Its legislature having passed the enabling legislation, the Cayman Islands is poised to have The Convention on International Interests in Mobile Equipment and the associated Protocol to the Convention on International Interests in Mobile Equipment on matters specific to aircraft equipment (together known as the “Convention”) come into force in the jurisdiction as early as August, 2015 - an event long sought after by Cayman Islands aviation finance attorneys.

The UK was among the original parties who signed the Convention in November, 2001 in Cape Town, South Africa. Although the Aircraft Protocol came into force in 2006, and had been ratified by many of its original signatories, it was not until 2014 that the UK Government took the policy decision to ratify the Convention. Due to its constitutional status as a British overseas territory, the Convention could directly apply to the Cayman Islands only following ratification of the Convention by the UK and extension to the Cayman Islands at its request.

Enabling Legislation

While it awaited ratification and extension of the Convention by the UK in 2009, the Cayman Islands enacted The Cape Town Convention Law, 2009 the aim of which was to mimic the principles and framework for the registration, recognition and enforcement of international interests contained in the Convention in the absence of the Convention actually being in force in the Cayman Islands. At a date to be appointed by the Governor of the Cayman Islands, The International Interests in Mobile Equipment (Cape Town Convention) Law, 2015, (the “Implementation Law”) which will implement the Cape Town Convention in the Cayman Islands, will be brought into force and repeal and replace The Cape Town Convention Law, 2009.

How the Convention Works

The Convention established a standardised international legal framework for the creation and registration of international interests in helicopters, airframes and aircraft engines which constitute “aircraft objects”. An “international interest” means any interest in an aircraft object that is held by a creditor that is either: (a) granted by the chargor under a security agreement; or (b) vested in a person who is the conditional seller under a title reservation agreement; or (c) vested in a person who is the lessor under a leasing agreement. Whether an interest falls within one of these three broad categories is determined by applying the Convention’s own definitions and autonomous rules of interpretation, and not by reference to the domestic law of any Convention State or territory. Registration on the International Registry is not essential to the creation or
perfection of an international interest. However, it allows creditors who register their interests on the International Registry to guarantee the priority of their claim against other parties, and further provides them with an internationally recognised set of rights in the event of a debtor's default or insolvency and includes a framework to deal with any disputes that arise under the Convention.

Priority is based upon the order of registration. It is also possible to register a “prospective international interest” in an aircraft object upon the occurrence of a stated future event, for example, the creditor’s acquisition of an interest in the aircraft object or registration of the airframe, to establish priority of interest prior to the closing of a transaction with that interest automatically becoming a perfected international interest on the closing of the transaction. Failure to register an international interest renders the unregistered interest subordinate to competing registered interests even if the unregistered interest was known to the holder of any registered interests at the time of creation or registration.

One of the advantages of the International Registry is that creditors will be able to register their interests against aircraft engines separately from the airframes – something which cannot currently be done on the Cayman Islands Civil Aviation Authority Mortgage Register (the “Local Register”) (like many national registries) where mortgages must be registered against the aircraft as a whole including its engines.

The Convention will apply to transactions involving aircraft objects where the following requirements are satisfied: (1) the aircraft object meets specified size/power requirements; (2) the transaction creates an ‘international interest’ or prospective international interest; and (3) at least one of two connecting factors is present: (a) at the time of execution of the agreement, the lessee, the chargor or the conditional buyer (or a person whose interest is burdened by a registrable non-consensual right or interest) is situated (including being incorporated or having its centre of administration or principal place of business located) in a Convention State (including a territorial unit of a Convention State); or (b) if at the time of execution of the agreement the airframe or helicopter is registered on the national registry of a Convention State (including a territorial unit of a Convention State). Following the ratification of the Convention by the UK and its extension to the Cayman Islands, the Cayman Islands will be recognised as a territorial unit of a Convention State for this purpose.

**Cayman Islands Declarations**

The Convention employs a system of Declarations which allows Convention States to deposit many opt-in and opt-out declarations stipulated by the Convention thus adding flexibility and attracting Convention States to ratify and implement the Convention. At the request of the Cayman Islands Government, the UK Government will shortly make a number of declarations on behalf of the Cayman Islands in connection with its implementation of the Convention, the content of which is reflected in the Implementation Law. These include that all categories of non-consensual rights or interests which under Cayman Islands law had priority to registered international interests, for example a lien of the Civil Aviation Authority and the Airports Authority in respect of unpaid taxes, will continue to have priority over international interests including those registered prior to the date of ratification of the Convention. It may be of interest to financiers in particular that the UK Government will also make declarations on behalf of the Cayman Islands that: (a) all remedies available to a creditor under any provision of the Convention which are not expressed to require application to the court may be exercised without leave of the court or other court action; (b) “speedy interim relief” for a creditor who adduces evidence of default by a debtor is defined as within 10 working days in the Cayman Islands from the date the application for relief is filed; and (c) the Cayman Islands will apply Article XI, Alternative A, in its entirety to all types of all insolvency proceedings and all other insolvency related events, and that the waiting period for the purposes of Article XI(3) of that Alternative shall be 60 calendar days.
Since aircraft objects are highly mobile it was important for the Cayman Islands Declarations to provide for them to be quickly repossessed upon insolvency thereby reducing the risk exposure, and therefore the costs, of the creditor.

**Significance to the Cayman Islands**

The Cayman Islands have long been a jurisdiction of choice for cross-border financing and investment structures primarily because of the advantages it offers including (a) political and economic stability: the Cayman Islands is a British Overseas Territory, has a sovereign debt rating of Aaa from Moody’s Investors Service and Aa3 by Fitch, and the Cayman Islands government must seek approval for additional borrowings from the UK under the Framework for Fiscal Responsibility; (b) a legal system which is based on the English common law together with innovative, flexible domestic legislation which provides for an ultimate right of appeal from the Cayman Islands courts to the Judicial Committee of the Privy Council in London; (c) a tax-neutral platform given the absence of any Cayman Islands income tax, corporate tax or capital gains tax or withholding tax on any cash flows; (d) a well-established and experienced financial and legal services sector; and (e) Cayman Islands vehicles may be established and maintained cost-effectively with speed and simplicity.

The Cayman Islands is a leading jurisdiction for aviation finance transactions. Cayman Islands entities are often used in cross-border aircraft financing structures for the financing of commercial aircraft to enhance the security of the lender by virtue of their bankruptcy remoteness features, for example using a bankruptcy-remote orphan trust structure. We believe that the Cayman Islands’ position will be further enhanced by its implementation of the Convention. It will provide additional comfort to financiers that the Cayman Islands will recognise and will give effect to the Convention and the remedies thereunder in the event of default under the finance documents and further provide lenders with more certainty around Cayman Islands insolvency laws in relation to aircraft objects.

The OECD has developed a set of specific guidelines for governmental export credit agencies (“ECAs”) involved in aircraft export which includes measures allowing ECAs to reduce costs to airlines in Convention States that have ratified the Convention (known as the Cape Town discount) provided they make a number of qualifying declarations. The deposit of the declarations above means that the Cape Town discount will apply to the Cayman Islands so that Cayman Islands aircraft owning entities may benefit. Similarly, The Export-Import Bank of the United States offers improved financing terms to buyers in countries which have ratified the Convention which will now include the Cayman Islands.

**Impact upon Cayman Aircraft Mortgage Register**

In tandem with the enactment of the Implementation Law, the legislature has also amended the Cayman Islands Civil Aviation Authority Law to make provision for the registration of aircraft mortgages on the Local Register which, up until now, has been governed by the Mortgaging of Aircraft Regulations, 1979 issued by the Governor (the “1979 Regulations”). The 1979 Regulations will be revoked upon the issuance of Regulations by the Cayman Islands Cabinet in respect of the mortgaging of aircraft pursuant to the amendments to the Civil Aviation Authority Law which is expected to occur shortly. These Regulations will recognise and take into account the registration of international interests on the International Registry pursuant to the Implementation Law but preserve the priority of existing aircraft mortgages on the Local Register. It is therefore not anticipated that the implementation of the Convention will lead to an exodus of aircraft mortgages currently registered on the Local Register to the International Registry. However, on and immediately following the Implementation Law coming into force, the mortgages on the Local Register in respect of which an international interest exists will have their priority versus “security interests” under the Convention determined in accordance with the priority rules set out in the Convention.
Conclusion

The Cayman Islands has taken a creditor-friendly approach to its implementation of the Convention, and has enhanced its position in the forefront of offshore financial centres involved in financing structures for commercial aircraft for lessors, airlines and other parties. We anticipate this move will be welcomed by lenders, ECAs, airlines and other participants in the aircraft finance industry, as it augments the remedies and reduces the risk for lenders, thereby potentially decreasing the costs of raising finance including pursuant to the Cape Town discount.

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This article is not intended to be a substitute for legal advice or a legal opinion. It deals in broad terms only and is intended to merely provide a brief overview and give general information.

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