AIRFINANCE JOURNAL

An ***Airfinance Journal***

special supplement

Guide to **aviation lawyers** 2020

Legal moves 2019-20

Edwards joins **CMS** as partner

Gwen Edwards

CMS Cameron McKenna Nabarro Olswang has appointed Gwen Edwards as a partner in the firm's asset finance team, based in London.

Edwards joins from Hogan Lovells, where she was in the asset finance team.

She has more than 10 years' experience in asset finance with a specialism in aircraft debt finance and leasing. This experience includes advising banks, operating lessors, borrowers, airlines, rail and shipping companies and private equity firms on cross-border asset finance transactions, tax-based structured finance and restructuring and other general banking work.

Her appointment bolsters the firm's new aviation team: Legal Flightpath – CMS Aviation.

This team comprises more than 70 partners, providing solutions for airlines, airport operators and service providers, air traffic control operators, banks, aircraft lessors, equipment manufacturers, aircraft maintenance services and aviation technology businesses.

Finnigan moves to **Conyers**

Conyers continues the expansion of its Cayman Islands corporate practice with the hire of Barnabas Finnigan as counsel. Finnigan arrives from Maples Group where he worked for more than eight years as an associate in the Cayman Islands advising on all aspects of Cayman Islands law, but specialising in asset finance, project finance and structured finance transactions and, in particular, shipping and aviation finance, with a focus on aircraft asset-based securities transactions.

His appointment comes during a time of growth for the firm and follows a large number of strategic appointments across its corporate and litigation practices.

Finnigan joins a team with experience in a wide range of corporate and finance matters, including asset and structured finance and fund finance transactions.

Barnabas Finnigan

Before joining Maples Group, Finnigan worked in the shipping finance team at Norton Rose for almost four years. He started his career at Eversheds before joining Richards Butler (now Reed Smith) in London.

Herbert Smith Freehills promotes Catanzariti

Herbert Smith Freehills has promoted Steven Catanzariti to partner within its aviation finance team. Catanzariti joins John Angus in Australia, and Siva Subramaniam, Samuel Kolehmainen, Rex Rosales and Jahnavi Ramachandran in London in supporting the firm's aviation finance clients.

Catanzariti joined the firm in 2009 and specialises in asset and structured finance, with a strong focus on the aviation sector. He advises Australian and international banks, lenders, borrowers, lessees, lessors and arrangers, and was listed as a senior associate.

Steven Catanzariti

Hogan Lovells appoints Cevher Conti

Mehtap Cevher Conti has joined law firm Hogan Lovells as a partner in the New York office. She was previously a partner at Arnold & Porter for two years.

Before that, she was in private practice, where she focused on global transportation finance. Cevher Conti has more than 15 years' experience in finance, particularly in aviation finance. Her broad range of experience includes secured debt and export credit agency-supported transactions, revolving credit facilities, leveraged leases, operating leases, portfolio acquisitions, and asset-backed structured financings and securitisations for commercial and investment banks, insurance companies, financial institutions, aircraft operating lessors and airlines.

Cevher Conti's work in the commercial airline space includes secured debt, export credit agency-supported transactions, sale and leaseback transactions and aircraft portfolio acquisitions.

Matthew Cottis, global head of the finance practice at Hogan Lovells, says the firm has been looking to expand its finance capabilities. He says: "We expect that she will work closely with our capital markets team in New York, as well as with our strong asset finance team in London."

Clifford Chance retains crown

Airfinance Journal had to sift through 1,520 deals to find its 2019 winner, with Clifford Chance's Turkish Airlines Balthazar deal scooping the inaugural Legal Transaction of the Year.

Airfinance Journal would like to thank all the law firms which participated in this year's survey.

Airfinance Journal's annual legal survey includes aviation finance deals based on submissions from law firms as well as *Airfinance Journal*'s Deal Tracker transactions. Those are subsequently aggregated to create the winners. This year, we received submissions from 15 firms, compiling 1,520 deals overall, including transactions gathered from Deal Tracker.

This is the fourth year *Airfinance Journal* has used data transactions from Deal Tracker for our legal survey. It provides a more accurate picture of the 2019 activity because it includes law firms, which were not able to submit or decided not to submit. The firms that did submit have the most accurate representation of their deals in 2019.

This year's survey highlighted the significant increase in the capital markets' activity. In 2019, *Airfinance Journal* recorded 179 eligible transactions compared with 116 the previous year.

The survey also highlighted more activity in the export credit agencies sector. Export credit agency-backed structures have been becoming scarce as a consequence of continued liquidity in the air finance sector. As a consequence, there were fewer transactions in the commercial loan market in 2019 than in 2018.

Today, 37% of the submitted deals originate with European customers versus 40% in the 2016 legal survey. Europe still represents 562 transaction points.

Asia-Pacific is the second region with 410 transactions, or 27%. North America remains third by region with about the same percentage of transactions as in 2018 (21%, or 320 transactions).

Activity in Latin America has slightly decreased over the past three years. Some 5.3% of this year's total involves clients from that region, against 6% two years ago. The activity in Africa remains at the previous year's level, while transactions in the Middle East are slightly lower than the previous year.

Methodology

Aviation law firms were invited to submit deals to be included in Deal Tracker. The *Airfinance Journal* data team then reviews the different deals and selects those eligible for Deal Tracker. This list is then used to select the most active law firms, which are then selected by region and product type. The legal survey reviews transactions for calendar year 2019 only.

This year's survey highlighted the significant increase in the capital markets' activity. In 2019, Airfinance Journal recorded 179 eligible transactions compared with 116 the previous year.

This is significant because we recognise that markets change, as do law firms; however, we felt this was the only way to offer an accurate snapshot of aviation finance legal activity.

Our aim is to continue being transparent and impartial. All of the deals used to judge the winners are eventually loaded into Deal Tracker and can be reviewed by our readers.

In this sense, our survey is unique. Our researchers assess each deal to verify them and to avoid double counting. The benefit of using Deal Tracker is that we can offer a granular presentation of law firm activity by both product type and region. There are limitations to the survey.

Client confidentiality may be an issue for law firms when submitting deals and some firms opted not to participate. As a consequence, the survey does not represent all of the deals happening in the market, but it remains the most comprehensive survey of its type and crucially offers a real insight into the aviation market.

The survey gives a strong indication of which law firms are most favoured for certain deal types and for certain regions.

Airfinance Journal continues to listen to its audience. This year we modified the evaluation criteria to reflect the transaction complexity as well as the law firm's role in a transaction rather than simply count the number of deals.

As a result, law firms were asked to self-assess the complexity of each transaction and their role in the transaction according to the following new set of criteria for which the specified points were awarded:

Complexity:

- Ground-breaking pioneer transaction: 10 points
- Complex transaction, some new parties or jurisdictions: 7 points
- Average complexity, repeat transaction with same players and jurisdictions: 5 points
- Less-complex transaction: 3 points
- Low complexity: 1 point

Role:

- Drafting counsel for major transaction documents: 10 points
- Primary counsel to major transaction parties: 7 points
- Secondary counsel to transaction parties: 3 points

For all Deal Tracker transactions that were not part of the submitted deals, *Airfinance Journal* assigned one point for the complexity of a transaction and three points for the role played by the law firm. This resulted in a total score of four that was assigned to all Deal Tracker transactions that were not part of the submitted deals.

Overall rankings

Like previous years, the survey records the overall number of deals for each law firm. A deal, as defined by the survey, represents one mandate and can include multiple aircraft and law firms.

In addition to presenting the most active law firms by product and region, the survey also aggregates how law firms have performed to produce an overall ranking.

Overall winners

Clifford Chance secured the number one spot among the law firms and topped the Asia-Pacific, Europe, Middle East, commercial loans, operating lease, and guaranteed financing categories.

Like in 2018, K&L Gates and Milbank completed the podium, with Milbank being the law firm which progressed the most year-on-year. Pillsbury pipped White & Case for the fourth spot. Bird & Bird remained sixth in the overall rankings, while Stephenson Harwood was the most improved law firm outside the top six.

Legal Transaction of the Year: **Turkish Airlines' 5xA321neo Balthazar-guaranteed commercial financing**

Airfinance Journal also introduced the Legal Transaction of the Year award, to recognise the strongest deal in the commercial aviation finance market.

Law firms were invited to submit one nomination for consideration in terms of complexity, timing, innovation, overcoming obstacles and diversity of solutions.

The editorial team selected Turkish Airlines Balthazar-guaranteed financing as the winning submission. Clifford Chance was involved in another first in the aviation industry space, with the successful closing of a new credit risk insurance product for Airbus aircraft financings.

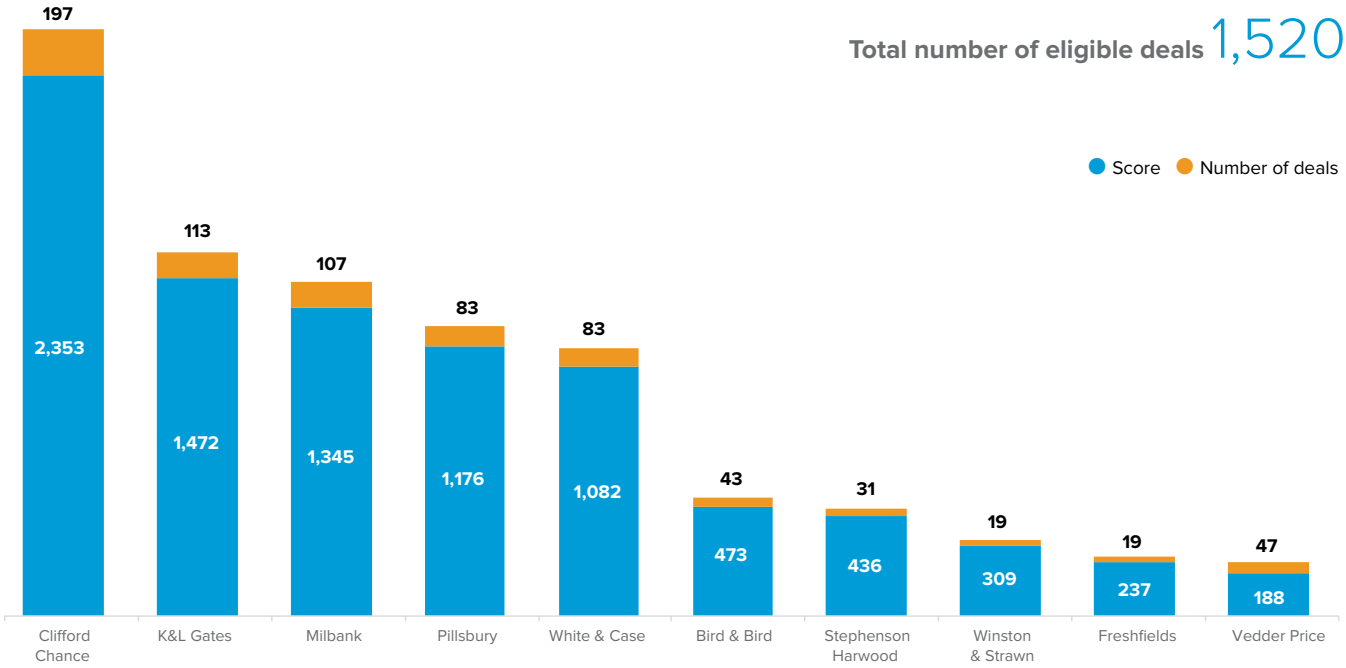
The first of five Airbus A320neo-family aircraft, an A321neo, closed in February 2019 to Turkish Airlines, with financing provided by BNP Paribas, utilising a French structured tax lease. Four further A321neo aircraft were financed during the course of the year as part of this transaction. The lenders have the benefit of a bespoke Balthazar credit risk insurance (CRI) policy, arranged by Marsh (Paris) as a broker, and provided by a syndicate of leading insurers, for repayment of the loan on a credit risk default of the airline.

Key features of the policy include 100% cover, negotiated exclusions and a framework, which balances the regulatory capital standards of aviation financiers with the risk profile of the CRI market.

Notably, the policy has been prepared to take account of EU financial institutions' credit risk mitigation requirements under the Capital Requirements Regulation/ Capital Requirements Directive package, as an alternative product to export credit agency support for similar aircraft financings. Clifford Chance acted as advisers to the insurers on all five deliveries and drafted the underlying Balthazar policy to be used for all such supported financings going forward. The deal team spent more than a year working closely with Airbus, selected banks and the Balthazar underwriting committee in developing the policy framework and was the sole law firm involved in this process.

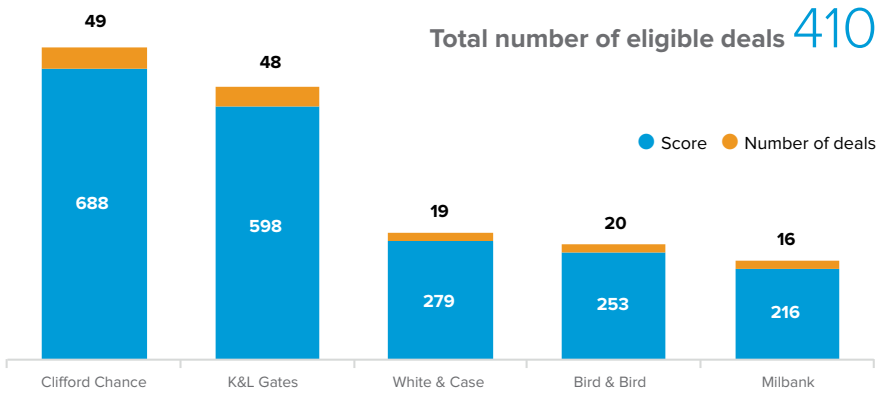
Clyde & Co acted as the borrower counsel, Norton Rose Fulbright was the lender counsel while Morris James was the security trustee counsel in the transaction.

Top 10 law firms by number of deals



Source: law firm submissions and *AFJ Deal Tracker*

Asia-Pacific



Source: law firm submissions and *AFJ Deal Tracker*

K&L Gates closed the gap on Clifford Chance last year in the Asia-Pacific region but Clifford Chance ranked first with a larger overall score.

Clifford Chance was particularly involved in lessors' commercial loan transactions in this market.

Simon Briscoe, a partner at the law firm, says the downward pressure on the commercial debt market continued in 2019, but the competitive market for assets for JoI investors was relatively unabated.

"The year just gone had seen a continuing swing to the operating lessor market to meet the capital funding requirement arising from the growth of the Asian carriers. In turn, those lessors had turned in ever-increasing numbers to the international capital markets, both the secured ABS [asset-backed securities] market and the unsecured bond market, to meet their capital requirements," says Briscoe.

The firm was involved in the $300 million Ortus Aircraft Leasing II Fund, Novus Aviation Capital's second fund which was the largest equity commitment for a Japanese-funded aircraft leasing fund last year. This was one of the fastest-closing funds that Sumitomo Mitsui Trust Bank had sponsored and invested in as a limited partner across asset classes.

K&L Gates' global head of aviation, Robert Melson, observes that private equity funds have been actively looking at opportunities for airline investments in Asia-Pacific. "Carriers who otherwise were doing fine before Covid-19, but who are now facing insolvency are of keen interest to private equity funds," he comments.

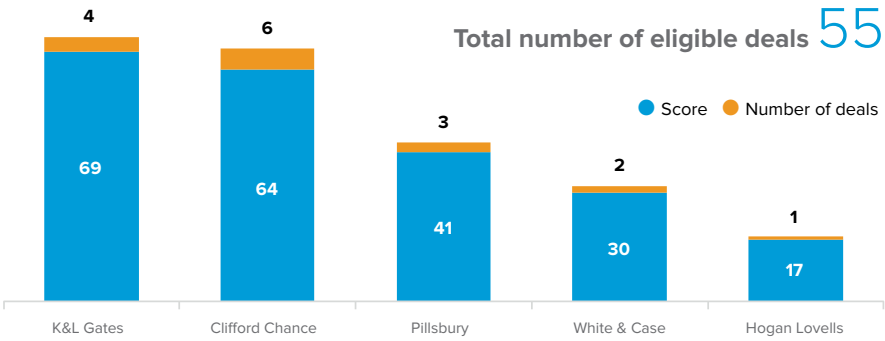
Melson observes that the number of structured leases in the Asia-Pacific has decreased dramatically, as debt and equity are staying on the sidelines until the winners and losers among airlines are determined. "In some cases, that determination is being made by governments who provide bailouts for one or two of their country-based carriers, but not all of them," adds Melson.

James Bradley, a partner at K&L Gates, says Asian airlines were the first to be hit by the impact of Covid-19 and, as such, were among the first to start putting contingency plans in place whether that be voluntary administration (Virgin Australia and Thai Airways), managed early terminations of operating leases, retrenching of aircraft back to the home jurisdiction (Lion Air) or grounding particular sections of their fleet (every airline).

"Depending upon their pre Covid-19 routes, some airlines will be able to recommence flights within their domestic markets to ensure they are able to have aircraft in operation (Australia, People's Republic of China, India, Indonesia and Vietnam). However, for those that rely significantly on international travel (Singapore Airlines and Cathay Pacific Airways), then it is going to be important that the green corridors arrangements are put in place quickly.

"It is clear that a multijurisdictional approach with the support of governments and international organisations is required in order to expedite the recovery of the airlines in this region," he adds.

Africa



Source: law firm submissions and *AFJ Deal Tracker*

The African market recorded a similar level of activity in 2019 as in 2018, with 55 deals.

K&L Gates topped the rankings followed by Clifford Chance and Pillsbury. The US-based law firm closed four transactions last year and scored 69 points.

K&L Gates was particularly involved in the financing closed by Royal Air Maroc (RAM), which was a new Japanese operating lease with call option (Jolco) name within the African market. K&L Gates represented the Japanese equity in the first Jolco to RAM's Boeing 737 Max delivery.

"Year on year, the Jolco market continues to evolve as lenders and lessors welcome new airlines from fresh jurisdictions. RAM are the second African-based airline to utilise the Jolco structure," says K&L Gates partner Amanda Darling.

The firm also advised a different Japanese lessor on a Japanese operating lease (JoI) sale/leaseback transaction for four 737-800 aircraft with RAM, two of which were closed without debt financing. "The volume of transactions indicate that there is considerable appetite for Japanese equity in the North African market, as well as for airlines from the region to explore new financing structures," says Misha Kovacevic, counsel at K&L Gates.

RAM was a big issuer in Africa last year. Its activity was on the back of using Aircraft Finance Insurance Consortium (AFIC)-supported financing structures for the first time in 2018.

In 2019, the carrier returned to this market through a French tax lease with AFIC financing for three 787-9s and a 737 Max delivery. Ethiopian Airlines was a big issuer of debt in 2019 in Africa and financed several Airbus A350 deliveries through the Jolco and the export credit market.

Air Mauritius also financed a pair of A350-900s through the Jolco market.

Tunisair financed an ATR72-600 delivery in the structured operating lease market through an Ijarah lease.

Operating leases were the bulk of the activity in the region in 2019 with an estimated 33 transaction points.

Europe

Some 37% of the submitted deals originate with European customers but its share has slightly reduced. In the 2016 legal survey, Europe accounted for 40% of the deals.

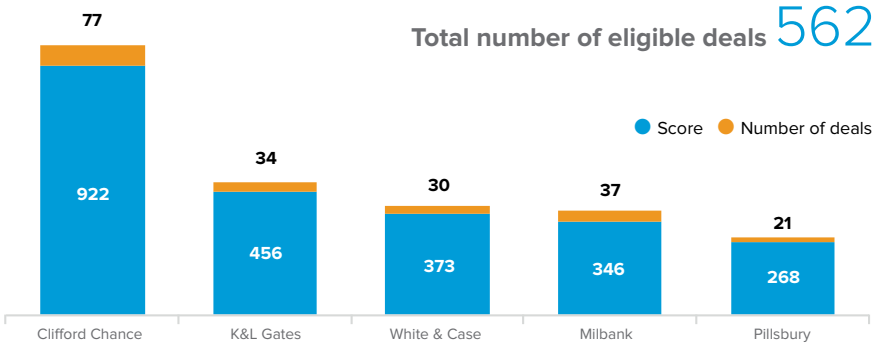
Europe still represents 562 transaction points, up from 539 eligible deals submitted in 2018.

Commercial loans account for 84 transaction points, of which 70 are secured. Among the unsecured activity in 2019, operating lessors represented more than half of the transactions with notably Aercap, Goshawk, Nordic Aviation Capital and SMBC Aviation Capital issuing debt.

The lessor companies continued to tap the capital markets, as a way of financing their growth, using the unsecured market in 2019.

Some, such as Nordic Aviation Capital (NAC), issued debt in the private placement market.

In March 2019, NAC sold a $786.3 million US private placement with Citi, Deutsche Bank, Goldman Sachs and RBC Capital Markets, which the borrower claimed was the largest senior unsecured US private placement ever issued by an aircraft leasing company. The issuance launched at $250 million and was substantially oversubscribed, allowing NAC to raise $786.3 million.



Source: law firm submissions and *AFJ Deal Tracker*

This private placement was a further step for NAC to migrate to unsecured financing.

The lessor returned to the private placement market this year with an $858 million issuance, again being the largest private placement issue by an aircraft lessor in the history of the market.

Clifford Chance acted as counsel for the Danish aircraft lessor. The firm came first with 77 transactions in 2019 with a score of 922 points, followed by K&L Gates (34 transactions and 456 points) and White & Case (30 transactions and 373 score).

The predominant structure in Europe continues to be operating leases with 279 transaction points last year, or just under 50% of all structures. The number of operating leases also reflects the changes in European carrier fleets after some ceased operations.

"Twenty-nineteen was a challenging year for the European airline market, one which saw further consolidation – whether consolidation by elimination (several airlines failed in 2019, including Thomas Cook Airlines, Germania, Wow Air and Aigle Azur), or active M&A activity (including IAG's proposed acquisition of Air Europa)," says Clifford Chance partner Oliver Hipperson.

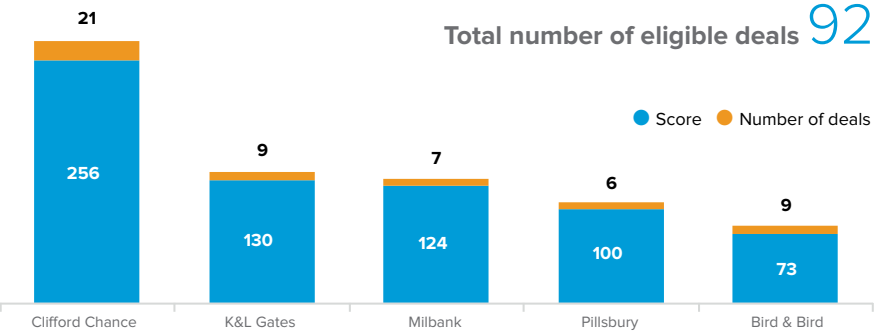
"Last year also saw the implementation of the first step of the United Nation's CORSIA scheme, which aims to make all growth in international flights after 2020 carbon neutral (though the scheme remains optional currently)", he adds. In a similar vein, the flygskam movement continued to gather momentum, which – together with the various airline failures – may have contributed to 2019 seeing the lowest European seat growth numbers since 2013."

Middle East

Clifford Chance ranked first in the Middle East region with 21 transaction points and a score of 256. K&L Gates came second with nine transactions and 130 points, closely followed by Milbank with seven transactions and a score of 124.

"The Middle East remains an important region for the global aviation industry. Over 2019, we saw continued growth from the major players in the region, as well as an increase in funds activity and establishment of new leasing companies on the ground," says Clifford Chance partner Antony Single.

"As with the rest of the world, Covid-19 is having an impact on the Middle East, but we are starting to see some green shoots in the recovery. The Middle East continues to see a wide mix of different financing and leasing structures but we have seen a definite increase in the structuring of transactions through the DIFC and ADGM on both UAE and also regional transactions. We have also seen some exciting initiatives in the green and sustainable development goals space with Etihad Airways becoming the first airline to raise funds tied to United Nations sustainable development goals," he adds.



Source: law firm submissions and *AFJ Deal Tracker*

One of the main transactions in the Middle East was Aercap's sale of a second-hand aircraft portfolio to NCB Capital. The innovative Shariah-compliant $500 million five-year portfolio financing for Dara Aviation Finance involved both Clifford Chance and Milbank as law firms.

Milbank was again active with another groundbreaking transaction in the region – the AFIC-supported financings for El Al Israeli Airlines with Japanese equity.

K&L Gates' partner Sidanth Rajagopal says the region has been one of the hardest-hit areas, because the entire aviation model was based on a hub-and-spoke model. "This has led to most airlines looking for avenues to increase their liquidity. We have acted for lessors assisting the airlines with sale and leaseback transactions to increase their liquidity," says Rajagopal.

Capital market deals accounted for five transactions with the notable DAE Capital sponsoring Falcon 2019-1 ABS transaction.

Commercial loan structures were popular in the Middle East in 2019 notably with leasing companies. The 17 transaction points included Alafco raising more than $1.5 billion through the Murabaha financing structure. DAE Capital raised $600 million through the commercial loan market and also amended its revolving credit facilities during the year.

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- Ascertain the ratings trend for individual airlines
- Benchmark or sense-check existing ratings that you have
- Assist in understanding public credit ratings for individual airlines
- Help predict the impact of operating performance and corporate finance decisions on credit ratings
- Assess the financial health of the airline industry as a whole

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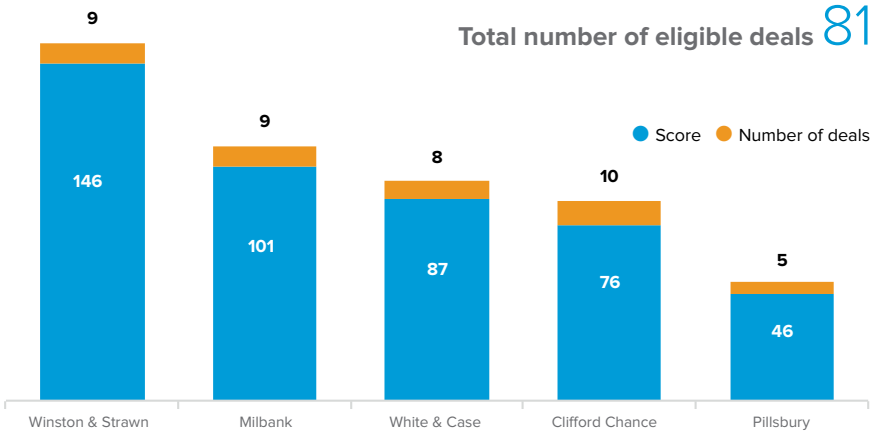
Latin America



Source: law firm submissions and *AFJ Deal Tracker*

Four law firms were very active in the Latin America market and, based on *Airfinance Journal*'s newly introduced points system recognising the role and complexity of transaction, Winston & Strawn ranked first, followed by Milbank and White & Case.

Mark Moody of Winston & Strawn notes that airlines in Latin America continued to attract diverse sources of financings last year, with Jolcos, in particular, being very prevalent for some of the leading airlines in the region.

The data shows that almost $1.5 billion-worth of Jolco transactions closed last year with Latin American carriers, notably Copa Airlines and LATAM Airlines.

The assets financed include 737 Max 9 aircraft, A320neo and 787-9s. But LATAM also managed to refinance six used A320s in the Jolco market in a $224 million transaction.

Winston & Strawn was involved in three transactions, representing $939 million.

Milbank partner Drew Fine says the firm was particularly active in Latin America representing Avianca in its debt and lease restructuring transaction. Avianca renegotiated more than $4.5 billion of aircraft lease, debt and other obligations as part of its 2021 strategic plan. The transaction included an offer to exchange its $550 million 8.375% senior unsecured notes due in May 2020 for new senior secured notes due 2023, and a $325 million convertible term loan facility provided by United Airlines, Kingsland International Group and certain Latin American investors.

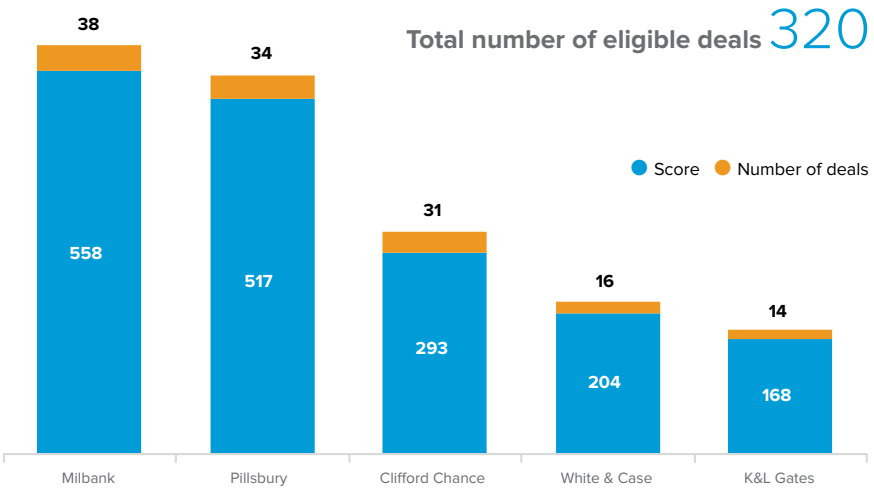
The firm also represented Brazilian carrier Gol in a spare parts engine financing-related transaction, another US Ex-Im financing and a predelivery financing. Milbank also represented the lenders in connection with a US Ex-Im financing for Aeromexico.

Operating leases in Latin America represented about half of the transactions last year, according to the data, while airlines acquired about 20 aircraft under purchase contracts.

Capital markets activity included 11 transactions with Avianca and Volaris issuing secured notes. LATAM Airlines, Viva Aerobus, Azul, Gol and Avianca issued unsecured bonds.

Looking ahead, Moody says that, because of Covid-19, "2020 is of course a different story, with both Avianca and LATAM having now filed for Chapter 11 in the USA. This will undoubtedly have an impact on the availability of future financings for airlines in the region, with such airlines likely having to turn towards supported financings such as those involving the ECAs".

North America



Source: law firm submissions and *AFJ Deal Tracker*

Milbank and Pillsbury were neck and neck in North America, representing more than 70 transactions during 2019, or 23% of the overall deals in the market.

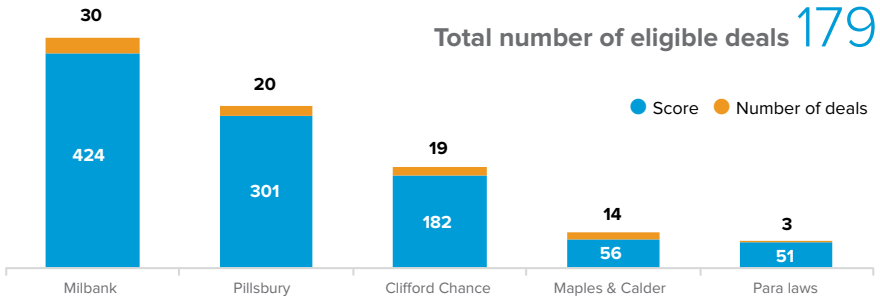
"The North American aircraft finance market had another incredible year in 2019. The capital markets were particularly hot, with aircraft ABS having another record year and plenty of unsecured offerings and EETCs [enhanced equipment trust certificates]," says Milbank's Fine.

The abundance of liquidity in the capital markets was translated in a total of 57 transactions last year in North America. *Airfinance Journal* recorded 17 transactions worth $8.8 billion in 2019 in the ABS market, up from $7.3 billion the previous year.

There was a vague air of optimism in January this year when the commercial aircraft ABS market was predicted to surpass 2019 volumes. Indeed, in the first two months of the year, ABS transactions across five issuances totalled $2.26 billion – and sources told *Airfinance Journal* in early March that another 10 deals were in the pipeline for the first half. However, the initial momentum has stalled because of the Covid-19 pandemic.

Also, there was $5.25 billion-worth of EETC issuances in the US market but 2019 also marked a year with many commercial loan deals in North America. The data shows almost 80 transaction points closing in 2019 with the majority being secured transactions. The lessor community, along with issuing unsecured debt, tapped the secured market through term loans, portfolio finance and revolving credit facilities. "There were also plenty of warehouse, term loan and other acquisition finance facilities. Milbank was delighted to be involved in the vast majority of major US financings in 2019. Overall, a banner year in the US aircraft finance market," adds Fine. The structured lease market activity was minimal in North America last year with six transactions recorded in the Jol market. Aircraft acquisitions and portfolio acquisitions represented about one-third of the total eligible transactions in North America with 118 deals recorded.

Capital markets



Source: law firm submissions and *AFJ Deal Tracker*

North America leads with a third of the capital markets transactions, especially in the ABS and EETC markets.

Airfinance Journal recorded a total of 21 ABS transactions in 2019, 12 of which were issued by US-based sponsors.

Milbank's Fine says: "Following a new record 15 aircraft ABS transactions closed in 2018, a new record 18 aircraft ABS transactions closed in 2019. This included 11 ABS with 144A "tradeable" equity and the first aircraft ABS with Japanese equity. The ABS market continued red-hot with five aircraft ABS deals closing in January and February 2020 until Covid-19 closed down the market."

The appetite for the unsecured bond market last year increased with a total of 106 transaction points recorded overall, of which a quarter was in North America.

Milbank maintained its lead in the capital markets category. The firm was involved as counsel in 30 transactions, three more than the previous year. Pillsbury was second with 20 transactions in 2019 closely followed by Clifford Chance with 19.

The EETC market had a better year in 2019 than in 2018 with almost $4.6 billion-worth of transactions. Last year, the EETC issuers included US carriers such as Jetblue Airways, American Airlines, United plus Delta Air Lines, which returned to the market after a five-year absence.

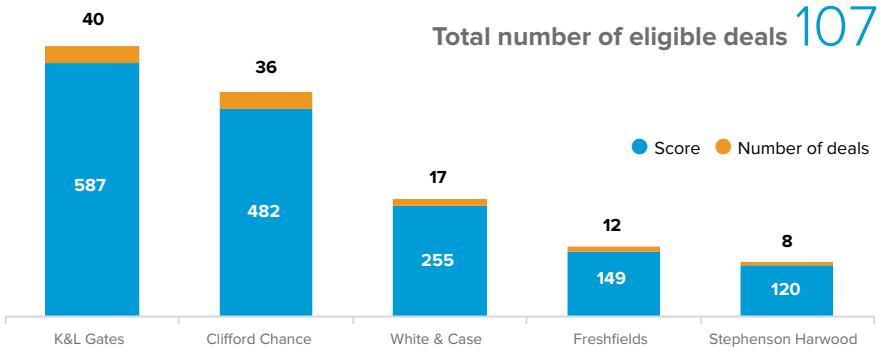
DAL 2019-1 was a very interesting deal because both AA and A certificates were structured with a five-year bullet maturity. The bullet structure is unusual for an EETC transaction, most of which are amortising structures featuring about 12-year tenors and approximately nine-year weighted average lives for senior tranches. The collateral pool included six Airbus A321s, two A350-900s, four 737-900ERs and two A220-100s, all of which were delivered to Delta in 2018.

"Delta, United, American and Jetblue continued to issue EETCs in 2019, and the rated aircraft leasing companies and the major US airlines turned out unsecured note offerings at attractive interest rates. Overall, a stellar year in the capital markets in 2019 and Milbank was the market leader," says Fine.

Non-US carrier issuers included two members of the IAG group. British Airways issued a $1.12 billion transaction that combines senior secured EETCs and Jolco equity in relation to six A350-1000 and two A320neo deliveries. Iberia issued an EETC transaction in the private market for two A320neo and two A350-900 deliveries.

Another milestone transaction included American issuing $650 million of debt in the private market secured by 79 engines. The transaction represented the first broadly distributed private placement engine EETC for the issuer, with 18 investors ultimately participating in the transaction.

Structured leases



Source: law firm submissions and *AFJ Deal Tracker*

Narrowbodies continue to account for the bulk of Jolco deals, particularly the A320neo-family as Boeing's competing 737 Max series remains grounded.

The past year has seen a number of notable developments in the Jol/Jolco space, including the proliferation of more Jolco deals with lessors as a natural adjustment to the shift in aircraft ownership from airlines to lessors. There were also more refinancings of vintage aircraft and more innovative debt structures emerging, combining the traditional Jolco with instruments including ABS, EETCs and AFIC-guaranteed debt.

Jolco financings represented about two-thirds of the structured lease market last year. The overall funding volumes have increased, reflecting the confidence in the product and the credits, but also as a consequence of larger transactions requiring bigger Japanese equity underwriting capabilities.

Last year saw the first Jolco transactions for El Al Airlines, Royal Air Maroc, Air Mauritius, while LATAM tapped the market for new and used assets, as Jolco underwriters became more open minded on the risk. "In 2019, we've seen the market expand, maybe even a bit too much because there was a moment where supply exceeded demand. This forced arrangers to sell down their inventories at a discount. We had hoped this would correct itself back but, unfortunately, this does not look to be the case for 2020," Tokyo Century joint general manager and global head of marketing, Marito Takamasa, tells *Airfinance Journal*.

K&L Gates maintained its lead position in this market, although Clifford Chance significantly reduced the gap.

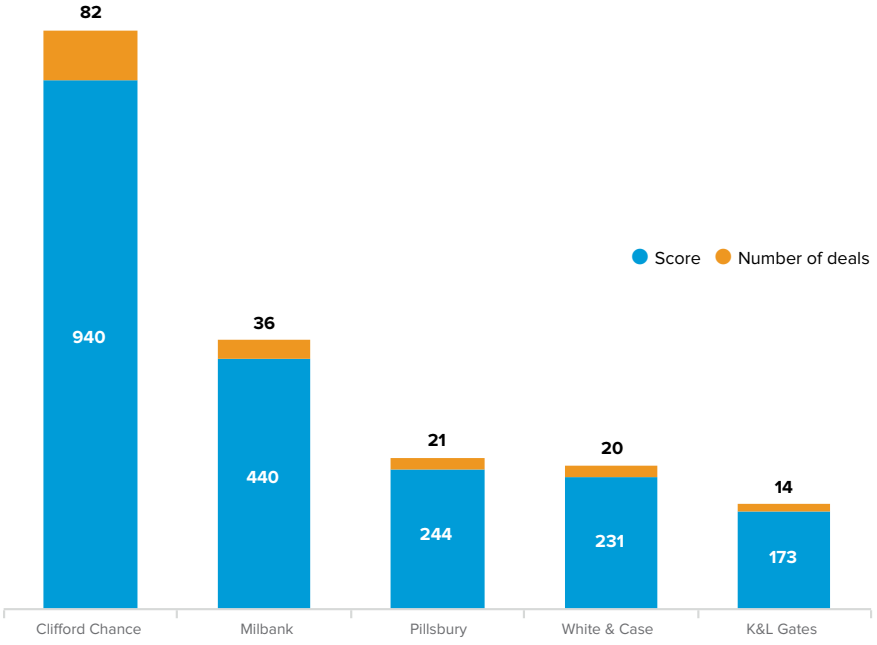
K&L Gates's Melson says 2019 was a big year for the firm. It advised on the JOL-Air 2019-1 ABS, the first ABS to feature securitised debt with equity sourced from the Jol market.

"On the structured lease front, we continued to advise on a majority of the Jolco transactions, including many that involved new airline credits for the product," he says. K&L Gates' Darling says the firm was able to guide clients through structured lease transactions with longstanding counterparties and also helped them institute new relationships, such as welcoming Royal Air Maroc to the Jolco market.

"Representing Japanese lessors on Jol and Jolco structures is an area where the K&L Gates team excel. Our expertise in structured lease transactions spans the globe, we establish knowledgeable teams across various jurisdictions and time zones to provide around the clock client care and encourage transaction momentum," adds Darling.

Commercial loan

Total number of eligible deals 277



Source: law firm submissions and *AFJ Deal Tracker*

The aircraft commercial loan market has been resilient in recent years, despite the abundance of liquidity and structures that have pushed airlines and lessors to opt as alternatives.

In recent years and until the Covid-19 crisis, airlines had never had it so good, as they benefited from aggressive pricing and a wide appetite for financings from traditional banks, new participants and banks which re-entered the sector after long absences.

Furthermore, new asset financing structures have been developed over the past few years, notably the emergence of insurance-backed structures that benefited from the withdrawal of the ECAs. At the same time, a growing list of carriers succeeded in tapping the US capital markets for the first time.

In 2019, *Airfinance Journal* recorded 277 eligible deals in the commercial loan market. However, this was about 100 transactions down from the previous year and, as such, the percentage of commercial loans dropped to 18% of the total transactions from 24% in 2019.

This pattern can be seen among the top three law firms ranked in this category. Clifford Chance came first with 82 transaction points in 2019 (20 fewer than the previous year), Milbank was second with 36 transactions (10 fewer than in 2019) and Pillsbury was third with 21 transactions (11 fewer than in 2019).

Some landmark transactions in 2019 included lessors.

Altavair and KKR secured a $750 million blind warehouse facility for their joint venture after KKR invested $1 billion. The facility has a three-year availability period and four-year term.

Castlelake was particularly active last year with two transactions: an $835 million non-recourse term loan facility to support the acquisition of an aircraft operating lease portfolio of 22 aircraft from CMIG Aviation, and an almost $600 million financing to purchase a 24 Airbus A320-aircraft portfolio from Air Aviation Capital.

Airborne Capital secured a $693 million warehouse facility agreement with three European lenders.

DAE Capital secured a four-year $440 million revolving credit facility syndicated in the Asia-Pacific region and subscribed by 10 Asian banks. Milbank worked on warehouse financings for, among others, Aerocapital Solutions, Apollo Navigator, the KKR/Altavair joint venture, Airborne/Tailwind, TrueNoord and the Napier Park/AAR joint venture.

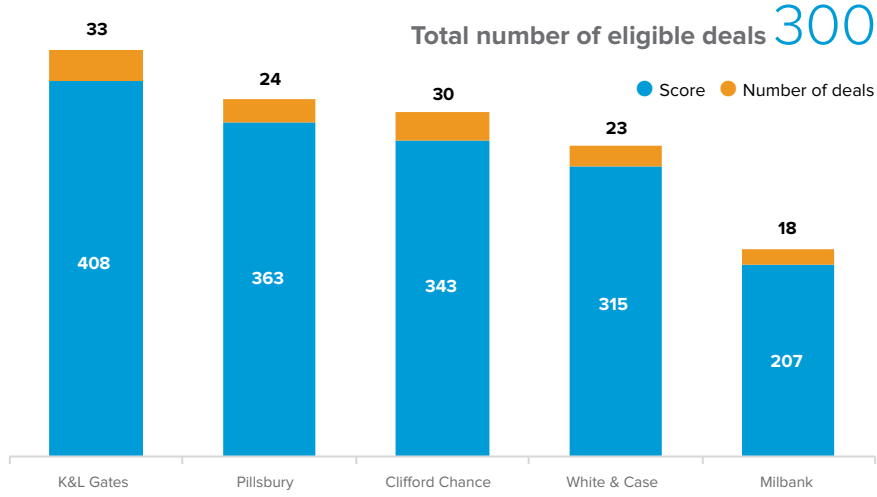
Milbank's Fine says the commercial loan market was very strong, whether it involved term loan facilities, revolving credit facilities or warehouses.

"Large term loan facilities and warehouses were made available with the goal of eventually being taken out by ABS or long-term financing facilities," he says.

The firm also represented the borrower on one of the largest financings of the year – a collateralised loan obligation-like financing of the acquisition by Athene and Apollo from GE Capital of PK Airfinance.

Sales & purchases

Total number of eligible deals 300



Source: law firm submissions and *AFJ Deal Tracker*

K&L Gates was the most active law firm last year in the sale and purchase market, ahead of Pillsbury and Clifford Chance. The firm racked up 33 transaction points and scored 408 points.

However, there were 300 transactions recorded last year, or about 45 transactions less than the previous year.

"Aircraft sale transactions continue to have a bit of a mixed approach from the market but is one area where there will be a reasonable amount of activity as airlines will look to access the sale and leaseback market or sell aircraft (including for part-out) to increase their cash position," comments K&L Gates' Rajagopal.

STEPHENSON HARWOOD

Legal opinion, clearly expressed

The award-winning Stephenson Harwood aviation team has expertise across all areas of the aviation industry, including financing and leasing transactions, portfolio management activities, aircraft acquisitions and disposals, and dispute resolution.

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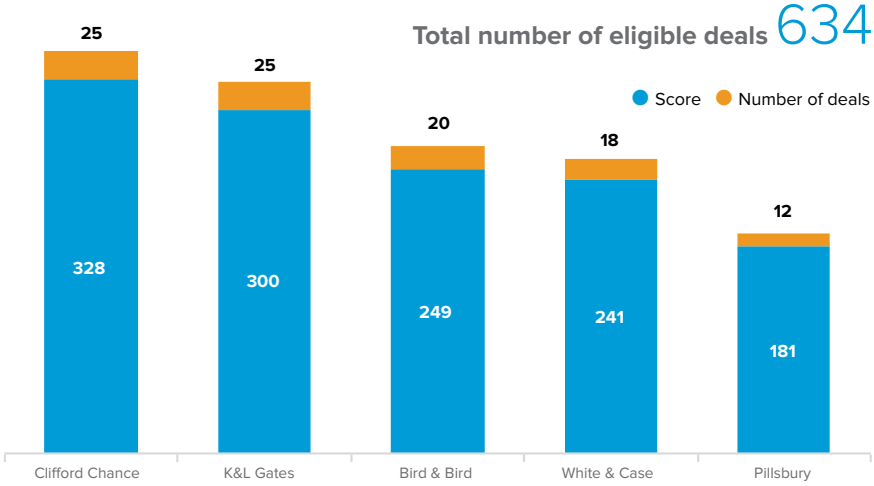
Operating leases

Total number of eligible deals 634



Source: law firm submissions and *AFJ Deal Tracker*

Clifford Chance and K&L Gates were neck and neck in the operating lease market, while Bird & Bird came third. It was a big change from the previous year when Clifford Chance had closed 40% more transactions than K&L Gates.

Operating leases continue to be the most popular financing solutions in the market of new aircraft deliveries.

In this year's legal survey, they represented about 42% of all transaction points, with a total of 634 deals versus 584 in 2019.

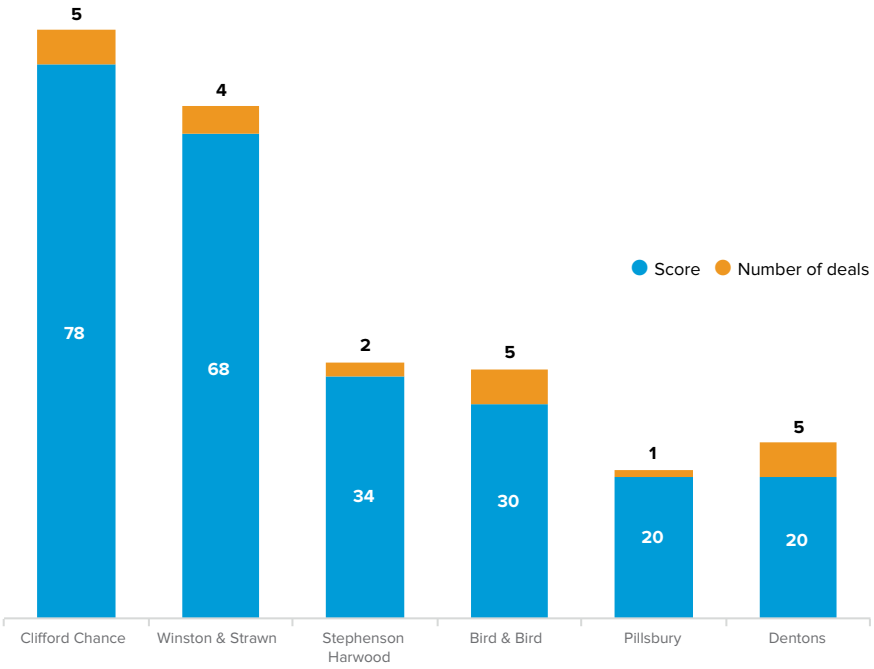
Europe continues to lead this category with 279 transactions in 2019. Sale and leaseback deals in Europe accounted for 23 deals of one or more aircraft.

The expectations in 2020 are not that optimistic, despite some airlines increasingly looking at unencumbered assets as a way of raising liquidity to offset the drop in revenues because of the Covid-19 crisis.

"The global market for operating leases (sale and leaseback transactions or pure operating leases) for new or old aircraft (except those owned by airlines) will take a bit of a hit until at least the end of the year. This is due to both Covid-19 and the Max issue together with low oil prices, which will see most carriers continuing to use older technology for a bit longer," says Rajagopal.

Guaranteed financing

Total number of eligible deals 23



Source: law firm submissions and *AFJ Deal Tracker*

The number of guaranteed financing transactions in 2019 – 23 – more than doubled compared with the previous year.

Clifford Chance, Bird & Bird, Dentons and Winston & Strawn were the main participants in this market in 2019, with a total of 19 transactions.

However, Clifford Chance and Winston & Strawn ranked first and second, respectively, when scores were added.

Winston & Strawn worked on export credit agency (ECA) deals for Aviation Capital Group and LATAM last year.

"ECA-supported financing has historically been counter cyclical and was a lifeline to airlines during the last downturn, when access to the commercial bank market became difficult," says Winston & Strawn's Moody.

"As a result of the current Covid-19 crisis, I would very much expect ECA financing to start to play a major role once again in aircraft financing during the next few years," he adds.

Clifford Chance was mainly involved in the development and implementation of insurance-guaranteed deals with French tax lease under the Balthazar product for Turkish Airlines and Ethiopian Airlines.

"Changes to the Basel capital rules are accelerating trends for banks to seek to de-risk on balance sheet assets through credit insurance products. At the same time for various reasons, export credit insurance/guarantee coverage became less available, which prompted the commercial credit risk insurance market to step in to provide 100% non-payment insurance products," says William Glaister, partner and head of Clifford Chance's global asset finance group.

The main transaction in the market last year involved Emirates Airline's financing four Airbus A380s under Bpifrance-covered loans provided by Santander as sole mandated lead arranger. It was the largest aviation transaction since the European ECAs returned to cover Airbus products.

Avianca, LATAM, Malaysia Airlines, Sun Express Airlines and Air Senegal were also active last year in the ECA market, some with refinancing deals.

Rising **stars**

Airfinance Journal recognises six of the most promising legal associates for 2019.

Russell Green

Senior associate, Hogan Lovells
London

"Russell is a highly versatile, intellectually rigorous lawyer with an amazing ability to get to the heart of the important issues in a deal quickly."

Robert Fugard, head of asset finance, Hogan Lovell

Russell Green is a senior associate in the Hogan Lovells asset finance team with a particular focus on aviation finance. His aviation clients include airlines, leasing companies, funds and banks and he has acted on a wide range of aviation finance products, including operating leases, sale and leasebacks, enhanced equipment trust certificates (EETC), Japanese operating lease with call options (Jolco), capital markets issuances, US and European export credit agency-supported financing and predelivery payment (PDP) financing.

Green has been particularly active in transactions involving groundbreaking insurance-backed aircraft financing solutions developed and launched to market in the past couple of years. He acted for Norwegian on a series of AFIC financings for Boeing 737 Max and 787-9 models, and for the mezzanine lender on one of the first Balthazar financings issued in the market.

Over the past two years, Green has advised on a number of complex, high-profile matters including advising Norwegian on the establishment of a joint venture with CCB Leasing (International) Corporation to finance, own and lease 27 Airbus A320neo-family aircraft that Norwegian has on order.

He also advised Norwegian on its recapitalisation. This project involved the restructuring of the majority of the company's aircraft operating leases, including the conversion of $912 million of rental obligations into shares or bonds, the adjustment of lease rates, the conversion of rentals until March 2021 into a "power-by-the-hour" arrangement (matching rentals paid to actual utilisation of aircraft) and the early redelivery of certain aircraft.

The recapitalisation enabled Norwegian to achieve an 8% equity ratio and qualified it to receive state aid from the Norwegian government in the form of a $301 million term loan facility. Green also worked with the Scandinavian carrier on PDP financing with Aercap covering five A320neo aircraft.

Other lead roles in Europe include advising Icelandair on its PDP financing and sale and leaseback transaction with BOC Aviation for 11 737 Max aircraft, advising Deutsche Bank on the financing of three ATR72-600 aircraft for Avation on lease to Braathens. The transaction marked the first "green financing" involving aircraft.

Green also plays a leading role in the firm's Africa finance practice. Over the past year, he has acted for African financial institutions such as Eastern and Southern African Trade and Development Bank as mezzanine lender in connection with the Balthazar insurance-backed financing with French tax lease of two A350-900 aircraft for Ethiopian Airlines. He also advised African Export-Import Bank on the repossession, settlement arrangements and subsequent sale of two ATR72-500s previously operated by airlines in Angola and Ghana.

His range of expertise enabled him to advise engine manufacturer Rolls-Royce on arrangements arising out of Avianca's out-of-court restructuring plan, as well as engine lessor Shannon Engine Support on arrangements with airlines including China Southern Airlines and Sunwing.

Green is ranked as an 'Associate to Watch' for Aviation Finance in Chambers and Partners' *Chambers UK 2020* rankings, with a client commenting "he is intelligent, hardworking and very responsive under pressure". He is also recommended in *The Legal 500, 2020* for UK Transport Finance and Leasing, with a client noting he is "always able to keep the client happy" and an "excellent communicator and deal manager".

Robert Fugard, Hogan Lovells' head of asset finance, says: "Russell is a highly versatile, intellectually rigorous lawyer with an amazing ability to get to the heart of the important issues in a deal quickly."

Evgenia Erakhtina

Senior associate, Allen & Overy
London

Evgenia Erakhtina is a senior associate in the structured and asset finance group of Allen & Overy.

She advises on some of the most innovative, complex and high-profile structured and asset finance transactions.

Her experience includes Covid-19 debt finance and debt restructuring, AFIC-supported finance, Islamic finance, operating leasing, joint-venture establishment, debt finance, export finance, PDP finance, sovereign debt, portfolio transfers, portfolio and warehouse financing, tax leasing products and a range of corporate and commercial matters.

One of Erakhtina's strengths is her expertise in Islamic-based financing transactions. She regularly acts for borrowers and Islamic banks on a variety of aircraft transactions. Recent transactions include advising a syndicate of Islamic lenders on the Ijara financing of five A330 aircraft on lease to Kuwait Airways, and DAE Capital on multiple Ijara and Murabaha transactions with regional Islamic banks.

She has also advised DAE Capital on the PDP and post-delivery financing and leasing of five 787-9s on lease to Gulf Air, First Abu Dhabi Bank on the financing of one 787-10 aircraft and one 777F aircraft for Etihad Airways.

Erakhtina's largest transaction is the five different syndicated financing facilities, totalling $3.5 billion, to International Airfinance.

She recently completed a secondment with a top-tier aircraft lessor in Dublin, which has provided her with a first-hand perspective on how operating lessor clients operate and their needs.

Evgenia is an expert at advising on complex cross-border transactions and her intelligence and calmness under pressure have allowed her to build strong client relationships across the market.

Paul Nelson, partner and global head of aviation, Allen & Overy

Her fluent Russian has helped her to develop strong client relationships with operating lessors and airlines across the CIS region. She has advised VEB-Leasing on the PDP and export credit agency-backed delivery financing of 20 new A320-family aircraft for UTair Aviation, VEB-Leasing in connection with the $1.1 billion US Eximbank-supported financing of 10 777-300ERs on lease to Aeroflot-Russian Airlines, as well as VTB Leasing on US Eximbank-supported financing of 50 737-800/900 aircraft for Aeroflot-Russian Airlines.

Erakhtina has also supported Russian and international operating lessors with restructurings and repossessions involving Russian airlines.

Paul Nelson, Allen & Overy partner and global head of aviation, says: "Evgenia is an expert at advising on complex cross-border transactions and her intelligence and calmness under pressure have allowed her to build strong client relationships across the market."

Her experiences include being the lead associate advising financiers in a recent £400 million ($500.3 million) financing for Easyjet (Covid-19).

She has also had several adviser roles for AFIC insurer groups: for a French Overseas LODEOM tax lease of two 787-9s for Air Tahiti Nui; a BNP Paribas-arranged and BNP Paribas/KfW and CaixaBank-funded AFIC-supported French lease of two new 787-9 aircraft delivered to Royal Air Maroc; and a French tax lease financing of one 787-9 aircraft and one 737 Max 8 aircraft for Royal Air Maroc. This was the first AFIC-supported financing for Royal Air Maroc and the first AFIC transaction involving KfW and CaixaBank.

Her work with Royal Air Maroc extended to the Jolco financing of two 737 Max 8 aircraft provided by SMBC.

In the lessor segment, Erakhtina has worked with BNP Paribas, Credit Agricole, ING Bank, National Australia Bank, Natixis, Societe Generale, SMTB and Westpac on a $700 million financing of a portfolio of 19 aircraft for CDB Aviation, as well as with PFA Asset Management on Nordic Aviation Capital's largest unsecured facility.

Pete Buckley

Senior associate, Clifford Chance
London

Pete Buckley is a senior associate in Clifford Chance's global asset finance group. He advises a wide range of clients across the aviation sector, including financiers, arrangers, insurance companies, manufacturers, export credit agencies, leasing companies and operators.

Buckley has worked on a wide range of financing structures including secured operating lease financings (full and limited recourse), direct airline financings, Balthazar insurance-backed financings, export finance transactions, Jolco financings, PDP financings and structured capital market transactions, as well as acting for a wide variety of leasing companies on numerous aircraft portfolio sales.

He has also worked on M&A transactions in the aviation sector and has experience advising operating lessors and financiers in relation to distressed airlines and their restructurings.

Notably, he advised Airbus, Marsh Paris, a number of selected banks and various insurance companies on the development of the Balthazar credit risk insurance product for new Airbus aircraft financings. He has also advised the Insurer Underwriting Committee on all Balthazar financing transactions completed as *Airfinance Journal* went to press.

Buckley has spent time on secondment with Standard Chartered Bank where he worked with their global aviation finance team in Dublin, gaining valuable insights from the operating lessor perspective.

Pete has a broad experience and has been the lead associate on a significant number of complex and first-of-their-kind transactions within the sector. Clients like his commercial approach and his ability to close transactions efficiently and smoothly.

William Glaister, head of global asset finance group, Clifford Chance

"Pete has a broad experience and has been the lead associate on a significant number of complex and first-of-their-kind transactions within the sector. Clients like his commercial approach and his ability to close transactions efficiently and smoothly; he is pragmatic and steady in negotiations with the opposite side," says William Glaister, head of Clifford Chance's global asset finance group.

Buckley's deal highlights include acting as lead associate for the syndicate of insurers on the first-ever Balthazar insurance-backed financing, for five A321neo aircraft for Turkish Airlines with financing provided by BNP Paribas utilising a French structured tax lease.

He recently advised on a Jolco refinancing for BNP Paribas for one 787 aircraft for KLM Royal Dutch Airlines. The transaction was completed in a matter of weeks during the Covid-19 crisis. MUL acted as equity arranger with junior financing provided by NTT Finance.

Buckley has had leading roles in transactions with financiers for the restructuring of certain Jolco transactions for Avianca and its subsequent (and ongoing) Chapter 11 proceedings, on Chorus Aviation's first warehouse facility (provided by Deutsche Bank, Barclays and Royal Bank of Canada) to finance the acquisition of regional aircraft, and financiers on a number of full recourse secured operating lease portfolio financings for Aercap and DAE Capital.

Last year, he advised SMBC Aviation Capital on the aircraft purchases of its Global Aircraft Equipment Leasing (GAEL) fund. This followed work with the lessor on three separate portfolio sales to Aircastle of 40 leased aircraft in aggregate.

His lessor's expertise spans to Avolon in connection with each of its 2018 Sapphire I and 2020 Sapphire II operating lease asset-backed securities (ABS) portfolio transactions, negotiation of a purchase agreement with Boeing for 10 737-800 aircraft for Standard Chartered, and the financing of two A380 aircraft operated by Etihad Airways for Amedeo. The first A380 was financed with senior and junior financing from NBAD and the second was financed through an Islamic Ijara structure with Dubai Islamic Bank.

Clement Leung

Senior associate, Stephenson Harwood
Hong Kong

Clement Leung is an experienced structured finance lawyer in the aviation sector. He has advised banks, lessors and airlines on various aspects of aircraft financing and leasing transactions involving multiple jurisdictions. He has more than a decade's experience advising on derivative agreements, including ISDA master agreements, catering to a wide variety of products, including interest rates, foreign exchange, equities, credit and commodities.

Of particular value is Leung's ability to advise on, negotiate and execute the hedging aspects of aviation finance transactions, which is unique to the industry. He recently advised on hedging issues in Mirae Asset Securities (HK)'s $450 million acquisition and financing of three 777 aircraft, on lease to China Airlines. The aircraft were purchased by three Cayman Islands-incorporated special purpose vehicles and remain on lease to China Airlines after the acquisition. Two of the aircraft were acquired from ICBC Aviation Leasing entities, with the other acquired from a GECAS entity.

He has also worked on various innovative deals in the Korean market, including advising Meritz Securities on the $147 million acquisition and financing of one 777 aircraft, on lease to Qatar Airways. The aircraft was purchased by a Cayman Islands-incorporated special purpose vehicle, established by Meritz Securities from an Irish leasing company.

"Of particular value is Leung's ability to advise on, negotiate and execute the hedging aspects of aviation finance transactions, which is unique to the industry."

The deal was financed using a combination of senior, mezzanine and junior funding. DVB Bank SE Singapore Branch and Australia and New Zealand Banking Group provided senior financing for the aircraft, while the mezzanine and junior financing were provided by Korean institutional investors. The transaction was the first arranged by Stellwagen's office in South Korea.

Leung notably advised Vietjet Air on two landmark transactions: the purchase of 50 A321neos worth up to $6.5 billion and 100 737 Max aircraft valued at $12.7 billion.

Before joining Stephenson Harwood, Leung worked for one of Australia's leading energy companies where he advised on a variety of derivatives and trading matters. Consequently, he is able to provide bespoke solutions to clients on their interest rate and foreign exchange risk.

Leung's significant transactions include advising Transportation Partners on a refinancing of a total of 21 737-900ERs. The aircraft are on lease to Lion Air and other related operating airlines including Batik Air, Thai Lion and Malindo Airways.

US-based global private investment firm Castlelake provided the financing. The transaction was executed within two months, involved seven jurisdictions, staggered closings and multiple drawdowns.

He has led on a Malaysian carrier in restructuring its leasing portfolio from a lessor-owned Labuan vehicle to an airline-owned Labuan vehicle, as well as a Philippine airline on the Japanese operating leases with call option financing of four new A321 aircraft.

Leung has also advised a French bank on the financing for a new A321 aircraft with Vietjet Air and two new A320s with Indigo as the operating lessee; a syndicate of banks on the financing of two new A321 aircraft to be operated by a Vietnamese airline; and a German bank on the Japanese operating lease (Jol) financing of an A320 aircraft and an A319 aircraft operated by a Spanish carrier.

Laura Lewis

Senior associate, Holland & Knight
New York

Laura Lewis is a senior level associate in the New York office of Holland & Knight and plays an essential role in the firm's aviation finance practice.

Lewis grew up in a small town in Finland just above the Arctic Circle and discovered her passion for the aviation world working at the Finnish Civil Aviation Authority (now Finnish Transport and Communications Agency) as a summer intern during law school.

She regularly counsels clients on some of the most complex transactions in the industry.

Lewis advises leasing companies and financial institutions, as well as airlines, on the purchase, sale, lease, novation, interchanges, secured and unsecured financing (including PDP financing) and securitisation of commercial and business aircraft, engines and parts.

Phillip Durham, practice group leader of Holland & Knight's asset finance group, says: "Laura is an immensely talented lawyer. Her intellect, service orientation and calm-under-fire approach have led her to become a key advisor for many of our most valued clients. We're extremely fortunate to have her on our team."

"Laura is an immensely talented lawyer. Her intellect, service orientation and calm-under-fire approach have led her to become a key advisor for many of our most valued clients. We're extremely fortunate to have her on our team."

Phillip Durham, practice group leader asset finance group, Holland & Knight

Lewis undertook a 15-month secondment with the Norwalk, Connecticut, office of GECAS between January 2019 and March 2020, where she advised on a range of aviation matters including operating leases, deliveries and original equipment manufacturer purchase agreements. She worked with marketing, technical, insurance, tax and risk functions gaining a deeper knowledge of aviation and the commercial side of the industry.

Joseph Esposito, senior vice-president and associate general counsel of GECAS, says: "Laura Lewis is an exceptionally gifted attorney who is keenly responsive to her clients. She has great technical, legal skills and also provides strategic, practical legal advice which is instrumental in executing commercial transactions."

She regularly advises aircraft leasing companies such as GECAS, BBAM Aircraft Management and Aircastle, among others, on all aspects of commercial, regulatory and aviation law.

Lewis has had leading roles in transactions for BBAM's sponsoring in the $612 million Horizon I asset-backed securitisation of 29 aircraft on lease to 21 airlines in 19 jurisdictions. This was BBAM's first securitisation since the $1.2 billion ECAF-1 Ltd transaction in 2015.

She also advised BBAM on the lease, portfolio financing and acquisition of 14 engines from Air Asia. This transaction is part of the $1.18 billion acquisition by BBAM of the Air Asia Capital portfolio and involved the establishment of two separate loan facilities and the lease of 14 engines to five different Air Asia-affiliated airlines.

Lewis also advised Aircastle in the portfolio financing by the National Australia Bank of five A320 aircraft on lease to American Airlines, and SMBC Aviation Capital in the lease of five A320neo aircraft to the newly formed Jetsmart.

She advised Jackson Square Aviation in a $500 million facility agreement, which provided financing for more than 10 new sale and leaseback deliveries of Boeing and Airbus narrowbody aircraft with Vivaerobus and Indigo Airlines, among others.

Lewis also advised GECAS in the $381 million aggregate sale of a portfolio of 21 engines on lease with 16 different lessees with lease servicing provided by GECAS after the sale and the novation of all engine leases.

She also serves as a member of the aeronautics committee of the New York City Bar and the forum on air and space law of the American Bar Association.

Niels Jensen

Senior associate, Milbank
New York

New York-based senior associate Niels Jensen is a longstanding member of Milbank's aviation finance practice and has provided invaluable advice and service to the firm's clients.

He graduated from Vanderbilt University law school.

Jensen has extensive experience working with the firm's lender, underwriters and issuer clients. He has particular experience working on capital markets transactions, including EETCs and asset-backed securities transactions.

Over the past few years, Jensen has represented underwriters of EETCs for American Airlines, Delta Air Lines, United Airlines, Air Canada, Jetblue Airways and other airlines including initial issuance of senior tranches as well as subsequent issuance of super C tranches. He has worked on several cutting-edge aircraft ABS transactions, including deals for GECAS, BBAM, DAE Capital, Sky Leasing, Avolon and Stratos/JP Lease.

Jensen worked on START 2018-1 (with GECAS as servicer), which was the first ABS with 144A tradeable equity (as well as the follow-up START 2019-1 and START 2019-2 transactions). He also worked on the Jol-Air 2019-1 for Stratos and JP Lease, which was the first ABS with Japanese equity.

"Niels is a huge contributor to the success of Milbank's clients. He has worked on many first-of their-kind transactions and is also at the forefront in developing solutions to complex issues."

Drew Fine, global head of transportation practice, Milbank

He has also worked on some of the most innovative and largest bank financings, including warehouse facilities for Sky Leasing, Aero Capital Solutions, Castlelake and Stellwagen.

Jensen is known for his deep knowledge of aircraft financing, his problem-solving skills, his calm demeanour and his ability to get deals done successfully.

Milbank's global head of transportation practice, Drew Fine, says: "Niels is a huge contributor to the success of Milbank's clients. He has worked on many first-of their-kind transactions and is also at the forefront in developing solutions to complex issues."

Guide to **cross-border restructuring**

Marie O'Brien, A&L Goodbody partner and head of aviation and transport finance, Dublin, and Maria McElhinney, A&L Goodbody partner, New York, look at key issues affecting lenders and lessors in Irish law arising from the Covid-19 crisis.

The aviation finance industry has encountered unprecedented and challenging changes over the past months. The grounding of the global fleet because of Covid-19 triggered numerous rent deferral requests from lessees and, in some cases, bankruptcies. This has led to existing financing structures being examined for flexibility and/or restructure.

Ireland's dominant position as a hub for aircraft leasing means that a large percentage of the global fleet are owned and leased by Irish companies which are the borrowers under these financing structures. These challenges have resulted in a number of lenders and lessors seeking clarification with regard to the refinancing and restructuring of existing debt obligations.

We have compiled a list of some frequently asked questions addressing Irish law aspects connected with proposed refinancings and restructurings.

Can existing security provided by an Irish company be relied on in the refinancing of a loan with the same lender group?

There are certain factors to consider in determining whether existing security will be sufficient to secure the refinancing of an existing loan. A key factor relates to how the existing security documents are drafted. The obligations secured under the existing security documents (typically defined as the 'secured obligations' or 'secured liabilities') must be drafted in such a manner, whereby the obligations secured would include any additional obligations arising under the refinancing arrangements.

For example, in the event additional monies are provided or there is an increase in the interest rate applicable under the refinancing, such an increase of obligations must be captured within the existing security in order for a lender(s) to continue to rely on such security documents.

Where existing security is sufficient to secure the obligations arising in a refinancing, we would advise that a confirmation be provided by each chargor confirming to the lender(s) that the existing security continues in full force and effect, and continues to secure the obligations of such chargor notwithstanding that the refinancing has taken place.

Marie O'Brien

Maria McElhinney

If the existing security is inadequate to secure the obligations arising in a refinancing, each chargor should enter into new security in favour of the lender(s) to secure the obligations arising under the refinancing arrangements.

In the event additional assets are required to be provided as security as part of the refinancing, we would advise that new security documents are put in place in respect of such additional assets in favour of the lender(s).

What key considerations should a director consider prior to entering into any new security documents?

Before granting any new security, it is critical for the directors to determine that the company providing the security is solvent. Under Irish laws, solvency is determined by the ability of the company to pay its debts as they fall due taking into account its current, contingent and perspective liabilities.

When solvent, an Irish company's directors owe their fiduciary duties to the company. Where uncertainty arises as to whether a company can trade through financial difficulties, directors continue to owe their duties to the company, but must take the interests of creditors into account.

Typically, this means considering the impact of material decisions, on creditors such as granting new security. Although a creditor does not have a direct right of action against a director for a breach, where a liquidator is appointed to the company, the liquidator could take an action against a director if they believed a breach occurred.

The solvency of the company is of particular relevance, where the granting of any new security would constitute the granting of financial assistance pursuant to Section 82 of the Irish Companies Act, 2014. In such circumstances, in order for the company to grant such new security, a summary approval procedure under the act is required to be carried out. This requires all or a majority of the directors of the company making a declaration of solvency that the company is able to pay its debts as they fall due. This is a 12-month 'look-forward' analysis whereby the directors should assess the company's current and projected financial position in order to make such an opinion.

In the event that a declaration of solvency is made and the company is wound up within a 12-month period of making such declaration, and it is unable to pay its debts in full, it is presumed until shown to the contrary, that the relevant director(s) did not have reasonable grounds for making such a declaration. Where a director makes a declaration of solvency without reasonable grounds for doing so, they could face both civil and/or criminal sanctions pursuant to the act.

What key factors should lenders be cognisant of where new security is required?

New security granted by an Irish company will be subject to the risk of being challenged by a liquidator appointed to such company, and rendered unenforceable if it is granted in risk periods (known as the 'hardening periods') on or before insolvency. The length of the risk period varies according to the type of challenge raised by the liquidator. The

solvency of the Irish chargor when granting new security will therefore be of critical concern to any lender and it is prudent that representations as to solvency are obtained prior to the entry into any new security.

In a winding up of an Irish company, a liquidator or creditor may seek to set aside any security entered into, where the effect of such arrangement is to prefer one creditor over the others and such agreement will be rendered invalid as an 'unfair preference'. This right may only be exercised where the company entered into the security within six months before the commencement of a winding up (or within two years for a transaction with a 'connected person' (broadly meaning a director or shadow director or associate of the company which includes a group company). There is a presumption that it was made with a view to giving that person a preference over the other creditors, and hence is presumed to be an unfair preference. The onus is on the creditor to provide that the arrangement was not an unfair practice.

If the new security granted contains a floating charge, the risk period is two years if granted to a connected person. In respect of any other person, the period is one year but only if the company was unable to pay its debts at the time such floating charge was granted, or became unable to pay them as a result of the granting of such floating charge. Any floating charge granted in the risk period will automatically be invalid, except to the extent the company received valuable consideration for granting the floating charge.

How can I enforce a share charge over an Irish company?

It is typical in aircraft financing transactions that a share charge is provided over the shares in the borrower and each of its underlying subsidiaries. For structuring purposes these entities are usually special purpose vehicles and will have no employees. The share charge security is drafted to enable it to be enforced as a self-help remedy and a court order is not necessary for enforcement. Share charges do not create rights under the Cape Town Convention therefore no registrations are required on the international registry.

Under the terms of a share charge, the chargee (usually the lender entitled to the security) will receive ancillary deliverable documents such as letters of resignation of the directors and company secretary and a share transfer form. These documents will be signed but left undated. On the occurrence of an event of default under the share charge, the chargee should be entitled to enforce its security. On enforcement, the chargee will be authorised to date the ancillary documents thereby allowing it to transfer the shares of the borrower into its own name or to a nominee and as a result take control of the borrower and its underlying subsidiaries.

The enforcement of a share charge over the shares in the borrower is an attractive option for lenders to take control over the borrower group and the secured assets. The ease and timeliness of enforcement may be a more straightforward and strategic option than repossession of each underlying aircraft.

Which jurisdiction is the most appropriate to make a bankruptcy filing?

There are a number of factors to consider in this decision, including the location of the debtor, the location of the principal creditors and the governing law of the documents.

In an EU context, one of the most important factors in assessing the jurisdiction in which to file is where the debtor's centre of main interests is located and the prospects of a court accepting jurisdiction of the proceedings. This will also be important in assessing the risk of creditor challenge.

Other factors such as the location of the significant creditors, their familiarity with the available restructuring tools and court processes will also be influencing factors in any decision as to the jurisdiction of making a bankruptcy filing.

Careful consideration is also required in considering the prospects of a successful restructuring, which will be a priority of both the creditors and the underlying debtor group. In order for a restructure to be successful, access to sufficient funding is a requirement. Unless the debtor group has sufficient liquidity to trade through the restructuring, the ability to raise funds to provide a sufficient liquidity buffer is essential.

Will a US bankruptcy process be recognised in an Irish court?

Ireland does not automatically recognise the US bankruptcy code or orders made by US bankruptcy courts. In fact, outside of the EU, there is therefore no automatic recognition of foreign insolvency proceedings. This can present practical challenges in the context of global restructurings in which companies in a number of different states are brought under the umbrella of a US bankruptcy process.

Against this challenge, we would expect an Irish court to respect both the process and orders made by a US bankruptcy court – in particular, if disgruntled creditors sought to relitigate before the Irish courts issues that had already been determined by a US bankruptcy court. The challenge for an Irish court is where there is a disconnect between Irish company law and the actions or orders made in the US bankruptcy process.

How will Alternative A of the Cape Town Convention impact a potential restructuring?

One area that is harmonised to a large extent across a number of jurisdictions is the availability of remedies relating to aircraft assets under the Cape Town Convention. Ireland is one of the contracting states to the Cape Town Convention and applies the Alternative A insolvency remedy. This means a regime substantially similar to the long established Chapter 1110 insolvency remedy in the US applies to aircraft assets the subject of a lease, a security agreement or a conditional sale agreement registered on the international registry applies in Ireland.

The key aspect of this remedy is that within 60 days of an insolvency-related event of a lessee, mortgagor or conditional purchaser, the lessor, financier or conditional seller will either get the aircraft asset back or all defaults (other than the default occasioned by the insolvency itself) will have been cured and an undertaking given as to future obligations. During the 60-day period, the aircraft value must be preserved by the insolvency practitioner or debtor.

The adoption of Alternative A is an exception to the Irish examinership process because it reduces the usual 100-day waiting period to 60 days for qualifying aircraft leasing and security arrangements. The remedy is very much focused on the aircraft assets rather than the company and assumes the aircraft are either located in Ireland or in the possession of the debtor – eg, lessee in question.

Conclusion

Ireland's stable rule of law and clear principles on financing and security are important reasons lenders and investors are comfortable to finance high value assets in Ireland and this benefits lessors in raising the debt needed to expand their business. These principles continue to be of importance in both the refinancing and restructure of existing debt obligations. Lessors, financiers and investors can rely on Ireland's creditor-friendly measures under the Cape Town Convention and domestic law to protect their interests in the current challenging and ever-changing economic landscape.

If you have any questions contact Marie, Maria or another partner in our Aviation and Transport Finance group (**www.algoodbody.com**); Marie O'Brien (**mobrien@algoodbody.com**); Maria McElhinney (**mmcelhinney@algoodbody.com**).

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