UNDERSTANDING AIRCRAFT FINANCING AND THE CAPE TOWN CONVENTION IN NIGERIA

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This literature is a six-part series that traces, analyses, and critiques the legal, regulatory, and operational framework for aircraft financing in Nigeria following domestic adoption of the 'Cape Town Convention'. The series undertakes a rigorous legal and commercial analysis whose internal logic, when followed carefully, portrays Nigeria as under-entered rather than unattractive. The analysis moves from foundational concepts to operational realities, evaluating statutory and administrative frameworks, the rights and obligations of market participants, operational friction points, and insolvency risks. While highlighting areas for improvement, the series demonstrates how Nigeria's legal reforms, when navigated with diligence and procedural discipline, provide internationally recognizable creditor protections and a credible pathway for investment in aircraft finance.

• Part I introduces the Cape Town Convention and Aircraft Protocol, alongside the domestic statutory and administrative scaffolding that implements Nigeria's international obligations.

• Part II examines the commercial logic of aircraft financing in Nigeria, the domestic legal instruments, regulatory architecture, and institutional practices that give effect to the Convention and shape enforcement outcomes.

• Part III explores the operational interface between lessor rights and airline duties, including IDERA invocation, preservation of aircraft value, and administrative compliance.

• Part IV evaluates practical bottlenecks, inter-agency conflicts, and macroeconomic constraints that affect the speed and certainty of asset recovery.

• Part V provides a practical playbook for lessors and airlines to navigate the statutory, procedural, and operational landscape efficiently, balancing enforcement with operational continuity.

• Part VI assesses residual insolvency, priority, and judicial risks, situating Nigeria as an under-entered market for investors prepared to leverage legal and procedural advantages.

PART I:
INTRODUCTION TO THE CAPE TOWN CONVENTION AND AIRCRAFT PROTOCOL IN NIGERIA

OVERVIEW

Part I of the series introduces the core international instrument "the Cape Town Convention and Aircraft Protocol" tracing their origin, objectives, and the mechanics designed to standardise aircraft finance across borders. It explains the concept of the international interest, the role of the International Registry, and the significance of registration and priority rules. The article also examines the International Registry, the Irrevocable De-registration and Export Request Authorisation (IDERA), as well as the Convention's insolvency and self-help devices, highlighting how they create enforceable, time-bound creditor rights. To illustrate the Convention's global operational logic, the subsequent sections examine the domestic legal and institutional architecture, setting the stage for understanding its implementation in Nigeria. By clarifying these foundational concepts, Part I establishes the technical and legal framework that underpins the remainder of the series.

1. INTRODUCTION

Aircraft financing operates within a distinctive legal and commercial environment shaped by the mobility of the asset, its high unit value, and the necessity for cross-border enforceability of proprietary and contractual rights across jurisdictions while remaining subject to a dense overlay of national regulatory regimes. Historically, this combination produced fragmented priority rules, uncertain enforcement outcomes, and prolonged insolvency exposure, all of which translated directly into elevated risk premiums for financiers. The Cape Town Convention on International Interests in Mobile Equipment and the Protocol on Matters Specific to Aircraft Equipment (the CTC/AP) were developed to respond to these structural challenges. Nigeria's ratification and domestication of the CTC/AP, followed by its statutory incorporation through various enacted laws and regulatory reforms, reflect a deliberate policy decision to align the country's aviation finance regime with this global architecture. These reforms are aimed at reducing the legal and procedural frictions that historically complicated aircraft financing transactions involving Nigerian operators.

2. THE CAPE TOWN CONVENTION AND AIRCRAFT PROTOCOL

The Cape Town Convention and the Aircraft Protocol (collectively, the CTC/AP) were designed to ensure uniformity in implementation. Their central economic objective is to reduce legal uncertainty and thereby lower the cost of capital for high-value mobile equipment financing. The Protocol achieves that objective through practical devices that are crucial to financiers: the international interest; the International Registry (IR); the IDERA; and the insolvency-related rules contained in Article XI of the CTC/AP.

2.1 The international Interest

The CTC/AP establishes the international interest as a vehicle that recognises and protects security agreements, title reservation agreements, and leasing arrangements relating to defined aircraft objects (airframes, engines, and helicopters). Doctrinally, the international interest converts diverse contractual devices into a single, recognisable, and enforceable legal category that can be registered on the International Registry. Once recorded on the IR using a unique manufacturer's serial number, the international interest acquires global priority determined by time of filing. This first-to-file rule replaces the transactional uncertainty generated by disparate local registries. For Nigerian transactions, the international interest provides a uniform first layer of protection, allowing financiers to rely on a harmonised system of rules rather than disparate local secured transactions regimes.

2.2 The International Registry (IR) and First-to-File Priority

The IR is the operational heart of the Convention's priority system. Registration establishes global notice and determines priority solely by the time of filing, thereby eliminating the possibility of competing, undisclosed local claims undermining enforcement outcomes. For financiers operating in Nigeria, IR registration is therefore foundational: it secures global priority and substantially reduces the risk of unexpected superior claims arising from opaque local filings. Due diligence practices in Nigeria must therefore be calibrated to the IR: confirmation of IR status and reconciliation with contemporaneous Nigeria Civil Aviation Authority (NCAA) and the Corporate Affairs Commission (CAC) filings are necessary to secure both international priority and local enforceability.

2.3 The Irrevocable De-registration and Export Request Authorisation (IDERA)

The IDERA is a debtor-granted authorisation enabling a creditor, upon default, to request de-registration and export of an aircraft without prior leave of Court, where the conditions of the Convention and national regulations are satisfied. It is a cornerstone of practical asset recovery because it translates contractual consent into an administrative pathway for recovery. The NCAA has integrated the IDERA into its regulatory apparatus, publishing advisory circulars and prescribed documentation, including the use of a designated administrative form (AC-AWS001C), to initiate de-registration and export upon valid invocation of the IDERA. This integration is intended to render IDERA an effective extrajudicial route to repossession and transfer, subject to proper evidentiary proof.

2.4 Insolvency: Article XI (Alternative A)

Article XI, and Nigeria's selection of Alternative A, establish a non-discretionary insolvency regime for aircraft objects that significantly narrows creditor exposure. Following an insolvency event, the administrator or debtor must either cure all defaults and perform future obligations under the relevant agreement or surrender possession of the object to the creditor within a prescribed waiting period. Nigeria's declaration adopting the shortest practical waiting period of thirty (30) calendar days materially enhances predictability and limits exposure to loss of use, insurance lapses, and collateral deterioration. By privileging time-bound mechanical outcomes over open-ended judicial discretion, the Alternative A regime is intended to neutralise the effect of automatic stays that frustrate asset recovery during insolvency proceedings.

2.5 Complementary Protocols: Articles 39, 40, and 54

Nigeria's declarations under Articles 39 and 40 narrow the scope of non-consensual claims that can take priority over registered international interests and convert certain categories of traditionally opaque local claims into registrable interests on the IR. By limiting priority wage liens to post-default accruals and opting to make state/tax liens, judgment attachments and salvors' liens registrable, Nigeria shifts informational risk onto the IR and materially reduces the danger of unforeseen priority disputes at enforcement. Moreover, Nigeria's Article 54(2) declaration affirming the exercise of non-judicial remedies without court leave secures the doctrinal legitimacy of IDERA-led self-help where procedural requirements are satisfied. Collectively, these declarations enhance transparency and underpin the Convention's aim of predictable creditor protection.

3. LEGAL FRAMEWORK: THE STATUTORY PILLARS OF AIRCRAFT FINANCING IN NIGERIA

Nigeria's domestic legal architecture is the crucible in which the CTC/AP's theoretical protections must be rendered operational. Three statutory pillars require close attention, which expressly give the Convention and Protocol force of law within the country.

3.1 Companies and Allied Matters Act (CAMA) 2020

The CAMA governs corporate capacity, the creation of security interests, and the registration and priority of charges in Nigeria. In aircraft transactions, compliance with CAMA's registration regime remains indispensable: an unregistered charge risks being void or subordinated, and corporate authority to incur financing obligations must be properly exercised. CAMA also provides the general insolvency framework within which Convention-based remedies operate. Accordingly, transactional documentation and enforcement strategies must account for the interaction between CAMA's insolvency provisions and Nigeria's treaty-based insolvency declarations.

3.2 The International Interests in Mobile Equipment Act 2015

The International Interests in the Mobile Equipment Act 2015 is the domestic vehicle by which the CTC's international regime was incorporated into Nigerian law. It provides statutory accommodation for international interests, validates IR-based priorities, and enables Nigerian courts and administrative agencies to implement the Convention's remedies.

Domestication via the said Act creates the statutory predicate for IR priorities to be recognised and enforced in Nigeria. The Act is therefore the principal conduit through which Convention mechanics acquire domestic legal effect.

3.3 Civil Aviation Act (CAA) 2022

The Civil Aviation Act (CAA) expressly confers the force of law on the CTC/AP within the aviation sector, thereby integrating international rules into the sectoral regulatory fabric. Section 50(2) and related provisions minimise conflicts of law by integrating the Convention's operative provisions into the regulatory framework. The Act further sanctions the NCAA with responsibilities for registration, mortgage recording, and the implementation of IDERA-based processes. By embedding the Convention within the aviation statute, the CAA constitutes a firm statement of national policy favouring predictability and procedural efficiency in aircraft collateral enforcement.

4. REGULATORY AND INSTITUTIONAL FRAMEWORK OF AIRCRAFT FINANCING IN NIGERIA

4.1 Registries and Filing Practice

Nigeria operates a dual domestic filing system comprising the NCAA Aircraft Mortgage Registry and the CAC register of charges. While intended to enhance transparency, this duality has historically generated friction where filing timelines diverge. The primacy of the International Registry mitigates cross-border priority risk, but local filings remain necessary for administrative enforceability. The prevailing best practice, therefore, combines IR registration to secure international priority with contemporaneous NCAA and CAC filings to ensure local compliance. Recent NCAA circulars and digitalisation initiatives are intended to streamline this process and reduce transactional friction.

4.2 Administrative Processes for De-Registration and Export

IDERA invocation triggers an administrative sequence requiring strict documentary compliance. The NCAA prescribes specific evidentiary thresholds and procedural steps for de-registration and export authorisation. Where documentation is complete and uncontested, the process can proceed administratively; where deficiencies or disputes arise, delays may occur, and judicial intervention may become necessary. The effectiveness of IDERA in practice, therefore, depends less on doctrinal availability than on procedural precision.

4.3 Judicial Enforcement Architecture

Nigeria has designated the Federal High Court as the forum for Convention-related matters Directions, which instruct courts to prioritise and fast-track CTC applications, typically within compressed timelines. Recent reported cases indicate improving enforcement outcomes, though sustained effectiveness remains contingent on judicial capacity, registry efficiency, and continued institutional training.

4.4 Cross-Regulatory Enforcement

Non-aviation regulators materially affect enforcement outcomes. Central Bank foreign-exchange controls influence lease payments and loan disbursements; customs disputes can impede repossession and export; and insurance regulation affects recovery economics. These factors introduce operational risk that must be mitigated contractually and through inter-agency coordination.

4.5 Procedural Timeline

Enforcement typically proceeds from default or insolvency to IDERA invocation, administrative de-registration, and export, with IR status confirming priority. Where insolvency is involved, Alternative A compels cure or surrender within thirty days, supplemented by cooperation duties under Article XII. When properly synchronised, this sequence delivers the time-bound outcomes envisaged by the Convention.

5. CONCLUSION

Nigeria's legislative and administrative reforms represent a deliberate effort to reprice sovereign and regulatory risk in favour of lessors and financiers. The Convention's priority, enforcement, and insolvency mechanisms have been given clear force within Nigerian law, reflecting an institutional commitment to rule-based, time-bound creditor remedies, limited creditor exposure and informational symmetry. In doctrinal terms, the measures employed convert historically discretionary outcomes into a governed legal process. Yet these gains must be understood as conditional. The effectiveness of this framework nevertheless depends on operational discipline. Priority outcomes turn on accurate and timely registration; asset recovery depends on documentary precision and administrative coordination; and financing economics remain sensitive to foreign-exchange regulation, customs procedures, and insurance compliance. These considerations do not weaken the legal architecture butemphasise that the Convention's benefits are realised through execution rather than declaration.

Taken as a whole, Nigeria has achieved legal sufficiency in aircraft financing, even as operational frictions persist at the margins. The significance of this conclusion lies not in asserting attractiveness but in demonstrating that the core legal processes required by international lessors and lenders are present, intelligible, and increasingly functional. The next Part of the series examines how these processes interact with Nigeria's domestic financing environment in practice.

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