



International Cape Town Convention Moot Court (CTC Moot Court)

Under the auspices of the Cape Town Convention Academic Project

The following training videos have been prepared by Norton Rose Fulbright LLP exclusively for use by participants in the CTC Moot Courts

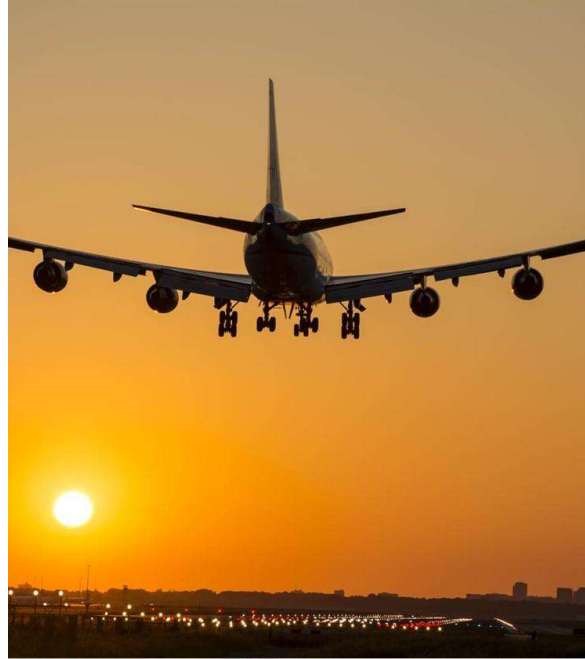
	Topics	Zoom recording links
1.	Essentials of aircraft finance and leasing	Essentials
2.	Aircraft Lease Agreements	Leases
3.	The Cape Town Convention	Cape Town Convention
4.	Advance relief under the Cape Town Convention	Advance Relief

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Essentials of aircraft finance and leasing

Kenneth Gray
Consultant

Norton Rose Fulbright LLP



Aircraft finance

What makes it so different?

- Pre-pandemic
- Volume
 - Over 1750 new jets/turboprops delivered annually
 - \$143bn cost
 - \$50 bn refinancing in secondary market
- Future value
- Remarketability
- Price financed
- Inherent internationality
- Profitability of airlines



Aircraft finance cont/d

2020 - the pandemic

- Financial impact on airlines, lessors and banks
- Liquidity crunch for airlines
- Defaults
- Restructurings
 - Domestic
 - Cross-border



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COVID-19: 2022

- 1450 new Airbus and Boeing aircraft deliveries
- Delivery queues for new aircraft

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Russia/Ukraine

- Impact of sanctions
- Re-registration of aircraft
- Over \$50bn
- Impact on Chicago Convention, Cape Town Convention
- Fuel prices
- Cost of living

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Lending vs Leasing

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Aircraft finance and leasing

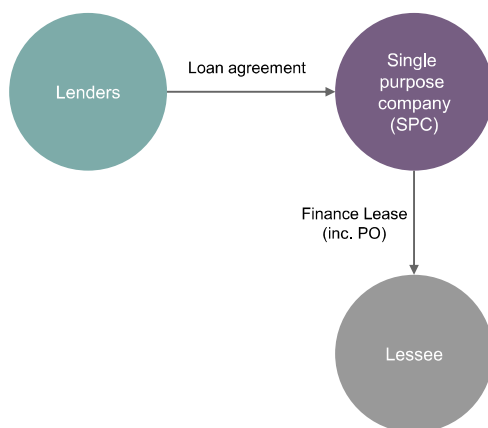
- What are lenders' and lessors' principal concerns?
- Credit risk
- Security
 - Over the aircraft
 - Over the cashflow
- Economic value
- Enforceability
- Timeframe
- Remarketability



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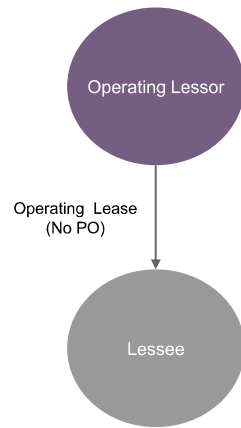
The basic structure: finance lease for an airline



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The basic structure: operating lease for an airline



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Finance leases

- Investment – acquisition of asset by lessee
- E.g. full pay out hire purchase agreement
- Medium to long term
- Finance lessor is a credit institution
- Looking to rentals purely to amortise acquisition cost



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Operating leases

- Lessee acquires no economic interest in the aircraft
- Security deposits
- Maintenance reserves
- Return conditions
- Operating lessor is a trading company
- Not looking to rentals purely to amortise acquisition cost



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Registration - Chicago Convention

- International Convention on Civil Aviation, 1944
- Set up ICAO
- Article 17: Aircraft have the nationality of the State in which they are registered
- Article 18: An aircraft cannot be validly registered in more than one State, but its registration may be changed from one State to another
- Article 19: The registration or transfer of registration of aircraft in any Contracting State shall be made in accordance with its laws and regulations



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Why does registration matter?

- Regulatory authority
- Maintenance, crewing, operational supervisory role
- AOC
- EU Banned List
- Security
- Aircraft may only be registered in one jurisdiction at a time
- Deregistration
 - At request of registered person
 - By law
 - Deregistration Powers of Attorney
 - Cape Town Convention IDERAs
 - Irrevocable Deregistration and Export Request Authorisation
 - Political risk

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Basics of a lease

Transfer of possession

For a fixed term

Consideration

Quiet enjoyment

Default



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Lessor's rights following an event of default

- Terminate the lease
- Repossess and deregister the aircraft
- Claim damages from the lessee
- Moratoria
- Chapter 11 in the US
- Alternative A under the Cape Town Convention



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Maintenance of value

- Why do lessors care about the value of the leased aircraft?
 - Finance lessor – security
 - Operating lessor – asset on its balance sheet



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Maintenance of value

- What constitutes the value of an aircraft?
 - Model and variant
 - Engines
 - Fuel efficiency
 - Age and useful life
 - Lease attached
 - ESG issues
 - Maintenance costs
 - Manufacturer support



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Maintenance of value

- What constitutes the value of an aircraft?
 - Physical condition
 - Maintenance, repair, operation
 - Freedom from liens
 - Registration status
 - Manufacturer's warranties
 - Manuals and technical records
 - Insurance
 - Return conditions



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Structure and contents of an aircraft lease agreement

Kenneth Gray
Consultant

Norton Rose Fulbright LLP



Agenda

- Different clauses and why they are there
- The timeline
 - Before delivery
 - Delivery
 - During the Lease Term
 - Termination/expiry
 - Unlimited by time



Basic of a lease

Transfer of possession

For a fixed term

Consideration

Quiet enjoyment

Default



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Finance leases vs Operating leases

Finance lease

- Financing ultimate acquisition of aircraft by lessee
- e.g. full pay out hire purchase agreement
- A credit operation
- For lessor, aircraft is *security*

Operating lease

- Lessee only pays for the right to use the aircraft
- No economic interest
- A trading operation
- For lessor, aircraft is *asset*

Definitions and Interpretation

For example:

- Engine vs engine

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Aviation finance webinar – Structure and contents of a lease



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Representations and warranties

- What is a representation?
- Statement as to question of fact or of law
- Made by the lessee
- To induce the lessor to enter into the agreement
- Establish an agreed legal and factual framework

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Aviation finance webinar – Structure and contents of a lease



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Conditions precedent

These are conditions which must be satisfied before the lessor becomes obliged to lease the aircraft to the lessee

- Corporate documents
- Legal opinions
- Cape Town registrations
- Deregistration Powers of Attorney
- IDERAs



Lessor's warranty – Quiet enjoyment



"The Lessor warrants and agrees that, provided that no Termination Event has occurred and is continuing, the Lessor shall not, through its own acts, interfere during the Lease Period with the use, possession and quiet enjoyment of the Aircraft by the Lessee."

Delivery

- Inspection and delivery process
- New and second hand aircraft
- "As is, where is"



Rent



Fixed vs floating rate

"Net lease"

Lessee responsible for maintenance, insurance, property taxes etc..

Rent – hell or high water

- Obligation to pay rent absolute and unconditional
- No set-off or counterclaim
- Unavailability, unairworthiness of aircraft etc..
- Breach by any party of its obligations under the lease
- Insolvency of a party
- Lack of authorisation of the Lease Agreement



Indemnities

- Third party indemnity
- Tax indemnity

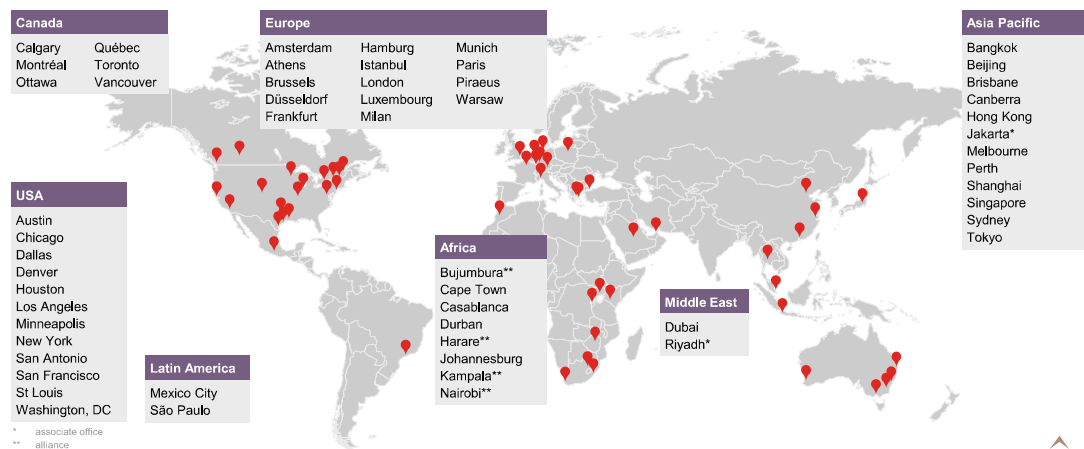


Undertakings

- Corporate
- Information on aircraft
- Liens
- Maintenance, repair, operation (including maintenance reserves)
- Sub-leasing
- Cape Town Convention
- Sanctions



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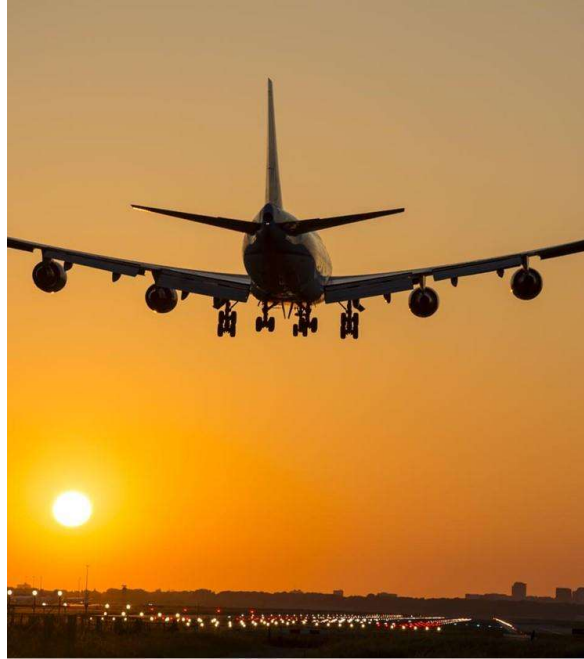
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Cape Town Convention Advance Relief

Kenneth Gray
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Advance relief under the CTC

- What does it consist of?
- Why is it needed?
- When is it available?
- The duties of a court
- What courts have jurisdiction?
- Consequences for deregistration and export



Article 13 CTC

- Relief pending final determination of a claim
- Speedy relief in the form of such one or more of the following orders as the creditor requests:
 - preservation of the object and its value;
 - possession, control or custody of the object;
 - immobilisation of the object; and
 - lease or, except where covered by sub-paragraphs [above], management of the object and the income therefrom
- Subject to agreement “at any time” by debtor
- Contracting State may opt out

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Article X Aircraft Protocol

- “speedy” ...means within such number of working days ... is specified in a declaration made by the Contracting State in which the application is made
- Additional relief:
 - sale and application of proceeds [of the aircraft object]
- Subject to agreement “at any time” by debtor
- Contracting State must opt in

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Why is advance relief needed?

- Aircraft are rapidly depreciating assets
- Creditors could be deprived of the asset and of the right to generate income pending dispute resolution

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When is advance relief available?

- Creditor must adduce evidence of a default by a debtor
- “The debtor and the creditor may at any time agree in writing as to the events that constitute a default” – Art 11 CTC
- Burden of proof of a default: “Sufficient evidence of default is adduced to enable the court, having regard to the need for prompt action to protect the creditor’s interests, to conclude that it is proper to grant the relief sought” (OC para 4.117)

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Duties of the court

- Court has no discretion as to whether to grant relief
- Balance of convenience irrelevant
- Likelihood of success irrelevant
- Article 13.2 CTC: “court may impose such terms as it considers necessary to protect [the debtor]”
- General Principle: Local procedural law must be applied consistently with substantive provisions of CTC
- Article X.5 AP: The creditor and the debtor..... may agree in writing to exclude the application of Article 13(2) of the CTC
 - Opt-in provision

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Jurisdiction

What courts have jurisdiction to grant advance relief?

- Courts of a Contracting State chosen by the parties (Art 42 CTC)
 - Exclusive jurisdiction if so agreed, subject to below
- Courts of the Contracting State on the territory of which the object is situated (Article 43 CTC)
 - For remedies specified in Arts 13.1(a), (b), and (c) CTC
- Courts of a Contracting State on the territory of which the debtor is situated (Article 43 CTC)
 - For remedies specified in Arts 13.1 (d) CTC and X.3 AP
- Courts of a Contracting State which is the State of Registry

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Jurisdiction – Worked Example

- Lessor in Ireland leases an aircraft to Lessee situated in Malaysia
- Aircraft is registered in Vietnam
- Lessor and Lessee have agreed courts of England have exclusive jurisdiction
- Lessee defaults in paying rent
- Lessor seeks interim relief by way of an order for the possession, control and custody of the aircraft (Art 13.1(b) CTC)
- Aircraft is in Indonesia
- Courts of England, Vietnam and Indonesia have jurisdiction
- Lessor obtains the order in England
- What rights does the Lessor then have in Vietnam, Indonesia and Malaysia?

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Deregistration – court route

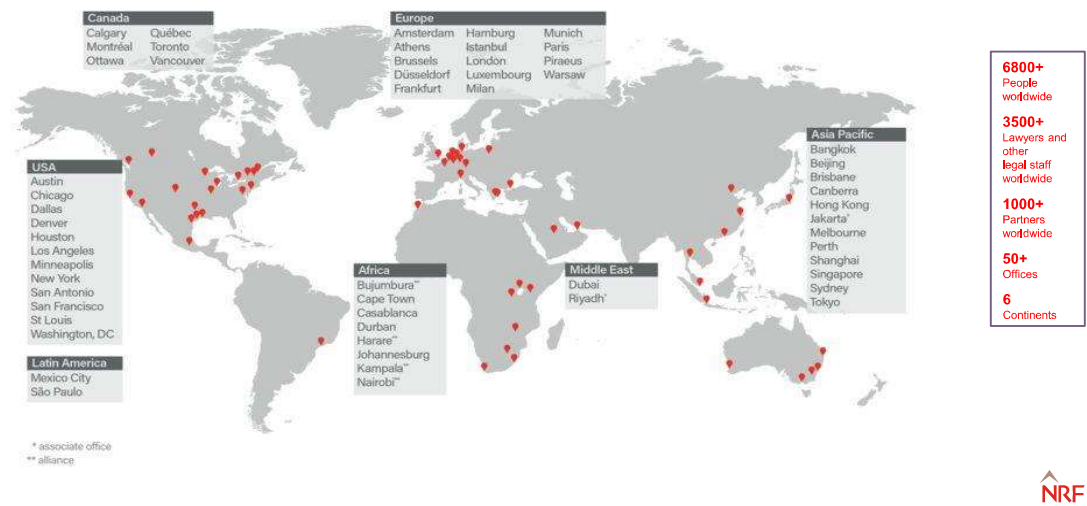
- Article X.6 (a) AP
- Remedies of deregistration and export must be made available by relevant authorities
- No later than five working days after the creditor notifies such authorities that the relief specified in Article [13.1 CTC] is granted; or
- In the case of relief granted by a foreign court, recognised by a court of that Contracting State,
- and that the creditor is entitled to procure those remedies in accordance with the [CTC]
- What is meant by “recognised”?

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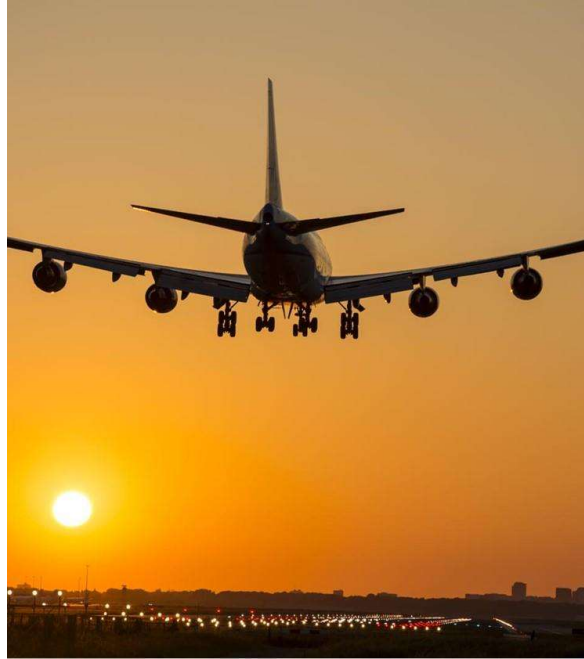
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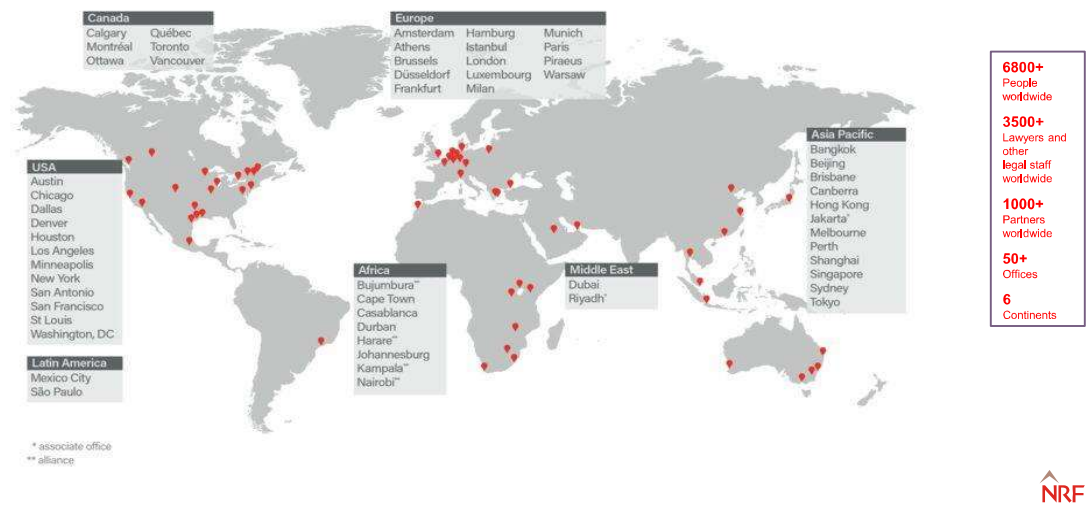
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