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When All Goes Wrong: How to Manage a Lessee Default and Secure the Asset

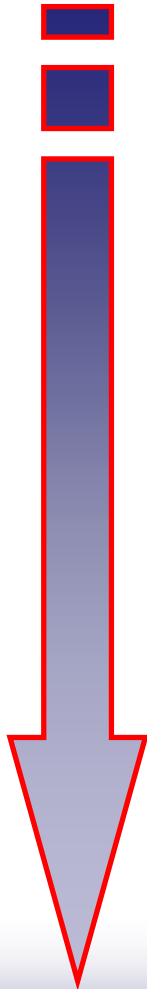
Aircraft Finance & Commercial Aviation- Geneva, February 2009



- Introduction
- Contractual Framework
- Lessee default
- Asset recovery
- Lessor position
- Lessee position
- The Cape Town Convention
- Conclusion

Introduction

2008



Numerous high-profile airline insolvencies in 2008:

- April
 - EOS Airlines
 - Oasis Hong Kong
 - ATA
- June
 - Silverjet
- August
 - Zoom Airlines
- September
 - Futura
 - XL Airways UK
 - Air Union
- October
 - LTE
 - Sterling

Introduction

What happens with the aircraft in these cases?

Not likely:



Most of these aircraft under operating leases

Contractual Framework

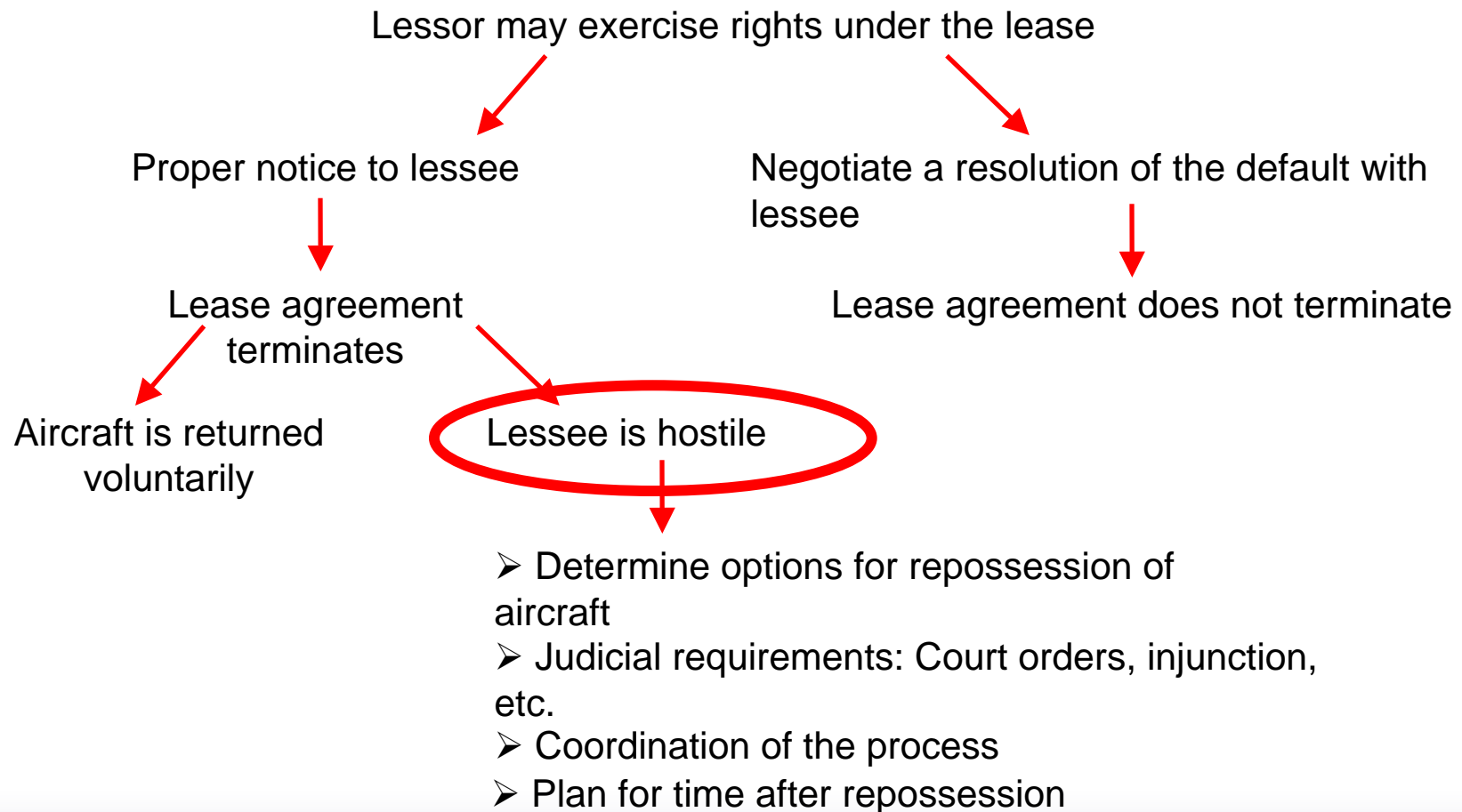
Common events of default language in lease agreements:

- Lessee fails to pay rent
- Failure to insure the aircraft appropriately
- Lessee does not meet significant financial obligations (third parties)
- Lessee initiates bankruptcy or insolvency proceedings
- Lessee de-registers the aircraft
- Lessee loses the authority to be a licensed air carrier
- Lessee sells the aircraft; or tries to
- Any cross default with other lease agreements
- Material inaccuracies of covenants or representations made by lessee

- Catch-all clause: any other event that has a material adverse effect

Lessee Default

Consequences of a lessee default:



Asset Recovery

Steps to consider in a repossession scenario:

- Aircraft location and jurisdiction
- Contractual rights enforceable in that jurisdiction?
- Local legal support
- Technical / operational support
- Logistics of the repossession
- Third party rights to the aircraft [Eurocontrol, Airport charges]
- Can the aircraft easily be de-registered?

- Repossession must include:
- aircraft
 - engines
 - documentation

Lessor Position



Close monitoring of the asset pays off

- technical
- financial
- operational

**Typically out-sourced
to a third-party
service provider**

Allows for actions to avoid a default

Prepares lessor for speedy action in a default scenario

Seek open lines of communication with lessee

Execute re-marketing strategy for the asset

Lessors Position

Cost of Aircraft Repossession	
Legal support	\$ 80.000,00
Security for aircraft	\$ 20.000,00
Airport charges	\$ 5.000,00
Ferry flight	\$ 50.000,00
Aircraft inspection	\$ 15.000,00
Records collection	\$ 10.000,00
Re-marketing	\$ 300.000,00
Maintenance	\$ 250.000,00
Insurance	\$ 50.000,00
Total	\$ 780.000,00

On average:

380 days to sell a repossessed aircraft

130 days to re-lease a repossessed aircraft

Source: IBA Group

Lessee Position

Typical concerns from lessee perspective:

- Fight for survival
- Exposure to significant costs under the lease
 - all amounts outstanding
 - all lessor cost associated with the early termination
 - all lessor losses
- Default a symptom of systematic distress
- Employee morale low
- Little incentive for cooperation
- Lack of support for Lessor
- Organizational structure in disarray
- Airline may already be under administration

Cape Town Convention

Cape Town Convention & Aircraft Protocol

Effective as of March 2006

Effective in 31 nations including the US and Ireland [not in the EU]

Legal framework governing financial interests in aircraft

- aircraft size requirement: > 8 people
- transaction creates an interest in an aircraft, i.e. lease agreement
- transaction with reference to a contracting state, i.e. aircraft registration

Establishment of International Registry

The Registry

The International Registry of Mobile Assets

- Defines the ranking of interests in aircraft & engines
- Stakeholders may register their interests
- Makes the existence of interests transparent
- Recognized by all ratifying countries
- Considered “best practice” for stakeholders
- Internet-based and 24/7

The Registry



The screenshot shows the International Registry website in a Windows Internet Explorer browser window. The address bar displays <https://www.internationalregistry.ae>. The page features a navigation menu on the left and a search form on the right.

Search Registrations

Manufacturer's Serial Number (Mandatory)	<input type="text" value="27826"/>
Manufacturer	<input type="text" value="BOEING"/>
Model Designation	<input type="text" value="737-400"/>

The manufacturer dropdown menu is open, showing the following options: AIRBUS, ATR, BAE SYSTEMS, BEECH AIRCRAFT CORPORATION, and BEECHCRAFT-HAWKER CORPORAT. The model designation dropdown menu is also open, showing 707-100 and 707-200.

Navigation Menu:

- Home
- User Area
- Register or Consent to Interest
- Search the Registry
- Fees and Payment Options
- Documentation and Information
 - Arabic
 - Chinese
 - English
 - French
 - Russian
 - Spanish
- FAQs (Frequently Asked Questions)
- Contact Us
- Annual Statistical Report
- Help

Log-in: Guest

The Registry

The screenshot shows the International Registry website in Internet Explorer. The browser window title is "International Registry - Windows Internet Explorer". The address bar shows "https://www.internationalregistry.ae". The page content includes a navigation menu on the left, a search section with a table of aircraft registrations, and a footer with contact information.

Navigation Menu:

- Home
- User Area
- Register or Consent to Interest
- Search the Registry
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Search Registrations

Informational Search

Manufacturer	Model Designator	Manufacturer's Serial Number	Object Type	Matches current Manufacturer List
BOEING	737-400	27826		YES

Buttons: Priority Search, Download Informational Search Listing

Log-in: Guest

The Registry

Benefits for lessor in a default scenario may be:

- Easier re-possession process
- Easier de-registration of the aircraft
- Un-disputed rights to aircraft income / profits
- Improved judicial position
- Improved position in light of insolvency proceedings

Conclusion

- Monitor the asset
- Defaults require fast and flexible action
- Follow the procedure
- Seek open communication with the lessee
- Seek third-party support
- Repossession includes
 - aircraft
 - engines
 - documentation
- Repossession is costly
- Allow for adequate re-marketing activities and time
- Cape Town Convention provides a transparent framework
- Registration of interest advisable



Thank You

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