

Aviation

The Cape Town Convention: Some Practical Insights

Overview

- Laws have now been passed in Australia to adopt the Cape Town Convention (“the Convention”) and Aircraft Protocol (“the Protocol”);
- No operative date has yet been set, however, it is expected to commence operation sometime in early 2014; and
- Some consequential amendments have been passed to the Personal Properties Security Act 2009 (“the PPSA”) and other Australian aviation legislation.

The Convention is an international treaty designed to protect security interests in moveable property including aircraft, rolling stock and space equipment. In Australia it will have most relevance to the aviation industry as a result of the Protocol.

The Convention is aimed at assisting in cross border leasing and financing of significant value assets and originally came into force on 1 April 2004. The specific aviation Protocol came into force on 1 March 2006.

The aim of the Convention is to reduce the credit risk to financiers with the ultimate goal of lowering the cost of credit and improving the availability of credit in the industry.

Currently there are [57 Contracting States](#) to the Convention (excluding Australia).

Key Elements

- Creation of an “international interest” recognised by all Contracting States;
- A system of perfection and priority of such interests by electronic registration; and
- A standardised set of rights and remedies on default by a debtor.

Application

The Convention will apply if:

- There is an “aircraft object” as defined by the Convention; and
- Where an “international interest” or prospective international interest is created by the transaction; and
- Where one of the following applies:
 - either the debtor is situated in a Contracting State when the agreement is concluded; or
 - the agreement relates to an aircraft object (but not engines) that is registered in a Contracting State.

The Convention and Protocol are not designed to apply retrospectively.

Aircraft Objects

Article 1 of the Protocol specifies the minimum aircraft object size/power requirements as follows:

- airframes (other than those used in military, customs or police services) that can transport at least 8 persons (including crew) or goods in excess of 2750 kilograms;
- helicopters (other than those used in military, customs or police services) that can transport at least 5 persons (including crew) or goods in excess of 450 kilograms;
- jet propulsion aircraft engines that have at least 1750lb of thrust; and
- turbine or piston powered engines that have at least 550 rated take-off shaft horsepower.

The International Registry

The International Registry of Mobile Assets is an online register open 24 hours a day 7 days a week based in Ireland. The International Registry:

- defines the priority of interests on airframes, aircraft engines and helicopters;
- permits individuals and organisations to register a financial interest in assets using the MSN (manufacturer’s serial number);

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- electronically records international interests in aircraft objects, thereby establishing priority of interests; and
- provides for the registration and protection of “international interests” that are recognised by all contracting states, with priority being determined on a “first-to-file” basis.

The online register can be found at:
<https://www.internationalregistry.aero>

PPSA Impact

The Convention and Protocol will prevail over the PPSA to the extent of any inconsistency. The PPSA has been amended to take into account the Convention and Protocol. However, “aircraft equipment” has not been excluded in its entirety and the PPSA will continue to operate along-side the Convention and Protocol to some extent. At this stage, the full impact of this is unknown.

What to Do Now?

- Continue to register security interests under the PPSA;
- Review financing documentation to allow for the Convention and Protocol to apply when they come into force;
- Review the definition of “aircraft objects”;
- Familiarise yourself with the International Registry; and
- Monitor alerts from FTI Consulting and the Australian Government’s Department of Infrastructure and Transport for further updates on the Cape Town Convention.

Critically, whilst the interplay of these pieces of legislation is being fine-tuned, Australian financiers should ensure that their aviation interests are recorded on both the PPS Registry and the International Registry.

How FTI Consulting Can Help

FTI Consulting has extensive experience and capabilities relating to local and international aviation sector participants and issues related to manufacturers, suppliers, financiers, and other stakeholders.

By leveraging our extensive network of relationships, cultivated from our roles in numerous complex situations in the aviation industry, our market-leading team of senior financial and operational advisors can provide assistance and guidance to those exposed to the aviation industry focusing on key issues, value protection and maximisation, creating comprehensive solutions for our clients.

For more information on our services and capabilities in the aviation sector, please contact:

SYDNEY

Nathan Landrey
Senior Managing Director
+61 2 8247 8000
nathan.landrey@fticonsulting.com

MELBOURNE

Ross Blakeley
Senior Managing Director
+61 3 9604 0600
ross.blakeley@fticonsulting.com

PERTH

Mark Englebert
Senior Managing Director
+61 8 9321 8533
mark.engagebert@fticonsulting.com

HONG KONG

John Batchelor
Senior Managing Director
+852 3768 4670
john.batchelor@fticonsulting.com

MELBOURNE

Jon Howarth
Managing Director
+61 3 9604 0600
jon.howarth@fticonsulting.com



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