

# The Banking Law Journal

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Victoria Prussen Spears

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# Comparing and Contrasting Domestic and Cross-Border Aviation Finance Transactions

*By Juan Carlos Ferrer\**

*In this article, the author discusses some important differences between domestic and cross-border aircraft finance transactions and offers some practice pointers to assist in navigating the potential pitfalls of financing a non-U.S.-registered aircraft.*

Although there are some similarities between financing an aircraft registered in the United States versus financing an aircraft registered abroad, in truth those similarities are vastly outweighed by the differences and complexities associated with a cross-border aircraft financing. This article is an overview of some important differences between domestic and cross-border aircraft finance transactions and offers some practice pointers to assist in navigating the potential pitfalls of financing a non-U.S.-registered aircraft.

## **CAPE TOWN CONVENTION**

Financing an aircraft registered in a country that has ratified the Cape Town Convention (CTC) can provide comfort to aircraft financiers that they will ultimately be able to timely foreclose on the aircraft should a default occur. Many countries have ratified the CTC, but a surprising number of countries have not. And even among those countries that have ratified the CTC, it is important to fully understand what elections the ratifying country has made to govern creditors' rights in relation to aircraft. Countries that have opted for Alternative A of the CTC afford far greater protections to creditors than those that opt for Alternative B or for reliance on that country's existing insolvency laws.

## **OWNER REGISTRY VS. OPERATOR REGISTRY**

The U.S. Federal Aviation Administration (FAA) registry is an "owner-based" registry where the eligibility requirements for obtaining U.S. registration for an aircraft are determined based on the citizenship of the owner of the aircraft. The citizenship of the operator is irrelevant for purposes of registering an aircraft in the United States. However, most foreign aircraft registries are "operator-based" registries that look to the citizenship of the operator – and not the owner – of an aircraft in order to determine eligibility to register an aircraft in that jurisdiction.

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Understanding these types of nuances and how to deal with the challenges, as well as the opportunities that they present, is key to properly structuring cross-border aircraft finance transactions.

### **COURT SYSTEMS AND RULE OF LAW**

The well-established case law and the consistency of the U.S. court system provide comfort to financiers of U.S.-registered aircraft. However, creditors' rights laws vary from country to country, as does the sophistication of a country's court system.

Having a good grasp of a country's track record for how quickly and fairly a financier's rights and remedies are adjudicated, regardless of whether or not that country has ratified the CTC, is a very important aspect of financing a non-U.S.-registered aircraft.

### **SOPHISTICATION OF AIRCRAFT REGISTRY**

Likewise, the sophistication and efficiency of aircraft registries vary widely from country to country. Though some aircraft registries record title transfers and security interests and process deregistration requests within one to three days, other aircraft registries can take upward of 30 days to do so.

Understanding, and properly planning for, these potential delays is another important aspect of financing aircraft abroad.

### **IMPORTANCE OF LOCAL COUNSEL**

Employing knowledgeable U.S. aviation counsel to "quarterback" the cross-border aircraft financing transaction, especially one with a network of highly skilled aviation counsel in various jurisdictions, is key to any successful transaction.

Identifying and engaging the "go-to" aviation counsel in a particular country will greatly facilitate a smooth closing, both in terms of ensuring that the financing documents comport with local law requirements and in facilitating the closing process with local authorities.

### **CONCLUSION**

Given these and other issues, financing an aircraft abroad can seem like a daunting task. But with proper guidance and planning, aircraft financiers can be confident that their interests will be protected notwithstanding that the aircraft is registered outside of the United States.