

The main legal issues arising from the operations of leased aircraft and the current practices concerning leasing contracts including the use of agreements under Article 83 bis of the Chicago Convention.

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1. Issues arising from the operations of leased aircraft
2. Current practices concerning leasing contracts
3. Brief overview of Article 83 bis of the Chicago Convention

Issues arising from the operations of leased aircraft

A. Various methods of fleet financing

B. Equipment leasing

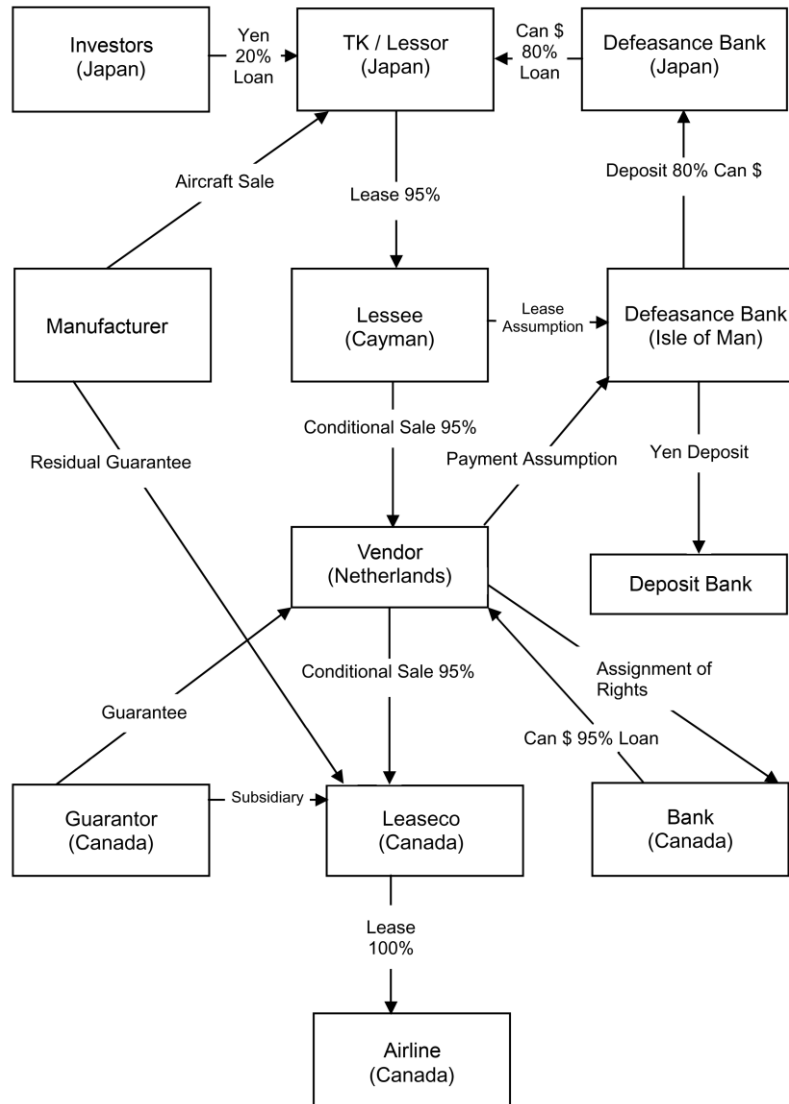
– Purposes

1. “off balance sheet financing”

2. “tax benefit transfers”

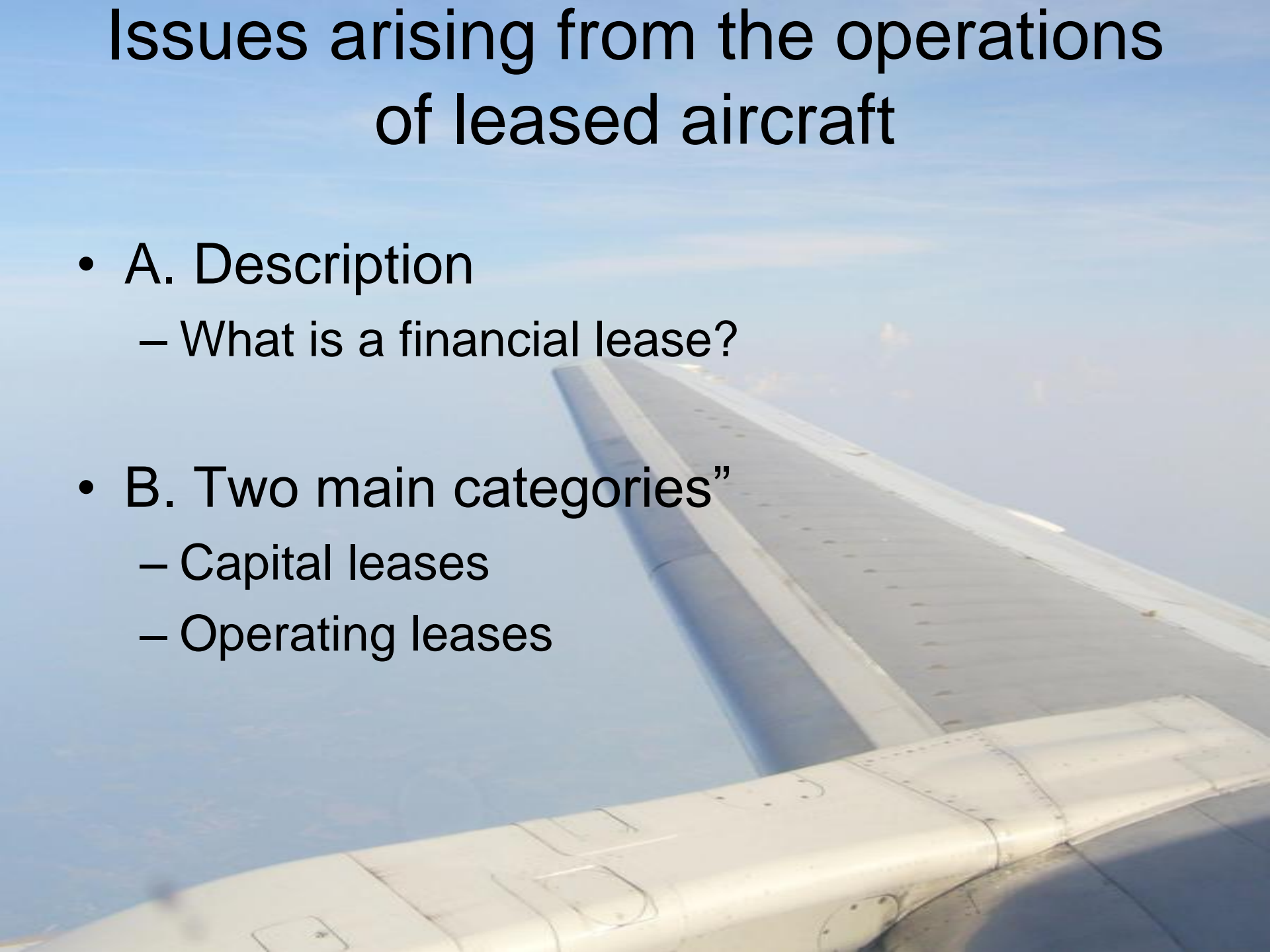
– Today: Advantages have diminished and the financing structure became more complex.

CANADIAN/JAPANESE LEVERAGED LEASE STRUCTURE



Issues arising from the operations of leased aircraft

- A. Description
 - What is a financial lease?
- B. Two main categories”
 - Capital leases
 - Operating leases



Issues arising from the operations of leased aircraft

Capital lease

1. From the lessee's point:
 - a. Transfer substantially all of the benefits and risks incident to ownership of property to the lessee
 - b. Exposed to credit risks only
 - c. Payment of specific amounts during a fixed term which fully amortizes cost.
 - d. Term has a relatively long duration compared to useful life of equipment
 - e. Acquisition :
 - i. Put Option
 - ii. Option to Purchase granted in the lease

Issues arising from the operations of leased aircraft

Operating lease

1. Capital cost of the asset not wholly amortized over term.
2. Lessor profit derived from rentals during multiple terms.
3. Lessor retains title to leased equipment.
4. Option to purchase equipment may be available to lessee on rare occasions.

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ARTICLE 2 - REPRESENTATIONS AND WARRANTIES

2.1 LESSEE'S REPRESENTATIONS AND WARRANTIES

- 2.1.1 Corporate Status
- 2.1.2 Governmental Approvals
- 2.1.3 Binding
- 2.1.4 No Breach
- 2.1.5 Filing
- 2.1.6 Licenses
- 2.1.7 No Suits
- 2.1.8 No Withholding
- 2.1.9 General Obligations
- 2.1.10 No Sovereign Immunity
- 2.1.11 Tax Returns
- 2.1.12 No material Adverse Effect
- 2.1.13 Notice in Chance of Lessee's Condition
- 2.1.14 Mergers
- 2.1.15 No Default
- 2.1.16 Financial Information
- 2.1.17 Authorization of Payments

2.2 REPETITION AND SURVIVAL

2.3. LESSOR'S REPRESENTATIONS AND WARRANTIES

2.3.1 Corporate Status

2.3.2 Government Approvals

2.3.3 Binding

2.3.4 No Breach

2.3.5 Title to Aircraft

2.4 NO PREJUDICE

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3.1.2 Delivery Requirements

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- 4.2 TERM
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- 4.4 LESSEE'S INSPECTION OF AIRCRAFT*
- 4.5 ACCEPTANCE OF AIRCRAFT*
- 4.6 LESSEE'S FAILURE TO TAKE DELIVERY
- 4.7 NO LESSOR LIABILITY
- 4.8 TERMINATION FOR DELAYED DELIVERY
- 4.9 LICENSES
- 4.10 RISK
- 4.11 QUIET ENJOYMENT*
- 4.12 LESSOR'S SECURITY INTERESTS*

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- 6.11 **EVIDENCE OF INDEBTEDNESS**

A photograph of an airplane wing in flight against a clear blue sky. The wing is white and shows rivets and panel lines. The sky is a gradient of light blue, with some faint clouds visible in the distance.

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- 11.2.1 Airframe
- 11.2.2 Engines
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APPENDIX D FURTHER DEFINITIONS AND VALUES

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APPENDIX J DEREGISTRATION POWER OF ATTORNEY

APPENDIX K AIRCRAFT ACCEPTANCE CERTIFICATE

APPENDIX L IDENTIFICATION PLATES

APPENDIX M REDELIVERY CONDITION

APPENDIX N AIRCRAFT REDELIVERY CERTIFICATE

APPENDIX O PERMITTED SUB-LESSEES

TRANSFER OF CERTAIN FUNCTIONS AND DUTIES PURSUANT TO ARTICLE 83 BIS OF THE CHICAGO CONVENTION

1. Nationality of an aircraft
2. Rights exchanged under the Chicago Convention
3. Certificate of Registration
4. Chicago Convention
 1. Art 17 → “aircraft have the nationality of the State in which they are registered”
 2. Art 19 → State of registration has complete autonomy
 3. Art 12, 30, 31 and 32 (a) → each State responsible for the conduct of and damages caused by any aircraft on its registry.

Deregistration procedures



1. a certified copy or photocopy of the relevant bill of sale or lease agreement transferring ownership or possession from the registered owner;
2. the certificate of registration in the name of the last registered owner;
3. a statement from the registered owner that the nationality and registration marks have been removed from the aircraft; and
4. if known, the name and address of the foreign purchaser or lessee and the new foreign registration marks allocated to the aircraft.

Transfer of certain functions and duties from aviation authorities in the State of registration to those in the State of location of the aircraft

- **Old procedure** implemented by ICAO pursuant to the Chicago Convention requiring the State of Registration at a minimum that:
 1. its aviation authority approve the maintenance procedures and schedules in the State of location relating to the aircraft and specify any ADs to be issued with respect to the aircraft;
 2. they be notified of any accidents or incidents involving the aircraft; and
 3. all crew licenses be validated by their aviation authority.


Article 83 bis

Transfer of certain functions and duties

- a) Notwithstanding the provisions of Articles 12, 30, 31 and 32(a), when an aircraft registered in a contracting State is operated pursuant to an agreement for the lease, charter or interchange of the aircraft or any similar arrangement by an operator who has His principal place of business or, if he has no such place of business, his permanent Residence in another contracting State, the State of registry may, by agreement with such other State, transfer to it all or part of its functions and duties as State of registry in respect of that aircraft under Articles 12, 30, 31, and 32(a). The State of registry shall be relieved of responsibility in respect of the functions and duties transferred.
- b) The transfer shall not have effect in respect of other contracting States before either the agreement between States in which it is embodied has been registered with the Council and made public pursuant to Article 83 or the existence and scope of the agreement have been directly communicated to the authorities of the other contracting State or States concerned by a State party to the agreement.
- c) The provisions of paragraphs (a) and (b) above shall also be applicable to cases covered by Article 77."

Further comments...

1. Situations where an aircraft has its principal place of business outside of its State of incorporation.
2. The issue of political jurisdiction over an aircraft in the context of compliance and crimes committed on board.
3. Article 77 of the Chicago Convention

A photograph of an airplane wing in flight against a clear blue sky. The wing is white and extends from the bottom left towards the top right. The sky is a gradient of light blue, with some faint clouds visible in the distance. The text is centered over the wing.

Thank you for your attention and
good luck with all your future
endeavors 😊