Katten

AVIATION ADVISORY

Toward a Rational Debt-Equity Framework in Leveraged Aircraft Leases

July 9, 2020

A non-recourse leveraged lease presents issues of how much say an equity investor or sponsor — as opposed to the secured lender — should have against a defaulting lessee airline. There is no definitive template. Each transaction is bespoke and negotiated. Standard loan agreement forms published by organizations such as the Loan Management Association (LMA) and the Loan Syndications and Trading Association (LSTA) are often cited by lenders but not instructive because they do not account for the fact that a lessee rather than the borrower is the credit on the repayment of the loan. In this Aviation advisory, we present for consideration by commercial parties a balanced set of debt/equity provisions for a single-airline, single- or multiple-aircraft leveraged lease, whether by sale-leaseback or otherwise.

The Transaction Structure

Reduced to its basic elements, the leveraged transaction combines an aircraft operating lease with a loan, the repayment of which is secured by the aircraft and the lease. The link between the two is the borrower under the loan is also the lessor under the lease. Periodic rent payments under the lease are applied to pay scheduled principal and interest on the loan, with any excess, assuming no ongoing outstanding costs that have to be paid to maintain the lender's yield, being distributed to the equity investor, who is the beneficial owner of the borrower. The borrower is typically a special-purpose trust or other entity. It does no business other than participate in the leveraged transaction, so that it has few or no creditors to compete with the lender for rights in the aircraft and rent stream. The equity investor will undertake limited obligations to pay certain expenses and preserve the collateral but not typically to pay any principal or interest on the loan, which is considered to be non-recourse The loan in these structures is normally extended by one or a syndicate of banks, in one or more tranches, which may be of different levels of seniority. The loan (or an individual tranche of the loan) may amortize fully over the basic term of the lease, partially amortize or be interest-only. There may be one or more aircraft. Here we consider loans serviced by a single airline, rather than an asset-backed security (ABS) structure with credit risk diversified across a number of airlines. Other collateral and agreements that may be in the transaction as well as the lease include security deposits, maintenance reserves, airframe and engine warranty assignments, account pledges, lessee parent guarantees, aids to enforcing the lease such as a deregistration power of attorney, and in new aircraft transactions, original equipment manufacturer (OEM) credit support agreements Our focus is on loan events of default and remedies, which will be set forth in one or both of the loan agreement and any applicable general collateral security agreement.

The Imbalance in Motivation and Expertise

The lender has the senior rights to the collateral. The equity investor stands behind the lender in rights to the collateral in exchange for the interest in the residual value of the aircraft and the portion of rent in excess of debt

service. At the same time, while the credit for repayment of the loan is the airline, the lender's direct relationship in the transaction is with the equity investor. The equity investor arranges the lease, and maintains the relationship with the airline, before and during the lease term. The active management of an aircraft operating lease generally does not fit the lender's business model, expertise or mandate, even though some have leasing experience through leasing affiliates. The equity investor in many ways resembles a junior, subordinated or mezzanine lender to the borrower in that it realizes a return only after the senior lender is repaid. A junior lender will have limited rights to protect its position in the capital structure, usually only the right to buy out the senior lender at par and control all the lenders' remedies, or to exercise remedies on its own after a period such as 180 days in which the senior lender does not exercise remedies. The equity investor by contrast may reasonably expect more rights to control the transaction because of its expertise in leasing and relationship with the airline. In any event the lender still stands above the equity investor in the capital structure. If the equity investor seeks to exercise remedies against a defaulting lessee, it is only because it believes it can realize value from the collateral in excess of the loan balance. In this situation the equity investor is incentivized to protect the aircraft and obtain its maximum value, of which the lender is the first beneficiary.

No Mismatch Between Loan Agreement and Operating Lease

The equity investor will negotiate the operating lease with the airline, and negotiate the loan documents with the lender. The loan documents will usually be drafted by the lender's counsel based on forms that the lender has used before. Often banks active in financing aircraft directly for airlines as borrower, will ask to use LMA or LSTA loan forms. As discussed above, these forms are not favorable to the equity investor because they are not drafted with a non-recourse borrower in mind. The lease may be based on a form that the equity investor has developed and optimized. Often in order for the equity investor to win a mandate for the lease, the equity investor will start with a lease that the equity investor has used with the airline previously, or even accede to a form that the airline has used previously with other lessors. The job of the equity investor is to harmonize the lease and the loan documents, to avoid mismatches to the extent it can.

The loan agreement will contain certain covenants of the borrower that will not have direct analogues in the lease, though their performance may be funded by lease rents. For example, the lender will expect that the borrower will indemnify the lender against increased costs incurred by the lender as a result of a change in law increasing the amount of capital the lender must set aside as a result of maintaining the loan. Such costs if not indemnified would impair the lender's expected return from making the loan. Except in a leveraged-lease financing in which the lessee arranges the debt and equity components, the lessee is not generally going to agree to indemnify the lender directly for such increased costs or reimburse the lessor for indemnifying the lender. That means that the lender will seek to have the equity investor agree to this indemnification as a recourse obligation. The equity investor can try to have this indemnification be a covenant of the borrower only, particularly if the transaction is structured so that the rent well exceeds the debt service and can be made available to pay the lender if the indemnification obligation matures. In that situation the waterfall provisions of the loan agreement will provide that the rent paid by the lessee to a lender-controlled account can be used by the lender to pay itself the indemnity amount owed plus scheduled debt service and remit the balance to the borrower for distribution to the equity investor. This, of course, is at the expense of the equity investor's expected return, but does not then otherwise require and equity investor out of pocket payment.

If the lease rent does not have a sufficient equity cushion, the lender may still be persuaded to rely only on a covenant of the borrower. That is because the equity investor would be compelled to fund the borrower by way of the equity investor's indemnity obligations owed to the borrower, which would be used to the indemnity to the lender, lest the lender foreclose and divest the equity investor of its interest in the transaction. If however the market value of the aircraft is depressed the lender may reject relying only on the borrower's convent in fear of the risk the equity investor may conclude it does not have a realistic opportunity to realize any return out of the residual value of the aircraft at the end of the lease term, and may prefer to walk away from the transaction rather than fund

an ongoing borrower indemnity obligation. The lender may therefore require at the outset of the transaction that the equity investor on a recourse basis guarantee the payment of the increased costs indemnity in the loan.

As mentioned, in a typical operating lease, the airline takes the position that the equity investor's financing is its own business, and the airline will not take "structural" risks such as an increased-cost indemnity. However, sometimes in an airline-arranged lease financing, the airline will agree to bear some of these costs in order to secure the financing or because it is not comfortable with the equity investor's willingness or ability to make these payments. In such event the airline may seek to protect itself by obligating the equity investor to reimburse the airline for any such payment. In the alternative, the airline may provide in the lease for a "burdensome indemnity buyout" — if the airline becomes obligated to pay an indemnity over a certain threshold, the airline lessee may purchase the aircraft from the lessor and terminate the lease and loan (and the burdensome indemnity) for a purchase price equal to a low termination value that repays the loan at par, but provides the equity investor a smaller return than full termination value payable on an event of loss.

Other borrower covenants will have an analogue in the lease. The obligation of the borrower to pay periodic principal and interest on the loan is matched by an obligation of the airline to pay rent. The obligation to maintain and insure the aircraft are matched by corresponding obligations of the lessee. In negotiating the loan documents, it is imperative that the equity investor ensure that no Loan Event of Default may exist without a corresponding Lease Event of Default with respect to any matter within the control of the lessee. Examples of what the equity investor should not allow to occur are:

1. Lessee fails to make a monthly rent payment on the date when due under the terms of the lease. The lease provides that the failure to pay rent does not mature into a Lease Event of Default for five calendar days. But the loan agreement provides that nonpayment of scheduled principal and interest matures into a Loan Event of Default after four calendar days.
2. Lessee fails to make a monthly rent payment on the date when due under the terms of the lease. The lease provides that the failure to pay rent matures into a Lease Event of Default after five business days. The loan agreement provides that nonpayment of scheduled principal and interest matures into a Loan Event of Default after five business days. The definition of business days in the lease carves out nonbusiness days in the lessee's home country. The definition in the loan agreement does not.
3. In the lease, the lessee agrees to maintain the aircraft in accordance with a maintenance program approved by the airworthiness authority of its home country. In the loan agreement, the borrower agrees to cause the aircraft to be maintained in accordance with a maintenance program approved by the European Union Aviation Safety Agency (EASA). EASA standards are more stringent than those of the airline's home country.
4. In the lease, the lessee agrees to indemnify the lessor and equity investor (but not the lender) against third-party claims arising from the use, operation, maintenance and repair of the aircraft. In the loan agreement, the borrower agrees to indemnify the lender against any such claims.

The problem in each example is the mismatch between the lease and the loan agreement. In each of the first three cases, a Loan Event of Default can occur without there simultaneously being a Lease Event of Default. In each of the first two examples, the mismatch is temporary; eventually either the incipient Lease Event of Default (and consequent Loan Event of Default) is cured by the lessee, or the incipient Lease Event of Default matures into a Lease Event of Default. In the third case, however, lessee's performance in full compliance with the lease may not be sufficient to prevent a Loan Event of Default, and the equity investor — not being in control of the aircraft — is powerless to cure it. In the fourth example, the equity investor may have to fund the performance by the borrower of an indemnification obligation for which the mismatch in the corresponding obligation of the lessee could readily have been fixed when the lease was drafted.

The key factor for the equity investor is that all of the protections for the equity investor discussed below assume that the loan agreement is in default only because the lessee is not performing under the lease, as evidenced by

the simultaneous existence of a Lease Event of Default. Conceptually there will be few or no protections for a Loan Event of Default caused by the equity investor's own bad acts or failure to perform or cause the borrower to perform covenants within the control of the equity investor, as evidenced by the absence of a Lease Event of Default. In the case of a back-leveraging of an existing lease, the equity investor may be presented with a draft loan agreement or security agreement that has covenants on aircraft maintenance, repair, operation, use, insurance and similar aircraft-specific matters that are different in many obvious and subtle ways from those set forth in the existing lease. In such a case a good course of action is to provide that such covenants do not apply as long as the aircraft remains under lease to the lessee. This is just another way for the lender to acknowledge that before approving the loan, it must do its due diligence on the lease and get comfortable with the covenants in that agreement.

Rights of Equity Investor in Case of Lease Event of Default

Once the equity investor ensures that the covenants in the loan agreement and security agreement have no mismatch with those in the lease, the equity investor should focus on providing itself protections if a lease event of default occurs.

- **Buyout Right.** A lender may insist that the only protection an equity investor needs from foreclosure caused by a defaulting lessee is the right of the borrower to repay the loan in full. This protection is necessary but not sufficient. It requires a large cash outlay by the equity investor to repay the outstanding principal and unpaid interest in full. The equity investor may have difficulty sourcing the funds to repay the loan by refinancing the existing loan, because the lease is in default. The equity investor also may be required to pay full-term swap breakage cost or premium, and a prepayment penalty to compensate the lender for its management time in extending the loan originally (as will be specified in the loan agreement). Nevertheless this repayment right should be included in the loan agreement. It should provide at least that the prepayment may be made without prepayment penalty, on the grounds that the prepayment is not being made by the equity investor voluntarily to take advantage of interest rate movements or in connection with a sale of the aircraft, but instead is being thrust upon the equity investor because of a defaulting lessee.
- **Cure Rights.** This protection was developed decades ago by equity investors in the context of 20-year leveraged leases of aircraft to US airlines. The borrower will have the right to cure a certain number of lessee rent defaults and other lease defaults that can be cured by the payment of money. The exercising of cure rights does not cure the Lease Event of Default as between the lessor and lessee. So if the lessee misses a rent payment, the borrower will be given a specified period to make that payment debt payment itself directly to the account to which the lessee is instructed to make its rent payment. If the borrower does so, the Lease Event of Default resulting from the lessee's failure to make the rent payment is "cured", meaning it no longer exists for the purposes of the loan and security documents.

  Similarly a non-rent default that can be cured by payment of money is typically included in the borrower's cure rights. So if the lessee fails to make a payment of maintenance reserves, the borrower can make that payment and cure the Lease Event of Default that resulted from nonpayment by the lessee. Likewise, if the lessee fails to pay an insurance premium on the aircraft, the borrower may make the payment and cure the lease default. Note that to be properly drafted as far as the equity investor is concerned, the cure rights should not be limited to curing payment defaults as such under the lease. In the last example above, the lessee obligation might be expressed as a covenant to maintain the aircraft insurance in full force and effect — which by implication requires that the lessee pay insurance premiums — but not as a covenant of lessee to pay insurance premiums. Conversely, if the lessee fails to comply with its covenant to provide audited financial statements, or files for insolvency protection, the resulting Lease Event of Default cannot be cured by the payment of money and is not covered by the borrower's cure rights.

  The borrower's cure rights are not unlimited. Typically the borrower may cure two (or three) consecutive rent defaults and four (or six) rent defaults in total over the term of the loan. The borrower's right to cure non-rent defaults also may be subject to an overall cap such as four cures in total. Cure rights are limited because events have occurred and are continuing that call into question the ability of the credit party (the

lessee) to continue paying as it is obligated to do to fund debt service, or to continue to perform covenants for the ongoing preservation of the value of the hard asset (the aircraft) collateralizing the loan. The lender is also mindful that the equity investor is not obligated to continue to fund debt service. The problem for the equity investor with the cure rights is that curing two consecutive rent defaults in an operating lease that has monthly rent payments buys the equity investor only two months of relief from enforcement action by the lender. The typical airline distress situation is likely to last much longer. In the US leveraged leases, cure rights were potentially a more effective tool for the equity investor because rent in those leases was allowed to be paid quarterly or semiannually, because the lessees were considered excellent credits when the leases were entered into. At the same time, however, it was assumed that a rent default would occur only in the context of a Chapter 11 bankruptcy proceeding, which is not curable in any event. The typical contemporary operating lease, by contrast, has rent payable monthly, with lessees that are not necessarily top-tier credits. The upshot is that equity investors should pursue more than the standard two-consecutive/four-total rent cure rights. But that may be hard for lenders to agree to, because it is too many credit events to give the equity investor a safe harbor.

- **Squeeze Protection.** To secure repayment of the loan, the borrower will grant to the lender (or a security trustee on its behalf) a security interest in the lease and the aircraft. Subject to any specified exceptions (discussed below), this includes all rights (but not the obligations) of the lessor under the lease, including the right to enforce the lease. This leads to consideration of another protection available to the equity investor that also has its origins in the old US leveraged leases: "squeeze protection" or protection against the "equity squeeze." An equity squeeze occurs when a Lease Event of Default (and consequent Loan Event of Default) is continuing and the lender or security trustee forecloses on some or all of the loan collateral — e.g., the mortgage on the aircraft or the security interest in the lease — without also exercising its right as security assignee of the lease to pursue remedies against the defaulting lessee. The threat this poses to the equity investor is as follows: if the lease is in default, the market value of the aircraft with lease attached can easily be less than the loan balance. In such event, the lender could foreclose on the loan collateral, conduct an auction of the aircraft subject to the lease and become the owner by "bidding in the debt" (i.e., paying above what other bidders are willing to pay because the debt balance constitutes currency with which the lender may itself bid). That results in the lender's (or its nominee's if it does not want to be a lessor) becoming the direct lessor to the defaulting lessee and the equity investor's being divested of its interest in the aircraft and lease or "squeezed" out. The lender has an incentive to engineer this result as part of a workout arrangement with the defaulting lessee to continue the term of the lease, possibly extend the term, relax the redelivery conditions, and reduce the rent over the original or extended term to an amount equal to scheduled debt service.

  To prevent this scenario, the equity investor should include in the loan documents a provision for squeeze protection. Squeeze protection at its basic level prohibits a lender (or security trustee) from foreclosing on its security interest in the aircraft unless the lender is simultaneously exercising remedies under the lease. Squeeze protection should be written broadly enough to prohibit the lender from foreclosing not only on the security interest in the aircraft, but also on the security interest in the lease or in any other loan collateral. For example, the lender should not be permitted to gain control of the borrower/lessor by foreclosing on the pledge of the shares of or beneficial interest in the borrower/lessor. Similarly, the lender should not be permitted to exercise any ancillary rights under the security agreements, such as exercising the rights of the borrower in the collateral under the standard power of attorney that is likely to be in the security agreements. Moreover, the lender should be required not simply to exercise some rights against the lessee, but to move to repossess the aircraft from the lessee and terminate the leasing of the aircraft. One mild remedy available to a lessor or the lender as its security assignee is to send a demand letter to the lessee asking the lessee to pay overdue rent. A mere demand letter without more could easily be part of a plan to squeeze out of the equity investor and keep the leasing of the aircraft in place despite a requirement that the lender exercise remedies against the lessee.

  From the lender's point of view, there is an exception to the requirement to repossess the aircraft from the lessee that has to be included in the squeeze-protection provision. If the lessee files a petition to become

a debtor in a bankruptcy or insolvency proceeding, the exercise of remedies against the lessee will in most jurisdictions be blocked by an automatic stay against actions against the debtor. This stay arises upon the filing of the petition and is of indefinite duration. The purpose of the stay is to permit the insolvency court or administrator to wind down or reorganize the debtor without interference by creditors. The lender will not agree to forbear from exercising remedies against the borrower for the indefinite duration of an automatic stay. The squeeze-protection provision will provide however that the lender will not foreclose on the loan collateral unless it is simultaneously moving to repossess the aircraft from the lessee. But if the lender is stayed from repossessing the aircraft from the lessee, the lender may be permitted to otherwise foreclose on the loan collateral without moving to repossess the aircraft if the stay has continued for a specified period. This period should extend as long as any applicable maximum period during which the stay can remain in place against an airline under the home country's bankruptcy law, whether the Section 1110 period in the United States, or the applicable period under the Cape Town Convention in contracting states. If there is no such period under applicable law, a common period is 90 or 180 days, during which the lessor should be specifically permitted by the loan documents to go into the applicable court to get the stay lifted as to the lease and aircraft. If the stay is lifted or expires by operation of law as discussed, the lender will then once again by required to move to repossess the aircraft as a condition to foreclosing on the loan collateral. If the lessor is not successful in getting the stay lifted, or it does not expire under applicable law, then following the end of the specified standstill period, the lender may foreclose its collateral without repossessing the aircraft.

The squeeze protection also should prohibit the lender from doing an end run around the squeeze protection by leasing the aircraft right back to the lessee after repossessing, as such it should require the lender to exercise actual lease dispossessory remedies. In a worst case, the lender and lessee could agree to a consensual repossession followed by an immediate redelivery without the airline's ever really losing possession of the aircraft.

- **Shared Rights.** In the security assignment of the lease, the borrower assigns to the lender or its security trustee for security purposes all rights in and to the lease except for excluded property and excluded or shared rights. Excluded property will be such items as proceeds of insurance paid for a third-party liability claims against the equity investor. In the rare transaction, excluded property will include the excess of rent over the debt service payments, meaning that excess may be paid by the lessee directly to the equity investor. Shared rights are rights that the loan or security agreement provides that the lender and borrower will exercise jointly, except the loan agreement may provide that the borrower loses its shared rights if a Loan Event of Default not caused by a Lease Event of Default has occurred and is continuing. The most important shared right for the equity investor is the right to prevent the lender from agreeing with the lessee to an amendment of the lease. The equity investor should insist on having this right for the same reason it asks for squeeze protection. Even without foreclosing, the lender could agree with a defaulting lessee undergoing reorganization that is looking for a better deal on aircraft that it will retain in its fleet to reduce the rent to debt service or less, extend the term, and relax the redelivery conditions. Any such amendment can reduce or eliminate any future return the equity investor will ever see from the transaction, and so is tantamount to a foreclosure.

- **Lease Default Remarketing.** The most important right for an equity investor to include in the loan documents is lease-default remarketing. What this means is that if a lease event of default occurs, the borrower will have a period, typically ten business days, to elect this remarketing option. This option gives the borrower a period, usually 180 days or one or two consecutive 90-day periods, to sell the aircraft and repay the loan at par (plus or minus swap breakage as applicable, but usually without any prepayment penalty that otherwise would apply). The price to exercise this option is payment by the borrower to the lender at the time of exercise of any overdue debt service payments plus scheduled debt service payments for the upcoming 180-day remarketing period (or 90 days if the borrower so elects, with an election of the second 90-day period subject to payment of the debt service for that additional 90-day period).

  At the time it makes the election, or within a specified period thereafter (say another 10 business days), the borrower must present to the lender a plan to remarket the aircraft, including designating a remarketing agent to execute the plan. The plan and remarketing agent are subject to approval by the lender (who generally may

not unreasonably withhold or delay its approval). The remarketing plan can include the repossession of the aircraft, or remarketing of the aircraft subject to the existing lease. Sometimes the lender insists that the lessor actively seek to repossess the aircraft during the remarketing period. But this may be counterproductive, as the aircraft will be more valuable with a lease attached if the lessee agrees to perform (even after reducing the rent). During the remarketing period, the exercise of remedies by the lender against the borrower is stayed and the borrower has liberty to deal with the defaulting lessee. If the borrower wishes to and succeeds in repossessing the aircraft, the borrower will have to fund the storage, maintenance, and insurance of the aircraft for the balance of the remarketing period. The equity investor usually has to agree to fund these expenses as a recourse obligation. Alternately, estimated expenses may be funded in advance into a collateral account. The equity investor will not be allowed to agree to a sale of the aircraft unless the net sale price (together with any topup that the equity investor wishes to make) at least repays the loan balance. Lease default remarketing is the only safe harbor that gives the borrower an extended period to control a workout, and so is very valuable to the equity investor. Lease-default remarketing does present risk to the lender, however. Ultimately the equity investor may not be able to consummate the sale of the Aircraft and repayment of the loan. So the lender might find that in exchange for receiving a mere three-months' debt service, it is left with an aircraft in storage, without the lease to the defaulting lessee that the lender would have marked down to debt service, that the lender then has to remarket on its own.

- **Borrower Acts at Direction of Equity Investor.** The loan documents will provide that the equity investor rights discussed above will be exercised by the borrower (the equity investor not generally being a party to the loan documents in which the rights are expressed). The borrower will typically be a special purpose entity — a corporation, limited liability company or owner trust, for example — that does no business other than the leveraged lease transaction. This is important so there are few or no other creditors competing with the lender for rights to the aircraft or lease. As part of its collateral package, the lender can then take a security interest in the shares, membership interest, or beneficial interest in the special purpose entity. One option of the lender when a Loan Event of Default occurs is to foreclose on the share pledge, keep the existing aircraft ownership structure in place, and control all of the actions of the borrower. Therefore it is imperative to state that all of the protections of the equity investor rights that are nominally exercisable by the borrower may be exercised by the borrower acting at the direction of the equity investor. Otherwise the lender could foreclose on the share pledge and as shareholder direct the borrower not to exercise any of the protections for the equity investor. Similarly, the notices section in the loan documents should state that all notices to the borrower must be copied to the equity investor in order to be validly given.
- **Notice Before Exercising Loan Remedies.** Sometimes the equity investor, either after or in lieu of exercising one of the options set forth above, will do a consensual workout with the lender and lessee. Workouts are unpredictable. Sometimes the lender loses patience and decides it is time to foreclose. By that time, the time to exercise any of the equity rights will have expired. The loan documents should therefore provide that the lender will give the borrower a period (say 10 business days) of notice before foreclosing. This will give the borrower the opportunity either to resurrect the workout or repay the loan if it wants.
- **Loan Event of Default Versus Enforcement Event.** As discussed, the collateral package will include a security interest in the aircraft, perhaps a local-law aircraft mortgage registered in the civil aircraft registry of the country of registration of the aircraft, a security assignment of the lease, a pledge of the ownership interests in the borrower, a deregistration power of attorney in favor of the lender, an international deregistration and export request authorization, and a pledge of each account into which the lessee is directed to pay rent, reserves, or any other amount under the lease. Security documents are written to provide the security assignee broad powers over the collateral. The equity investor should add to each security document a provision that the powers thereunder do not arise unless and until an "Enforcement Event" occurs. Enforcement Event would be defined as the occurrence of both (1) a Loan Event of Default which is continuing; and (2) the expiration of all periods for the equity investor to avail itself of the protections set forth in the loan documents.

- **Safe Harbor Equity Investor Rights Are the Basis for a Workout With the Lender.** Sometimes the lender will make the point during the negotiation of the loan documents that the equity investor does not need the protections described above. Instead, the lender reasons, if the lease is ever in default, the lender and equity investor, being reasonable, can do a consensual workout at the time. However, in addition to giving the equity investor a safe harbor to work with at the time of a default, the protections described above are also useful for providing a framework for a further consensual workout. For example, if the equity investor invokes the 180-day lease default remarketing period, but because of difficulty concluding a sale ends up needing 270 days, it will be much easier for the lender to agree at the end of the 180-day period to extend it for another 90 days, than it would be for the equity investor and lender to negotiate a 270- or 180-day remarketing provision while the lease is in default.

Transfer Rights

Often the lender will require that if the equity investor desires to sell its interest in the transaction, the equity investor must prepay the loan. This can be costly. For a fixed-rate loan, the equity investor may have to pay full-term swap break cost, and potentially an early payment premium, to the lender along with the prepayment of the loan balance. In many instances, the purchaser may wish to have the existing loan prepaid, either because the purchaser will finance the purchase with its own credit facility or because it is wary of inheriting surviving liabilities to the existing lender. Nevertheless, given the limited set of recourse obligations of an equity investor, the equity investor should pursue a safe harbor right to transfer to another equity investor having a specified minimum net worth at the time of transfer (e.g., US$ 5 million per aircraft in the transaction, capped at $25 million), who does not violate the lender's "know your customer" requirements, and who is experienced in the management of leased aircraft.

CONTACTS

For more information, please contact your Katten attorney, the firm's Aviation group or any of the following:

Timothy J. Lynes
+1.202.625.3686
timothy.lynes@katten.com

Tom Healey
+1.202.625.3631
thomas.healey@katten.com

Stewart B. Herman
+1.212.940.8527
stewart.herman@katten.com

Lisa A. Clark
+1.202.625.3559
lisa.clark@katten.com

Brett J. Seifarth
+1.202.625.3615
brett.seifarth@katten.com

Miran Vila
+1.202.625.3762
miran.vila@katten.com