitudes below or well over the 20,000 feet considered safe by most airlines. Four business aircraft types are recognized by the NBAA: piston engines, turboprops, jets, and helicopters.⁵³

NBAA has always advocated for pro-BA measures, both domestically and internationally. The Association and the industry it represents are working toward a number of policy objectives, including the further improvement of BA's already exceptional safety record, the expansion of airport capacity, and the protection of airspace.

- Regulatory

After it was determined that the aviation industry required government involvement and the application of federal law, the Government Aviation Act of 1958 was passed into law to supervise and regulate aviation in the United States. This act was enacted after it was determined that the aviation sector required government participation.⁵⁴

FAA of the USA has changed in function and structure from its inception in the 1920s. It plays a crucial role in policymaking and rulemaking today, as well as rulemaking enforcement.

The regulations are fully laid out in Part 14 of the Code of Federal Regulations (Code of Federal Regulations). The rulemaking process includes drafting documents, holding public hearings, and publishing notifications. Furthermore, the National Transportation Safety Board is a crucial regulator (NTSB). Keep in mind that all transportation, not just aircraft, is under the NTSB's watchful eye. The NTSB makes recommendations, and the FAA enforces them.

The more relaxed regulations of Part 91 make it ideal for private and business flights, which are why you should use it whenever possible. To clarify, rotorcraft activities with an external

⁵³ NBAA. (2012). NBAA Business Aviation Factbook. Washington: NBAA

⁵⁴ Eichenberger, J. A. (1997). General Aviation Law. (S. Chevalier, Ed.) New York: McGraw-Hill

load go under Part 133, whereas agricultural aircraft operations fall under Part 137. Only actions covered by Part 91 may be considered GA under the law. The FAA and others occasionally use the term "general aviation" (GA) to describe and analyses trends in aviation that are comparable to GA, even if they are technically not GA. General aviation (GA) refers to any civil aircraft registered in the United States that is not operated by a commercial airline in accordance with 14 CFR Part 121 or Part 135. CFR Part 135 establishes more stringent safety requirements for transportation-for-hire businesses including air tours and medical evacuations. Part 135 of Title 14 of the United States Code defines GA as include non-scheduled airlines that transport passengers at their request.⁵⁵

Legal fees were capped as part of a substantial regulatory change in the area of GA brought about by the General Assembly's (GA) GA Revitalization Act (GARA) of 1994. Reforms to Georgia's tort laws spurred the industry's expansion. There is an 18-year statute of limitations on filing a product liability lawsuit against the maker of a 20-seater aero plane, its engine, or any of its parts.

In Scott Tarry's article, he talks about how the GA industry tried to frame the issue of tort reform in a way that would help their unlikely alliance with influential consumer advocates like the Aircraft Owners and Pilots Association (AOPA) and make it less likely that organized labor would oppose the issue by pointing out the industry's strong ties to manufacturing jobs.⁵⁶ Certificates and ratings for pilots, flight instructors, and ground instructors, as well as the situations under which they are required, the privileges and limits associated with them, and the procedures for obtaining them, are all described in detail in Part 61.

The ETOS framework, which illustrates the ways in which engineers, trainers, and operators communicate with one another, is very important to the aviation industry (The ETOS framework for flying).

The engineers will employ both hard and soft infrastructure in order to create the circumstances that are necessary for the aircraft to fly. However, the person who will be operating the equipment is need to go through both ground and flight training. The pilot is responsible for operating the aircraft, which involves completing the required circuits and ensuring the necessary level of structural integrity so that the plane can fly. Worldwide aviation policy may

⁵⁵ GAO. (2001). General Aviation: Status of the Industry, related Infrastructure and Safety Issues. Washington: United States General Accounting Office

⁵⁶ Tarry, S. E. (2001). Policy Studies Journal. 29(4)

be analyzed using the ETOS flying framework. It stands to reason that a policy may be established after examining the framework's components and developing appropriate regulations.

Any pilot who takes off at an indicated velocity of more than 250 knots below 10,000 feet MSL violates Federal Aviation Regulation 91.117. (288 mph). If flying over a densely populated location, such as a city, town, or hamlet, or an outdoor assembly of people, the aircraft's altitude must be at least 1,000 feet over the highest barrier within such a horizontal perimeter of 2,000 feet from the aircraft.

Pilots must follow a certain set of protocols when flying over certain types of airspace. When required, authorities will issue a Notice to Airmen (NOTAM) identifying the geographic region and describing the nature of the danger or situation that necessitates the installation of temporary flying restrictions.

Flights that transport passengers for employment or remuneration are subject to CFR 91.147. Daytime VFR (Visual Flight Rules) needs just 30 minutes of fuel after landing at the first point, but night time VFR (Visual Flight Rules) demands 45 minutes.

Information such as the aircraft id number and radio call sign, the type of aircraft, the full address and name of the pilot in command, the departure point and time, the intended route, the cruising altitude and true Mach number at that altitude, and any other relevant information must be included in the VFR flight plan. Passenger count, fuel reserve (in hours), initial destination, and time remaining till crossing the finish line should also be given.

The aircraft must have enough fuel to fly for another 45 minutes beyond the point of anticipated landing, according to Instrument Flying Rules (IFR). Helicopters need to have enough fuel for 30 more minutes after the alternative airport.

Standardized U.S. airworthiness certificates for powered civil aircraft are written out in CFR 91.205, as are the instruments and equipment requirements for such aircraft. Note that specific requirements consistent with election law exist for transporting candidates for elections, as described in CFR 91.321.1.

Among the many general aviation uses that come under CFR 91.501 are ferry and training flights, aerial work operations like aerial photography or survey, and pipeline patrol. Demonstrator flights are used to introduce prospective purchasers to an aircraft. conveyance of personal items (as opposed to mail) by a pilot or manager of a fractional ownership arrangement. For all services covered by this rule, there shall be no fees.

A commercial air tour is a paid excursion that includes aerial sightseeing in a plane or helicopter. Any for-hire or for-compensation flight where the flight is conducted as a public

charter under part CFR 380, or any flight for which the departure time, departure location, and arrival location are specifically negotiated with the customer or the customer's representative, are considered to be on-demand operations.

- (i) Except for operations utilizing a single kind of aircraft, common carrier operations may utilize turbojet-powered aircraft with a cargo capacity of 7,500 pounds or less and a passenger capacity of 30 or fewer (not including crew seats).
- (ii) Private charter flights in planes that can seat less than 20 people (not including the pilot) and can haul no more than 6 tons of cargo.

• Part 135

Part 135 specifies the rules that certificate holders must follow when conducting commuter and on-demand operations. In order to qualify as a "eligible on-demand operation conducted under CFR 135.4 and with a Two-pilot crew," the certificate holder must employ or contract with a minimum of two qualified pilots. The chief pilot has to have 1,500 hours of experience in the air, while the copilot needs 500 hours of flying time. Regulations are more stringent for on-demand services and charters since they are transporting consumers for payment. The several chapters that make up Part 135 are shown in Table 1.

Table 1: Operations under Part 135.

Subpart	Description
Subpart A General	This section will go through the guidelines for staff and passenger On-demand operations like training and emergency situations.
Subpart B Flight Operations	Extra requirements for airworthiness and crew responsibilities are specified in this subpart beyond those found in part 91.
Subpart C	Part 91 of this chapter establishes minimum standards for aircraft and equipment, such as dual

Aircraft and Equipment	controls, PA systems, oxygen supplies, etc., to which the provisions of this subpart add.
Subpart D VFR/IFR Operating Limitations and Weather Requirements	Limitations on flight operations under Visual Flying Rules/Instrument Flying Rules and related weather restrictions are outlined in this subpart.
Subpart E Flight Crewmember Requirements	This section lays forth the chief pilot and copilot standards in terms of education, experience, and time since certification.
Subpart F Crewmember Flight Time and Duty Period Limitations and Rest Requirements	Flight time, duty time, and rest needs are all outlined in this section.
Subpart G Crewmember Testing Requirements	Specifies the procedures to be followed by checking pilots in approving pilots and flight attendants for duty.
Subpart H Training	This sub part prescribes training requirements at initial, transition, upgrade, requalification etc. It also prescribes Crew Resource Management.
Subpart I Airplane Performance Operating Limitations	This subpart prescribes airplane performance operating limitations applicable to the operation of various categories of airplanes.

<p>Subpart J Maintenance, Preventive Maintenance, and Alterations</p>	<p>This sub part prescribes rules in addition to those for maintenance, preventive maintenance and alterations.</p>
<p>Subpart K Hazardous Materials Training Program</p>	<p>This sub part prescribes the requirements applicable for training each crew member for supervising, accepting, rejecting and handling any item for transport on board an aircraft:</p>

The plane is registered as a civil aircraft in the USA and has a current and valid airworthiness certificate. Regulation 135.43 of the Federal Aviation Agency states that airlines are required to revoke pilot certifications awarded to crew members who have been employed by the airline at the time of certificate issuance.

Night flying privileges under Part 135 need 25 hours of flight time, 5 of which must be accomplished during the night. Five actual or simulated instrument approach operations are required for IFR certification. A sensitive altimeter, carburetor heating/de-icing equipment, and two gyroscopic bank/pitch signals are also required at the pilot stations (artificial horizons). All aircraft with seating for twenty or more passengers must be equipped with a voice and flight data recorder.

Operating a turbine-powered aircraft with ten or more passenger seats (not including the pilot's seat) without an authorized terrain awareness and warning system is illegal under CFR 135.154. The aircraft must be equipped with a vacuum indication or power failure warning device to display the amount of power available for gyroscopic instruments from each power source, a static pressure backup system, and a vertical speed indicator for IFR flight. Aircraft must also be fitted with a certified traffic warning and collision avoidance system.

- Productivity and economic contribution

The value of GA may be estimated by totaling all the money made in the GA business sector. The FAA created one way for calculating the economic effect of anything. The technique used here analyzes the effects of GA on the national and regional economies via the lenses of three interconnected variables: economic activity (or production), employment (or jobs), and income

(or earnings).⁵⁷

Direct, indirect, and induced effects contribute to GA's overall economic significance. As an example of direct effects, consider the monetary transactions that take place as a direct consequence of the supply of general aviation (GA) services, such as the provision of aircraft and airport-related services. The usage of GA's services has secondary effects, such as increased spending and business for local eateries. Direct and indirect effects from tourists spending money at hotels are amplified by a "multiplier effect." influences; the multiplier effects are the outcome of a chain of expenditure that begins with the direct and indirect influences.

The International Civil Aviation Organization researched what steps may be made to help BA set up shop at existing airports and explore opportunities for growth in the sector. Capacity restrictions mostly caused airport access issues, actions adopted to address airport capacity shortfall (such as congestion charges and slot allocation), the impact of airport organizational structures, environmental constraints, and security concerns.

BA is a game-changer for local economies and employment creation in America's rural and suburban backwaters. Because there are seldom suitable alternatives in terms of transportation. There are a lot of micro, small, and medium-sized enterprises (MSMEs) in places where commercial airlines do not fly. Sales, technical assistance, and other customer service forms are just some of the many business functions that need in-person travel. Such journeys may need several stops in a short time or far-flung destinations. It is not always possible to fly because of the great distances involved. Not only does the BA community provide jobs for thousands of Americans, but it also provides aid to those in need whenever disaster strikes.⁵⁸

3.2.1.1 Finance and insurance

General aviation (GA) airport investments are often funded by state government grants and bond sales. Much of the funding comes from federal grants.

The United States President signed into law a bill in 2004 that had been passed by the 108th Congress (2003-2004) called the Vision 100-century of Aviation Reauthorization Act. In particular, the law continues the airport capital project financing provisions of the Wendell H.

⁵⁷ US Department of Transportation. (1986). Measuring the regional economic significance of airports. Washington: US Department of Transportation

⁵⁸ Bartle, J. R. (2006, January). The Sustainable development of US air transportation: the promise and challenge of Institutional reform. *Public Works Management and Policy*, 10(3), 214-224

Ford Aviation Investment and Reform Act for the 21st century (AIR-21) of 2000. With the passage of that statute, funding for general aviation airports became more feasible.

The Airport Improvement Program is supported through taxes on airline tickets, air cargo, and aviation fuel. These taxes are collected and deposited into the Airport and Airway Trust Fund (AIP). Distribution of FAA AIP Grants is typically handled by the predetermined method of distribution established by law and FAA-approved discretionary funding that takes project priority and other factors into account.

In the same way, as budgetary caps and other restrictions constrain mandatory expenditures, discretionary funds are also limited.

John Bartle has looked at how the aviation industry can grow in a way that is good for the environment, the economy, and society from many different points of view. He thought it was time to put economic and social goals ahead of building infrastructure. The Airport and Airway Trust Fund gets most of its money from things like ticket prices, taxes on fuel, and excise taxes on both international and domestic cargo flights (AATF). The Airport Improvement Program does get money from AATF, which is true. The benefits to the passenger are not equal to the PFC. The research done by Bartle has shown that (2006)

Airport development is put into groups based on the goals and objectives of the FAA. This helps choose projects and decide how much money to spend on them. Priorities are set based on the type of airport, the goal, the type of work, and the airport infrastructure (runway, building, apron) (that is, the specific project being done, such as construction, purchasing a firefighting vehicle, or making security improvements). Under the plan, construction projects that meet or go above and beyond federal safety and security rules and guidelines are given the most attention. (GAO, 2001)

There are three steps to buying an aero plane: strategic planning, tactical execution, and operations. It has many steps and could be complicated because countries are different. Experts agree that a good rule of thumb is to buy an aero plane that can meet your needs 80% of the time and then use charters, jet cards, or fractional ownership for the other 20%. Now that we are at a 50/50 split in requirements, maybe we can solve it with two fractional shares. (Pataky, *Buying and Financing a Business Aircraft*) says that a good aircraft management company is very helpful for the crew, the maintenance, and the operation of an aircraft.

Some of the most common paths to aircraft ownership are outlined here.

1. Whole aircraft ownership

While there are many benefits to owning a real aircraft, doing so demands a substantial financial commitment and support system.

2. Fractional Ownership

Costs are cut, administrative responsibilities are removed, and many advantages not available with outright aircraft purchases are introduced.

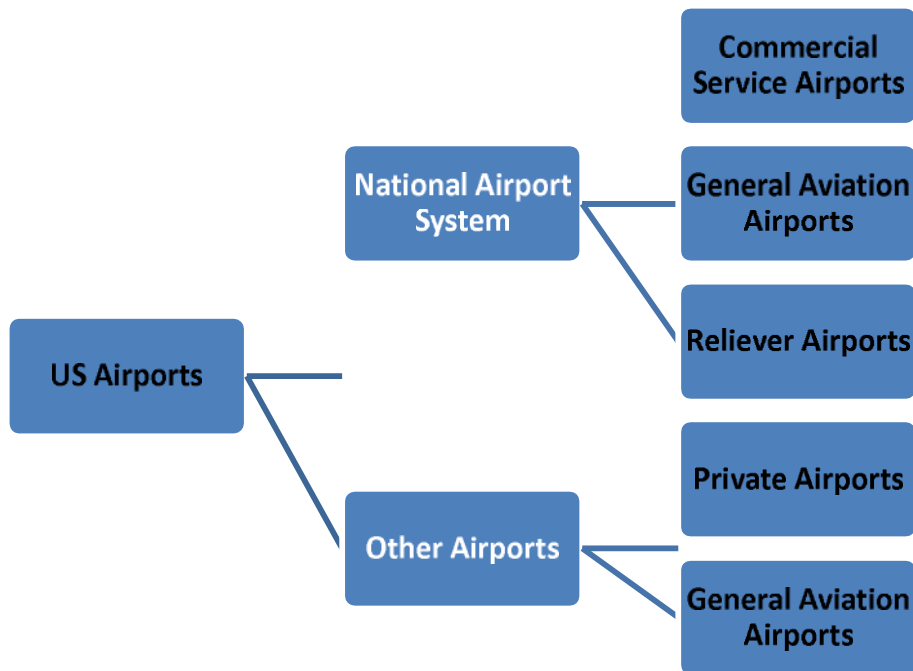
3. Jet Cards

This choice, like the Flex jet 25 vCard, Avant air edge card, Citation air, etc., eliminates the upfront cost, minimizes the commitment to use, and provides excellent versatility at a higher hourly rate.

The airport is a vital hub on the road to wherever your flight is taking you. Airports in the United States fall under a wide variety of categories, as seen in Figure 7.

According to the Federal Aviation Administration Reauthorization and Modernization Act of 2012, a general aviation (GA) airport is one that either does not provide scheduled service or has less than 2,500 annual passenger boardings. There are about 19 thousand airports, helipads, seaplane bases, and other landing facilities in the United States; 3,330 of them are included in the National Plan for integrated Airport system and are within the FAA's purview (NPIAP). The Airport Improvement Program may provide funding for publicly accessible airport upgrades (AIP). Only 378 airports are major hubs that provide scheduled service, while the other 2,952 airports are general aviation (GA) facilities that may receive federal funding. (FAA, 2012). General Aviation airports may be split in two categories based on their financing mechanisms. Figure 10 shows that the government only provides funding to airports that are part of the National Airport System and serve general aviation.

Figure 2: Types of airports in USA



Airport development requires careful consideration of a wide range of factors, including real estate, noise, environmental impact, safety, airspace integration, zoning and land use management, community relations, and capacity planning. In white plains, Jerseys Teterboro (TEB) and Westchester County (HPN) serve as relief airports for New York City, while Van Nuys is located just outside Los Angeles. More unpredictable, non-routine traffic flows through these airports. Unlike airport terminals, it does not force passengers in a certain direction.

The airport's marketing strategy should be treated as seriously and urgently as any other critical airport plan. Since there are several potential approaches to marketing an airport and only so many resources to go around, it is crucial to zero in on a specific strategy by settling on a set of objectives, crafting a clear message, and committing to an approach.⁵⁹

Since the FAA and others base their estimates on airport master plans, which become less accurate after 3 to 5 years, they tend to underestimate the real costs of building.

One such BA airport planned forward is the DuPage Airport in west Chicago. In addition to its direct impact on the economy, the sector benefits from many spinoff employment and

⁵⁹ Peggy, F., Hazel, R., Ureksoy, M., & Harig, G. (2010). Marketing Guidebook for Small Airports. Washington: Airport Cooperative Research Program (ACRP)

industries. Income is partly generated by selling fuel in the air and by operating a technology park on the ground.⁶⁰

It seems sensible to know how much airport facilities cost. Karlsson has looked at how much of the budget goes toward infrastructure expenses, including maintenance, upgrades, and security. Airport infrastructure costs can be broken into two groups: (a) taxes and fees that are specifically used to pay for infrastructure, and (b) clear spending by airport operators on things like charging passengers to use airport facilities, security, ATMs, and building and maintaining airport-based amenities.⁶¹

The poll divided expenses into the following five broad groups:

- a) Passenger facility charges (PFC) and other airport fees;
- b) Fees for Airway Use;
- c) Expenses relating to safety, such as government security costs;
- d) Other payments made to the US government, including taxes and fees
- e) Infrastructure and security-related taxes and levies paid to non-national organizations.

The difficulty of establishing and quantifying the state and local economic consequences of GA airports was investigated by Glen Weisbard. He claims that the economic benefits of company development and attractiveness directly result from the advantages enjoyed by airport users. The economic value of a transportation improvement may be measured against the baseline state by adding up the time saved, money saved, and risk reduced by all passengers. The airport's positive impact on the local economy may be quantified by tallying the sum of money earned by local establishments thanks to airport-related traffic. The total includes all kinds of spending, whether it was direct or indirect. The net economic gain comes from the growth of local businesses, the creation of new jobs, and the value of user benefits (savings in time and money) from leisure travel. With the assistance of the Massachusetts Airport Risk Assessment framework, which takes into consideration the airport's service region's population and economic profile, changes in how airport businesses are used, how much money they bring

⁶⁰ Esler, D. (2007, April). Are Business Aviation Hubs prepared for future? *Business and Commercial Aviation*, pp. 70-73

⁶¹ Karlsson, J., Odoni, A., & Gaudet, M. B. (2007). Cost of Aviation Infrastructure in the United States. *Transportation Research Record*, 28-36

in, and how attractive they are to businesses can be estimated. The poll found that 19% of businesses in Massachusetts would move if the airport closed, and 7% would stop doing business.⁶²

3.2.1.2 Skill development and training

Some forms of GA aviation are riskier than others. For instance, compared to commercial passenger carriers, the safety record of business aviation is on par. There are many more accidents in other sorts of flying, such as private and aerial applications.

The FAA, NTSB, NASA, and several industry groups have created the General Aviation Accident Data Improvement Team (GADIT) as a direct outcome of Safer Skies' efforts. Concerns about the dearth of information on GA accidents and incident causes, particularly those attributable to human error, led to the formation of this program. Additionally, this group will plan for:

- a) Measure the efficacy of the different Safer Skies programs by
- b) enhancing the accuracy and timeliness of GA activity estimations.

The FAA ensures the safety of GA by certifying pilots and requiring them to undergo a flight review every other year. Training may be done in various methods, such as via lectures on safety and PC-based aviation training systems. Some of the training programs are detailed in

Table 2: Training in GA

Source	Training Recommendations
Safer Skies	Enhance the biennial flight review and Competency check.
	Improve pilot training (that is, weather briefing, equipment, decision making, wire and tower avoidance and human factors).
	Develop and distribute mountain flying technique advisory material.
	Enhance requirements for initial training to include instruction in flying in marginal weather conditions and topics related to weather awareness.

⁶² Weisbrod, G. (1991). Economic Impact of Improving GA airports. *Transportation Quarterly*, 45(1), 67-83

AOPA	Enhance requirements for the biennial flight review to include competence in: Reading and interpreting aviation weather reports and forecasts; Obtaining in-flight weather information and Explaining various adverse weather conditions and strategies for avoiding them.
NTSB	Establish a cooperative program that encourages the training of pilots transitioning from one type of airplane to an unknown type.

FAR Part 91 does not provide an overall operating performance criterion for any aircraft, while being the primary component of U.S. aviation legislation pertaining to non-commercial passenger-carrying operations. In many parts of the world, this problem has been addressed by mandating that private operators get a certificate of authorization to conduct business, comparable to the commercial operating licenses provided by aviation ministries. Since the 1990s, private operators in Canada have been required to get a Private Operator Certificate (POC). As of recently, a programme that was formerly managed by Transport Canada has been transferred to the CBAA. Concerned about these issues, IBAC started working on operational safety criteria for BA in 1999 (with considerable support from the NBAA and the revamping of Canada's POC programme). A further factor was the widespread implementation of the Geneva-based International Standards Organization's (ISO) 9000 code of industrial best practices, which is thought to boost output, employee satisfaction, and working conditions while also facilitating international commerce. This process yielded the International Standard for Business Aircraft Operations (IS-code of practice for flight departments worldwide, developed by the industry for this purpose). IS-BAO might be an internationally recognized operational template for risk management and issue solving.⁶³

IBAC established the IS-BAO initiative for a number of reasons. Standardization at the international level is often praised for the efficiencies it brings to the trading of goods and services across borders. The overall mission of this group is the same as that of IS-BAO: to advance the practice of highly professional, standardized, and safe aircraft operations.

The BA community is recognized by IBAC as the driving force behind efforts to harmonize operational procedures and rules. International Civil Aviation Organization (ICAO) and IBAC

⁶³ Esler, D. (2004, October). Towards a higher Standard. Business and Commercial Aviation

work closely together to advance global standardization. Incorporating the International Standards and Recommended Practices for the Aircraft Operation applicable to BA established in ICAO Annex 6, Part II for Transnational GA-Aeroplanes, the BA -BAO has been authorized by the President of the ICAO Council (IBAC, 2011).⁶⁴

Best practices are codified in the IS-BAO. The industry created this standard for the benefit of the industry. It is the business world's way of helping spread the word about the need to use only the highest standards of professionalism in all operations. IS-goal BAO is to improve upon BA's already stellar record of safety.

The IS-SMS BAO model combines the best features of a traditional flight safety programme with quality management concepts to make it possible for even a small aviation department to engage in coordinated flight safety operations.

The Safety Management System (SMS) is a comprehensive strategy for the avoidance of risks, taking into account all of the factors—financial, human, and organizational—that might lead to an unsafe situation.⁶⁵

3.2.2 Latin America

The Latin American market is rather modest compared to the United States and Canada, with over 16,000 aircraft in the Business-jet fleet. It is the fourth largest marketplace for aircraft manufacturers, falling behind the Middle East, Europe, and North America respectively. The rising demand is due to several factors, including the entry of new companies into the Latin American market, an improvement in political stability and economic growth in many countries, growth in the offshore oil and gas industry, and the retirement of an older fleet. Used helicopters are still in high demand, and those who sell them often upgrade to brand-new models. Executives and the rich no longer consider helicopter transportation a luxury but a necessity in the bigger cities, with traffic jams that go on for kilometers and rising crime rates that cause them to worry about their safety. Helicopter landing platforms are becoming standard in Mexico City's new construction. The city now has 75 helipads. Bombardier predicts rising demand for bigger aircraft with a range to meet a global economy into which an increasing number of Latin American enterprises are venturing.⁶⁶

⁶⁴ IBAC. (2011, December 20). Introduction to IBAC. Retrieved May 29, 2012, from IBAC: <http://www.ibac.org/about-2/introduction-to-ibac>

⁶⁵ Rohr, R. (2004, August- September). Safety Management System for Business Aviation. Bart International, pp. 17-23

⁶⁶ Harrison, Kirby J; Johnson, Elizabeth. (2006, September 01). Business Aviation in Latin America. Aviation International News, pp. 28-36

A growing number of business jets in Latin America reflects the region's growing economy. The BA fleets in Latin America have risen at a 9.1% CAGR since 2001, making it one of the fastest-growing regions globally. Solid economic development, economies founded on transplanted manufacturing and resource extraction, patchy overland transport infrastructure, and economically important locations that are considerably far from one another may all be found here.⁶⁷

3.3 Europe

Since its inception in 1977, the European BA Association (EBAA) has been widely recognized as Europe's preeminent BA organization. As an important aspect of Europe's economic growth, the community is actively involved in regulatory talks at the different European institutions. There are 4266 planes in the European BA fleet, flown by 838 different companies. The number of ships has increased by 6.9 percent since 2010.⁶⁸

General and BA may make transport services for people, businesses, and communities are flexible and individualized. These are additional services that help providers go to locations that major airlines either do not go to or cannot afford to get to. Public services like environmental monitoring, firefighting, mapmaking, and ambulance transport are only a few examples of the high-quality work that general and BA do.⁶⁹

Air Taxi services, in which customers charter whole planes, and corporate operations, in which businesses hire pilots to fly their planes, fall under the umbrella of business aviation. If you need to go there fast, cheaply, and by the most direct routings but are limited by the airline industry's tight timetables and time-wasting rituals, British Airways (BA) may help. It lets CEOs get through journeys that might otherwise need frustrating and costly overnight breaks in a single day. One of the safest ways to travel is via airplane. It also has the quickest expansion rate. Because of this, the member states of the EU have come to the consensus that they would collaborate on a common effort to assure the future sustainability of the aviation industry. This will, in turn, make it easier to both expand the economy and increase security. It is officially

⁶⁷ Sarsfield, K. (2011, August 9). Latin Lustre. Retrieved from Flight Global: <http://www.flightglobal.com/news/articles/latin-lustre-360587/>

⁶⁸ EBAA. (2012, December 21). Annual Review 2011-2012. Retrieved from EBAA: http://www.ebaa.org/content/dsp_page/pagec/EBAA_Annual_Reviews

⁶⁹ ASD-EGAMA. (2009, May 12). European General Aviation Manufacturers Association. Retrieved from Aerospace and Defence Industries of Europe: <http://ilot.edu.pl/GeneralAviation/GA/A03-JaroslavRuzicka-3in1-EGAMA.pdf>

known by its formal name, which is the European Aviation Safety Agency.⁷⁰

3.3.1 Regulatory

The European Aviation Safety Agency is in charge of the rules and regulations in the region (EASA). Across Europe and beyond, the Agency is working to ensure that all commercial air travel adheres to the strictest possible safety and environmental protection measures. It is the cornerstone of a new regulatory framework that creates a unified aviation market in Europe.⁷¹ Europe's foundational law is (EC) No. 216/2008. See Figure 3 for a breakdown of Europe's underlying regulatory framework.

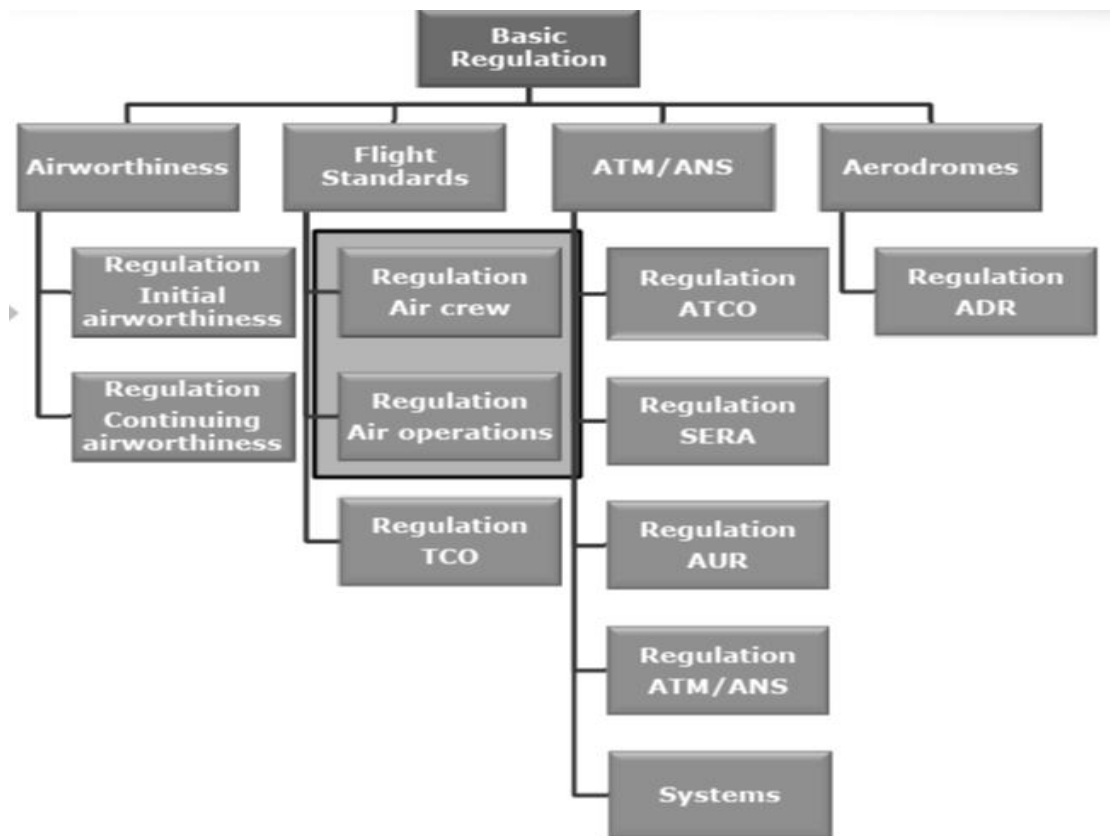


Figure 3: Regulatory structure in Europe

3.3.2 Productivity as well as contributions to the economy

According to a European information sheet on GA, the status of an aircraft is not decided by its legal basis but rather by the "principle of usefulness." This was a comment made by the

⁷⁰ EBAA. (2012, December 21). Annual Review 2011-2012. Retrieved from EBAA: http://www.ebaa.org/content/dsp_page/pagec/EBAA_Annual_Reviews

⁷¹ EASA. (2012, December 20). Regulations Structure. Retrieved from EASA: <https://www.easa.europa.eu/regulations/regulations-structure.php>

document. The usage of cross-company chargebacks for the provision of air transportation and the use of fractional ownership of aircraft both contribute to the aggravation of the issue, which may occur in certain circumstances. When asked about their reasons for using on-demand taxi services or their corporate aircraft, individuals and businesses frequently cite an increase in overall company productivity, greater operational flexibility, a quicker point-to-point service, and an enhanced number of potential locations as the primary drivers behind their decision to utilize these services. This sector of general aviation encompasses the usage of a variety of different kinds of aircraft. It is possible for the concept's regulatory framework to change, regardless of whether it is employed for public or private air transport.⁷²

The rapid growth of British Airways between the years 2001 and 2007 was a significant contributor to the overall rise in the number of airlines that service Europe. This market was hit particularly hard and early by the recession, resulting in the largest decrease in flight activity among the main markets during that year (14%). The British and Spanish economies were the two that suffered the most from the BA downturn among the six major nations. This was enough for Germany to pass the United Kingdom and become the second-largest origin of flights, despite the fact that they are still quite a way behind France. British Airways is well-known for its commitment to provide service from airports that are not primary hubs. It flies a very high volume of routes, which is three times as many as the number of linkages that are regularly scheduled, and the majority of its traffic goes between locations that do not have everyday scheduled services. As a consequence of the reduction in passenger traffic, the percentage of flights operated by British Airways (BA) between locations that do not have daily scheduled flights increased from 62% in 2007 to 66% in 2009. This increase took place between 2007 and 2009. The smaller fleets and less frequent service are two aspects that British Airways continues to highlight. In 2009, 3,200 operators and handling agents filed flight plans, while only 1,900 aircraft were actively flying in Europe at the same time. The first flights of the very-light aircraft have already taken place, and the frequency of their flights is expected to increase in the near future. Although it is anticipated that growth will slow down over the next several years in comparison to the tremendous growth that was seen between 2004 and 2007, it is anticipated that growth will still outperform the overall expansion of air travel. As a

⁷² European Commission. (2007). General Aviation in European Community. Directorate F- Air Transport. Brussels: European Commission, Directorate General Energy and Transport

result, British Airways ought to have restored its market share of flights by the year 2015; this share was 6.9% back in 2009. Business for British Airways (BA) in Europe is generated almost entirely by only six nations: France, Germany, Italy, U.K, Switzerland, and Austria.⁷³

According to the presentation that David Marsh gave at the conference that was held on European BA that has just wrapped up, out of the 1930 flights that take place each day, 1007 are somewhere between city pairs that do not operate scheduled service. The money that is brought in from Western Europe remains one of the most important regions. In 2009, there were indications that the economy was getting better, but it has been worse again since then. In 2011, Poland, Turkey, and Ukraine each saw growth rates that were, on average, 12%.⁷⁴

Russian business jet operators are subjected to the same requirements as any large Air Operations Certificate (AOC) holder, in a manner that is analogous to the certification method for commercial air carriers in the United States that is outlined in FAR Part 121. In contrast, an AOC is not required in the United States for business jet operators that fly aircraft with less than 20 seats or a maximum payload of less than 6,000 pounds. This exemption applies to operators of planes that meet both of these criteria. Instead, "General Operating and Flight Rules," which is found in FAR Part 91, is what controls the operations of business jets in the United States. Business jet operators in Russia, whether they individual owners or air taxi businesses, are legally required to offer tickets to their clients. This requirement is a significant divergence from the ordinary practice that is followed everywhere else in the world. This ticket will serve as the primary legally enforceable contract of carriage in the event that the client and the aircraft operator get into a disagreement over anything. The client and the jet operator's earlier agreements will be rendered null and void as a result of this document. In this particular case, the passenger as well as the operator of the business aircraft take on a greater amount of legal obligation and risk.⁷⁵

3.4 The Asia Pacific

McKenzie predicts that China, India, and Russia will all become major powers during

⁷³ Marsh, David. (2010). Business Aviation in Europe in 2009. Brussels: Euro control

⁷⁴ Marsh, D. (2012, May 14). EBACE 2012 Presentations. Retrieved from EBACE:
<http://www.ebace.aero/2012/presentations/20120514-1600-marsh-recent-trends-businessaviation-europe.pdf>

Marsh, D. (2012, May 14). EBACE 2012 Presentations. Retrieved from EBACE:
<http://www.ebace.aero/2012/presentations/20120514-1600-marsh-recent-trends-businessaviation-europe.pdf>

⁷⁵ Voskoboynikov, A., & Wicks, G. P. (2010). Business Jet Aviation: The Industry Sector that Globalization forgot. *Air and Space Lawyer*, 23(1)

the next two decades. In the aerospace industry, suppliers and original equipment manufacturers (OEMs) like Airbus, Boeing, and Bombardier are likely to specialize in the design, production, and assembly. The aviation sector in these areas is seeing robust growth. It is anticipated that China, India, & Russia would together acquire more than 3,500 aircraft during the course of the next twenty years. An analysis of the global industrial environment reveals that China is on its way to become a dominant force in the near future. The ability to grasp worldwide needs, design a compelling and dependable aircraft, and establish program management, supplier integration, and after-market support skills would be key factors in determining the rate of aviation development.

Asia and the Pacific economies have been among the fastest-growing in the world, and BA has been a vital part of that expansion. There are still obstacles to expanding business in the area (NBAA, 2012).

With an emphasis on safety and networking, the Asian BA Association's mission is to spread the word about business aviation in Asia and represent the needs of business aircraft operators and suppliers.⁷⁶

3.4.1 China

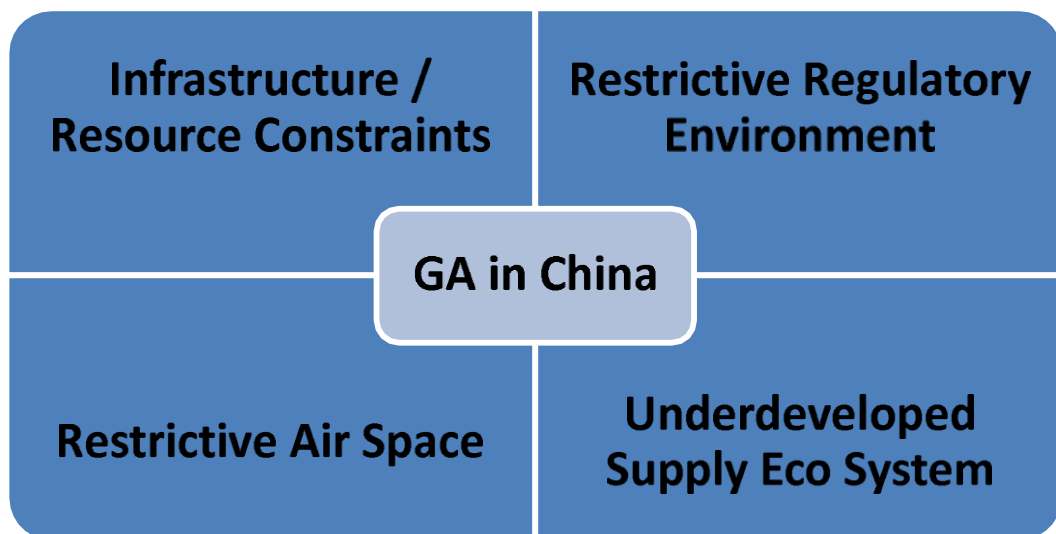


Figure 4: Growth Constraints for GA in china

⁷⁶ Bedier, C., Vancauwen berghe, M., & Sintern, W. V. (2008). The Growing role of emerging markets in aerospace. The McKinsey Quarterly, 1-13

Booz & Allen studied the Chinese GA industry's development potential and limiting factors. As seen in figure 12, the limits on BA's expansion are almost the same as those of GA, despite the latter's higher sample size.⁷⁷

- i. "Few Airports and low utilization of existing airports."
- ii. "Lack of Pilots and pilot development system."

Restrictive regulatory environment

- i. There is no strong regulatory framework to promote growth while guaranteeing public safety and security.
- ii. Over-cautiousness on the part of regulators directly results from the lack of coordinated rules and policies among stakeholders.
- iii. Approval The GA process is tedious, expensive, and time-consuming.

Underdeveloped supply eco system

- i. Management, technology, and engineering constraints slow progress in the aircraft manufacturing industry.
- ii. Second, most GA businesses struggle to turn a profit.
- iii. Due to a lack of domestic resources, companies in other countries must handle the most important repairs.

Restrictive airspace

- The full potential of China's aerial resources has not been used.
- Class A, B, C, and D airspaces are the most restricted and monitored. Reduced airspace availability and poor air traffic control.
- Embraer's initial regional market forecast for China predicts that the country's

The rise of the middle class in China has led to a demand for improved infrastructure in the country's secondary cities. The regional aviation industry will maintain its steady expansion over the last decade. The Market Outlook emphasizes fleet capacity optimization as a means to maintain a competitive advantage and the central and local government aviation policies as drivers of regional aviation growth in China.

⁷⁷ MacCorkle, J., & Wong, T. (2009). General Aviation in China: seizing growth opportunities. New York: Booz and Co

For BA, the regulatory framework remains one of China's most pressing challenges. The Civil Aviation Administration of China knows that all major airports have capacity issues and that new regional airports and airports specifically designed to serve BA are needed. However, infrastructure construction and airspace access will occur at a steady pace.

3.4.2 India

According to the VII schedule of the Indian Constitution, established under article 246, aviation is a core list item.⁷⁸ The authority to pass laws about aviation is vested in the federal government. When reading the rule, it is important to pay attention to the nuances, as the defining clause shows. Article 301 of the Indian Constitution protects the right to trade and commerce inside India even if the document does not define word "Air Commerce" or "interstate air commerce" is not defined in the document.

“The Aircraft Act of 1934” and “the Aircraft Rules of 1937” promulgated there under provide the present legal and regulatory framework for civil aviation in India. There have been several revisions to both the Act and the Rules. “The Aircraft Act of 1934 and the Aircraft Rules 1937 “have not been revised since 2012. Wherever and wherever necessary, ICAO's "international standards and recommended practices" (SARPs) have been written into law by the current Act and the Rules. As a result, the Indian government has suggested creating a new Civil Aviation Authority of India Bill and establishing a Civil Aviation Authority to oversee the country's aviation industry. Rather than relying on a single person, as is the case now, the Civil Aviation Authority of India (CAAI) is planning to govern the civil aviation industry under the Aircraft Act, 1934 (or the newly planned Civil Aviation Act to replace the Aircraft Act of 1934).⁷⁹

The Directorate General of Civil Aviation (DGCA) is the government agency in India that is in charge of monitoring the civil aviation business in the nation. The aviation sector has a regulating authority called the Directorate General of Civil Aviation (DGCA), and it is responsible for safeguarding the general public's safety. It is responsible for enforcing civil aviation laws as well as criteria for air safety and airworthiness for flights to, from, and within India. The many responsibilities of the Directorate include, among other things, the

⁷⁸ Shukla, V. N. (2010). Constitution of India (11th ed.). (M. P. Singh, Ed.) Lucknow, Uttar Pradesh, India: Eastern Book Company

⁷⁹ Ministry of Civil Aviation. (2012, July). Formulation of new Civil Aviation Act. Retrieved from Ministry of Civil Aviation http://civilaviation.gov.in/cs/groups/public/documents/document/moca_001688.pdf

development of standards, the licensing of pilots as well as engineers, and the regulatory oversight of businesses such as airports as well as training facilities (Responsibilities, Functions and Responsibilities, 2012). Additionally, the Directorate is responsible for the registration of civil aircraft. The Directorate General of Civil Aviation (DGCA) works closely with the International Civil Aviation Organization to coordinate its regulatory responsibilities.

The headquarters are located in New Delhi, although each of India's other major cities also has its own branch of the company. Regional Airworthiness Offices may be found in the following cities: Delhi, Mumbai, Chennai, Kolkata, Bangalore, Hyderabad, Trivandrum, Bhopal, Lucknow, Patna, Bhubaneswar, Kanpur, Guwahati, and Patiala. This brings the total number of Regional Airworthiness Offices in India to 14. (fourteen). In addition to the Regional Airworthiness Offices, there are additional Regional Air Safety Offices in Delhi, Mumbai, Chennai, Kolkata, and Hyderabad; a Regional Research and Development Office in Bangalore; and a Gliding Centre in Pune. All of these offices are located in India (DGCA, 2012).

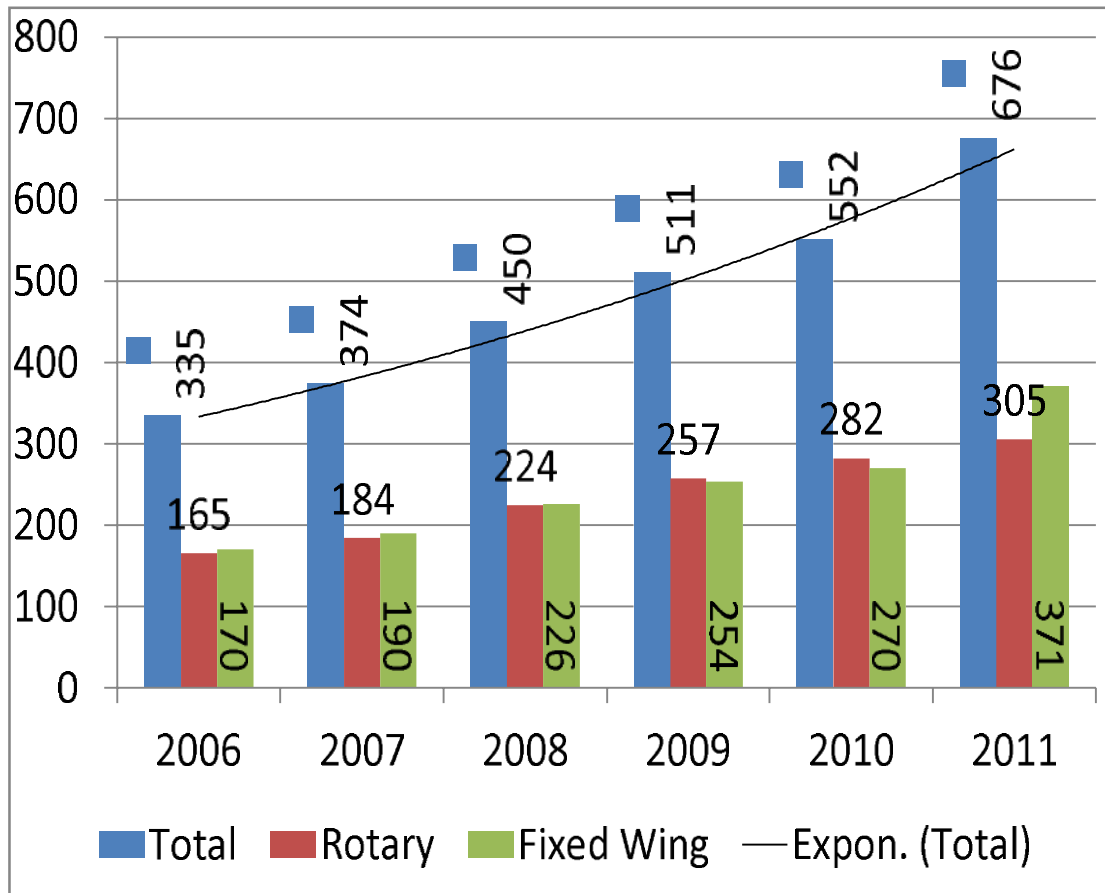
Even while BA's market share in the United States began to decline at the end of the first decade of this century, the company's growth in India has been consistent. The United States of America is hopeful that the expansion of other countries, particularly India and China, would compensate for this loss. Table 9 illustrates British Airways' growing presence in the Indian market.

The BA market is rising at a quick rate, and the top three quickest markets are India, Russia, and China respectively. Since 2005, there has been a rise of two in the number of corporate jets that have been acquired (2011 data). There are around 676 commercial rotary-wing and fixed-wing aircraft based in India as per 2011 statistics.⁸⁰

It is worth noting that the ratio of fixed-wing to rotary-wing aircraft purchases was stable between 2006 and 2010 but swung significantly in favor of the former in 2011.

⁸⁰ Singh, K. (2011, November 10). President, Business Aircraft Operators Association (India). (A. K. Nigam, Interviewer)

Figure 5: Growth of Business Aircraft Acquisition in India



SOURCE: INTERVIEW WITH BAOA OFFICIALS

According to CAPA's 2011 assessment, India's GA sector has significant prospects and may see new aircraft sales of up to US\$12 billion over the next decade. This includes selling business jets, helicopters, turboprops, and piston engines. By that point, the number of planes in service will reach two thousand. The research also predicts that by 2020, GA's direct and indirect economic contributions would total close to \$4 billion annually in the United States alone. The future of India's rotary-wing industry is bright. The Indian helicopter market is expanding quickly because of the country's rapidly rising economy, its increasing dependence on air transportation, and its diverse topography. It is predicted that commercial transportation for corporations and celebrities will expand fast as well. The oil and gas sector will be another area of obvious expansion in India. To facilitate the search for and exploitation of new oil and gas reserves, ONGC and the Ministry of Petroleum are working to meet the need for more long-range helicopters. An additional promising new profession is emergency medical care, where helicopters play a crucial role. Studies on the cost-effectiveness of fixed-wing business jets compare them well to commercial services, suggesting this opportunity exists.

India is the world's fourth-largest market, behind the United States, China, and Japan. However, it is also one of the least-penetrated markets in the world, below even Sri Lanka, Pakistan, and Nigeria.

The future of India's economy will hinge on the smooth integration of IT, regional aviation, and national development objectives in the next decades.⁸¹

In India, data on scheduled airlines are readily accessible, but data on non-scheduled and private planes, which make up GA, is scarce. Since the industry has been liberalized to such a large extent, the Government of India (GOI) is now faced with the problem of ensuring that the sector's rapid expansion is managed sustainably and well-considered.

Lease or purchase agreements are both viable options for acquiring aircraft. Finance leases and operating leases are the two types of lease transactions.

The purchase of an aircraft requires approval from the Ministry of Civil Aviation. The Reserve Bank of India (RBI) must provide its approval before any initial payments, foreign currency loans, guarantee issuance, etc., may be made toward the acquisition of an aircraft or its purchase via a financing lease.⁸²

Spending without intermediaries

The Aircraft Sales and Purchase Agreements Act applies to the sale and purchase of airplanes. All provisions of the Indian Contract Act must be met for a sales contract to be legally binding. Existing commodities, prospective goods, or things the seller may get only upon a certain event are all fair game for a contract. The contract shall be construed as an agreement to sell in the event of future products.

Lease-purchase Agreement

In a finance lease, the lessee assumes practically all ownership costs and benefits. However, the lessor receives enough in lease payments to cover expenses and generate a profit throughout the lease. Although the lessor is responsible for purchasing the aircraft, it often has no say in which model is chosen since the lessee's requirements determine it. Lessee also

⁸¹ Nigam, Ajit Kumar; Pahwa, M S; Saini, Jaskaran Singh. (2013, January). Skies of Tomorrow: Demoralizing India through Regional Aviation. *INTENSITY: International Journal of Applied Social Science Research*, 2(1), 208-2011., from www.cassr.com

⁸² Saran, A. (2008, August). *A Primer on Aircraft Financing in India*. Canada: Institute of Air and Space Law, McGill University

assumes the risk of obsolescence and is liable for all repair, maintenance, and insurance expenses. Since the duration of a typical lease is longer than the aircraft's useful life, the residual value after the contract may be small. When considering bank breakage costs and the parties' bargaining positions, a lessor may provide the lessee an option to buy the aircraft at the end of the lease term or at any time throughout the lease. Such options may be exercised at either a set price or at fair market value.

Operating lease

The purpose of an operating lease is to facilitate the use of the asset rather than the transfer of any ownership interest. It covers most other forms of leases, where the risks and rewards of ownership remain with the lessor. An operating lessor must place the aircraft on several successive leases or sell the aircraft in due course to recover its capital outlay and profit. In contrast, a finance lessor looks to a single lease to do the same. Therefore, operating lessors must have significant expertise in asset management. In contrast, a finance lessor is primarily concerned with the effectiveness of the lease structure and has minimal interest in the asset.

Leveraged lease

In a leveraged lease, the lessor (also called the equity participant) provides only a proportion of the cost of the aircraft from its own pockets, and the rest is borrowed from a lender or a syndicate of lenders (also called the debt participant) on a non-recourse basis. The proportion ranges between 20% - 40%, and the lessor maintains this risk throughout the lease term. The loan is repaid from the lease rentals, assigned to the lender and the insurance proceeds, and is secured by a first mortgage on the aircraft. In case of default, the lender has no recourse against the lessor for any amount over what might be realized under the enforcement of the mortgage or receipt of the insurance proceeds for the repayment of the loan.

Sale and leaseback

The asset owner sells the item to the buyer, who subsequently leases it back to the asset owner in a transaction known as a "sale and leaseback." Thus, the former owner may recoup some of their investment while still keeping users of the item.

Using business aircraft in India

Kalyan Jewelers of Kochi, Kerala, a state where communism reigns supreme, just purchased a Phenom 100, indicating things to come. Mr. Kalayanaraman, the company's CMD,

uses the plane for business purposes, not as a status symbol or a luxury item, so that he may grow the firm while still finding time for his personal life.

Thirty locations in Kerala, Tamil Nadu, Karnataka, Andhra Pradesh, and Pondicherry make up the jewelry chain owned by the organization. Mr. Kalyanaraman is frustrated with the limited transportation alternatives, which makes it difficult to maintain a close check on the company. Business air travel has not decreased despite the widespread use of videoconferencing, which is a poor alternative at best. When there are problems with air service, getting to smaller cities like Hubli, Belgaum, or Tirupati might take days. The time savings for the promoters of Kalyan Group is a primary factor in their decision to purchase the plane. Mr. Kalayanaraman chose the Embraer Phenom 100 since it can land at some of the biggest airstrips in the country, expanding the group's potential market to include 250 cities and towns with airports.⁸³

Security

The consequences of GA on security must be grasped as well. For instance, in the Purulia weapons drop case, illegal arms trafficking was shown using aerial delivery. Over 300 AK-47/56 rifles, 20,545 bullets, Dragunov sniper guns, rocket launchers, and night vision gear were dropped by an Antonov-26 aircraft over Purulia village, West Bengal, on December 17, 1996.⁸⁴

⁸³ Scaria, J. A. (2012, February 11). Jet-set Jeweller. Retrieved March 19, 2012, from [economictimes.indiatimes.com: http://economictimes.indiatimes.com/news/news-byindustry/et-cetera/Kerala-billionaire-TS-Kalayanaraman-is-now-proud-owner-of-the-states-firstprivate-jet/articleshow/11845053.cms](http://economictimes.indiatimes.com/news/news-byindustry/et-cetera/Kerala-billionaire-TS-Kalayanaraman-is-now-proud-owner-of-the-states-firstprivate-jet/articleshow/11845053.cms)

⁸⁴ Singh, S. P. (2002). *Transnational Organized Crime: The Indian Perspective*. The Asia and Far East Institute for prevention of crime and treatment of Offenders. Tokyo: UNAEFI. Retrieved Feb 25, 2013, from http://www.unafei.or.jp/english/pdf/RS_No59/No59_00All.pdf#page=578

CHAPTER 4: CONVENTION AND PROTOCOL

“Adopted at the end of 2001, the Convention is quickly becoming one of the most significant and effective international accords in the area of commercial law. Its regulations include themes such as property insolvency, rights, electronic trade, and dispute resolution to a level never before seen in the realm of transnational commercial law.” - “Exec Dir. of the Academic Project at the CTC, Professor Jeffrey Wool”

4.1 Introduction

The previous chapter elaborated on the enormous work that went into drafting “the Convention on International Interests in Mobile Equipment and its Aircraft Protocol”. State parties and industry representatives debated at length the treaty's unique structure, provisions, many of which prescribed entirely new legal norms for the majority of States, practical efficacy, required flexibility to ensure acceptance by States, and the avoidance of a fate similar to that of previous attempts to modernize the law on security transactions. The Convention was made possible by the extraordinary and enthusiastic engagement of industry, in particular the aviation sector.⁸⁵ At a diplomatic conference held in Cape Town on November 16, 2001, twenty states signed the Convention with the purpose of simplifying asset-based financing and aircraft leasing. The conference was held in the United States. The Convention comes into effect on 1 March 2006⁸⁶. Right now, 83 contracting State Parties and one regional economic integration organization (the European Union) have ratified the Convention⁸⁷.

According to UNIDROIT's website, there are five main goals of the Convention and its supplementary Protocols. There are four of these:⁸⁸

Promote the expansion of a global (international) interest shared by all Contracting States;

To improve the creditworthiness of equipment receivables and hence lower borrowing costs

⁸⁵ Cape Town Convention Manual, Self- Instructional Materials Prepared under the aegis of the Legal Advisory Panel to the Aviation Working Group, Cape Town Convention Academic Project (2014)

⁸⁶ Website of UNIDROIT states that there was a proposal to include the name of UNIDROIT in the title but the Secretary- General of UNIDROIT, Professor Herbert KRONKE, was keen that the Convention should be ‘informally’ known as the Cape Town Convention in view of the courtesies extended by the South African Government in organizing the Conference. For details see Roy Goode, The Cape Town Convention on International Interests in Mobile Equipment: a Driving Force for International Asset-Based Financing, *Uniform Law Review*, 1 – 15 (2002)

⁸⁷ Convention on International Interests in Mobile Equipment (Cape Town, 2001) – Status, as on 28.10.2022 available at <https://www.unidroit.org/status-2001capetown>

⁸⁸ Roy Goode, The Cape Town Convention on International Interests in Mobile Equipment: a Driving Force for International Asset-Based Financing, *Uniform Law Review*, 1 – 15 (2002)

and provide "intending creditors more confidence in the choice to extend credit."

Offer the creditor a variety of remedies in the event of default, including temporary relief pending the final settlement.

To create an electronic international register for the registration of international interests for the purpose of informing third parties as well as establishing priority of secured creditors against subsequently registered interests, unregistered interests, as well as the debtor's insolvency manager; to guarantee that the relevant Protocol satisfies the needs of the industry; and to put the project's recommendations into action. The goals of this project are as follows: to create an electronic international register for the registration of international interests; to establish priority of secured creditors against subsequently registered interests; and

In the context of asset-based financing and leasing of high-value mobile equipment, the purpose of the Convention would be to provide "parties with the autonomy necessary to conduct transactions." This will be accomplished through the universal recognition, safeguards, and registration of interests created by such financing and leasing. The Preamble states that this will be accomplished by "providing parties with the autonomy necessary to conduct transactions."

In addition, the Convention and the Protocol are guided by five fundamental principles⁸⁹, in his formal commentary to the Convention, Professor Sir Roy Goode QC explains:-

Applicability by include asset-based financing and leasing transactions;

Independence of parties in contractual interactions, given that those involved in high-value cross-border transactions will be well-informed and, therefore, entitled to have their agreements recognized and enforced.

Predictability of Convention application by the use of explicit priority standards;

Transparency by alerting third parties through the registration of foreign interests and

Sensitivity to national legal cultures by implementing a system of declarations to exclude or opt into chosen elements of the Convention.

This chapter analyses the basic characteristics of the Convention, whereas the next chapter focuses on the revisions made to the Convention's key sections by the Protocol. This would be beneficial for assessing the Convention's successes and deficiencies in light of its stated objectives. Disputes handled via the UNIDROIT System will be used as instances.

⁸⁹ Cape Town Convention and Aircraft Protocol Official Commentary (Third Edition, 2013), Commentary 2.17

Nevertheless, considering that it has been more than a decade since the Convention and Protocol went into force, the time has come to assess their effectiveness.

4.2 Unique Organization of the Convention

There are 62 separate articles spread over 14 chapters of the Convention. The Convention and the Protocol shall be regarded & read as a single document in accordance with Article 6 of the Convention. Any inconsistencies between the Convention and the Protocol shall be resolved in favor of the Protocol. Protocol is defined as "in respect of any category of objects and associated rights to which this Convention applies, the Protocol in respect of that category of objects and associated rights" under Article 1(aa). Among the types of mobile machinery that fall within the Convention's purview are those listed in Article 2(3): (a) airframes, aircraft engines, and helicopters. Moreover, "Object" is defined as "an object of a category to which Article 2 applies" under Article 1(u). Therefore, we have three Protocols covering aircraft⁹⁰, railroad⁹¹, space⁹² assets and Mining, Agricultural and Construction Equipment (MAC)⁹³. 83 Contracting States and 1 (European Union) Regional Economic Integration Organization have ratified the Aircraft Protocol, making it an active treaty. Article II, headed "Application of Convention as respects aircraft objects," of the Aircraft Protocol states that the Convention shall apply to aircraft objects "as provided by the conditions of this Protocol"⁹⁴. Until a Protocol is formed pertaining to a category of equipment, the Convention does not apply to that category of equipment under Article 49(1). Once a Protocol is made, the Convention applies to that category of equipment subject to the requirements of that Protocol.⁹⁵

UNIDROIT made the extraordinary decision to construct a base Convention detailing the broad

⁹⁰ Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment (Cape Town on 16 November 2001)

⁹¹ Luxembourg Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Railway Rolling Stock (Luxembourg 2007) It has been signed by nine States (France, Gabon, Germany, Italy, Luxembourg, Mozambique, Switzerland, Sweden, the UK as well as the European Union) and ratified by three (Gabon, Luxembourg and Sweden)

⁹² Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Space Assets (Berlin, 9 March 2012). It has been signed by 5 States (Burkina Faso, Germany, Saudi Arabia, United States and Zimbabwe)

⁹³ Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to mining, agricultural, and construction equipment (Nov 2019). It has been signed by 6 States (Congo, Gambia, Nigeria, Paraguay, USA and European union)

⁹⁴ Article II of Railway Rolling Stock Protocol and the Space Protocol contain similar provisions

⁹⁵ Article 49 (1) runs as 'This Convention enters into force on the first day of the month following the expiration of three months after the date of the deposit of the third instrument of ratification, acceptance, approval or accession but only as regards a category of objects to which a Protocol applies: (a) as from the time of entry into force of that Protocol; (b) subject to the terms of that Protocol; and (c) as between States Parties to this Convention and that Protocol.

regulatory regime and operational Protocols specifying the precise specifics of the specific mobile equipment in issue, allowing these protocols to supersede the requirements of the Convention as necessary. Even from its start, the Cape Town Convention distinguished itself in significant respects from prior initiatives to modernize secured transaction legislation. Throughout the drafting process, UNIDROIT maintained in mind that the Convention's applicability and practicability were of the utmost significance. UNIDROIT's efforts to modify the legislation governing security transactions have failed, and the many Study-Groups constituted for discussion only rehash those same efforts in different terminology. The drafters of the Convention devoted particular attention to the necessity of limiting its scope to include just the most crucial themes. Any attempt to deviate from the norm and undertake a larger work was properly rejected as impossible and redundant with previous scholastic endeavors. Consequently, the success of the Convention was secured in great part by the precise determination of its scope⁹⁶.

In addition to being forward-thinking, the amount of industrial participation and importance put on party independence were particularly notable. The gap in industry support between the Aircraft Protocol and the other Protocols is the fundamental reason why the former has obtained the required number of ratifications while the others have not. Convention and Protocol were led by "aviation industry stakeholders, the International Air Transport Association, and the Aviation Working Group, which was jointly directed by Airbus Industry and The Boeing Company."⁹⁷ These organizations were compelled by the huge economic benefits, immediate ratification of the Convention and the Protocol was supposed to bring. Reference can be made to the huge number of pending orders on aircraft delivery. It made sense to push for ratification of the Convention at the earliest.

Industry participation also ensured breaking away from legal theory beyond the required point and thinking more in terms of acceptability and workability. It made no sense to refer to what has been done when what was required was thinking as to what can be done, even if not done earlier and how States could be motivated to see the economic gains from following novel approaches. This practical thought was the driving force. The Convention could not look for observance of traditions because what it intended to do – promoting asset based financing for

⁹⁶ Mark J. Sundahl, *The Cape Town Approach: A New Method of Making International Law*, 44 *Columbia Journal of Transnational Law* 339 (2006)

⁹⁷ *Implementing the Cape Town Convention and the domestic laws on secured transactions* (ed., 2017), ICAO publications

tangible movables was unheard of in most jurisdictions. While it is not entirely untrue that the secured financing laws of USA along with some of its bankruptcy norms were rubbed upon other States, it was also true that U.C.C 9 model was the most developed and successful and it made sense to adopt the same for high value mobile equipment. Industry forces ensured that the reforms got replicated. Part of the thrust also came from the too varied national approach to the law on secured transactions. This made it difficult to improve the situation with piecemeal changes.

Rationale for the two tier structure of the Convention also flows from the delay in finalizing the draft Protocols by the Space industry and participants of railway rolling stock sector. The aviation enthusiasts were compelled to break away from one composite structure of the Convention and the Protocol and seek a prior date. Comments forwarded by AWG and IATA to the Study Group refer to the time required by participants of other sector for cultivating consensus as the primary reason for coming up with a new basic structure. "explore the possibility that certain sectors may need alternative timelines to reach a sufficient degree of consensus to make the Convention financially and politically feasible," the Convention's call to action said. In light of this, the working group recommended that the "format of the proposed legal instrument be modified such that the same is largely made up of a base/ umbrella agreement which sets forth the basic legal framework applicable to all classifications of equipment ("base/ umbrella Convention"), and equipment- practices that enable, established from time to time, each of which includes rules specifically applicable to a classification of equipment covered by the proposed Convention." Once it goes into effect, a protocol will be distinct from all others and will "automatically incorporate the fundamental/overarching Convention."⁹⁸

'Protocol' means 'agreements less formal than those designated 'treaty' or 'Convention' in the United Nations Treaty Reference Guide.⁹⁹

It establishes the six canonical types of protocols in use today. Signature protocols, amendment protocols, optional protocols, framework convention protocols, supplemental treaty protocols, and verbal process protocols are all examples. Along with the treaty itself, a protocol of signing is offered for signature. The obligations under the protocol are in addition to those in the

⁹⁸ Certain Recommendations Relating to Aircraft Equipment submitted jointly by the Aviation Working Group and the International Air Transport Association, (1996)

⁹⁹ United Nations Treaty Reference Guide. UNO Publications

Convention. The broad responsibilities in the framework Convention are supplemented by 18 Protocols based on the treaty. Nineteen. Altering The provisions of the Convention may be added to, removed from, or otherwise altered by a Protocol. The process-verbal protocol documents the parties' understandings that led to the agreement, whereas the supplemental protocol adds to the original treaty by adding new clauses. The Cape Town Accords do not fit any of these six definitions. Therefore, the technique used by the Cape Town Convention was an innovative effort that yielded excellent results.

This novel framework is known as the "Cape Town Approach," as coined by Professor Sundahl. In spite of the fact that three distinct legal regimes have been established, he finds that there is remarkable consistency across them. The remarkable accomplishment of the Cape Town Convention is that it has allowed for a high degree of standardization to be maintained while yet allowing for certain standards to be modified to meet the demands of various sectors.¹⁰⁰ He enumerates ten benefits, including adaptability, uniformity, rapid implementation, the promotion of treaty-based, hard international law, the elimination of duplication of effort, the possibility of building on the success of pioneering protocols, the encouragement of participation from sectors not directly involved, the ability to selectively ratify protocols based on a state's specific needs, and the financial incentives for ratification of the Convention. The main complaints are that they lead to "greater complexity and fragmentation of the law," that they take too long to implement because of the need for non-negotiation of protocols, that they lead to a lack of uniformity because of the possibility of renegotiation of the base Convention during the negotiation of each Protocol, that they allow for the repetition of mistakes made in the first Protocol in the second Protocol, and that they lead to legal obscurity in the observance of principles followed in the interpretation of one¹⁰¹.

4.3 Scope of the Convention

Article 2(1) of the Convention "provides for the formation and consequences of an international interest in specific kinds of mobile equipment and related rights." Therefore, the Convention promotes "international interest" in "particular types of mobile equipment." Aircraft, engines,

¹⁰⁰ Mark J. Sundahl, *The Cape Town Approach: A New Method of Making International Law*, 44 *Columbia Journal of Transnational Law* 339 (2006).

¹⁰¹ *Ibid*

and rotorcraft; railroad cars and spacecraft; and other transportation assets fall into the three classes previously mentioned and stipulated in Article 2(3). High-value mobile equipment, such as the three types of assets discussed here, often changes location, making any property rights established over them vulnerable to the idiosyncrasies of many legal systems and the complexities of conflict of law rules. Initially, the list of moveable property proposed to be subject to the Convention comprised trucks, lorries, automobiles, and other forms of vehicles, non-motorized construction equipment, oil drilling equipment, ships and other types of floating equipment, and aeroplanes.

Article 51 of the Convention states that "the application of this Convention, through one or more Protocols, to items of any category of high-value mobile equipment other than a category referred to in Article 2" is permissible. (3.) In order to be included in the Convention, the object must be "uniquely recognizable" in addition to being a piece of high-value transportable equipment. Article 51 empowers the Depository to form working groups with competent non-governmental organizations to make a decision on a proposed application extension (1). Articles 51(2) and (3) require that the text of the preliminary draught protocol be communicated to all Depository member states, UN member states that are not Depository members, relevant intergovernmental organizations, and relevant non-governmental organizations; and Article 51(4) calls for the convening of a diplomatic conference to adopt the protocol after appropriate discussion and negotiation. When the Protocol goes into force, it will be subject to Article 51 (5) of the Convention.¹⁰²

Seven different types of interests are safeguarded under the convention. For example: -

1. Priority given to international considerations [Article 1(o)]
2. Article 1(y): International interests in the future
3. Concern for the Nation as a Whole [Article 1(r)]
4. Fourth, interests that are not created with mutual consent [Article 1(s)] or that arise under national law and are not required to be recorded.
5. Rights and interests that may be registered without the parties' prior consent under national law [Article 1(dd)]
6. Linked Possessions [Article 1(c)]

¹⁰² The entire Convention, except Article 45 bis is applicable to such new Protocol once adopted. Article 45 bis providing for the relationship of the Convention with the United Nations Convention on the Assignment of Receivables in International Trade will be applicable to the new Protocol only if the Protocol specifically provides for it -Article 51(6).

7. Rights and interests that exist before this Agreement [Article 1(v)]

The following other interests may be recorded:

- I. First, assignments and proposed assignments [Article 1(b), (x)];
- II. second, linked rights assignments that are not register able but are protected by registration of the assignment of their corresponding international interest.
- III. Article 16(1)(e)(23): Acquisition of Foreign Interests; and Agreement Subordinating Prior Interest.

4.3.1 International Interest

The Convention is predicated on the idea of international interest. The international interest is a different form of right in rem whose roots may be traced to the Cape Town Convention. In contrast to the Geneva Convention, which imposes conflict of law norms, the Cape Town Convention established a globally acknowledged new interest. The originality of this interest is distinct from the peculiarities of domestic law, and it only applies to three types of interests resulting from three independent agreements. (security¹⁰³, title¹⁰⁴ or leasing¹⁰⁵) Internationalized the concept's feasibility and ensured its viability ¹⁰⁶.

The term "international interest" is not defined in Article 1(o). Only that these interests should be subordinated to Article 2 seems to be implied. Please refer to Article 7 for further information on how to prove an international interest. Specifically, the following categories of mobile devices are described in Article 2(3): (a) airframes, aircraft engines, and helicopters; (b) railway rolling stock; and (c) space assets¹⁰⁷, as well as the "constitution and consequences"

¹⁰³ Article 1(ii) defines 'security agreement' to mean an agreement by which a charger grants or agrees to grant to a charge an interest (including an ownership interest) in or over an object to secure the performance of any existing or future obligation of the charger or a third person.

¹⁰⁴ Article 1(II) defines 'title reservation agreement' to mean an agreement for the sale of an object on terms that ownership does not pass until fulfilment of the condition or conditions stated in the agreement.

¹⁰⁵ Article 1(q) defines 'leasing agreement' as an agreement by which one person (the lessor) grants a right to possession, or control of an object (with or without an option to purchase) to another person (the lessee) in return for a rental or other payment

¹⁰⁶ Commentary of Sir Roy Goode mentions that the Convention creates a 'sui generis interest which is neither derived from nor dependant on national law.' (Commentary 2.41, 2.42)

¹⁰⁷ International interest in an object extends to proceeds of that object. [Article 2(5)] Article 1 (w) defines 'proceeds' as money or non-money proceeds of an object arising from the total or partial loss or physical destruction of the object or its total or partial confiscation, condemnation or requisition.

of an international interest in such items and "related rights"¹⁰⁸. Furthermore, according to Article 2(2), a foreign interest is established in a "uniquely identified item" and may be

1. granted by the charger under the security agreement,
2. vested in the conditional seller under the title reservation agreement, or
3. vested in the lessor under the leasing arrangement.

To ensure that no conflicting interests arise, Article 2(2) states that a conditional seller's interest under a title reservation agreement or a lessor's interest under a leasing arrangement may not coincide with the interest provided by a charger under a security agreement. The interest is classified in accordance with the relevant law¹⁰⁹.

Article 7 details the 'formal conditions' that must be met in order to establish an international interest, as previously noted. The interest must be created by a valid arrangement (security, title, or lease) in order to be valid.

1. About the thing that the charger, conditional seller, lessor, or seller is authorized to dispose of; and describing the thing in a way that allows it to be identified in accordance with the Protocol.
2. Aircraft items' serial numbers, manufacturers' names, and generic models' names must be included in the security agreement, and the agreement's terms must make it possible to ascertain the secured obligation.¹¹⁰

4.3.2 Prospective international interests [Article 1(y)]

When individuals talk about "international interest," they are referring to both immediate and long-term problems on a global scale. Article 1(y) specifies that this term refers to an interest in an object that is intended to be created or provided for it in the future as an international interest upon the happening of a stated event, such as the debtor obtaining an interest in the object, even if the event is not guaranteed to take place. In other words, the term refers to an interest in an object that will be created or provided for in the future as an international interest. Before it is ever established, a potential international interest might be registered with the appropriate authorities. Because of this, it has precedence beginning with the day it was

¹⁰⁸ Article I (c) define 'associated rights' to mean all rights to payment or other performance by a debtor under an agreement which are secured by or associated with the object

¹⁰⁹ Article 5(3) provides 'References to the applicable law are to the domestic rules of the law applicable by virtue of the rules of private international law of the Forum State

¹¹⁰ Agreement need not state a sum or maximum sum secured.

registered.

4.3.3 National interests [Article 1(r)]

Article 1(r) defines "national interest" as "an interest held by a creditor in an item that was produced through an internal transaction covered by Article 50(1)" The following are the three requirements for a transaction to be designated a "Internal transaction." At the time of the conclusion of the contract, both the parties' primary interests and the subject matter of the transaction must be located in the same Contracting State. Second, the newly created interest must be documented in the national registry of the Contracting State. The third and final reason is that the Contracting State should not have made such a statement under Article 50 (1)¹¹¹. Therefore, domestic deals are labelled as being in the "national interest."

The Convention may be declared inapplicable to internal transactions by Contracting States under Article 50, "Internal Transactions." The requirements of Articles 8(4), 9(1), 16, Chapter V, Article 29, and any law on registered interests will continue to apply notwithstanding such a declaration³⁴. This effectively nullifies the majority of the Convention, including its default remedies. It is not possible to declare a national interest as a global one. Priority rules supersede any assignment or subrogation made under relevant legislation if a 'national interest' is registered in the international registry¹¹². Important notification of sale or lease by chargee, vesting of object upon default, registration procedures, priority standards, etc. restrictions remain in effect, as do others.

It is possible for a Contracting State to issue a separate declaration for each of its geographical units if those units are governed by distinct legal systems. Unless otherwise declared, the Convention applies similarly to all territorial units¹¹³, and there are three requirements that must be met for a transaction to be considered an internal transaction in such territorial unit. First,

¹¹¹ 'Internal transaction' has been defined under Article 1 (n) to mean 'a transaction of a type listed in Article 2 (2)(a) to (c) where the centre of the main interests of all parties to such transaction is situated, and the relevant object located (as specified in the Protocol), in the same Contracting State at the time of the conclusion of the contract and where the interest created by the transaction has been registered in a national registry in that Contracting State which has made a declaration under Article 50 (1)',

¹¹² Article 8(4) obliges a chargee wanting to sell or grant lease of an object to give reasonable prior notice in writing to interested persons, Article 9(1) vests the object covered by security in charge upon default, Article 16 details establishment of an international registry, Chapter V deals with registration matters and Article 29 lays down priority norms for competing interests.

¹¹³ Article 52 (1) provides 'If a Contracting State has territorial units in which different systems of law are applicable in relation to the matters dealt with this Convention, it may, at the time of ratification, acceptance, approval or accession, declare that this Convention is to extend to all its territorial units or only to one or more of them and may also modify its declaration by submitting another declaration at any time.'

that area must fall inside the scope of the Convention. Second, the creditor must physically be located inside the jurisdiction in question (debtor should be incorporated or formed under a law in force in that territorial unit or it should have its registered office, statutory seat, center of administration, place of business or habitual residence in that territorial unit). And last, it must be inside that administrative division to qualify.¹¹⁴

4.3.4 Non-consensual or interests arising under national law which need not be registered [Article 1(s)]

Article 1(s) defines a "non-consensual right or interest" as one that is safeguarded by a declaration issued by a State according to Article 39 "to assure the fulfilment of an obligation." The Official Commentary clarifies that "right" and "interest" are not synonymous. An "interest" "denotes a right in rem in an asset," whereas a "right" is "a personal right of ownership or control" in which the "holder [of that right] has no interest." In order for a claim to a right or interest to be recognized, it must be recognized under the law of the state in which the claim is made. It should be established by legislation rather than consensus¹¹⁵. Article 39 prevents the Convention's rights from superseding pre-existing national rights with precedence over consensual rights, but it does not establish any new rights or interests. An "equivalent registered international interest" does not take precedence over these unrecorded rights or interests. Each state must define whether the precedence is given within or outside of any insolvency procedures. A non-consensual right or interest that does not fall under Article 40 may be declared under Article 39. Priority for non-consensual rights is established by registration under Article 40. By making the necessary notifications under Article 39, a State may seize an item for overdue payments. That jurisdiction may be exerted by a State, a State agency (like the State aviation authority), an intergovernmental body, or a commercial supplier of public service. Unpaid salaries and charges, tax claims, and repair liens are all examples of rights or interests that might be proclaimed under Article 39.

The primacy of a non-consensual right or interest may be established by satisfying two conditions listed in the AWG Practitioner's Guide. For example, -

- 1) whether the Contracting State recognizes the non-consensual right or interest
and

¹¹⁴ Article 52(5) The Cape Practitioners Guide Town Convention

¹¹⁵ Roy Goode, The Cape Town Convention on International Interests in Mobile Equipment: a Driving Force for International Asset-Based Financing, *Uniform Law Review*, 1 – 15 (2002) Para 2.33

- 2) whether the non-consensual right or interest has priority in the Contracting State over interests that are equivalent to the registered international interest under the law of the Contracting State that it is covered by the declaration.¹¹⁶

A non-consensual right or interest may have priority if the state declares that all non-consensual rights or interests that have such priority under local law are to have precedence. To establish precedence for a non-consensual right or interest, it is not required to identify the specific sort of right or interest involved. Priority may exist over secured and unsecured claims, or the State may declare otherwise. Any future incorporation of non-consensual priority rights in the State's domestic legislation shall be reflected automatically under Article 39, as stated by the State. If a new right or interest is accorded precedence under domestic law, the State is not required to re-declare its position under Article 39. If no such declaration is made, the State may make the necessary changes to the declaration made.

4.3.5 Registrable non-consensual rights or interests arising under national laws [Article 1(dd)]

The word "registrable non-consensual right or interest" in Article 1 refers to a non-consensual right or interest that is registrable in accordance with a statement that has been filed in accordance with Article 40. (dd). Article 40 extends the safeguards that are provided by Article 39 in a more comprehensive manner. According to the official view, there is no overlap between the non-consensual rights and interests described in Article 39 and the registrable non-consensual rights and interests described in Article 40.¹¹⁷ In contrast to the interests and rights that are protected by Article 39, which don't need to be registered, Article 40 says that non-consensual interests and rights have priority over registered international interests only if they have been registered. This is because Article 39 does not require registration to protect rights and interests. When a right or interest is registered without the other person's permission, it gets the same status as a registered foreign interest. This means that the right or interest that was not agreed upon can be used. So, it has priority over any interests that have been registered later and over whatever interests that were not recorded. Article 40 state statements often include the phrase "any other non-consensual right or interest that is not covered either by statement under Article 39(1)(a) of the Convention." Several countries, including the United

¹¹⁶ AWG Practitioners Guide to the Cape Town Convention and The Aircraft Protocol, 134 (2015)

¹¹⁷ Ibid Para 2.154

Arab Emirates, Bahrain, Cameroon, Congo, Kazakhstan, Myanmar, Oman, Rwanda, and Togo, have made statements that are very similar. Article 40 lists several common declarations, such as the rights of a judgement debtor, liens in favor of workers for unpaid wages, liens in favor of the state for unpaid taxes and other unpaid charges, liens of a salvager for salvage services, and liens for unpaid towage charges of a waterborne aircraft.¹¹⁸

4.3.6 Associated rights [Article 1(c)]

Under Article 1(c), "associated rights" are defined as the entitlement to payment or other fulfilment of certain obligations by a debtor under an arrangement secured by or related to an aviation item. Therefore, a related right might be a claim for compensation or an entitlement to have a certain duty fulfilled. The right to payment may include the right to repayment of a debt or the right to payment of a lease charge. A debtor's performance rights might include securing insurance for the aircraft or performing routine maintenance.

However, the rights associated with being a creditor are exclusive to creditors. The secondary right must be based on the primary agreement, such as a security agreement, lease, or title retention agreement. Rights connected to the object covered by the primary agreement cannot be created by a secondary contract that is tied to or secured by the thing covered by the primary agreement. Everything that the debtor is expected to accomplish should be spelled out in the primary agreement. However, it may be deemed a "related right" if the performance has already been completed in the principal agreement and the rights to it are secured by the object covered by the agreement or have some connection to it. The Official Commentary illustrates this principle with the example of a security arrangement that guarantees a debt under another contract. Payment and performance claims will only be honored if they are included in the primary contract. The AWG Practitioners Guide states that if the debtor's liability stems from a separate contract and the security interest in an aircraft item stems from a different agreement, then the agreement does not have international interest. That "the obligations in it are secured by or related to the correct aircraft item" should be included in the independent contract as well. It further specifies that the agreement will remain in effect even in the absence of the commitment and the declaration. Nonetheless, the Cape Town Convention is unlikely to recognize it as a "associated right" since it is unrelated to the linked international interest. Once

¹¹⁸ Article 40 – Declarations deposited under the Cape Town Convention on International Interests in Mobile Equipment, as on November 7, 2016.

the proclamation and pledge are in place, the connection between the two may be readily seen. A term for this is "connected rights."¹¹⁹

There are two sorts of associated rights: 'object related' and 'non-object related'. The accompanying rights that pertain to the financing or leasing of an asset are mentioned in Article 36(2). The assignor's right to payment of the money advanced and used to purchase the object; the assignor's right to payment of the money advanced and used to purchase any other object in which the assignor has an international interest, provided that the assignor has transferred the interest to the assignee and the assignment has been registered; the price or rental payable for the object; and any other obligation which arises from these transactions.¹²⁰ The same holds true for the entitlement to payment or performance in unrelated transactions as it does in linked ones.

4.3.7 Pre-existing rights or interests [Article 1(v)]

For the purposes of this Convention, a "pre-existing right or interest" or "grandfather clause" is defined as "means a right or interest of any type in or over an item formed or arising before the effective date of this Convention as described in Article 60(2)(a). All rights and interests in and to aircraft objects that arose before to the entry into force of the Convention are not covered by it. Priority under the relevant legislation is preserved throughout the duration of the rights or interests. There is no need for any further registration or action. The UK Civil Aviation Authority still maintains the UK National Register of Aircraft Mortgages⁴⁶ despite the Cape Town Convention being part of UK legislation as of November 1, 2015¹²¹. If a security arrangement establishes a charge that is normally registrable under Section 859A of the Companies Act 2006, then the charge must be registered in accordance with Section 859A. The fact that the accusation is likewise of international importance makes no difference. If the charge is not recorded, the debt secured by the charge becomes due immediately.

A right that already exists may be registered in the International Registry to provide public notice of the right, even when no registration or technical process is necessary. Where no such mechanism exists under the law, this becomes even more crucial. To the extent that the parties

¹¹⁹ Ibid, Pg. 35

¹²⁰ Official Commentary gives examples of such obligations to include indemnities and loan breakage costs due to premature termination of agreement for default. Para 2.188

¹²¹ Justin benson, adrian c. beasley, alison weal, uk ratification of the cape town convention, white & case, September 24, 2015; newsletter, uk ratifies cape town convention and aircraft protocol—effective November 1, 2015, vedderprice, august 2015. 46owen costine, tanya dolan, aviation finance in the uk (England and Wales)

so want, they may include a prior agreement within the scope of the Convention. If the parties knew the Cape Town Convention would be in effect when they drafted the agreement, they might have included a Cape Town assurance provision or made other changes (such as by amending, novating, or extending) to bring the agreement under its purview. When re-documenting, it is important to consider tax and local regulatory implications. The parties are free to make this choice based only on the financial implications to themselves.

In spite of the fact that the Convention does not have retroactive applicability, Article 60 allows states to make such a proclamation (1). Declarations under Article 60 have been made by just Canada thus yet (1).¹²²In accordance with the declaration, the Cape Town Convention will apply to a pre-existing right or interest controlled by Sections 426-436 of the Bank Act five years after the date on which the Aircraft Protocol entered into effect in Canada. As of April 1, 2013, Canada is a party to the Cape Town Convention and Aircraft Protocol. As of April 1, 2018¹²³, the Cape Town Convention will apply to any pre-existing right or interest. Only rights and interests covered by the proclaimed sections of the Bank Act shall be considered for application¹²⁴. Moreover, the declaration must be made at least three years before it goes into force, as per Article 60(3). To add, only priority standards may be applied retroactively to pre-existing rights or interests. For this reason, Convention default remedies are not retroactive. Article 60 provides the definition of "Effective Date" (2). The debtor is considered to be a party to the Convention as of the later of the date the Convention went into effect or the date the State in which the debtor is located became a contracting State. Debtor's main administrative offices may be found in a certain state. To the extent that no one location can be identified as the primary administrative hub, the entity's main place of business (in the case of numerous locations) or its usual place of residence will serve.

4.3.8 Assignments and prospective assignments [Article 1(b), (x)]

Under the Convention, an assignment of an international interest may be recorded. Assignment is defined in Article I (b) as "any transaction which, by way of security or otherwise, confers on the assignee associated rights with or without a transfer of the relevant international interest." Article 1(x) defines "prospective assignment" as an assignment that is intended to be

¹²² Article 60(1) – Declarations deposited under the cape town convention on international interests in mobile equipment

¹²³ A Banker Asked Us: Does the Cape Town Convention Affect Pre-Existing Rights and Interests or Their Priorities in Canada? GOWLING WLG, June 26, 2017.

¹²⁴Ibid.

made in the future upon the occurrence of a specific event, regardless of whether the occurrence of the event is certain.

Instead of defining assignment in terms of foreign interests, the Convention focuses on the assignment of linked rights. Assignments were intended to be described in terms of international interests rather than associated rights during the writing process, with the idea being that the transfer of an international interest would also include the transfer of any associated rights. In light of the Convention's emphasis on cross-border concerns, it was determined that the general rule that "a security interest is ancillary to the obligation secured" should be disregarded. However, in the end, it was agreed to let things stay as they were, and assignment was defined in terms of connected interests,¹²⁵ which transfers the relevant international interest for the purposes of the Convention. Therefore, foreign interests do not always transfer along with accompanying rights. However, this only applies to the rights that are attached to or secured by the thing in question. In accordance with the Convention, an assignment is a legal agreement that confers onto the assignee the benefits of the underlying contract. It does not apply to assignments that occur automatically under the legislation. A statutory merger or amalgamation that results in a transfer of rights and liabilities⁵² is cited as an example of assignment by operation of law in the official commentary.

Transfer of the international interest is not required, and neither does the assignment need to be for security purposes alone. Internationally relevant interests may be assigned apart from related rights. However, the Cape Town Convention will not cover such transactions.¹²⁶ As a result, according to Article 31(1), the assignee acquires the assignor's worldwide interest and all of the assignor's interests and priority under this Convention upon the assignment of the associated rights. If the assignment is made in accordance with Article 32, the assignee will automatically get the assignor's foreign interest and all of the assignor's interests and priorities. The formalities involved in making an assignment are outlined in Article 32. It states that a written assignment of an associated right is required in order to transfer the international interest connected with that right. Priority of competing assignments is explained in further detail in Article 35, which states that registered assignments involving the related international interests take precedence over connected rights transferred without transfer of linked

¹²⁵ Official Commentary Para 2.189 in AWG, Practitioners Guide

¹²⁶ Article 32(3) provides that the Convention does not apply to assignment of associated rights which does not transfer related international interest.

international interest. Furthermore, only assignments and potential assignments of foreign interests are registrable under the Convention, as stated in Article 16(1)(b) allowing for registration. This means that assigning associated rights in tandem with the accompanying international interest is required for the Convention to take effect.

As long as Articles 31 and 32 of the Convention have been followed, an assignment is valid and the debtor is obligated by it. If the debtor has been given notice of the assignment and the accompanying rights have been indicated in the notice, then the debtor is obligated under Article 33 to make payment or deliver performance to the assignee. Article 8 (remedies of chargee), Article 9 (vesting of objects, redemption), and Articles 11-14 (meaning of default, additional remedies, relief pending final determination, and procedural requirements) of the Convention provide remedies available upon default by the assignor for assignments made as security and accompanied by assignment of associated rights and the related international interest (Article 34). It is important to highlight that foreign interests formed by means of security cannot be transferred without assignment of the accompanying rights, but international interests owned by a conditional seller or lessor may be transferred without assignment of the associated rights. In such a situation, the transfer of an international interest must also include the transfer of the rights normally connected with that interest. Under Article 32(2), a security agreement's foreign interest cannot be transferred without simultaneously assigning the underlying rights that gave rise to it.

Assignment encompasses the full transfer, charges, and pledges of linked rights, and is effective even in the absence of the assignment of a related foreign interest (Official Commentary, para 2.186). The terms "novation" and "subrogation" (which appear at line¹²⁷) are not part of the definition of "as" (Official Commentary, Para 2.186). In certain cases, the duties may be transferred together with the corresponding rights and international interest in an assignment, but in others, only the rights may be transferred. Again, a partial or complete transfer of responsibilities is possible. Novation is a legal concept recognized in certain regions when an agreement transfers the debts of one party to another. For the purposes of the Convention, however, the same is still an assignment and has not been "novated" (Official Commentary 2.44).

According to the definition of "related rights" in the Official Commentary, only the creditor

¹²⁷ Article 38 provides that the Convention does not affect acquisition of associated rights and related international interests by legal or contractual subrogation under the applicable law.

(chargee, conditional seller, or lessor) is allowed to transfer associated rights. It is not within the purview of the Convention to permit a lessee to assign. When a lessee assigns their lease, a new international interest is created between the lessor and assignee, and this interest must be registered and given a new priority order. Even if the lessee creates a sublease, the sublessor's rights will still be assigned together with the sublease because "assignment of its rights as sub-lessor will constitute an assignment of related rights bringing with it an assignment of the sub-worldwide lessor's interest" (Official Commentary, Para 2.185). Associated rights might be assigned in whole or in part. Partial assignments need an agreement between the assignor and the assignee about the rights of each party. The debtor's approval is required for any arrangement to be valid under Article 31. (2).

The assignment of an associated right over the same international interest or a separate international interest has various priority implications. The rights connected with anything may be assigned more than once. If an assignment is made over a separate foreign interest, the assignee will get the priority that the assignor had over that interest. Priority of interests is preserved upon assignment, with the assignee taking the place of the assignor in the priority order (Article 31). Multiple registrations of the same foreign interest will take precedence based on the order in which they were recorded. An initial registration of an assignment gives it precedence over any later registrations or over any unregistered assignments that may occur.¹²⁸ There are three caveats to this rule that must be followed. First, the international interest must be included in at least one assignment¹²⁹; second, the underlying agreement must specify that the associated rights are secured by or associated with the object so that the debtor can learn about the object¹³⁰; and third, priority is granted only to the extent that the associated rights are object related.¹³¹ Priority between assignments made contractually and those made automatically by operation of law would be established by the application of applicable local

¹²⁸ Article 29 contains the basic priority rules and prescribes that a registered interest has priority over any subsequently registered interest (first-in-time) and any unregistered interest (registered over unregistered).

¹²⁹ Article 35(1). This is because Assignment of associated rights is not registrable. It is only the assignment of international interest which is registrable and creates priority.

¹³⁰ Article 36. Official Commentary in Para 2.204 discusses the reason for this requirement prescribed by Article 36. It notes, "This is to deal with the situation where, for example, an agreement secures not only the obligations for which it provides but obligations arising under a later agreement and the later agreement does not refer to the security, so that a subsequent assignee of the associated rights under the later agreement has no way of knowing that the obligations under the later agreement are secured on or in any way connected with the equipment and ought not, therefore, to be subject to the Convention priority rules."

¹³¹ Article 36(2) This will cover repayment of purchase-money loans, payment of price and object rentals, contract and default charges and interest, funding breakage costs, enforcement costs etc. for details see, Article 36(2) (a) to (e) and Official Commentary Para 2.204

legislation (Official Commentary, Para 2.202).

4.3.9 Assignments of associated rights which are not registrable but are protected by the registration of the assignment of their corresponding international interest

Article 16(1) assignments are the first kind outlined above (b). Under the Convention, an assignee's foreign interest may be safeguarded by the registration of an assignment, even if the underlying right is not registrable. That covers Article 32(3) situations as well.

4.3.10 Acquisition of international interests

International interests acquired by legal or contractual subrogation are registrable as of right under Article 16 (1) (c). Article 9 grants a right of subrogation (4). The appropriate legislation will define the nature and scope of a subrogation. Article 5(3) of the Rules of the European Court of Human Rights defines "applicable law" as the domestic principles of law applicable under the rules of private international law of the Forum State.

If, upon default, the Secured Amount is paid by any party other than the Debtor, such party shall be subrogated to the Chargee's rights according to Article 9(4). Acquisition of linked rights and related foreign interest through legal or contractual subrogation under relevant legislation is unaffected by the Convention, as per Article 38(1). This interest may be registered by the subrogee according to Article 20, which deals with consent to registration. According to the Official Commentary, if there are two subrogees over two separate international interests, the subrogee of the senior international interest will take the place of its subrogor and will have precedence over the subrogee of the junior international interest. There is no need to sign up for anything to do this. If two parties claim the same foreign interest as subrogees, the order of precedence is determined by the date of registration of the acquisition through subrogation.¹³²

4.3.11 Agreement of subordination of a prior interest [Article 16(1) (e)]

It's OK for individuals to have fluctuating priorities. Subordination of rights and interests is permitted by the Convention under Article 16(1)(e) and Article 29(5)(64). Per Article 16(1), subordinating interests may be recorded (e). It permits the recording of subsidiary interests, as specified in subparagraphs (a)through (c)above (d). This includes any and all foreign rights and interests, any and all potential foreign rights and interests, any and all assignments of any and all foreign rights and interests, any and all acquisitions of any and all foreign rights and interests

¹³² Official Commentary Para 2.208 in AWG,

by legal or contractual subrogation under applicable law, and any and all notices of national interests. In Article 29, the relative rights of an absolute purchaser, a conditional purchaser, and a lessee are spelled forth (5). Although the priority of competing interests can be varied by agreement between the holders of the interests, it also states that an assignee of a subordinated interest is only obligated by an agreement to subordinate his interest if a subordination pertaining to the agreement is registered at the time of assignment. Regulation 5.9 of the International Registry Regulations requires information on the entities utilising the register who are subordinating their interest and receiving the advantages of the subordination (2016). A separate authorization from the designated person whose interest is being subordinated is also necessary for the subordination to take place. Registration of a subordination according to this Article 20(2) may be initiated by, or with the consent of, the party whose international interest is being subordinated. Whether or whether the subordinated interest or the subordinated interest being received is a registered interest must be specified. In the case of a registered interest transfer (through assignment, for example), the file number of the registered assignment must be given; similarly, in the case of a registered interest acquisition by subrogation, the file number of the registered subrogation must be provided. The form must be used to provide a description of the subordinating or subordinating interest and the debtor if the interest is not already registered.

4.4 System of Declarations

The declarations system has been briefly discussed in the preceding chapters. To make the Convention more palatable, statements were permitted even though Article 56 clearly forbade the use of reservations. These proclamations are broken down into five categories in the official commentary. Declaratory acts include those that are optional, required, or related to the legislation of a Contracting State¹³³.

A. Opt-in declarations

For a certain provision to take effect, they must be made by a Contracting State. If no such declaration is made, then these provisions shall not be enforceable. According to the official commentary, Article 60 has a single such clause. Article 60 addresses how the Convention might be applied to existing rights and interests in the interim. For starters, pre-existing rights

¹³³ Official Commentary, Para. 2.269

and interests are not covered by the Convention or the Protocol. Second, the Convention and the Protocol may be made relevant to existing rights and interests by a Contracting State's declaration. Third, at least three years must have passed after the date of declaration before an application may be considered.

B. Opt-out declarations

These are the declarations that a Contracting State must make in order to opt out of a certain provision. Any provision of the Convention that is applicable under the Aircraft Protocol is referred to herein as a "provision." There are a total of six "opt- out" statements. For example:

- Article 8(1) (b)- Having the authority to lease a charged item while inside the declared state's borders.

In the event of a default by the charger, the chargee may exercise the right to sell or lease the aircraft item under Article 8 (1) (b). Article 1166 describes what happens in the event of a "default." Any declaration under Article 54 will supersede this Article 8(1)(b). If the Charged Property is located inside the territory of a Contracting State, the Chargee may be denied the right to a lease remedy under Article 54.¹³⁴

- Articles 8(1), 9(1), 10 - Options outside of the court system

Specifically, paragraph two of Article 54 allows Contracting States to make statements on the kinds of extrajudicial remedies that are acceptable in their jurisdictions. The State may, in its discretion, prohibit the creditor from pursuing any non-judicial remedy provided for under the Convention and may instead require the creditor to obtain judicial authorization before pursuing any such remedy.

Creditor remedies are laid forth in Articles 8–10 of the Convention. The charged aircraft item may be acquired, controlled, sold, leased, managed, or utilized for the purpose of earning money or profit, as set out in Article 8(1). Creditors may pursue the remedies outlined in Article 8(1) without first obtaining the Court's permission to do so. As an alternative, the chargee may seek a court order authorizing the remedies provided for in Article 8(2). (1). To ensure that the secured obligations are met, the ownership of the charged item might be transferred to the chargee under Article 9. The conditional vendor or lessee has the right to cancel this agreement and retake ownership or control of the property under the terms of Article 10. Again, under

¹³⁴ Article 54 reads as 'A Contracting State may, at the time of ratification, acceptance, approval of or accession to the Protocol, declare that while the charged object is situated within, or controlled from its territory the charge shall not grant a lease of the object in that territory.

Article 10(b), a conditional vendor or lessor may seek judicial approval before using these remedies.

- Article 13 - Relief Waiting for a Final Determination

It's fine for people to have different priorities at different times. Article 16(1)(e) and Article 29(5) of the Convention allow rights and interests to be put below other ones (64). Article 16:1 says that subordinating interests can be written down (e). It makes it possible to record subsidiary interests, as described in (a) through (c) above (d). This includes any and all foreign rights and interests, any and all possible foreign rights and interests, any and all assignments of any and all foreign rights and interests, any and all acquisitions of any and all foreign rights and interests by legal or contractual subrogation under applicable law, and any and all notices of national interests. In Article 29, the differences between the rights of a buyer, a conditional buyer, and a lessee are explained (5). It also says that an assignee of a subordinated interest is only required by an agreement to subordinate his interest if a subordination relating to the agreement is registered at the time of assignment. Regulation 5.9 of the International Registry Regulations says that the entities using the register who are subordinating their interests and getting the benefits of the subordination must provide information about themselves (2016). For the subordination to happen, the person whose interests are being put second also needs to give a separate permission. Article 20(2) says that the party whose international interest is being subordinated can start the registration process or give permission for it to happen. It must be said whether or not the subordinated interest or subordinated interest being received is a registered interest. If a registered interest is transferred (for example, by assignment), the file number of the registered assignment must be given. If a registered interest is acquired by subrogation, the file number of the registered subrogation must also be given. If the interest is not already registered, the form must be used to describe the subordinating or subordinating interest and the debtor.

- Article 50 - Deals Within the Company

Unless it says otherwise, the Convention also applies to business that is done within a party's own organisation. Business deals that don't involve someone from another country are called "internal." Article 1 says that a transaction is an internal transaction if all three conditions are met in the same Contracting State (n). The State must be the main concern of all parties involved in the transaction. The object must be located in the State at the time the contract is made, and the transaction must be recorded in the State's national registry to protect the State's national interest. "National interest" in Article 1 refers to an interest that comes from an internal

transaction that is subject to a declaration under Article 50. (r). (1). Article IV of the Protocol says where a "internal transaction" that uses aircraft equipment must take place (2). So, a helicopter is said to be located in the State of Registry where it was first registered, an aircraft's airframe is said to be located in the State of Registry of the aircraft of which it is a part, and an aircraft engine is said to be located in the State of Registry of the aircraft on which it is installed, or in its current physical location if it is not on an aircraft. Article 52 of the Convention says that it can be used in certain local areas of a Contracting State. Article 52(5) says that a debtor is only in a Contracting State if it is formed under the laws of a territory to which the Convention applies or if it has its main place of business, main place of administration, or usual place of residence in that territory. For the Convention's rules to apply to the debtor, the Convention must have been put into place in the debtor's area. Even so, Article 8(4), which says that the chargee must give reasonable written notice of a proposed sale or lease, Article 9(1), which says that the owner of the aircraft object covered by the security interest becomes the debtor, Article 16, which says that notices of national interests must be given, Chapter V (registry), which says that security interests must be registered, and Chapter VI (registry) will still apply (2). These additional rules limit what Article 50 can do. A national interest notice can be registered with the same priority as an international interest notice as long as the system of registration and criteria for priority remain in place. The priority of the holder of a national interest that has been registered under Article 50 is not affected by an assignment or subrogation to a third party (3). The remedies in Articles 8(4) and 9(1) also still apply.

Declarations relating to a Contracting State's own laws:

The State must make these disclosures about the application of its own laws. To protect its rights and interests, each Contracting State would naturally prioritize a few issues above others. Three similar proclamations exist.

- Article 39 -Rights and interests that arise outside of a contract and take precedence even if they are not recorded

This Article allows for two different types of declarations to be made by a Contracting State. First, the power of arrest and detention for payments owed for services to aircraft, and second, the primacy of non-consensual rights or interests above registered interests. A statement under Article 39 may provide non-consensual rights and interests super-priority even above previously recognized foreign interests (4). Unlike the statement required by Article 39(4), which must be made at the time of ratification, the other declarations required by Article 39 may be made at any time and will not have any retroactive effect. A Contracting State may

make a second declaration by informing the repository, as provided for in Article 57. In addition, Article 57(3) states that statements made at a later date do not impact rights and interests that have already arisen.

- Article 40 - Confidential Interests or Rights That Can Be Recorded Without the Parties' Consent

Priority over an international interest is only granted to nonconsensual rights or interests stated under Article 40 if they are registered. Furthermore, the sequence of registration determines their importance.

- Article 53 - Affirmation by the appropriate court

In accordance with this Convention, any court designated by a Contracting State shall have jurisdiction.

C. Mandatory Declarations to be deposited at the time of ratification, adoption:

There are two proclamations included in the official commentary as falling under this heading. The first is the statement that a Regional Economic Integration Organization must make upon signing, accepting, approving, or acceding to the agreement as required by Article 48(2). When member states of a Regional Economic Integration Organization (REIO), like the European Union, delegate authority to the REIO to exercise their rights and perform their responsibilities, the REIO becomes vested with those rights and obligations. The organization must define its authority to represent its members in accordance with Article 48(2). If there is a change to this "distribution of competence," the company must inform the Depository. A further declaration filing is not needed at this time. When a State ratifies, accepts, approves, or accedes to a Protocol, it must also make the statement required by Article 54(2). It permits a Contracting State to make use of an extra-judicial remedy permitted under the Convention subject to judicial authorization. Given that the declaration required by Article 54(2) is an obligatory declaration, the Official Commentary states that it cannot be revoked. In the event of a withdrawal, a subsequent declaration must be made that is effective simultaneously with the withdrawal.¹³⁵ These two declarations are required for the ratification document to be accepted and must be made at the moment the Convention or Protocol is ratified. There are several statements that must be made at the time of ratification and cannot be revoked later,

¹³⁵ Goode Roy. Official Commentary on the Convention on International Interests in Mobile Equipment and Protocol thereto on matters specific to Aircraft Equipment, Unidroit 2013, Para 2.277

including the declaration under Article 60 allowing for applicability of the Convention to pre-existing rights or interests. Accordingly, a further declaration under Article 60 is prohibited by Article 57.

D. Other Declarations:

The final kind of declaration made under Article 52 comprises a miscellaneous declaration without falling under any of the categories. As previously mentioned, if a Contracting State includes of many territorial units, it is available to the State to apply the Convention to all or part of those territorial units. It is also conceivable for a State to issue various statements in respect of distinct geographical divisions. If no such declaration is made, the Convention shall be considered to apply to all of the State's territories.

E. Withdrawal and modification of Declarations:

Articles 56–58 detail the process for making, revoking, and amending declarations. Any declaration must be made in writing and submitted to the Depository, which will then inform the Supervisory Authority and the Registrar (Article 62). Depository is to give information of all declarations made by Contracting States, its subsequent withdrawal or alteration also to all other Contracting States. UNIDROIT, as the Depository for deposit of instruments of ratification, acceptance, approval, or accession, is responsible for carrying out this duty.

All Articles, save for Article 60's transitional provisions, allow for further declarations. Additional declarations become effective on the first day of the month after the expiration of six months from the day Depository received notified. Existing declarations shall continue to govern rights and interests throughout the interim period until the future declarations become effective. Rights and interests accruing prior to the declaration's effective date are unaffected by later declarations. In addition, declarations made under Rule 70 might be revoked (Article 58). After Depository receives your notice of withdrawal, your funds will be available on the first day of the month that follows the six-month withdrawal deadline you specified. Prior to the effective date of the withdrawal, the current declarations shall continue to govern the rights and interests. A withdrawal declaration will not alter any rights or interests that existed previous to the withdrawal declaration's effective date.

With the proper notification to the Depository, a State Party may terminate its participation in the Convention. Twelve months from the day the Denunciation notification is received by the Depository is the minimum period of time for the Denunciation to take effect (Article 59). A twelve-month notice time is required for denunciation from the Convention, whereas a six-month notice period is required for future declarations and withdrawals of declarations. Any

claims or entitlements that existed before the date of renunciation would continue to stand, even if the renunciation is later revoked.

To assist States and Regional Economic Integration Organizations in completing declarations, the UNIDROIT Secretariat has released The System of declarations under the Convention on International Interests in Mobile Equipment and the Protocol documents relating on Matters specific to Aircraft Equipment: an explanatory note. You can locate it on their website. Both the Purple Book (Volume I) and the Green Book (Volume II) were written by the Legal Advisory Panel of the Aviation Working Group in order to give practical assistance for contracting under the Cape Town Convention. The Implementation Resource Material created by AWG is meant for "consideration and technical use" during the ratification or accession to the Convention and Protocol. To "increase the economic advantages" of the Cape Town Convention, the AWG created a Declarations matrix and included it into Annex I of the Implementation Resource Material. "Qualifying Declarations" are almost identical between the Aircraft Protocol and the OECD's Aircraft Sector Understanding (ASU). A Contracting State must make one of the following statements in order to get the Cape Town Convention discount: (reduced premium basis) In addition to model instruments of ratification, acceptance, approval, accession, and declarations, the UNIDROIT website has a "explanatory memorandum for the use of States and Regional Economic Integration Organizations in drafting of declarations." Each section title inside the Declarations Memorandum has a certain function. The commentary on the different declarations required by the Convention can be found in Part I, while the Model Declaration Forms For Use by the States under the Convention and Protocol may be found in Parts II and III, respectively. Part II consists of 18 Forms (Form No. 1-18) for use in making declarations in accordance with the Convention, whereas Part III consists of 17 Forms (Form No. 1-17) for use in making declarations in accordance with the Protocol (Form No.19-34). Two Model Declaration Forms (Nos. 35 and 36) for use by REIOs are provided in Section IV (Form No.35-36).

Articles 35 and 38 of Appendix II to the ASU72 are met by the submission of the "Qualifying Declarations" supplied by the OECD in order to get the Cape Town Convention (CTC) Discount. Certain statements must be made by the state, and others must not be made, in order for the state to "qualify" for the discount. The ASU requires Contracting States to make the declarations in Article 2 of Annex 1 and prohibits them from making the statements in Article 3 of Annex 1. Declarations must be made include-

- I. In accordance with Article XI (3) of the Aircraft Protocol, I have selected Alternative A and have set the waiting time to no more than 60 calendar days.

- II. Article VIII of the Aircraft Protocol should be interpreted to allow the parties to make a choice of law.
- III. Deregistration clause in Article XIII of the Aircraft Protocol.

All three election options for insolvency deregistration and governing legislation must be followed. The Aircraft Protocol also requires a declaration from the State, which must be made under Article 54(2) or Article V.

- IV. Article 54(2) of the Covenant requires the State to provide access to alternative dispute resolution in cases when judicial resolution is unavailable.
- V. Time limits in Article X (2) of the Aircraft Protocol shall not exceed ten calendar days for remedies specified in Article 13(1)(a), (b), and (c) of the Convention⁷³, or thirty calendar days for remedies specified in Articles 13(1)(d) and (e) of the Convention⁷⁴, if the State elects to apply Article X. V.

For a state to be considered "qualified," it must not make any of the following three statements. For example,

- A State Party may not waive Articles 13 and 43 of the Convention according to Article 55 of the Convention. In the event that the State approves extra-judicial remedies according to Article 54(2), the first condition may be waived.
- By filing a declaration under Article XXXII of the Aircraft Protocol, member states of the Convention for the Unification of Certain Rules Relating to the Precautionary Attachment of Aircraft cannot renounce their adoption of the Cape Town Convention.
- Article 54(1) of the Convention prohibits a declaratory stance by a State prohibiting the use of leasing as a remedy, although no such statement may be made.

Table 3: Convention and Protocol allow Contracting States to make the following declarations:

1.	Article 39(1)(a) Form No.1,2 Priority of non-consensual rights And interests without	Anytime, everywhere, you may make a declaration; declarations might be broad or narrow Precedence may arise either inside or outside of bankruptcy procedures and will be determined by the kind of non-consensual right or interest that a state has determined to have priority under its law over a registered international interest.
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	Registration	
2.	Article 39(1)(b) Form No.3,4 Preservation of right of providers of public services to arrest or detain	Anytime is a good opportunity to make a declaration One's declaration may be broad or narrow. State or State entity, intergovernmental organization, or private provider of public services' right to arrest or detain an object for payment of payments owing to such entity or organization directly related to such object or another object's use of such services.
3.	Article 39(4) Form No.1, 2	An international interest registered prior to the date of ratification, acceptance, approval, or accession to the Protocol must not be prioritized over a right or interest of a type covered by a declaration made under Paragraph 1(a).
4.	Article 40 Form No.6 Registrable non-consensual rights or interests	Any nonconsensual right or interest may be declared at any time and registered under the Convention as if it were an international interest and governed accordingly. There is a possibility that the declaration will be updated at some point.
5.	Article 50 Form No.7,8 Application of Convention to internal transactions	In order to exclude internal transactions from the scope of the Convention, a State must make a declaration at the time of ratification, acceptance, approval, or accession to the Protocol.
6.	Article 52 Form No.9,10 Application of Convention in relation to territorial units	<ul style="list-style-type: none"> • Different legal jurisdictions apply in various parts of a Contracting State The Convention must be declared to extend to all or part of its territorial components when it is ratified, accepted, approved, or acceded to, and this declaration may be changed at any time.
7.	Article 53 Form No.11 Determination of courts	At the time of ratification, acceptance, approval, or accession, the State must make a declaration designating the competent "court" for purposes of Article 1 and Chapter XII of the Protocol.

8.	Article 54(1) Form No.12 Granting of lease over charged object by charge	This declaration must be made by the State when it ratifies, accepts, approves, or accedes to the Protocol, and it must specify that no leased asset located in or under its control is eligible for a charge.
9.	Article 54(2) Form No.13-A, 13-B Exercise of remedies with leave of the court	When a state ratifies, accepts, approves, or accedes to the Protocol, it must make a declaration indicating whether or not the creditor has recourse to any extrajudicial remedies other than litigation.
10.	Article 55 Form No. 14,15,16,17 Relief pending final determination	At the moment of the Protocol's ratification, acceptance, approval, or accession, a declaration must be issued. To exclude all or part of Article 13 or Article 43 from its jurisdiction, a State may make such a declaration. The statement stating the circumstances under which the applicable Article shall be implemented is required for a partial application. If Article 13/43 isn't applied, the State must indicate what alternative measures of temporary relief will be implemented.
11.	Article 60(1) Form No.18 Transitional provisions	State may declare application of Convention and Protocol to preexisting right or interest; State must specify a date, not earlier than three years after declaration becomes effective, for application of Convention and Protocol; Declaration must be made at the time of ratification, acceptance, approval, or accession to the Protocol.
12.	Article XIX (1) Form No.28-A, 28-B, 29 Designated entry points	Anytime is a good opportunity to make a declaration Registration data must be sent to the International Registry through a point of entry that the state will designate. An official declaration cannot mandate a certain port of entry.

13.	<p>Article XXIV Form No.32 Relationship with 1933 Rome Convention</p>	<p>The Cape Town Convention shall replace the Convention for the Unification of Certain Rules Relating to the Precautionary Attachment of Aircraft upon the making of the declaration required by Article 5 of the Protocol at the time of ratification, acceptance, approval, or accession to it.</p> <p>Each State may opt out of this Article's provisions by issuing a separate proclamation.</p>
14.	<p>Article XXVII (2) Form No.36 Competence of Regional Economic Integration Organisation</p>	<p>At the time of ratification, acceptance, approval, or accession to the Protocol, the Regional Economic Integration Organization (REIO) must make the following declarations</p> <p>Specify matters for which competence has been transferred to the REIO by its members;</p> <p>Specify matters for which REIO must make a declaration of any change in its competence.</p>
15.	<p>Article XXIX Form No.33,34 Application of Protocol to Territorial units</p>	<p>Separate jurisdictions within a Contracting State may be subject to a separate legal regime.</p> <p>Declare that the Protocol applies to all or some territorial units;</p> <p>declare that the Declaration is modifiable;</p> <p>declare the specific territorial units to which the Protocol applies; and so on.</p>
16.	<p>Article XXX (1): VIII Declarations relating to certain provisions</p> <p>Article VIII — Choice of law</p> <p>Form No.19</p>	<p>As part of the ratification, acceptance, approval, or accession process, the State should declare that Articles VIII, XII, and XIII of the Protocol shall apply to it.</p> <p>Article VIII</p> <ol style="list-style-type: none"> 1. Article applies only where a Contracting State has made a declaration under Article XXX (1). 2. Parties can agree on law to govern their contractual rights and obligations. 3. Reference to law chosen by the parties is to the domestic law of State

4.5 Internal Transactions

An internal transaction occurs when the contracting parties and the subject matter of the transaction are situated inside the same Contracting State. An interest must be registered in the national registration of the applicable Contracting State in accordance with Article 1(n) of the Convention. Because neither the parties nor the subject matter include any element of international trade or commerce, these transactions fall within the exclusive jurisdiction of local law and are thus called "internal." A "national interest" is a "interest created by internal transactions" that is eligible for registration under the Convention and so meets the criteria for "registered interests" in Article 1(cc) of the Convention.

For aircrafts, "internal transactions" also include airframe present in its State of registry at the time of the conclusion of the contract creating or providing for the interest¹²⁴, the aircraft engine present in its State of registry at the time of the agreement creating or offering for the interest¹²⁴, whether installed or physically located, and the helicopter present in its State of registry.

Ideally, the Convention would also apply to interests deriving from internal transactions. However, a Contracting State may revoke its acceptance of the Convention's jurisdictional obligations by making a declaration under Article 50. Some nations that have made similar declarations include China, Mexico, Panama, Turkey, and the Ukraine. ¹²⁵ This declaration may only be made at the time of ratification, acceptance, approval, or accession to the Protocol and cannot be revoked or changed after the fact. The ramifications of this proclamation are limited by Article 50. (2). Default rules such as Article 8(4)'s requirement that the chargee provide notice of the planned sale or lease of the charged object to all interested parties and Article 9's requirement that the chargor's interest be vested in the chargee do not apply to internal transactions (1). Priority and registration provisions of Article¹⁶, Chapter V, and Article²⁹ apply to internal transactions as well. Last but not least, "provisions of the Convention linked to registered interests" include internal transactions as well. Due to the expansive nature of Article 50(2), any attempt to limit the application of the Convention to external transactions is mainly rendered ineffective.

Article 50 makes it clear that an assignment or subrogation under applicable law will not change the priority of a national interest registered in the International Registry (3).

4.6 Applicable Law and Choice of Law

In legal parlance, questions pertaining to process are controlled by *lex fori*, sometimes known as the law of the forum, while those concerning the subject matter are controlled by *lex loci* (the law of the location). Even though the Cape Town Convention and Protocol intend to limit the impact of both *lex loci* and *lex fori*, Article 5127 acknowledges that domestic law may continue to be applicable even after the adoption of new substantive law. This is the case even though the Convention and Protocol are named after the city of Cape Town. If you have a question regarding anything that is included in the Convention but isn't handled anywhere else, you should direct your attention to Article 5. The answers to such questions are to be provided in a manner that is consistent with the fundamental values underpinning the Convention. In the absence of overarching principles, one must turn to the law as a compass for direction. Could you maybe elaborate on what you mean when you say "applicable law" so that everyone is on the same page? To paraphrase paragraph three of Article 5, it reads as follows: "the internal laws of the Forum State that apply according to the principles of private international law of the Forum State."

When determining which law is "relevant," various conflict standards of *lex fori* may use a variety of connecting components.

These connecting components may include the law of the cause (*lex causae*), the law of the place where property is situated (*lex situs*), the law of the State of registration (*lex registry*), and other similar laws. Both the Convention and the Protocol provide a wide variety of circumstances in which "relevant law" must be complied with. Priority of pre-existing rights and interests (Article 60(1));

additional remedies (Article 12); procedure for exercise of remedies (Article 14); registration of international interests acquired by legal or contractual subrogation under applicable law (Article 16(1)(c)); rights in an item (other than an object) available prior to its installation; re-characterization of agreement under Article 2(2);

determination of time of making the agreement; re-characterization of agreement under Article 2(2); re-characterization of agreement under There are six different occurrences of the phrase "applicable legislation" in the Aircraft Protocol. Article VIII, the creditor's right to seek interim relief under applicable law in the event of the debtor's insolvency (Article XI, Alternative A, paragraph 5(b)), the insolvency administrator's authority under applicable law to terminate the agreement supersedes the protection against the modification of the debtor's obligations without the creditor's consent (Article XI, Alternative A, paragraph 11), and so on and so forth

are all examples of provisions that are supersede Any law may be selected to regulate the rights and responsibilities of the parties under an agreement, a contract of sale, or a related guarantee contract, as stated in Article VIII of the Protocol, which is labelled "option of law" (including standby letters of credit, suretyship guarantees, demand guarantees, and other forms of credit insurance). In the event that a disagreement arises, the parties have agreed to abide by the laws of their respective nations as the governing authority.

To be able to make use of this provision, the Contracting State must have previously published a declaration in accordance with the requirements of Article XXX (1) of the Protocol, to which both parties must have given their consent. A statement of this kind that is made by a Contracting State must be recognized and honored, as stated in the Official Commentary. According to the Official Commentary, there are two distinct types of choice of law provisions that may apply to obligatory provisions. Both of these types can be found in the United States Constitution. There are two types of *lex fori* provisions: those that apply regardless of the applicable law and those that cannot be waived by agreement between the parties if *lex fori* applies. Those that apply regardless of the applicable law are known as *lex fori* provisions that apply regardless of the applicable law. The second set of guidelines is crucial to the accomplishment of the organization's goals (Para 3.25).

4.7 Remedies Under Convention & Protocol

The essential idea of asset-based financing and leasing concepts, namely quick-response debtor relief techniques, is outlined in the Preamble's fifth section. Decrease the likelihood of future debtor defaults so that the debtor may choose from a larger range of low-cost financing options. The creditor shall be able to rely on "effective recourse" to the aviation object and its value if the debtor is unable to uphold its responsibilities when making the choice to finance an aviation item.¹³⁶ The clock is running out. To reduce the danger of creditor assessment, two factors are crucial. First, if a court is involved, the processes should be restricted by a certain time period. Second, the required remedies should be available without a court order, sometimes known as "self-help." The rapid relief rule is another name for this.¹³⁷

¹³⁶ Goode Roy. Official Commentary on the Convention on International Interests in Mobile Equipment and Protocol thereto on matters specific to Aircraft Equipment, Unidroit 2013., para 4.5

¹³⁷ Saunders Anthony – Walter Ingo. Proposed Unidroit Convention on International Interests in Mobile Equipment as applicable to aircraft equipment protocol: Economic Impact assessment. A Study prepared under the auspices of INSEAD and the New York University Salomon Centre by Anthony Saunders and Ingo Walter (1998), pp. 1-32.

The quick relief rules of the CTC will next be examined. This section will be broken into subsections by first defining default. The consideration of remedies, including the Convention's provision for a swift remedy, will next follow. The norms of jurisdiction are taken into account in this situation. The main Protocol remedies for aircraft deregistration and export are discussed below. Both options are evaluated. The routes are divided into the IDERA route without court approval and the court route. The safety standards and laws regulating the export or repositioning of an aircraft will also be looked at in this context. The subject of aircraft re-registration brings this section to a close. The guidelines for re-registration are contained in the Chicago Convention.

4.7.1 Default Meaning

The events that constitute defaults under a contract may be decided by the parties. This may be done whenever you want as long as it's documented. Instances are used by the parties to specify between parties default. Failure to pay the lease rents for an aeroplane constituted a default in a case before the High Court of England and Wales.¹³⁸ In another case, an aircraft's lack of airworthiness owing to poor maintenance resulted in a default in the United States.¹³⁹ The late return of a leased aircraft to the lessor is another instance of default.¹⁴⁰ If anything occurs on the aeroplane, like an accident, this becomes very important.¹⁴¹ This concept raises two questions: what a creditor may "expect under the arrangement" and when a creditor is regarded as "seriously deprived." If the parties do not specify default in the contract, the Convention defines it as "an incident that materially deprives the creditor of what it is entitled to anticipate under the contract." These obligations need to live up to the creditor's expectations. The initial motivations for entering an arrangement might also be used as a way. Such goals would be in keeping with the expectations the creditor stated in the agreement. When such objectives are present, determining whether a breach of a clause entails a significant deprivation of the creditor under the provisions of the agreement is less complicated. To put it another way, the creditor should only anticipate to receive payments and interest in exchange for the security interest or aircraft goal.

¹³⁸ *Celestial Aviation Trading 71 Ltd v Paramount Airways Private Ltd*. [2010] EWHC 185 (Comm).

¹³⁹ *Burton S. Davis, Iii, Appellant, v. American Jet Leasing, Inc.; St. Louis Flight Systems, Inc.; John Stone; and David A. Stone, Appellees*, 864 F.2d 612 (8th Cir. 1988).

¹⁴⁰ *Pindell Ltd & Anor v AirAsia Bhd*. [2010] EWHC 2516 (Comm).

¹⁴¹ *Centre Capital Corporation v. National Union Fire Insurance Co. of Pittsburgh*, No. 1:2009cv00471 - Document 36 (D. Idaho 2010).

If the creditor has been significantly disadvantaged, the second question of whether or not that has occurred should be taken into account. A breach of a fundamental clause in the contract, such as one that increases the likelihood that the debt won't be repaid or causes serious damage to an aircraft goal, may be viewed as a significant deprivation of the creditor and, consequently, as a default as defined by Article 11 of the Convention.¹⁴² To determine what a reasonable creditor may expect from a contract is another viewpoint. Think about the case when the debtor fails to keep aircraft insurance for the duration of the agreement. It is not necessary for an accident to occur while the aircraft is in flight. For instance, it may be ruined on the ground, necessitating costly repairs.

4.7.2 The Convention's Remedy Provisions

Based on the kind of creditor, the Convention divides default remedies into two groups. Secured creditors and the crucial remedies at their disposal to protect their international interests make up the first group.¹⁴³ The second kind of creditor views themselves as the owner of the aircraft. Leasing parties and sellers with restrictions fall within this group. It is possible to "take ownership or control" of the thing as a legally enforceable remedy. The lessor may choose to end the contract in the case of a default. If any of the Convention's remedies may only be put into effect by a court order, all states are required under Article 54(2) to submit a statement. This sentence must be made. ¹ This comment relates to the CTC's formal guidelines. The fundamental rule of forum law on the methods of interpreting international treaties is strengthened by Article 14. State legislation must be updated to reflect any declaration that CTC remedies may be employed without a court order.¹⁴⁴

4.7.2.1 Article 13 Advance Remedy

Legal action may be used to resolve a debtor's challenge to a creditor's right to seek redress. Reaching a consensus and resolving the conflict might take a long time. This happens at the expense of the creditor, who is unable to pay for an aeroplane. Aeroplane artefacts will lose value with time. Additionally, the creditor will suffer additional losses if the aircraft

¹⁴² Cape town convention. Article 11

¹⁴³ Cape town convention. Article 8-9

¹⁴⁴ Gray Donald – MacIntyre Jason – Jeffrey Wool. The interaction between Cape Town Convention repossession remedies and local procedural law: a civil law case study, Cape Town Convention Journal, Vol. 4. No. 1 (2015). P.18

components are improperly maintained. The Convention mandates interim remedial measures up to the final judgement in order to avert potentially substantial economic losses. A creditor has the power to ask a court for urgent relief under Article 13 if they can "provide proof" of a debtor's delinquency. Concerning the relevance of such evidence, the Convention says nothing. The request for interpretation must be handled procedurally and in accordance with local legislation. The creditor has various possibilities for debt relief. The creditor may want to take over ownership and management of the objectives. The timeliness of aid is not addressed in the Convention. There is citation in the Protocol. States have the right to publicly declare their intention to file a lawsuit under Article X. If the government decides to provide "quick" help, it must specify how many working days would be required. The majority of countries believe that Article 13(1)(b) of the Convention applies if 10 working days have passed. When the creditor files with the court, this period of time begins.¹⁴⁵

Ten days suggests that an unmaintained aircraft's condition and value begin to decline after around seven to ten days. This might result in the aircraft losing its airworthiness and rendering it unflyable. This may be the case if the debtor can no longer afford to maintain the aircraft to industry standards. In order to try to recover the asset, the creditor will incur additional expenses. The absolute maximum amount of time an aeroplane may go without maintenance is 10 days.

4.7.2.2 Recourse/ Jurisdiction

According to the commentary, the term "transaction" is not defined; nonetheless, it should include both the primary contract of international interest and any subsequent agreements that are covered by the instrument.¹⁴⁶ Article 42 of the Convention stipulates that the courts of a Contracting State have exclusive jurisdiction over "transaction parties."¹⁴⁷ This general jurisdiction rule on party autonomy has a few exceptions.

The first relates to Contracting States, while the second discusses Article 13's provision for interim remedy awaiting a judgement.

Local courts and courts recognised by the parties as Contracting States have the authority to

¹⁴⁵ Protocol Declarations, Article XXX (2). Available at <https://www.unidroit.org/depositary-2001capetown-aircraft?id=450>

¹⁴⁶ Cape town convention, Article 42

¹⁴⁷ Goode Roy. Official Commentary on the Convention on International Interests in Mobile Equipment and Protocol thereto on matters specific to Aircraft Equipment, Unidroit 2013., para 4.280

provide relief under Article 13. (1). (b). The ultimate claim may be decided by a court of a state that is not a party to the Convention, according to Article 13(1)(b) of the Convention. There is no reason why a CTC state's courts shouldn't be competent to provide remedies under Article 13 in such a circumstance. In nature, the kind of relief is in rem because it is appropriate for the thing. In the end, the laws regulating in rem remedies must be established by the state where the aviation products are located. Therefore, power for advance relief should likewise reside in the zone where the aeroplane component is located. As soon as it is practicable, creditors should use the Article 13 remedies. Contracting States that operate as both the State of registration and the State of registration are subject to the second exception. According to the Protocol, if an aircraft's airframe is involved in the provision of temporary relief under Article 43 of the Convention, the State of Registration of the aircraft has jurisdiction over it.¹⁴⁸ If the parties have agreed to exclusive jurisdiction in accordance with the General Jurisdiction Clause of the Convention, this exclusion may be overridden. In the last section of this chapter, the idea of register status will be covered with regard to aircraft re-registration. A state may declare all or part of Article 13 of the Convention to be unenforceable. Article 43, "Jurisdiction under Article 13," which may be applied in part or in whole, must be followed while making this statement. A state must explain if there are any other quick cures if it choose to do so. The state must clarify which treatments will be utilised if only some are used. If a state decides to make such a proclamation, it must do so quickly. A declaration should be made applicable in accordance with Article 43 if it is made relevant in accordance with Article 13.¹⁴⁹

4.7.3 Protocol Remedies

The Protocol gives additional remedies in addition to those offered by the Convention. Both aircraft deregistration and export are covered under the Protocol. 154 The Convention's default remedies are supplemented by those in the Protocol. A government announcement is not necessary for these solutions. The Protocol specifies two methods for carrying out default remedies. For certain Protocol routes, state declarations are required. The options are as follows: Filing a lawsuit is the main option. The IDERA route is the second alternative. The main remedies under the Protocol will next be discussed. The two possible results will then be discussed.

¹⁴⁸ Protocol, Article XXI.

¹⁴⁹ Goode Roy. Official Commentary on the Convention on International Interests in Mobile Equipment and Protocol thereto on matters specific to Aircraft Equipment, Unidroit 2013., para 4.292

4.7.3.1 Revocation of Registration and Export Remedies

General instructions for obtaining aircraft deregistration, as well as for exporting and physically transferring aviation equipment, are provided in protocol Article IX, (1). Transferring power from the debtor to the creditor was the goal of these legislation, which resulted in the CTC.

According to the Chicago Convention, de-registration of an aircraft is associated with its airframe rather than the actual aircraft. However, it should be remembered that engines that haven't been installed are also included in the export and physical transfer of aviation products, in addition to the airframe.¹⁵⁰ A state declaration of Article IX is not necessary. It mostly relies on the parties' understanding, which might alter at any time. Protocol Article IX (1) is silent on the order in which these remedies must be used. The treatments may also be utilised alone. No export or deregistration is required, for example, if the new debtor resides in the Contracting State where the aircraft is registered.¹⁵¹

The creditor is at danger if the state doesn't issue a declaration approving the court's or IDERA choice. Creditors often include a Power of Attorney (PoA) in the transaction agreement to handle this. When seeking to deregister or export a chemical, however, administrative challenges could occur if a state has not designated a specific path. The Protocol has no provisions that prevent a state from sending an IDERA even if it has decided not to use the IDERA channel to make a declaration. If certain conditions are satisfied, the organisation in charge of registration in a Contracting State shall accept a request for deregistration. As long as the submission is correctly filled out, the authorised party (the creditor) may utilise the IDERA form.

The authorised person making the request must also confirm, upon inquiry by the appropriate authority, that any interest having a greater priority than their own has been either cleared or has obtained written clearance. Last but not least, all requests to deregister and export aircraft must abide by all existing safety laws.

4.7.3.2 The Judiciary

¹⁵⁰ Gerber Dean N – Walton David R. De-registration and export remedies under the Cape Town Convention, Cape Town Convention Journal, Vol. 3 No.1 (2014). P.53

¹⁵¹ Gerber Dean N – Walton David R. De-registration and export remedies under the Cape Town Convention, Cape Town Convention Journal, Vol. 3 No.1 (2014). P.60

The advance relief provisions of the Convention are closely related to the judicial route under the Protocol. To use the Protocol's remedies, the creditor must first obtain an interim court judgement for a remedial remedy under Article 13. (1). Normally, states demand that these legal remedies be provided within 10 days.¹⁵² In addition to the declaration required under the Convention, the state is obliged to opt-in and make a Protocol declaration. The declaration places two requirements on the accountable authorities. When the creditor informs the court of the remedies available under Article 13(1) of the Convention on the Rights of the Child, the five-day timeframe starts. Since the word designates the entity as a registry authority, this requirement applies to the deregistration legislation. The second need is that relevant agencies collaborate with and support the creditor in accordance with current safety standards and regulations. The first obligation is using a "strictly documented" technique in order to de-register without the authorities being involved. The last criteria concerns aircraft export and/or physical transfer remedies.¹⁵³

The court path is not accessible, with the exception of one occasion. The default remedies set out in the Protocol are governed by a required provision. The creditor's remedies will not be carried out if any registered interests are given a higher priority than those of the creditor. The higher-ranking interest holder must provide their consent before employing the remedies.

4.7.3.3 IDERA route

The second option for the creditor is to use the "IDERA method," which is described in an Annex to the Protocol and contains an example IDERA form, to exercise its rights to remedies. This therapy may be used without a judge's permission as a self-help remedy. A debtor default as defined by the Convention or the parties is required for IDERA to apply. The State shall make a statement in line with Protocol Article XXX (1) to carry out this permanent order. 178 A Contracting State must adhere to certain rules, which are described below, before submitting an IDERA. The contents of the IDERA form will then be discussed. The regulations for the IDERA route will be covered in the section's last paragraph.

The use of IDERA's standing directive must have received the debtor's approval beforehand. The deregistration and export remedies may be carried out by the creditor designated as "the

¹⁵² Protocol Declarations, Article XXX (2).

¹⁵³ Goode Roy. Official Commentary on the Convention on International Interests in Mobile Equipment and Protocol thereto on matters specific to Aircraft Equipment, Unidroit 2013., para 3.36

authorised party" or its "authorised designee," according to IDERA. The only political party that have done so is this one. The word "sole" designates the single authority to carry out remedies. The approved party is the exclusive point of contact for the state of registration's authorities in this respect. It is not necessary to ask for a judicial decision.¹⁵⁴ As part of the transaction documentation, the creditor often requests that the debtor complete the IDERA. Secondly, the Protocol prohibits "substantial" changes to the IDERA form. The use of the form would be in jeopardy if a state made major changes. The goal of the rules as expressed in the IDERA version of the CTC is relevant in this situation as a major change. One example of changes is the inclusion of new criteria that makes IDERA less effective. Changes to the IDERA's substantive wording would also be seen as being inconsistent with the goals and intentions of the Protocol.¹⁵⁵ The IDERA, also known as the debtor's authorization, must subsequently be sent to the registration authority for recording. The rule only applies to registration authorities and leaves out all other organizations. This means that the IDERA is only able to be handled by the state in which it is registered and has no extraterritoriality. Additionally, the Contracting State that made this declaration must have a system in place that permits such registration records in order for registrations to be feasible. "The authorised party" (creditor) must provide written consent if the debtor decides to remove the IDERA. The administrative authority of the registration must be notified of a withdrawal.

The IDERA form includes information on the authorised party, the "undersigned" (debtor), and the register authority in addition to the name, model, and manufacturer of the aircraft.

It includes unique registration insignia in addition to "any installed, integrated, or affixed extras." This would suggest that the airframe is the aeroplane item for deregistration purposes. The scope of an export is expanded to include an aircraft's installed engines when an authorised party recommends it. Another creditor may confiscate the aircraft's installed engines when an authorised party demands that an aircraft be exported. The authorised party would not thereafter have any rights or interests in the installed engines. It is advised to speak with the engine creditor prior to exporting an aircraft covered by the IDERA. It may not be able to get in touch with the engine creditor since the IDERA depends on time to maintain the aircraft's

¹⁵⁴ Gerber Dean N – Walton David R. De-registration and export remedies under the Cape Town Convention, Cape Town Convention Journal, Vol. 3 No.1 (2014). P.57

¹⁵⁵ Gerber Dean N – Walton David R. De-registration and export remedies under the Cape Town Convention, Cape Town Convention Journal, Vol. 3 No.1 (2014). P.66

worth. In general, it is believed that moving the aircraft to a more impartial location is beneficial for all parties included creditors.¹⁵⁶

The authority is required to cooperate when a party with authorization requests that the IDERA remedies be applied. Two requirements must be met by the authorised party. The approved party's response must begin with a mention of an authority-registered IDERA.¹⁵⁷ There can only be one current IDERA identifying the aircraft item, and the reference is given to the party authorised to enforce the remedies. Second, the authorised party is required to provide a certificate at the authority's request attesting to the priority ranking of the IDERA-specific interest. This document must attest to the payment of all debts, if any, and the authorization of higher ranking interest holders to seek remedies. The authority must not impose any further restrictions, including the need of the debtor's approval. Additionally, the aircraft may still be de-registered even if the state has reported the application of NCRI and the potential for seizing an aircraft under Article 39 (1)(b) of the Convention. Confiscated aircraft cannot be exported or transported to another state until all outstanding debts are paid. The authorised party has a duty to follow the rules governing priority of interests. The approved party must provide proof that the remedies have been agreed upon or that all costs have been paid if the priority ranking is higher, such as in the case of an NCRI under Art 39(1).¹⁵⁸

4.7.3.4 Safety Laws and Rules

The term "in compliance with existing safety standards and regulations" appears several times throughout the Protocol, and the remedial actions must address the idea of "safety rules and regulations" in order to be successful. The instruments that establish safety standards and regulations are not described. The Official Commentary has a mention to this. The aforementioned safety requirements only take effect when an aircraft is actually exported and flown. The "purely documentary" deregistration of the aircraft would be exempt. This is consistent with the Protocol's definition of "deregistration," which is equivalent to the Chicago Convention's definition of "deletion or removal of the aircraft's registration from its aircraft register" As a result, the state of registration shouldn't enforce aviation safety regulations if a

¹⁵⁶ Gerber Dean N – Walton David R. De-registration and export remedies under the Cape Town Convention, Cape Town Convention Journal, Vol. 3 No.1 (2014). P.57-58

¹⁵⁷ Goode Roy. Official Commentary on the Convention on International Interests in Mobile Equipment and Protocol thereto on matters specific to Aircraft Equipment, Unidroit 2013., para 3.35-3.36

¹⁵⁸ Ibid, Para 3.36

creditor tries to deregister an aircraft. Various laws are in place, and national aviation authorities have different views on how this should be handled. The Irish Aviation Authority (IAA) details a number of conditions in its instructions if, for example, an IDERA request for de-registration is received. The authorised party is required to take down all identifying markings, including registration, and return the aircraft's certificate, which was granted by the IAA. For the authorised party that wants the aircraft to be deregistered as quickly as feasible via a documented process, such "necessary prerequisites" take time. On the other hand, the Canadian aviation authority only orders the authorised party to take off the national insignia if the aircraft is going on an international flight. The latter position is supported by the Protocol's Official Commentary.¹⁵⁹

Safety considerations come first when an aircraft is exported and flown outside of the nation. An airworthy aircraft is required. An aircraft's airworthiness certificate verifies that it is in fact airworthy. If the safety criteria are not satisfied and the aircraft is hazardous to fly, the authority in the state of registration may withdraw the certificate.¹⁶⁰ According to the Protocol, the legal remedy for exporting and transferring an aeroplane is to ask for the property of the creditor to be moved to another state. The authority's main duty is to help the creditor make sure the transfer is carried out securely.¹⁶¹ It makes no difference whether the creditor uses the IDERA system or the judicial system—this responsibility still stands. It is not necessary for the competent authority to create extra safety precautions for the aircraft's repositioning to a different state. In reality, a ferry flight, which is defined as a flight with just air crew and no commercial passengers, often has different safety criteria than a commercial aircraft. The aircraft may still be flown safely even when the airworthiness regulations change.

4.7.4 Re-Registration of Aircraft

Deregistration becomes challenging to enforce in the state that is in charge of the registration, as was already mentioned in the preceding section. The Chicago Convention, another document that governs aviation authority, is where the procedures for registering aircraft are located, which adds to the challenges. Regulations for registering and reregistering are included in this section. Despite the fact that the language of the Chicago Convention on

¹⁵⁹ Gerber Dean N – Walton David R. De-registration and export remedies under the Cape Town Convention, Cape Town Convention Journal, Vol. 3 No.1 (2014). P.62-64

¹⁶⁰ Ibid. p.62

¹⁶¹ Ibid P.62-63

de-registration does not include it, the CTC Protocol does. Next, we'll talk about the goals and objectives of the Chicago Convention. The criterion for nationality for aircraft registration will next be discussed. The provisions of Chicago Convention Article 83bis, which define transitory circumstances in which monitoring by a state of registration may be transferred to a state of operation, serve as the section's conclusion. This prevents aircraft from needing to be reregistered.

4.7.4.1 Chicago Convention

The Chicago Convention was one of the first pieces of international aviation public law. Since its completion during WWII and entry into effect in 1949, it has received the most ratifications of any international aviation law. Treaties signed during this time period help states get along, which in turn leads to further cooperation. It also finds a middle ground between strengthening aviation security and limiting its impact on business. Within the framework of the treaty, the United Nations was tasked with establishing the International Civil Aviation Organization (ICAO). International Standards and Recommended Practices (SARP) development for the global aviation sector is currently the ICAO's top priority. These requirements are detailed in the appendices of the Chicago Convention. Now, there are 19 annexations. The Annexes are more technical in nature, covering subjects like airworthiness, crew licensure, accident search and rescue, safety management, aircraft registration, etc. The aims of the Chicago Convention of the ICAO are consistent with these safety-related issues. Since the economic aims of the Chicago Convention have been moved to other organizations, it may be claimed that ICAO has not been able to function as the convention's authors intended.¹⁶²

4.7.4.2 Aircraft Nationality

The nationality of the country where an aircraft is registered must be visible. This has safety implications. The state of registration will issue a certificate of airworthiness. The responsible state must keep checking to make sure that the safety goals for registered aircraft are being fulfilled.¹⁶³ Only one state may lawfully register a single aircraft at a time. This

¹⁶² White Nigel D. The law of international organizations, 2nd edition Manchester University Press 2005. P.58

¹⁶³ Epstein Lee – King Gary. The rules of interference, The University of Chicago Law Review, 69 No.1 (2002). P661-662

registration may be changed or transferred to another state. Dual registration is prohibited, although registration transfers to another state are permitted. It is more cost-effective from a safety standpoint to hold one state responsible at a time. Even while the primary focus of the Chicago Convention is safety, it may be argued that changing an aircraft's registration from one state to another always ends in de-registration from a CTC dimension, even if this isn't expressly recognised. Article 19 of the Constitution, which deals with registration, states that any registration or reregistration in another state must adhere to its domestic laws. Despite the fact that the ICAO does not prescribe the registration procedure, the State of registration is required to provide ownership and registration information. ICAO or another state must be given this information upon request.

Numerous mechanisms exist to aid registration in the absence of national legislation. The basis for an aircraft's registration in a state may be ownership, operator-specific requirements, or a mix of the two. Each state has its own specific ownership requirements when registering an aircraft. The owner of an aeroplane, for instance, must be a citizen of the United States. Non-U.S. Only certain situations allow for the registration of companies and noncitizens. In comparison to the United States, India has less restrictive laws regarding the ownership of aeroplanes. In this case, ownership may be held by non-Indian citizens, such a lessor from another country. Aircraft registration calls for details on both the owner and the operator, much like a lease agreement.¹⁶⁴

4.7.4.3 Article 83bis

The Chicago Convention was modified in October 1980 to meet the need for leasing market facilitation. 20 June 1997 marks the implementation date of Article 83bis. When the "State of Registry" and the "State of Operator" were different, this was done to guarantee aircraft operating safety. According to Article 83bis, certain operational responsibilities may be transferred from the state where the aircraft is registered to the state where it is operated. As a result, actions related to aeroplane safety may be properly observed. Two jobs that might be moved are crew and radio licenses. It also has to do with the "air rules" provision and awarding of an airworthiness certificate. A bilateral agreement is necessary to transfer the

¹⁶⁴ DGCA (Government of India Civil Aviation Department). Application for registration of aircraft. Available at <https://dgca.gov.in/digigov-portal/?page=jsp/dgca/InventoryList/RegulationGuidance/Forms/CA28.pdf> (Visited on 13.8.2022)

responsibilities previously listed across national boundaries. Before being put into effect, such an agreement must be submitted to the ICAO for review.

When the aircraft's owner and operator are in separate countries, as in "lease, charter, or interchange," Article 83bis may be necessary.

The ICAO circular advises that the length of the underlying economic transaction, such as a lease, should be taken into consideration when determining the criteria for determining the lifespan of the agreement between nations. The process for the creditor to get maintenance data while an aircraft is being moved to another country may be a topic worth further research.

4.8 Relationship of Convention to National Laws

While the Cape Town seeks to limit the applicability of "national law," it does so while still enacting new substantive legislation. Under Paragraph 2.9 of the Official Commentary, there are few explanations. All relevant national criminal law, tort law, and regulatory public law also applies. However, public law provisions cannot be used to avoid fulfilling Convention obligations; rights and interests not covered by the Cape Town Convention continue to be governed by the Geneva Convention for State Parties to both treaties; and numerous articles of the Convention and Protocol¹⁶⁵ make express reference to "applicable law." Articles 39 and 40 provide for the protection of rights or interests under national laws through suitable State declaration; registration in the International Registry of non-Convention interests or registrable non-consensual rights or interests can satisfy the needs of 'notice' under applicable law; and finally, Convention rights or interests may be protected through the use of suitable State declaration.

¹⁶⁵ Serap Zuvin and Mehmet Ali Akgun, Why the Cape Town Convention is Really Important? mondaq, August 21, 2015

CHAPTER 5: IMPACT OF THE CAPE TOWN CONVENTION ON AIRCRAFT FINANCING

5.1 Introduction

To evaluate the effects of the Cape Town Convention and Aircraft Protocol, AWG has funded three studies too far. The first, a pre-Convention assessment, was the Economic Impact Assessment conducted in 1988 by Anthony Saunders and Ingo Walter at New York University and INSEAD (Paris). An impartial assessment on the economic advantages of the Cape Town Convention via the use of the bankruptcy option in Alternative A to Article XI of the Aircraft Protocol was conducted in 2009. Since the United Kingdom ratified the Convention in 2010, AWG has been able to conduct an independent evaluation of the Convention's potential economic benefits. Even while governments do impact assessments before to ratification, AWG has not conducted research on a comparable scale for other countries. The Cape Town Convention and Protocol have been hailed as a "Durable legal innovation capable of drawing significant, broad-based international support" and "large and complementary" economic gains by all three studies commissioned by the AWG. Many people stand to gain from aviation sector reform, including airlines, passengers, and other end users, governments, commercial aircraft manufacturers and suppliers, and the aviation industry as a whole. This is according to the Cape Town Convention Academic Project, a joint undertaking between the University Of Oxford Faculty Of Law and the University of Washington School of Law funded by the Aviation Working Group.¹⁶⁶ A research conducted in 1988 classifies the various microeconomic gains accruing to different aviation industry actors. Benefits for airlines include lower financing costs, more available money and funding alternatives, lower transaction costs, more operational efficiency, and better profitability. The final consumers, in this case passengers, are able to save money on tickets and get higher quality service¹⁶⁷. As a result of having more options for where to get money, demands on public resources may be lowered. The aircraft industry receives consistent backing from the government, which is always eager to grant subsidies. Grants (research and development, exports, investments, loss coverage), equity infusions, loans

¹⁶⁶ Anthony Saunders and Ingo Walter, Proposed UNIDROIT Convention on International Interest in Mobile Equipment as Applicable to Aircraft Equipment Through the Aircraft Equipment Protocol: Economic Impact Assessment, Study LXXII, vol I

¹⁶⁷ Vadim Linetsky, Economic Benefits of the Cape Town Treaty, October 18, 2009

and loan guarantees, public service obligations, hidden subsidies (reduced infrastructure fees, cross-subsidization, monopoly rights), and public service obligations are just a few examples of the types of government support available to the aviation industry, according to a 2017 study that traced government support across the value chain, from manufacturers to infrastructure providers to airlines. When we talk about government support in this article, we're mostly referring to aid in export finance and aircraft purchase, not to other subsidies that are still in place but beyond the purview of this study. Higher sales for commercial aircraft manufacturers and suppliers means more employment opportunities, and better profits for the industry's investors.¹⁶⁸

The purpose of this section is to examine the positive outcomes that may result from ratifying the Cape Town Convention and the Aircraft Protocol. This critical review of the effectiveness of the Convention and Protocol may cover some ground that has already been covered.¹⁶⁹

5.2 Efficacy of the Convention and Protocol

The Convention and Protocol have transformed the funding of planes all over the world. A lot has happened since the Convention entered into effect, from the availability of new sources of money to the creation of popularized aviation finance centers. Other advantages worth mentioning are the new substantive provisions of security interests, their perfection and priority order creation of a worldwide registry, exemption from bankruptcy restrictions, and the enhancement of global aviation safety standards. We'll go through the same themes in further detail below.¹⁷⁰

5.2.1 Growth of the debt capital market (EETC) as a new source of funding:

Commercial banks, leasing companies, capital markets, and export credit agencies are just a few of the various financing possibilities available for an aircraft purchase. Innovative corporate debt arrangements are increasingly being issued and sold on the capital market. The surge in capital market offers has been fueled by the EETC structure. According to the AWG Note on "Debt Capital Markets Financing of Aircraft Equipment," data from Goldman Sachs Structured Finance Trade and Transportation Team show that as of February 26, 2016, the

¹⁶⁸ Vadim Linetsky, *Accession to the Cape Town Convention by the UK: An Economic Impact Assessment Study*, December 2010.

¹⁶⁹ *Supra* n .1

¹⁷⁰ Details available at <https://www.law.ox.ac.uk/research-subject-groups/cape-town-conventionacademic-project>

cumulative aviation issuance between 2009 and February 2016; contribution of EETC should be US\$31,822.7m. Other Asset Based Security (ABS) provided \$8,877.9 million in funding, while Equity Offerings provided \$12,399.8 million, Term Loans provided \$28,129.1 million, and Secured Notes provided \$13,320.8 million.¹⁷¹

What is it about EETCs that make them so attractive? ¹⁷² EETCs serve the same function as any other asset-backed security, but they offer unique advantages that make them more appealing to investors and airlines. To begin, EETCs include a default in interest payment liquidity mechanism. This is due to the fact that the number of interest periods covered varies from tranche to tranche (each tranche representing a different cost of debt and related rights under it). Banks' reputations for offering liquidity were not always the finest in the past; nevertheless, the providers are now respected organizations that pay your interest for up to 18 months. Second, new frameworks were established. Previously, income from Equipment Trust Certificates (EETCs) were kept in an escrow account until they could be utilized to acquire equipment notes (pre-funding). While the pre-funding structure remained same, airlines were able to reduce their debt costs by refinancing freshly purchased planes using unique financing mechanisms. Efforts were made to simplify EETC tranching and boost the attractiveness of the junior tranches. It was decided to add a second, even more prestigious Class AA tranche. Cross-default, cross-collateralization (upon default, defaulted equipment notes underlying EETC, cross-default other indentures, and split profits from other indentures) and cross-subordination over strict-subordination clauses can be included in inter-creditor agreements for EETCs (payment on senior tranches had to be completed before payments on junior tranches).¹⁷³

The Cape Town Convention and Protocol applied insolvency protection similar to Section 1110 of the U.S. Bankruptcy Code, which was the most significant development for the application

¹⁷¹ AWG, Debt Capital Markets Financing of Aircraft Equipment, 2016. An asset-backed security is defined to include assignment of lease cash-flows and negative pledge on disposal of aircraft. It does not include aircraft mortgages with a right to foreclose and sell the aircraft upon default.

¹⁷² Some of the benefits of capital markets financing listed under the AWG 2016 Capital Markets Financing Note include access to capital, increased liquidity/ favourable pricing, longer tenor, efficiency, rating, favourable terms and upfront bond programme. Some of the features listed by Standard & Poor include, debt tranching (different level of over collateralization); liquidity facility (payment of interest only upon repossession and sale of aircraft); 'soft amortization scheduling (principal due only after maturity date with interest payment on fixed schedule) and secure legal mechanism ensuring access to collateral. See, Standard & Poor's, The Rating process for Aircraft Financings, Structured Finance- Aircraft Securitization Criteria.

¹⁷³ Stefan Gossling, Frank Fichert and Peter Forsyth, Subsidies in Aviation, Sustainability 9 (2017). Also see, U.S. Congress, Office of Technology Assessment, Government Support of the Large Commercial Aircraft Industries of Japan, Europe, and the United States in Competing Economies: America, Europe, and the Pacific Rim, OTA-ITE-498, 341-364 (1991). Also see, Geoffrey Gertz, Airbus, Boeing, and Bombardier: Making sense of the aircraft subsidy wars, BROOKINGS, October 19, 2017

of EETC in jurisdictions outside of the United States. Aviation, aircraft engine, propeller, appliance, or spare component defaults may be remedied within 60 days of filing for bankruptcy under Section 1110 of the United States Bankruptcy Code. After 60 days, the debtor-in-possession is required to "immediately surrender and restore" the assets to the lessor or financier in the absence of fulfilment of contractual duties or cure of contractual defaults and any extension agreement by the lessor or financier. Alternative A of the Cape Town Convention specifies a comparable date within which the flaw must be corrected or at the end of which control of the aircraft must be turned up by the creditor. This deadline is determined by a Contracting State at the time of ratification. The courts have no jurisdiction over repossession and can't set any conditions. Option B, which is disliked by both Contracting States and creditors, is also permitted. Moreover, a Contracting State that chooses "Alternative B" will not be eligible for the Cape Town discount under 2011 ASU, and the Cape Town Protection will no longer be "effective." However, the Cape Town Convention and Protocol have shown very little success in developing EETCs in established legal jurisdictions.¹⁷⁴

One such example is UK which had an established EETC market even prior to ratification of Cape Town Convention in 2015.¹⁷⁵

Alternative A, which included a Section 1110-like provision in the Cape Town Convention and Protocol, assisted in addressing key concerns raised by rating agencies when reviewing non-US airline finance. The following points were addressed and answered by Convention and Protocol when considering airlines outside of the United States. First, are the rights of lessors and secured creditors to recover collateral recognized? Second, how long do lessors and secured creditors have to file a lawsuit in order to defend their rights? Finally, how much government assistance is there to mitigate the delay in aircraft recovery if insolvency proceedings are initiated? The standardizing of solutions to these questions, which were previously unreachable under local applicable legislation, is a good development, instilling

¹⁷⁴ Newsletter/Bulletin, Another Hurdle Cleared on the Path to Ratification – The UK and the Cape Town Convention and Aircraft Protocol, VEDDER PRICE, April 2014; World Aircraft Repossession Index, ILLSBURY, Second Edition March 2017; Dean N. Gerber, the 2011 Aircraft Sector Understanding: Calming the Turbulent Skies, 24 (1) Air & Space Lawyer, 2011.

¹⁷⁵ A 2013 report by Moody rating British Airways EETCs, A-tranche at Baa1, B-tranche at Ba1 pointed this out and observed that 'the historical application of contract and insolvency law in the United Kingdom demonstrates that secured creditors or lessors are likely to repossess their collateral when a company enters administration and such equipment is no longer needed by the company or receive payments pursuant to a contract's original terms when the company desires to continue to use the subject equipment while in administration.' See, Moody's, Moody's rates British Airways EETCs, A tranche at Baa1, B-tranche at Ba1, Moody's Investors Service (June 25, 2013).

creditor confidence and significantly increasing the issuance of EETCs.¹⁷⁶

Between 2009 and 2016, major EETC deals were completed by international carriers such as Air Canada, Norwegian Air Shuttle (NAS), LATAM Airlines (South American airline holding company incorporated in Chile), Turkish Airlines, Virgin Australia, Doric Alpha (Emirates), British Airways, and Hawaiian Airlines, in addition to domestic carriers in the United States like United Airlines, American Airlines, Delta Air Lines, and Spirit Airlines. This is only possible due to the international adoption of the US insolvency model under the Cape Town Convention and Protocol.

Doric Alpha's US\$588m EETC for financing four A380s, leased to Emirates on four separate four-year operating leases, was the first EETC from a country other than the United States. This was followed by Air Canada's US\$606.3m EETC in April 2013 to finance purchase of Boeing 777-300ERs at a blended rate of 4.66 per cent.¹⁷⁷ Besides the low cost of lending, another big advantage with EETC is availability of full funding of the aircraft. British Airlines has been able to raise US\$9¹⁷⁸.6m through EETC based on Japanese Operating Lease Structure (JOLCO) to fund purchase of 14 new aircrafts. Again, in 2015, Turkish Airlines raised US\$328m for financing three Boeing 777-300ERS, owned by Bosphorus Pass Through Trust and leased to Turkish Airlines for 12 year¹⁷⁹. In 2016, Norwegian Air Shuttle was able to raise US\$349m through EETC by an Irish SPV, owned by a leasing subsidiary of Norwegian Air Shuttle for finance of 10 Boeing 737-800.¹⁸⁰ Virgin Australia gained Enhanced Equipment Notes (EEN), an EETC like structure, to raise US\$732.621m collateralizing 24 aircrafts from the airlines existing fleet in 2013¹⁸¹. The deal is governed by Australian insolvency law as

¹⁷⁶ Bex Pearson, EETC deals 2009-2016, AIRCRAFT INVESTOR, March 21, 2016.

¹⁷⁷ Donald G Gray and Auriol Marasco, The Cape Town Convention and Capital Markets: Air Canada's First EETC offering, WHO'S WHO LEGAL, November 2013.

¹⁷⁸ Brian Jeffery, Senior Vice President, Corporate Treasury, Emirates Airlines observed during the 2012 Doric Alpha EETC issue that, 'When we talked to banks in the past about doing a straight EETC, we were told that we would only get a loan to value (LTV) of about 50-70% of the base value of the aircraft. ...So at that kind of rate we would only be getting about 60-65% of what the aircraft costs, and given the number of aircraft that we have coming, we just can't afford to just have 60-65% of that value coming to us on delivery. It's hard enough trying to find 15-20% of each aircraft cost on each delivery, but when you have to find 35% or more, that's a significant amount when you've got 36 aircraft due for delivery this year.' See, Securing Doric Alpha- Overall Deal of the Year, AIRLINE ECONOMICS, January/February, 2013.

¹⁷⁹ Adam Tempkin, British Airways launches debut EETC offering to finance planes, REUTERS, June 26, 2013

¹⁸⁰ Alasdair Whyte, Norwegian closes \$350 million EETC, AIRCRAFT INVESTOR, May 9, 2016.

¹⁸¹ Virgin Australian breaks into the US capital markets, AIRLINE ECONOMICS, October 8, 2013; Virgin Australia Celebrates EETC, MRO NETWORK, October 9, 2013; Virgin Australia launches EETC, GLOBAL TRANSPORT FINANCE, October 8, 2013; Kevin A. MacLeod, Aviation Debt Capital Markets Are Growing: An Overview of Recent Trends, VEDDER PRICE; Adam Tempkin, Asset managers load up on aircraft-backed bonds, REUTERS, October 11, 2013.

Australia ratified the Convention only on September 1, 2015 and the Convention has no retrospective application. However, six of the aircrafts covered under the deal are governed by Cape Town Convention and Protocol, being leased in New Zealand, a Cape Town Convention signatory¹⁸². AWG 'Debt Capital Market Note' in its Appendix A discusses the contrasting commentary of the rating Agency Fitch, while analyzing Australian insolvency regime for Australian registered aircraft and Cape Town Convention for New Zealand registered aircraft appreciating contribution of Cape Town Treaty in easing finance availability and access.

Thus, standardization of insolvency provisions to the extent related to aircraft equipment financing has opened up issue of EETC as a new and efficient financing mode in non-US jurisdictions also. The 2016 AWG Note on "Debt Capital Markets Financing of Aircraft Equipment" reflects this shift by making specific reference to the priority accorded to EETC and ABS by the Cape Town Convention. It notes, " Even though there are a number of well-known products used to finance aircraft equipment in the debt capital market, the Cape Town Convention has helped the market for these products offered by issuers/originators outside the U.S. grow, especially in places where bankruptcy laws are very different from the protections offered by Section 1110 of the U.S. Bankruptcy Code, which investors and rating agencies are not familiar with.

Non-U.S. airlines have been mostly unable to issue secured debt on foreign capital markets owing to the fact that bankruptcy procedures related to aircraft equipment in the airline's home state do not closely resemble Section 1110 of the U.S. Bankruptcy Code. When there is less clarity and predictability about the legal protections granted to investors and the timelines for repossession of aircraft equipment following airline insolvency, this has a substantial detrimental impact on risk assessment and rating of projects. Notwithstanding, there is evidence that if the Cape Town Convention is ratified and effectively implemented, investors and rating agencies will be better able to evaluate repossession risk after the bankruptcy of non-U.S. airlines. The standard approach of the Cape Town Convention might assist to reduce transaction costs.

5.2.2 Rise of business aviation jurisdictions

Through its 'option of law,' the Cape Town Convention has not only generated popular

¹⁸² Virgin Australian breaks into the US capital markets, AIRLINE ECONOMICS, October 8, 2013. Also see, RPT-Fitch rates VAH's proposed 2013-1 EEN class A certs 'A', class B certs 'BB+', class C certs 'B+', REUTERS (October 7, 2013) and Business Wire, Fitch Upgrades Virgin Australia 2013-1 A, B & C Notes; Affirms D Notes, October 6, 2016.

flag countries, but it has also opened up new and popular channels of aircraft finance. Some of these countries previously existed, but the Convention and its Protocol provisions have given them a boost, while a few others are emerging as viable new locations. Similar to forum shopping, business aviation countries that gained legitimacy via the use of Special Purpose Vehicles have eagerly embraced the prospects given by the Convention and Protocol Malta as a flag of convenience destination:

Malta, a former British colony and now an EU member state that has adopted common law traditions, has recently gained attention. According to the most recent information, as of May 10, 2018, the "Aircraft Registry List" in the "National Aircraft Register" managed by the "Civil Aviation Directorate" established under the "Malta Aircraft Registration Act, 2010" includes over 200 unique entries. Malta benefits substantially from its membership in the European Aviation Safety Body (EASA), a European Union agency with regulatory and executive duties. Some of the factors that make Malta a good choice as a registry location include: an integrated national registry for both aircrafts and mortgages, which provides all details pertaining to ownership and third party rights in one place; the availability of the Cape Town discount; the absence of import duties and stamp duty; the avoidance of double taxation through Double Taxation Treaties; and the low cost of living.

Malta's aviation standards were revised in 2010 with the enactment of the Aircraft Registration Act, which was passed with the express intention of improving the country's attractiveness to the aviation sector. The following sections will go through some of the most major modifications made possible by the Act. The same concepts may be employed by any country interested in pushing domestic law reforms in order to attract investors. The Aircraft Registration Act is divided into seven sections, the sixth of which deals with the implementation of the Cape Town Convention (Section 45-49). Section 47 specifies which court has jurisdiction for the purposes of the Convention and the Protocol, and Section 48 requires courts and tribunals to take "judicial notice" of the Convention and the Protocol. Concerning the International Registry, Maltese courts cannot make final orders and must instead transfer the matter to the competent authority. The "Implementing legislation in conjunction with the Cape Town Convention on International Interests in Mobile Equipment and the Aircraft Protocol thereto" are included in the Act's First Schedule. The Second Schedule includes a "Form of Irrevocable De-Registration and Export Request Authorization." The Third Schedule is an extremely noteworthy portion since it contains all of the documents and other sources that judges must use while interpreting the Convention and Protocol. The official Commentary by Professor Roy Goode, crucial judgements on the Supervisory

Authority and the International Registry for Aircraft Objects, and the aforementioned comments and proposals from UNIDROIT are all included.

In compared to previous domestic legislative actions addressing the Cape Town Convention and Protocol, this one makes UNIDROIT's role clearer than before.

Key provisions inserted through the Act to facilitate Malta ascend as a coveted aviation financing destination are-

Expansive definition of applicants allowed registering aircrafts and nature of interests registrable- Uniquely identifiable aircrafts can be registered even if under construction. Aircraft may be uniquely identified by its serial number, the name of the manufacturer, and the model name. As such, it conforms to the Cape Town Convention and Protocol on the Registration of Prospective International Interest. The registrant need not own or have a lease on the property. The registration is open to anybody who operates a plane while the buyer is waiting for the sale or title to be finalized (Section 5).

Trust may also be used as a registration mechanism. A foreign applicant may register in accordance with this Act by designating a resident agent in accordance with subsection (6). (Article 19 and 20). Registration is possible for the subdivision of a registered interest into shares or other interests (Articles 3(4), 4(2)(iv), and 7), with the exception of aircraft engines (Article 4(2)(ii)).

Single registry for aircrafts and engines- “There is a single registry for aircrafts and engines and ownership rights on them including fractional shares, rights held by trustee, held under agreement with reservation of ownership rights, irrevocable deregistration and export request authorization or other power of attorneys, mortgages and lessor and lessee rights under certain situations.” Also, telling is the effect of registration. The information becomes public and is effective against third parties besides establishing priority and being effective under applicable law. (Section 4)¹⁸³

Aircraft are exempt from seizure in the event of insolvency or bankruptcy since they are specifically listed in the Act as a kind of moveable property that is "independent and distinct

¹⁸³ Section 27 (1) reads as ‘All registered mortgages, any special privileges and all actions and claims to which an aircraft may be subject shall not be affected by the bankruptcy and or insolvency of the mortgagor or owner, happening after the date on which the mortgage was created, or the special privilege, action or claim arose, notwithstanding that the owner at the commencement of the bankruptcy and, or insolvency had the aircraft in his possession, order or disposition, or was the reputed owner thereof, and such mortgage, privilege, action or claim shall have preference, on the said aircraft, over all other debts, claims or interests of any other creditor of the bankrupt or of any curator, liquidator, receiver or trustee, acting on behalf of any other creditors.

assets within the estate of their owners" (Section 25). 40 No bankruptcy procedure will impact any registered mortgages, special rights, or "any actions and claims" to which an aircraft is subject. Inter-creditor agreements may be made between anybody with a stake in an aircraft, including the owner, lessor, lessee, creditor, mortgagee, security interest holder, and anyone else. In addition, a curator or liquidator cannot take any action that might hinder an enforcement action brought by a registered mortgagee or creditor with a preferred right, such as a judicial sale (Section 27).

Lenient provisions on registration cancellation- In case of cancellation of registration, appeal is allowed to Administrative Review Tribunal and registration remains valid during pendency of appeal. (Section 13) Even upon closure of register, unsatisfied mortgages and security interests remain valid and it is open to the Director General to extend validity of registration to allow enforcement of mortgage or other security interest in the aircraft. (Section 14)

The Act is extremely facilitative in the way it has been drafted. Inculcating Convention and Protocol specified remedies as part of domestic law, there are extensive and elaborate provisions covering various rights capable of being created over aircrafts.

One of the financial benefits is the absence of federal income tax in the United States on earnings derived from the sale, lease, or operation of aeroplanes and aeroplane engines for international transportation. This is true regardless of the nation of origin of the plane or engine or the place of departure, Malta. Businesses in the aviation sector in Malta may be entitled for a tax credit relating to dividend payments. Depreciation periods for aircraft and aviation equipment were reduced in 2010 (The Deduction for Wear and Tear of Plant and Machinery (Amendment) Rules, 2010). The depreciation term has been reduced from 12 to 6 years, with the airframe receiving 6 years, the engines receiving 6 years, aircraft or engine overhaul receiving 6 years, and interior and other components receiving 4 years. Employers with international transportation aircraft are exempt from paying fringe benefit tax for their employees under the Fringe Benefits (Amendment) Rules, 2010. Businesses involved in aircraft leasing and aircraft and aviation equipment repair, overhaul, and maintenance have also received tax breaks. In terms of VAT, provisions have been implemented that are more advantageous for aircraft leasing, and tax is only due for the period an aircraft is physically present in EU airspace. Employees in the aviation industry may potentially be eligible for tax reductions.

Ireland as birthplace of aircraft leasing industry:

Leasing companies have gotten 42-45 percent of all new aircraft deliveries, suggesting a substantial structural change in the sector. AerCap, located in Ireland, is the world's largest aircraft lessor, with a fleet valued \$30,146 million. According to the same statistics, nine of the world's top ten lessors are also situated in Ireland. These firms include GECAS, Avalon, SMBC, AWAS, ICBC, and Orix Aviation. In a video on its website, the Irish Aviation Authority portrays Ireland as the "Centre of Global Aviation Industry," a country of aviators that is home to the world's largest international airline and an industry that produces over €4 billion for the Irish economy each year. More than half of all leased aircraft in the world are registered in Ireland, and the country's active MRO and manufacturing industries contribute to reinforce its position as the aviation industry's global leasing and finance center. The Irish Aviation Authority cites the country's consistent corporation tax rate of 12.5% and extensive network of double tax treaties as reasons to consider leasing from Ireland.

Ireland is often cited as a center for aircraft leasing, although the industry actually has its roots on the Emerald Isle. In 1975, an Irish firm named Guinness Peat Aviation (GPA) pioneered aircraft leasing as we know it today¹⁸⁴. Since then, Ireland has made significant strides toward being the preferred aircraft leasing jurisdiction across the world. Ireland's permissive and flexible tax rules on aircraft finance and leasing have been one of the country's selling features. Ireland has a large network of double tax treaties and a low corporation tax rate. According to 2017 research on aviation finance and international tax reform, "the nature of the product being leased allows firms to service the majority of the world from low cost bases," which is why the majority of aircraft lessors are domiciled in tax havens. A single Irish company manages half of all leased planes. Because of the country's favorable fiscal climate, solid legal system, and world-class regulatory body, Ireland is a major jet leasing center. "Everyone in the world is looking at Ireland and seeing how well their approach worked," said Markus Ohlert, head of leasing at Deutsche Lufthansa. They will want to replicate your accomplishment in order to compete with you for the title of most gorgeous person in the world. In fact, Singapore, Hong Kong, and China are all attempting to replicate the booming economy of Ireland. As part of its continuous drive to expand its position as a forerunner in the aircraft leasing market, the Irish

¹⁸⁴Barry McCall, Aviation Finance: Big Players have put Ireland on the map, THE IRISH TIMES, January 19, 2017. Also see, Jody Clarke, Half of the world's aviation fleet now managed from Ireland, TheJournal.ie, October 18, 2012. Barry McCall, Ireland's aircraft leasing industry expected to see further growth, THE IRISH TIMES, October 27, 2016

Stock Exchange has revealed its desire to build a specialized debt instrument exchange for the aviation sector. In 2014, the Irish Stock Exchange issued 26 aviation debt listings totaling \$12.7 billion, including Ryanair's \$927 million EETC and Aer Lingus' equity listings.

Ireland's unconditional acceptance of the Cape Town Convention was a crucial element in the country's ascension to the top of the aircraft leasing business. Ireland's International Interests in Mobile Equipment (Cape Town Convention) Act 2005 was the first piece of European legislation to implement the convention's provisions in 2005. However, due to EU legislation, "Alternative A" of the insolvency procedures could only be applied in Ireland in 2014, with the enactment of the State Airports (Shannon Group) Act 2014. The International Registry is operated from Ireland, and the Irish High Court's precedent-setting rulings have had a considerable effect on the evolution of aviation law. Furthermore, Aviareto, the global registry, is a collaboration between SITA SC and the Irish government. Ireland has been in the forefront of raising awareness of the Convention, and their efforts have paid off by making the country the Centre of the aircraft leasing sector.

UAE as a rising hub for aviation finance and leasing:

PwC was recently commissioned by Abu Dhabi Global Market (ADGM) to create a research comparing aviation financing and leasing prospects in the UAE to those in more established hubs such as Ireland, Singapore, Hong Kong, and the Cayman Islands. ADGM's objective is to become the foremost aviation financing Centre in the UAE, the Middle East, and North Africa, and this study assisted them in taking a step in that direction. Similarly committed, the UAE updated its Insolvency Regulations in 2016 to incorporate the terms of the Cape Town Convention and Protocol, which it signed in 2008. As a result, the Companies Regulation 2015 no longer applies to fees defined as international interest. Etihad Airways and Natixis have so executed the first aircraft leasing transactions in ADGM.

The paper argued for ADGM's position as a financial free zone, citing the UAE's wide network of double tax treaties (81 in force and 32 treaties in process as of February 28, 2017). On payments made overseas, including interest, dividends, and other types of compensation, there is no stamp duty or withholding tax. There is also no corporate income tax. A robust financial services regulator, a competitive SPV framework, and a common law tradition and court system are other advantages. Despite the implementation of VAT on January 1, 2018, cross-border aircraft leasing is likely to be zero-rated, which means that VAT will not be levied on leasing profits. The strategic position of the United Arab Emirates (UAE) is advantageous, especially given the positive outlook for the Middle Eastern aviation sector.

The United Arab Emirates appears to be planning to become a key Centre for the aviation

financing and leasing sectors. In 2014, AWG and the United Arab Emirates (UAE) General Civil Aviation Authority (GCAA) organised the inaugural Middle East Seminar on the Cape Town Convention in Dubai; the GCAA also acts as the entrance point for UAE64. Attempts have lately been made to use the Islamic finance system to finance aeroplanes. Major airlines may turn to Islamic bonds guaranteed by the ECA for finance. The United Arab Emirates is positioned to become a significant Centre for aviation finance and leasing as a result of the investments made and the main strengths recognised in the 2017 PwC study.

The Cayman Islands, Singapore, and Hong Kong are three other prominent aviation financing and leasing Centre's.

Cayman Island, a British overseas territory, is also a significant aviation financing and leasing Centre. Because the territory is a British foreign possession, the courts adopt English common law. Cayman Island has emerged as a major international aviation hub, thanks to a tax-neutral environment that includes a complete lack of taxation and import duties, a streamlined registry, a highly qualified workforce, and stringent regulations enforced by the Civil Aviation Authority of the Cayman Islands (CAACI).

On January 23, 2017, an aeroplane finance and leasing tax reform proposal was presented to the Legislative Council's Panel on Economic Development in Hong Kong. Hong Kong's effective tax rate was 33%, higher than the rates of 12.50% in Ireland and 5% in Singapore but lower than the rate of 0% in the United States. In comparison to larger, more successful countries, Hong Kong has a tiny number of double taxation treaties.

The revised taxation structure in Hong Kong, as well as newly drafted laws on the Corporate Treasury Centre, are part of an effort to market the city as a "gateway to China" and "prominent financial Centre in Asia." Because of the tax reductions implemented by the Inland Revenue (Amendment) (No. 3) Ordinance 2017, the earnings of qualifying lessors are taxed at an 8.25% rate. Lease income is only considered taxable if it exceeds 20% of total earnings. To that objective, a depreciation deduction of 80% of net assessable profit is allowable. Leased planes are free from state and municipal sales taxes. Income earned on or after April 1, 2017 is eligible for tax reductions. As a consequence of these new opportunities, it is envisaged that Hong Kong would be able to grab the Mainland Chinese aviation industry and solidify its status as an international Centre.

Singapore's tax environment has enabled comparable advancement. It has a history of success in marine leasing, a good infrastructure, and is qualified for the Aircraft Leasing Incentive Scheme (ALS).

All of these jurisdictions have either completely implemented or are in the process of fully

implementing the Cape Town Convention and Protocol after ratifying it. In addition to the 'Cape Town discount,' it makes sense to take advantage of the commercial and legal benefits that come from actual treaty implementation. In order to depict themselves as progressive jurisdictions, these nations are bringing their domestic laws into compliance with their treaty responsibilities, opening the path for greater unity and legal stability. Domestic measures that go beyond tax breaks to enhance things like financing, leasing, and the entire experience of doing business with aeroplanes have contributed to the growth of these global Centre's.

5.2.3 Improving global aviation safety

One of the primary international organizations entrusted with the task of ensuring global aviation safety is ICAO. Recently, ICAO has been coming up with 'Global Aviation Safety Plan (GASP)' from time to time. The present document effective from 2017 to 2019, builds upon its previous versions prescribing global aviation safety standards. Drawing up a global aviation safety roadmap for achieving the goals of GASP, it clearly underlines the interconnectedness between aviation safety and availability of latest technology and resources.¹⁸⁵

Cape Town Convention has been able to allow operators to switch towards cleaner and efficient aircrafts through insertion of liquidity in aircraft financing market apart from upping the aircraft leasing industry. As discussed, close to 40-45 percent of aircrafts are on lease and lease industry has gained tremendously through the provisions of IDERAs and other substantive provisions contained in the Convention. A proper, implementable security regime has poured greater cash availability and aircraft operators today have the best access to finances for procuring new and advanced technology aircrafts. By contrasting the Cape Town Convention with the ICAO Conventions on Compensation for Damage to Third Parties Resulting from Acts of Unlawful Interference Involving Aircraft (Unlawful Interference Compensation Convention) and Compensation for Damage to Third Parties Caused by Aircraft (General Risks Convention), Jennifer A. Urban concludes that the ICAO conventions are effective tools for enhancing aviation safety. In contrast, the Cape Town Convention offers "real means to fulfil business demands within the aviation sector while encouraging safer air travel."¹⁸⁶

¹⁸⁵Appendix A, Global Aviation Safety Plan- 2017-2019, International Civil Aviation Organization

¹⁸⁶Jennifer also draws out the relation between poor compliance with safety standards and availability of latest technology aircrafts in developing countries and the related higher percentage of aviation accidents occurring in such countries. Jennifer Ann Urban, International Civil Aviation Organization Initiatives Versus Industry

5.2.4 Uniformity through New Substantive Property Law Provisions

All the incorrect things were reported on after the 2010 verdict in *Blue Sky One Limited & Or's v. Mahan Air & Anor's*. With a recent court judgement in England, the legality of a mortgage on personal property is under question (aircraft in this case). The location of the mortgaged property on the day of execution will decide whether or not a mortgage may be placed on movable property under English law, according to the English High Court. In cases when the *lex situs* rule is used, only the laws of the country in question are used to make a determination, regardless of any conflict of law rules that may otherwise be in effect. For an English mortgage to be valid under English law, the aircraft must be located in England or a nation that applies English mortgage law at the time the mortgage is finalized, according to this understanding.

The Blue Sky lawsuit claims that the United States government forbade its citizens from selling or leasing aeroplanes to Iranian organizations as part of its sanctions against the country. Three Boeing 747-422s owned by Balli Group plc's Blue Sky One Ltd., Blue Sky Two Ltd., and Blue Sky Three Ltd. were leased and chartered by Blue Airways LLC (an Armenian company) to Mahan Air (an Iranian airline). Balli Group financed the purchase of three more Boeing 747-422s using a loan from PK Air finance US Inc. With the help of PK Air finance, Blue Sky Two Ltd. and Blue Sky Three Ltd. were able to get a loan by using their planes as collateral. Although it had an Armenian registration, the location of the aircraft at the time of the mortgage were a mystery. As of the mortgage's execution, Blue Sky Three Ltd.'s plane belonged to the UK but was based in the Netherlands. A Temporary Denial Order (TDO) was issued to Balli by the Bureau of Industry and Security of the United States Department of Commerce for violating Iran trade restrictions. After the lease period ended, Mahan transferred ownership of the aircraft to Blue Sky Aviation Co. FZE. The plane's registration has been changed from the Armenian register to the Iranian registry. A breach of contract and conversion case involving Mahan, FZE, Balli, Blue Sky SPVs, PK, and others was heard in an English court (as agreed upon by the parties in their contract).

In order to receive a loan, PK had to put up two planes as collateral, and now he has to get them back. The mortgage issued in favor of PK by Balli and Blue Sky special purpose organizations

Initiatives: A Look at How Commercially Motivated Transactions Increase Aviation Safety, 81 J. AIR L. & COM. Pg. 683 (2016)

to secure the financing given for the acquisition of the second batch of three Boeing aircraft required the court to intervene to determine its validity. The court opted to adopt the law of the place where the matter was heard (the "lex situs rule"). The court decided to apply English law to the mortgage since it was unclear where one of the planes was at the time. Dutch law, which forbids mortgages if a security interest is formed on personal property, was used by the court in the case of the other planes (a valid mortgage under Dutch law has to be constituted under the laws of the State of registration of the aircraft). The court did not recognize the English law-based mortgage because it did not apply Dutch conflict of law standards to the law of registration, even though the plane was registered in the UK.

Legal jurisdiction determined by the location of the property (lex situs) Instead of lex registrii, bankers were incensed by the impracticality and expense of proving an airplane's actual presence in a certain jurisdiction to legitimize choice of law. Investors were counting on the courts to create an exemption and not treat pricey portable equipment the same as other forms of personal property. It was quite disconcerting that the applicable conflict of laws, which, in this case, would have ensured the transaction's legality, weren't applied. Creditors were worried that their interests wouldn't be adequately protected in the wake of earthquakes caused by a strict *senso* interpretation in the banking industry. It is instructive that the judgement was handed down in 2010 — after the Cape Town Convention had already entered into force and a global consensus had formed to treat high-value mobile equipment like aircraft as a separate class — when contemplating the commercial imperatives and consequences of not ratifying the Convention. At a time when governments are donning their creative thinking caps to come up with fresh investment plans, a ruling from the English courts, long favored by bankers, shocked everyone.

It would not have made a difference where the aero plane was located at the time the security interest was established, as long as it was done in accordance with the Cape Town Convention. And yet, the Cape Town Convention is hardly a silver bullet. Gavin Hill, an aviation finance partner at Vedder Price London, said, "The Cape Town Convention can only settle *lex situs* if all relevant governments approve it" during the discussion of whether or not ratifying the Cape Town Convention will solve the *lex situs* issue. Ratification by the United Kingdom would not be possible for many transactions, such as an English law secured financing of a Japanese aircraft leased to a Dutch airline and registered in the Netherlands, because the agreement applies only if the debtor is located in a contracting state or if the aircraft is registered in a contracting state.

The Convention will be considered a success if and only if it is widely implemented. Not only

the Cape Town Convention, but all international accords fall under this. Later in this chapter, we'll delve more into the Convention's breadth and its many applications.

This case shows that the *lex situs* rule may result in the invalidation of validly created security interests, even when applied to highly mobile aircraft equipment such in this one. The Cape Town Convention helps prevent similar disasters from occurring. In reality, the Convention's most noticeable result has been the creation of standardized forms of security interest. The Convention achieved its two primary objectives, (1) the elimination of a plethora of national substantive property laws, and (2) the establishment of modern regulations for aviation finance and leasing. Property rights and contractual obligations have been altered, and one must understand the Convention to appreciate these shifts. The Convention codified the substantive laws relating to security interests, such as the different kinds of interests that can be created, the procedures for establishing valid interests, the priority order of interests, the rights and responsibilities of the parties creating these interests, and provisions for insolvency. A worldwide register was established to carry out these mandates in addition to the aforementioned organizations and think tanks (including IATA, UNIDROIT, and AWG) with supervision duties for the Convention's execution. As a result of the Convention's novel features, which include substantive property law addressing "international interests," there is now conformity in this area of law. It's like if the whole planet suddenly switched to using the same currency.

It was particularly difficult to determine how the substantive provisions of the Convention defining security interests related to secured rights and interests formed under local law. As a preliminary stage, it was determined that a completely domestic transaction is exempt from the treaty (given that governments have the authority to do so), but that a transaction with international features is subject to the treaty. The Convention brought attention to interests established under domestic law that have renewed ties to international concerns. Rights and interests listed in the Convention were typically understood to take a back seat to public policy interests like employee pay liens, and all other interests required to be recorded in the international register in order to be effective. It is necessary because the global register would be useless without it. In the extreme, this may lead to a government being convinced to register all interests in order to boost investor trust. Since the Convention does not address third-party rights, which are instead regulated by the forum's rules of private international law, its applicability is restricted beyond the grading and recognition of domestic rights. The rights and obligations of specific interests are addressed in the Convention, and the Convention is applicable solely between the parties. Furthermore, the method and interest categorization must

continue to be guided by the relevant legislation. Disputes arising out of contracts may be heard in any party's preferred location, according to the Convention. Using substantive law provisions, parties may choose a law to govern their contractual obligations in a way that favors them (provided an enabling declaration is issued by a Contracting State).

Many people think the aviation business would thrive more if its financial sector had easier access to tax havens and developed nations. A "choice of law" provision naming a nation with an advanced legal system and, ideally, financial incentives, was all that was needed. Nonetheless, "choice of law" is not without its restrictions. It has been shown that the distinction between substantive property rights and contractual rights requires treating them independently. Most courts have held that parties to "choice of law" agreements cannot decide the law that applies to their intellectual property. As a result, legal disputes involving real estate are still settled using the conflict of laws principles of the relevant country. And as we've already demonstrated, "choice of law" doesn't apply to outsiders. If the law of the forum state precludes the parties from determining the law under which they want their relationship to be interpreted, "choice of law" should be interpreted as the right to choose the legal principles that would apply under the contract. Professor Honnebier's observations on the matter are quite astute. How he sees it from his vantage point to circumvent this critical issue, a group of legal experts has proposed adding a "choice of laws provision" to any international aviation marriage or lease deal. The parties should think about having the deal done in a nation with modern aviation finance and leasing legislation. Assuming their findings hold water, the chosen legal system will be binding in both local and foreign courts. They also worry that the chosen system might have unintended consequences (*erga omnes*). It's possible that the debtor's choice of law provision will bind the other (foreign) creditors. When it comes to leasing and financing planes, parties often agree that either English law or New York law would apply to their contract. It is hypothesized that the aviation financing and leasing legislation in these countries are adequate. In addition, a lot of people think that if the parties choose New York law, the Cape Town Convention kicks in. The United States of America considers the choice of law provision, which specifies that New York law applies, to be null and void since it was adopted by the United States. An approach like this is just wrong. According to this article, a provision specifying English or New York law has little bearing. ... Because the judgement will only effect the two parties involved (*inter se*). When determining whether or not a contract is enforceable, it is necessary to take into account any clauses that specify the laws that apply. Almost everywhere in the globe, the chosen laws do not infringe on the rights of third-party property owners. Therefore, choosing either English law or New York law will not address the

fundamental disparities in the two systems' treatment of substantive property. If the debtor stops making payments or declares bankruptcy, any (international) third parties who were counting on exercising their option lose all of their claims.

Justifying the Blue-Sky judgment, Professor Honnebier's observes:

The English Supreme Court has determined that the conflict of laws rule prevents substantive property law from any nation other than England from being applied. ... The English Court considered the applicability of the *lex contractus* conflict of laws rule, sometimes known as the rule of the 'proper law of the contract,' in the Blue-Sky case. Despite the fact that the mortgage was executed on an aircraft owned by a British person, the court decided not to apply English property law to the legality of the mortgage. He ignored the fact that the mortgage for the English plane was written in English and that the parties agreed to adopt English law. The widespread opinion in England and across the world is that problems about the establishment, validity, consequences, and enforcement of property rights are not determined by the law selected by the contract's parties. The Blue Sky judgement established case law that the use of English law as the controlling legislation of international aviation financing and leasing agreements has no effect on ownership rights.

As is obvious, a "choice of law" option has its own set of constraints. The treaty, on the other hand, sets its own substantive property law norms in addition to allowing the parties to determine their contractual responsibilities through 'option of law.' If the parties "select" a country that has ratified the Cape Town Convention and made the required declarations, the rules of the Convention will apply to their dispute rather than the rules of the foreign court, which would otherwise decide the case based on the "applicable law" that would apply under that country's conflict of laws rules. This collection of fundamental principles established by the convention is the pact's greatest strength and contribution. The Cape Town Convention is frequently contrasted with the Geneva Convention, which was only a "conflict of law" treaty related to the state of registry, because it creates substantive law. Because the Convention's law applies in ratifying states, "financiers no longer have to study the law of the debtor's State or other States where the security may be enforced." 88 What distinguishes this piece of property law legislation is that it was adopted through an international instrument, despite the fact that it is really a local statute.

5.2.5 Convention Novelties:

As discussed, Cape Town Convention introduces a new body of substantive provisions. The substantive provisions of the Convention and the Protocol have been discussed in detail in the previous chapter. However, some of the outstanding features drawn out through application of these provisions are being singled out here to show why Cape Town Convention is actually effective.

Sui Generis International Interests:

The Convention deals with international interests, modes of its creation, registration, priority and enforcement. This 'international interest' is sui generis to the Convention. It is a unique creation of the Convention, a new 'substantive interest' exclusively created and recognized through the tool of this treaty as against the mobile equipment's. The bundle of interests recognized to be worth protection are grouped and re-branded as 'international interests'. This includes both statutory security interests (like a mortgage, pledge, or hypothecation) and equitable security interests (like a lien or security interest). Therefore, the definition of international interests includes the charger's grant of a security interest in an aircraft object with a unique identifier under a security agreement, the conditional seller's vesting of an interest in the aircraft object under a title reservation agreement, and the lessor's vesting of an interest in the aircraft object under a leasing agreement. Interests that have been transferred to a third party or sold in a sale agreement are likewise considered "international interests" for the purposes of this definition. Moreover, there is no need to create a fictitious "international interest." Inevitably, after the groundwork has been laid, the subject will come up.¹⁸⁷

24x7 Registry and improved transparency:

The worldwide register system put in place by the Convention is particularly noteworthy. The world's first worldwide registry for the registration of security interests developed over aviation assets is based on the simple, first-to-file priority criterion. The online

¹⁸⁷Accordingly, Article 6 (3) of UK The International Interests in Aircraft Equipment (Cape Town Convention) Pg. 63, Regulations 2015 provides that 'international interest has effect where the conditions of the Cape Town Convention and the Aircraft Protocol are satisfied (with no requirement to determine whether a proprietary right has been validly created or transferred pursuant to the common law lex situs rule).

registry is accessible around the clock from any location in the world, providing complete visibility, and it does not conflict with local registrations, even accepting them as a gateway to the international registry. To the degree that a lender or other interested party needs to know, it will. The International Registry was deemed "civil aviation's biggest success story" by the International Civil Aviation Organization in a Working Paper issued in 2016. As a result of the advantages of registration, it is usual for parties to additionally register interests that are not governed by the Convention. The Registrar is responsible for day-to-day operations, but ICAO operates in a supervisory position. This asset-based system for filing notices has evolved beyond the Convention's provisions to incorporate registration of fractional and partial interests, numerous registrations, and "other innovations such as a closing chamber and transferable right to discharge."¹⁸⁸

Overriding Insolvency Provisions:

The Convention establishes a comprehensive bankruptcy framework, beginning with the essential assumption stated in Article 31 of preserving foreign interests created prior to the commencement of insolvency operations. Contracting States may construct a new scheme based on a "select and chose" process that best suits their discretion. Secured interests can be recovered and owned within a short time frame under Alternative A, which is based on U.S. bankruptcy law, to avoid insolvency processes. In principle, this remedy might be pursued outside of the court system, but in practice, parties usually take that route for greater security. Alternative B, which would give courts more authority, is targeted to individuals who favor civil law procedures. If the States find this too burdensome, the Convention provides the parties with the option of retaining the status quo while utilizing the Convention's economic advantages as an incentive to approve new legislation at the national level. Alternative A has gained popularity, and states that choose for it receive a discount from Cape Town a Wide range of default and additional remedies.

As far as is consistent with obligatory treaty requirements, the Convention and the Protocol provide a broad variety of default, extra, and advance remedies without interfering with the remedies available under relevant legislation. The parties must reach an agreement in order to

¹⁸⁸The International Registry After 10 Years- Civil Aviation's Great Success Story, ICAO Working Paper A39-WP/422.

implement most of these remedies. Again, the parties have free discretion over what constitutes a default event. Lease and title reservation agreements often allow for the lease to be terminated and the asset to be repossessed, with the lessee or lessees responsible for making the necessary arrangements for the asset's deregistration and export. Chargees in ownership of or control over Charged Property under a Security Agreement may sell, lease, or otherwise profit from the Charged Property. A similar set of remedies is provided for under the Convention for assignments as well. Furthermore, advance relief extends to encompass even sale of the asset leaving the creditor only with monetary relief and 'disturbs what would be the debtor's right absent default and does not purport to preserve the status quo.'¹⁸⁹

IDERAs:

IDERA should be singled out as a noteworthy treaty remedy because it has significantly altered the landscape of treaty relief. In fact, IDERA is the most comprehensive treatment option currently accessible. Repossession of the secured asset is the major concern of creditors in the event of failure, and IDERA helps creditors achieve this goal by allowing for the expedited deregistration, export, and physical transfer of the asset with the least possible involvement from local authorities. Some Contracting States, such as Australia, have been proactive in introducing domestic measures for facilitating transfer of interests held under IDERA by certified designee confirmation letter, ushering in more mobility.¹⁹⁰

Separate financing of Aircraft engines:

The 'doctrine of accession' or 'accretion theory' traditionally applicable to aircraft engines lays down that once an aircraft engine is installed in or on an aircraft, it becomes an integral part of the aircraft. There are conflicting and varying norms on application and essentials of this theory but the basic premise remains the same. The theory sounds trouble for leased engines or leased planes. Application of this doctrine frustrated legitimate rights of financiers/engine owners prompting its discontinuation in most jurisdictions. However, conflict of law provisions always kept the risk alive and it was only with the Cape Town Convention that separate financing norms for aircraft engines came to be so well defined. The agreement covers airframes, aircraft

¹⁸⁹Official Commentary at para 2.104 cited in AWG, Practitioners Guide at Pg. 124

¹⁹⁰Kate Craig and Matthew Bode, Aviation Finance & Leasing- Australia, GETTING THE DEAL THROUGH, July 2018.

engines, and helicopters, as well as all of the components, accessories, parts, and equipment that are installed or connected to them, as well as any and all associated documentation and technical drawings. The treaty expressly states that "[t]he installation on or removal from an aircraft of any engine shall not affect any right or interest in any such engine" (Article XIV, Protocol). Article 29(7) of the Convention states that the treaty must safeguard the rights under relevant law with respect to other component components (items other than an object) following installation on an aeronautical object.¹⁹¹

¹⁹¹Recently in 2013, the Bankruptcy courts of Sonder Borg, Denmark while hearing proceedings on bankruptcy of Danish airline Cimber Sterling held that out of nine leased aircraft engines, the lessors had title only to seven engines and the other two was subject to bankruptcy proceedings because they were installed for more than three months. On appeal to Western High Court, it held that engines installed permanently were part of bankruptcy estate. See, Morten L. Jakobsen & Lotte Bay Gabelgaard, *The Aircraft Engine Dispute in Denmark: First Judgment*, *Air & Space Law* 39, no.3 (2014):215-226 and Jakobsen, Morten L. & Midtgaard Pedersen, Morten, *The Danish Aircraft Engine Dispute: The Sequel*, *Air & Space Law* 40, no.6 (2015): 421-428. Also see, Ian Sheppard, *Danish Court Decision Could Undermine Engine Leasing*, *AINONLINE*, January 24, 2014.

CHAPTER 6: PROTECTION AND ENFORCEMENT OF INTERESTS IN AIRCRAFT OBJECTS BILL, 2022

6.1 Introduction

India adopted the Convention and Protocol on March 31, 2008. In 2008, the Cape Town Convention entered into force. Both a Convention and Protocol declaration were issued by India. India has made a number of statements in conformity with the Convention, including specific declarations under Article 39(1)(a) outlining non-consensual rights or interests that would take priority under its domestic law. Liens for unpaid airline employee pay, taxes, and charges linked with usage and maintenance of the aircraft object are among those included, inasmuch as the completion of these acts would increase the worth of the aircraft object after a default. Article 39(1)(b) deals with the general power to arrest or detain an aircraft or other aircraft object to retrieve payments owing to governmental organizations that have supplied fleet-related services.

India utilized one of the UNIDROIT model forms that it gives to make its disclosures. Thus, there will be no opportunity for violating the CTC's regulations. With respect to the Convention's requirements under Articles 39 (2) and 39(4), India has opted not to provide any information. Nonconsensual rights and interests, both historical and prospective, would be included in such declarations. Nonconsensual rights or interests in India are also registrable as of Article 40. Except for the timeline, this is identical to Article 39 (1)(a) with respect to the treatment of income and unpaid taxes for airline employees.

The registrable category under Article 40 pertains to non-consensual rights that happened prior to the declaration of default. A judgment creditor's lien is also included in Article 40. Finally, the single obligatory declaration of the Convention applies to procedural standards for which India has opted-in, enabling creditors to exercise remedies available to them when judicial action is not required without resorting to court proceedings.

India's declarations under the Protocol include an opt-in to the Protocol's fast remedy requirements. The time limit for obtaining relief for a creditor is established at 10 working days. This means that, for example, a lessor might assume ownership and control of an aviation item within 10 working days after filing relief. India likewise issued an Article XIII statement enabling the usage of the IDERA. Finally, it proclaimed under Article XXX (1) on the choice of law that it is opting in for party autonomy on the law to govern contractual rights and responsibilities.

The Ministry of Civil Aviation recognized the necessity for distinct law to protect and enforce rights in aircraft objects in India a long time ago, and different committees and working groups were formed to that end. In India, there is a need for distinct regulation for aircraft items in leasing. This is due to the fact that present regulations do not directly address aircraft objects, and there is a lack of clarity about the legality involved. This is because aircraft items are not officially included in India's aviation legislation. This implies that the laws and regulations that apply to aircraft items in leasing are not precisely specified, and the legally involved are unclear. This might cause confusion and ambiguity in the leasing of aviation items, affecting the market for aircraft objects in India.

“The Aircraft Act of 1934 ("Aircraft Act"), the Aircraft Rules of 1937 ("Aircraft Rules"), the Civil Aviation Requirements ("CARs"),” and the Aircraft Leasing Manual (Cap3200) have all been the primary Indian aviation rules up to this point (issued in line with Chicago Convention and governs only operating leasing transactions).

The Directorate General of Civil Aviation (DGCA) and the Civil Aviation Requirements form the basis of India's aircraft leasing regulatory structure (CAR). Aircraft registration, airworthiness, flight crew qualifications, accident and incident investigations, and lease sale regulations are only some of the topics covered by these laws. In order to register a leased aircraft in India, lessors must follow the guidelines outlined in the Aircraft Act, 1934, and the Aircraft Rules, 1937. Leasing aircraft must have permission from the Directorate General of Civil Aviation before they may be registered. When an aircraft is registered, the lessee is legally recognised as the owner, and the certificate of registration is issued in the lessee's name. Aircraft airworthiness and compliance with all relevant safety rules are the lessee's responsibilities.

Aircraft operations in India are governed by the country's Civil Aviation Requirements (CAR). The Directorate General of Civil Aviation, in conjunction with the Ministry of Civil Aviation, issues the CARs. Part A and Part B make up the whole of the CARs. Aircraft operating requirements may be found in Part A. The Civil Aviation Requirements (CAR) Part B, Section 3, Sub-part H, deals with the requirements for the operation of leased aircraft and provides the particular requirements for the operation of various aircraft types. The clause stipulates that the lessee must seek the lessor's permission before putting the aircraft into service. Lessee must also meet the aircraft's airworthiness criteria, as stated in this section. Furthermore, the Lessee must ensure that the Aircraft is covered by an effective insurance policy as per the terms of this Section.

Part B, Section 4, Subpart H of the CAR addresses the needs for aircraft registration under a leasing agreement. When registering the plane, the lessee must get the lessor's permission first. Lessee must also meet the aircraft's airworthiness criteria, as stated in this section. Furthermore, the Lessee must ensure that the Aircraft is covered by an effective insurance policy as per the terms of this Section.

Leased aircraft must meet the standards set out in Subpart H of Part B of the CAR. Under this clause, the lessee must consult with the lessor to ensure the aircraft is airworthy. Lessee must also meet the aircraft's airworthiness criteria, as stated in this section. Furthermore, the Lessee must ensure that the Aircraft is covered by an effective insurance policy as per the terms of this Section. Part B, Section 6, Subpart H of the CAR addresses the needs for aircraft leasing insurance. Aircraft insurance coverage is subject to the lessor's permission, as stipulated in this section.

6.2 Commercial Aircraft on Lease in India

According to the CAPA fleet statistics, 81% of commercial aircraft in India are rented. The percentage of the Indian fleet that is leased has ranged between 81% and 88% since the end of 2007, with a high of 88% in 2011.

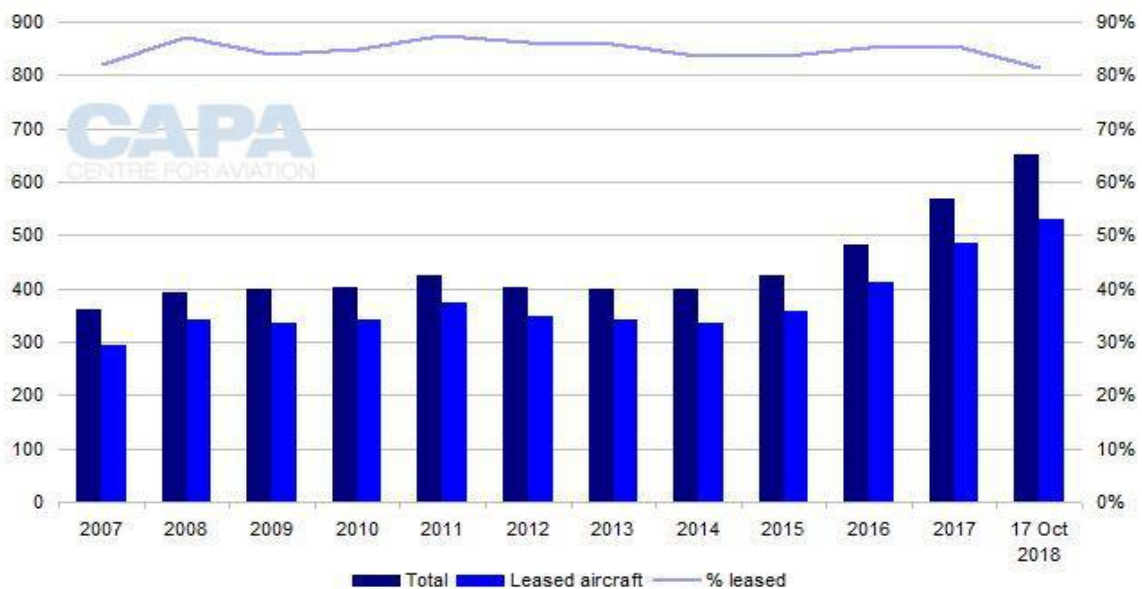


Figure 6 : Leased and total commercial aircraft numbers with operators in India: year-end 2007 to 2017 and at 17-Oct-2018¹⁹²

¹⁹² Ibid

***In service and inactive.**

Source: CAPA Fleet Database.

As per the Director General of civil aviation (DGCA), the total number of aircraft registered with DGCA is 2014, out of which 43.99% i.e., 886 aircraft are on lease.¹⁹³

6.3 Changes Brought Before Introduction of The Bill

Following the Spice jet financial crisis in 2014-2015, as interim measure's DGCA revised certain clauses in the AIRCRAFT RULES 1937.

The rule 30(7) is added to Aircraft Rules 1937 which gives sanctity to Irrevocable De-Registration And Export Request Authorization (known as IDERA)

The rule is as follows:

“Rule 30(7) (7) The Central Government will cancel the registration of an aircraft registered in India that is covered by the Cape Town Convention and Cape Town Protocol within five working days, without asking the operator of the aircraft or anyone else for permission or a document. All they need is an application from the IDERA Holder with (i) the original or a notarized copy of the IDERA recorded with the Director-General and (ii) a priority search request.

Provided that the cancellation of the aircraft's registration does not affect the right of the Central Government or any part of it, or any intergovernmental organization of which India is a member, or any other private provider of public services in India, to arrest, detain, attach, or sell an aircraft object under its laws for payment of amounts owed to the Government of India, any such entity, organization, or provider directly related to the services provided.

Explanation. For the purposes of this rule, "International Registry" means the Registry set up under Article 16 of the Cape Town Convention.”¹⁹⁴

-The Rule 32A is added, which imposes an obligation to take action within five working days to help the export.

The rule is as follows:

¹⁹³ Government of India, Ministry of civil aviation Lok Sabha Unstarred question: 3127 (to be answered on 16th December 2021 on Aircraft leasing in India Answered by Gen. (DR) V.K.Singh (Retd) minister of state in ministry of civil Aviation

¹⁹⁴ Inserted by GSR No 295(E) dated 23-3-2017; and amended by G.S.R. No. 821(E) dated 27th August 2018]

Aircraft exports are governed by Rule 32A. If an IDERA Holder applies to have an aircraft deregistered under Rule 30's Subrule 7, the Central Government must grant permission for the aircraft to be exported and for the IDERA Holder to physically transfer the aircraft and any spare engines, if any, subject to: (i) the payment of all outstanding debts owed in connection with the aircraft; and (ii) the compliance with all applicable safety regulations.¹⁹⁵

6.4 Inconsistent provisions of IBC-2016 with Cape Town Convention & Protocol in India.

Under IBC (Insolvency and Bankruptcy Code)2016¹⁹⁶

- When the bankruptcy court declares insolvency, According to section 14(1)(d),¹⁹⁷ “the recovery of any property by an owner or lessor if such property is occupied by or in the possession of the corporate debtor is prohibited for the duration of the moratorium period.”
- Section 14(1)(d)¹⁹⁸ simply prohibits the lessor from regaining possession and makes no mention of the parties' lease agreement being terminated (lessors & lessee).
- The handling of lease rents under IBC is clearly dependent on their presence (whether the lease rental due to the lessor falls under pre-moratorium or post-moratorium period).
- The supply of essential goods or services to the corporate debtor cannot be terminated, suspended, or interrupted during the moratorium period, according to section 14 (2)¹⁹⁹.

To reap the full benefits of accession to the Cape Town Convention and Protocol on Interest in Aircraft Objects, a new bill containing a non-obstante clause²⁰⁰ is required to override the conflicting provisions with other laws now in place.

¹⁹⁵ Inserted by GSR No 295(E) dated 23-3-2017; and amended by G.S.R. No. 821(E) dated 27th August 2018]

¹⁹⁶ Accessed October 11th .2022

<https://legislative.gov.in/sites/default/files/The%20Insolvency%20and%20Bankruptcy%20Code%2C%202016.pdf...>

¹⁹⁷ Ibid, section 14(1)

¹⁹⁸ Ibid, section 14 (1)

¹⁹⁹ Ibid, section 14(2)

²⁰⁰ A non-obstante clause is added to a provision in order to uphold its enforceability over another provision that is contradictory to it. This clause is used to clarify the intention of the legislature in cases where two provisions appear contradictory.

6.5 The Cape Town Convention Bill, 2018

This Civil aviation Ministry of India had proposed to introduce the Cape Town Convention Bill, 2018 to implement the Cape Town Convention/Protocol in India in order to fulfil treaty obligations and reap the full benefits of Indian accession to the treaty.

As part of the pre-legislative consultation, a soft copy of the proposed Draft Bill, titled "The Cape Town Convention Bill, 2018," along with the Cape Town Convention, the Cape Town Protocol, and the Declaration lodged by India under the Cape Town Convention and Protocol, is posted on the Ministry's website, inviting comments from the general public, stakeholders, and persons likely to be affected on 08th October, 2018.²⁰¹

6.5.1 Provisions in The Bill

An Act to give effect to the Convention on International Interests in Mobile Equipment and the Protocol thereto on Matters Specific to Aircraft Equipment, each signed at Cape Town on 16th November 2001.²⁰²

It has six sections and three schedules:

1. Short title, extent and commencement²⁰³
2. Definitions²⁰⁴
3. Application of the Convention and the Protocol in India.²⁰⁵
4. Changes in Declarations.²⁰⁶

²⁰¹ AV.11012/1/2014-A (Vol. I) Ministry of Civil Aviation | GoI. Accessed November 9, 2022. <https://www.civilaviation.gov.in/sites/default/files/Cape%20Town.pdf>.

²⁰² Ibid

²⁰³ Ibid: Section 1: (1) This Act may be called The Cape Town Convention Act, [2018].

(2) It extends to the whole of India.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

²⁰⁴ Ibid: section 2

²⁰⁵ Ibid: section 3

²⁰⁶ AV.11012/1/2014-A (Vol. I) Ministry of Civil Aviation | GoI. Accessed November 9, 2022. <https://www.civilaviation.gov.in/sites/default/files/Cape%20Town.pdf>.

Section 4: If, at any time, India makes a subsequent declaration or withdraws a declaration, the Central Government may, by notification in the Official Gazette, amend the Third Schedule to incorporate such changes.

5. Overriding effect.²⁰⁷
6. Power of Central Government to make rules.²⁰⁸

The Cape Town Convention and Protocol are been attached to the Bill as the First and Second Schedules, respectively. India's declarations have also been incorporated into the Bill as the Third Schedule. The Bill also includes a provision that gives the provisions of the Convention/Protocol precedence over any other law. It also gives the government the authority to make rules for implementing the Convention and Protocol in India, if necessary.

At a time when many regional airlines have been refused planes for rent, the proposed law will allow international aircraft leasing companies to repossess and transfer planes out of India in the event of a financial dispute with an Indian airline.

Through improved legal certainty, the bill is intended to reduce risks for creditors and, as a result, debtors' borrowing costs. This encourages the provision of credit for the purchase of more modern, and thus more fuel-efficient, aircraft. Airlines from countries that have ratified the Convention and Protocol may receive a ten percent (10%) discount on export credit premiums.

6.5.2 Status of the Bill: The Bill is yet not passed by any of the house of parliament.²⁰⁹

6.6 The Protection and Enforcement of Interests in Aircraft Objects Bill, 2022 (draft)

The Ministry of Civil Aviation released "The Protection and Enforcement of Interests in Aircraft Objects Bill, 2022" (Aircraft Objects Bill 2022) for public comment on April 16, 2022. The bill is meant to implement the Cape Town Convention/Protocol in India so that India can meet its obligations under the treaty and get the benefits of joining the treaty.

²⁰⁷ Ibid. Section 5: — Notwithstanding any conflicting provision contained in any other law in force in India, the provisions of section 3 shall be applicable to all cases falling within the sphere of application of the Convention and the Protocol.

²⁰⁸ Ibid. Section 6: The Central Government may, by notification in the Official Gazette, make such further rules for implementation of the Cape Town Convention and the Cape Town Protocol as may be considered necessary and expedient subject to the condition that such rules shall be made after previous publication.

²⁰⁹ Legislation: Lok Sabha." Parliament of India, Lok Sabha. Accessed November 9, 2022.
<https://loksabha.nic.in/Legislation/NewAdvsearch.aspx>.

The main thing about the Bill is that the rules of the Cape Town Convention and Protocol, as well as the declarations that India made under them, are now legally binding in India. The First and Second Schedules, which are attached to the Bill, list the rules and India's declarations. The Bill also has a clause that says the current laws in India are more important than any other law in India. It also gives the Central Government of India the power to make laws, if needed, to make sure the Convention and Protocol are followed in India.

Even though India signed the Cape Town Convention on March 31, 2008, there was no domestic law to carry out the responsibilities of the convention. So, if the Cape Town Convention and local law are at odds, local law will win.

If the Indian Parliament passes the Aircraft Objects Bill 2022, it will be law in India. The Protection and Enforcement of Aircraft Objects Bill, 2022, also has a part that says that existing laws in India are more important than any other law (non-obstacle clause). It also gives the Central Government the power to make laws, if needed, to make sure that the Convention and Protocol are followed in India. Unless the agreement says otherwise, the remedies in the Aircraft Objects Bill of 2022 apply to all transactions with ties to India, even if the parties to the agreement haven't chosen India as the place of jurisdiction. The parties can choose which law applies to their obligations under the contract. The main parts of the Bill are summed up below:

Aircraft Objects Bill 2022 applies to any debtor or seller who is based in India or whose aircraft object was in India at the time of an agreement or contract of sale that created or provided for an international interest. It also applies to every aircraft object that's also required to register in India and has a link to the rest of the world.²¹⁰

Aircraft Objects Bill 2022, also applies to transactions that happen within the country, as long as they don't break the rules that are already in place. The Aircraft Objects Protection and Enforcement Act of 2022 doesn't apply to any state that hasn't signed a CTC contract.²¹¹

The Protection and Enforcement of Interests in Aviation Objects Bill, 2022 specifically

²¹⁰ "The Protection and Enforcement of Interests in Aircraft Objects Bill, 2022." Azb. Last modified April 26, 2022. <https://www.azbpartners.com/bank/the-protection-and-enforcement-of-interests-in-aircraft-objects-bill-2022/>.

²¹¹ Ibid

recognizes international interest in aircraft objects in line with Cape Town Convention Articles 2–7. The overseas interest must be registered in accordance with the CTC and is valid until discharged or the registration time expires.²¹²

Aircraft Objects Bill 2022 also says that a registered interest has priority over any other registered interest or an unregistered interest, as defined by the Bill. The registered interest comes first: a) whether the interest was bought or registered with knowledge of the other interest or not; and b) regardless of how much the person who bought or registered the interest knew about the other interest. Also, Section 77 of the Companies Act, 2013 does not apply to a foreign interest set up through a CTC. This is because Section 77 is about how to register a charge.

The Protection and Enforcement of Interests in Aviation Objects Bill, 2022, also defines rights with priority over the aircraft object that do not need to be registered. These rights will (a) take the place of a registered international interest in an aircraft object and (b) take the place of a registered international interest (whether in or outside insolvency proceedings). Aircraft Objects Bill 2022, says that these rights will apply to the non-consensual rights and interests listed in Part A of the Third Schedule.

If the chargee is in default or has stated that they are in default under the agreement, the chargee may exercise the following self-help remedies (subject to the applicable notification requirements), or they may seek a court order to bring such remedies into effect.²¹³

- (a) seizing or taking control of the aircraft object charged to it;
- (b) selling or renting such an aircraft object; or
- (c) receiving or collecting any money or profits from the management or usage of such aircraft object.

If the debtor fails to pay, the creditor may (a) have the aircraft de-registered and (b) have the aircraft exported and physically relocated from the country where it is situated, if the

²¹² Ibid

²¹³ "The Protection and Enforcement of Interests in Aircraft Objects Bill, 2022." Azb. Last modified April 26, 2022. <https://www.azbpartners.com/bank/the-protection-and-enforcement-of-interests-in-aircraft-objects-bill-2022/>.

debtor has ever consented to this. The DGCA must deregister the aircraft within 5 (five) business days after receiving the request.²¹⁴

According to Aircraft Objects Bill 2022, a creditor with evidence that the debtor hasn't paid may seek the court (respective High Court) for the interim remedies mentioned in the bill if the debtor accepts. Dates have been specified for this kind of short-term assistance.²¹⁵

Aircraft Objects Bill 2022 modifies the (Indian) Insolvency and Bankruptcy Code, 2016. However, there are procedures for enforcing property rights that must be followed whether the bankruptcy administrator is in control or the case is in charge. If the debtor is the subject of an insolvency proceeding, whoever has actual or constructive custody of the aircraft object must deliver it to the creditor no later than (a) two (two) calendar months after the insolvency proceeding begins, or (b) the date on which the creditor would have been permitted to take possession of the aircraft object.

However, if there is a means to rectify the defect or if there is a commitment that the contract would be followed, the bankruptcy administrator may retain possession of the aircraft item. If the insolvency administrator fails to act by the foregoing deadlines, the creditor may take possession of the aircraft object immediately or pursue one of the other remedies outlined in Aircraft Objects Bill 2022.²¹⁶

The Protection and Enforcement of Interests in Aircraft Objects Act of 2022 permits the transfer of related rights to the assignee of the linked international interest. There are, however, certain limitations.²¹⁷

²¹⁴ Ibid

²¹⁵ Ibid

²¹⁶ Ibid

²¹⁷ Ibid

CHAPTER 7: CONCLUSION

Aircraft leasing is an arrangement whereby a lessee airline leases an aircraft from an owner lessor. While the lessor retains the Aircraft's ownership, the lessee possesses the rights to use such an Aircraft. Due to various advantages, Aircraft leasing can be used for operating and financial purposes. Once Aircraft leasing was ushered into the international aviation community, many regimes of international air law appeared insufficient, fragmentary and even anachronistic. This study examines the following issues.

- The concerned States have a dilemma between legal and de facto control of airplanes due to their monitoring obligations in safety. However, this problem is solved by Article 83bis, which states that all contracting states must accept as lawful any transfer of responsibility for a vessel's operation from the State of Registry to the State of the Operator.
- Because of the global scope of aviation safety regulations, the ICAO Council has designated Standards and Recommended Practices as Annex 13 to oversee Aircraft accident investigations. With this, the Operator's home state might become involved in the inquiry of rented planes. Annex 13 is a source of the Chicago Convention, but its legal position is unclear. As a result, Article 26 of the Chicago Convention has to be revised.
- Article 2 (Customs Duties), Article 5 (Right of Non-Scheduled Flight), Article 15 (Airport and Similar Charges), and Article 25 (Aircraft in Distress) of the Chicago Convention do not apply to leased aircraft. As a result of this assumption that the issues are purely theoretical, little work has been done to date to update the outmoded assumptions underlying the problem.
- The Tokyo Convention of 1963 establishes the State of Registry as the exclusive criminal jurisdiction. This is inadequate and unacceptable when committing crimes on board rented aircraft. Although the criminal authority of the State of the Operator is recognized by the 1970 Hague Convention and the 1971 Montreal Convention, the State of the Operator does not have jurisdiction for lesser offenses under the 1963 Tokyo Convention. The Tokyo Convention of 1963 still needs revision.
- Even while the Geneva Convention of 1948 acknowledges purchaser, mortgagee, and lessor rights to aircraft, it is silent on assigning precedence among them. When dealing with simple purchasing transactions, it could make sense to think of the engines as just

another section of the plane. The premise above may be contentious due to the common practice of leasing deals when the lessor of an aircraft engine would transfer ownership of the engine to the lessor of the aircraft. Therefore, the aviation community on a global scale should provide aircraft engines with their distinct legal standing.

- Because international financial leasing is used worldwide, despite the absence of fundamental legal principles, UNIDROIT has attempted to invent the new sui generis Convention based on the triangular nature of such leasing. The Convention perceives the independent agreements among the parties as a single transaction and rearranges the parties' rights and duties under the concept of the direct link. Up to now, the Convention has yet to enter into force. The aviation community has benefited from using aircraft leasing, but international law governing the practice is outdated, fragmentary and insufficient. It is worth the effort to modernize and systematize the rules of international air law.
- Despite the fact that India accepted the Cape Town convention & protocol in 2008, the country did not have any domestic laws in place to carry out the commitments that were outlined in the convention & protocol. The law's proposal is introduced for the first time in 2018 by “Cape town Bill ,2018” and a new draft bill “Aircraft Objects Bill 2022 “was introduced for the second time in 2022. Nevertheless, it is difficult to determine how long it will be until it truly becomes an act and fulfill its objectives.

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