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The Cape Town Convention

The Cornerstone of Modern Aircraft Financing



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The acquisition of an aircraft represents one of the most significant and complex investments in the commercial sector, with costs that can reach hundreds of millions of dollars. Historically, this process was hindered by a fundamental issue: the lack of legal uniformity in the registration and protection of security interests in these assets at the international level. An aircraft flying between multiple countries is subject to various jurisdictions, creating considerable uncertainty for lenders.

This is where the Cape Town Convention (officially, the Convention on International Interests in Mobile Equipment) and its Aircraft Protocol come into play. This international agreement, in force since 2006, was designed to mitigate these risks and revolutionize aircraft financing.

How it Works?

The Convention establishes a unified and harmonized legal framework for the creation, registration, and enforcement of security interests in aviation assets (aircraft airframes, engines, and helicopters). The key elements are:

1. International Registry: The Convention establishes an international electronic registry where creditors can register their security interests (mortgages, leases, etc.). This registry provides a centralized, public system that determines the priority of security interests, regardless of national jurisdiction. A registered security interest takes precedence over any subsequent claims, eliminating the risk of multiple creditors claiming the same asset.

2. Legal Certainty: The Convention offers lenders the assurance that, in the event of debtor default, they can recover the asset in a timely and predictable manner. It provides a range of legal remedies that can be swiftly exercised by the creditor, including asset repossession, sale, or leasing.



3. Risk and Cost Reduction: By offering lenders a lower-risk environment with greater predictability, the Convention enables them to offer more favorable financing terms. This leads to lower interest rates and increased credit availability for airlines, thereby stimulating the growth and renewal of global fleets.

The Cape Town Convention not only facilitates financing but also introduces clear and effective **legal measures** in the event of insolvency or default. This is perhaps one of the most crucial aspects of the agreement, as it significantly reduces risk for creditors and enhances confidence in transactions.



Legal Measures in Case of Default

The Convention establishes a robust framework for creditors, enabling them to swiftly and efficiently recover their assets if the debtor (the airline or private operator) fails to meet its payment obligations. The primary remedies include:

- **Right to Take Possession:** The creditor has the legal right to take possession of the asset (the aircraft or engine) covered by the security interest. This can be done without the need for a court order in certain jurisdictions, provided the contract permits it. The speed of this process is vital to minimizing losses.

- **Sale or Lease:** Once the creditor takes possession, they can sell or lease the asset to recover the debt. The Convention streamlines this process, allowing the creditor to act directly and without the delays typically encountered in national legal systems.

- **Cancellation of Registry:** The creditor may request that the relevant aviation authority in the country where the aircraft is registered cancel its registration and remove it from the registry. This is crucial, as an aircraft without registration cannot legally operate, thus preventing the debtor from using or transferring it beyond the creditor's control.



Insolvency Framework

The Convention also provides vital protection in the event that the airline or operator declares bankruptcy or enters an insolvency process. Two key concepts apply here:

- **Waiting Period:** The Convention grants the creditor the right to recover the asset after a short waiting period (typically 60 days) if the debtor fails to meet their obligations during the insolvency process. This ensures that the asset is not "trapped" in lengthy and costly bankruptcy proceedings.

- **Irrelevance of Local Insolvency Laws:** The agreement asserts that the provisions of the Convention take precedence over national insolvency laws that might obstruct the recovery of the asset.

In summary, the Cape Town Convention has transformed aircraft financing by standardizing the rules at the international level. By creating a robust and reliable security system, it not only protects lenders but also facilitates access to capital for airlines and private operators. This, in turn, has made a significant contribution to the growth and expansion of the aviation industry.



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