
SECURITY

FEBRUARY 2011

SIGNIFICANT NEW EXCEPTION TO THE PPSA INTRODUCED



Murray Tingey
PARTNER



David Friar
SENIOR ASSOCIATE

When it was first introduced, the Personal Property Securities Act 1999 (**PPSA**) was intended to create a comprehensive regime for security interests in personal property. Ten years later, however, Parliament has created a significant exception by passing the Civil Aviation (Cape Town Convention and Other Matters) Amendment Act 2010 (the **CAA Act**).

The CAA Act gives effect to the Cape Town Convention and Aircraft Protocol (the **Convention**). It provides that the Convention takes precedence over any other New Zealand law, including the PPSA, from 1 November 2010.

Importantly, this means that the Convention—and not the PPSA—applies to interests in certain aircraft objects, even if both parties are in New Zealand.

The Convention also differs from the PPSA in crucial respects. For example, the Convention applies to all leases, while the PPSA only applies to leases of more than 12 months. Further, the traceable proceeds under the Convention are narrower than those under the PPSA.

Holders of security and lease interests in relevant aircraft objects should therefore make sure that their interests are protected by registering under both the Convention and the PPSA. Both registers must be searched to determine if there are any prior interests.

Application of the Convention

The Convention only applies to certain aircraft objects, including:

- airframes certified to transport at least 8 people (including crew), or goods in excess of 2,750kg;
- helicopters certified to transport at least 5 people (including crew), or goods in excess of 450kg; and
- helicopter or airframe engines either powered by jet propulsion with at least 1,750lb of thrust or equivalent, or powered by turbine or piston technology with at least 550 rated take-off shaft horsepower or equivalent.

Airframes, helicopters and engines below this size continue to be governed by the PPSA.

The Convention only applies where the debtor is situated in a country in which the Convention has entered into force. Where a debtor is in New Zealand, the Convention applies to interests in relevant aircraft objects created after 1 November 2010. Interests created prior to that date continue to be governed by the PPSA.

To view all our publications or update your details please visit our website: www.bellgully.com

For further information, please contact your usual Bell Gully adviser or:

Murray Tingey

DDI 64 9 916 8903
murray.tingey@bellgully.com

David Friar

DDI 64 9 916 8977
david.friar@bellgully.com

In contrast to New Zealand, the Convention is not in force in Australia, which is currently considering whether to accede to the Convention.

Registration under the Convention

When the Convention applies, any person who holds a security interest, is a lessor under a lease agreement, or holds a reservation of title in a debtor's aircraft object can register that interest in an International Registry. The Registry is based in Dublin, but interests can be registered and searched online. The debtor's consent is required for registration. Security and lease interests are defined broadly. Unlike the PPSA, which applies only to leases for more than one year, there is no minimum time period for a lease to which the Convention applies.

Priority rules under the Convention

When the Convention applies, an interest that is registered on the International Register has priority over any interest that is subsequently registered on that Register. An interest that is registered on the International Register also has priority over any unregistered interest, as well as any interest that is registered only under the PPSA (even if the PPSA interest was registered first in time).

Remedies under the Convention

The Convention allows the creditor and debtor to agree on a number of remedies if the debtor defaults. These remedies include the creditor:

- taking possession or control of the charged object;
- selling or granting a lease of the charged object; and
- collecting or receiving income or profits arising from the management or use of the charged object.

With the consent of the debtor, a registered interest holder may also procure the de-registration, export and physical transfer of aircraft.

Like the PPSA, an interest in an object registered on the International Register also extends to the proceeds of that object. While the PPSA includes a broad definition of "proceeds," the Convention's definition is narrower. Under the Convention, "proceeds" only includes "money or non-money proceeds of an object arising from the total or partial loss or physical destruction of the object or its total or partial confiscation, condemnation or requisition." As a result, it may be advisable to register any interest both on the International Register and under the PPSA.

Conclusion

The Convention is intended to provide for more certainty in international transactions involving aircraft objects. That certainty comes at price, as the PPSA is now no longer a one-stop shop for ensuring that security interests are protected. Holders of security and lease interests in aircraft objects should ensure that their interests are protected by also registering on the International Register.

Disclaimer: This publication is necessarily brief and general in nature. You should seek professional advice before taking any further action in relation to the matters dealt with in this publication.

All rights reserved © Bell Gully 2010