

Aircraft Financing

A. Applicable Federal Law – Transportation Code

- Transportation Code (49 USC §§ 40101 et. seq.) establishes a recording system for the registration of aircraft and the recording of certain interests in aircraft and related equipment (49 USC §44107) (see also Federal FAA Regulations, 14 CFR pts 47 & 49)
 - registration of aircraft ownership (but not engines or propellers) (49 USC § 44103)
 - conveyances that affect an interest in aircraft (including engines and propellers) for aircraft registered in the United States
 - leases and instruments executed for security purposes that affect:
 - engines (550 takeoff horsepower)
 - propellers (750 takeoff horsepower)
 - spare parts maintained by or for a US air carrier

B. Applicable State Law – Article 9

- Article 9 of the Uniform Commercial Code provides state law rules for obtaining security interests in various things, including airframe, propellers, engines and parts
- Transportation Code overrides as to aircraft, engines and spare parts in certain circumstances (Utah Code § 70A-9a-311)
- Federal override sets up a special recordation system for obtaining a security interest in aircraft, engines, propellers and parts which preempts the filing requirements of Article 9 – but not the entire field of Article 9 (i.e., priority rules, default rules)

C. International Law

- Can affect rights of secured parties in aircraft (Geneva Convention on the International Recognition of Rights and Interests in Aircraft; Chicago Convention on International Civil Aviation; Rome Convention on Precautionary Arrest)
- Recent change in international law is the Cape Town Convention on International Interests in Mobile Equipment (“Convention”) and Aircraft Equipment Protocol (“Protocol”) (Convention and Protocol collectively, the “Cape Town Convention”)
 - adopted by 68 countries on November 16, 2001
 - however, not effective as to any country until March 1, 2006 following the ratification of the Cape Town Convention by 8 countries (currently, the following have ratified the Cape Town Convention: Afghanistan, Angola, Ethiopia, Ireland, Kenya, Malaysia, Mongolia, Nigeria, Oman, Pakistan, Panama, Senegal, United States)
 - two parts
 - First, the Convention which covers “mobile equipment.” Three categories of “mobile equipment” are listed: (i) airframes, aircraft engines and helicopters, (ii) railway rolling stock, and (iii) space assets.
 - Second, the Protocol which adopts the governing rules relating to airframes, aircraft engines and helicopters.
 - The Convention and the Protocol are intended to be read as one instrument and the framers have compiled a “Consolidated Text” which is a helpful tool, but does not have the legal effect of the Convention and Protocol.

D. End Result

- UCC/local law governs creation, validity and enforceability of interests in airframes, engines, propellers, helicopters, coffee carts, parts
- Transportation Code governs registration of aircraft (49 USC § 44103) (no registration of engines or propellers with the FAA)
- Cape Town Convention governs perfection and priorities of whatever interests the parties have under local law, as well as providing remedies – BUT, the Transportation Code and the Cape Town Convention are still linked because the FAA acts as the “entry point” to the Cape Town Convention for U.S. registered aircraft (Consolidated Text, Article 29)
 - registration for purposes of the Cape Town Convention is a two step process:
 - registration with the FAA of bill of sale, security agreement, lease, conditional sale contract, assignment, collateral assignment and subordination agreement
 - registration with the International Registry

E. Certain Key Changes Caused by the Cape Town Convention

- standard documentation needs to be revised to reflect the Convention and the Protocol
- filing at the FAA is no longer sufficient in most cases
- Cape Town Convention applies when “at the time of the conclusion of the agreement creating or providing for the international interest, the debtor is situated in a Contracting State.” (Consolidated Text, Article 3)
- Cape Town Convention applies if:
 - (1) Must have an “Aircraft Object” covered by the Cape Town Convention:
 - airframe certificated to transport at least (8) persons including crew or goods in excess of 2750 kilograms
 - engines, in case of jet propulsion aircraft, having at least 1750 lb of thrust or, in the case of turbine-powered or piston-powered engines, having at least 550 rated take-off shaft horsepower
 - helicopters certificated to transport at least (5) persons including crew or goods in excess of 450 kilograms
 - (2) Must have an international interest in an “Aircraft Object”:
 - “International Interest” means an interest in an aircraft object: (a) granted by the charger under a security agreement, (b) vested in a person who is the conditional seller under a title reservation agreement or (c) vested in a person who is the lessor under a leasing agreement
 - (3) Must have a “debtor” situated in a “Contracting State”
 - “debtor” means a charger under a security agreement, a conditional buyer under a title reservation agreement, a lessee under a leasing agreement or a person whose interest in an aircraft object is burdened by a registerable non-consensual right or interest
 - “Contracting State” – Afghanistan, Angola, Ethiopia, Ireland, Kenya, Malaysia, Mongolia, Nigeria, Oman, Pakistan, Panama, Senegal, United States
- “contract of sale” is NOT an international interest, however, it can (and generally should) be registered
- priority is based purely on first to file – if a creditor has not filed or is 2nd in line, that creditor will lose to the creditor who filed first

F.

New Lingo

- International Registry – the registry for matters governed by the Cape Town Convention
- debtor means:
 - in connection with a contract of sale – the seller
 - in connection with a conditional sale – the conditional buyer
 - with respect to a security agreement – the charger/mortgagor
 - with respect to a lease – the lessee
- creditor means:
 - in connection with a contract of sale – the buyer
 - in connection with a conditional sale – the conditional seller
 - with respect to a security agreement – the chargee/mortgagee/secured party
 - with respect to a lease – the lessor
- aircraft object – see above
- international interest – means an interest held by a creditor to which the Cape Town Convention is applicable
- transacting user entity – what an entity needs to be in order to make a Cape Town Convention filing
- transacting user – the individual with the “football” loaded onto their system – i.e., the person who can register and consent
- professional user entity (PUE) – firm or entity assisting the transacting user entity
- professional user -- the individual with the “football” loaded onto their system – i.e., the person who can register and consent
- priority search certificate – what the International Registry shows has been registered with respect to a particular aircraft object

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Resources

- go to www.unidroit.org
- go to www.internationalregistry.aero
- go to www.aviareto.aero