

Form of Cape Town Convention Closing Opinion

This revised form of the Cape Town Convention Closing Opinion

* replaces Annex E to the Practitioner’s Guide to the Cape Town Convention and the Aircraft Protocol, produced by the Legal Advisory Panel of the Aviation Working Group, and
* will be included in a revised version of the that Guide.

See footnote 1 in the Opinion for a statement of its intended use.

[*Form of Cape Town Convention Closing Opinion*][[1]](#footnote-1)

To the addressees on Schedule 1 attached hereto:

You have asked us to render an opinion in connection with the [manufacturer] [model] (manufacturer’s list airframe model [\_\_\_])[[2]](#footnote-2)[aircraft] bearing manufacturer’s serial number [\_\_\_\_] and [name of jurisdiction] registration mark [or registration number] [\_\_\_] (the “Airframe”)[[3]](#footnote-3) and [\_\_\_\_] engines, model [\_\_\_\_] bearing manufacturer’s serial numbers [\_\_\_\_] and [\_\_\_\_] (each an “Aircraft Engine”, together with the Airframe, the “Aircraft”) and specifically in relation to:

1. the Bill of Sale [between]/[from] [party] as seller [and]/[to] [party] as purchaser (the “Bill of Sale”),
2. the Lease between [party] as lessor and [party] as lessee (the “Lease”),
3. the Irrevocable De-registration and Export Request Authorisation (the “IDERA”) issued by [party] in respect of the Aircraft, naming [party] as the authorized party[[4]](#footnote-4);
4. the Security Assignment between [party] as assignor and [party] as assignee (the “Assignment”) and the related [notice to and acknowledgment of the assignment by the Lessee] / [consent of the Lessee to the assignment], and
5. the [Security Agreement] between [party] as [mortgagor][chargor] and [party] as [mortgagee] [chargee] (the “Security Agreement”),

each dated [\_\_\_\_] (documents [x] – [y], collectively, the “Transaction Documents” and each a “Transaction Document”).[[5]](#footnote-5)

 For the purpose of issuing this opinion we have reviewed the following documents [choose as applicable]:

* + 1. Each of the Transaction Documents;
		2. Evidence of registration of the Airframe in the national aircraft registry held by [aviation authority] (the “**Aviation Authority**”) in [Contracting State] (the “**Aircraft Registry**”);
		3. The priority search certificates issued by the Registrar on [date] at [time] in respect of the [Airframe]/[Aircraft Engine] (the “**Priority Search Certificates**”);[[6]](#footnote-6)
		4. The Contracting State Certificate issued by the Registrar on [date] at [time] in respect of the [Contracting State] (the “**Contracting State Certificate**”);
		5. [all other documents, approvals and consents of whatever nature and wherever kept which were, in our judgment and to our knowledge, necessary or appropriate to examine to enable us to give the opinions expressed below.]

For the purpose of this opinion the “**Convention**” means the Convention on International Interests in Mobile Equipment signed in Cape Town on 16 November 2001 and the “**Protocol**” means the Protocol to the Convention on Matters Specific to Aircraft Equipment, as each has been adopted by [Contracting State] pursuant to [Law No. \_\_\_\_]. The Convention and the Protocol are read and interpreted together as a single document as required by Article 6(1) of the Convention and reference to the “Convention” in this opinion, where necessary or appropriate, includes the Protocol.

Defined terms used herein (whether or not capitalized)[[7]](#footnote-7) and not otherwise defined in this opinion shall have the meanings given to them in the Convention.[[8]](#footnote-8)

 Our opinions set out below are subject to the assumptions and qualifications attached on Schedule 2. Based on the documents listed above and the relevant laws of [Contracting State], we are pleased to advise that in our opinion:

\*Opinions to be given by International Registry Counsel\*

* + - * 1. Based solely on the Priority Search Certificate[s], [an international interest[s]]/[a sale]/[an assignment of international interest] in favour of [party] related to [insert the relevant object, airframe and/or engines] has[have] been registered with the International Registry in accordance with the Convention [and the requirements of the Aircraft Registry][[9]](#footnote-9) as of [the date and time of registration of international interest[s], contract of sale or assignment shown on the Priority Search Certificates].[[10]](#footnote-10)
				2. Based solely on the Priority Search Certificate[s], [the right to discharge the registration of the [international interest[s]] / [assignments] related to [insert the relevant Transaction Documents] has[have] been transferred by [party] as transferor to [party] as transferee and registered with the International Registry as of [the date and time of registration of the transfer of the right to discharge shown on the Priority Search Certificate[s]].[[11]](#footnote-11)
				3. No further registration is required or advisable under the Convention for the sale constituted by the Bill of Sale, the international interest[s] and associated rights constituted by the [Lease]/[Security Agreement] or the assignment of the international interest[s] and associated rights constituted by the Assignment to be effective against third parties.[[12]](#footnote-12)

\*Opinions to be given by Counsel in the State of Registry/Jurisdiction where Debtor is Situated\*

* + - * 1. The Convention and the Protocol entered into force in [Contracting State] on [date] and have the force of law.
				2. [party] will be entitled to the rights and remedies available under the Convention, taking account of any declarations made by [Contracting State] and the provisions of Article 14 of the Convention to a holder of an international interest that are agreed under the [Security Agreement]/[Lease] [and available to a holder of an assignment of international interest in respect of the assigned international interest[s] and associated rights under the Assignment].[[13]](#footnote-13)
				3. The rights and interests of [party][[14]](#footnote-14) with respect to the [Airframe]/[Aircraft Engine] pursuant to the [international interest[s]]/[contract of sale]/[assignment] constituted under the [insert relevant Transaction Document] will be subject only to:[[15]](#footnote-15)
1. the rights and interests of the Lessee in the [Airframe]/[Aircraft Engine] pursuant to the Convention [and] [the quiet enjoyment provisions set out in [insert relevant Transaction Document]],
2. any pre-existing right or interest which enjoyed under the law of [Contracting State] before the effective date of the Convention a priority higher than an international interest[s], assignment of associated rights or contract of sale constituted under the [insert the relevant Transaction Document], provided that if the Convention is applicable to such pre-existing right or interest, the priority of such pre-existing right or interest will only be retained if it is registered on the International Registry within the time frame specified by [Contracting State][[16]](#footnote-16);

1. any non-consensual rights or interests included in the following categories[[17]](#footnote-17) covered by [Contracting State]’s current declaration under Article 39 of the Convention[[18]](#footnote-18): [insert categories of non-consensual rights or interests][[19]](#footnote-19); and
2. the right of [Contracting State], or any state entity, intergovernmental organisation or other private provider of public services described in [Contracting State’s] declaration, or of any other Contracting State which may make such a declaration, to arrest or detain the Airframe or any Aircraft Engine under the laws of such Contracting State for payment of amounts owned relating to those services in respect of that or another airframe.
	* + - 1. The IDERA is in the form required by the Convention and the Aviation Authority[[20]](#footnote-20) and has been [submitted for recordation to] [recorded by] the Aviation Authority.[[21]](#footnote-21)
				2. [After the IDERA has been recorded] [Considering that the IDERA has been recorded] by the Aviation Authority, the Aviation Authority shall be obligated, subject to any applicable safety laws and regulations, to honour a request for de-registration and export based on the IDERA, if: (a) the request is properly submitted by the authorised party named in the IDERA; and (b) such authorised party certifies to the Aviation Authority[[22]](#footnote-22) that all registered interests ranking in priority to that of the creditor in whose favour the authorisation has been issued have been discharged or that the holders of such interests have consented to the de-registration and export.[[23]](#footnote-23)
				3. [Contracting State] has adopted Alternative A[[24]](#footnote-24) of Article XI of the Protocol and has declared the waiting period (after an insolvency-related event) of [ ] days under Article XI(2). The insolvency administrator or the debtor, as applicable, is obligated to give possession of the Aircraft to [party] [or, if in doubt, the “creditor entitled to such possession”], no later than the end of such waiting period, subject to the right of the insolvency administrator or the debtor to retain possession of the Aircraft after meeting the requirements of Article XI(7) of the Protocol.
				4. [Contracting State] is the debtor’s primary insolvency jurisdiction as defined in the Convention[[25]](#footnote-25).
				5. In accordance with the declaration of [Contracting State] under Article XXXI of the Protocol,[[26]](#footnote-26) [as well as the national law of [Contracting State], the law of [insert name of jurisdiction][[27]](#footnote-27) as chosen by the parties to govern [insert the relevant Transaction Documents][[28]](#footnote-28) in whole or in part will be upheld as a valid choice of law with respect to the contractual rights and obligations [and non-contractual rights and obligations][[29]](#footnote-29) of the parties under such agreements in any action in the courts of [Contracting State].[[30]](#footnote-30)
				6. Pursuant to the written waiver of sovereign immunity between the parties, [party] is not entitled to sovereign immunity from jurisdiction in connection with the Transaction Documents to which it is a party in the courts of [Contracting State] with respect to such claims or requests for relief as are specified in Articles 42 and 43 of the Convention, respectively, or relating to enforcement of rights and interests relating to the [Airframe]/[Aircraft Engine].[[31]](#footnote-31)
				7. The written agreement between [ parties] contained in [insert the relevant Transaction Document] that the courts of [Contracting State] are to have [exclusive]/[non-exclusive] jurisdiction in respect of any claim brought by either of them under the Convention will be recognized under the laws of [Contracting State].[[32]](#footnote-32)

\*Opinions to be given by Governing Law Counsel\*

* + - * 1. The [Bill of Sale]/[Lease]/[Security Agreement] is a [contract of sale]/[leasing agreement]/[security agreement] as defined in the Convention. [[33]](#footnote-33)
				2. The [Lease]/[Security Agreement] is effective to constitute an international interest[s] in the [Airframe]/[Aircraft Engine].[[34]](#footnote-34)
				3. The [Bill of Sale] is effective to constitute a sale with respect to the [Airframe]/[Aircraft Engine].[[35]](#footnote-35)
				4. The Assignment is effective to constitute an assignment of associated rights and is effective to transfer to [party] as assignee the related international interest[s] of [party] as assignor relating to the [Airframe]/[Aircraft Engine].[[36]](#footnote-36)

Schedule 2

Assumptions and Qualifications

1. [insert firm’s standard qualification concerning equity][[37]](#footnote-37)
2. This opinion is limited to matters of the law of [Contracting State]. We express no opinion with respect to the law of any other jurisdiction.
3. The opinions expressed herein shall be effective only as of the date of this Opinion. We do not assume responsibility for updating this Opinion as of any date subsequent to the date of hereof.
4. We do not opine on any matter in relation to the International Registry or its workings, systems, functionality and capability or the accuracy of any certificate or other document generated and provided by the International Registry or whether or not the International Registry or its staff has properly recorded and processed all information provided to it.
5. We express no opinion as to the presence, absence, validity or invalidity of any purported registrations that have been made without using International Registry provided object identification information.[[38]](#footnote-38)
6. We have assumed:
	1. the genuineness of all signatures on the Transaction Documents;
	2. the authenticity and completeness of the facsimiles or PDF copies of the Transaction Documents delivered to us;
	3. that each of the Transaction Documents that is not governed by the laws of [Contracting State] is valid and binding under the laws by which it is expressed to be governed; and
	4. that each party has taken all corporate and other necessary steps to authorise the execution of the Transaction Documents to which it is a party.[[39]](#footnote-39)
7. We have further assumed:
	1. that the information contained in the Priority Search Certificates is complete, current and accurate in all respects;
	2. that each Priority Search Certificate contains all the registered information and data on the International Registry in connection with the [Airframe]/[Aircraft Engine] to which it relates.
	3. any opinion as to the registrations with the International Registry is based on information received from the International Registry on the date of and as set out in the relevant Priority Search Certificate;
	4. that the conditions to full effectiveness of any registrations made as prospective have been met and such interests are no longer prospective and that the prospective registrations of the international interest[s], assignments of associated rights and sales constituted by the relevant Transaction Documents were still current immediately before the relevant international interests were constituted under the Convention and pursuant to the relevant Transaction Documents];[[40]](#footnote-40)
	5. that each of the following [pre-existing] registrations, which are indicated on the Priority Search Certificates reflect properly constituted international interests, assignments, contracts of sale, or agreements to subordinate registered interests, as applicable: [list relevant file numbers];[[41]](#footnote-41)
	6. that [each of] the [seller]/[lessor]/[chargor] had the power to dispose of the [Airframe]/[Aircraft Engine] by way of the [Bill of Sale]/[Lease]/[Security Agreement];
	7. that at the time of the execution and coming into effect of the [Bill of Sale]/[Lease]/[Security Agreement], [party] is situated in [Contracting State][[42]](#footnote-42) and [Contracting State] is a Contracting State [We note that [party] is incorporated in [Contracting State ]];
	8. the free-text description of the [describe relevant object] is accurate and complete;[[43]](#footnote-43)
	9. the [Airframe]/[Aircraft Engine] is correctly identified and described by manufacturer’s serial number, name of manufacturer and generic model designation in each of the relevant Transaction Documents;
	10. the [Airframe]/[Aircraft Engine] is an aircraft object;
	11. the [Bill of Sale]/[Lease]/[Security Agreement]/[Assignment] is a [contract of sale]/[leasing agreement]/[security agreement]/ [assignment] with respect to the [Airframe]/[Aircraft Engine]/[associated rights under the [Lease]] as determined by the laws by which the relevant agreement is expressed to be governed[[44]](#footnote-44);
	12. [the Airframe was, at the time of execution and coming into effect of [Bill of Sale]/[Lease]/[Security Agreement]registered in [Contracting State] or at the time of execution and coming into effect of [Bill of Sale]/[Lease]/[Security Agreement]there is an agreement for registration of the Airframe in [Contracting State]][[45]](#footnote-45);
	13. that the Contracting State Certificate description of declarations made by [Contracting State] on the date when each such declaration is recorded are accurate in all respects; and
	14. no other agreements have been entered into which would constitute international interests or determine the priority of interest of any of the parties other than the Transaction Documents.

1. This generic form is intended to provide guidance to a firm developing its approach to issuing opinions on the Cape Town Convention, with the opining firm determining if, and to the extent to which, such guidance should be followed taking into account its established policies and practices, role in the transaction, the applicable law, and any other relevant circumstances of its jurisdiction. It is not intended to modify customary assumptions and qualifications regarding national law that may be required by the opining law firm in order to give the opinions set forth herein. [↑](#footnote-ref-1)
2. The “manufacturer’s list” airframe and engine models are intended to refer to the generic model names prepared by the various manufacturers and which are available in the drop-down lists on the International Registry. These model descriptions should be used when making registrations on the International Registry, but are often different from those contained in the Transaction Documents. Some practitioners refer to these drop-down list model descriptions as “generic” or “Cape Town” model descriptions. As discussed in note 42 below, if an airframe, engine or helicopter model is not found on the drop-down lists, then a free text model description is required. If a free text description is used which is different from the model description in the Transaction Documents, then “manufacturer’s list” should be replaced with “free text” in this paragraph of the opinion to clarify which model description is being used for registration purposes. [↑](#footnote-ref-2)
3. If the opinion is given in respect of a helicopter then all references to the “Airframe” should be changed to the “Helicopter” and special attention should be given to the treatment of helicopter engines. For further information on helicopter engines see Part III(E) of this Practitioners’ Guide. [↑](#footnote-ref-3)
4. If a certified designee of the authorized party under the IDERA is appointed, a reference to the appointment document should be added to this list of Transaction Documents. [↑](#footnote-ref-4)
5. For the purposes of the Convention opinions, this form opinion mentions a bill of sale, a lease, an IDERA, a security assignment and a mortgage, however, this list might include other documents such as a conditional sale agreement, a security agreement (which could include both a mortgage and a security assignment created under the same document), a novation and/or a subordination agreement. These additional Transaction Documents should be included, to the extent applicable, in the opinions issued by the suggested opining law firm in respect of the other relevant Transaction Documents identified in this form opinion. A lease novation, since it is essentially a new lease, would create an international interest in the same way as a lease. [Official Commentary, Goode (n 3) para 2.43-2.44]. The opining law firm should take care to ensure that the relevant agreement is a true novation (as opposed to an assignment) based upon the terms of the Convention. In some cases documents purporting to be novations are actually assignments and in other cases documents with names like 'assignment and assumption agreement' may be novations. The Official Commentary states that the distinction between novations and assignments is to be determined by reference to the Convention and not national law, however, the opining law firm cannot ignore the possibility of a legitimate dispute in the future concerning characterisation of an agreement as a novation or an assignment. Consequently, this is an opinion the opining law firm may want to give on a reasoned basis, if at all, since it may be subject to more uncertainty or inconsistent determinations. If no opinion is possible then an assumption may be appropriate. [↑](#footnote-ref-5)
6. The opining law firm must obtain and review priority search certificates from the Registrar prior to the issuance of the opinion. Attaching priority search certificates to opinions is optional, in the discretion of the opining law firm. [↑](#footnote-ref-6)
7. Opinions frequently capitalize all terms that are defined in the Convention and the Protocol (e.g., 'International Interests'). This is a natural tendency, however, most of the terms used in the Convention and Protocol are not capitalized and generally it is recommended that opining law firms follow the capitalization usage of the Convention and Protocol as closely as possible. Transaction documents and labels for parties such as 'Security Trustee' will usually be capitalized. [↑](#footnote-ref-7)
8. A longer variation would be: 'The following terms [modify as appropriate] used in this opinion shall have the meaning given to them in (or, as appropriate, shall be construed in accordance with) the Convention: 'assignment', 'associated rights', 'contract of sale', 'creditor', 'debtor', 'Depositary', 'International Registry', 'international interest', 'leasing agreement', 'prospective assignment', 'prospective international interest', 'prospective sale', 'Registrar', 'registry authority', 'sale', 'security agreement' and 'title reservation agreement'. 'Contracting State' shall mean those countries which have ratified or acceded to the Convention; 'Contracting State search certificate' and 'priority search certificate' shall have the meaning given to each of them in the Regulations issued by the Supervisory Authority pursuant to Article 17 of the Convention and Article XVII of the Protocol.' The shorter formulation used in the text will probably be adequate in most opinions. [↑](#footnote-ref-8)
9. This should be included in particular in Contracting States where AEP Codes are required. Opining law firms should note, however, that this portion of the opinion will only be able to be rendered by international registry counsel to the extent that such counsel is also counsel in the State of Registry and is able to confirm that all AEP Code requirements have been met. [↑](#footnote-ref-9)
10. Priority Search Certificates confirm the type of interest registered, the relevant object, the names of parties and dates. Priority Search Certificates do not mention the name of the underlying Transaction Documents. [↑](#footnote-ref-10)
11. If rights to discharge have not been transferred this paragraph would affirm the name of the party holding such rights, which would be the holder of the international interests. [↑](#footnote-ref-11)
12. If the opinion is being rendered prior to registrations having been made then the words 'Upon the registration of . . . ' should be introduced at the beginning of each of these affirmations. Opinions are usually rendered after registrations have been made and priority search certificates have been issued and reviewed. The value of an opinion to a party to a transaction will be considerably enhanced if the registrations have been made. [↑](#footnote-ref-12)
13. If the Transaction Documents include a subordination agreement then a description of the international interests that have been subordinated should be included and the following additional opinion should be considered by the opining law firm: ‘No further registration is required or advisable under the Convention for the subordination of [international interest B] to [international interest A] under the [Subordination Agreement], by or with the consent in writing of [the person whose interest has been subordinated] and consequently [international interest A] has priority over [international interest B] under the Convention.’ [↑](#footnote-ref-13)
14. In most cases the relevant party will be a security trustee or mortgagee or, in the case of a lease with no external financing, the lessor. If more than one party holds registered international interests this paragraph should be repeated and an indication of the party with priority should be included. [↑](#footnote-ref-14)
15. If the priority search certificates reveal interests registered prior to the interests of the ultimate creditor, these should also be noted as having priority. A formulation of this notation is “the rights and interests of any persons who are evidenced as having a registration in relation to the [Airframe]/[Aircraft Engine] that is prior to the international interest[s] constituted by the [Security Agreement]/[Lease], the assignment of associated rights constituted by the Assignment and the contract of sale constituted by the Bill of Sale on the priority search certificates.” [↑](#footnote-ref-15)
16. If applicable in the relevant Contracting State, a statement to this effect should be included in the opinion. [↑](#footnote-ref-16)
17. If possible a description of the categories should be included. [↑](#footnote-ref-17)
18. Article 39 of the Convention allows a Contracting State to grant priority over registered interests to certain unregistered interests. The most common types of categories are navigational charges and charges for use of airports. For a detailed discussion of Article 39 see John Pritchard and David Lloyd, ‘Analysis of Non-Consensual and Interests under Article 39 of the Cape Town Convention’ (2013) 2 *Cape Town Convention Journal* 3-40. [↑](#footnote-ref-18)
19. An alternative form of this opinion would be “the non-consensual rights or interests included in those categories covered by [Contracting State’s] declaration that under its law have priority over an interest registered with the International Registry against the [Airframe] / [Aircraft Engine].” [↑](#footnote-ref-19)
20. Some aviation authorities have imposed certain formalities such as signatures of witnesses, notarization, legalization or translations. The authors of this Practitioners’ Guide do not purport to comment on the necessity of such additional formalities, however, if such formalities apply in a particular jurisdiction the opining law firm should ensure that they have been followed. [↑](#footnote-ref-20)
21. This opinion should only be given by counsel in the State of Registry of the Aircraft. [↑](#footnote-ref-21)
22. The Protocol stipulates that this certification is necessary only when the relevant aviation authority requires it. Therefore the opinion law firm should verify the rules that the aviation authority in its jurisdiction has adopted and adjust the language of this opinion if necessary. [↑](#footnote-ref-22)
23. IDERAs may be used in Contracting States that have made a declaration pursuant to Article XXX(1). The language of this model opinion refers to de-registration in accordance with the Protocol, thus incorporating the terms and limitations of Articles IX and XIII of the Protocol, such as considerations of safety laws and regulations. Some opining law firms may wish to expressly reference applicable limitations. If the relevant Contracting State has promulgated regulations for the enforcement of IDERAs and certified designation letters, a brief description of the provisions of the regulations could be included. For example, regulations in some jurisdictions have been promulgated which stipulate that the Aircraft Registry will deregister an aircraft within a certain number of days from receipt of an application from an authorised party named in an IDERA or, if applicable, its designee. [↑](#footnote-ref-23)
24. To date only one jurisdiction, Mexico, has adopted Alternative B. Therefore we have not included a suggested formulation for Mexican opinions. Experienced law firms in Mexico are familiar with Alternative B. Also, some Contracting States may choose to codify an Alternative A equivalent in their national law rather than adopting Alternative A. In such instances, an equivalent local law opinion may be sought. [↑](#footnote-ref-24)
25. Pursuant to Article I(2)(n) of the Protocol, the “primary insolvency jurisdiction” is the Contracting State in which the centre of the debtor’s main interests is situated. Furthermore, the centre of the debtor’s main interest is deemed to be the place of the debtor’s statutory seat or, if there is none, the place where the debtor is incorporated or formed, unless proved otherwise. For further explanation see Official Commentary, Goode (n 3) para 3.103. [↑](#footnote-ref-25)
26. The opining law firm should verify that this declaration was made. [↑](#footnote-ref-26)
27. This should be included only if national law supports freedom of parties to elect national law. [↑](#footnote-ref-27)
28. Article VIII(2) of the Protocol refers to ' . . . to an agreement, or a contract of sale, or a related guarantee contract or subordination agreement . . . ' The Convention (Article 1(a)), defines ‘agreement' as 'a security agreement, a title reservation agreement or a leasing agreement'. Thus in principle any of these transaction documents could be inserted here. [↑](#footnote-ref-28)
29. Insert if Regulation (EC) No. 864/2007 – the law applicable to non-contractual obligations (Rome II) – is applicable in the Contracting State. [↑](#footnote-ref-29)
30. This opinion or a variation of it is nearly always requested by opinion recipients. [↑](#footnote-ref-30)
31. This opinion should be given solely in cases where a party has sovereign immunity and has waived such immunity. Footnote 532 of this Practitioners’ Guide clearly summarizes diligence the opining law firm would need to conduct before giving this opinion. 'In order to make this opinion, the opining law firm must confirm that the waiver of sovereign immunity from jurisdiction of the courts specified in Articles 42 and 43 of the Convention is in writing and contains a description of the [Airframe]/[Aircraft Engine]. The opinion may be given by an opining law firm in the Contracting State in which the applicable sovereign is located despite the absence of a local statute on waiver of sovereign immunity since the Convention should override national law.’ [↑](#footnote-ref-31)
32. The opining law firm should refer to Article 42 of the Convention. [↑](#footnote-ref-32)
33. The opining law firm should give consideration to the definition of “contract of sale” set forth in Article 1 of the Convention when determining which Transaction Document(s) to include in this opinion. If this opinion is not given by counsel in the jurisdiction of the governing law of the relevant Transaction Document then opinion (1) may require the assumption in paragraph (G)(k) of Schedule 2. In jurisdictions where “true lease” and similar opinions are not customarily given, this opinion would instead be formulated as an assumption. [↑](#footnote-ref-33)
34. If this opinion is not given by counsel in the jurisdiction of the governing law of the relevant Transaction Document then opinion (2) will require the assumption in paragraph (G)(k) of Schedule 2. Note that the opining law firm will also need to confine this opinion to the Convention as ratified by the jurisdiction in which the opining law firm practices. [↑](#footnote-ref-34)
35. Since a “sale” is analogous to an “international interest”, this opinion should reference a “sale” and not a “contract of sale”. See Official Commentary, Goode (n 3) paras 5.21 and 5.30. Note that the Transaction Document relevant for this opinion is the operative title transfer document. If this opinion is not given by counsel in the jurisdiction of the governing law of the relevant Transaction Document then opinion (3) will require the assumption in paragraph (G)(k) of Schedule 2. Note that the opining law firm will also need to confine this opinion to the Convention as ratified by the jurisdiction in which the opining law firm practices. [↑](#footnote-ref-35)
36. Note that Article 33(1) of the Convention (see also Article XV of the Protocol) provides that written notice of an assignment must be given to the debtor, the notice must identify the associated rights and the debtor must consent in writing to the assignment. The consent may be given in advance, e.g. in the lease agreement, and the assignee need not be identified in such consent. If this opinion is not given by counsel in the jurisdiction of the governing law of the relevant Transaction Document then opinion (4) will require the assumption in paragraph (G)(k) of Schedule 2. [↑](#footnote-ref-36)
37. Parts (A) – (D) are generic and not specifically related to the Convention and Protocol. They have been included merely to remind opining law firms to consider including some form of each of these qualifications. Counsel should also include any other necessary qualifications in accordance with their customary practice. [↑](#footnote-ref-37)
38. Sections 5.1 and 5.2 of the 7th Edition of the Regulations and Procedures for the International Registry require the use of International Registry-provided object identification information unless no such information has been provided. If no such information has been provided for one or more of the aircraft objects that are the subject of this opinion, the assumption in paragraph G(h) below should be included and this qualification revised accordingly. [↑](#footnote-ref-38)
39. If the opinion includes a corporate authorisation opinion then this assumption should be adjusted accordingly. [↑](#footnote-ref-39)
40. Occasionally law firms are asked to opine on the validity of prospective international interests or other prospective filings. Such opinions can be problematic, in part because priority search certificates make no distinction between registrations of prospective interests and registrations of interests. It is likely easier for the opining law firm and more useful to opinion recipients to receive opinions in respect of registered interests. The practice of registering prospective international interests over helicopter engines is widespread due to uncertainties as to whether a helicopter engine is an object for purposes of the Convention and the Protocol, as described in more detail in this Practitioners’ Guide, Part III(E). [↑](#footnote-ref-40)
41. Whenever an opining law firm finds pre-existing registered interests that it is not discharging the opining law firm must assume that those interests were correctly constituted and filed. This qualification should not extend to interests that are the subject of the opinion. [↑](#footnote-ref-41)
42. This assumption should only be made if the debtor is located in a Contracting State other than the Contracting State in respect of which the opining law firm is issuing the opinion. [↑](#footnote-ref-42)
43. Most major aircraft and aircraft engine manufacturers have registered airframes, helicopters and aircraft engines on the International Registry, however, a few do not. Registering interests over such objects requires the professional user entity to type a description of the object’s manufacturer and model. At first glance this would seem to be a simple exercise, however, in practice there are many ways to type this information. For example some manufacturers use stylized upper case or lower case letters and many objects may have suffixes added to their model designations (in upper or lower case variations). Just the inclusion or exclusion of a hyphen can alter a search result. Therefore lawyers opining on registrations of free-texted objects should include an assumption for the description of that object. If the holder of the interest is an entity engaged in regular financing of similar objects it may have a pre-established policy concerning description of the object. The opining law firm should always seek the instructions or recommendations of the holder of the interest. [↑](#footnote-ref-43)
44. This assumption will be necessary if the opining law firm is not opining in respect of the governing law of the relevant Transaction Documents. This assumption may also be included in lieu of the equivalent opinion in those jurisdictions where it is not customary to issue “true lease” or similar opinions. [↑](#footnote-ref-44)
45. This assumption will be necessary if the opining law firm is not opining on the registration of the Airframe in the opining law firm’s jurisdiction and the registration of the Airframe is the sole connecting factor in respect of the relevant interest. [↑](#footnote-ref-45)