Airline Economics
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pwc

Transaction Documents

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Jurisdictional Issues in Aircraft Leasing and Financing

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Background

- Why particularly relevant to aircraft?
- On and off lease during the life of the aircraft
- Structural issues

- Role in the transaction, financier or lessor, legal, risk or negotiation
- Jurisdictional risks may vary depending on the asset, airframe v engine
- Different forms of jurisdictional advice, JQ, legal opinion or less formal

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Aircraft Registration

International Treaties

- The Chicago Convention of 1944
- The 1948 Geneva Convention
- The Cape Town Convention

Aircraft Register:

- Owner or operator based?
- Record lease or mortgage details?
- Practical steps in registering the aircraft
- Foreign operated aircraft
- IDERAs and DPOAs

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Leasing

English law lease recognised in the lessee's jurisdiction?	
Form of lease, translated, legalised, impact on timing, special terms for the local law	
Lease re-characterisation:	A secured loan An operating lease
Lease registration:	Possible? Periodic? Subordinated loan, A rent, B rent etc
Finance lease rental split:	

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Enforcement of Leases

- Enforcement of a foreign judgment in the local courts? If not, is arbitration an option?
- Is it possible to take possession of the aircraft without judicial proceedings?
- Details of judicial proceedings from local counsel in the lessee's jurisdiction? Undertakings or bonds that must be provided?
- What documents would need to be presented to court to obtain an order of repossession? Normal duration and cost of such proceedings?
- Waiting periods or limitations before judicial action can be taken?
- Consent of any party required before repossession ? Restrictions on the sale of the aircraft in the lessee's jurisdiction?

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Enforcement of Leases

- Any local law issues cutting across the sums expressed to be payable under the Lease or the obligations expressed to be assumed by the airline in the Lease?
- Restrictions on lease termination and rights on insolvency.
- Restrictions on export of the aircraft?

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Mortgages

- Is it possible to create a mortgage over an aircraft in the lessee's jurisdiction?
  - Local law security?
  - Form of local security? Language?
  - Legalisation, perfection and execution requirements?
- Any statutory requirements to be complied with?
- Stamp Duty or other taxes payable before a mortgage may be admissible?
- Concept of security trustee recognised?
- Restrictions on foreign mortgagee's rights?
- Local issues on cross-collateralisation?
- Spare parts? Register for aircraft mortgages?
- Priority of other parties, lien holders etc.
- Requirements for valid creation

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Enforcement of mortgages

- Will a court order be required to take physical repossession through the mortgage?
- As per lease, detail judicial proceedings
- Restrictions on the right of sale of the aircraft, must it be by a court appointed officer?
- Must the judgment be given in the local currency?
- Details of any attempts to repossess aircraft in the lessee's jurisdiction

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Rights and evidence of ownership

- Is any particular form of transfer required for the transfer to be legally recognised?
- Are there any particular conditions which must be satisfied for the transfer to be recognised?
- Any local insolvency or other emergency powers in the lessee's jurisdiction that may defeat the owner's rights in the aircraft?
- Rights of detention and confiscation?

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De-registration/Exportation

- Who should apply for de-registration of the aircraft and is there any time period within which application should be made?
- If lessee is situated in a contracting state, request details of the process of registering an IDERA with the aviation authority and relying on IDERA to deregister
- If a Deregistration Power of Attorney is required or recommended?
- Procedures for exportation and deregistration where (i) you have lessee cooperation, and (ii) where there is no lessee cooperation
- Is it possible to obtain an export licence or permit in advance?

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Insolvency

- How lease and other payments would be affected?
- Ranking with other creditors of the lessee?
- Rights to participate in the insolvency process?
- Any issues around hardening period that may affect the security package?

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Other

- Exchange controls
- Insurance
- Strict liability
- Sovereign immunity
- Tax, VAT, withholding, stamp duty

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Questions?