



# BUSINESS CONTINUITY – ENSURING A SOLID BUSINESS MODEL LEASING CONSIDERATIONS FOR 'PREIGHTER' OPERATIONS

by Adam Longney



## *Takeaways*

- The COVID-19 pandemic has caused airlines to adapt their operations, giving rise to the 'preighter'
- Technical, regulatory, and contractual considerations determine whether an airline can operate a passenger aircraft as a 'preighter'
- Significant lease modifications to account for 'preighter' operations seem unlikely



**A**s COVID-19 grounded passenger flights, airlines responded to the resulting cargo capacity crunch by adapting their passenger aircraft to operate as “preighters”. However, while some fine-tuning of lease agreements may be seen in the future to allow for greater operational flexibility, significant lease modifications to account for ‘preighter’ operations seem unlikely.

### The cargo capacity crunch

As COVID-19 travel restrictions forced airlines to ground many passenger flights, demand for cargo remained high.

However, because belly cargo (that is, cargo carried in the belly of a passenger aircraft) accounted for almost two-thirds of total international cargo capacity pre-pandemic, grounding passenger flights also had a significant impact on cargo capacity.

According to [IATA's Air Cargo Market Analysis, by March 2020](#), international belly cargo capacity had declined by 43.7 percent on a year-on-year basis. Even in June 2021, despite the first signs of international passenger travel restarting, international [belly cargo capacity was still 38.9 percent below June 2019 values](#).

### Step up the ‘preighter’

In response to this capacity crunch, and in order to continue generating some cargo-driven revenues, airlines started adapting their operations by repurposing the passenger compartments of their passenger aircraft to carry more cargo.

And so, the ‘preighter’ was born.

Unlike a full conversion to cargo configuration, repurposing a passenger compartment to carry cargo in a ‘preighter’ is a temporary solution. Broadly speaking, this involves:

- Storing cargo on and between seats and in overhead bins;
- Storing cargo in specific seat containers or seat bags; or
- Removing the passenger seats and securing the cargo to the passenger compartment floor.

## It's not as simple as it sounds

While this appears to provide a simple “quick fix” solution to increasing the cargo capacity of passenger aircraft, repurposing a passenger aircraft to become a ‘preighter’ does give rise to a number of considerations for both the airline and owner/lessor of the aircraft:

- Passenger aircraft are not certified to carry cargo on passenger seats, nor in cargo pallets and containers secured to the seat track (where the seats have been removed), so any reconfiguration to carry cargo in this way will require approval from the operator’s national aviation authority.
- If seats are removed for the purposes of carrying cargo on the passenger cabin floor, manufacturer approval must be obtained.
- Certain goods – including some dangerous goods and live animals – can be carried only in the underfloor cargo compartment (subject to the cargo compartment meeting the required standards), irrespective of any ‘preighter’-type modifications.
- Beyond these technical and regulatory considerations, contractual terms in lease agreements also may restrict an airline’s ability to use a passenger aircraft as a ‘preighter’.

## What does the contract say?

Airlines that own unencumbered aircraft may have the option of using those aircraft as “preighters”, free from any constraints imposed by a lease agreement or financing arrangement. However, airlines whose fleets are largely made up of leased or encumbered aircraft will need to consider any contractual restrictions which may affect their ability to operate a passenger aircraft as a ‘preighter’.

Lease agreements will typically contain provisions intended to protect the lessor’s investment in the asset. Some of those provisions will be a contractual statement of what the airline is required to do under applicable law in any event – for example, the airline will be obliged to operate the aircraft in accordance with all applicable regulations and approvals – and those provisions will apply equally to passenger and cargo operations.

However, other provisions – such as those dealing with the nature and extent of modifications to the aircraft during the term of the lease, and the redelivery conditions – will be largely contractual matters agreed between the airline and its lessor, and it is these which may have a greater impact when the airline is determining whether it can modify or operate a leased aircraft as a ‘preighter’. For example, these provisions may restrict the removal of passenger seats and, in more extreme cases, they may contractually limit the airline’s ability to operate regular cargo-only flights using the aircraft.



## Will 'preighter' operations be expressly addressed in the future?

Until the onset of the COVID-19 pandemic, in most lease agreements the provisions referred to above were unlikely to expressly refer to 'preighter' operations. Now, both lessors and airlines may be re-assessing whether any of these provisions need to be adjusted in the future to take into account potential freighter operations.

For example, where airlines have leases that would contractually restrict their ability to operate aircraft as "freighters", they may seek adjustments to those provisions to allow them greater flexibility to manage their fleet and operate the aircraft as "freighters" in times of disruption. After all, flying cargo is a way to generate revenues that are needed to pay rent. Airlines may also seek adjustments to provisions that could result in cost savings while the aircraft are operating as "freighters" – for example, by adjusting the insurance requirements to reflect the operation of cargo-only flights.

Conversely, lessors may look to address certain 'preighter'-specific concerns that would not normally be expressly covered in a typical lease agreement – for example, they may seek to include specific provisions dealing with the storage of seats removed as part of a permitted 'preighter' reconfiguration (while airlines may, of course, remove seats during the term of a lease for maintenance and other related reasons, the removal of all seats to allow the aircraft to be operated on a cargo-only basis was generally not considered part of the normal course of operations, at least until the COVID-19 pandemic), and they will undoubtedly consider the redelivery conditions with potential 'preighter' operations in mind.

All that said, it seems unlikely at this stage that we will see the wholesale revision of lease agreements on account of 'preighter' operations. Generally speaking, the asset protection and usage provisions of a typical lease will cater for most proposed 'preighter' operations, perhaps with some fine tuning required here and there; more extensive modifications are likely to continue to be dealt with on a case-by-case basis as the need arises. If anything is to come out of this crisis, it seems far more likely that there will be a renewed focus on how lease terms can be structured to accommodate the seasonal nature of many airlines' businesses and the gradual return to "normal".

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Adam, a partner in our Transportation Industry Group and based in London, advises clients in connection with a broad spectrum of domestic and international financing and leasing transactions, with a particular focus on transactions in the aviation industry where he advises airlines, lessors, financiers and investors on the procurement, sale and purchase, financing and leasing of fleets of aircraft, aircraft engines and helicopters. Described as "very bright and technically strong" (Legal 500 UK, 2017), clients have commented that Adam's "...calm, methodical, practical and commercial approach to matters is exactly what we require and appreciate. His client service is excellent" (*Chambers & Partners UK, 2022*).