

The Cape Town Treaty –

What it means for Business Aircraft Owners and Purchasers

By

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The Cape Town Convention on International Interests in Mobile Equipment or, as it is more commonly referred to, the Cape Town Treaty (the “Treaty”), is scheduled to take effect on March 1, 2006. To date, eight countries have ratified the Treaty. The United States became a signatory to the Treaty on May 9, 2003 and ratified it on October 28, 2004. In addition to the United States, the other seven countries that have ratified or acceded to the Treaty to date are Ethiopia, Ireland, Malaysia, Nigeria, Oman, Pakistan, and Panama. Therefore, owners and prospective owners of business aircraft registered in the United States and the other countries that have ratified the Treaty or ratify it in the future (there are currently at least 20 additional countries that have signed the Treaty but have not yet ratified it) will need to become aware of the substantive provisions of the Treaty that may have an effect on them.

The Treaty consists of a Convention, which covers aircraft, engines, space objects and railway rolling stock, and a Protocol, which applies specifically to aircraft and engines. The Treaty applies to aircraft certificated for the transport of at least eight persons (including crew); rotorcraft certificated for the transport of at least five persons (including crew) and engines of at least 550 horsepower (or the equivalent thrust).

The Treaty creates an international system of perfecting security interests and other similar interests in aircraft and aircraft engines and simplified and stronger methods of enforcing the rights created by such interests. Proponents of the Treaty and its provisions hope that the implementation of the Treaty and its eventual ratification by additional countries will lead to more certainty for lenders that will, in turn, lower costs of financing for the purchase and lease of larger aircraft and aircraft engines and spur increased worldwide demand for such items. Whether the intent of the Treaty will be realized remains to be seen. However, in the meantime, owners and prospective owners of

aircraft and aircraft engines to which the Treaty applies must understand the provisions of the Treaty and the ways in which it will apply to them.

The Treaty establishes certain substantive laws relating to default by a borrower or lessee, remedies available to a lessor or lender, bankruptcy rules governing all parties and a method of perfecting liens and other interests in certain larger aircraft and aircraft engines (as described above). The changes to substantive law contained in the Treaty are very similar to current provisions of U.S. law relating to the recording and perfection of security interests and leasehold interests in aircraft and aircraft engines and the enforcement of the rights created by those interests (through repossession and similar enforcement remedies).

The Treaty establishes an International Registry and a procedure for perfecting an “international interest” in aircraft and engines. The International Registry will be solely electronic and Internet based and will be supervised by the International Civil Aviation Organization. The FAA has been designated as the exclusive portal through which all international interests in U.S. registered aircraft to be recorded with the International Registry will pass.

Under the Treaty, in order for an “international interest” in aircraft or engines to be perfected, an electronic notice of such interest must be filed with the International Registry. Security interests, conditional sales contracts and interests under a lease all constitute “international interests” under the Treaty. The Treaty also applies to other interests including certain non-consensual liens (like a mechanic’s lien).

Once the Treaty goes into effect, the seller or purchaser of business aircraft to which the Treaty applies will need to ensure that a proper search of the International Registry is conducted by such person’s legal representative to determine whether any such interests have been recorded with respect to the aircraft or engines that are being sold or purchased by such person. In addition, the holder of any interest created in a purchase, conditional sales or lease transaction of aircraft or engines to which the Treaty applies will need to

ensure that such interest is properly recorded with the International Registry in order for it to be properly perfected. Because the procedures to be followed are similar to those currently utilized for FAA filings of such interests and because the FAA has been designated as the exclusive portal for filings with the International Registry pertaining to aircraft registered in the United States, there will probably not be much difference from that currently utilized in undertaking such filings with the FAA.

Therefore, although the Treaty's impact on owners and prospective owners of business aircraft may not be clearly evident from the perspective of such owners and prospective owners, compliance with the terms of the Treaty will be just as important as compliance with current similar provisions of U.S. law. The attorneys in the Aviation Group at Galland, Kharasch, Greenberg, Fellman & Swirsky are well versed in the intricate provisions of the Treaty including its effect on owners and prospective owners of business aircraft and are fully capable of providing them with additional information and guidance pertaining to these issues.