

CAPE TOWN CONVENTION

“INTERNATIONAL AIRCRAFT REGISTRY ESTABLISHED IN DUBLIN, IRELAND”



AVIATION LEGAL ALERT

APRIL 2006

ESTABLISHMENT OF THE REGISTRY

By recent ratification of the Aircraft Protocol to the Cape Town Convention (or formally the *Convention on International Interests in Mobile Equipment*), an international internet-based registry has been established for the filing of interests in aircraft and aircraft engines.

Since becoming open for signature in November 2001, the Cape Town Convention has been signed by 32 countries, including Canada, the U.S., France, Germany and the United Kingdom. The Convention's Aircraft Protocol required ratification by eight countries to come into force, which occurred on March 1, 2006.

The international registry is supervised by the International Civil Aviation Organization (ICAO) and is being operated out of Dublin, Ireland by Aviareto, a joint venture between SITA, an air transport IT service provider, and the Irish government:

<http://www.aviareto.aero/public/contact.php>

The international registry is a web and notice-based electronic registry system, requiring no physical documentary filing, and operating 24 hours a day, 7 days a week.

The registry is an “object-specific” registry, meaning that registrations are made against and searched by criteria such as manufacturer, model, and serial number of an aircraft object.

APPLICATION OF THE CONVENTION AND PROTOCOL

The Cape Town Convention and Aircraft Protocol apply to a transaction when **each** of the following conditions are met:

- when aircraft meet certain size and power requirements, as follows:
 - airframes certified to transport at least 8 persons (including crew) or goods in excess of 6050 lbs (2750 kilos);
 - helicopters certified to transport at least 5 persons (including crew) or goods in excess of 990 lbs (450 kilos); and,
 - aircraft engines rated to at least 550 HP or at least 1750 pounds of thrust.
- when the transaction documents (ie. involving a sale, lease or financing of aircraft) create an international interest or prospective international interest in aircraft; and,
- when the aircraft is registered in or a debtor is situate in a contracting state at the time of conclusion of the agreement creating the interest.

An *international interest* and *prospective international interest* include the following interests:

- that of a chargor under a security agreement.
- that of a lessor under a lease (title reservation)
- that of the seller under a conditional sales agreement
- a contract of sale
- amendments, assignments, subordinations and subrogations relating to international interests
- certain nonconsensual rights or interests (rights which a signatory country has identified as having priority without registration)

Parties may register a *prospective international interest* in aircraft before a transaction closes and such interests would become effective upon closing. If the transaction does not close, no rights are created or perfected. This is similar to the registration regime under the Personal Property Security Acts of Canadian Provinces and Territories. Only approved users (ie. sellers, buyers, lenders) may register interests in aircraft. An organization that wishes to apply to become an approved user must apply to the registry. Approved users, along with the general public, may search the registry to determine the priority of interests in aircraft. Professional users (ie. acting on behalf of sellers, buyers and lenders) may also be appointed to process registration of international interest in aircraft on behalf of others.

RATIONALE BEHIND THE REGISTRY

The rationale behind the international registry is reduction of risks associated with financing aircraft, allowing greater certainty to creditors and aircraft manufacturers and resulting in larger amounts of credit being made available to airlines and aircraft owners at lower costs, which in turn generates increased airline profits and spin-offs to the broader economy.

Specifically, the registry will reduce the risks of purchasing and financing aircraft by:

- allowing individuals and organizations to electronically register interests in aircraft on a “first-to-file” priority basis;
- allowing individuals and organizations to search the registry to ensure the priority of their interests; and,
- allowing for various remedies for individuals and organizations in the case of default of registered interests, including de-registration, re-possession, sale, lease and export of aircraft.

ASSOCIATED CANADIAN LEGISLATION

To give force of law to the provisions of the Convention and protocol, the Canadian federal government passed the *International Interests in Mobile Equipment (Aircraft Equipment) Act* in February 2005. Not all of the Act’s provisions have been declared into force. The Act introduces amendments to the federal *Bank Act* to remove large aircraft equipment from the *Bank Act*’s application and to direct registrations to the international registry, and also amends the federal *Bankruptcy and Insolvency Act*, *Companies’ Creditors Arrangement Act* and *Winding-up and Restructuring Act* to provide greater certainty for aviation creditors.

Provincial and territorial legislation is also required before the Convention and Protocol have force in Canada. To date, only Ontario (*International Interests in Mobile Equipment Act (Aircraft Equipment)*, 2002) and Nova Scotia (the *International Interests in Mobile Aircraft Equipment Act*) have passed legislation, although it has not yet been declared in force. In Alberta, first reading of *Bill 15: International Interests in Mobile Aircraft Equipment Act* was heard in the Legislative Assembly on February 23, 2006. Second reading was adjourned on March 9, 2006.

WHEN TO REGISTER

If the Cape Town Convention and Aircraft Protocol apply, you must register notice of your interest in the aircraft with the international registry, or your interest will be unperfected.

PRIORITY OF REGISTRATIONS

If interests which are registrable under the Cape Town Convention and Aircraft Protocol are not registered with the international registry, they will not have priority over those which are registered in the event that the Convention and Protocol apply to the transaction. In that sense, registration is mandatory if priority of interests is to be assured.

Priority in interests registered with the international registry is determined on a first to register priority basis, regardless of knowledge of a prior interest that has not been registered.

Liens and interests perfected before the effective date of the Cape Town Convention will not be impacted, but are grandfathered in, and their perfection will continue in full force and effect.

ENFORCEMENT RIGHTS

If an aircraft is located in a country that has ratified the Cape Town Convention, the enforcement rights of creditors and debtors in such country will be greatly enhanced and they may, in the event of default, and if the applicable agreements and applicable domestic law provide:

- obtain de-registration of aircraft;
- take possession or control of aircraft;
- sell or grant a lease of aircraft;
- collect or receive any income or profits arising from aircraft;
- terminate applicable agreements;
- apply for court orders to enforce applicable agreements;

OTHER APPLICABLE LAW

The Cape Town Convention and Aircraft Protocol do not replace applicable domestic law such as that relating to debtor property rights and obligations or liability in tort. It also does not override governmental regulations such as those relating to safety.

PRACTICAL EFFECTS

Practically-speaking, the effects of the Cape Town Convention and international registry are:

- that it will no longer be sufficient to conduct searches and file documents in Canada at provincial and territorial Personal Property Registries (and in the U.S. at the Federal Aviation Administration (FAA)) to perfect ownership and lien interests in aircraft (**although this still must also be done – the international registry does not replace but is supplemental to local and national registries**);
- one must also search and register interests at the international registry; and,
- aircraft agreements must address changes to the law regarding registration, assignments, subordinations, default, remedies and other rights as set out in the Cape Town Convention.

Parlee McLaws LLP is a Professional User of the International Registry and is in a position to offer registration services to our clients. We would also be happy to assist any of our clients who wish to become a registered user.

For more information please contact:

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