CMS Expert Guide to aircraft finance and leasing
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What this is and is not

This guide sets out the responses to a set of questions relevant to any aircraft lessor looking to lease an aircraft to a lessee/operator in the selected country. It does not deal with taking security or other debt financing aspects.

Every effort is made to keep this updated but specific confirmation should be obtained when a new transaction is contemplated.
Aircraft finance and leasing in Austria
1 PROPOSED TRANSACTION STRUCTURE

2 SEARCHES

2.1 Are there any public registers in the Relevant Jurisdiction where a search can be carried out to determine whether an order or resolution for any bankruptcy, bankruptcy protection or similar insolvency proceedings has been registered in relation to the Airline?

2.2 If so, specify which public registers, how long such searches typically take and if the fees are more than USD 100, approximately what fees apply.

3 RIGHTS AND EVIDENCE OF OWNERSHIP

3.1 In the case of the transfer of title to an Aircraft registered in the Relevant Jurisdiction:

3.2 Other than Insolvency laws (see section 9) are there any laws which may have the effect of defeating the Owner's right in the Aircraft – for example, Government requisition? Do the laws of the Relevant Jurisdiction provide for any compensation in such circumstances?

4 THE AIRCRAFT REGISTER – NATIONALITY OF AIRCRAFT

4.1 Has the Relevant Jurisdiction ratified any of:

4.2 If the Relevant Jurisdiction has ratified the Cape Town, see the Cape Town Convention Annex.

4.3 If the Relevant Jurisdiction has not ratified the Cape Town Convention, has the Relevant Jurisdiction started official proceedings or given any other official indication that it will accede to or ratify the Cape Town Convention in the near future?

4.4 Is there an Aircraft Register in the Relevant Jurisdiction and if so, what is it called and who operates it?

4.5 If so, in relation to registration:

4.6 What documents and/or consents are required to obtain registration on the Aircraft Register and will these require any formalities (for example, notarisation, legalisation or application of apostille)?

4.7 Are there any restrictions on the legal status and/or nationality/domicile of parties seeking to register an Aircraft on the Aircraft Register?

4.8 In respect of Aircraft transactions connected with the Relevant Jurisdiction generally, are there any foreign Aircraft Registers that are commonly used, or should be considered, as alternatives to or in addition to registration with the Relevant Jurisdiction's Aircraft Register? If so, what is benefit of such registration?

4.9 Are there any other filings or registrations necessary or desirable (other than the registrations already mentioned and Lease Registration – see section 6) in the Relevant Jurisdiction in order to ensure the validity, priority or enforceability of the transaction documents, or to perfect the interests of the Owner in the Aircraft or the transaction documents?

5 LEASES

5.1 Will the Relevant Jurisdiction recognise the concept of a lease over an Aircraft?

5.2 Would the choice of English law to govern the Lease be upheld as a valid choice of law in any action in the Relevant Jurisdiction?

5.3 Must the Lease be in a particular form if it is to be valid and enforceable in the Relevant Jurisdiction (for example, must it be in the language of the Relevant Jurisdiction or be notarised, legalised or have the apostille applied)?

5.4 If the Lease must be in the language of the Relevant Jurisdiction, is it possible under the Relevant Law also to have an English version, and to provide that the English version should prevail in case of conflict with the Relevant Jurisdiction language?
version?

5.5 Are there any special terms that the Lease must contain or that it is advisable for the Lease to contain?

5.6 Are there any circumstances under which the Lease might be re-characterised under the laws of the Relevant Jurisdiction as:

5.7 If yes, then:

6 ENFORCEMENT OF LEASES (ASSUMING AIRLINE IS NOT IN A FORM OF INSOLVENCY PROTECTION)

6.1 On the occurrence of an event of default under the Lease, assuming that the Owner is permitted to do so under the terms of the Lease, can the Owner terminate the Leasing of the Aircraft under the Lease and enforce the Lease by taking physical possession of the Aircraft?

6.2 If so, can the Owner take physical possession of the Aircraft without the need for judicial proceedings in the Relevant Jurisdiction?

6.3 Where judicial proceedings in the Relevant Jurisdiction are necessary, please provide details of the proceedings, in particular:

6.4 Where judicial proceedings are not necessary, please comment on the time limits relevant to taking possession of the Aircraft, in particular:

6.5 Apart from the judicial proceedings described above and ignoring deregistration (see section 8), is the permission of any other party (including any official body) in the Relevant Jurisdiction required to take possession of the Aircraft?

6.6 Is there any history of actual repossession of Aircraft by Owners in the Relevant Jurisdiction? If so, please provide details of any matters or issues of which an Owner should be aware.

6.7 Are there any restrictions on the ability of the Owner to sell the Aircraft in the Relevant Jurisdiction during the term of the Lease or, following an event of default, on termination of the leasing or pending judicial enforcement of the Lease?

6.8 Are there any export restrictions on export of a repossessed Aircraft?

7 DEREGISTRATION POWER OF ATTORNEY/EXPORTATION

7.1 Can the Owner apply for deregistration of the Aircraft either at the end of the lease term or following successful repossession (with or without judicial proceedings) and is there any time period within which such application should be made?

7.2 Is the consent of the Airline required to deregister the Aircraft either by law or as a matter of custom or practice?

7.3 How long does deregistration take, both where there is co-operation from the Airline and where this is no co-operation from the Airline?

7.4 Is it possible to obtain an export licence or export permit in advance?

7.5 Approximately how long does it take to obtain an export licence or export permit? What are the costs involved?

7.6 Is it possible to obtain a certificate of deregistration in advance?

7.7 Will a power of attorney empowering the Owner to deregister and export the Aircraft from the Relevant Jurisdiction, either at the end of the lease term or following successful repossession (with or without judicial proceedings), be enforceable in the Relevant Jurisdiction?

7.8 If the power of attorney was stated to be irrevocable would this be enforceable against the Airline or can the Airline revoke such power of attorney?

7.9 Upon the occurrence of a bankruptcy or insolvency of the Airline is the power of attorney still effective?

8 INSOLVENCY

8.1 In the event that the Airline were to become insolvent either on a balance sheet basis (assets less than liabilities) or unable to pay debts as fall due:
TAXATION

9.1 The decision to lease to an airline in the Relevant Jurisdiction assumes that the Owner will not be taxed on receipt of rentals or other payments (including maintenance reserves) under the Lease except by way of tax on its general income, profits or gains payable by the Owner in its place of incorporation or place of main business (if different). Will there be a requirement for the Owner to pay tax in the Relevant Jurisdiction on lease payments on basis that either the Owner is subject to taxation in the Relevant Jurisdiction by reason only of the leasing of the Aircraft under the Lease and is required to make payment itself; or payment of such tax is by way of the airline being required to withhold and account for tax from lease payments, where:

9.2 If there is a requirement in the Relevant Jurisdiction for the airline to withhold tax on lease payments, will the courts of the Relevant Jurisdiction recognise and permit enforcement of a “gross up” clause in the Lease requiring the payment by the Airline of an additional sum to ensure the Owner receives and is entitled to retain the same net amount as would have been received in the absence of the withholding, taking account of any further withholding on account of tax required in relation to such additional sum.

9.3 VAT: European Union country: under Article 148(f) of the VAT Directive, an exemption from VAT is applied to “supplies” consisting of chartering or hiring of aircraft which are used by airlines operating for reward chiefly on international routes. Therefore:

9.4 Is any stamp duty, notarial or other fee or equivalent payable in respect of the execution of the Lease, a de-registration power of attorney or any other lease related document concerning the Aircraft? Will such stamp duty or fee still be payable if the relevant documents are executed and held outside the Relevant Jurisdiction? If any such amount is payable how much is it approximately?

9.5 Can any form of consent, authorisation or licence be obtained exempting the payments referred to in this Section from such tax or duty? If so, how would it be obtained?

9.6 Ignoring any taxation consequence already mentioned and any potential taxation issues if the Owner has any other connection to the Relevant Jurisdiction, is there any other Relevant Jurisdiction taxation consequence of the Owner:

EXCHANGE CONTROLS

10.1 Are payments to foreign Owners by companies incorporated or registered in the Relevant Jurisdiction subject to any form of exchange or similar control?

10.2 If yes, can any consents, authorisations or licences be obtained to exempt payments from any such control? How would these be obtained? Are such consents, authorisations or licences transferable?

INSURANCE

11.1 Is it a legal requirement to insure the Aircraft within the Relevant Jurisdiction?

11.2 If so, is there any restriction on reinsurance of the primary insurance outside the Relevant Jurisdiction?

11.3 Is there a minimum percentage of cover which a local insurer is obliged to retain, and if so, what is it?

11.4 Is it possible for local insurers to assign contracts of reinsurance? If not, is a cut-through clause enforceable?

LIABILITY FOR DAMAGE

DETENTION/CONFISCATION

13.1 If so, can the Aircraft be forfeited and sold without the Owner being made aware?

SOVEREIGN IMMUNITY
14.1 Is any Airline based in the Relevant Jurisdiction entitled to any form of sovereign or other immunity from suit which might restrict the Owner's rights under the Lease?

14.2 Can such immunity be validly waived in advance by contract?

15 DISPUTE RESOLUTION AND RECIPROCAL ENFORCEMENT

15.1 Do the laws of the Relevant Jurisdiction permit and recognise an "asymmetric" submission to jurisdiction clause under which the lessee submits to the exclusive jurisdiction of the Courts of England but the Owner has discretion to choose a jurisdiction other than the Courts of England?

15.2 If the Lease is governed by English Law and a judgment is obtained by the Owner in the English courts, can that judgment be automatically enforced in the Relevant Jurisdiction or will the case have to be re-examined on its merits? If so what procedures must be complied with to enforce such a judgment?

15.3 Is the Relevant Jurisdiction party to the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention) or the 1965 Convention on the Settlement of Investment Disputes Between States and Nationals of Other States (the Washington Convention)? Yes, both Conventions.

15.4 What is the usual choice of dispute resolution in international supply contracts involving a lessor or buyer incorporated in or with its main place of business in the Relevant Jurisdiction?

16 AIRCRAFT ENGINES

16.1 If the equipment being leased to the Airline in the Relevant Jurisdiction was an Aircraft Engine either unattached to an airframe or attached to an airframe belonging to a party other than the Aircraft Engine Owner and being leased to the Airline under a separate engine lease agreement, would there be any significant changes to the responses set out above?

16.2 In particular, does the Relevant Jurisdiction recognise the separate ownership of the Aircraft Engine by the Aircraft Engine Owner when the Aircraft Engine is attached to an airframe belonging to a person other than the Aircraft Engine Owner?

16.3 Is there a register of Aircraft Engines and is the information given above in relation to registration of Aircraft and the ownership and leasing of Aircraft the same for registration of an Aircraft Engine and the ownership and leasing of such Aircraft Engine at the Aircraft Engine register?

17 ADDITIONAL INFORMATION – IS THERE ANYTHING ELSE WE SHOULD HAVE ASKED?
1. PROPOSED TRANSACTION STRUCTURE

The Aircraft will be purchased by the Owner and leased on an operating lease basis to the Airline pursuant to the Lease.

Is this the usual structure for transactions of this nature in the Relevant Jurisdiction? Yes

2. SEARCHES

2.1 Are there any public registers in the Relevant Jurisdiction where a search can be carried out to determine whether an order or resolution for any bankruptcy, bankruptcy protection or similar insolvency proceedings has been registered in relation to the Airline?

Yes, the homepage of the Austrian Justice Department (www.edikte.justiz.gv.at) operates a data base which allows checking whether the airline has filed an application for insolvency. This service is free of charge. However, it does not state whether the prerequisites for insolvency at a certain company are fulfilled but only lists the filed insolvency applications. The result of the search is provided instantly.

In addition to the online search, a creditor may turn to the Austrian Creditor’s Protection Agency (Kreditschutzverband) and request information on a certain company. The costs for such information should not exceed EUR 100.

2.2 If so, specify which public registers, how long such searches typically take and if the fees are more than USD 100, approximately what fees apply.

See above 2.1.

3. RIGHTS AND EVIDENCE OF OWNERSHIP

3.1 In the case of the transfer of title to an Aircraft registered in the Relevant Jurisdiction:

3.1.1 Is any particular form of transfer required for the transfer to be legally recognised?

No particular form of transfer is required; the possession of the Aircraft must be transferred to the purchaser; the legal basis for the transfer of ownership is the purchase agreement. Please note that the Owner and evidence of ownership must be disclosed and submitted to Austro Control in the course of the registration of the Aircraft.
3.1.2 Must any particular conditions be satisfied for the transfer to be recognised?

Under Austrian law, for a valid transfer of title to a moveable asset there must be (i) an agreement between seller and buyer that title is transferred to buyer and (ii) a transfer of physical possession of the property from seller to buyer. As under realistic scenarios a physical transfer of possession may not always be practical, Austrian law provides for various ways to substitute the need for a physical transfer of possession (e.g. by way of the seller assigning its contractual rights to reclaim possession from a third party).

3.1.3 Will such a transfer still be recognised by the courts of the Relevant Jurisdiction as legally valid where the relevant Aircraft is located in another jurisdiction at the time of the transfer?

Yes, provided that the transfer was executed in accordance with Austrian law, i.e. physical transfer of possession from the seller to the purchaser based on a purchase agreement.

3.1.4 Are any duties, taxes or fees levied on such transfer of ownership?

VAT: Provided the Aircraft is supplied to an Austrian purchaser, the VAT-exemption rule may be applicable; hence, the supply of the Aircraft might be exempt from VAT in Austria.

§ 9 sec 2 Austrian VAT Act stipulates that the supply of an Aircraft is exempt from VAT if the purchaser of the Aircraft is an entrepreneur predominantly carrying out international air transportation or solely carrying out air transportation on routes outside Austria. It is however, not necessary that the respective Aircraft is utilized mainly on international routes but only required that the purchaser operates his other Aircraft mainly on international routes. The purchaser must prove that he fulfils the prerequisites for the VAT-exemption.

The VAT-exemption also applies to parts of the Aircraft as well as to fuel, lubricants, tools, food for the crew, airport services directly connected with flight operations etc.

Registration Fees: The Aircraft is subject to numerous fees in Austria. In this connection, AOC fees, registration fees and fees for the airworthiness certificate will be due. These fees are regulated in the Austro Control Fee Ordinance (Austro Control Gebührenverordnung, BGBl Nr. 2/1994).

Fees for obtaining an Aircraft Operator's Certificate ("AOC") may amount to EUR 41,370 (Performance Class A Aircraft exceeding 150,000 kg [330,693 lb]). Obtaining an AOC for a typical business Aircraft (5,701 kg [12,568 lb] – 20,000 kg [44,092 lb]) amounts to EUR 11,821.

Registration fees may vary between EUR 295 and EUR 2,957. Finally the fee for obtaining an airworthiness certificate varies between EUR 709 and EUR 21,748.

Please note that additional minor fees may apply.

3.2 Other than Insolvency laws (see section 9) are there any laws which may have the effect of defeating the Owner’s right in the Aircraft – for example,
Government requisition? Do the laws of the Relevant Jurisdiction provide for any compensation in such circumstances?

1. **Expropriation:** Under extraordinary circumstances the Owner's right in the Aircraft may be defeated. However, such expropriation is only permissible for public good and only if expropriation is the last resort. The Aircraft's owner must be compensated in case of an expropriation.

2. **Seizure by customs office:** Under certain circumstances, the customs office may seize the means of transportation if they were used for trafficking of goods subject to customs and such customs were not paid. The customs authority is obliged to release the seized means of transportation after the prerequisites for the seizure cease to exist. The customs office is obliged to return the seized means of transportation to the person from whom the means of transportation was taken regardless of the ownership status.

3. **Seizure by the prosecution:** In case the Aircraft had been used for a criminal act (e.g. transportation of forbidden goods) the prosecution may order the confiscation of the Aircraft provided the Aircraft will be used as a piece of evidence in the following criminal proceedings. The Operator is obliged to surrender possession to the police.

4. **Retention Rights:** The Austrian Commercial Code grants a creditor a retention right on assets of the debtor which are in the possession of the creditor (e.g. maintenance company may retain the possession of an Aircraft for unpaid maintenance bills of the Aircraft Operator).

5. **Emission Certificate:** In case of an infringement of the Austrian Waste Emissions Certificate Act, the environment minister is responsible to impose sanctions against the Aircraft Operator. If the measures taken are not able to keep an Aircraft Operator from committing infringements, the environment minister may request an operating ban for the Aircraft Operator (cf § 28 sec 7 EmissionsG).

### 4. THE AIRCRAFT REGISTER – NATIONALITY OF AIRCRAFT

4.1 Has the Relevant Jurisdiction ratified any of:

- **The Chicago Convention of 1944 on International Civil Aviation?**  
  Yes, Sept. 26, 1948

- **The 1948 Geneva Convention on the International Recognition of Rights in Aircraft?**  
  No

- **The 1933 Convention for the Unification of Certain Rules Relating to the Precautionary Arrest of Aircraft?**  
  Yes, Austria is a signatory state

- **The 2001 Cape Town Convention on International Interests in Mobile Equipment and the associated Protocol on Matters Specific to Aircraft Equipment (the Cape Town Convention)?**  
  No

4.2 If the Relevant Jurisdiction has ratified the Cape Town, see the Cape Town Convention Annex.

4.3 If the Relevant Jurisdiction has not ratified the Cape Town Convention, has
the Relevant Jurisdiction started official proceedings or given any other official indication that it will accede to or ratify the Cape Town Convention in the near future?

There seem to be no efforts of the Austrian Government to ratify the Cape Town Convention any time soon. The European Union has already ratified the Cape Town Convention on 28th April, 2009.

4.4 Is there an Aircraft Register in the Relevant Jurisdiction and if so, what is it called and who operates it?

Yes, it is called Austrian Aircraft register (Österreichisches Luftfahrzeugregister) and is operated by Austro Control GmbH based in Vienna which is working under the supervision of the Federal Ministry for Climate Action, Environment, Energy, Mobility, Innovation and Technology. Their website contains useful information (https://www.austrocontrol.at/en).

4.5 If so, in relation to registration:

4.5.1 Who is responsible for registering the Aircraft – is it an Owner registry or an Operator registry?

The Aircraft Operator (Halter) is responsible for registering the Aircraft, not the owner. For certain aspects the participation of the owner is necessary (e.g. signature). However the owner does not appear on the certificate of registration nor in the public Aircraft register. Please note that the owner must be disclosed as well as the evidence of ownership upon registration of the Aircraft.

Please note that the Operator must be a person (physical or legal) residing within the European Union in order to register the Aircraft in Austria. In case the Operator is a resident of a third country, such Operator may transfer its Operator status to an Austrian or European Operator (Halterschaftsübertragung).

4.5.2 What details would normally be recorded on the Aircraft Register upon registration of an Aircraft in the Relevant Jurisdiction? If not normally recorded, is it possible to record the Lease and/or an Aircraft Mortgage on the Aircraft Register?

The following information is recorded by Austro Control

1. Details of the Operator(s)
2. Details of the Aircraft (registration number, type of Aircraft, MTOM, serial number)
3. Details of the Owner(s)
4. Last registration
5. Noise insulation

It is not possible to record the Lease and/or an Aircraft Mortgage on the Aircraft Register.

4.5.3 If the Aircraft Register is an Operator register, is it possible to record the details of the Aircraft Owner/lessor and any financier with an Aircraft Mortgage?
Such entries are not allowed in Austria. However, the Owner has to be named in the application for registration; further the Operator must declare each transfer of ownership of the Aircraft to Austro Control.

4.5.4 If the Aircraft Register is an Owner register, is registration on the Aircraft Register definitive to determine ownership of the Aircraft?

The register is an Operator register.

4.5.5 Are any distinctions made between Aircraft employed on international routes and those used purely for domestic flights?

Not for registration purposes; but it makes a difference for VAT purposes (see above under 3.1.4);

4.6 What documents and/or consents are required to obtain registration on the Aircraft Register and will these require any formalities (for example, notarisation, legalisation or application of apostille)?

For the registration on the Aircraft Register the following documents need to be submitted to Austro Control:

1. The Austro Control standard application form
2. Attached
   1. Proof of ownership (Austro Control standard form)
   2. Transfer of operatorship (if applicable) (Austro Control standard form)
   3. Proof of Operator’s citizenship
   4. Proof of owner's citizenship
   5. Tax confirmation (sec. 27 (1) Austrian VAT Code) (if applicable)
   6. A certificate of deregistration (Löschungsbescheinigung) if the Aircraft has previously been registered in another Aircraft register or a certificate of non-registration (Nichteintragungsbescheinigung)
   7. Compliance Certificate in respect of noise development

Please note that in order to operate the Aircraft the airline required further approvals, such as approvals in respect of the Aircraft, insurance and crew.

4.7 Are there any restrictions on the legal status and/or nationality/domicile of parties seeking to register an Aircraft on the Aircraft Register?

see under 4.5.1 above

4.8 In respect of Aircraft transactions connected with the Relevant Jurisdiction generally, are there any foreign Aircraft Registers that are commonly used, or should be considered, as alternatives to or in addition to
registration with the Relevant Jurisdiction’s Aircraft Register? If so, what is benefit of such registration?

No

4.9 Are there any other filings or registrations necessary or desirable (other than the registrations already mentioned and Lease Registration – see section 6) in the Relevant Jurisdiction in order to ensure the validity, priority or enforceability of the transaction documents, or to perfect the interests of the Owner in the Aircraft or the transaction documents?

Austria does not have a pledge register or similar registers. The retention of title of the Owner is not entered into any register.

5. LEASES

5.1 Will the Relevant Jurisdiction recognise the concept of a lease over an Aircraft?

Yes; although a lease (in German: Leasing) is not regulated as a separate type of agreement, such agreement is recognized by the Austrian legal doctrine and the Austrian court practice.

5.2 Would the choice of English law to govern the Lease be upheld as a valid choice of law in any action in the Relevant Jurisdiction?

English law may govern the lease agreement. However, if the lease is closely related to one country, English law may not overrule mandatory provisions of the country to which the lease is closely connected.

5.3 Must the Lease be in a particular form if it is to be valid and enforceable in the Relevant Jurisdiction (for example, must it be in the language of the Relevant Jurisdiction or be notarised, legalised or have the apostille applied)?

No, there are no formal requirements in Austria applicable to a Lease.

5.4 If the Lease must be in the language of the Relevant Jurisdiction, is it possible under the Relevant Law also to have an English version, and to provide that the English version should prevail in case of conflict with the Relevant Jurisdiction language version?

As the Lease does not have to be registered, the English version of the agreement could prevail. However, the Lease agreement needs to be disclosed to Austro Control when evidencing the operatorship of the Operator. We recommend a bilingual agreement with German as the prevailing language.
5.5 Are there any special terms that the Lease must contain or that it is advisable for the Lease to contain?

There are no mandatory terms which need to be included in a Lease. Hence, the terms of the Lease may be negotiated between the parties. The term of the lease should be specified in the lease agreement. Further, it is recommended to include events-of-default and acceleration provisions and a repossession procedure which applies after the premature termination of the lease agreement. Finally, it should be stated that the lessor bears the stamp duty tax triggered by the lease agreement. As an Aircraft lease agreement is usually concluded for long term, the advice of experienced Austrian legal and tax counsel is highly recommended.

5.6 Are there any circumstances under which the Lease might be re-characterised under the laws of the Relevant Jurisdiction as:

5.6.1 a secured loan?

Yes, the Austrian Supreme Court has re-characterised a sale and lease back agreement into a secured loan. In this specific case, it was never intended that the leased assets return to the lessor after the expiry of the lease. Therefore, the specific agreement was qualified as a secured loan.

5.6.2 a finance (or capital) lease?

The distinction between a finance lease and an operating lease is mainly significant for tax purposes. A finance lease is treated as a purchase; i.e. Operator needs to recognise the Aircraft in its balance sheet. The lease payments are not recognized as rental payments. In case of an operating lease, the Operator is a lessee and therefore the Operator may deduct the monthly lease payments as expenses. The Austrian Tax authority generally recognizes a lease as an operating lease if the lessee may purchase the asset after the expiry of the lease term for at least the book value minus 20% of the book value.

If, on the basis of these responses a proposed transaction appears to have constituents which could suggest a re-characterisation risk, we recommend detailed advice is obtained.

5.7 Is there a separate register for Aircraft leases in the Relevant Jurisdiction?

There is no separate register for Aircraft leases.

5.8 If yes, then:

5.8.1 What documentation and/or consents are required for the registration of the Lease?

Not applicable

5.8.2 What registration fees are payable (if any)?
5.8.3 What information is recorded on the register? How is the eventual discharge of the Lease recorded?

Not applicable

5.8.4 Does any registration in respect of the Lease remain valid throughout the tenure of the Lease or does such a registration require periodic renewal? If renewal is required when must this be done and what is the approximate cost of renewal?

Not applicable

6. ENFORCEMENT OF LEASES (ASSUMING AIRLINE IS NOT IN A FORM OF INSOLVENCY PROTECTION)

6.1 On the occurrence of an event of default under the Lease, assuming that the Owner is permitted to do so under the terms of the Lease, can the Owner terminate the Leasing of the Aircraft under the Lease and enforce the Lease by taking physical possession of the Aircraft?

If the Owner validly terminates the Lease, the Operator is obliged to return the Aircraft to the Owner. However, the Owner as a general rule cannot enforce this claim for repossession by himself without the consent of the Operator without taking judicial proceedings (i.e. filing of a suit and subsequently enforcing the judgment through a bailiff). Please note that in case of an physical repossession by the Owner without prior judicial proceedings the Operator may file an action for trespass (Besitzstörungsklage).

6.2 If so, can the Owner take physical possession of the Aircraft without the need for judicial proceedings in the Relevant Jurisdiction?

No, if the Operator does not return the Aircraft to the Lessor the Owner is generally not allowed to take physical possession of the Aircraft but has to take judicial proceedings, see 6.1.

6.3 Where judicial proceedings in the Relevant Jurisdiction are necessary, please provide details of the proceedings, in particular:

6.3.1 What documents would the Owner as lessor need to present in order to obtain possession of the Aircraft, both before and subsequent to judgment? Can documents be copies?

The Owner would have to present the lease agreement and prove to the court the chain of title from the first owner of the Aircraft. In addition the Owner would have to sufficiently substantiate the fact that the Operator has...
failed to fulfil its obligations under the lease agreements. The documents may be submitted as copies as long as the opposing party does not dispute the content of, or the authenticity of the signature under, the document. If the opposing party does so, the court may request the Owner to present original documents. Foreign documents should be translated into German. After a judgment is rendered by the court, only the official copy of the judgment is to be presented to the bailiff to enable him to enforce the judgment.

6.3.2 What is the approximate cost of issuing proceedings?

This depends on the value of the Aircraft and may only be assessed on a case-to-case basis.

6.3.3 Would the Owner be required to provide a bond, guarantee or other security in order to issue proceedings?

Generally not. However plaintiffs who are domiciled outside the European Union can be required to provide security for the costs of the proceedings unless international agreements state otherwise.

6.3.4 What is an estimate of the normal duration of possession proceedings from time at which all required documentation is made available – if uncontested?

If the claim is uncontested, proceedings should not last more than six months.

6.3.5 What is an estimate of the normal duration of possession proceedings from time at which all required documentation is made available – if contested?

If the claim is contested, proceedings could last between 1.5 and several years.

6.4 Where judicial proceedings are not necessary, please comment on the time limits relevant to taking possession of the Aircraft, in particular:

6.4.1 Is there a waiting period before action may be taken?

The Owner cannot take possession of the Aircraft itself but has to institute proceedings against the Lessee. Prior to the termination of the lease agreement, the lessee should be notified of the default and given a reasonable period of time to make good the default before the Owner dissolves the lease agreement.

6.4.2 Is there a long stop date by which action must be taken

The claim of the Owner for restitution of the Aircraft becomes time-barred after three years from the end of the year in which the Lease was terminated, unless there are circumstances that interrupt or restart the limitation period (such as the institution of legal proceeding, an acknowledgement of the claim by the other party, negotiations between the parties, a right of the other party to refuse the restitution or other events).
6.4.3 Is a Public Auction of the Aircraft required?

No

6.5 Apart from the judicial proceedings described above and ignoring deregistration (see section 8), is the permission of any other party (including any official body) in the Relevant Jurisdiction required to take possession of the Aircraft?

There are practical issues such as clearance to repossess an Aircraft which is “airside” at an Airport. Generally a specialist aviation consulting firm with familiarity of such issues would be used to effect repossession. There is, however, no formal permission required – simply compliance with ground security and similar requirements.

6.6 Is there any history of actual repossession of Aircraft by Owners in the Relevant Jurisdiction? If so, please provide details of any matters or issues of which an Owner should be aware.

We are not aware of any published case in Austria dealing with the repossession of an Aircraft or an Aircraft engine.

Are there any circumstances in which the sums expressed to be payable under the Lease or obligations expressed to be assumed by the Airline in the Lease are or will be unrecoverable or unenforceable in the Relevant Jurisdiction?

Whenever the airline files for opening of insolvency proceedings, there is a stay on enforcement of rights, so the lessor would not be allowed to take any legal actions against the airline. Besides, there is a payment stop for the lessee (for further information regarding insolvency proceedings see section 9). Another reason which affects the recoverability is the illegality of the contents of the contract. The Operator could successfully defend a claim of the Owner in case the statute of limitation has lapsed. Further, the Owner could not claim sums payable under the agreement in case the Operator has claims vis-à-vis the Owner and the lease agreement does not exclude the right of set-off for the Operator. Other grounds on which the enforceability of obligations under a lease may be challenged by a lessee include mistake fraud, incapacity of the lessee, illegality, sovereign immunity and public policy.

6.7 Are there any restrictions on the ability of the Owner to sell the Aircraft in the Relevant Jurisdiction during the term of the Lease or, following an event of default, on termination of the leasing or pending judicial enforcement of the Lease?

Provided the lessee is not in Administration, as a matter of law, the Owner is free to sell at any time (subject to the lease and taking account of the warranty of quiet enjoyment and peaceful possession if the lease has not been terminated for default). Contractually the lease could restrict the Owner's ability to sell or to assign the lease but this is a matter of contract rather than law. The lease agreement, on the other hand, could also allow for the Aircraft to be sold in the course of the Operator's insolvency.
6.8 Are there any export restrictions on export of a repossessed Aircraft?

For the export of an Aircraft, an Export Certificate of Airworthiness ("CofA", in German: Lufttüchtigkeitszeugnis) is required. This certificate will be issued by Austro Control if all requirements are fulfilled. Procedures and requirements are different depending on whether the Aircraft is exported to another EASA country, to the US/Canada or to another non-EASA-country. Within the EASA area a CofA will not be needed, outside the EASA area it will be required. Please visit the Austro Control website or call Austro Control for further information.

7. DEREGISTRATION POWER OF ATTORNEY/EXPORTATION

7.1 Can the Owner apply for deregistration of the Aircraft either at the end of the lease term or following successful repossession (with or without judicial proceedings) and is there any time period within which such application should be made?

As the Austrian Aircraft Register is an Operator register; the Operator is responsible for deregistration of the Aircraft. The Owner would not be entitled to apply for deregistration, unless the Owner is authorized by way of a power of attorney.

7.2 Is the consent of the Airline required to deregister the Aircraft either by law or as a matter of custom or practice?

The Operator is responsible for deregistration of the Aircraft; without its consent, deregistration would not be possible. I.e. if the Airline is a different entity as the Operator, the Airline's consent is not required.

7.3 How long does deregistration take, both where there is co-operation from the Airline and where this is no co-operation from the Airline?

It mainly depends on the applicant (normally the Operator) and on the time he needs to provide all documents necessary for deregistration. When all documents have been received by Austro Control, the process will be finished within a few business days, depending on their capacities.

7.4 Is it possible to obtain an export licence or export permit in advance?

In general, an export license is not required. However, an export licence may be required if embargoes imposed by the United Nations or other international organisations, the European Union (to the extent applicable in Austria) or by Austria itself have to be complied with or if parts of the Aircraft qualify as a Dual-Use Item in the meaning of Council Regulation (EC) No. 428/2009 or the Austrian Foreign Trade Act (Außenwirtschaftsgesetz). Such permit would have to be applied for by the exporter and granted by the competent authority – the Federal Ministry for Economy (Bundesministerium für Wirtschaft) – prior to the export of the Aircraft. Special regulations apply in case that an Aircraft is specially designed for military purposes. Further, prior to the export of the Aircraft, a Certificate of Airworthiness ("CoA") must be obtained. Such CoA is issued by Austro Control.
7.5 Approximately how long does it take to obtain an export licence or export permit? What are the costs involved?

As soon as the applicant provides all documents necessary to obtain a CoA, the process will be finished within a few business days. The costs depend on the weight of the Aircraft and may vary between EUR 110 (up to 1,200 kg) and EUR 3,512 (above 20,000 kg).

7.6 Is it possible to obtain a certificate of deregistration in advance?

No. Austro Control will deregister an Aircraft when the Operator fails to meet the requirements for registration, the Operator requests that the Aircraft be deregistered or when the Aircraft is registered elsewhere. Please note that a certificate of deregistration is issued by Austro Control only upon request.

7.7 Will a power of attorney empowering the Owner to deregister and export the Aircraft from the Relevant Jurisdiction, either at the end of the lease term or following successful repossession (with or without judicial proceedings), be enforceable in the Relevant Jurisdiction?

Yes.

Will the courts recognise a power of attorney in the form of an IDERA and governed by English law?

As Austria is not a signatory state to the Cape Town Convention, Austrian law does not know a power of attorney in the form of IDERA (Irrevocable De-Registration and Export Request Authorization). Generally, power of attorneys may be governed by foreign laws. Nevertheless, to date IDERA has not been discussed in Austria.

7.8 If the power of attorney was stated to be irrevocable would this be enforceable against the Airline or can the Airline revoke such power of attorney?

In principle, a power of attorney is always revocable. However, if stated to be irrevocable and coupled with a security interest, then it will be irrevocable.

7.9 Upon the occurrence of a bankruptcy or insolvency of the Airline is the power of attorney still effective?

Insolvency proceedings cause all powers of attorney regarding the insolvency estate to extinguish. The liquidator is the only person who is entitled to deal with the insolvency estate.

8. INSOLVENCY

8.1 In the event that the Airline were to become insolvent either on a balance sheet basis (assets less than liabilities) or unable to pay debts as fall due:
8.1.1 Would the airline be required to file for insolvency protection?

According to Austrian law, a debtor is obliged to file an application for opening of insolvency proceedings “without culpable delay”, but at the latest within 60 days after he is unable to pay his debts. The obligation applies to the directors of the Airline or, under certain circumstances, to a controlling partner of the company; in case of a violation of their duties, the directors are opened up to personal liability for any damage caused to the company's creditors due to the prolonging of insolvency.

8.1.2 Do the available forms of insolvency protection in the Relevant Jurisdiction involve the appointment of either an officer of the court or a specifically court appointed official to take control of the Airline (an Insolvency Official) while in insolvency protection?

Yes, an Insolvency Official will be nominated at the beginning of insolvency proceedings. Under certain circumstances the debtor may administrate the insolvency procedure by himself (Selbstverwaltung). The insolvency proceedings do not subdivide to Administration and Liquidation. The Insolvency Official's primary goal shall be to restore solvency while continuing the business; closure is only the last resort in case it is the only way to prevent the creditors from being damaged. After closure, the Insolvency Official has to liquidate the company (detect the assets/liabilities, recover debts etc.). He is supervised by the insolvency court.

8.1.3 Does the Insolvency Official have authority to negotiate and reach agreement with the Owner in relation to matters such as the payment of unpaid rent, continuation or termination of the Lease and repossession of the Aircraft without the need for court approval?

Generally the Insolvency Official does have the authority to do so, but for certain legal transactions, such as fulfilment or annulment of contracts worth more than EUR 100,000, he has to ask the committee of creditors for a written statement and inform the Insolvency Court about the planned transactions to be safeguarded in his internal relationship with the company.

8.1.4 Does the commencement of insolvency protection involving the appointment of an Insolvency Official in the Relevant Jurisdiction have the effect of prohibiting the Owner from taking the following actions to enforce the lease after commencement of such protection:

- **(a.) Applying any security deposit held by the Owner against any unpaid amounts due under the Lease?** This question will depend on the precise terms under which the security deposit is paid. Generally there is a moratorium on enforcement of rights under a Lease following the commencement of Administration and, if not properly constructed, this would apply to the security deposit arrangements. However, if properly constructed there is a strong argument that the security deposit is Financial Collateral and subject to the Financial Collateral Regulations which permit appropriation of the deposit to satisfy unpaid amounts without regard to the moratorium. There are no restrictions in Liquidation.
- **(b.) Accepting payment of rent or other lease payments from:**
1. (i.) the Airline? The directors are not allowed to make payments after gaining knowledge of the insolvency to prevent belittlement of the insolvency estate for the benefit of single creditors. The other creditors and the Insolvency Official could contest the payment; besides, disregarding the prohibition exposes the directors to personal liability towards the company.

2. (ii.) a guarantor? Assuming the guarantor is not itself in insolvency proceedings then there is no limitation on accepting payments under the guarantee from the guarantor; the guarantor is even obliged to pay in case the Airline does not. Through payment the guarantor is subrogated to the rights of the Airline and therefore has a right of redress; he can file his claim to the insolvency proceedings.

3. (iii.) a shareholder? Assuming the shareholder is not itself in insolvency proceedings then there is no limitation on accepting payments from the shareholder. Such payments may be vulnerable to being set aside if the shareholder is insolvent at the time of payment and within a defined period is subject to formal insolvency proceedings.

- (c.) giving notice of default under the lease? Notice of default may be given.
- (d.) obtaining a judgment or arbitral award for unpaid lease payments? After commencement of the insolvency proceedings, it is prohibited to take legal action against the Airline. A pending lawsuit against the Airline will be stayed and the suitor has to assert his claim to be taken into account during the insolvency proceedings.
- (e.) giving notice to terminate the leasing of the Aircraft? Generally, the Owner is prohibited from terminating the Lease after commencement of the insolvency proceedings except for cause or the consent of the Insolvency Official. The prohibition ends six months after commencement of the insolvency proceedings. There is no such prohibition in Liquidation.
- (f.) exercising rights to repossess the Aircraft? During the first six months of the Insolvency Proceedings, the Owner cannot demand the Aircraft back if this would endanger the continuation of the business as a going concern, unless consented to by the Insolvency Official. The Owner will receive either the contractual payment or a reasonable fee for use as insolvency claims. There is no such prohibition in Liquidation.

8.1.5 Can the commencement of Insolvency Proceedings have retrospective effect in relation to any such actions taken before commencement? If so, for what period can there be a look back?

The commencement of Insolvency Proceedings itself does not have a retrospective effect, but the Insolvency Official has the right to annul some legal acts taken by the Airline with the intention to discriminate certain creditors. The period of time varies from six months up to ten years in special cases. In most cases the right of contest will affect contracts signed within six months before commencement of the insolvency proceedings.

8.1.6 Is there, either under law or as a matter of practice in the Relevant Jurisdiction, a period of time within which the Insolvency Official will either “adopt” the lease and pay rent and other lease payments as an expense of the insolvency or “reject” the lease and permit the Owner to enforce such rights as it may have under the lease?

Generally, the insolvency estate adopts the lease at commencement of the insolvency proceedings, but the Insolvency Official has the right to terminate the lease agreement any time within the statutory notice period or a shorter period of notice if this is agreed in the lease agreement. If he terminates the lease even earlier, the Owner has a claim against the insolvency estate for damages being caused by the early termination. There is no specific
time limit but in practice Insolvency Officials try and make such decisions quickly after taking office. The
Administration process should ordinarily not extend beyond a year in total so the Insolvency Official has a finite
time to achieve the aims of the Administration. The primary purpose of an Administration is to rescue the
insolvent company as a going concern. To achieve that aim it is usually essential to decide what assets are
required and which are not at an early stage. There may well be a dialogue with the Insolvency Official or the
Insolvency Official's legal advisers which may be helpful in determining whether the Insolvency Official will
continue with the lease or not.

8.1.7 If the lease is “adopted” will the Insolvency Official also pay any unpaid lease
payments due as at commencement of the insolvency protection?

Rent due before commencement of the insolvency proceedings has to be filed in the proceedings and will not be
paid by the Insolvency Official. Rent due after commencement of the insolvency proceedings, however, will be
paid in full; creditors of such claims will be satisfied prior to creditors whose claims became due at or before
commencement of the insolvency proceedings.

8.1.8 If not or if the lease is “rejected”, would the Owner's claim for any outstanding
sums rank equally with other ordinary unsecured creditors of the Airline?

Yes

8.1.9 Are there certain types of preferred creditors whose claims will rank above claims
of the Owner?

Yes, there is such a ranking. At first, creditors can separate their property from the insolvency estate. Next, the
secured creditors (pledgees etc.) will be satisfied; then creditors can assert their set-off claims. In the next step,
creditors of claims arising after commencement of the insolvency proceedings will be paid. Within this group of
claims, a certain order has to be maintained if the insolvency estate does not cover all of those claims. All other
insolvency creditors whose claims arose before commencement of the insolvency proceedings will be satisfied
last.

8.1.10 If the Aircraft is in the possession of a person other than the Airline at the
commencement of Insolvency Protection of the Airline, for example an independent
maintenance facility, will such person be entitled, under the laws of the Relevant
Jurisdiction, to assert a lien arising under law or contract over the Aircraft in respect of
amounts then due and unpaid to such person by the Airline?

Under Austrian law, an entrepreneur has a right to retention in respect of the goods he is holding with another
entrepreneur's intention to safeguard claims against him. He can also exploit such goods in the same way as
pledgees. This right, however, does not affect third parties having a right in rem. As the Airline is not the actual
Owner of the Aircraft, a person other than the Airline possessing the Aircraft is not entitled to retain or exploit it.

8.1.11 Is a person other than the Airline, for example an airport authority, entitled
under the laws of the Relevant Jurisdiction to seize possession of the Aircraft after
commencement of Insolvency Protection and assert a lien arising under law or contract over the Aircraft in respect of amounts then due and unpaid to such person by the Airline.

No, under Austrian law, liens can only be asserted by persons who are in possession of an item. Therefore, a person other than the Airline is not entitled to assert a lien.

9. TAXATION

9.1 The decision to lease to an airline in the Relevant Jurisdiction assumes that the Owner will not be taxed on receipt of rentals or other payments (including maintenance reserves) under the Lease except by way of tax on its general income, profits or gains payable by the Owner in its place of incorporation or place of main business (if different). Will there be a requirement for the Owner to pay tax in the Relevant Jurisdiction on lease payments on basis that either the Owner is subject to taxation in the Relevant Jurisdiction by reason only of the leasing of the Aircraft under the Lease and is required to make payment itself; or payment of such tax is by way of the airline being required to withhold and account for tax from lease payments, where:

9.1.1 the Owner is incorporated and is tax resident in Ireland?

See response below.

9.1.2 the Owner is incorporated and is tax resident in the United Kingdom?

See response below.

9.1.3 the Owner is incorporated and is tax resident in Hong Kong?

See response below.

9.1.4 the Owner is incorporated and is tax resident in Singapore?

See response below.

9.1.5 the Owner is incorporated and is tax resident in Malta?

See response below.
9.1.6 the Owner is incorporated and is tax resident in the Channel Islands?
See response below.

9.1.7 the Owner is incorporated and is tax resident in the Isle of Man?
See response below.

9.1.8 the Owner is incorporated and is tax resident in Mauritius?
See response below.

9.1.9 the Owner is incorporated and is tax resident in Bermuda?
See response below.

9.1.10 the Owner is incorporated and is tax resident in the Cayman Islands?
See response below.

The lease payments are not subject to withholding tax in Austria regardless of where the Owner is incorporated. If the Owner leases the Aircraft to an Austrian Operator, the income derived from the rental (lease) payments are not taxed in Austria, provided the Owner does not have a permanent establishment in Austria.

9.2 If there is a requirement in the Relevant Jurisdiction for the airline to withhold tax on lease payments, will the courts of the Relevant Jurisdiction recognise and permit enforcement of a “gross up” clause in the Lease requiring the payment by the Airline of an additional sum to ensure the Owner receives and is entitled to retain the same net amount as would have been received in the absence of the withholding, taking account of any further withholding on account of tax required in relation to such additional sum.

n/a; even if the Owner has a permanent establishment in Austria, the Owner’s income would be taxable in Austria; the Owner would be obliged to file a tax return in Austria; even in this case no withholding tax on the rental payments would apply. A tax “gross up” is however, recognized in Austria as market standard.

9.3 VAT: European Union country: under Article 148(f) of the VAT Directive, an exemption from VAT is applied to “supplies” consisting of chartering or hiring of aircraft which are used by airlines operating for reward chiefly on international routes. Therefore:
9.3.1 New lease to airline operating for reward chiefly in domestic routes: VAT will be applied to lease rentals at current rate:

20%

9.3.2 New Lease to airline operating for reward chiefly on international routes: VAT will not be applied to lease rentals by reason of application of exemption:

Yes

9.3.3 Sale of aircraft by an aircraft lessor to another aircraft lessor of an aircraft subject to a lease to an airline operating for reward chiefly in domestic routes: VAT will be applied to the purchase price. If the seller and the purchaser are both EU entities and the purchaser supplies its EU VAT Number to the seller then the VAT charge will be a reverse charge (i.e. Purchaser pays VAT in its resident state). Otherwise VAT will be applied to purchase price at current rate:

20%

9.3.4 Sale of aircraft by an aircraft lessor to another aircraft lessor of an aircraft subject to a lease to an airline operating for reward chiefly on international routes: VAT will be applied to purchase price:

No

If no, is this because of application of the exemption under Article 148(f) to the airline following the decision in ECJ Case C-33/2011?

Yes

If yes, is this because the Relevant Jurisdiction does not apply the decision in ECJ Case C-33/2011?

Not applicable

9.3.5 If the transaction involves the first importation of the aircraft into the EU (and assuming the aircraft is intended for use as a civil and not military aircraft) what rate of Customs Duty will apply?

Customs rate at 0%, however, customs registration is required. Such registration is done online by a haulage contractor.

9.4 Is any stamp duty, notarial or other fee or equivalent payable in respect of
the execution of the Lease, a de-registration power of attorney or any other lease related document concerning the Aircraft? Will such stamp duty or fee still be payable if the relevant documents are executed and held outside the Relevant Jurisdiction? If any such amount is payable how much is it approximately?

Stamp Duty Tax: Leasing agreements concluded in Austria or concerning an asset located in Austria are subject to Austrian stamp duty tax. In case the lease agreement is concluded for a limited term, the tax amounts to 1% of the remuneration due for the entire term, e.g. lease agreement concluded for ten years, monthly lease payment: EUR 20,000; entire remuneration for ten years: EUR 2,400,000; thereof 1% = EUR 24,000 stamp duty tax.

9.5 Can any form of consent, authorisation or licence be obtained exempting the payments referred to in this Section from such tax or duty? If so, how would it be obtained?

Stamp duty tax may be avoided, e.g. in case the Owner, being a non-Austrian company, concludes the lease agreement with the Operator outside of Austria and keeps the lease agreement outside of Austria. Stamp duty may be also avoided in case the Owner offers the conclusion of the lease agreement and the Operator accepts the offer by paying the first lease payment, i.e. the lease agreement is in fact not signed by the Operator. These tax-avoidance scenarios are legal in Austria and do not constitute any kind of tax fraud. However, each of these scenarios carries risks in case of a tax audit. Diligent care and counsel’s guidance is recommended in case of proposed mitigation of stamp duty tax.

9.6 Ignoring any taxation consequence already mentioned and any potential taxation issues if the Owner has any other connection to the Relevant Jurisdiction, is there any other Relevant Jurisdiction taxation consequence of the Owner:

9.6.1 being Owner and lessor of an Aircraft registered in the Relevant Jurisdiction and operated/leased by a company incorporated or registered in the Relevant Jurisdiction?

n/a

9.6.2 making available a lease facility to a company incorporated or regulated in the Relevant Jurisdiction?

n/a

9.6.3 Receiving rent and other lease payments under the Lease from the lessee incorporated or registered in the Relevant Jurisdiction?

If the VAT exception does not apply, the lease payments would be subject to VAT in Austria due to reverse charge. However, the Owner would have to register in Austria for VAT purposes, especially, if the Owner could claim input VAT in Austria.
9.6.4 Repossessing the Aircraft and exporting the Aircraft from the Relevant Jurisdiction?

The repossession of the Aircraft might have VAT consequences, especially in case of a finance lease (which is treated for VAT purposes as a purchase); the export is VAT exempt.

9.6.5 Selling the Aircraft at a profit, whether such sale is after repossession or is subject to the Lease and the lessee's rights?

The profits derived in Austria from the sale of the Aircraft are likely to be taxable in the country where the Owner (seller) is a tax resident.

10. EXCHANGE CONTROLS

10.1 Are payments to foreign Owners by companies incorporated or registered in the Relevant Jurisdiction subject to any form of exchange or similar control?

Generally, payments to foreigners are free from control. Hence, there are no restrictions on movement of capital, except for those specified in Articles 57 to 60 of the EC treaty. However, the Austrian National Bank may lay down regulations or resolution by which certain transactions with foreigners are restricted. For example, in 2014, the Austrian National Bank prohibited certain type of transactions with numerous Ukrainian citizens. Other transactions with Ukrainian citizens were subject to approval by the Austrian National Bank. Please note that transactions made without an approval are void unless such transaction was permitted retrospectively.

10.2 If yes, can any consents, authorisations or licences be obtained to exempt payments from any such control? How would these be obtained? Are such consents, authorisations or licences transferable?

If a certain transaction is subject to prior approval, such approval is to be obtained from the Austrian National Bank. An approval is not transferrable as the approval depends on the reliability of the party holding the approval.

11. INSURANCE

11.1 Is it a legal requirement to insure the Aircraft within the Relevant Jurisdiction?

Yes, there is an obligation to insure the Aircraft based on international treaties, regulations of the European Union and national laws partially complementing these provisions.
The obligation to insure initially affects air carriers and Aircraft Operators as defined in Regulation (EC) No. 785/2004 being directly applicable in Austria. Regulation (EC) No. 785/2004 assumes that the person in whose name the Aircraft is registered is the Aircraft Operator, unless such person provides evidence that a different person is the Operator of the Aircraft.
Further, sec. 164 Austrian Air Traffic Act (Luftfahrtgesetz) stipulates that every Operator is required to have liability insurance for damages caused to passengers, baggage, cargo and third parties or assets (not being a part of the Aircraft or its cargo).
Austrian law does not stipulate that the insurer must be an Austria Institution. Hence, as long as the requirements set out above are met, the insurer may be located outside of Austria.

11.2 If so, is there any restriction on reinsurance of the primary insurance outside the Relevant Jurisdiction?

The Austrian Air Traffic Act does not stipulate any restrictions on reinsurance.

11.3 Is there a minimum percentage of cover which a local insurer is obliged to retain, and if so, what is it?

There is no such obligation stipulated in the Regulation (EC) No. 785/2004 or in the Austrian Air Traffic Act.

11.4 Is it possible for local insurers to assign contracts of reinsurance? If not, is a cut-through clause enforceable?

Reinsurance agreements are governed by the general Austrian Civil Code as the Austrian Insurance Act excludes reinsurances from the scope of its application. Thus, there is no obstacle in assigning contracts of reinsurance. So far, Austrian courts have not dealt with the enforceability of a cut-through clause. In our view, such clauses should be generally permitted under Austrian law.

12. LIABILITY FOR DAMAGE

Can the Owner be strictly liable – liable without a requirement to prove fault or negligence – for any damage or loss caused by the Aircraft assuming Owner is an innocent owner with no operational control of the Aircraft?

The liability for damages caused by an Aircraft is based on the Austrian Air Traffic Act, unless international treaties apply. Generally, the Owner is not strictly liable for any damage or losses derived from the Aircraft.

The Operator is strictly liable for damages caused by an Aircraft. According to sec. 156 of the Austrian Air Traffic Act, the Owner is strictly liable for personal damages of passengers up to a maximum amount of 113,100 SDR. Operator’s liability for property damages caused by the Aircraft requires fault or negligence of the Operator.

The Operator of the Aircraft may only be liable for property and personal damages of passengers and carried goods and only according to the general liability principles as set out in the Austrian Civil Code. The Operator’s liability amount depends on the Aircraft’s Maximum Take-Off Mass (MTOM).
13. DETENTION/CONFISCATION

13.1 Are there any rights to detain or sell the Aircraft pursuant to drug trafficking, tax or other laws or pursuant to rights of airport or air navigation authorities if the Airline fails to pay when due?

One has to distinguish between several cases:

- **Confiscation by Prosecution:** The Aircraft could be seized under the Austrian Code of Criminal Procedure (Strafprozessordnung) either temporarily as evidence or permanently in case of confiscation (Konfiskation), forfeiture (Verfall) or deprivation (Einziehung) of the object as laid down in the Austrian Criminal Code (Strafgesetzbuch). However, confiscation and deprivation orders with respect to third party property generally require either some degree of involvement in criminal or regulatory offences, or that the object constitutes a danger to the public or there is a risk that the object will serve the commission of unlawful acts. In the latter two cases, adequate compensation is generally provided unless there is some degree of responsibility attributable to the third party. For example, the Owner may be deprived of the Aircraft, if it has been used as a vessel for drug trafficking, in which the Owner is involved.

- **Confiscation by Police:** Austrian police is authorised under the Federal Police Act (Sicherheitspolizeigesetz) to seize an Aircraft, if necessary to avert an imminent danger and keep it in custody until the danger is averted. In case the Aircraft may not have been returned to the Owner within six months (because the danger was not averted) or no one claimed the Aircraft, such Aircraft is forfeited. In such case, the Aircraft needs to be sold and the proceeds transferred to the Owner. The Owner may claim the proceeds from the sale three years of the day of the forfeiture.

- **Tax and Customs Authorities:** The Austrian tax authority may take enforcement measures against the Aircraft (as immovable asset) to enforce tax debt of the Owner. The Austrian Tax Code (Bundesabgabengesetzung) refers to the rules of compulsory judicial execution and public sale laid down in the Austrian Tax Execution Code (Abgabenexekutionsordnung -AbgEO) and also to the general rules of compulsory judicial execution and public sale laid down in the Austrian Execution Act (Exekutionsordnung) and its related statutes. In most cases the tax authority refers to the Austrian Execution Act. The procedure of public sale as such is not different than it would be in case of a private creditor’s enforcement against the Aircraft following a civil court decision. This is a highly formalised procedure including notification of the Owner of the upcoming public sale. As a general rule, enforcement measures can only be undertaken against assets of the respective tax debtor. Where the tax debtor is not the Owner of the Aircraft (e.g. the airline), enforcement measures may be undertaken against the rights and claims of the tax debtor only (e.g. rights and claims against the Owner, incl. right to transfer of title). Additionally, the customs office may seize the Aircraft from the Operator in case the Aircraft was used for customs fraud.

- **Unpaid airport fees:** Unpaid airport fees may lead to the formalised procedure of compulsory judicial enforcement in favour of the creditor (e.g. the airport operating company) under the Austrian Execution Act. Interim measures in favour of the creditor may be admissible in order to prevent frustration of (payment) claims.

13.2 If so, can the Aircraft be forfeited and sold without the Owner being made aware?

Generally, the Owner will be notified in case the Aircraft is at risk of being forfeited. Other measures such as confiscation or deprivation may generally not commence against assets of third parties unless such third party is a part of the respective criminal act. Hence, it is very unlikely that the Aircraft would be forfeited and sold without the Owner being aware of it.
14. SOVEREIGN IMMUNITY

14.1 Is any Airline based in the Relevant Jurisdiction entitled to any form of sovereign or other immunity from suit which might restrict the Owner’s rights under the Lease?

No.

14.2 Can such immunity be validly waived in advance by contract?

Not applicable.

15. DISPUTE RESOLUTION AND RECIPROCAL ENFORCEMENT

15.1 Do the laws of the Relevant Jurisdiction permit and recognise an “asymmetric” submission to jurisdiction clause under which the lessee submits to the exclusive jurisdiction of the Courts of England but the Owner has discretion to choose a jurisdiction other than the Courts of England?

There is no explicit provision in Austrian permitting such an “asymmetric” submission to jurisdiction clause, but it is recognised by Austrian courts.

15.2 If the Lease is governed by English Law and a judgment is obtained by the Owner in the English courts, can that judgment be automatically enforced in the Relevant Jurisdiction or will the case have to be re-examined on its merits? If so what procedures must be complied with to enforce such a judgment?

Such judgements will be recognized in Austria according to the provisions Council Regulation (EC) No. 44/2001 (Bruxelles I); judgements cannot be recognized only for the reasons listed in the Regulation. To enforce a judgement, no special procedures must be complied with. Pursuant to Article 36 of the Regulation, a judgement must not be re-examined on its merits.

15.3 Is the Relevant Jurisdiction party to the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention) or the 1965 Convention on the Settlement of Investment Disputes Between States and Nationals of Other States (the Washington Convention)? Yes, both Conventions.
Will the courts of the Relevant Jurisdiction recognise and enforce a decision of an arbitrator? Yes, based on the New York Convention.

15.4 What is the usual choice of dispute resolution in international supply contracts involving a lessor or buyer incorporated in or with its main place of business in the Relevant Jurisdiction?

The choice of arbitration under the Vienna Rules (VIAC) is commonly used in international transactions. However, ICC rules often are chosen for international disputes as well.

16. AIRCRAFT ENGINES

16.1 If the equipment being leased to the Airline in the Relevant Jurisdiction was an Aircraft Engine either unattached to an airframe or attached to an airframe belonging to a party other than the Aircraft Engine Owner and being leased to the Airline under a separate engine lease agreement, would there be any significant changes to the responses set out above?

The answers above apply to Aircraft Engines as well as Aircraft. Engines are separate parts different from the Aircraft (see below 16.2).

16.2 In particular, does the Relevant Jurisdiction recognise the separate ownership of the Aircraft Engine by the Aircraft Engine Owner when the Aircraft Engine is attached to an airframe belonging to a person other than the Aircraft Engine Owner?

We believe that the Aircraft engine forms a separate part of the Aircraft and hence may be owned by a different Owner. However, please note that we are not aware of any Austrian Supreme Court Decisions dealing with the qualification of the Aircraft engines as dependent or independent parts of the Aircraft. According to Austrian tax courts Aircraft engines are to be treated as separate parts of the Aircraft and therefore, may be subject to separate transactions. Hence, Aircraft engines are under Austrian (tax) law separate and independent parts from the Aircraft and may be subject to evaluation and depreciation (for accounting and tax purposes). It could be argued that also under civil law, the Aircraft engine is a separate part of the Aircraft. In such case, the Owner of the Aircraft does not become automatically the Owner of the Aircraft engines but the owner of the engines would remain Owner of the Aircraft engines.

16.3 Is there a register of Aircraft Engines and is the information given above in relation to registration of Aircraft and the ownership and leasing of Aircraft the same for registration of an Aircraft Engine and the ownership and leasing of such Aircraft Engine at the Aircraft Engine register?

There is no Aircraft Engine register in Austria.
17. ADDITIONAL INFORMATION – IS THERE ANYTHING ELSE WE SHOULD HAVE ASKED?

Are there any other matters, issues, recommended courses of action or steps which can be taken to protect and/or perfect the Owner's interests, as Owner and lessor of the Aircraft in the Relevant Jurisdiction or of which the Owner should be aware when contemplating leasing an Aircraft to a company incorporated and operating in the Relevant Jurisdiction?
Aircraft finance and leasing in Belgium
1.1 The Aircraft will be purchased by the Owner and leased on an operating lease basis to the Airline pursuant to the Lease. Is this the usual structure for transactions of this nature in Belgium?

2.1 Are there any public registers in Belgium where a search can be carried out to determine whether an order or resolution for any bankruptcy, bankruptcy protection or similar insolvency proceedings has been registered in relation to the Airline?

2.2 If so, specify which public registers, how long such searches typically take and if the fees are more than USD 100, approximately what fees apply?

3.1 In the case of the transfer of title to an aircraft registered in Belgium:

3.2 Other than Insolvency laws (see section 9) are there any laws which may have the effect of defeating the Owner’s right in the aircraft – for example, Government requisition? Do the laws of Belgium provide for any compensation in such circumstances?

4.1 Has Belgium ratified any of:

4.2 If Belgium has ratified the Cape Town, see the Cape Town Convention Annex.

4.3 If Belgium has not ratified the Cape Town Convention, has Belgium started official proceedings or given any other official indication that it will accede to or ratify the Cape Town Convention in the near future?

4.4 Is there an Aircraft Register in Belgium and if so, what is it called and who operates it?

4.5 If so, in relation to registration:

4.6 What documents and/or consents are required to obtain registration on the Aircraft Register and will these require any formalities (for example, notarisation, legalisation or application of apostille)?

4.7 Are there any restrictions on the legal status and/or nationality/domicile of parties seeking to register an aircraft on the Aircraft Register?

4.8 In respect of aircraft transactions connected with Belgium generally, are there any foreign Aircraft Registers that are commonly used, or should be considered, as alternatives to or in addition to registration with Belgium's Aircraft Register? If so, what is benefit of such registration?

4.9 Are there any other filings or registrations necessary or desirable (other than the registrations already mentioned and Lease Registration – see section 6) in Belgium in order to ensure the validity, priority or enforceability of the transaction documents, or to perfect the interests of the Owner in the Aircraft or the transaction documents?

5.1 Will Belgium recognize the concept of a lease over an aircraft?

5.2 Would the choice of English law to govern the Lease be upheld as a valid choice of law in any action in Belgium?

5.3 Must the Lease be in a particular form if it is to be valid and enforceable in Belgium (for example, must it be in Dutch, French or German or be notarised, legalised or have the apostille applied)?

5.4 If the Lease must be in Dutch, French or German, is it possible under the Relevant Law also to have an English version, and to provide that the English version should prevail in case of conflict with Belgium language version?
5.5 Are there any special terms that the Lease must contain or that it is advisable for the Lease to contain?
5.6 Are there any circumstances under which the Lease might be re-characterised under the laws of Belgium as:

6 Lease registration
6.1 Is there a separate register for aircraft leases in the Belgium?

7 Enforcement of leases (assuming airline is not in a form of insolvency protection)
7.1 On the occurrence of an event of default under the Lease, assuming that the Owner is permitted to do so under the terms of the Lease, can the Owner terminate the Leasing of the Aircraft under the Lease and enforce the Lease by taking physical possession of the Aircraft?
7.2 If so, can the Owner take physical possession of the Aircraft without the need for judicial proceedings in Belgium?
7.3 Where judicial proceedings in Belgium are necessary, please provide details of the proceedings, in particular:
7.4 Where judicial proceedings are not necessary, please comment on the time limits relevant to taking possession of the Aircraft, in particular:
7.5 Apart from the judicial proceedings described above and ignoring deregistration (see section 8), is the permission of any other party (including any official body) in Belgium required to take possession of the Aircraft?
7.6 Is there any history of actual repossession of aircraft by Owners in Belgium? If so, please provide details of any matters or issues of which an Owner should be aware.
7.7 Are there any circumstances in which the sums expressed to be payable under the Lease or obligations expressed to be assumed by the Airline in the Lease are or will be unrecoverable or unenforceable in Belgium?
7.8 Are there any restrictions on the ability of the Owner to sell the Aircraft in Belgium during the term of the Lease or, following an event of default, on termination of the leasing or pending judicial enforcement of the Lease?
7.9 Are there any export restrictions on export of a repossessed aircraft?

8 Deregistration power of attorney/exportation
8.1 Can the Owner apply for deregistration of the Aircraft either at the end of the lease term or following successful repossession (with or without judicial proceedings) and is there any time period within which such application should be made?
8.2 Is the consent of the Airline required to deregister the Aircraft either by law or as a matter of custom or practice?
8.3 How long does deregistration take, both where there is co-operation from the Airline and where this is no co-operation from the Airline?
8.4 Is it possible to obtain an export licence or export permit in advance?
8.5 Approximately how long does it take to obtain an export licence or export permit? What are the costs involved?
8.6 Is it possible to obtain a certificate of deregistration in advance?
8.7 Will a power of attorney empowering the Owner to deregister and export the Aircraft from Belgium, either at the end of the lease term or following successful repossession (with or without judicial proceedings), be enforceable in Belgium?
8.8 Will the courts recognise a power of attorney in the form of an IDERA and governed by English law?
8.9 If the power of attorney was stated to be irrevocable would this be enforceable against the Airline or can the Airline revoke such power of attorney?
8.10 Upon the occurrence of a bankruptcy or insolvency of the Airline is the power of attorney still effective?

9 Insolvency
9.1 In the event that the Airline were to become insolvent either on a balance sheet basis (assets less than liabilities) or unable to pay debts as fall due:

10. Taxation

10.1 The decision to lease to an airline in Belgium assumes that the Owner will not be taxed on receipt of rentals or other payments (including maintenance reserves) under the Lease except by way of tax on its general income, profits or gains payable by the Owner in its place of incorporation or place of main business (if different). Will there be a requirement for the Owner to pay tax in Belgium on lease payments on basis that either the Owner is subject to taxation in Belgium by reason only of the leasing of the Aircraft under the Lease and is required to make payment itself; or payment of such tax is by way of the airline being required to withhold and account for tax from lease payments, where:

10.2 If there is a requirement in Belgium for the airline to withhold tax on lease payments, will the courts of Belgium recognise and permit enforcement of a “gross up” clause in the Lease requiring the payment by the Airline of an additional sum to ensure the Owner receives and is entitled to retain the same net amount as would have been received in the absence of the withholding, taking account of any further withholding on account of tax required in relation to such additional sum.

10.3 VAT: European Union country: under Article 148(f) of the VAT Directive, an exemption from VAT is applied to “supplies” consisting of chartering or hiring of aircraft which are used by airlines operating for reward chiefly on international routes. Therefore:

10.4 Is any stamp duty, notarial or other fee or equivalent payable in respect of the execution of the Lease, a de-registration power of attorney or any other lease related document concerning the aircraft? Will such stamp duty or fee still be payable if the relevant documents are executed and held outside Belgium? If any such amount is payable how much is it approximately?

10.5 Can any form of consent, authorisation or licence be obtained exempting the payments referred to in this Section from such tax or duty? If so, how would it be obtained?

10.6 Ignoring any taxation consequence already mentioned and any potential taxation issues if the Owner has any other connection to Belgium, is there any other Belgium taxation consequence of the Owner:

11. Exchange controls

11.1 Are payments to foreign owners by companies incorporated or registered in Belgium subject to any form of exchange or similar control?

11.2 If yes, can any consents, authorisations or licences be obtained to exempt payments from any such control? How would these be obtained? Are such consents, authorisations or licences transferable?

12. Insurance

12.1 Is it a legal requirement to insure the Aircraft within Belgium?

12.2 If so, is there any restriction on reinsurance of the primary insurance outside Belgium?

12.3 Is there a minimum percentage of cover which a local insurer is obliged to retain, and if so, what is it?

12.4 Is it possible for local insurers to assign contracts of reinsurance? If not, is a cut-through clause enforceable?

13. Liability for damage

13.1 Can the Owner be strictly liable – liable without a requirement to prove fault or negligence – for any damage or loss caused by the Aircraft assuming Owner is an innocent owner with no operational control of the Aircraft?
14 Detention/Confiscation
14.1 Are there any rights to detain or sell the Aircraft pursuant to drug trafficking, tax or other laws or pursuant to rights of airport or air navigation authorities if the Airline fails to pay when due?
14.2 If so, can the Aircraft be forfeited and sold without the Owner being made aware?

15 Sovereign immunity
15.1 Is any Airline based in Belgium entitled to any form of sovereign or other immunity from suit which might restrict the Owner's rights under the Lease?
15.2 Can such immunity be validly waived in advance by contract?

16 Dispute resolution and reciprocal enforcement
16.1 Do Belgium laws permit and recognise an "asymmetric" submission to jurisdiction clause under which the lessee submits to the exclusive jurisdiction of the Courts of England but the Owner has discretion to choose a jurisdiction other than the Courts of England?
16.2 If the Lease is governed by English Law and a judgment is obtained by the Owner in the English courts, can that judgment be automatically enforced in Belgium or will the case have to be re-examined on its merits? If so what procedures must be complied with to enforce such a judgment?
16.3 Is Belgium party to the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention) or the 1965 Convention on the Settlement of Investment Disputes Between States and Nationals of Other States (the Washington Convention)? Will the court of Belgium recognise and enforce a decision of an arbitrator?
16.4 What is the usual choice of dispute resolution in international supply contracts involving a lessor or buyer incorporated in or with its main place of business in Belgium?

17 Aircraft engines
17.1 If the equipment being leased to the Airline in Belgium was an Aircraft Engine either unattached to an airframe or attached to an airframe belonging to a party other than the Aircraft Engine Owner and being leased to the Airline under a separate engine lease agreement, would there be any significant changes to the responses set out above?
17.2 In particular, does Belgium recognise the separate ownership of the Aircraft Engine by the Aircraft Engine Owner when the Aircraft Engine is attached to an airframe belonging to a person other than the Aircraft Engine Owner?
17.3 Is there a register of Aircraft Engines and is the information given above in relation to registration of Aircraft and the ownership and leasing of Aircraft the same for registration of an Aircraft Engine and the ownership and leasing of such Aircraft Engine at the Aircraft Engine register?

18 Additional information
18.1 Are there any other matters, issues, recommended courses of action or steps which can be taken to protect and/or perfect the Owner's interests, as owner and lessor of the Aircraft in Belgium or of which the Owner should be aware when contemplating leasing an aircraft to a company incorporated and operating in Belgium?
1. Proposed transaction structure

1.1 The Aircraft will be purchased by the Owner and leased on an operating lease basis to the Airline pursuant to the Lease. Is this the usual structure for transactions of this nature in Belgium?

Yes. In Belgium, the structure generally used for the purchase of an Aircraft is as follows: the Aircraft is purchased by a special purpose vehicle company (with or without external financing) which will act as Owner of the Aircraft and will in turn lease the Aircraft to an Airline operating it. If the purchase of the Aircraft has been financed by an external financing, the Owner/Lessor will usually pledge the Aircraft as a security for the prompt repayment thereof and the Airline will act as the third-party pledgeholder for the Owner (pledgor) and the lender (pledgee).

2. Searches

2.1 Are there any public registers in Belgium where a search can be carried out to determine whether an order or resolution for any bankruptcy, bankruptcy protection or similar insolvency proceedings has been registered in relation to the Airline?

Yes, the Belgian legislator created in 2017 an online digital database for bankruptcy proceedings called the Central Solvency Register or RegSol in short (Centraal Register Solvabiliteit/Registre Central de la Solvabilité). This register only mentions the opening of an insolvency proceedings (and not the filing for bankruptcy/judicial reorganization).

The register does not deliver a so called non-bankruptcy certificate but such certificate may be requested at the clerk office of the relevant commercial court where the Airline has its registered office. Such document will show the bankruptcy or any insolvency proceedings opened against a company for the past five years.

2.2 If so, specify which public registers, how long such searches typically take and if the fees are more than USD 100, approximately what fees apply?

The Central Solvency Register is available through www.regsol.be and is free of charge. Regarding the bankruptcy certificate, upon request of the relevant bankruptcy certificate, it will be delivered immediately upon payment of the clerk’s duties. If the request is done by emails/mail, the delivery of the certificate may take up to two weeks. The fees amount to EUR 30.00 (less than USD 100).

3. Rights and evidence of ownership

3.1 In the case of the transfer of title to an aircraft registered in Belgium:
3.1.1 Is any particular form of transfer required for the transfer to be legally recognised?

No specific formality is required for the transfer of title of ownership over an Aircraft.

3.1.2 Must any particular conditions be satisfied for the transfer to be recognised?

Under Belgian law, the transfer will be valid between parties (in the event of a sale) as soon as there is an agreement among parties on the object of the sale and the price thereof. The sale and purchase agreement does not need to be notarized.

3.1.3 Will such a transfer still be recognised by the courts of Belgium as legally valid where the relevant aircraft is located in another jurisdiction at the time of the transfer?

Yes.

3.1.4 Are any duties, taxes or fees levied on such transfer of ownership?

No registration duties are due on the transfer of ownership of an Aircraft.

3.2 Other than Insolvency laws (see section 9) are there any laws which may have the effect of defeating the Owner’s right in the aircraft – for example, Government requisition? Do the laws of Belgium provide for any compensation in such circumstances?

Under Belgian law, public authorities are entitled to proceed to expropriation which results in the deprivation of rights of ownership, but such expropriation can only occur for “common public interest” and following a very strict procedure. Owners of expropriated assets are entitled to fair compensation prior to the expropriation. In practice however, such expropriation procedures mainly (almost exclusively) concern real estate assets (e.g. for urban planning reasons, etc.).

4. The Aircraft Register - nationality of Aircraft

4.1 Has Belgium ratified any of:

The Chicago Convention of 1944 on International Civil Aviation?

Yes.

The 1948 Geneva Convention on the International Recognition of Rights in Aircraft?
Yes.

The 1933 Convention for the Unification of Certain Rules Relating to the Precautionary Arrest of Aircraft?

Yes.

The 2001 Cape Town Convention on International Interests in Mobile Equipment and the associated Protocol on Matters Specific to Aircraft Equipment (the Cape Town Convention)?

No.

4.2 If Belgium has ratified the Cape Town, see the Cape Town Convention Annex.

4.3 If Belgium has not ratified the Cape Town Convention, has Belgium started official proceedings or given any other official indication that it will accede to or ratify the Cape Town Convention in the near future?

There is no indication that Belgium intends to ratify the Cape Town Convention in a near future.

4.4 Is there an Aircraft Register in Belgium and if so, what is it called and who operates it?

Yes there is an Aircraft Register in Belgium. It is called Registre matricule des aéronefs ou matricule aéronautique/Register voor inschrijving van de luchtvaartuigen, of luchtvaartregister.

4.5 If so, in relation to registration:

4.5.1 Who is responsible for registering the Aircraft – is it an owner registry or an operator registry?

The request for registration may be filed with the Belgian Public Federal Service for Mobility and Transports by the owner, the bare owner or the Lessee (under an operating lease or a finance lease) of the Aircraft. It is an operator registry.

4.5.2 What details would normally be recorded on the Aircraft Register upon registration of an aircraft in Belgium? If not normally recorded, is it possible to record the Lease and/or an Aircraft Mortgage on the Aircraft Register?

The following information/support documents will have to be provided while filing the application form with the
Belgian Public Federal Service for Mobility and Transports:

- description of the Aircraft (e.g. brand, year of manufacture, serial number);
- description of whether the applicant is the Owner/bare owner/Lessee/financial Lessee;
- description of the applicant (if the applicant is a company: details of the company must be provided);
- bylaws (if the applicant is a company);
- evidence of the title of the applicant on the Aircraft (e.g. invoice, leasing agreement etc.);
- DL2 certificate showing the Aircraft has been validly imported (and all import duties paid);
- evidence of deregistration from the foreign Aircraft registry if the Aircraft was previously registered in another jurisdiction;
- evidence of payment of the administrative fee for registration (around EUR 120 for the certificate of registration)

4.5.3 If the Aircraft Register is an operator register, is it possible to record the details of the aircraft owner/lessor and any financier with an Aircraft Mortgage?

No.

The registration certificate only contains information as to the operator of the Aircraft and the Aircraft itself. It contains information as to the owner of the Aircraft only when the Owner operates the Aircraft, and as such, files the application for registration (see above). The registration certificate does not contain any information as to the existence of pledges/mortgage on the Aircraft since the Belgian Aircraft Register does not record rights/titles on the Aircraft.

4.5.4 If the Aircraft Register is an owner register, is registration on the Aircraft Register definitive to determine ownership of the Aircraft?

N/A.

4.5.5 Are any distinctions made between aircraft employed on international routes and those used purely for domestic flights?

No.

4.6 What documents and/or consents are required to obtain registration on the Aircraft Register and will these require any formalities (for example, notarisation, legalisation or application of apostille)?

See above (answer to question 4.5.2). No formalities are required. The Aircraft Register will accept documents that are drafted in one of the official languages in Belgium (i.e. French, German or Dutch) or even in English. An unofficial translation is acceptable.

4.7 Are there any restrictions on the legal status and/or nationality/domicile of parties seeking to register an aircraft on the Aircraft Register?
As a general principle, Article 3 of the Royal decree dated 15 March 1954 provides, as far as companies are concerned, that Aircraft that can be registered are those owned by Belgian companies whereof directors, managers, or proxies are EU citizens – or citizens of a member state of the European Economic Area (i.e. EEA).

However, as exceptions to the main rule mentioned above, the Belgian Public Federal Service for Mobility and Transports may authorize the registration of Aircraft that are either (i) owned by Belgian companies whereof the directors/managers/proxies do not comply with abovementioned criteria, or (ii) owned by EU/EEA companies with a place of business/office located in Belgium, or (iii) owned by non EU/EEA companies with a place of business/office located in Belgium since one year at least (without interruption), or (iv) operated under a finance lease by any of the abovementioned entities, or (iv) operated under a lease agreement for at least six months by any of the abovementioned entities/persons.

4.8 In respect of aircraft transactions connected with Belgium generally, are there any foreign Aircraft Registers that are commonly used, or should be considered, as alternatives to or in addition to registration with Belgium’s Aircraft Register? If so, what is benefit of such registration?

No.

4.9 Are there any other filings or registrations necessary or desirable (other than the registrations already mentioned and Lease Registration – see section 6) in Belgium in order to ensure the validity, priority or enforceability of the transaction documents, or to perfect the interests of the Owner in the Aircraft or the transaction documents?

There is no other registry in Belgium where title on an Aircraft may be recorded. Moreover, even though documents evidencing valid title on Aircraft are needed for registration purposes (see answer to question 4.5.2), such titles/rights are not registered as such in the Aircraft Registry.

5. Leases

5.1 Will Belgium recognize the concept of a lease over an aircraft?

Yes.

5.2 Would the choice of English law to govern the Lease be upheld as a valid choice of law in any action in Belgium?

Yes, to the extent that no provision of English law applicable to the Lease is manifestly incompatible with the Belgian international public policy. Note also that a Belgian court may give effect to mandatory rules of the laws of a jurisdiction other than Belgium with which the situation has a close connection, insofar as, under the laws of that other jurisdiction those rules must be applied, whatever the chosen law.
5.3 Must the Lease be in a particular form if it is to be valid and enforceable in Belgium (for example, must it be in Dutch, French or German or be notarised, legalised or have the apostille applied)?

No.

The lease agreement does not have to be in any particular form. Please note however that in the event of judicial proceeding, the court may request the agreement to be translated in the official language of the proceeding (i.e. Dutch, French or German, as the case may be).

5.4 If the Lease must be in Dutch, French or German, is it possible under the Relevant Law also to have an English version, and to provide that the English version should prevail in case of conflict with Belgium language version?

Not applicable as English versions are admitted (see answer to question 4.6).

5.5 Are there any special terms that the Lease must contain or that it is advisable for the Lease to contain?

- The lease of the Aircraft must be for a duration of at least six months in order to allow the operator to apply for registration thereof in the Aircraft Register (see answer to question 4.7).
- In order to avoid the re-characterisation of a Lease as a finance lease (see below, question 5.6), express wording to that end may be inserted in the lease agreement.
- In order to avoid the lease to be re-characterized as a finance lease, it should not contain any purchase option for the Lessee.

5.6 Are there any circumstances under which the Lease might be re-characterised under the laws of Belgium as:

5.6.1 a secured loan?

Yes.

5.6.2 a finance (or capital) lease?

Yes.

In general, a lease agreement may always be re-characterised by a judge/bankruptcy trustee (in the event of a bankruptcy) if the latter considers that the agreement under its scrutiny has been mislabelled and actually corresponds to another type of legal relationship.

6. Lease registration
6.1 Is there a separate register for aircraft leases in the Belgium?

No.

7. Enforcement of leases (assuming airline is not in a form of insolvency protection)

7.1 On the occurrence of an event of default under the Lease, assuming that the Owner is permitted to do so under the terms of the Lease, can the Owner terminate the Leasing of the Aircraft under the Lease and enforce the Lease by taking physical possession of the Aircraft?

As a general rule, self-help remedies are not authorized under Belgian law. It means that if the Lessee does not give the Aircraft back to the Owner at its own initiative, the Owner will have to apply for a court-ordered repossession of the Aircraft against the Lessee. Even though self-help remedies are not allowed, practice shows that parties to a lease do nonetheless provide for clauses pursuant to which the Lessor/owner may physically re-take possession of the leased good in the event of a default by the Lessee. However, if the Lessee fails to comply with such provision, the Lessor will not be able to enforce that clause in particular but may still seek a court-ordered repossession of the leased good based on an event of default and subsequent termination of the lease agreement.

7.2 If so, can the Owner take physical possession of the Aircraft without the need for judicial proceedings in Belgium?

See above (answer to question 7.1)

7.3 Where judicial proceedings in Belgium are necessary, please provide details of the proceedings, in particular:

7.3.1 What documents would the Owner as lessor need to present in order to obtain possession of the Aircraft, both before and subsequent to judgment? Can documents be copies?

The Owner would need to present (i) the lease agreement, (ii) evidence of non-payment of the lease (or evidence of any other event of default based on which the Owner seeks to terminate the lease and re-possess the leased good), and (iii) the articles of association of the Lessee. Copies are sufficient. The documents will have to be translated (under oath) in the official language of the proceeding (i.e. French, Dutch or German, as the case may be).

7.3.2 What is the approximate cost of issuing proceedings?

If the Owner uses the specific method provided for under Belgian law for filing a suit in the area of lease-related litigation, i.e. the so-called unilateral petition (requête unilatérale/eenzijdig verzoekschrift), the costs will be around
If the Owner uses the generic method for filing a suit in Belgium, i.e. the summons (citation/dagvaarding), the costs will be around EUR 300.00.

On top of these costs, a registration fee (droit de mise au role/rolrechten) is also due and vary from EUR 300 – EUR 800 depending on amount in issue.

7.3.3 Would the Owner be required to provide a bond, guarantee or other security in order to issue proceedings?

No.

7.3.4 What is an estimate of the normal duration of possession proceedings from time at which all required documentation is made available – if uncontested?

From six to nine months.

7.3.5 What is an estimate of the normal duration of possession proceedings from time at which all required documentation is made available – if contested?

From six to nine months.

7.4 Where judicial proceedings are not necessary, please comment on the time limits relevant to taking possession of the Aircraft, in particular:

N/A.

7.5 Apart from the judicial proceedings described above and ignoring deregistration (see section 8), is the permission of any other party (including any official body) in Belgium required to take possession of the Aircraft?

No.

7.6 Is there any history of actual repossession of aircraft by Owners in Belgium? If so, please provide details of any matters or issues of which an Owner should be aware.

No.

7.7 Are there any circumstances in which the sums expressed to be payable under the Lease or obligations expressed to be assumed by the Airline in the
Lease are or will be unrecoverable or unenforceable in Belgium?

As a general legal rule, if the Lessee claims it does not have the full use of the Aircraft, it may decide to cease any payment due under the Lease to the Owner. It is a legal defence which does not have to be specifically provided for in the Lease but should nevertheless be used in a reasonable – not abusive – way by the Lessee (i.e. if the Lessee decides to no longer pay the Lessor it should result from an impossibility to use the Aircraft and not from a small defect having no consequences on the operation of the Aircraft).

7.8 Are there any restrictions on the ability of the Owner to sell the Aircraft in Belgium during the term of the Lease or, following an event of default, on termination of the leasing or pending judicial enforcement of the Lease?

If the lease agreement does not provide anything to the contrary (which is usually the case), the Owner is free to sell the aircraft (subject to the lease) during the term of the Lease. In practice, the new Owner of the good will notify the Lessee of such transfer in order to receive the payments due under the Lease. The Owner may also sell the aircraft (subject to the lease) pending judicial enforcement of the Lease. In that latter scenario, such change of ownership will probably have procedural consequences (e.g. replacement of the parties to the lawsuit).

7.9 Are there any export restrictions on export of a repossessed aircraft?

No.

8. Deregistration power of attorney/exportation

8.1 Can the Owner apply for deregistration of the Aircraft either at the end of the lease term or following successful repossession (with or without judicial proceedings) and is there any time period within which such application should be made?

Only the persons allowed to register the Aircraft may apply for deregistration thereof. It means that the Owner (as long as it operates the Aircraft) and the Lessee (under a finance lease or an operating lease) may apply for deregistration. There is no time period within which the application for deregistration of the Aircraft should be made.

8.2 Is the consent of the Airline required to deregister the Aircraft either by law or as a matter of custom or practice?

The consent of the Airline is required only if it operates the Aircraft.

8.3 How long does deregistration take, both where there is co-operation from the Airline and where this is no co-operation from the Airline?

There is no strict timeframe but it usually takes a few days (two to three days).
8.4 Is it possible to obtain an export licence or export permit in advance?

No.

8.5 Approximately how long does it take to obtain an export licence or export permit? What are the costs involved?

It may vary from one situation to another and the size of the Aircraft but it usually takes from two to ten days.

8.5.1 What are the costs?

The costs are determined by a Royal Decree of 14 February 2001 and vary depending on the size/type of the Aircraft from EUR 250 to EUR 25,000.

8.6 Is it possible to obtain a certificate of deregistration in advance?

No.

8.7 Will a power of attorney empowering the Owner to deregister and export the Aircraft from Belgium, either at the end of the lease term or following successful repossession (with or without judicial proceedings), be enforceable in Belgium?

Yes, subject to compliance with the relevant provisions of the law (see answer 4.7 above)

8.8 Will the courts recognise a power of attorney in the form of an IDERA and governed by English law?

Yes.

8.9 If the power of attorney was stated to be irrevocable would this be enforceable against the Airline or can the Airline revoke such power of attorney?

The question is controversial under Belgian law, but it is generally admitted that a power of attorney under which the attorney has its own interests (other than a general power of attorney in the sole interest of the principal) can be irrevocable and such irrevocability would be enforceable vis-à-vis the Airline.

8.10 Upon the occurrence of a bankruptcy or insolvency of the Airline is the power of attorney still effective?

Upon the occurrence of a bankruptcy or insolvency of the Airline, the power of attorney is still effective. However,
if the power of attorney was given during the suspect period or the moratorium, the latter will not be enforceable against the general body of creditors. In addition, if the power of attorney is not irrevocable there is a risk that the Insolvency Official prevents the use of this right during the bankruptcy or insolvency of the Airline.

9. Insolvency

9.1 In the event that the Airline were to become insolvent either on a balance sheet basis (assets less than liabilities) or unable to pay debts as fall due:

9.1.1 Would the airline be required to file for insolvency protection?

It depends on the insolvency proceedings. There are two different types of insolvency proceedings under Belgian law:

- The bankruptcy proceedings (*faillite/faillissement*) are governed by the Title VI of Book XX of the Belgian Code of Economic Law. If a company has ceased to make payments on a sustained basis and its creditworthiness is undermined, it will be deemed to be in a state of bankruptcy. Within one month after the cessation of payments (unless the company has filed for judicial reorganisation), the Airline must file for bankruptcy with the commercial court. Criminal sanctions are applicable for the directors if the company does not declare the bankruptcy within the prescribed timeframe.

- The judicial reorganisation process (*réorganisation judiciaire/gerechtelijke reorganisatie*) is governed by Title VI of Book XX of the Belgian Code of Economic Law. The judicial reorganisation intends to promote the recovery of a business by granting its owner in temporary financial difficulties protection against its creditors through three different routes (i.e. amicable agreement (*accord amiable/minnelijk akkoord*), collective agreement (*accord collectif/collectieve akkoord*) and transfer under judicial supervision (*transfert sous autorité de justice/overdracht onder gerechtelijk gezag*).

If the continuity of the Airline is threatened (which is assumed when its net assets are less than half of the share capital), the Airline may apply, through its directors, to the competent commercial court for a judicial reorganisation. A judicial reorganisation is an option that can be triggered, but the directors of the concerned company do not have any obligation to do so.

9.1.2 Do the available forms of insolvency protection in Belgium involve the appointment of either an officer of the court or a specifically court appointed official to take control of the Airline (an Insolvency Official) while in insolvency protection?

No.

Concerning the judicial reorganisation process, the insolvent Airline’s management remains in control but the Airline is protected against the rights of its creditors. In principle, the court does not appoint any Insolvency Official in such a case, but only a deputy judge to supervise the judicial reorganisation and to regularly report to the court. Only under certain specific circumstances, a judicial administrator (and not an Insolvency Official) can be appointed in order to manage the difficulties faced by the company

Yes.
Concerning the **bankruptcy process**, from the date of the bankruptcy court decision, the powers of the Airline's management are suspended and transferred to an Insolvency Official. The Insolvency Official has wide discretionary administrative, managing and representation powers including a power to sell the assets of the Airline and to distribute the proceeds to creditors.

9.1.3 Does the Insolvency Official have authority to negotiate and reach agreement with the Owner in relation to matters such as the payment of unpaid rent, continuation or termination of the Lease and repossession of the Aircraft without the need for court approval?

The Insolvency Official can negotiate and reach agreement. However, some decisions (such as settlements, pursuing of the Airline business, etc.) require prior court approval.

9.1.4 Does the commencement of insolvency protection involving the appointment of an Insolvency Official in Belgium have the effect of prohibiting the Owner from taking the following actions to enforce the lease after commencement of such protection:

(a) applying any security deposit held by the Owner against any unpaid amounts due under the Lease?

No.

The Owner is entitled to apply any security deposit.

(b) accepting payment of rent or other lease payments from:

1. the Airline? Yes. According to article XX. 110 of the Belgian Code of Economic Law, all payments, operations and transactions made by the bankrupt company, and all payments made to the bankrupt company as from the day of the bankruptcy order, shall be void and is not enforceable vis-à-vis the bankruptcy estate.
2. a guarantor? No (assuming the shareholder is not engaged in insolvency proceedings). Payments from a guarantor can be accepted.
3. a shareholder? No (assuming the shareholder is not engaged in insolvency proceedings). Payments from a guarantor can be accepted.

(c) giving notice of default under the lease?

No.

Notice of default may be given both in judicial reorganisation and bankruptcy proceedings.

(d) obtaining a judgment or arbitral award for unpaid lease payments?

Yes.
Proceedings against the bankrupt company are suspended as from the bankruptcy judgment. Pursuant to article XX. 155 of the Belgian Code of Economic Law, in order to take part in the allocation or to exercise any preferential right in a personal capacity, creditors are required to register their claims, together with their titles, thru the website www.regsol.be, at the latest on the date indicated in the bankruptcy order. All the claims are then verified by the Insolvency Official in the presence of the bankrupt company. If the Insolvency Official accepts the claim, the dispute is ended. However, if the Insolvency Official contests a claim, he shall inform the creditor accordingly, adding that the latter will be summoned subsequently, by registered letter, to appear before the court to hear the decision thereon.

(e) giving notice to terminate the leasing of the Aircraft?

No. Usually, leases provide for an ipso jure termination clause in case of bankruptcy of the company. Such a clause will however have no valid effects in case of judicial reorganisation (see our answer to question 9.1.6).

(f) exercising rights to repossess the Aircraft?

No.

In case of bankruptcy, subject to the below conditions, the Owner may exercise its right to recovery pursuant to article XX. 194 of the Belgian Code of Economic Law.

The Owner's right to recovery needs to be exercised with the Insolvency Official, shortly after the day of the bankruptcy order by the Commercial Court. More specifically, subject to forfeiture, the action to recover property must be exercised prior to (the filing of the first verification report on) the claims, which will generally take place within the month of the declaration of the bankruptcy.

If the custody or return of the claimed assets (such as an Aircraft) entailed costs at the expense of the bankruptcy estate, the Insolvency Official shall require that such costs be paid when these goods are delivered. If the Owner refuses to pay these costs, the Insolvency Official shall be entitled to exercise a right of retention on the assets of the Owner.

Such a right to recovery may not be exercised during the moratorium of the judicial reorganisation.

9.1.5 Can the commencement of Insolvency Proceedings have retrospective effect in relation to any such actions taken before commencement? If so, for what period can there be a look back?

Payments or other transactions (such as granting new security) made by a company during a certain period of time prior to the bankruptcy declaration – the hardening/ “suspect” period (période suspecte/verdachte periode) – can (and in certain instances must) be voided for the benefit of the creditors. The court will determine the date of commencement of this period which can be up to 6 months before the bankruptcy declaration.

Whenever the bankrupt company enters into a transaction or makes a payment that proves fraudulent toward its creditors, such transaction or payment will be declared void for the bankrupt estate, even if the transaction or payment took place before the suspect period.
9.1.6 Is there, either under law or as a matter of practice in Belgium, a period of time within which the Insolvency Official will either “adopt” the lease and pay rent and other lease payments as an expense of the insolvency or “reject” the lease and permit the Owner to enforce such rights as it may have under the lease?

In the case of a judicial reorganisation, contracts (such as lease agreements) remain in force and an early termination clause due to judicial reorganisation has no effect. However, the Owner may terminate the lease if the rent arrears are not paid by the debtor within 14 days of formal notice given by registered letter. Except for employment contracts, the debtor can decide, within 14 days as from the judgment, not to perform under certain contracts during the suspension period (if this is necessary for the reorganisation plan or the judicial transfer).

Yes, a specific time limit is provided for in article XX. 139 of the Belgian Code of Economic Law. According to this article, the Insolvency Official shall decide without delay whether to continue with the performance of contracts concluded prior to the bankruptcy order. The Bankruptcy Act further provides that the party that has contracted with the bankrupt company may serve notice to the Insolvency Official to take the said decision within 15 days. If no extension of this period is agreed, or if the Insolvency Official does not take a decision, the contract shall be presumed to have been terminated by the Insolvency Official as of the expiry of said time limit. In conclusion, one of the first decisions the bankruptcy trustee needs to take, is to put an end to the lease and to return the property to the Owner.

9.1.7 If the lease is “adopted” will the Insolvency Official also pay any unpaid lease payments due as at commencement of the insolvency protection?

Yes.

If the Insolvency Official decides to adopt the lease, all the unpaid lease payments due as at commencement of the insolvency protection are considered to be an expense of the administration and can be claimed as a debt incurred by the general body of creditors.

Pursuant article XX. 58 of the Belgian Code of Economic Law, when the claims are born during the judicial reorganisation process, they are considered as secured debts in a subsequent bankruptcy which occurred during the period of the judicial reorganisation.

9.1.8 If not or if the lease is “rejected”, would the Owner’s claim for any outstanding sums rank equally with other ordinary unsecured creditors of the Airline?

Yes, all claims born prior to the bankruptcy will rank equally with other ordinary unsecured creditors of the Airline.

9.1.9 Are there certain types of preferred creditors whose claims will rank above claims of the Owner?

Based on the documentation provided by the creditors and documentation held by the Airline, the bankruptcy trustee establishes a list of creditors/claims and classifies them according to the categories established in Belgian
Creditors benefiting from special privileges, in particular, where claims are secured by a specific asset or right (essentially, *in rem* security). These creditors are entitled to execute their privilege, subject to certain restrictions including the admission of their debt by the Court and a waiting period. The proceeds of the disposal of assets covered by a specific security do not form part of the bankruptcy estate. These creditors are paid directly through the proceeds of the disposal of such assets. If the proceeds prove to be insufficient, these creditors are admitted as unsecured creditors for the remaining amount.

Creditors benefiting from a general privilege, including, among others, specific labor claims up to a certain amount; claims relating to unpaid tax withholdings and social security contributions; claims for other amounts to be paid to the tax authorities and the social security authorities. During the liquidation process, claims benefiting from a general privilege are paid before ordinary claims, in accordance with the ranking established under the Belgian Mortgages Act. Assets subject to a special privilege may not be used to pay general privilege claims, unless there is an excess after the payment of the secured claim.

Ordinary creditors (non-subordinated and non-privileged claims) rank *pari passu* and will be paid *pro rata*.

Subordinated creditors to all ordinary creditors pursuant to an agreement or the law. Claims form creditors benefiting from a special or general privilege will rank above claims of the Owner.

9.1.10 If the Aircraft is in the possession of a person other than the Airline at the commencement of Insolvency Protection of the Airline, for example an independent maintenance facility, will such person be entitled, under Belgium laws, to assert a lien arising under law or contract over the Aircraft in respect of amounts then due and unpaid to such person by the Airline?

Yes, the right of retention may be exercised by a person other than the Owner to assert a lien arising under law or contract over the Aircraft in respect of amounts then due and unpaid to such person by the Airline. Nevertheless, the exercise of such a right can be considered, in certain circumstances, as an abuse of right.

If the Aircraft is in the possession of a person other than the Airline at the commencement of Insolvency Protection of the Airline, for example an independent maintenance facility, such person could be entitled to exercise a right of retention.

This right of retention is even enforceable against the Owner if the person in possession of the Aircraft could legitimately believe that he was dealing with the effective Owner or at least with someone it could legitimately assume as authorized to act on behalf of the Owner.

9.1.11 Is a person other than the Airline, for example an airport authority, entitled under Belgium laws to seize possession of the Aircraft after commencement of Insolvency Protection and assert a lien arising under law or contract over the Aircraft in respect of amounts then due and unpaid to such person by the Airline?

No.
After the commencement of Insolvency Protection of the Airline, everyone is subject to the moratorium on enforcing rights once Insolvency has commenced. This is the case for both bankruptcy and judicial reorganisation.

10. Taxation

10.1 The decision to lease to an airline in Belgium assumes that the Owner will not be taxed on receipt of rentals or other payments (including maintenance reserves) under the Lease except by way of tax on its general income, profits or gains payable by the Owner in its place of incorporation or place of main business (if different). Will there be a requirement for the Owner to pay tax in Belgium on lease payments on basis that either the Owner is subject to taxation in Belgium by reason only of the leasing of the Aircraft under the Lease and is required to make payment itself; or payment of such tax is by way of the airline being required to withhold and account for tax from lease payments, where:

10.1.1 the Owner is incorporated and is tax resident in Ireland?

A distinction has to be made between a wet lease of an Aircraft and the dry lease of an Aircraft.

If the Owner leases an Aircraft on a dry lease, there should be no taxation in Belgium on the lease payments unless the Owner carries on business through a permanent establishment in Belgium and the lease payments are attributable to that permanent establishment. In that case, the benefits will be taxed at a rate of 29.58% (25% as of financial year 2020) (article 7 of the double tax treaty). No Belgian WHT on the lease payments is due.

If the Owner wet leases an Aircraft to the Airline, the profits derived shall be taxable only in Ireland (article 8 of the double tax treaty). No WHT on the lease payments is due.

10.1.2 the Owner is incorporated and is tax resident in the United Kingdom?

A distinction has to be made between a wet lease of an Aircraft and the dry lease of an Aircraft.

If the Owner leases an Aircraft on a dry lease, there should be no taxation in Belgium on the lease payments unless the Owner carries on business through a permanent establishment in Belgium and the lease payments are attributable to that permanent establishment. In that case, the benefits will be taxed at a rate of 29.58% (25% as of financial year 2020) (article 7 of the double tax treaty). No Belgian WHT on the lease payments is due.

If the Owner wet leases an Aircraft to the Airline, the profits derived shall be taxable only in the UK (article 8 of the double tax treaty). No WHT on the lease payments is due.

10.1.3 the Owner is incorporated and is tax resident in Hong Kong?
A distinction has to be made between a wet lease of an Aircraft and the dry lease of an Aircraft.

If the Owner leases an Aircraft on a dry lease basis, there should be no taxation in Belgium on the lease payments unless the Owner carries on business through a permanent establishment in Belgium and the lease payments are attributable to that permanent establishment. In that case, the benefits will be taxed at a rate of 29,58% (25% as of financial year 2020) (article 7 of the double tax treaty). However when such lease is an occasional source of income for the Owner, the lease shall be taxable only in Hong Kong. No Belgian WHT on the lease payments is due.

If the Owner wet leases an Aircraft, the profits derived shall be taxable only in Hong Kong (article 8 of the double tax treaty). No Belgian WHT on the lease payments is due.

10.1.4 the Owner is incorporated and is tax resident in Singapore?

A distinction has to be made between a wet lease of an Aircraft and the dry lease of an Aircraft.

If the Owner leases an aircraft on a dry lease, there should be no taxation in Belgium on the lease payments unless the Owner carries on business through a permanent establishment in Belgium and the lease payments are attributable to that permanent establishment. In that case, the benefits will be taxed at a rate of 29,58% (25% as of financial year 2020) (article 7 of the double tax treaty). No Belgian WHT on the lease payments is due.

If the Owner wet leases an Aircraft to the Airline, the profits derived shall be taxable only in Singapore (article 8 of the double tax treaty). No WHT on the lease payments is due.

10.1.5 the Owner is incorporated and is tax resident in Malta?

A distinction has to be made between a wet lease of an Aircraft and the dry lease of an Aircraft.

If the Owner leases an aircraft on a dry lease, there should be no taxation in Belgium on the lease payments unless the Owner carries on business through a permanent establishment in Belgium and the lease payments are attributable to that permanent establishment. In that case, the benefits will be taxed at a rate of 29,58% (25% as of financial year 2020) (article 7 of the double tax treaty). No Belgian WHT on the lease payments is due.

If the Owner wet leases an Aircraft to the Airline, the profits derived shall be taxable only in Malta (article 8 of the double tax treaty). No WHT on the lease payments is due.

10.1.6 the Owner is incorporated and is tax resident in the Channel Islands?

There is no double tax treaty available between Belgium and the Channel Islands. Therefore, the income will be taxable in Belgium at the rate of 29,58% (25% as of financial year 2020), and may also be taxable in the Channel Islands.

10.1.7 the Owner is incorporated and is tax resident in the Isle of Man?

There is no double tax treaty available between Belgium and the Isle of Man. Therefore, the income will be
taxable in Belgium at the rate of 29.58% (25% as of financial year 2020), and may also be taxable in the Isle of Man.

**10.1.8 the Owner is incorporated and is tax resident in Mauritius?**

A distinction has to be made between a wet lease of an Aircraft and the dry lease of an Aircraft.

If the Owner leases an Aircraft on a dry lease, there should be no taxation in Belgium on the lease payments unless the Owner carries on business through a permanent establishment in Belgium and the lease payments are attributable to that permanent establishment. In that case, the benefits will be taxed at a rate of 29.58% (25% as of financial year 2020) (article 7 of the double tax treaty). However when such lease is an occasional source of income for the Owner, the lease shall be taxable only in Mauritius. No Belgian WHT on the lease payments is due.

If the Owner wet leases an Aircraft, the profits derived shall be taxable only in Mauritius (article 8 of the double tax treaty). No Belgian WHT on the lease payments is due.

**10.1.9 the Owner is incorporated and is tax resident in Bermuda?**

There is no double tax treaty available between Belgium and Bermuda. Therefore, the income will be taxable in Belgium at the rate of 29.58% (25% as of financial year 2020), and may also be taxable in the Bermuda.

**10.1.10 the Owner is incorporated and is tax resident in the Cayman Islands?**

There is no double tax treaty available between Belgium and the Cayman Islands. Therefore, the income will be taxable in Belgium at the rate of 33.99%, and may also be taxable in the Cayman Islands.

**10.2 If there is a requirement in Belgium for the airline to withhold tax on lease payments, will the courts of Belgium recognise and permit enforcement of a “gross up” clause in the Lease requiring the payment by the Airline of an additional sum to ensure the Owner receives and is entitled to retain the same net amount as would have been received in the absence of the withholding, taking account of any further withholding on account of tax required in relation to such additional sum.**

Gross up clauses agreed upon between the parties are generally accepted in Belgium.

**10.3 VAT: European Union country: under Article 148(f) of the VAT Directive, an exemption from VAT is applied to “supplies” consisting of chartering or hiring of aircraft which are used by airlines operating for reward chiefly on international routes. Therefore:**

**10.3.1 New lease to airline operating for reward chiefly in domestic routes: VAT will be applied to lease rentals at current rate:**
10.3.2 New Lease to airline operating for reward chiefly on international routes: VAT will not be applied to lease rentals by reason of application of exemption:

Yes, VAT will not be applied to lease rentals from an airline operating for reward chiefly on international routes by reason of application of exemption.

10.3.3 Sale of aircraft by an aircraft lessor to another aircraft lessor of an aircraft subject to a lease to an airline operating for reward chiefly in domestic routes: VAT will be applied to the purchase price. If the seller and the purchaser are both EU entities and the purchaser supplies its EU VAT Number to the seller then the VAT charge will be a reverse charge. Otherwise VAT will be applied to purchase price at current rate:

21%

10.3.4 Sale of aircraft by an aircraft lessor to another aircraft lessor of an aircraft subject to a lease to an airline operating for reward chiefly on international routes: VAT will be applied to purchase price:

no

10.3.4.1 If no, is this because of application of the exemption under Article 148(f) to the airline following the decision in ECJ Case C-33/2011?

Yes

10.3.4.2 If yes, is this because Belgium does not apply the decision in ECJ Case C-33/2011?

N/A

10.3.5 If the transaction involves the first importation of the aircraft into the EU (and assuming the aircraft is intended for use as a civil and not military aircraft) what rate of Customs Duty will apply?

0%

10.4 Is any stamp duty, notarial or other fee or equivalent payable in respect of the execution of the Lease, a de-registration power of attorney or any
other lease related document concerning the aircraft? Will such stamp duty or fee still be payable if the relevant documents are executed and held outside Belgium? If any such amount is payable how much is it approximately?

No it is not possible to register a lease interest in Belgium. A copy of the lease agreement will usually be provided to the Belgian Civil Aviation Authority in order to proceed with registration, but the filing of the lease with the Aviation Authority cannot be considered as a registration as such.

10.5 Can any form of consent, authorisation or licence be obtained exempting the payments referred to in this Section from such tax or duty? If so, how would it be obtained?

No

10.6 Ignoring any taxation consequence already mentioned and any potential taxation issues if the Owner has any other connection to Belgium, is there any other Belgium taxation consequence of the Owner:

10.6.1 being owner and lessor of an aircraft registered in Belgium and operated/leased by a company incorporated or registered in Belgium?

No.

10.6.2 making available a lease facility to a company incorporated or regulated in Belgium?

No.

10.6.3 receiving rent and other lease payments under the Lease from the lessee incorporated or registered in Belgium?

No other than mentioned above

10.6.4 repossessing the aircraft and exporting the aircraft from Belgium?

No other than mentioned above

10.6.5 selling the aircraft at a profit, whether such sale is after repossession or is subject to the Lease and the lessee's rights?
The capital gain resulting from the sale will be taxed as a business profit at the general corporate income tax rate of 29.58% (25% as of financial year 2020). Note however that most double tax treaties entered into in Belgium provide that capital gains realised on aircraft by their foreign owners with a Permanent Establishment in Belgium are not subject to tax in Belgium.

11. Exchange controls

11.1 Are payments to foreign owners by companies incorporated or registered in Belgium subject to any form of exchange or similar control?

No.

Payments from Belgium to foreign countries are not subject to prior authorisations. Belgium applies EU law with respect to the free movement of capital.

11.2 If yes, can any consents, authorisations or licences be obtained to exempt payments from any such control? How would these be obtained? Are such consents, authorisations or licences transferable?

N/A.

12. Insurance

12.1 Is it a legal requirement to insure the Aircraft within Belgium?

There is no legal requirement to insure the Aircraft under Belgian law and no requirement that primary cover be placed with a Belgian insurer. Generally, Belgian air carriers/Aircraft operators are required under the EU Regulation 785/2004 to insure damages caused by them to passengers, cargo and/or third parties but again there is no restriction on where the insurances are placed.

12.2 If so, is there any restriction on reinsurance of the primary insurance outside Belgium?

There is no restriction on reinsurance of the primary insurance outside Belgium. However, in order for non-EEA reinsurance companies to offer such services in Belgium, they must (i) have notified the Belgian Financial Services and Market Authorities (i.e. FSMA) thereof and (ii) be properly registered for such purpose with the FSMA.

12.3 Is there a minimum percentage of cover which a local insurer is obliged to retain, and if so, what is it?

There is no obligation to retain a percentage for the local insurer.
12.4 Is it possible for local insurers to assign contracts of reinsurance? If not, is a cut-through clause enforceable?

In principle, cut through clauses are not used in Europe (and Belgium).

13. Liability for damage

13.1 Can the Owner be strictly liable – liable without a requirement to prove fault or negligence – for any damage or loss caused by the Aircraft assuming Owner is an innocent owner with no operational control of the Aircraft?

Under Belgian law, the general principle is that any liability implies a fault, a damage and a causal link between the fault and the damage. There are however exceptions to such principles such as liabilities incurred for third parties or strict liability (liability without fault or negligence). An example of strict liability is the product liability covered by the law of 25 February 1991 (as amended). Indeed, under the Belgian legislation, the manufacturer of products is liable for damages caused by defective products even if there is no fault as such. In case the manufacturer is based outside the EU, any importer will also be liable on the basis of such legislation in the same way as the manufacturer. Therefore, in case of defect products causing damages and provided that the manufacturer is based outside EU, an Owner – as importer – could be liable (even without fault).

The parties to a lease may provide, contractually, how such risks are allocated between them and typically the risk is passed to the lessee.

14. Detention/Confiscation

14.1 Are there any rights to detain or sell the Aircraft pursuant to drug trafficking, tax or other laws or pursuant to rights of airport or air navigation authorities if the Airline fails to pay when due?

No specific rule law applies in this respect.

14.2 If so, can the Aircraft be forfeited and sold without the Owner being made aware?

N/A.

15. Sovereign immunity

15.1 Is any Airline based in Belgium entitled to any form of sovereign or other immunity from suit which might restrict the Owner's rights under the Lease?
The concept of sovereign immunity for state-owned companies does not exist under Belgian law.

15.2 Can such immunity be validly waived in advance by contract?

N/A.

16. Dispute resolution and reciprocal enforcement

16.1 Do Belgium laws permit and recognise an “asymmetric” submission to jurisdiction clause under which the lessee submits to the exclusive jurisdiction of the Courts of England but the Owner has discretion to choose a jurisdiction other than the Courts of England?

Generally, Belgian courts will recognise and give effect to the choice of a foreign forum subject to the requirements of EU Regulation No.1215/2012 dated 12 December 2012 on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters (EU No.1215/2012) if such foreign place of jurisdiction is located within the EU, the leasing agreement does not concern immovable property and provided that the agreement of the parties to the lease to submit to the jurisdiction of an EU court is valid under the law applicable to the lease agreement. Note that certain formal requirements apply in respect of a valid choice of jurisdiction in accordance with EU No. 1215/2012 - for example: the place of jurisdiction must normally be agreed in a (written) document executed by all parties. To our knowledge, there is no Belgian case-law on that specific issue, i.e. the abusive nature (or not) of an ‘asymmetric’ jurisdiction clause in case of lease on Aircraft.

In our point of view however, such a clause should be valid provided that no abuse of right may be found (the competent jurisdictions must have some links with the case under their scrutiny).

16.2 If the Lease is governed by English Law and a judgment is obtained by the Owner in the English courts, can that judgment be automatically enforced in Belgium or will the case have to be re-examined on its merits? If so what procedures must be complied with to enforce such a judgment?

The case will not be re-examined on the merits but an exequatur procedure has to be followed. During such exequatur procedure, the Tribunal of First Instance will examine several elements listed below. The “exequatur” will indeed not be granted if:

- the decision is incompatible with public order; or
- the right of defence was infringed; or
- the parties could not dispose of their rights; or
- the decision is incompatible with a Belgian decision previously rendered; or
- the claim was introduced before the English Courts after the introduction of the same claim involving the same parties that is still pending before Belgian jurisdictions; or
the Belgian jurisdictions were the sole competent jurisdictions; or
the jurisdiction of the English Courts was based only on the (random) presence of the defendant (in
the exequatur procedure) or goods in England, without any direct relation with the dispute; or
the dispute concerns specific areas of law (adoption, modification of name, etc.).

16.3 Is Belgium party to the 1958 Convention on the Recognition and
Enforcement of Foreign Arbitral Awards (the New York Convention) or the
1965 Convention on the Settlement of Investment Disputes Between States
and Nationals of Other States (the Washington Convention)? Will the court of
Belgium recognise and enforce a decision of an arbitrator?

Belgium is a party to the New York Convention of 1958. Belgium has made the reciprocity reservation (article I (3)
of the Convention), and therefore Belgian courts will apply the New York Convention only to awards made in the
territory of another contracting state.

Belgium also signed the ICSID Convention.

16.4 What is the usual choice of dispute resolution in international supply
contracts involving a lessor or buyer incorporated in or with its main place of
business in Belgium?

Except in supply contract which are regulated by mandatory rules, the usual choice is the one of the stronger
party.

17. Aircraft engines

17.1 If the equipment being leased to the Airline in Belgium was an Aircraft
Engine either unattached to an airframe or attached to an airframe belonging
to a party other than the Aircraft Engine Owner and being leased to the
Airline under a separate engine lease agreement, would there be any
significant changes to the responses set out above?

No.

17.2 In particular, does Belgium recognise the separate ownership of the
Aircraft Engine by the Aircraft Engine Owner when the Aircraft Engine is
attached to an airframe belonging to a person other than the Aircraft Engine
Owner?

Although Belgian law recognizes the theory of annexation of fixtures, it is merely applied to real estate cases. If
this theory is however applied to Aircraft, then the mere fact that the engine is affixed to an Aircraft owned by a
different person does not give a right of ownership on such engine to that person. The engine may however be
considered as part of the assets of the owner of the Aircraft by a creditor thereof if the latter shows evidence of
“ostensible ownership” of the engine by the owner of the Aircraft/airframe. In practice, if the owner of the engine
and the owner of the Aircraft are not the same person, they will try to avoid “ostensible ownership” by affixing plate on the engine (showing the identity of the real owner of the engine). As a consequence, if the Owner of the Aircraft engine is able to prove its title to such engine (by agreement with the Aircraft Owner, by plates, etc.), it will be able to recover such engine even if it is attached to an airframe belonging to another person.

17.3 Is there a register of Aircraft Engines and is the information given above in relation to registration of Aircraft and the ownership and leasing of Aircraft the same for registration of an Aircraft Engine and the ownership and leasing of such Aircraft Engine at the Aircraft Engine register?

There is no register of Aircraft Engines in Belgium. The only existing register is the abovementioned Aircraft Register (matricule aéronautique/luchtvaartregister).

18. Additional information

18.1 Are there any other matters, issues, recommended courses of action or steps which can be taken to protect and/or perfect the Owner's interests, as owner and lessor of the Aircraft in Belgium or of which the Owner should be aware when contemplating leasing an aircraft to a company incorporated and operating in Belgium?

In case a bank grants facilities with a view to financing the sale of an Aircraft, it will usually require a pledge over the underlying Aircraft to cover any default under the Finance Documents. Since 1 January 2018, such pledge can be registered into an electronic national pledge registry (“Registre National du Gage”/“Nationaal Pandregister”). The validity and enforceability of a pledge over an Aircraft (as well as over any kind of moveable asset) does not require any dispossession of the pledged assets in the hands of a third party pledgeholder anymore. Therefore, the borrower (pledgor) can be the operator of the Aircraft (which was not permitted when a dispossession was legally required).
PROPOSED TRANSACTION STRUCTURE

SEARCHES

2.1 Are there any public registers in the Relevant Jurisdiction where a search can be carried out to determine whether an order or resolution for any bankruptcy, bankruptcy protection or similar insolvency proceedings has been registered in relation to the Airline?

2.2 If so, specify which public registers, how long such searches typically take and if the fees are more than USD 100, approximately what fees apply?

RIGHTS AND EVIDENCE OF OWNERSHIP

3.1 In the case of the transfer of title to an aircraft registered in the Relevant Jurisdiction:

3.2 Other than Insolvency laws (see section 8) are there any laws which may have the effect of defeating the Owner’s right in the aircraft – for example, Government requisition? Do the laws of the Relevant Jurisdiction provide for any compensation in such circumstances?

THE AIRCRAFT REGISTER – NATIONALITY OF AIRCRAFT

4.1 Has the Relevant Jurisdiction ratified any of:

4.2 If the Relevant Jurisdiction has ratified the Cape Town Convention, see the Cape Town Convention Annex.

4.3 If the Relevant Jurisdiction has not ratified the Cape Town Convention, has the Relevant Jurisdiction started official proceedings or given any other official indication that it will accede to or ratify the Cape Town Convention in the near future?

4.4 Is there an Aircraft Register in the Relevant Jurisdiction and if so, what is it called and who operates it?

4.5 If so, in relation to registration:

4.6 In respect of aircraft transactions connected with the Relevant Jurisdiction generally, are there any foreign Aircraft Registers that are commonly used, or should be considered, as alternatives to or in addition to registration with the Relevant Jurisdiction’s Aircraft Register? If so, what is benefit of such registration?

4.7 Are there any other filings or registrations necessary or desirable (other than the registrations already mentioned and Lease Registration – see section 5.7) in the Relevant Jurisdiction in order to ensure the validity, priority or enforceability of the transaction documents, or to perfect the interests of the Owner in the Aircraft or the transaction documents?

LEASES

5.1 Will the Relevant Jurisdiction recognise the concept of a lease over an aircraft?

5.2 Would the choice of English law to govern the Lease be upheld as a valid choice of law in any action in the Relevant Jurisdiction?

5.3 Must the Lease be in a particular form if it is to be valid and enforceable in the Relevant Jurisdiction (for example, must it be in the language of the Relevant Jurisdiction or be notarised, legalised or have the apostille applied)?

5.4 If the Lease must be in the language of the Relevant Jurisdiction, is it possible under the Relevant Law also to have an English version, and to provide that the English version should prevail in case of conflict with the Relevant Jurisdiction language version?

5.5 Are there any special terms that the Lease must contain or that it is advisable for the Lease to contain?

5.6 Are there any circumstances under which the Lease might be re-characterised under the laws of the Relevant Jurisdiction as:
5.7 Is there a separate register for aircraft leases in the Relevant Jurisdiction?
5.8 If yes, then:

6 ENFORCEMENT OF LEASES (ASSUMING AIRLINE IS NOT IN A FORM OF INSOLVENCY PROTECTION)

6.1 On the occurrence of an event of default under the Lease, assuming that the Owner is permitted to do so under the terms of the Lease, can the Owner terminate the Leasing of the Aircraft under the Lease and enforce the Lease by taking physical possession of the Aircraft?
6.2 If so, can the Owner take physical possession of the Aircraft without the need for judicial proceedings in the Relevant Jurisdiction?
6.3 Where judicial proceedings in the Relevant Jurisdiction are necessary, please provide details of the proceedings, in particular:
6.4 Where judicial proceedings are not necessary, please comment on the time limits relevant to taking possession of the Aircraft, in particular:
6.5 Apart from the judicial proceedings described above and ignoring deregistration (see section 7), is the permission of any other party (including any official body) in the Relevant Jurisdiction required to take possession of the Aircraft?
6.6 Is there any history of actual repossession of aircraft by Owners in the Relevant Jurisdiction? If so, please provide details of any matters or issues of which an Owner should be aware.
6.7 Are there any circumstances in which the sums expressed to be payable under the Lease or obligations expressed to be assumed by the Airline in the Lease are or will be unrecoverable or unenforceable in the Relevant Jurisdiction?
6.8 Are there any restrictions on the ability of the Owner to sell the Aircraft in the Relevant Jurisdiction during the term of the Lease or, following an event of default, on termination of the leasing or pending judicial enforcement of the Lease?
6.9 Are there any export restrictions on export of a repossessed aircraft?

7 DEREGISTRATION POWER OF ATTORNEY/EXPORTATION

7.1 Can the Owner apply for deregistration of the Aircraft either at the end of the lease term or following successful repossession (with or without judicial proceedings) and is there any time period within which such application should be made?
7.2 Is the consent of the Airline required to deregister the Aircraft either by law or as a matter of custom or practice?
7.3 How long does deregistration take, both where there is co-operation from the Airline and where this is no co-operation from the Airline?
7.4 Is it possible to obtain an export licence or export permit in advance?
7.5 Approximately how long does it take to obtain an export licence or export permit? What are the costs involved?
7.6 Is it possible to obtain a certificate of deregistration in advance?
7.7 Will a power of attorney empowering the Owner to deregister and export the Aircraft from the Relevant Jurisdiction, either at the end of the lease term or following successful repossession (with or without judicial proceedings), be enforceable in the Relevant Jurisdiction?
7.8 If the power of attorney was stated to be irrevocable would this be enforceable against the Airline or can the Airline revoke such power of attorney?
7.9 Upon the occurrence of a bankruptcy or insolvency of the Airline is the power of attorney still effective?

8 INSOLVENCY

8.1 In the event that the Airline were to become insolvent either on a balance sheet basis (assets less than liabilities) or unable to pay debts as fall due:

9 TAXATION
9.1 The decision to lease to an airline in the Relevant Jurisdiction assumes that the Owner will not be taxed on receipt of rentals or other payments (including maintenance reserves) under the Lease except by way of tax on its general income, profits or gains payable by the Owner in its place of incorporation or place of main business (if different). Will there be a requirement for the Owner to pay tax in the Relevant Jurisdiction on lease payments on basis that either the Owner is subject to taxation in the Relevant Jurisdiction by reason only of the leasing of the Aircraft under the Lease and is required to make payment itself; or payment of such tax is by way of the airline being required to withhold and account for tax from lease payments, where:

9.2 If there is a requirement in the Relevant Jurisdiction for the airline to withhold tax on lease payments, will the courts of the Relevant Jurisdiction recognise and permit enforcement of a “gross up” clause in the Lease requiring the payment by the Airline of an additional sum to ensure the Owner receives and is entitled to retain the same net amount as would have been received in the absence of the withholding, taking account of any further withholding on account of tax required in relation to such additional sum?

9.3 VAT: European Union country: under Article 148(f) of the VAT Directive, an exemption from VAT is applied to “supplies” consisting of chartering or hiring of aircraft which are used by airlines operating for reward chiefly on international routes. Therefore:

9.4 Is any stamp duty, notarial or other fee or equivalent payable in respect of the execution of the Lease, a de-registration power of attorney or any other lease related document concerning the aircraft? Will such stamp duty or fee still be payable if the relevant documents are executed and held outside the Relevant Jurisdiction? If any such amount is payable how much is it approximately?

9.5 Can any form of consent, authorisation or licence be obtained exempting the payments referred to in this Section from such tax or duty? If so, how would it be obtained?

9.6 Ignoring any taxation consequence already mentioned and any potential taxation issues if the Owner has any other connection to the Relevant Jurisdiction, is there any other Relevant Jurisdiction taxation consequence of the Owner:

10 EXCHANGE CONTROLS

10.1 Are payments to foreign owners by companies incorporated or registered in the Relevant Jurisdiction subject to any form of exchange or similar control?

10.2 If yes, can any consents, authorisations or licences be obtained to exempt payments from any such control? How would these be obtained? Are such consents, authorisations or licences transferable?

11 INSURANCE

11.1 Is it a legal requirement to insure the Aircraft within the Relevant Jurisdiction?

11.2 If so, is there any restriction on reinsurance of the primary insurance outside the Relevant Jurisdiction?

11.3 Is there a minimum percentage of cover which a local insurer is obliged to retain, and if so, what is it?

11.4 Is it possible for local insurers to assign contracts of reinsurance? If not, is a cut-through clause enforceable?

12 LIABILITY FOR DAMAGE

13 DETENTION/CONFISCATION

13.1 Are there any rights to detain or sell the Aircraft pursuant to drug trafficking, tax or other laws or pursuant to rights of airport or air navigation authorities if the Airline fails to pay when due?

13.2 If so, can the Aircraft be forfeited and sold without the Owner being made aware?
14 SOVEREIGN IMMUNITY
14.1 Is any Airline based in the Relevant Jurisdiction entitled to any form of sovereign or other immunity from suit which might restrict the Owner’s rights under the Lease?
14.2 Can such immunity be validly waived in advance by contract?

15 DISPUTE RESOLUTION AND RECIPROCAL ENFORCEMENT
15.1 Do the laws of the Relevant Jurisdiction permit and recognise an “asymmetric” submission to jurisdiction clause under which the lessee submits to the exclusive jurisdiction of the Courts of England but the Owner has discretion to choose a jurisdiction other than the Courts of England?
15.2 If the Lease is governed by English Law and a judgment is obtained by the Owner in the English courts, can that judgment be automatically enforced in the Relevant Jurisdiction or will the case have to be re-examined on its merits? If so what procedures must be complied with to enforce such a judgement?
15.3 Is the Relevant Jurisdiction party to the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention) or the 1965 Convention on the Settlement of Investment Disputes Between States and Nationals of Other States (the Washington Convention)? Will the courts of the Relevant Jurisdiction recognise and enforce a decision of an arbitrator?
15.4 What is the usual choice of dispute resolution in international supply contracts involving a lessor or buyer incorporated in or with its main place of business in the Relevant Jurisdiction?

16 AIRCRAFT ENGINES
16.1 If the equipment being leased to the Airline in the Relevant Jurisdiction was an Aircraft Engine either unattached to an airframe or attached to an airframe belonging to a party other than the Aircraft Engine Owner and being leased to the Airline under a separate engine lease agreement, would there be any significant changes to the responses set out above?
16.2 In particular, does the Relevant Jurisdiction recognise the separate ownership of the Aircraft Engine by the Aircraft Engine Owner when the Aircraft Engine is attached to an airframe belonging to a person other than the Aircraft Engine Owner?
16.3 Is there a register of Aircraft Engines and is the information given above in relation to registration of Aircraft and the ownership and leasing of Aircraft the same for registration of an Aircraft Engine and the ownership and leasing of such Aircraft Engine at the Aircraft Engine register?

17 ADDITIONAL INFORMATION – IS THERE ANYTHING ELSE WE SHOULD HAVE ASKED?
1. PROPOSED TRANSACTION STRUCTURE

The Aircraft will be purchased by the Owner and leased on an operating lease basis to the Airline pursuant to the Lease.

Is this the usual structure for transactions of this nature in the Relevant Jurisdiction?

Yes.

2. SEARCHES

2.1 Are there any public registers in the Relevant Jurisdiction where a search can be carried out to determine whether an order or resolution for any bankruptcy, bankruptcy protection or similar insolvency proceedings has been registered in relation to the Airline?

Yes. Every bankruptcy and bankruptcy protection case being heard by the court of China will be publicly announced by the court. The announcements will include the information such as the names of the plaintiff and respondent, date of acceptance of hearing the case, time and venue for the first creditors' meeting etc. All such announcements will be published on the website of the PRC People's Court: https://rmfygg.court.gov.cn/.

2.2 If so, specify which public registers, how long such searches typically take and if the fees are more than USD 100, approximately what fees apply?

All bankruptcy and bankruptcy protection announcements can be found instantaneously on the website of the PRC People's Court: https://rmfygg.court.gov.cn/ free of charge.

3. RIGHTS AND EVIDENCE OF OWNERSHIP

3.1 In the case of the transfer of title to an aircraft registered in the Relevant Jurisdiction:

3.1.1 Is any particular form of transfer required for the transfer to be legally recognised?

The PRC law requires a written contract for transfer of the title of an aircraft. Such transfer shall be registered with the China Aviation Administration of China (“CAAC”), otherwise, the ownership of the transferee cannot be protected against a bona fide third party.
3.1.2 Must any particular conditions be satisfied for the transfer to be recognised?

Under the PRC law, a written contract shall be concluded between the seller and the buyer and the physical possession of the aircraft shall be transferred from the seller to the buyer. The PRC law also provide for various ways to substitute the need for a physical transfer of possession where a physical transfer of possession may not be practical under realistic scenarios. E.g. if the aircraft is on lease and being operated by an airline, physical transfer to the buyer would not be required in such circumstance. The transfer of title of the aircraft shall be registered with the CAAC, otherwise, the ownership of the buyer cannot be protected against a bona fide third party.

3.1.3 Will such a transfer still be recognised by the courts of the Relevant Jurisdiction as legally valid where the relevant aircraft is located in another jurisdiction at the time of the transfer?

It depends on the governing law to such transfer. Since the target, i.e. the aircraft, is located in another jurisdiction at the time of the transfer, foreign-related civil relations exist. Pursuant to the Application of Law to Foreign-related Civil Relations in China, the parties may choose the governing law by agreement to such transfer. If the transfer is legally valid under the governing law, the court in China will recognize it accordingly despite the location of the aircraft.

3.1.4 Are any duties, taxes or fees levied on such transfer of ownership?

The Airline in China needs to pay import duty (ranging from 1% to 5%, depending on the HS code of the specific aircraft for import) and 13% import VAT based on the dutiable value of the Aircraft. The import VAT rate can be reduced to 5% if the imported aircraft's load-free weight is higher than 25 tons. If the aircraft has already been imported by the Airline in China through lease, when the ownership is transferred from the overseas lessor to the Airline in China, cross-border physical transfer of the aircraft is not required because the aircraft has already been imported, but the Airline in China still needs to pay import duty and import VAT based on the residual purchase price, if any, of the aircraft.

3.2 Other than Insolvency laws (see section 8) are there any laws which may have the effect of defeating the Owner’s right in the aircraft – for example, Government requisition? Do the laws of the Relevant Jurisdiction provide for any compensation in such circumstances?

Under extraordinary circumstances may the Owner’s right in the aircraft may be defeated. Pursuant to the PRC Property Law, there are two ways of government expropriation against private property.

a) Expropriation for temporary usage. Such expropriation is limited to the emergency purpose, such as rescue and disaster relief. Expropriated property shall, after its use, be returned to the Owner. Compensation will be made to the Owner, during or after the expropriation, only if the property is damaged or lost.

b) Permanent expropriation. Such expropriation is limited to the needs for public interest, and will result to a transfer of title from the Owner to the government. Mostly, the expropriated property is real property. Compensation will be paid to the Owner.
There are certain other statutory rights which could defeat the Owner's rights in the aircraft where the Owner did something illicit, such as criminal offense, breach of contract, tax evasion, etc. These may result to a detention or confiscation of the Owner's property.

4. THE AIRCRAFT REGISTER – NATIONALITY OF AIRCRAFT

4.1 Has the Relevant Jurisdiction ratified any of:

The Chicago Convention of 1944 on International Civil Aviation?
Yes

The 1948 Geneva Convention on the International Recognition of Rights in Aircraft?
yes

The 1933 Convention for the Unification of Certain Rules Relating to the Precautionary Arrest of Aircraft?
No

The 2001 Cape Town Convention on International Interests in Mobile Equipment and the associated Protocol on Matters Specific to Aircraft Equipment (the Cape Town Convention)?
Yes.

4.2 If the Relevant Jurisdiction has ratified the Cape Town, see the Cape Town Convention Annex.

4.3 If the Relevant Jurisdiction has not ratified the Cape Town Convention, has the Relevant Jurisdiction started official proceedings or given any other official indication that it will accede to or ratify the Cape Town Convention in the near future?
Not applicable.

4.4 Is there an Aircraft Register in the Relevant Jurisdiction and if so, what is it called and who operates it?
Yes, it is called the Civil Aviation Administration of China (“CAAC”), a government authority located in Beijing and operated by the PRC Ministry of Transport. The CAAC maintains a website: http://www.caac.gov.cn.

4.5 If so, in relation to registration:

4.5.1 Who is responsible for registering the Aircraft – is it an owner registry or an operator registry?
According to the PRC Civil Aviation Law, registration of right of aircraft can be divided into four categories: (1) registration of ownership of aircraft; (2) registration of possession of aircraft (by means of sale or lease contract with a term of longer than 6 months); (3) registration of a mortgage on aircraft; and (4) registration of a civil aircraft lien.

So either the owner or the operator who leases aircraft for a term longer than 6 months or the entity who has mortgage or lien right on the aircraft can register his right to the aircraft.

4.5.2 What details would normally be recorded on the Aircraft Register upon registration of an aircraft in the Relevant Jurisdiction? If not normally recorded, is it possible to record the Lease and/or an Aircraft Mortgage on the Aircraft Register?

For all kinds of registration mentioned above under 4.5.1 including Lease and/or an Aircraft Mortgage on the Aircraft, following details will be recorded by CAAC: Nationality Mark, Registration Mark, Aircraft Model, Place and date of Manufacture, Name of Aircraft Manufacturer, Name and address of Owner and Serial Number.

For registration of ownership of aircraft, the following additional information shall be recorded: Value of Aircraft, Manufacturing Materials, Name and Address of Mortgagee (if any), Name and Address of Actual Possessor (if different from Owner) and details of any Mortgage.

For registration of possession of aircraft, the following additional information shall be recorded: Name and Address of Actual Possessor, Mode and Date of Acquisition of the Possession Right, Terms and Period of Possession Agreed and Name and Address of Lessor (Only if Lessor is not Owner).

For registration of mortgage on aircraft, the following additional information shall be recorded: Details of Spare Parts and Manufacturing Materials (Including Categories, Quantity and Places of Storage), Name and Address of Mortgagee, Name and Address of Mortgagor, Debts Secured by Mortgage, Amount and Interest Rate, Reimbursement Period and Date of Acquisition of Mortgage.

For registration of civil aircraft lien, the following additional information shall be recorded: Name and Address of Lessee only if there is a Lease on the Aircraft; Name and Address of Operator if neither Owner nor Lessee; Cause Giving Rise to the Claim; Date the Cause Arose; Description of the Event Giving Rise to the Claim; Sums claimed by the Creditor.

Lease and/or Aircraft Mortgage can be normally recorded.

4.5.3 If the Aircraft Register is an operator register, is it possible to record the details of the aircraft owner/lessor and any financier with an Aircraft Mortgage?

Yes. For details please refer to 4.5.2.

4.5.4 If the Aircraft Register is an owner register, is registration on the Aircraft Register definitive to determine ownership of the Aircraft?

Usually it is. Under the PRC Property Law and the PRC Civil Aviation Law, the acquisition of ownership of aircraft
must be registered with CAAC, otherwise the ownership of the buyer cannot be protected against the bona fide third party. Registration certificate issued by CAAC is the most definitive evidence of proof of ownership of an aircraft. Only under extraordinary circumstance, may a third party apply to change or withdraw such registration where he has evidence to prove that the certificate was wrongfully issued or the owner committed fraud, such as using fake documents, to get the registration.

4.5.5 Are any distinctions made between aircraft employed on international routes and those used purely for domestic flights?

We are not aware of such distinctions.

4.6 What documents and/or consents are required to obtain registration on the Aircraft Register and will these require any formalities (for example, notarisation, legalisation or application of apostille)?

An application form, nationality certificate of aircraft, identification certificate of the person/company holds the right to aircraft, evidence documents to prove the acquisition of such right to aircraft. Any aforementioned documents not originated from China are subject to notarization and legalization.

4.7 Are there any restrictions on the legal status and/or nationality/domicile of parties seeking to register an aircraft on the Aircraft Register?

Parties seeking to register an aircraft can be either legal entity or natural person. No restrictions on nationality or domicile are set. However, please note that only the ownership of aircraft with Chinese nationality can be registered at CAAC.

4.8 In respect of aircraft transactions connected with the Relevant Jurisdiction generally, are there any foreign Aircraft Registers that are commonly used, or should be considered, as alternatives to or in addition to registration with the Relevant Jurisdiction’s Aircraft Register? If so, what is benefit of such registration?

No.

4.9 Are there any other filings or registrations necessary or desirable (other than the registrations already mentioned and Lease Registration – see section 5.7) in the Relevant Jurisdiction in order to ensure the validity, priority or enforceability of the transaction documents, or to perfect the interests of the Owner in the Aircraft or the transaction documents?

Other than the registrations with CAAC, no other filings are necessary.
5. LEASES

5.1 Will the Relevant Jurisdiction recognise the concept of a lease over an aircraft?

Yes.

5.2 Would the choice of English law to govern the Lease be upheld as a valid choice of law in any action in the Relevant Jurisdiction?

Yes. As mentioned in 3.1.3, parties to the lease contract may choose the governing law by agreement if there is a foreign element. As long as the chosen English Law will not infringe the social public interests of China, it can be a valid choice of law should there be an action in China. However, please note that an England court decision will not be recognized and enforced by the court in China.

5.3 Must the Lease be in a particular form if it is to be valid and enforceable in the Relevant Jurisdiction (for example, must it be in the language of the Relevant Jurisdiction or be notarised, legalised or have the apostille applied)?

The aircraft lease contract shall be in writing, besides that there is no other form requirement. However if the leasing term is longer than 6 months, actual possessor shall register the possession at CAAC. In that case, CAAC will require a signed Chinese lease to be submitted.

5.4 If the Lease must be in the language of the Relevant Jurisdiction, is it possible under the Relevant Law also to have an English version, and to provide that the English version should prevail in case of conflict with the Relevant Jurisdiction language version?

Yes.

5.5 Are there any special terms that the Lease must contain or that it is advisable for the Lease to contain?

There are no special terms that the lease must contain. Generally leases of aircraft will be reasonably long and comprehensive documents stipulating detailed terms which are entered into after negotiation between lessor and lessee. It is advisable for a prospective lessor or lessee to retain experienced Chinese law lawyers to advise on terms.

5.6 Are there any circumstances under which the Lease might be re-characterised under the laws of the Relevant Jurisdiction as:

5.6.1 a secured loan?
5.6.2 a finance (or capital) lease?

According to the PRC Generally Accepted Accounting Principles ("GAAP"), the Lease should be regarded as finance lease if any of the following conditions is met:

1. The ownership of the Aircraft is transferred to the lessee when the leasing period ends.
2. The lessee has the option to purchase the Aircraft. The agreed purchase price is expected to be far lower than the fair value of the leased asset when the purchase right is exercised so that it can be reasonably expected at the inception of the leasing period that the lessee will exercise the purchase right.
3. Even though the ownership of the Aircraft is not transferred to the lessee, the leasing period accounts for at least 75% of the life of the asset.
4. The present value of the lowest lease payment at the beginning date of the leasing accounts for at least 90% of the fair value of the Aircraft.
5. The Aircraft is so special in nature that only the lessee is able to use it if no large transformation is conducted.

If the Lease fails to meet any of the conditions above, it is regarded as operating lease.

5.7 Is there a separate register for aircraft leases in the Relevant Jurisdiction?

There is no separate register for aircraft lease except CAAC.

5.8 If yes, then:

5.8.1 What documentation and/or consents are required for the registration of the Lease?

N/A

5.8.2 What registration fees are payable (if any)?

N/A

5.8.3 What information is recorded on the register? How is the eventual discharge of the Lease recorded?

N/A

5.8.4 Does any registration in respect of the Lease remain valid throughout the tenure of the Lease or does such a registration require periodic renewal? If renewal is
required when must this be done and what is the approximate cost of renewal?

N/A

6. ENFORCEMENT OF LEASES (ASSUMING AIRLINE IS NOT IN A FORM OF INSOLVENCY PROTECTION)

6.1 On the occurrence of an event of default under the Lease, assuming that the Owner is permitted to do so under the terms of the Lease, can the Owner terminate the Leasing of the Aircraft under the Lease and enforce the Lease by taking physical possession of the Aircraft?

If the Owner validly terminates the Lease, the Lessee is obliged to return the Aircraft to the Owner.

6.2 If so, can the Owner take physical possession of the Aircraft without the need for judicial proceedings in the Relevant Jurisdiction?

Yes.

6.3 Where judicial proceedings in the Relevant Jurisdiction are necessary, please provide details of the proceedings, in particular:

6.3.1 What documents would the Owner as lessor need to present in order to obtain possession of the Aircraft, both before and subsequent to judgment? Can documents be copies?

The Owner can also take judicial proceedings to take physical possession of the Aircraft. In this case, the documents required by the Owner as lessor to obtain possession of the Aircraft will vary from case to case but will include but not limited to documents evidencing ownership of the Aircraft, documents evidencing a right to repossess the Aircraft or a right to compensation and documents evidencing breach by the lessee of its obligations. This might include the lease contract, evidence as to the default, evidence of service of a notice of default. (Documents which are not in Chinese will need to be translated.)

Principally, documents submitted as proof during proceedings shall be originals. Under certain circumstances parties may submit copies instead of originals, for example: (1) the other party recognizes the authenticity of the copy; or (2) such copy can be corroborated by other relevant proofs.

6.3.2 What is the approximate cost of issuing proceedings?

Under the PRC law, court fees will depend on the claimed amount of compensation in the complaint. Usually the losing party will have to bear the court fees.
6.3.3 Would the Owner be required to provide a bond, guarantee or other security in order to issue proceedings?

No.

6.3.4 What is an estimate of the normal duration of possession proceedings from time at which all required documentation is made available – if uncontested?

Usually civil trial of first instance will be completed within six months from the date such case is accepted by the court. However under the PRC Civil Procedure Law, simple civil case heard by district court or its branch with clear facts, clear rights and obligation and less contention will be heard with simplified procedure. Case tried by simplified procedure shall be completed within three months from the date such case is accepted by the court.

6.3.5 What is an estimate of the normal duration of possession proceedings from time at which all required documentation is made available – if contested?

Contested case usually takes longer time than uncontested one. As mentioned in 6.3.4, usually civil trial of first instance will be completed within six months from the date such case is accepted by the court. Duration of contested case may have the possibility of being extended if such case cannot be completed within six months.

6.4 Where judicial proceedings are not necessary, please comment on the time limits relevant to taking possession of the Aircraft, in particular:

6.4.1 Is there a waiting period before action may be taken?

There is no set period of time but if there is no risk of loss or damage to the Aircraft, the lessee should be notified of the default and given a reasonable period of time to make good the default before action to repossess is taken.

6.4.2 Is there a long stop date by which action must be taken?

No.

6.4.3 Is a Public Auction of the aircraft required?

No.

6.5 Apart from the judicial proceedings described above and ignoring deregistration (see section 7), is the permission of any other party (including any official body) in the Relevant Jurisdiction required to take possession of the Aircraft?
6.6 Is there any history of actual repossession of aircraft by Owners in the Relevant Jurisdiction? If so, please provide details of any matters or issues of which an Owner should be aware.

The self-help remedy of repossession is a legitimate way of remedy. However, we are not aware of any examples of actual repossession of aircraft. Usually the aircraft will be directly leased to another lessee or transferred to a buyer after the lease term expired/judicial proceedings.

6.7 Are there any circumstances in which the sums expressed to be payable under the Lease or obligations expressed to be assumed by the Airline in the Lease are or will be unrecoverable or unenforceable in the Relevant Jurisdiction?

There are a number of circumstances which might affect the recoverability of sums payable or enforceability of obligations. For example, the Airline announced or was sued into bankruptcy.

6.8 Are there any restrictions on the ability of the Owner to sell the Aircraft in the Relevant Jurisdiction during the term of the Lease or, following an event of default, on termination of the leasing or pending judicial enforcement of the Lease?

No, the Owner is entitled to sell the Aircraft at any time.

6.9 Are there any export restrictions on export of a repossessed aircraft?

Generally the Owner is required to apply for an Export Certificate of Airworthiness from CAAC and a deregistration application shall be filed at CAAC once the ownership is transferred.

7. DEREGISTRATION POWER OF ATTORNEY/EXPORTATION

7.1 Can the Owner apply for deregistration of the Aircraft either at the end of the lease term or following successful repossession (with or without judicial proceedings) and is there any time period within which such application should be made?

The Owner can apply for deregistration of the Aircraft either at the end of the lease term or following successful repossession. No statutory law imposes a time limit requirement. However it is recommend that the deregistration shall be made without delay.

7.2 Is the consent of the Airline required to deregister the Aircraft either by law or as a matter of custom or practice?
The consent of the Airline is not required for the deregistration of the Aircraft. However, if some required documents were kept by the Airline, the cooperation of the Airline is required.

7.3 How long does deregistration take, both where there is co-operation from the Airline and where this is no co-operation from the Airline?

Where all application documents for deregistration are complete and accurate, CAAC’s decision of deregistration will be made within 7 working days after all application documents are submitted to CAAC and are accepted. Please note that time for preparation and submission of any supplemental documents required by CAAC is not included in such time frame. Thus, in practice, the registration would take an even longer period. Where the Airline does not act in a cooperative manner during the preparation of the application documents, it may also cause some delay if some required documents were kept by the Airline.

7.4 Is it possible to obtain an export licence or export permit in advance?

Yes, an Export Certificate of Airworthiness from CAAC is required before export of an aircraft or any parts. It can be obtained before deregistration of the aircraft.

7.5 Approximately how long does it take to obtain an export licence or export permit? What are the costs involved?

After the applicant submits the application to CAAC, the decision whether to process the application or not will be made within 5 working days. The processing term depends on the scale and condition of the Aircraft, but typically takes 14 days after CAAC accepts the application documents. The cost mainly involves an inspection of the airworthiness and depends on how much the aircraft weighs.

7.6 Is it possible to obtain a certificate of deregistration in advance?

No, CAAC will deregister an aircraft once they find the aircraft is not qualified for registration or the applicant file an application for deregistration.

7.7 Will a power of attorney empowering the Owner to deregister and export the Aircraft from the Relevant Jurisdiction, either at the end of the lease term or following successful repossession (with or without judicial proceedings), be enforceable in the Relevant Jurisdiction?

Yes.

Will the courts recognise a power of attorney in the form of an IDERA and governed by English law?

Yes. For deregistration of ownership of aircraft, an IDERA issued by the Owner in such circumstance can be submitted to the CAAC. For deregistration of possession of aircraft, an IDERA issued by the operator can be
7.8 If the power of attorney was stated to be irrevocable would this be enforceable against the Airline or can the Airline revoke such power of attorney?

No. To revoke such power of attorney, the Airline needs to show the legal grounds. For example, the power of attorney was concluded by means of fraud, or under duress.

7.9 Upon the occurrence of a bankruptcy or insolvency of the Airline is the power of attorney still effective?

The power of attorney is still effective.

8. INSOLVENCY

8.1 In the event that the Airline were to become insolvent either on a balance sheet basis (assets less than liabilities) or unable to pay debts as fall due:

8.1.1 Would the airline be required to file for insolvency protection?

In the event that the Airline were to become insolvent either on a balance sheet basis (assets less than liabilities) or unable to pay debts as fall due, the Airline or any of its creditors can file a bankruptcy proceeding under the PRC Law. However, please note that alternatively, the Airline may also carry out restructuring.

8.1.2 Do the available forms of insolvency protection in the Relevant Jurisdiction involve the appointment of either an officer of the court or a specifically court appointed official to take control of the Airline (an Insolvency Official) while in insolvency protection?

If the court accepts a bankruptcy petition, it shall simultaneously appoint an insolvency administrator to take control of the Airline. The insolvency administrator can be undertaken by a liquidation team comprising personnel from the relevant authorities and institutions, a law firm, an accounting firm or a liquidation firm.

8.1.3 Does the Insolvency Official have authority to negotiate and reach agreement with the Owner in relation to matters such as the payment of unpaid rent, continuation or termination of the Lease and repossession of the Aircraft without the need for court approval?

Upon acceptance of the bankruptcy petition by the court, the insolvency administrator is entitled to decide whether to rescind or continue with the performance of the contracts which have been concluded before the acceptance of the bankruptcy application. The insolvency administrator shall notify the Creditors’ Committee,
which is composed of all creditors who have filed claims to the court according to law, in time about the above decision. However, if such decision was made prior to the first creditors' meeting, the insolvency administrator shall first obtain the approval of the court.

8.1.4 Does the commencement of insolvency protection involving the appointment of an Insolvency Official in the Relevant Jurisdiction have the effect of prohibiting the Owner from taking the following actions to enforce the lease after commencement of such protection:

- **(a.) Applying any security deposit held by the Owner against any unpaid amounts due under the Lease?** No. The Security Deposit held by the Owner does not need to be passed over to the Insolvency administrator and can be applied by the Owner against any unpaid amounts due under the Lease according to the lease contract.
- **(b.) Accepting payment of rent or other lease payments from:**
  1. **the Airline?** After the court accepts the bankruptcy petition, the debts payment by the Airline to any specific creditor is invalid. b) Within six months before the court accepts the application for bankruptcy, if the Airline pays off debts to specific creditors, the insolvency administrator is entitled to claw back such payment.
  2. **a guarantor?** The Owner is not prohibited from accepting payments from a guarantor.
  3. **a shareholder?** The Owner is not prohibited from accepting payments from a shareholder.
- **(c.) Giving notice of default under the lease?** Notice of default may be given and there is no any restriction on serving a default notice where the lease has not been terminated. However, such notice issued by the Owner would have no legal effect due to the reason that upon acceptance of the application for bankruptcy by the court, it is the insolvency administrator who is entitled to rescind the contracts.
- **(d.) Obtaining a judgment or arbitral award for unpaid lease payments?** After acceptance of bankruptcy petition, if any creditor files any petition with regard to the payment with the Airline's property before the court, the court will not accept such petition.
- **(e.) Giving notice to terminate the leasing of the Aircraft?** The termination of the lease contract by the Lessor is not permitted after the bankruptcy petition is accepted by the court. The insolvency administrator has a right to terminate such contract. Where the administrator decides to continue the performance of the lease contract, the Owner shall continue to perform the contracts. However, the Owner is entitled to ask the administrator for security. If the administrator does not provide such security, the lease contract shall be deemed as rescinded.
- **(f.) Exercising rights to repossess the Aircraft?** The Aircraft occupied or used by the Airline based on the lease contract shall not be deemed as the property of the Airline. After the acceptance of the bankruptcy petition, the Owner is allowed to take back the Aircraft through the insolvency administrator.

8.1.5 Can the commencement of Insolvency Proceedings have retrospective effect in relation to any such actions taken before commencement? If so, for what period can there be a look back?

Within one year before the court accepts the bankruptcy petition, the insolvency administrator is entitled to request the court to rescind the following activities concerning the Airline's property: i) transfer the property free of charge; ii) transfer the property at obviously unreasonable low prices; iii) provide security for the debts that
originally have no security; iv) pay off in advance the debts undue; or v) waiving credits.

Within six months before the court accepts the bankruptcy petition, if the Airline pays off debts to specific creditors, the insolvency administrator is entitled to request the court to rescind the payoff unless the Airline's property benefits from such payoff.

8.1.6 Is there, either under law or as a matter of practice in the Relevant Jurisdiction, a period of time within which the Insolvency Official will either “adopt” the lease and pay rent and other lease payments as an expense of the insolvency or “reject” the lease and permit the Owner to enforce such rights as it may have under the lease?

Upon acceptance by the court of the bankruptcy petition, the insolvency administrator is entitled to rescind or continue the performance of the contracts, and notify the counterpart concerned. If the insolvency administrator fails to give a notice to the counterpart concerned within 2 month upon acceptance of the bankruptcy petition or fails to reply to the counterpart concerned within 30 days upon demand of the counterpart concerned, it shall be deemed that the contracts are rescinded.

8.1.7 If the lease is “adopted” will the Insolvency Official also pay any unpaid lease payments due as at commencement of the insolvency protection?

If the lease is “adopted”, i.e. the lease contract continues, the lease payments due after the acceptance of the bankruptcy petition shall be made as priority expense. However, those unpaid lease payments due before acceptance of the bankruptcy petition are deemed as ordinary unsecured debt which are equal with all other general unsecured debts.

8.1.8 If not or if the lease is “rejected”, would the Owner’s claim for any outstanding sums rank equally with other ordinary unsecured creditors of the Airline?

Yes, unless the Owner has security over assets of the Airline.

8.1.9 Are there certain types of preferred creditors whose claims will rank above claims of the Owner?

The i) expenses for bankruptcy proceedings (including the lawsuit expenses, the expenditures for the management, appraisal and distribution of the Airline’s property and the expenses for the insolvency administrator to perform its duties, its remuneration and expenses for engagement of workers) and the ii) debts of common benefits (including the debt generated on the ground that the insolvency administrator requests the other party to continue to perform the contract and the labor remuneration and social insurance expenses payable due to continuing the Airline’s business operation) shall be paid off at any time with the Airline’s property.

8.1.10 If the Aircraft is in the possession of a person other than the Airline at the commencement of Insolvency Protection of the Airline, for example an independent maintenance facility, will such person be entitled, under the laws of the Relevant
Jurisdiction, to assert a lien arising under law or contract over the Aircraft in respect of amounts then due and unpaid to such person by the Airline?

Such person could be entitled to assert a lien. The insolvency administrator may take back the Aircraft by paying off debts to or providing guarantee acceptable to the person. The Owner could pay off the debts for the Airline and take back the aircraft with the assistance of the insolvency administrator, e.g. the insolvency administrator can issue a consent letter to the maintenance facility to instruct it to release the aircraft. Simultaneously, the Owner shall file the claim to the insolvency administrator.

8.1.11 Is a person other than the Airline, for example an airport authority, entitled under the laws of the Relevant Jurisdiction to seize possession of the Aircraft after commencement of Insolvency Protection and assert a lien arising under law or contract over the Aircraft in respect of amounts then due and unpaid to such person by the Airline?

Yes. The Owner could take back the aircraft with the similar approach in last item. Other than paying off the debts, providing a guarantee acceptable to such person could also be feasible.

9. TAXATION

9.1 The decision to lease to an airline in the Relevant Jurisdiction assumes that the Owner will not be taxed on receipt of rentals or other payments (including maintenance reserves) under the Lease except by way of tax on its general income, profits or gains payable by the Owner in its place of incorporation or place of main business (if different). Will there be a requirement for the Owner to pay tax in the Relevant Jurisdiction on lease payments on basis that either the Owner is subject to taxation in the Relevant Jurisdiction by reason only of the leasing of the Aircraft under the Lease and is required to make payment itself; or payment of such tax is by way of the airline being required to withhold and account for tax from lease payments, where:

9.1.1 the Owner is incorporated and is tax resident in Ireland?

Tax implications on the Owner:

From 1 April 2019, the lease payments are subject to 13% PRC VAT plus local surcharges (normally around 10% of the VAT payable). Under the PRC domestic tax law, the rental paid to the Owner is subject to 10% PRC Withholding Tax (“WHT”). According to the Sino-Irish Double Taxation Treaty, the WHT rate can be reduced to 6% if the Owner is the beneficial owner of the lease payments. The Airline has the obligation to withhold all the PRC taxes above for the Owner, but the VAT withheld for the Owner can be used by the Airline to credit against its output VAT liabilities.
Taxes implications on the Airline:

As a general rationale, the Airline needs to pay import duty and import VAT for the lease payments, but from 1 June 2018, according to the relevant regulations, the Airline no longer needs to pay import VAT for the lease payments.

9.1.2 the Owner is incorporated and is tax resident in the United Kingdom?

Tax implications on the Owner:

From 1 April 2019, the lease payments are subject to 13% PRC VAT plus local surcharges (normally around 10% of the VAT payable). Under the PRC domestic tax law, the rental paid to the Owner is subject to 10% PRC WHT. According to the Sino-British Double Taxation Treaty, the WHT rate can be reduced to 6% if the Owner is the beneficial owner of the lease payments. The Airline has the obligation to withhold all the PRC taxes above for the Owner, but the VAT withheld for the Owner can be used by the Airline to credit against its output VAT liabilities.

Taxes implications on the Airline:

As a general rationale, the Airline needs to pay import duty and import VAT for the lease payments, but from 1 June 2018, according to the relevant regulations, the Airline no longer needs to pay import VAT for the lease payments.

9.1.3 the Owner is incorporated and is tax resident in Hong Kong?

Tax implications on the Owner:

From 1 April 2019, the lease payments are subject to 13% PRC VAT plus local surcharges (normally around 10% of the VAT payable). Under the PRC domestic tax law, the rental paid to the Owner is subject to 10% PRC WHT. According to the Mainland China-Hong Kong Double Taxation Arrangement, the WHT rate can be reduced to 5% if the Owner is the beneficial owner of the lease payments. The Airline has the obligation to withhold all the PRC taxes above for the Owner, but the VAT withheld for the Owner can be used by the Airline to credit against its output VAT liabilities.

Taxes implications on the Airline:

As a general rationale, the Airline needs to pay import duty and import VAT for the lease payments, but from 1 June 2018, according to the relevant regulations, the Airline no longer needs to pay import VAT for the lease payments.

9.1.4 the Owner is incorporated and is tax resident in Singapore?

Tax implications on the Owner:
From 1 April 2019, the lease payments are subject to 13% PRC VAT plus local surcharges (normally around 10% of the VAT payable). Under the PRC domestic tax law, the rental paid to the Owner is subject to 10% PRC WHT. According to the Sino-Singaporean Double Taxation Treaty, the WHT rate can be reduced to 6% if the Owner is the beneficial owner of the lease payments. The Airline has the obligation to withhold all the PRC taxes above for the Owner, but the VAT withheld for the Owner can be used by the Airline to credit against its output VAT liabilities.

**Taxes implications on the Airline:**

As a general rationale, the Airline needs to pay import duty and import VAT for the lease payments, but from 1 June 2018, according to the relevant regulations, the Airline no longer needs to pay import VAT for the lease payments.

### 9.1.5 the Owner is incorporated and is tax resident in Malta?

**Tax implications on the Owner:**

From 1 April 2019, the lease payments are subject to 13% PRC VAT plus local surcharges (normally around 10% of the VAT payable). Under the PRC domestic tax law, the rental paid to the Owner is subject to 10% PRC WHT. According to the Sino-Malta Double Taxation Treaty, the WHT rate can be reduced to 7% if the Owner is the beneficial owner of the lease payments. The Airline has the obligation to withhold all the PRC taxes above for the Owner, but the VAT withheld for the Owner can be used by the Airline to credit against its output VAT liabilities.

**Taxes implications on the Airline:**

As a general rationale, the Airline needs to pay import duty and import VAT for the lease payments, but from 1 June 2018, according to the relevant regulations, the Airline no longer needs to pay import VAT for the lease payments.

### 9.1.6 the Owner is incorporated and is tax resident in the Channel Islands?

**Tax implications on the Owner:**

From 1 April 2019, the lease payments are subject to 13% PRC VAT plus local surcharges (normally around 10% of the VAT payable). Under the PRC domestic tax law, the rental paid to the Owner is subject to 10% PRC Withholding Tax (“WHT”). The Airline has the obligation to withhold all the PRC taxes above for the Owner, but the VAT withheld for the Owner can be used by the Airline to credit against its output VAT liabilities.

**Taxes implications on the Airline:**

As a general rationale, the Airline needs to pay import duty and import VAT for the lease payments, but from 1 June 2018, according to the relevant regulations, the Airline no longer needs to pay import VAT for the lease payments.
9.1.7 the Owner is incorporated and is tax resident in the Isle of Man?

Tax implications on the Owner:

From 1 April 2019, the lease payments are subject to 13% PRC VAT plus local surcharges (normally around 10% of the VAT payable). Under the PRC domestic tax law, the rental paid to the Owner is subject to 10% PRC Withholding Tax ("WHT"). The Airline has the obligation to withhold all the PRC taxes above for the Owner, but the VAT withheld for the Owner can be used by the Airline to credit against its output VAT liabilities.

Taxes implications on the Airline:

As a general rationale, the Airline needs to pay import duty and import VAT for the lease payments, but from 1 June 2018, according to the relevant regulations, the Airline no longer needs to pay import VAT for the lease payments.

9.1.8 the Owner is incorporated and is tax resident in Mauritius?

Tax implications on the Owner:

From 1 April 2019, the lease payments are subject to 13% PRC VAT plus local surcharges (normally around 10% of the VAT payable). Under the PRC domestic tax law, the rental paid to the Owner is subject to 10% PRC Withholding Tax ("WHT"). The Sino-Mauritius Double Taxation Treaty does not further reduce the WHT rate. The Airline has the obligation to withhold all the PRC taxes above for the Owner, but the VAT withheld for the Owner can be used by the Airline to credit against its output VAT liabilities.

Taxes implications on the Airline:

As a general rationale, the Airline needs to pay import duty and import VAT for the lease payments, but from 1 June 2018, according to the relevant regulations, the Airline no longer needs to pay import VAT for the lease payments.

9.1.9 the Owner is incorporated and is tax resident in Bermuda?

Tax implications on the Owner:

From 1 April 2019, the lease payments are subject to 13% PRC VAT plus local surcharges (normally around 10% of the VAT payable). Under the PRC domestic tax law, the rental paid to the Owner is subject to 10% PRC Withholding Tax ("WHT"). The Airline has the obligation to withhold all the PRC taxes above for the Owner, but the VAT withheld for the Owner can be used by the Airline to credit against its output VAT liabilities.

Taxes implications on the Airline:

As a general rationale, the Airline needs to pay import duty and import VAT for the lease payments, but from 1
June 2018, according to the relevant regulations, the Airline no longer needs to pay import VAT for the lease payments.

9.1.10 the Owner is incorporated and is tax resident in the Cayman Islands?

Tax implications on the Owner:

From 1 April 2019, the lease payments are subject to 13% PRC VAT plus local surcharges (normally around 10% of the VAT payable). Under the PRC domestic tax law, the rental paid to the Owner is subject to 10% PRC Withholding Tax (“WHT”). The Airline has the obligation to withhold all the PRC taxes above for the Owner, but the VAT withheld for the Owner can be used by the Airline to credit against its output VAT liabilities.

Taxes implications on the Airline:

As a general rationale, the Airline needs to pay import duty and import VAT for the lease payments, but from 1 June 2018, according to the relevant regulations, the Airline no longer needs to pay import VAT for the lease payments.

9.2 If there is a requirement in the Relevant Jurisdiction for the airline to withhold tax on lease payments, will the courts of the Relevant Jurisdiction recognise and permit enforcement of a “gross up” clause in the Lease requiring the payment by the Airline of an additional sum to ensure the Owner receives and is entitled to retain the same net amount as would have been received in the absence of the withholding, taking account of any further withholding on account of tax required in relation to such additional sum?

Yes

9.3 VAT: European Union country: under Article 148(f) of the VAT Directive, an exemption from VAT is applied to “supplies” consisting of chartering or hiring of aircraft which are used by airlines operating for reward chiefly on international routes. Therefore:

9.3.1 New lease to airline operating for reward chiefly in domestic routes: VAT will be applied to lease rentals at current rate:

13%. For avoidance of ambiguity – if the lessee charters or hires the aircraft from the Owner for transportation, which means that the Owner provides the facilities and staff for the leased aircraft at the same time, the rental shall effectively be treated as transportation income for VAT purposes so that the VAT rate of 9% applies. However, under the current circumstance, since the Airline leases the aircraft and further provides chartering services to the customers, the lease from the Owner to the Airline is still not a “chartering” or “hiring”, thus the VAT rate of 13%.
9.3.2 New Lease to airline operating for reward chiefly on international routes: VAT will not be applied to lease rentals by reason of application of exemption:

13% VAT shall apply. For avoidance of ambiguity – if the lessee charters or hires the aircraft from the Owner for transportation, which means that the Owner provides the facilities and staff for the leased aircraft at the same time, the rental shall effectively be treated as transportation income for VAT purposes so that the VAT rate of 9% applies – whether this 9% VAT can be exempted depends on the tax-related articles of the applicable air transportation treaty between the PRC and the relevant jurisdiction. However, under the current circumstance, since the Airline leases the aircraft and further provides chartering services to the customers, the lease from the Owner to the Airline is still not a “chartering” or “hiring”, thus the VAT rate of 13% without exemption.

9.3.3 Sale of aircraft by an aircraft lessor to another aircraft lessor of an aircraft subject to a lease to an airline operating for reward chiefly in domestic routes:

If both the seller and the buyer are not PRC entities, no PRC VAT shall be triggered. If the buyer is a PRC entity, import VAT of 13% shall be triggered based on the dutiable value (or the residual purchase price if the lessor as the buyer buys out the ownership of the aircraft after leasing the aircraft from the lessor as the seller). The import VAT rate can be reduced to 5% if the imported aircraft's load-free weight is higher than 25 tons.

9.3.4 Sale of aircraft by an aircraft lessor to another aircraft lessor of an aircraft subject to a lease to an airline operating for reward chiefly on international routes: VAT will be applied to purchase price:

Same as 9.3.3

9.3.5 If no, is this because of application of the exemption under Article 148(f) to the airline following the decision in ECJ Case C-33/2011?

Not applicable.

9.3.6 If yes, is this because the Relevant Jurisdiction does not apply the decision in ECJ Case C-33/2011?

Not applicable.

9.3.7 If the transaction involves the first importation of the aircraft into the EU (and assuming the aircraft is intended for use as a civil and not military aircraft) what rate of Customs Duty will apply?

The concept of “first sale” is not applicable under the PRC customs rules. The import duty rate ranges from 1% to 5%, depending on the HS code of the specific aircraft for import. For import through sales, the import VAT rate is generally 13%, but it can be reduced to 5% if the imported aircraft's load-free weight is higher than 25 tons. For import through lease, the Customs office no longer levies import VAT on the rental from 1 June 2018.
9.4 Is any stamp duty, notarial or other fee or equivalent payable in respect of the execution of the Lease, a de-registration power of attorney or any other lease related document concerning the aircraft? Will such stamp duty or fee still be payable if the relevant documents are executed and held outside the Relevant Jurisdiction? If any such amount is payable how much is it approximately?

Stamp duty at 0.1% of the lease payments shall be paid by both the Owner and the Airline. Stamp duty cannot be avoided through execution of the relevant documents outside China.

9.5 Can any form of consent, authorisation or licence be obtained exempting the payments referred to in this Section from such tax or duty? If so, how would it be obtained?

No.

9.6 Ignoring any taxation consequence already mentioned and any potential taxation issues if the Owner has any other connection to the Relevant Jurisdiction, is there any other Relevant Jurisdiction taxation consequence of the Owner:

9.6.1 Being owner and lessor of an aircraft registered in the Relevant Jurisdiction and operated/leased by a company incorporated or registered in the Relevant Jurisdiction?

No.

9.6.2 Making available a lease facility to a company incorporated or regulated in the Relevant Jurisdiction?

No.

9.6.3 Receiving rent and other lease payments under the Lease from the lessee incorporated or registered in the Relevant Jurisdiction?

No, except the taxes mentioned above in Section 9.1.

9.6.4 Repossessing the aircraft and exporting the aircraft from the Relevant Jurisdiction?

No.
9.6.5 Selling the aircraft at a profit, whether such sale is after repossession or is subject to the Lease and the lessee’s rights?

No.

10. EXCHANGE CONTROLS

10.1 Are payments to foreign owners by companies incorporated or registered in the Relevant Jurisdiction subject to any form of exchange or similar control?

Yes, there is exchange control regime in the Relevant Jurisdiction. Relevant contracts and invoices shall be provided for review to the bank which copes with the company’s application for payment. If the amount of a single payment to the foreign Owner is over USD 50,000, an outbound payment recordal form chopped by the competent tax authorities must also be provided to the bank for review.

10.2 If yes, can any consents, authorisations or licences be obtained to exempt payments from any such control? How would these be obtained? Are such consents, authorisations or licences transferable?

No consents, authorisations or licences can exempt payments from any such exchange control.

11. INSURANCE

11.1 Is it a legal requirement to insure the Aircraft within the Relevant Jurisdiction?

It is a legal requirement that adequate insurance will be maintained.

11.2 If so, is there any restriction on reinsurance of the primary insurance outside the Relevant Jurisdiction?

Reinsurance of the primary insurance outside the Relevant Jurisdiction is not allowed by the PRC law. However, a branch of a foreign reinsurance company is allowed to carry out reinsurance business in the PRC.

11.3 Is there a minimum percentage of cover which a local insurer is obliged to retain, and if so, what is it?

Where any direct property insurance business is ceded in the manner of proportional reinsurance, the proportion of business ceded to a reinsurer for each risk unit shall not exceed 80% of the insured amount or the limit of liability in the direct insurance contract underwritten by the cedant.
11.4 Is it possible for local insurers to assign contracts of reinsurance? If not, is a cut-through clause enforceable?

It is possible for an insurer in the Relevant Jurisdiction to assign a contract of reinsurance.

12. LIABILITY FOR DAMAGE

Can the Owner be strictly liable – liable without a requirement to prove fault or negligence – for any damage or loss caused by the Aircraft assuming Owner is an innocent owner with no operational control of the Aircraft?

For the loss and damage caused by an aircraft to third parties, the operator (the entity which was making use of the aircraft at the time the damage was caused) of the civil aircraft shall undertake the liability for compensation. The registered person in possession of the Aircraft shall be considered as the operator and shall be liable for the damages, unless it can prove that some other person was the actual operator in the proceedings and take appropriate measures to make that other person a party in the proceedings. I.e. if the Owner is an innocent owner with no operational control of the Aircraft, it shall be the actual operator who is liable for the damages or losses.

13. DETENTION/CONFISCATION

13.1 Are there any rights to detain or sell the Aircraft pursuant to drug trafficking, tax or other laws or pursuant to rights of airport or air navigation authorities if the Airline fails to pay when due?

If the Aircraft is used to commit a criminal offence, it may be temporarily seized in criminal proceedings. Further, if the Airline fails to pay the fees to the airport, the latter is entitled to asset a lien over the Aircraft.

13.2 If so, can the Aircraft be forfeited and sold without the Owner being made aware?

No.

14. SOVEREIGN IMMUNITY

14.1 Is any Airline based in the Relevant Jurisdiction entitled to any form of sovereign or other immunity from suit which might restrict the Owner’s rights under the Lease?

No.
14.2 Can such immunity be validly waived in advance by contract?

Not applicable.

15. DISPUTE RESOLUTION AND RECIPROCAL ENFORCEMENT

15.1 Do the laws of the Relevant Jurisdiction permit and recognise an “asymmetric” submission to jurisdiction clause under which the lessee submits to the exclusive jurisdiction of the Courts of England but the Owner has discretion to choose a jurisdiction other than the Courts of England?

No. The laws of PRC do not permit and recognize the described “asymmetric” submission clause.

15.2 If the Lease is governed by English Law and a judgment is obtained by the Owner in the English courts, can that judgment be automatically enforced in the Relevant Jurisdiction or will the case have to be re-examined on its merits? If so what procedures must be complied with to enforce such a judgement?

According to the PRC Civil Procedure Law, a Chinese court may only recognize and enforce the judgment or ruling of a foreign court on the basis of international treaties concluded or acceded by China, or in accordance with the principle of reciprocity. Up till now, China has not yet acceded to the Hague Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Criminal Matters. We did not notice that there is bilateral treaty between UK and China regarding recognition and enforcement of court decision on civil matters either. In respect of the principle of reciprocity, we do not know whether any England courts have already acknowledged the principle of reciprocity regarding the judgments of Chinese courts. Even if there are such precedent cases, there is no assurance that the Chinese court will recognize and enforce an England court decision. In other words, we consider that an England court decision will not be recognized and enforced by the court in China.

15.3 Is the Relevant Jurisdiction party to the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention) or the 1965 Convention on the Settlement of Investment Disputes Between States and Nationals of Other States (the Washington Convention)? Will the courts of the Relevant Jurisdiction recognise and enforce a decision of an arbitrator?

PRC is a party to the New York Convention and will recognise and enforce a decision of an arbitrator. However, in its Declaration of Accession, China made a reciprocity reservation, as a result of which China is only obliged to recognize and enforce awards made in the territory of another contracting state of the New York Convention. Further, PRC is a party to the Washington Convention.
15.4 What is the usual choice of dispute resolution in international supply contracts involving a lessor or buyer incorporated in or with its main place of business in the Relevant Jurisdiction?

Dispute resolution choices vary from company to company. In practice, the parties of an international aircraft lease agreements may choose to submit the disputes to the ICC for arbitration.

16. AIRCRAFT ENGINES

16.1 If the equipment being leased to the Airline in the Relevant Jurisdiction was an Aircraft Engine either unattached to an airframe or attached to an airframe belonging to a party other than the Aircraft Engine Owner and being leased to the Airline under a separate engine lease agreement, would there be any significant changes to the responses set out above?

See 16.2 and 16.3. Subject to 16.2 and 16.3 generally, no significant changes are required in relation to Aircraft Engines.

16.2 In particular, does the Relevant Jurisdiction recognise the separate ownership of the Aircraft Engine by the Aircraft Engine Owner when the Aircraft Engine is attached to an airframe belonging to a person other than the Aircraft Engine Owner?

Except as expressly conferred by the Lease Agreement, the PRC law does not provide that an Engine installed on an aircraft is owned by the owner of the Aircraft. We think the lessor would remain the owner of the Engine throughout the duration of the lease term except as expressly conferred by the Lease Agreement.

16.3 Is there a register of Aircraft Engines and is the information given above in relation to registration of Aircraft and the ownership and leasing of Aircraft the same for registration of an Aircraft Engine and the ownership and leasing of such Aircraft Engine at the Aircraft Engine register?

There is no separate register in the PRC for Aircraft Engines.

17. ADDITIONAL INFORMATION – IS THERE ANYTHING ELSE WE SHOULD HAVE ASKED?

Are there any other matters, issues, recommended courses of action or steps which can be taken to protect and/or perfect the Owner's interests, as owner and lessor of the Aircraft in the Relevant Jurisdiction or of which the Owner should be aware when contemplating leasing an aircraft to a company incorporated and operating in the
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No.
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5.4 If the Lease must be in the language of the Relevant Jurisdiction, is it possible under the Relevant Law also to have an English version, and to provide that the English version should prevail in case of conflict with the Relevant Jurisdiction language version?

5.5 Are there any special terms that the Lease must contain or that it is advisable for the Lease to contain?

5.6 Are there any circumstances under which the Lease might be re-characterised under the laws of the Relevant Jurisdiction as:

6 LEASE REGISTRATION

6.1 Is there a separate register for aircraft leases in the Relevant Jurisdiction?

6.2 If yes, then:

7 ENFORCEMENT OF LEASES (ASSUMING AIRLINE IS NOT IN A FORM OF INSOLVENCY PROTECTION)

7.1 On the occurrence of an event of default under the Lease, assuming that the Owner is permitted to do so under the terms of the Lease, can the Owner terminate the Leasing of the Aircraft under the Lease and enforce the Lease by taking physical possession of the Aircraft?

7.2 If so, can the Owner take physical possession of the Aircraft without the need for judicial proceedings in the Relevant Jurisdiction?

7.3 Where judicial proceedings in the Relevant Jurisdiction are necessary, please provide details of the proceedings, in particular:

7.4 Where judicial proceedings are not necessary, please comment on the time limits relevant to taking possession of the Aircraft, in particular:

7.5 Apart from the judicial proceedings described above and ignoring deregistration (see section 8), is the permission of any other party (including any official body) in the Relevant Jurisdiction required to take possession of the Aircraft?

7.6 Is there any history of actual repossession of aircraft by Owners in the Relevant Jurisdiction? If so, please provide details of any matters or issues of which an Owner should be aware.

7.7 Are there any circumstances in which the sums expressed to be payable under the Lease or obligations expressed to be assumed by the Airline in the Lease are or will be unrecoverable or unenforceable in the Relevant Jurisdiction?

7.8 Are there any restrictions on the ability of the Owner to sell the Aircraft in the Relevant Jurisdiction during the term of the Lease or, following an event of default, on termination of the leasing or pending judicial enforcement of the Lease?

7.9 Are there any export restrictions on export of a repossessed aircraft?

8 DEREGISTRATION POWER OF ATTORNEY/EXPORTATION

8.1 Can the Owner apply for deregistration of the Aircraft either at the end of the lease term or following successful repossession (with or without judicial proceedings) and is there any time period within which such application should be made?

8.2 Is the consent of the Airline required to deregister the Aircraft either by law or as a matter of custom or practice?

8.3 How long does deregistration take, both where there is co-operation from the Airline and where this is no co-operation from the Airline?

8.4 Is it possible to obtain an export licence or export permit in advance?

8.5 Approximately how long does it take to obtain an export licence or export permit? What are the costs involved?

8.6 Is it possible to obtain a certificate of deregistration in advance?

8.7 Will a power of attorney empowering the Owner to deregister and export the Aircraft from the Relevant Jurisdiction, either at the end of the lease term or following successful repossession (with or without judicial proceedings), be enforceable in the
Relevant Jurisdiction? Will the courts recognise a power of attorney in the form of an IDERA and governed by English law?

8.8 If the power of attorney was stated to be irrevocable would this be enforceable against the Airline or can the Airline revoke such power of attorney?

8.9 Upon the occurrence of a bankruptcy or insolvency of the Airline is the power of attorney still effective?

9 INSOLVENCY

9.1 In the event that the Airline were to become insolvent either on a balance sheet basis (assets less than liabilities) or unable to pay debts as fall due:

10 TAXATION

10.1 The decision to lease to an airline in the Relevant Jurisdiction assumes that the Owner will not be taxed on receipt of rentals or other payments (including maintenance reserves) under the Lease except by way of tax on its general income, profits or gains payable by the Owner in its place of incorporation or place of main business (if different). Will there be a requirement for the Owner to pay tax in the Relevant Jurisdiction on lease payments on basis that either the Owner is subject to taxation in the Relevant Jurisdiction by reason only of the leasing of the Aircraft under the Lease and is required to make payment itself; or payment of such tax is by way of the airline being required to withhold and account for tax from lease payments, where:

10.2 If there is a requirement in the Relevant Jurisdiction for the airline to withhold tax on lease payments, will the courts of the Relevant Jurisdiction recognise and permit enforcement of a "gross up" clause in the Lease requiring the payment by the Airline of an additional sum to ensure the Owner receives and is entitled to retain the same net amount as would have been received in the absence of the withholding, taking account of any further withholding on account of tax required in relation to such additional sum.

10.3 VAT: European Union country: under Article 148(f) of the VAT Directive, an exemption from VAT is applied to "supplies" consisting of chartering or hiring of aircraft which are used by airlines operating for reward chiefly on international routes. Therefore:

10.4 Is any stamp duty, notarial or other fee or equivalent payable in respect of the execution of the Lease, a de-registration power of attorney or any other lease related document concerning the aircraft? Will such stamp duty or fee still be payable if the relevant documents are executed and held outside the Relevant Jurisdiction? If any such amount is payable how much is it approximately?

10.5 Can any form of consent, authorisation or licence be obtained exempting the payments referred to in this Section from such tax or duty? If so, how would it be obtained?

10.6 Ignoring any taxation consequence already mentioned and any potential taxation issues if the Owner has any other connection to the Relevant Jurisdiction, is there any other Relevant Jurisdiction taxation consequence of the Owner:

11 EXCHANGE CONTROLS

11.1 Are payments to foreign owners by companies incorporated or registered in the Relevant Jurisdiction subject to any form of exchange or similar control?

11.2 If yes, can any consents, authorisations or licences be obtained to exempt payments from any such control? How would these be obtained? Are such consents, authorisations or licences transferable?

12 INSURANCE

12.1 Is it a legal requirement to insure the Aircraft within the Relevant Jurisdiction?

12.2 If so, is there any restriction on reinsurance of the primary insurance outside the
Relevant Jurisdiction?

12.3 Is there a minimum percentage of cover which a local insurer is obliged to retain, and if so, what is it?

12.4 Is it possible for local insurers to assign contracts of reinsurance?

LIABILITY FOR DAMAGE

14.1 Are there any rights to detain or sell the Aircraft pursuant to drug trafficking, tax or other laws or pursuant to rights of airport or air navigation authorities if the Airline fails to pay when due?

14.2 If so, can the Aircraft be forfeited and sold without the Owner being made aware?

DETENTION/CONFISCATION

15.1 Is any Airline based in the Relevant Jurisdiction entitled to any form of sovereign or other immunity from suit which might restrict the Owner's rights under the Lease?

15.2 Can such immunity be validly waived in advance by contract?

SOVEREIGN IMMUNITY

16.1 Do the laws of the Relevant Jurisdiction permit and recognise an "asymmetric" submission to jurisdiction clause under which the lessee submits to the exclusive jurisdiction of the Courts of England but the Owner has discretion to choose a jurisdiction other than the Courts of England?

16.2 If the Lease is governed by English Law and a judgment is obtained by the Owner in the English courts, can that judgment be automatically enforced in the Relevant Jurisdiction or will the case have to be re-examined on its merits? If so what procedures must be complied with to enforce such a judgment?

16.3 Is the Relevant Jurisdiction party to the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention) or the 1965 Convention on the Settlement of Investment Disputes Between States and Nationals of Other States (the Washington Convention)?

16.4 What is the usual choice of dispute resolution in international supply contracts involving a lessor or buyer incorporated in or with its main place of business in the Relevant Jurisdiction?

DISPUTE RESOLUTION AND RECIPROCAL ENFORCEMENT

AIRCRAFT ENGINES

17.1 If the equipment being leased to the Airline in the Relevant Jurisdiction was an Aircraft Engine either unattached to an airframe or attached to an airframe belonging to a party other than the Aircraft Engine Owner and being leased to the Airline under a separate engine lease agreement, would there be any significant changes to the responses set out above?

17.2 In particular, does the Relevant Jurisdiction recognise the separate ownership of the Aircraft Engine by the Aircraft Engine Owner when the Aircraft Engine is attached to an airframe belonging to a person other than the Aircraft Engine Owner?

17.3 Is there a register of Aircraft Engines and is the information given above in relation to registration of Aircraft and the ownership and leasing of Aircraft the same for registration of an Aircraft Engine and the ownership and leasing of such Aircraft Engine at the Aircraft Engine register?

ADDITIONAL INFORMATION – IS THERE ANYTHING ELSE WE SHOULD HAVE ASKED?
1. PROPOSED TRANSACTION STRUCTURE

The Aircraft will be purchased by the Owner and leased on an operating lease basis to the Airline pursuant to the Lease.

Is this the usual structure for transactions of this nature in the Relevant Jurisdiction?

Yes.

2. SEARCHES

2.1 Are there any public registers in the Relevant Jurisdiction where a search can be carried out to determine whether an order or resolution for any bankruptcy, bankruptcy protection or similar insolvency proceedings has been registered in relation to the Airline?

Yes. The opening of the bankruptcy proceedings is published on e-bulletin board of the Croatian Ministry of Justice. The initiation of liquidation is recorded in the Company registry held with the respective Commercial courts. The Company registry can be viewed online.

2.2 If so, specify which public registers, how long such searches typically take and if the fees are more than USD 100, approximately what fees apply.

Company registry and the e-bulletin board of the Croatian Ministry of Justice. All searches can be conducted online and are free of charge.

3. RIGHTS AND EVIDENCE OF OWNERSHIP

3.1 In the case of the transfer of title to an aircraft registered in the Relevant Jurisdiction:

3.1.1 Is any particular form of transfer required for the transfer to be legally recognised?

The agreement by which the aircraft is acquired has to be in written form.

3.1.2 Must any particular conditions be satisfied for the transfer to be recognised?

The transfer of ownership is done by registration of the new owner with the Croatian Civil Aircraft Registry. Legal effects of registration are constitutive, i.e. only by registration with the Croatian Aircraft Registry the new owner
acquires its proprietary rights in relation to the aircraft.

3.1.3 Will such a transfer still be recognised by the courts of the Relevant Jurisdiction as legally valid where the relevant aircraft is located in another jurisdiction at the time of the transfer?

Yes. However, law of the country where the aircraft is registered has to be observed.

3.1.4 Are any duties, taxes or fees levied on such transfer of ownership?

VAT is not payable where the Aircraft will be used by an Airline operating commercial flights for reward mostly on international routes (see 10.3 below for more detail). Aircraft Parts and equipment (including Aircraft Engines) supplied in Croatia are also VAT exempt where they are of a kind ordinarily installed or incorporated in an Aircraft operated by an Airline operating commercial flights mostly on international routes.

If the Aircraft is to be registered on the Croatian registry of civil aircraft then Special administration fee in the amount of HRK 170.00 (for aircraft whose maximum take-off mass is up to 2,000 kilos), HRK 490.00 (for aircraft whose maximum take-off mass is 2,000 – 5,700 kilos) or HRK 1,400.00 (for aircraft whose maximum take-off mass is over 5,700 kilos) will be paid.

3.2 Other than Insolvency laws (see section 9) are there any laws which may have the effect of defeating the Owner's right in the aircraft – for example, Government requisition? Do the laws of the Relevant Jurisdiction provide for any compensation in such circumstances?

Croatian law provides the possibility of government requisition in the event of war or immediate threat of war. In such event the owner is entitled to compensation in the amount which will be subsequently prescribed by government decision. However, the only compensation which is certain and prescribed by law is the one paid in the event of damage done to the aircraft during its use by the government. The owner is in no circumstance entitled to compensation for loss of profits.

Aircraft inspectors have the power to limit the use or entirely forbid the use of a certain aircraft if it is determined in the course of inspection that it or its component does not fulfil the technical requirements for airworthiness. The limitation or prohibition lasts until the irregularities are remedied.

4. THE AIRCRAFT REGISTER – NATIONALITY OF AIRCRAFT

4.1 Has the Relevant Jurisdiction ratified any of: The Chicago Convention of 1944 on International Civil Aviation?

Yes.

The 1948 Geneva Convention on the International Recognition of Rights in Aircraft?
Yes.

The 1933 Convention for the Unification of Certain Rules Relating to the Precautionary Arrest of Aircraft?

No.

The 2001 Cape Town Convention on International Interests in Mobile Equipment and the associated Protocol on Matters Specific to Aircraft Equipment (the Cape Town Convention)?

No.

4.2 If the Relevant Jurisdiction has ratified the Cape Town, see the Cape Town Convention Annex.

N/A.

4.3 If the Relevant Jurisdiction has not ratified the Cape Town Convention, has the Relevant Jurisdiction started official proceedings or given any other official indication that it will accede to or ratify the Cape Town Convention in the near future?

No, as far as we’re aware of.

4.4 Is there an Aircraft Register in the Relevant Jurisdiction and if so, what is it called and who operates it?

Yes. It is called Croatian Civil Aircraft Registry. It is operated by the Croatian Civil Aviation Agency.

4.5 If so, in relation to registration:

4.5.1 Who is responsible for registering the Aircraft – is it an owner registry or an operator registry?

Owner. The owner can authorize the operator to register the aircraft based on a notarized Power of Attorney. Both owners and operators are registered in the Registry.

4.5.2 What details would normally be recorded on the Aircraft Register upon registration of an aircraft in the Relevant Jurisdiction? If not normally recorded, is it
possible to record the Lease and/or an Aircraft Mortgage on the Aircraft Register?

Generally, Croatian Civil Aircraft registry includes information on the following: ownership, registration designation, manufacturer, aircraft manufacturer label, ICAO aircraft type, serial number, year of production, operator information, MTOM, former state of registry, former registration mark, date of removal from the former registry. Additionally, mortgage and lease can be recorded.

4.5.3 If the Aircraft Register is an operator register, is it possible to record the details of the aircraft owner/lessor and any financier with an Aircraft Mortgage?

It is not an operator registry. However, the Register of Civil Aircraft contains the details of the aircraft owner, lessor and operator.

4.5.4 If the Aircraft Register is an owner register, is registration on the Aircraft Register definitive to determine ownership of the Aircraft?

Yes.

4.5.5 Are any distinctions made between aircraft employed on international routes and those used purely for domestic flights?

No, save for VAT (see point 3.1.4).

4.6 What documents and/or consents are required to obtain registration on the Aircraft Register and will these require any formalities (for example, notarisation, legalisation or application of apostille)?

Request for aircraft entry to the register have to be accompanied with originals or certified copies of the following documents:

- Single customs declaration (if the aircraft has been bought in foreign country which is not an EU Member State),
- Application for the acquisition of the new aircraft if the buyer is subject to the value added tax (if the aircraft has been bought in the EU Member State),
- Application for the acquisition of the new aircraft with proof of payment of the value added tax, if the buyer is not subject to value added tax (i.e. provided that the aircraft has been bought in EU Member State),
- Sale-purchase agreement or the bill of sale or other relevant proof of ownership,
- Excerpt from the court registry which proves that legal person has the seat in the Republic of Croatia or in another ECAA contracting party,
- Lease agreement (if the operator is different from the owner),
- If the applicant is operator, written verified consent of an owner given to the operator which entitles him to take all the actions regarding entering aircraft into the Registry and for the entering of operator into the Registry,
- Certificate of De-registration issued by competent body entitled for maintenance of foreign registry or
military registry, if the aircraft is being transferred from foreign registry to the Registry,
- Certificate of Non-registration, if the new aircraft was bought in foreign country which has never been entered into registry or military registry,
- Certificate of Airworthiness or Permit to Fly,
- Export Certificate of Airworthiness, for aircraft entering from foreign country which is not EU Member State,
- Personal identification card or other equivalent document which proves the nationality of Republic of Croatia or ECAA Contracting Party (copy of the document is acceptable),
- OIB Certificate - OIB means Personal Identification Number issued by the Ministry of finance of the Republic of Croatia (copy of the document is acceptable),
- For a newly produced aircraft which has not before been registered in any jurisdiction documents proving that it is a newly produced aircraft are required (e.g. builder's certificate, contract with the builder or its representative transferring the title over the aircraft etc).

4.7 Are there any restrictions on the legal status and/or nationality/domicile of parties seeking to register an aircraft on the Aircraft Register?

Yes. An Aircraft can be registered in Croatian Civil Aircraft registry if it is not already registered in register of another country or in Croatian or some other's country military register. An owner or an operator are required to be nationals of either Croatia or EU Member State or Member of ECAA Agreement or corporations incorporated in Croatia, EU Member State or Member state of ECAA Agreement. If an Aircraft is already registered in another register, an evidence of deletion from that register has to be submitted for the purpose of registration in Croatian Register of Civil Aircraft. An Aircraft has to comply with air traffic safety standards and other requirements prescribed by the by-laws rendered pursuant to Air Transport Act.

4.8 In respect of aircraft transactions connected with the Relevant Jurisdiction generally, are there any foreign Aircraft Registers that are commonly used, or should be considered, as alternatives to or in addition to registration with the Relevant Jurisdiction’s Aircraft Register? If so, what is benefit of such registration?

No.

4.9 Are there any other filings or registrations necessary or desirable (other than the registrations already mentioned and Lease Registration – see section 6) in the Relevant Jurisdiction in order to ensure the validity, priority or enforceability of the transaction documents, or to perfect the interests of the Owner in the Aircraft or the transaction documents?

Other than mortgages, lease, pre-emption right and repurchase right registered with Croatian Register of Civil Aircraft, no further filings or registrations are desirable.

5. LEASES

5.1 Will the Relevant Jurisdiction recognise the concept of a lease over an
Yes.

5.2 Would the choice of English law to govern the Lease be upheld as a valid choice of law in any action in the Relevant Jurisdiction?

Yes, providing one of the parties to the Lease is a non-Croatian domicile.

5.3 Must the Lease be in a particular form if it is to be valid and enforceable in the Relevant Jurisdiction (for example, must it be in the language of the Relevant Jurisdiction or be notarised, legalised or have the apostille applied)?

Written form will suffice. If the Owner requests the notarisation of the Lease (although notarisation is not mandatory), then Lease must be also in Croatian language.

5.4 If the Lease must be in the language of the Relevant Jurisdiction, is it possible under the Relevant Law also to have an English version, and to provide that the English version should prevail in case of conflict with the Relevant Jurisdiction language version?

The Lease does not have to be in Croatian language. (Please also see 5.3). The parties are free to agree that in case of any discrepancies the English version shall prevail. However, as Croatian is the official language in the Relevant Jurisdiction, all communication before Croatian authorities (including courts and other regulatory authorities) must be in Croatian language.

5.5 Are there any special terms that the Lease must contain or that it is advisable for the Lease to contain?

There are no special terms that the Lease must contain.

5.6 Are there any circumstances under which the Lease might be re-characterised under the laws of the Relevant Jurisdiction as:

5.6.1 a secured loan?

It is not very likely that a lease would be re-characterised as a secured loan. However, if elements of sale and lease back are present, structure of the transaction may resemble to a financing, consequently triggering regulatory and tax requirements specific for sale and lease back.

5.6.2 a finance (or capital) lease?

Finance lease is defined in Croatian Leasing Act as a transaction in which the lessee, during the period of the
lease agreement, pays a fee to the lessor (i.e., leasing provider) as a compensation for using the leased object. In finance lease agreement, the entire value of the leased object has been calculated into leasing fee and the lessee undertakes to bear the cost of depreciation of the leased object. Finance lease contains also an option for lessee to acquire the leased object at a certain price (such price being less than the actual value of the leased object at the time such option is exercised). In financial lease agreement, most ownership related risks and awards are transferred to the lessee. Save for the characteristics of the finance lease above, it should be noted that there is no firmly set criteria determining the difference between general lease agreements and the leasing agreements. Hence, such issue should be addressed on a case to case basis.

6. LEASE REGISTRATION

6.1 Is there a separate register for aircraft leases in the Relevant Jurisdiction?

No.

6.2 If yes, then:

6.2.1 What documentation and/or consents are required for the registration of the Lease?

N/A.

6.2.2 What registration fees are payable (if any)?

N/A.

6.2.3 What information is recorded on the register? How is the eventual discharge of the Lease recorded?

N/A.

6.2.4 Does any registration in respect of the Lease remain valid throughout the tenure of the Lease or does such a registration require periodic renewal? If renewal is required when must this be done and what is the approximate cost of renewal?

N/A.

7. ENFORCEMENT OF LEASES (ASSUMING AIRLINE IS NOT IN A FORM OF INSOLVENCY PROTECTION)
7.1 On the occurrence of an event of default under the Lease, assuming that
the Owner is permitted to do so under the terms of the Lease, can the Owner
terminate the Leasing of the Aircraft under the Lease and enforce the Lease
by taking physical possession of the Aircraft?

Yes, the Owner can terminate the Lease and ask for repossession of the Aircraft. In case of judicial proceedings,
enforcement of the court decision is allowed if the aircraft is located on the territory of the Republic of Croatia or
if the aircraft is registered with the Croatian Civil Aircraft Registry (in case the aircraft is not located on the
Croatian territory).

7.2 If so, can the Owner take physical possession of the Aircraft without the
need for judicial proceedings in the Relevant Jurisdiction?

Yes, if Lessee does not object and such undertaking is allowed pursuant to the lease agreement.

7.3 Where judicial proceedings in the Relevant Jurisdiction are necessary,
please provide details of the proceedings, in particular:

7.3.1 What documents would the Owner as lessor need to present in order to obtain
possession of the Aircraft, both before and subsequent to judgment? Can documents
be copies?

If lessee objects to the owner’s re-possession request, the Owner has to prove its title, i.e. it needs to present the
originals of Sale and Purchase Agreement, or other document evidencing the title over the Aircraft as well as the
lease agreement and the evidence of valid termination thereof. Documents can be presented in copies before
the court, although opposite party may request for originals to be presented before the court.

7.3.2 What is the approximate cost of issuing proceedings?

It is hard to predict.

7.3.3 Would the Owner be required to provide a bond, guarantee or other security in
order to issue proceedings?

No.

7.3.4 What is an estimate of the normal duration of possession proceedings from time
at which all required documentation is made available – if uncontested?

It is hard to predict.

7.3.5 What is an estimate of the normal duration of possession proceedings from time
at which all required documentation is made available – if contested?

It is hard to predict.

7.4 Where judicial proceedings are not necessary, please comment on the time limits relevant to taking possession of the Aircraft, in particular:

7.4.1 Is there a waiting period before action may be taken?

The Owner can terminate the Lease after expiration of 15 days after the Lessee is in payment default and then has a right to take action to repossess.

7.4.2 Is there a long stop date by which action must be taken?

No.

7.4.3 Is a Public Auction of the aircraft required?

No.

7.5 Apart from the judicial proceedings described above and ignoring deregistration (see section 8), is the permission of any other party (including any official body) in the Relevant Jurisdiction required to take possession of the Aircraft?

No, except from the case of criminal activity (see 14.1)

7.6 Is there any history of actual repossession of aircraft by Owners in the Relevant Jurisdiction? If so, please provide details of any matters or issues of which an Owner should be aware.

We are not aware of any such history.

7.7 Are there any circumstances in which the sums expressed to be payable under the Lease or obligations expressed to be assumed by the Airline in the Lease are or will be unrecoverable or unenforceable in the Relevant Jurisdiction?

No, except in the case of bankruptcy proceedings over Lessee or in case of debt restructuring in pre-bankruptcy proceedings.

7.8 Are there any restrictions on the ability of the Owner to sell the Aircraft in
the Relevant Jurisdiction during the term of the Lease or, following an event of default, on termination of the leasing or pending judicial enforcement of the Lease?

Generally, the Owner can at any time sell the Aircraft. Following the sale, a buyer steps into the Lessor's place and assumes all rights and obligations of the Lessor. If there is a mortgage registered on the Aircraft, sale shall be subject to mortgage. If, however, the sale is conducted after the Lease had already been terminated, the buyer shall not assume the Lessor's position.

7.9 Are there any export restrictions on export of a repossessed aircraft?

When exporting aircraft from the Republic of Croatia to non-EU member states, one has to inquire about the importing national requirements. On the basis of an airworthiness review certificate not older than 60 days and information on the national importing requirements, Croatian Civil Aviation Agency will issue upon the request of the Aircraft Owner an Export CoFa for exporting aircraft to a specific country.

8. DEREGISTRATION POWER OF ATTORNEY/EXPORTATION

8.1 Can the Owner apply for deregistration of the Aircraft either at the end of the lease term or following successful repossession (with or without judicial proceedings) and is there any time period within which such application should be made?

Yes and there is no time period for submission of application for deregistration (besides submitting a completed form which can be found on the Agency's web page) the following documents are required: certificate of registration, if the applicant is operator – written verified consent of an owner given to the operator which entitles him to take all the actions regarding deregistration, if there is a burden entered in the burden sheet – written verified consent of the authorized person or a decision of the competent court must be submitted).

8.2 Is the consent of the Airline required to deregister the Aircraft either by law or as a matter of custom or practice?

The consent of the Airline is not required. The Aircraft can be deregistered ex officio or by the request of the Owner or the Operator, authorised by the Owner. Croatian Civil Aviation Agency brings a resolution on deregistration of the Aircraft from Croatian registry.

8.3 How long does deregistration take, both where there is co-operation from the Airline and where this is no co-operation from the Airline?

According to the law, deregistration takes up to 30 days. However, in practice, it takes up not more than few days.

8.4 Is it possible to obtain an export licence or export permit in advance?
Croatian Civil Aviation Agency issues an Export Certificate of Airworthiness only when all requirements prescribed by law are met and when the Aircraft is exported outside EU. Other potential export licence or export permit depend on import state.

8.5 Approximately how long does it take to obtain an export licence or export permit? What are the costs involved?

It depends on import state in each particular case.

8.6 Is it possible to obtain a certificate of deregistration in advance?

No, Croatian Civil Aviation Agency brings a resolution on deregistration of the Aircraft only when all requirements prescribed by law are met (ex officio or by the request of the Owner/authorised Operator).

8.7 Will a power of attorney empowering the Owner to deregister and export the Aircraft from the Relevant Jurisdiction, either at the end of the lease term or following successful repossession (with or without judicial proceedings), be enforceable in the Relevant Jurisdiction? Will the courts recognise a power of attorney in the form of an IDERA and governed by English law?

Power of attorney has to contain a verified signature, be drafted in Croatian language and not older then six months. There is a special Removal of Aircraft Application Form prescribed, that has to be filled and submitted (not IDERA form.)

8.8 If the power of attorney was stated to be irrevocable would this be enforceable against the Airline or can the Airline revoke such power of attorney?

Pursuant to general law, the Airline can revoke power of attorney even if the power of attorney was stated to be irrevocable by the contract.

8.9 Upon the occurrence of a bankruptcy or insolvency of the Airline is the power of attorney still effective?

Generally yes, but by commencement of bankruptcy proceedings over the Airline, its power of attorney regarding its assets will terminate.

9. INSOLVENCY

9.1 In the event that the Airline were to become insolvent either on a balance sheet basis (assets less than liabilities) or unable to pay debts as fall due:
9.1.1 Would the airline be required to file for insolvency protection?

The Airline (i.e. its directors) is obliged to file for opening of bankruptcy proceedings in case of illiquidity1, within 61 days from the day when illiquidity occurred, except when there is an obligation of pre-bankruptcy proceedings. The Airline (i.e. its directors) is also obliged to file for opening of bankruptcy proceedings in case of inability to pay debts2 or insolvency3, within 21 days from the day when inability to pay debts when due or insolvency occurred, except where there is an obligation of the Airline to initiate pre-bankruptcy proceedings. Bankruptcy proceedings over the Airline will commence in a case of its insolvency, except when it can be presumed (by e.g. available assets and security) that by continuing its business activity the Airline will keep fulfilling its liabilities properly when due.

The Airline (i.e. its directors), if still has assets and employees, is obliged to file for opening of pre-bankruptcy proceedings in case of illiquidity, within 60 days from the day when illiquidity occurred, if it cannot maintain liquidity with measures of financial restructuring. The Airline (i.e. its directors), if still has assets and employees, is also obliged to file for opening of pre-bankruptcy proceedings in case of inability to pay its debts or insolvency, within 21 days from the day when inability to pay the debts or insolvency occurred.

9.1.2 Do the available forms of insolvency protection in the Relevant Jurisdiction involve the appointment of either an officer of the court or a specifically court appointed official to take control of the Airline (an Insolvency Official) while in insolvency protection?

Yes.

Upon opening of bankruptcy procedure, a court will appoint an Insolvency Administrator, who will represent and take the business of the Airline.

Upon opening of pre-bankruptcy proceedings, the court may appoint a Pre-bankruptcy Commissioner, who will control the business of the Airline.

In a case of liquidation, a Liquidator appointed by shareholders of the Airline will represent and take the business of the Airline until the company is liquidated and deleted from a Court register.

9.1.3 Does the Insolvency Official have authority to negotiate and reach agreement with the Owner in relation to matters such as the payment of unpaid rent, continuation or termination of the Lease and repossession of the Aircraft without the need for court approval?

Insolvency Administrator holds the right continue performing all Airline's obligation arising from Lease during the bankruptcy proceedings. However, it also holds a right not to fulfil the Airline's obligation pursuant to the lease agreement in which case the owner is entitled to submit its claims arising therefrom as a bankruptcy creditor in the bankruptcy proceedings. Although, general supervision of Insolvency Administrator's work is prescribed by the Bankruptcy Act, Insolvency Administrator does not need the court's approval for such actions.

After the commencement of pre-bankruptcy proceedings until the pre-bankruptcy settlement, the Airline can
make payments necessary for continuing regular business activity, for example pay unpaid rent incurred after commencement of pre-bankruptcy or provide other actions, without preliminary approval of the Pre-bankruptcy Commissioner or the court.

Liquidator is obliged to negotiate and reach agreement with the Owner in relation to matters such as the payment of unpaid rent, continuation or termination of the Lease and repossession of the Aircraft during the proceedings of liquidation.

9.1.4 Does the commencement of insolvency protection involving the appointment of an Insolvency Official in the Relevant Jurisdiction have the effect of prohibiting the Owner from taking the following actions to enforce the lease after commencement of such protection:

- **Applying any security deposit held by the Owner against any unpaid amounts due under the Lease?** After commencement of bankruptcy and pre-bankruptcy proceedings, applying security against unpaid lease payments is prohibited. There is no such prohibition in liquidation.
- **Accepting payment of rent or other lease payments from:**
  - (i.) the Airline? Yes in bankruptcy and pre-bankruptcy proceedings provided that, in the bankruptcy proceedings, the Insolvency Administrator has decided not to terminate the Lease, no limitation during liquidation.
  - (ii.) a guarantor? Assuming the Guarantor is not itself in bankruptcy or pre-bankruptcy proceedings then there is no limitation on accepting payments under the guarantee from the Guarantor.
  - (iii.) a shareholder? Assuming the shareholder is not itself in bankruptcy or pre-bankruptcy proceedings then there is no limitation on accepting payments from the shareholder.
- **Giving notice of default under the lease?** No restrictions, notice of default can be given.
- **Obtaining a judgment or arbitral award for unpaid lease payments?** After commencement of bankruptcy and pre-bankruptcy proceedings, commencing proceedings or an arbitration process to enforce unpaid lease payments is prohibited. Pending proceedings started before commencement of bankruptcy proceedings will terminate while pending proceedings started before commencement of pre-bankruptcy proceedings will terminate upon a request of the Airline. There is no such a prohibition in liquidation.
- **Giving notice to terminate the leasing of the Aircraft?** After a motion for opening bankruptcy proceedings has been submitted, lessor may not terminate the lease agreement for the reason of payment default which has occurred prior to opening of the bankruptcy proceedings or due to decrease of value of debtor’s assets
- **Exercising rights to repossess the Aircraft?** No restrictions.

9.1.5 Can the commencement of Insolvency Proceedings have retrospective effect in relation to any such actions taken before commencement? If so, for what period can there be a look back?

Yes, legal actions representing preferential transfer to certain creditors prior to the opening of the bankruptcy proceedings are not allowed and such actions can be challenged by bankruptcy administrator or other bankruptcy creditors before the court. Clawback periods vary on various conditions (e.g. degree of creditor’s awareness of debtor’s insolvency or inability to pay) and may last up to 10 years for cases of wilful misconduct to the detriment of other creditors.
9.1.6 Is there, either under law or as a matter of practice in the Relevant Jurisdiction, a period of time within which the Insolvency Official will either “adopt” the lease and pay rent and other lease payments as an expense of the insolvency or “reject” the lease and permit the Owner to enforce such rights as it may have under the lease?

There is no legal requirement or particular practice pursuant to which Insolvency Administrator should terminate the Lease. It will decide in each particular case how to proceed like with any other commercial contract. However, lessor may request for Insolvency Administrator to inform it on Insolvency Administrator's right of choice to either terminate or continue the agreement (please see 9.1.3. above). In that case, Insolvency Administrator is obliged immediately (or by the end of reporting bankruptcy hearing) to inform the creditor on its right of choice. If Insolvency Administrator decides to terminate the contract, the Owner may submit its due and payable claims arising from lease agreement as a bankruptcy creditor in the bankruptcy proceedings.

9.1.7 If the lease is “adopted” will the Insolvency Official also pay any unpaid lease payments due as at commencement of the insolvency protection?

No, lease payments due before commencement of the bankruptcy or pre-bankruptcy proceedings are under regime of insolvency protection, i.e. the Owner can apply his claims as a bankruptcy creditor.

9.1.8 If not or if the lease is “rejected”, would the Owner’s claim for any outstanding sums rank equally with other ordinary unsecured creditors of the Airline?

Yes.

9.1.9 Are there certain types of preferred creditors whose claims will rank above claims of the Owner?

Owner has a right of repossession of the Aircraft, prior to other creditors, but considering unpaid lease payments there are certain types of preferred creditors/receivables (such as those creditors who are also owners of certain asset in debtor's possession or are secured creditors, i.e. creditors with a mortgage, lien, claims for expenses of bankruptcy proceedings, expenses of lawyers, receivables of employees occurred after commencement of the bankruptcy...).

In pre-bankruptcy proceedings the Owner has also a right of repossession of the Aircraft, prior to other creditors, but considering unpaid lease payments preferred creditors are also other owners of certain asset in debtor's possession or those creditors who have a mortgage, secured creditors, creditors with a lien, workers whose receivables occurred before commencement of the pre-bankruptcy, creditors whose receivables matured after commencement of the bankruptcy proceedings.

9.1.10 If the Aircraft is in the possession of a person other than the Airline at the commencement of Insolvency Protection of the Airline, for example an independent maintenance facility, will such person be entitled, under the laws of the Relevant
Jurisdiction, to assert a lien arising under law or contract over the Aircraft in respect of amounts then due and unpaid to such person by the Airline?

Yes.

9.1.11 Is a person other than the Airline, for example an airport authority, entitled under the laws of the Relevant Jurisdiction to seize possession of the Aircraft after commencement of Insolvency Protection and assert a lien arising under law or contract over the Aircraft in respect of amounts then due and unpaid to such person by the Airline.

No.

10. TAXATION

10.1 The decision to lease to an airline in the Relevant Jurisdiction assumes that the Owner will not be taxed on receipt of rentals or other payments (including maintenance reserves) under the Lease except by way of tax on its general income, profits or gains payable by the Owner in its place of incorporation or place of main business (if different). Will there be a requirement for the Owner to pay tax in the Relevant Jurisdiction on lease payments on basis that either the Owner is subject to taxation in the Relevant Jurisdiction by reason only of the leasing of the Aircraft under the Lease and is required to make payment itself; or payment of such tax is by way of the airline being required to withhold and account for tax from lease payments, where:

Remark: Croatian DTT treaties generally comply with the OECD model, including the article 8 (1): Profits of an enterprise of a Contracting State from the operation of ships or aircraft in international traffic shall be taxable only in that State.

10.1.1 the Owner is incorporated and is tax resident in Ireland?

Yes/no DDT yes/no If yes, Rate:

DTT – yes; there is no withholding tax on lease payments.

Provided that the Owner is non-resident in Croatia, there is no requirement for the Owner to pay corporate profit tax in Croatia on the lease payments under the Lease.

10.1.2 the Owner is incorporated and is tax resident in the United Kingdom?
Yes/no DDT yes/no If yes, Rate:

DTT – yes; there is no withholding tax on lease payments.

Provided that the Owner is non-resident in Croatia, there is no requirement for the Owner to pay corporate profit tax in Croatia on the lease payments under the Lease.

10.1.3 the Owner is incorporated and is tax resident in Hong Kong?

Yes/no DDT yes/no If yes, Rate:

DTT – no; there is no withholding tax on lease payments.

Provided that the Owner is non-resident in Croatia, there is no requirement for the Owner to pay corporate profit tax in Croatia on the lease payments under the Lease.

10.1.4 the Owner is incorporated and is tax resident in Singapore?

Yes/no DDT yes/no If yes, Rate:

DTT – no; there is no withholding tax on lease payments.

Provided that the Owner is non-resident in Croatia, there is no requirement for the Owner to pay corporate profit tax in Croatia on the lease payments under the Lease.

10.1.5 the Owner is incorporated and is tax resident in Malta?

Yes/no DDT yes/no If yes, Rate:

DTT – yes; there is no withholding tax on lease payments.

Provided that the Owner is non-resident in Croatia, there is no requirement for the Owner to pay corporate profit tax in Croatia on the lease payments under the Lease.

10.1.6 the Owner is incorporated and is tax resident in the Channel Islands?

Yes/no DDT yes/no If yes, Rate:

DTT – no; there is no withholding tax on lease payments.

Provided that the Owner is non-resident in Croatia, there is no requirement for the Owner to pay corporate profit tax in Croatia on the lease payments under the Lease.
10.1.7 the Owner is incorporated and is tax resident in the Isle of Man?

Yes/no DDT yes/no If yes, Rate:

DDT – no; there is no withholding tax on lease payments.

Provided that the Owner is non-resident in Croatia, there is no requirement for the Owner to pay corporate profit tax in Croatia on the lease payments under the Lease.

10.1.8 the Owner is incorporated and is tax resident in Mauritius?

Yes/no DDT yes/no If yes, rate:

DDT – yes; there is no withholding tax on lease payments.

Provided that the Owner is non-resident in Croatia, there is no requirement for the Owner to pay corporate profit tax in Croatia on the lease payments under the Lease.

10.1.9 the Owner is incorporated and is tax resident in Bermuda?

Yes/no DDT yes/no If yes, Rate:

DDT – no; there is no withholding tax on lease payments.

Provided that the Owner is non-resident in Croatia, there is no requirement for the Owner to pay corporate profit tax in Croatia on the lease payments under the Lease.

10.1.10 the Owner is incorporated and is tax resident in the Cayman Islands?

Yes/no DDT yes/no If yes, Rate:

DDT – no; there is no withholding tax on lease payments.

Provided that the Owner is non-resident in Croatia, there is no requirement for the Owner to pay corporate profit tax in Croatia on the lease payments under the Lease.

10.2 If there is a requirement in the Relevant Jurisdiction for the airline to withhold tax on lease payments, will the courts of the Relevant Jurisdiction recognise and permit enforcement of a “gross up” clause in the Lease requiring the payment by the Airline of an additional sum to ensure the Owner receives and is entitled to retain the same net amount as would have been received in the absence of the withholding, taking account of any
further withholding on account of tax required in relation to such additional sum.

N/A. Lease payments are not subject to withholding tax in Croatia.

10.3 VAT: European Union country: under Article 148(f) of the VAT Directive, an exemption from VAT is applied to “supplies” consisting of chartering or hiring of aircraft which are used by airlines operating for reward chiefly on international routes. Therefore:

10.3.1 New lease to airline operating for reward chiefly in domestic routes: VAT will be applied to lease rentals at current rate:

25%.

It is expected that as of 1/1/2020 the general VAT rate will be reduced to 24%.

10.3.2 New Lease to airline operating for reward chiefly on international routes: VAT will not be applied to lease rentals by reason of application of exemption:

Yes.

10.3.3 Sale of aircraft by an aircraft lessor to another aircraft lessor of an aircraft subject to a lease to an airline operating for reward chiefly in domestic routes:

Sale will be subject to VAT.

10.3.4 Sale of aircraft by an aircraft lessor to another aircraft lessor of an aircraft subject to a lease to an airline operating for reward chiefly on international routes: VAT will be applied to purchase price:

No.

10.3.5 If no, is this because of application of the exemption under Article 148(f) to the airline following the decision in ECJ Case C-33/2011?

Yes, but following the exemption provided in the Croatian VAT Law (following Art 148(f) of the VAT Directive).

10.3.6 If yes, is this because the Relevant Jurisdiction does not apply the decision in ECJ Case C-33/2011?
10.3.7 If the transaction involves the first importation of the aircraft into the EU (and assuming the aircraft is intended for use as a civil and not military aircraft) what rate of Customs Duty will apply?

According to the Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff,

- 7.7% customs duty is applicable to Aeroplanes and other aircraft, of an unladen weight not exceeding 2,000 kg and
- 2.7% customs duty to Aeroplanes and other aircraft, of an unladen weight exceeding 2,000 kg.

10.4 Is any stamp duty, notarial or other fee or equivalent payable in respect of the execution of the Lease, a de-registration power of attorney or any other lease related document concerning the aircraft? Will such stamp duty or fee still be payable if the relevant documents are executed and held outside the Relevant Jurisdiction? If any such amount is payable how much is it approximately?

Lease Contract have to be concluded in written form. If it is going to be concluded in Croatia, in a form of public notary's act, notarial fee depends on value of the Lease (i.e. 1-year lease payments, save for the leases entered into for less than a 1-year term). When the case value exceeds approx. EUR 50,000, notarial fees would amount between approx. EUR 400 and approx. EUR 5,300. In a case of notarization of the Lease contract, composed by, for example, attorney instead of public notary, notarial fee would amount 50% of above-mentioned fees.

Other notarial or attorney's fees in respect of the execution of the Lease are also possible and they are payable in Croatia if the relevant documents are executed in Croatia, by Croatian public notary and attorney.

10.5 Can any form of consent, authorisation or licence be obtained exempting the payments referred to in this Section from such tax or duty? If so, how would it be obtained?

No.

10.6 Ignoring any taxation consequence already mentioned and any potential taxation issues if the Owner has any other connection to the Relevant Jurisdiction, is there any other Relevant Jurisdiction taxation consequence of the Owner:

10.6.1 Being owner and lessor of an aircraft registered in the Relevant Jurisdiction and operated/leased by a company incorporated or registered in the Relevant Jurisdiction?
10.6.2 Making available a lease facility to a company incorporated or regulated in the Relevant Jurisdiction?

Under assumption that the Owner does not trigger PE in Croatia, no other taxation consequences should arise.

10.6.3 Receiving rent and other lease payments under the Lease from the lessee incorporated or registered in the Relevant Jurisdiction?

Under assumption that the Owner does not trigger PE in Croatia, no other taxation consequences should arise.

10.6.4 Repossessing the aircraft and exporting the aircraft from the Relevant Jurisdiction?

Under assumption that the Owner does not trigger PE in Croatia, no other taxation consequences should arise.

10.6.5 Selling the aircraft at a profit, whether such sale is after repossession or is subject to the Lease and the lessee’s rights?

Under assumption that the Owner does not trigger PE in Croatia, no other taxation consequences should arise.

11. EXCHANGE CONTROLS

11.1 Are payments to foreign owners by companies incorporated or registered in the Relevant Jurisdiction subject to any form of exchange or similar control?

No. With an exception to certain capital investments, payments to non-residents are free of exchange or similar control.

11.2 If yes, can any consents, authorisations or licences be obtained to exempt payments from any such control? How would these be obtained? Are such consents, authorisations or licences transferable?

N/A.

12. INSURANCE
12.1 Is it a legal requirement to insure the Aircraft within the Relevant Jurisdiction?

In order to operate in the Croatian airspace, every air carrier or aircraft operator is required to have liability insurance for damages caused to passengers, baggage, cargo and third parties, in accordance with the Regulation (EC) No 785/2004 of the European Parliament and of the Council of 21 April 2004 on insurance requirements for air carriers and aircraft operators, as amended by the Commission Regulation (EU) No 285/2010 of 6 April 2010.

Insurance certificate or any other evidence of insurance have to list all insured risks and demonstrate compliance with the Regulation (EC) No 785/2004 of the European Parliament and of the Council of 21 April 2004 on insurance requirements for air carriers and aircraft operators.

12.2 If so, is there any restriction on reinsurance of the primary insurance outside the Relevant Jurisdiction?

No.

12.3 Is there a minimum percentage of cover which a local insurer is obliged to retain, and if so, what is it?

The requirements regarding minimum insurance covers stated in Special Drawing Rights (SDRs) are as follows:

Insurance in respect of liability to third parties, per accident for aircraft with a maximum take-off mass (MTOM) off:

- up to 500 kg: SDR 0.75m,
- from 501 and up to 1000 kg: 1.5m SDR,
- from 1.001 and up to 2.700 kg: 3m SDR,
- from 2.701 and up to 6.000 kg: 7m SDR,
- from 6.001 and up to 12.000 kg: 18m SDR,
- from 12.001 and up to 25.000 kg: 80m SDR,
- from 25.001 and up to 50.000 kg: 150m SDR,
- from 50.001 kg and up to 200.000 kg: 300m SDR,
- from 200.001 kg and up to 500.000 kg: 500m SDR,
- above 500.001 kg: 700m SDR.

For every individual passenger 250.000 SDR in commercial operations.

For baggage 1.131 SDR in commercial operations.

For cargo 19 SDR per kg in commercial operations.

In respect to non-commercial operations by an aircraft with MTOM of 2700 kg or less, the minimum insurance cover must be 100.000 SDR per passenger.
12.4 Is it possible for local insurers to assign contracts of reinsurance?

Yes.

If not, is a cut-through clause enforceable?

Yes, also.

13. LIABILITY FOR DAMAGE

Can the Owner be strictly liable – liable without a requirement to prove fault or negligence – for any damage or loss caused by the Aircraft assuming Owner is an innocent owner with no operational control of the Aircraft?

No. Lessee is liable for damage caused on earth by the Aircraft in air, during the Lease. Lessee is also liable for misdemeanor caused by using the Aircraft while the Aircraft is in its possession. Furthermore, Croatia has ratified Montreal Convention from 1999 defining liability of the Airline for damage.

14. DETENTION/CONFISCATION

14.1 Are there any rights to detain or sell the Aircraft pursuant to drug trafficking, tax or other laws or pursuant to rights of airport or air navigation authorities if the Airline fails to pay when due?

Yes, there is such a possibility. For example, according to Croatian Criminal Act, if the Aircraft was used for a purpose of criminal act (e.g. drug trafficking), a Court may confiscate the Aircraft, but in certain cases the Owner has a right of exemption from the enforcement.

14.2 If so, can the Aircraft be forfeited and sold without the Owner being made aware?

No.

15. SOVEREIGN IMMUNITY

15.1 Is any Airline based in the Relevant Jurisdiction entitled to any form of sovereign or other immunity from suit which might restrict the Owner’s rights under the Lease?
16. DISPUTE RESOLUTION AND RECIPROCAL ENFORCEMENT

16.1 Do the laws of the Relevant Jurisdiction permit and recognise an “asymmetric” submission to jurisdiction clause under which the lessee submits to the exclusive jurisdiction of the Courts of England but the Owner has discretion to choose a jurisdiction other than the Courts of England?

In Croatia, according to the rules of private international law the Regulation (EU) No 1215/2012 of the European Parliament and of the Council (Bruxelles I bis) is applicable to the jurisdiction, recognition and enforcement of judgements in civil and commercial matters. There is no explicit provision within Croatian Jurisdiction permitting such an “asymmetric” submission to jurisdiction clause.

16.2 If the Lease is governed by English Law and a judgment is obtained by the Owner in the English courts, can that judgment be automatically enforced in the Relevant Jurisdiction or will the case have to be re-examined on its merits? If so what procedures must be complied with to enforce such a judgment?

According to the Bruxelles I bis Regulation, such a judgment brought in England will be recognised in Croatia (with exceptions prescribed by the Regulation) without any special procedure being required. The judgment obtained in the English courts cannot be re-examined on its merits, save for an ordre public test (where applicable).

16.3 Is the Relevant Jurisdiction party to the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention) or the 1965 Convention on the Settlement of Investment Disputes Between States and Nationals of Other States (the Washington Convention)?

Yes, Croatia is party both the New York Convention and the Washington Convention.

Will the courts of the Relevant Jurisdiction recognise and enforce a decision of an arbitrator?

Generally yes, with some exceptions proscribed by the Croatian Arbitration Act and the New York Convention.
16.4 What is the usual choice of dispute resolution in international supply contracts involving a lessor or buyer incorporated in or with its main place of business in the Relevant Jurisdiction?

The usual choice of dispute resolution is arbitration or, in case foreign law is the governing law for the contract, disputes are often resolved before the courts of that country.

17. AIRCRAFT ENGINES

17.1 If the equipment being leased to the Airline in the Relevant Jurisdiction was an Aircraft Engine either unattached to an airframe or attached to an airframe belonging to a party other than the Aircraft Engine Owner and being leased to the Airline under a separate engine lease agreement, would there be any significant changes to the responses set out above?

No.

17.2 In particular, does the Relevant Jurisdiction recognise the separate ownership of the Aircraft Engine by the Aircraft Engine Owner when the Aircraft Engine is attached to an airframe belonging to a person other than the Aircraft Engine Owner?

Croatian law does not specifically recognise the separate ownership of the Aircraft Engine by the Aircraft Engine Owner through a system of registration where the Aircraft Engine is attached to an airframe owned by a person other than the Aircraft Engine Owner. However, since the Aircraft Engine can be physically detached from the airframe without demolishing the Aircraft, a separate property right over the Aircraft Engine can exist in favour of a person other than the airframe owner, subject to a contract between the Aircraft Engine Owner and the airframe owner (i.e. the Aircraft Owner) whereby, inter alia, the Aircraft Owner should acknowledge the engine title separation from the aircraft ownership and such rights should be recognised in courts. The Aircraft Engine Owner shall have a burden of proof that such property rights exist in its favour.

17.3 Is there a register of Aircraft Engines and is the information given above in relation to registration of Aircraft and the ownership and leasing of Aircraft the same for registration of an Aircraft Engine and the ownership and leasing of such Aircraft Engine at the Aircraft Engine register?

There is no Aircraft Engine register. However, although it is not explicitly prescribed by Croatian Law regulating the aircraft registration, it is possible to file the notice with the Croatian Civil Aircraft Registry confirming that the title over the Aircraft Engine has remained with the Engine Owner in spite the fact that the Aircraft Engine has been physically attached to the particular aircraft. Filing “the notice” itself does not constitute title or any other property right over the Aircraft Engine in favour of the Engine Owner (such right is constituted by the contract between the Aircraft Owner and the Engine Owner), however the notice should serve as an evidence to any third party that the Aircraft Engine is owned by a person other than the Aircraft Owner, pursuant to terms of the Engine SPA.
18. ADDITIONAL INFORMATION – IS THERE ANYTHING ELSE WE SHOULD HAVE ASKED?

Are there any other matters, issues, recommended courses of action or steps which can be taken to protect and/or perfect the Owner’s interests, as owner and lessor of the Aircraft in the Relevant Jurisdiction or of which the Owner should be aware when contemplating leasing an aircraft to a company incorporated and operating in the Relevant Jurisdiction?

N/A.
Aircraft finance and leasing in Czech Republic
1  PROPOSED TRANSACTION STRUCTURE

2  SEARCHES

2.1  Are there any public registers in the Relevant Jurisdiction where a search can be
carried out to determine whether an order or resolution for any bankruptcy,
bankruptcy protection or similar insolvency proceedings has been registered in
relation to the Airline?

2.2  If so, specify which public registers, how long such searches typically take and if the
fees are more than USD 100, approximately what fees apply.

3  RIGHTS AND EVIDENCE OF OWNERSHIP

3.1  In the case of the transfer of title to an aircraft registered in the Relevant Jurisdiction:

3.2  Other than Insolvency laws (see section 9) are there any laws which may have the
effect of defeating the Owner’s right in the aircraft – for example, Government
requisition? Do the laws of the Relevant Jurisdiction provide for any compensation in
such circumstances?

4  THE AIRCRAFT REGISTER – NATIONALITY OF AIRCRAFT

4.1  Has the Relevant Jurisdiction ratified any of:

4.2  If the Relevant Jurisdiction has ratified the Cape Town, see the Cape Town Convention
Annex.

4.3  If the Relevant Jurisdiction has not ratified the Cape Town Convention, has the
Relevant Jurisdiction started official proceedings or given any other official indication
that it will accede to or ratify the Cape Town Convention in the near future?

4.4  Is there an Aircraft Register in the Relevant Jurisdiction and if so, what is it called and
who operates it?

4.5  If so, in relation to registration:

4.6  What documents and/or consents are required to obtain registration on the Aircraft
Register and will these require any formalities (for example, notarisation, legalisation
or application of apostille)?

4.7  Are there any restrictions on the legal status and/or nationality/domicile of parties
seeking to register an aircraft on the Aircraft Register?

4.8  In respect of aircraft transactions connected with the Relevant Jurisdiction generally,
are there any foreign Aircraft Registers that are commonly used, or should be
considered, as alternatives to or in addition to registration with the Relevant
Jurisdiction’s Aircraft Register? If so, what is benefit of such registration?

4.9  Are there any other filings or registrations necessary or desirable (other than the
registrations already mentioned and Lease Registration – see section 6) in the
Relevant Jurisdiction in order to ensure the validity, priority or enforceability of the
transaction documents, or to perfect the interests of the Owner in the Aircraft or the
transaction documents?

5  LEASES

5.1  Will the Relevant Jurisdiction recognise the concept of a lease over an aircraft?

5.2  Would the choice of English law to govern the Lease be upheld as a valid choice of
law in any action in the Relevant Jurisdiction?

5.3  Must the Lease be in a particular form if it is to be valid and enforceable in the
Relevant Jurisdiction (for example, must it be in the language of the Relevant
Jurisdiction or be notarised, legalised or have the apostille applied)?

5.4  If the Lease must be in the language of the Relevant Jurisdiction, is it possible under
the Relevant Law also to have an English version, and to provide that the English
version should prevail in case of conflict with the Relevant Jurisdiction language
version?

5.5 Are there any special terms that the Lease must contain or that it is advisable for the Lease to contain?

5.6 Are there any circumstances under which the Lease might be re-characterised under the laws of the Relevant Jurisdiction as:

6 LEASE REGISTRATION

6.1 Is there a separate register for aircraft leases in the Relevant Jurisdiction?

6.2 If yes, then:

7 ENFORCEMENT OF LEASES (ASSUMING AIRLINE IS NOT IN A FORM OF INSOLVENCY PROTECTION)

7.1 On the occurrence of an event of default under the Lease, assuming that the Owner is permitted to do so under the terms of the Lease, can the Owner terminate the Leasing of the Aircraft under the Lease and enforce the Lease by taking physical possession of the Aircraft?

7.2 If so, can the Owner take physical possession of the Aircraft without the need for judicial proceedings in the Relevant Jurisdiction?

7.3 Where judicial proceedings in the Relevant Jurisdiction are necessary, please provide details of the proceedings, in particular:

7.4 Where judicial proceedings are not necessary, please comment on the time limits relevant to taking possession of the Aircraft, in particular:

7.5 Apart from the judicial proceedings described above and ignoring deregistration (see section 8), is the permission of any other party (including any official body) in the Relevant Jurisdiction required to take possession of the Aircraft?

7.6 Is there any history of actual repossession of aircraft by Owners in the Relevant Jurisdiction? If so, please provide details of any matters or issues of which an Owner should be aware.

7.7 Are there any circumstances in which the sums expressed to be payable under the Lease or obligations expressed to be assumed by the Airline in the Lease are or will be unrecoverable or unenforceable in the Relevant Jurisdiction?

7.8 Are there any restrictions on the ability of the Owner to sell the Aircraft in the Relevant Jurisdiction during the term of the Lease or, following an event of default, on termination of the leasing or pending judicial enforcement of the Lease?

7.9 Are there any export restrictions on export of a repossessed aircraft?

8 DEREGISTRATION POWER OF ATTORNEY/EXPORTATION

8.1 Can the Owner apply for deregistration of the Aircraft either at the end of the lease term or following successful repossession (with or without judicial proceedings) and is there any time period within which such application should be made?

8.2 Is the consent of the Airline required to deregister the Aircraft either by law or as a matter of custom or practice?

8.3 How long does deregistration take, both where there is co-operation from the Airline and where this is no co-operation from the Airline?

8.4 Is it possible to obtain an export licence or export permit in advance?

8.5 Approximately how long does it take to obtain an export licence or export permit? What are the costs involved?

8.6 Is it possible to obtain a certificate of deregistration in advance?

8.7 Will a power of attorney empowering the Owner to deregister and export the Aircraft from the Relevant Jurisdiction, either at the end of the lease term or following successful repossession (with or without judicial proceedings), be enforceable in the Relevant Jurisdiction?

8.8 If the power of attorney was stated to be irrevocable would this be enforceable against the Airline or can the Airline revoke such power of attorney?
8.9 Upon the occurrence of a bankruptcy or insolvency of the Airline is the power of attorney still effective?

9 INSOLVENCY
9.1 In the event that the Airline were to become insolvent either on a balance sheet basis (assets less than liabilities) or unable to pay debts as fall due:

TAXATION
10.1 The decision to lease to an airline in the Relevant Jurisdiction assumes that the Owner will not be taxed on receipt of rentals or other payments (including maintenance reserves) under the Lease except by way of tax on its general income, profits or gains payable by the Owner in its place of incorporation or place of main business (if different). Will there be a requirement for the Owner to pay tax in the Relevant Jurisdiction on lease payments on basis that either the Owner is subject to taxation in the Relevant Jurisdiction by reason only of the leasing of the Aircraft under the Lease and is required to make payment itself; or payment of such tax is by way of the airline being required to withhold and account for tax from lease payments, where:

10.2 If there is a requirement in the Relevant Jurisdiction for the airline to withhold tax on lease payments, will the courts of the Relevant Jurisdiction recognise and permit enforcement of a “gross up” clause in the Lease requiring the payment by the Airline of an additional sum to ensure the Owner receives and is entitled to retain the same net amount as would have been received in the absence of the withholding, taking account of any further withholding on account of tax required in relation to such additional sum.

10.3 VAT: European Union country: under Article 148(f) of the VAT Directive, an exemption from VAT is applied to “supplies” consisting of chartering or hiring of aircraft which are used by airlines operating for reward chiefly on international routes. Therefore:

10.4 Ignoring any taxation consequence already mentioned and any potential taxation issues if the Owner has any other connection to the Relevant Jurisdiction, is there any other Relevant Jurisdiction taxation consequence of the Owner:

10.5 Making available a lease facility to a company incorporated or regulated in the Relevant Jurisdiction?

EXCHANGE CONTROLS
11.1 Are payments to foreign owners by companies incorporated or registered in the Relevant Jurisdiction subject to any form of exchange or similar control?

11.2 If yes, can any consents, authorisations or licences be obtained to exempt payments from any such control? How would these be obtained? Are such consents, authorisations or licences transferable?

INSURANCE
12.1 Is it a legal requirement to insure the Aircraft within the Relevant Jurisdiction?

12.2 If so, is there any restriction on reinsurance of the primary insurance outside the Relevant Jurisdiction?

12.3 Is there a minimum percentage of cover which a local insurer is obliged to retain, and if so, what is it?

12.4 Is it possible for local insurers to assign contracts of reinsurance?

LIABILITY FOR DAMAGE
13.1 Can the Owner be strictly liable – liable without a requirement to prove fault or negligence – for any damage or loss caused by the Aircraft assuming Owner is an innocent owner with no operational control of the Aircraft?

DETENTION/CONFISCATION
14.1 Are there any rights to detain or sell the Aircraft pursuant to drug trafficking, tax or
other laws or pursuant to rights of airport or air navigation authorities if the Airline fails to pay when due?

14.2 If so, can the Aircraft be forfeited and sold without the Owner being made aware?

15 SOVEREIGN IMMUNITY

15.1 Is any Airline based in the Relevant Jurisdiction entitled to any form of sovereign or other immunity from suit which might restrict the Owner's rights under the Lease?

15.2 Can such immunity be validly waived in advance by contract?

16 DISPUTE RESOLUTION AND RECIPROCAL ENFORCEMENT

16.1 Do the laws of the Relevant Jurisdiction permit and recognise an "asymmetric" submission to jurisdiction clause under which the lessee submits to the exclusive jurisdiction of the Courts of England but the Owner has discretion to choose a jurisdiction other than the Courts of England?

16.2 If the Lease is governed by English Law and a judgment is obtained by the Owner in the English courts, can that judgment be automatically enforced in the Relevant Jurisdiction or will the case have to be re-examined on its merits? If so what procedures must be complied with to enforce such a judgment?

16.3 Is the Relevant Jurisdiction party to the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention) or the 1965 Convention on the Settlement of Investment Disputes Between States and Nationals of Other States (the Washington Convention)? Will the courts of the Relevant Jurisdiction recognise and enforce a decision of an arbitrator?

16.4 What is the usual choice of dispute resolution in international supply contracts involving a lessor or buyer incorporated in or with its main place of business in the Relevant Jurisdiction?

17 AIRCRAFT ENGINES

17.1 If the equipment being leased to the Airline in the Relevant Jurisdiction was an Aircraft Engine either unattached to an airframe or attached to an airframe belonging to a party other than the Aircraft Engine Owner and being leased to the Airline under a separate engine lease agreement, would there be any significant changes to the responses set out above?

17.2 In particular, does the Relevant Jurisdiction recognise the separate ownership of the Aircraft Engine by the Aircraft Engine Owner when the Aircraft Engine is attached to an airframe belonging to a person other than the Aircraft Engine Owner?

17.3 Is there a register of Aircraft Engines and is the information given above in relation to registration of Aircraft and the ownership and leasing of Aircraft the same for registration of an Aircraft Engine and the ownership and leasing of such Aircraft Engine at the Aircraft Engine register?

18 ADDITIONAL INFORMATION – IS THERE ANYTHING ELSE WE SHOULD HAVE ASKED?
1. PROPOSED TRANSACTION STRUCTURE

The Aircraft will be purchased by the Owner and leased on an operating lease basis to the Airline pursuant to the Lease.

Is this the usual structure for transactions of this nature in the Relevant Jurisdiction?
Yes. An operating lease is considered the usual structure for transactions of this nature. Although there have been cases of direct purchases of the aircrafts in recent years, it is not considered a prevailing trend in the Czech Republic.

2. SEARCHES

2.1 Are there any public registers in the Relevant Jurisdiction where a search can be carried out to determine whether an order or resolution for any bankruptcy, bankruptcy protection or similar insolvency proceedings has been registered in relation to the Airline?

Yes.

2.2 If so, specify which public registers, how long such searches typically take and if the fees are more than USD 100, approximately what fees apply.

The applicable register is the Insolvency Register (the “IR”) maintained by the relevant regional court (i.e. the court where the company has its registered office). The searches can be carried out online as the IR is accessible through the public web portal. The official extract concerning certain legal entity can be obtained, among others, through a notary for a small fee.

3. RIGHTS AND EVIDENCE OF OWNERSHIP

3.1 In the case of the transfer of title to an aircraft registered in the Relevant Jurisdiction:

3.1.1 Is any particular form of transfer required for the transfer to be legally recognised?

Pursuant to the Act No. 49/1997 Coll. on Civil Aviation (the “ACA”) the agreement through which the ownership title is being transferred must be executed in a written form.

3.1.2 Must any particular conditions be satisfied for the transfer to be recognised?
The ACA prescribes that the transfer must be registered in the Czech Aviation Register (the “Aviation Register”) to become effective. Furthermore, in case the aircraft is subject to pledge, pledgee’s consent must be obtained.

3.1.3 Will such a transfer still be recognised by the courts of the Relevant Jurisdiction as legally valid where the relevant aircraft is located in another jurisdiction at the time of the transfer?

Under the applicable provisions on conflict of laws the transfer is governed by the laws of the country where the aircraft is registered. Therefore the actual location of the aircraft is considered irrelevant.

3.1.4 Are any duties, taxes or fees levied on such transfer of ownership?

Generally the VAT applies to the supply of an aircraft to the Czech Republic. However, the airline will be exempted from its VAT duty provided the aircraft is designated to serve on international routes. The same applies for repair, modification, maintenance and lease of such aircraft or devices installed onto such aircraft.

Additionally, in case an aircraft is sold within one year following its acquisition the profit is the not subject to the income tax.

3.2 Other than Insolvency laws (see section 9) are there any laws which may have the effect of defeating the Owner’s right in the aircraft – for example, Government requisition? Do the laws of the Relevant Jurisdiction provide for any compensation in such circumstances?

In case of specific statutory defined emergency situations (e.g. natural disasters, war etc.), the Czech government is entitled to expropriate the aircraft or otherwise restrict the owner’s right of disposition. Nevertheless, compensation must be provided.

From the tax law perspective, the tax authorities may secure the debts arising from unpaid taxes through the unilateral establishment of pledge to the property of the debtor.

In context of criminal proceedings, the seizure of goods may be imposed as a result of conviction from various crimes such as money laundering or reduction/curtailment of taxes.

The ownership title may also be defeated by the retention right of the possessor of the aircraft for purposes of securing the debt that arose in connection with the aircraft. For instance, the repairer may retain the aircraft until the owner does not fulfil his obligation to pay the price for the agreed services.

As regards the rights of the national Civil Aviation Authority (the “CAA”), it is only entitled to seize the Certificate of Airworthiness if the aircraft does not meet the conditions of airworthiness.

4. THE AIRCRAFT REGISTER – NATIONALITY OF AIRCRAFT
4.1 Has the Relevant Jurisdiction ratified any of:

The Chicago Convention of 1944 on International Civil Aviation?
Yes

The 1948 Geneva Convention on the International Recognition of Rights in Aircraft?
Yes

The 1933 Convention for the Unification of Certain Rules Relating to the Precautionary Arrest of Aircraft?
No

The 2001 Cape Town Convention on International Interests in Mobile Equipment and the associated Protocol on Matters Specific to Aircraft Equipment (the Cape Town Convention)?
No

4.2 If the Relevant Jurisdiction has ratified the Cape Town, see the Cape Town Convention Annex.

4.3 If the Relevant Jurisdiction has not ratified the Cape Town Convention, has the Relevant Jurisdiction started official proceedings or given any other official indication that it will accede to or ratify the Cape Town Convention in the near future?

The official negotiations on accession of the Czech Republic to the Cape Town Convention were stopped several years ago due to the lack of political consensus at the governmental level. There is no indication the negotiations will be renewed in the near future.

Furthermore, please note that EU acceded to the Cape Town Convention as a Regional Economic Integration Organisation in 2009. However, the Czech authorities do not seem to derive any practical or legal consequences thereof, as the implications of the Convention are not taken into account and the applicability of the Convention in the Czech Republic is not recognised by the relevant civil aviation authorities (CAA).

4.4 Is there an Aircraft Register in the Relevant Jurisdiction and if so, what is it called and who operates it?

Yes, the Aviation Register maintained by the CAA.

4.5 If so, in relation to registration:

4.5.1 Who is responsible for registering the Aircraft – is it an owner registry or an operator registry?

The respective application must be filed by both owner and operator (e.g. lessor if applicable) of the aircraft. It can be therefore assumed that the Czech Aviation Register is rather of a hybrid nature.
4.5.2 What details would normally be recorded on the Aircraft Register upon registration of an aircraft in the Relevant Jurisdiction? If not normally recorded, is it possible to record the Lease and/or an Aircraft Mortgage on the Aircraft Register?

Details concerning both owner and operator (if applicable) must be recorded. With respect to the details on the aircraft itself, license plate, type and serial number, aircraft mortgage (if applicable), aircraft address (if allotted) and the date of registration/deregistration of the aircraft must all be entered into the Aviation Register. Furthermore, secondary legislation prescribes to record additional technical information such as the identification of manufacturer or maximum take-off weight. The lease of the aircraft is not subject to registration. On the other hand, the lessor of the aircraft would typically be recorded as the operator.

4.5.3 If the Aircraft Register is an operator register, is it possible to record the details of the aircraft owner/lessor and any financier with an Aircraft Mortgage?

It is possible to record details on both the owner and the aircraft mortgagee. As for the nature of the register, please see 4.5.1

4.5.4 If the Aircraft Register is an owner register, is registration on the Aircraft Register definitive to determine ownership of the Aircraft?

The registration of an owner is definitive as regards an ownership determination. As for the nature of the register, please see 4.5.1

4.5.5 Are any distinctions made between aircraft employed on international routes and those used purely for domestic flights?

No. There are differences only for the VAT purposes (please see 3.1.4).

4.6 What documents and/or consents are required to obtain registration on the Aircraft Register and will these require any formalities (for example, notarisation, legalisation or application of apostille)?

To register an aircraft, an application together with the supporting documents must be filed with the CAA. The supporting documents must contain (i) extract from the Commercial Register evidencing existence of an owner/operator; (ii) documents evidencing the owner's title/operator's title to the aircraft (i.e. purchase agreement, lease agreement); (iii) insurance certificate; (iv) document evidencing the existence of aircraft mortgage; (v) confirmation that the aircraft is not registered in another jurisdiction (only in case of supply of the aircraft from abroad) All documents need to be submitted at least in the form of verified copies.

4.7 Are there any restrictions on the legal status and/or nationality/domicile of parties seeking to register an aircraft on the Aircraft Register?

No.
4.8 In respect of aircraft transactions connected with the Relevant Jurisdiction generally, are there any foreign Aircraft Registers that are commonly used, or should be considered, as alternatives to or in addition to registration with the Relevant Jurisdiction's Aircraft Register? If so, what is benefit of such registration?

No.

4.9 Are there any other filings or registrations necessary or desirable (other than the registrations already mentioned and Lease Registration – see section 6) in the Relevant Jurisdiction in order to ensure the validity, priority or enforceability of the transaction documents, or to perfect the interests of the Owner in the Aircraft or the transaction documents?

The aircraft mortgage must be recorded in the Aviation Register to come fully into effect. The application itself must, among others, specify the secured debt. Furthermore, the application needs to be accompanied by the original/verified copy of the document evidencing creation of the security interest.

5. LEASES

5.1 Will the Relevant Jurisdiction recognise the concept of a lease over an aircraft?

Yes.

5.2 Would the choice of English law to govern the Lease be upheld as a valid choice of law in any action in the Relevant Jurisdiction?

Generally yes, if one of the parties is not a Czech entity. In such case, the parties are free to choose the applicable law and the choice of English law would be respected. However, such choice must not prejudice mandatory (public order) provisions of the Czech legal system.

5.3 Must the Lease be in a particular form if it is to be valid and enforceable in the Relevant Jurisdiction (for example, must it be in the language of the Relevant Jurisdiction or be notarised, legalised or have the apostille applied)?

No, there are no such requirements.

5.4 If the Lease must be in the language of the Relevant Jurisdiction, is it possible under the Relevant Law also to have an English version, and to provide that the English version should prevail in case of conflict with the
5.5 Are there any special terms that the Lease must contain or that it is advisable for the Lease to contain?

There are no special mandatory terms that the aircraft lease agreement must contain. However, due to complexity of aircraft leases it is advisable to seek a legal advice from the local law firm experienced in dealing with such matters.

5.6 Are there any circumstances under which the Lease might be re-characterised under the laws of the Relevant Jurisdiction as:

5.6.1 a secured loan?

We are not aware of any substantial case law indicating the basis for re-characterisation of lease (sale and financial lease back) as a secured loan. On the other hand, the sale and financial leaseback transaction has been disputed in context of tax laws. In this regard, the case law generally does not deem sale and lease back as an unlawful tool to disguise different type of transaction to reduce tax burden. However, under specific circumstances (e.g. repeating such transaction in respect of the same goods contrary to its true economic substance), liability for tax reduction may arise.

5.6.2 a finance (or capital) lease?

From the tax law perspective, finance lease and operating lease may be re-characterised one for another under various circumstances.

6. LEASE REGISTRATION

6.1 Is there a separate register for aircraft leases in the Relevant Jurisdiction?

No.

6.2 If yes, then:

6.2.1 What documentation and/or consents are required for the registration of the Lease?

N/A

6.2.2 What registration fees are payable (if any)?
6.2.3 What information is recorded on the register? How is the eventual discharge of the Lease recorded?

N/A

6.2.4 Does any registration in respect of the Lease remain valid throughout the tenure of the Lease or does such a registration require periodic renewal? If renewal is required when must this be done and what is the approximate cost of renewal?

N/A

7. ENFORCEMENT OF LEASES (ASSUMING AIRLINE IS NOT IN A FORM OF INSOLVENCY PROTECTION)

7.1 On the occurrence of an event of default under the Lease, assuming that the Owner is permitted to do so under the terms of the Lease, can the Owner terminate the Leasing of the Aircraft under the Lease and enforce the Lease by taking physical possession of the Aircraft?

Yes, theoretically such option might be freely negotiated in the aircraft lease agreement.

7.2 If so, can the Owner take physical possession of the Aircraft without the need for judicial proceedings in the Relevant Jurisdiction?

In general, the owner is entitled to take physical possession of the leased goods without judicial proceedings provided such way of enforcement is granted by the lease agreement. The Owner, however, can take only legal measures to do so. In any case judicial proceedings are recommended.

7.3 Where judicial proceedings in the Relevant Jurisdiction are necessary, please provide details of the proceedings, in particular:

7.3.1 What documents would the Owner as lessor need to present in order to obtain possession of the Aircraft, both before and subsequent to judgment? Can documents be copies?

The Owner would need to prove the ownership of the aircraft and valid termination of the Lease. Subsequent to judgement a court decision would be necessary. Generally originals of documents must be provided.
7.3.2 What is the approximate cost of issuing proceedings?

This is different on case by case basis and depends on the circumstances of the case in question.

7.3.3 Would the Owner be required to provide a bond, guarantee or other security in order to issue proceedings?

No, but since the proceedings would be normal court proceedings a court fee must be paid.

7.3.4 What is an estimate of the normal duration of possession proceedings from time at which all required documentation is made available – if uncontested?

Three to 12 months

7.3.5 What is an estimate of the normal duration of possession proceedings from time at which all required documentation is made available – if contested?

Nine to 24 months.

7.4 Where judicial proceedings are not necessary, please comment on the time limits relevant to taking possession of the Aircraft, in particular:

7.4.1 Is there a waiting period before action may be taken?

There is no statutory waiting period before action to repossess is taken. The period may be prescribed under the terms of the lease agreement.

7.4.2 Is there a long stop date by which action must be taken?

There is a general limitation period of three years following the date the lessor has learnt he is entitled to repossess the goods (aircraft) (i.e. the conditions for repossession stipulated under the lease agreement were fulfilled). However the right for repossession must be taken no later than ten years following the date of its maturity.

7.4.3 Is a Public Auction of the aircraft required?

No.

7.5 Apart from the judicial proceedings described above and ignoring deregistration (see section 8), is the permission of any other party (including any official body) in the Relevant Jurisdiction required to take possession of
the Aircraft?

No formal permission by any official body is generally required in the context of the lease goods repossessions.

7.6 Is there any history of actual repossession of aircraft by Owners in the Relevant Jurisdiction? If so, please provide details of any matters or issues of which an Owner should be aware.

We are not aware of any cases concerning of the actual aircraft repossessions in the Czech Republic.

7.7 Are there any circumstances in which the sums expressed to be payable under the Lease or obligations expressed to be assumed by the Airline in the Lease are or will be unrecoverable or unenforceable in the Relevant Jurisdiction?

Such situation may occur in relation to the insolvency proceedings or as a result of enforcement/execution proceedings.

7.8 Are there any restrictions on the ability of the Owner to sell the Aircraft in the Relevant Jurisdiction during the term of the Lease or, following an event of default, on termination of the leasing or pending judicial enforcement of the Lease?

Generally, the lessor is allowed to transfer the ownership title to the property under the lease agreement without restrictions (unless otherwise agreed on the lease agreement). Furthermore, the insolvency or enforcement/execution proceedings also do not impose such restriction.

Pursuant to the Czech insolvency law, once a decision on lessee's insolvency has been issued, the lessor is not entitled to terminate the lease agreement due to the lessee's delay with rental payments or other considerations that arose before the decision on the insolvency or due to the deterioration of the lessee's property situation. On the other hand, the insolvency administrator may freely terminate the lease agreement on behalf of the lessee.

7.9 Are there any export restrictions on export of a repossessed aircraft?

An Export Certificate of Airworthiness is required.

**8. DEREGISTRATION POWER OF ATTORNEY/EXPORTATION**

8.1 Can the Owner apply for deregistration of the Aircraft either at the end of the lease term or following successful repossession (with or without judicial proceedings) and is there any time period within which such application should be made?
Yes, the owner can apply for deregistration of the aircraft. There is no time period within which such application should be made.

8.2 Is the consent of the Airline required to deregister the Aircraft either by law or as a matter of custom or practice?

The law does not expressly require the airline (the operator) to provide consent with deregistration. However, the CAA always contacts the operator to provide statement relating thereto. As a result, the operator becomes party to the deregistration proceedings.

If the application for deregistration is filed by the operator, consent of the owner is required.

8.3 How long does deregistration take, both where there is co-operation from the Airline and where this is no co-operation from the Airline?

If both parties co-operate, the proceedings would take approximately ten days. In general, the CAA is obligated to carry out deregistration in 30 days (in difficult cases, period of 60 days may apply).

8.4 Is it possible to obtain an export licence or export permit in advance?

Aircrafts should not be subject to export licences/permits as long as they are used only for civil aviation purposes.

8.5 Approximately how long does it take to obtain an export licence or export permit? What are the costs involved?

N/A

8.6 Is it possible to obtain a certificate of deregistration in advance?

No.

8.7 Will a power of attorney empowering the Owner to deregister and export the Aircraft from the Relevant Jurisdiction, either at the end of the lease term or following successful repossession (with or without judicial proceedings), be enforceable in the Relevant Jurisdiction?

Yes.

Will the courts recognise a power of attorney in the form of an IDERA and governed by English law? The power of attorney governed by the English law will be recognised but must be also conform with Czech law requirements (e.g. regarding identification of parties etc.). We however do not have any experience with IDERA. Due to the fact that Czech Republic is not a direct signatory to the Cape Town Convention, the representatives of the CAA confirmed to us that they are not familiar with IDERA as well.
8.8 If the power of attorney was stated to be irrevocable would this be enforceable against the Airline or can the Airline revoke such power of attorney?

Generally, the irrevocability would not be enforceable as such arrangement is not allowed under Czech law. On the other hand, it is allowed to agree on certain reasons for which only the power of attorney can be revoked.

8.9 Upon the occurrence of a bankruptcy or insolvency of the Airline is the power of attorney still effective?

Upon occurrence of bankruptcy and appointment of insolvency administrator, the power of attorney ceases to exist.

9. INSOLVENCY

9.1 In the event that the Airline were to become insolvent either on a balance sheet basis (assets less than liabilities) or unable to pay debts as fall due:

9.1.1 Would the airline be required to file for insolvency protection?

Yes, an entity (its statutory body) is obliged to file an insolvency petition provided the conditions of insolvency are met. If the petition is not filed or is filed late, liability of the statutory body might arise.

9.1.2 Do the available forms of insolvency protection in the Relevant Jurisdiction involve the appointment of either an officer of the court or a specifically court appointed official to take control of the Airline (an Insolvency Official) while in insolvency protection?

Yes. However the extent of an Insolvency Official’s powers depends on the method of resolution of the insolvency. In case of bankruptcy, the Insolvency Official has all the disposition rights to the assets of the insolvent company, while within reorganization his role is only supervisory.

9.1.3 Does the Insolvency Official have authority to negotiate and reach agreement with the Owner in relation to matters such as the payment of unpaid rent, continuation or termination of the Lease and repossession of the Aircraft without the need for court approval?

In case of bankruptcy, an Insolvency Official would have the authority to negotiate and reach agreement with the Owner with respect to the above mentioned matters.

9.1.4 Does the commencement of insolvency protection involving the appointment of
an Insolvency Official in the Relevant Jurisdiction have the effect of prohibiting the Owner from taking the following actions to enforce the lease after commencement of such protection:

- **(a.) Applying any security deposit held by the Owner against any unpaid amounts due under the Lease?** The possibility to set off the due debts against the security deposit would depend mainly on the phase of insolvency proceedings. In general, until the issuance of a decision on insolvency, the set off is allowed. However, the set off is banned within the moratorium unless the court issued a preliminary measure enabling the creditor to take such action. After the decision on insolvency is issued, the set off is generally forbidden (however certain exceptions may apply).

- **(b.) Accepting payment of rent or other lease payments from:**
  1. **(i.) the Airline?** It is allowed to accept the payments under the lease agreement provided the respective payments are transferred by an authorized person/entity (e.g. the Insolvency Administrator in the course bankruptcy proceedings and the debtor in the course of reorganization proceedings).
  2. **(ii.) a guarantor?** There is no restriction in respect of claiming the due debts against the guarantor alongside the insolvency proceedings.
  3. **(iii.) a shareholder?** There is no limitation on accepting payments from the shareholder.

- **(c.) Giving notice of default under the lease?** The notice of default may be given.

- **(d.) Obtaining a judgment or arbitral award for unpaid lease payments?** After the commencement of insolvency proceedings, unpaid lease payments cannot be enforced through court or arbitral proceedings. The receivables must be claimed only through application filed with the relevant insolvency court.

- **(e.) Giving notice to terminate the leasing of the Aircraft?** The commencement of insolvency proceedings itself does not affect the Owner's right to terminate the lease agreement.

- **(f.) Exercising rights to repossess the Aircraft?** The commencement of insolvency proceedings itself does not affect the Owner's contractual rights (such as lease termination and subsequent repossession).

**9.1.5 Can the commencement of Insolvency Proceedings have retrospective effect in relation to any such actions taken before commencement? If so, for what period can there be a look back?**

Yes, in case the debtor took actions in order to intentionally damage the creditors, it is possible to bring an action to the court. In this respect, the 5 year look-back period would apply meaning the actions intentionally damaging creditors carried out as long as 5 years prior to the commencement of insolvency proceedings may be disputed and declared ineffective as a result. However, creditor's claim would only be successful provided the debtor's transaction counterparty must have been familiar with debtor's damaging intention. Such familiarity is presumed with respect to the transactions within a concern. For instance, this situation may be relevant in terms of informal restructuring (i.e. restructuring outside the insolvency proceedings framework).

In case of the debtor's lack of intent to damage his creditors, 3 year look back-period would apply with respect to the actions found “disproportionally favourable” or “without adequate consideration”.

**9.1.6 Is there, either under law or as a matter of practice in the Relevant Jurisdiction, a period of time within which the Insolvency Official will either “adopt” the lease and pay**
rent and other lease payments as an expense of the insolvency or “reject” the lease and permit the Owner to enforce such rights as it may have under the lease?

The “adoption” of the lease applies only to the situation where the respective goods have not been handed over to the lessee yet. Under these circumstances and provided the decision on bankruptcy has been issued, the lessor may request to be informed by the Insolvency Official whether the lease is rejected or not. The Insolvency Official is obligated to provide the information on adoption (or rejection) of the lease within ten days following the request. Otherwise, the right to reject the lease ceases to exist.

9.1.7 If the lease is “adopted” will the Insolvency Official also pay any unpaid lease payments due as at commencement of the insolvency protection?

No. The payments due as at commencement of the insolvency proceedings must be claimed through the application filed with the insolvency court.

9.1.8 If not or if the lease is “rejected”, would the Owner’s claim for any outstanding sums rank equally with other ordinary unsecured creditors of the Airline?

Yes, provided the Owner is the unsecured creditor as well.

9.1.9 Are there certain types of preferred creditors whose claims will rank above claims of the Owner?

Unless the Owner qualifies as a secured creditor, the claims of the secured creditors will be privileged. Furthermore, among others, the claims arising in connection with costs of the insolvency proceedings or the claims under the employment agreements would be considered privileged.

9.1.10 If the Aircraft is in the possession of a person other than the Airline at the commencement of Insolvency Protection of the Airline, for example an independent maintenance facility, will such person be entitled, under the laws of the Relevant Jurisdiction, to assert a lien arising under law or contract over the Aircraft in respect of amounts then due and unpaid to such person by the Airline?

Any such liens would need to be asserted only through the insolvency proceedings. In case of the retention right that may arise to the maintenance facility, the respective creditor of the airline (i.e. facility proprietor) would be deemed a secured creditor due to the retention right to the aircraft.

9.1.11 Is a person other than the Airline, for example an airport authority, entitled under the laws of the Relevant Jurisdiction to seize possession of the Aircraft after commencement of Insolvency Protection and assert a lien arising under law or contract over the Aircraft in respect of amounts then due and unpaid to such person by the Airline?

No.
10. TAXATION

10.1 The decision to lease to an airline in the Relevant Jurisdiction assumes that the Owner will not be taxed on receipt of rentals or other payments (including maintenance reserves) under the Lease except by way of tax on its general income, profits or gains payable by the Owner in its place of incorporation or place of main business (if different). Will there be a requirement for the Owner to pay tax in the Relevant Jurisdiction on lease payments on basis that either the Owner is subject to taxation in the Relevant Jurisdiction by reason only of the leasing of the Aircraft under the Lease and is required to make payment itself; or payment of such tax is by way of the airline being required to withhold and account for tax from lease payments, where:

10.1.1 the Owner is incorporated and is tax resident in Ireland?
No.

10.1.2 the Owner is incorporated and is tax resident in the United Kingdom?
Yes, tax withholding applies. Operating lease: 10%; Financial lease: 5% (Under the international treaty on prevention of double taxation the withheld tax should be subsequently set off against the tax duty in the UK)

10.1.3 the Owner is incorporated and is tax resident in Hong Kong?
Yes, tax withholding applies. Operating lease: 10%; Financial lease: 5% (Under the international treaty on prevention of double taxation the withheld tax should be subsequently set off against the tax duty in the Hong Kong)

10.1.4 the Owner is incorporated and is tax resident in Singapore?
Yes, tax withholding applies. Operating lease: 10%; Financial lease: 5% (Under the international treaty on prevention of double taxation the withheld tax should be subsequently set off against the tax duty in the Singapore)

10.1.5 the Owner is incorporated and is tax resident in Malta?
Yes, tax withholding applies. Operating lease: 5%; Financial lease: 5% (Under the international treaty on prevention of double taxation the withheld tax should be subsequently set off against the tax duty in the Malta)

10.1.6 the Owner is incorporated and is tax resident in the Channel Islands (Jersey,
10.1.7 the Owner is incorporated and is tax resident in the Isle of Man?

Yes, tax withholding applies. Operating lease: 15%; Financial lease: 5% (International treaty on prevention of double taxation concluded with UK does not extend to Channel Islands; No other treaty concluded)

10.1.8 the Owner is incorporated and is tax resident in Mauritius?

Yes, tax withholding applies. Operating lease: 35%; Financial lease: 5% (No treaty concluded)

10.1.9 the Owner is incorporated and is tax resident in Bermuda?

Yes, tax withholding applies. Operating lease: 15%; Financial lease: 5% (No treaty concluded)

10.1.10 the Owner is incorporated and is tax resident in the Cayman Islands?

Yes, tax withholding applies. Operating lease: 15%; Financial lease: 5% (No treaty concluded)

10.2 If there is a requirement in the Relevant Jurisdiction for the airline to withhold tax on lease payments, will the courts of the Relevant Jurisdiction recognise and permit enforcement of a “gross up” clause in the Lease requiring the payment by the Airline of an additional sum to ensure the Owner receives and is entitled to retain the same net amount as would have been received in the absence of the withholding, taking account of any further withholding on account of tax required in relation to such additional sum.

Yes.

10.3 VAT: European Union country: under Article 148(f) of the VAT Directive, an exemption from VAT is applied to “supplies” consisting of chartering or hiring of aircraft which are used by airlines operating for reward chiefly on international routes. Therefore:

10.3.1 New lease to airline operating for reward chiefly in domestic routes: VAT will be applied to lease rentals at current rate:

21%
10.3.2 New Lease to airline operating for reward chiefly on international routes: VAT will not be applied to lease rentals by reason of application of exemption:

Yes

10.3.3 Sale of aircraft by an aircraft lessor to another aircraft lessor of an aircraft subject to a lease to an airline operating for reward chiefly in domestic routes: VAT will be applied to the purchase price. If the seller and the purchaser are both EU entities and the purchaser supplies its EUVAT Number to the seller then the VAT charge will be a reverse charge. Otherwise VAT will be applied to purchase price at current rate:

21%

10.3.4 Sale of aircraft by an aircraft lessor to another aircraft lessor of an aircraft subject to a lease to an airline operating for reward chiefly on international routes: VAT will be applied to purchase price:

No

10.3.5 If no, is this because of application of the exemption under Article 148(f) to the airline following the decision in ECJ Case C-33/2011?

Yes

10.3.6 If yes, is this because the Relevant Jurisdiction does not apply the decision in ECJ Case C-33/2011?

N/A

10.3.7 If the transaction involves the first importation of the aircraft into the EU (and assuming the aircraft is intended for use as a civil and not military aircraft) what rate of Customs Duty will apply?

0 %

10.4 Is any stamp duty, notarial or other fee or equivalent payable in respect of the execution of the Lease, a de-registration power of attorney or any other lease related document concerning the aircraft? Will such stamp duty or fee still be payable if the relevant documents are executed and held outside the Relevant Jurisdiction? If any
such amount is payable how much is it approximately?

No such fees apply.

10.5 Can any form of consent, authorisation or licence be obtained exempting the payments referred to in this Section from such tax or duty? If so, how would it be obtained?

No

10.6 Ignoring any taxation consequence already mentioned and any potential taxation issues if the Owner has any other connection to the Relevant Jurisdiction, is there any other Relevant Jurisdiction taxation consequence of the Owner:

10.6.1 Being owner and lessor of an aircraft registered in the Relevant Jurisdiction and operated/leased by a company incorporated or registered in the Relevant Jurisdiction?

No.

10.6.2 Making available a lease facility to a company incorporated or regulated in the Relevant Jurisdiction?

No.

10.6.3 Receiving rent and other lease payments under the Lease from the lessee incorporated or registered in the Relevant Jurisdiction?

No.

10.6.4 Repossessing the aircraft and exporting the aircraft from the Relevant Jurisdiction?

No.

10.6.5 Selling the aircraft at a profit, whether such sale is after repossession or is subject to the Lease and the lessee’s rights?

No.
11. EXCHANGE CONTROLS

11.1 Are payments to foreign owners by companies incorporated or registered in the Relevant Jurisdiction subject to any form of exchange or similar control?

No restrictions are imposed as regards the export of capital in favour of foreign entities.

11.2 If yes, can any consents, authorisations or licences be obtained to exempt payments from any such control? How would these be obtained? Are such consents, authorisations or licences transferable?

N/A

12. INSURANCE

12.1 Is it a legal requirement to insure the Aircraft within the Relevant Jurisdiction?

The operator must ensure that adequate insurance will be maintained but there is no requirement that the risk is placed with insurers or underwriters in the Czech Republic.

12.2 If so, is there any restriction on reinsurance of the primary insurance outside the Relevant Jurisdiction?

N/A

12.3 Is there a minimum percentage of cover which a local insurer is obliged to retain, and if so, what is it?

N/A

12.4 Is it possible for local insurers to assign contracts of reinsurance?

The assignment of contracts of reinsurance is generally possible under Czech law. With regard to the cut-through clauses, we are of the view that such provisions should be enforceable under Czech law (if properly drafted). However, as this is not a standard provision and there is a lack of sufficient case law it cannot be excluded that the courts may take different position.

13. LIABILITY FOR DAMAGE
13.1. Can the Owner be strictly liable – liable without a requirement to prove fault or negligence – for any damage or loss caused by the Aircraft assuming Owner is an innocent owner with no operational control of the Aircraft?

Generally, operator (lessee) would be liable for any damage caused by the aircraft.

14. DETENTION/CONFISCATION

14.1 Are there any rights to detain or sell the Aircraft pursuant to drug trafficking, tax or other laws or pursuant to rights of airport or air navigation authorities if the Airline fails to pay when due?

Neither the CAA, airport or navigation authorities dispose of the right to detain an aircraft under the described (or any other) circumstances. For other cases of detention/confiscation please refer to 3.2.

14.2 If so, can the Aircraft be forfeited and sold without the Owner being made aware?

As regards the cases of criminal activity or emergency situation as described in 3.2., it could be possible that the owner would not be aware of the confiscation/detention of the aircraft.

15. SOVEREIGN IMMUNITY

15.1 Is any Airline based in the Relevant Jurisdiction entitled to any form of sovereign or other immunity from suit which might restrict the Owner’s rights under the Lease?

There are currently no civil airlines in the Czech Republic that would be considered as state bodies and as such would be entitled to enjoy the state immunity.

15.2 Can such immunity be validly waived in advance by contract?

Yes. It is a sole discretion of the state to waive its immunity.

16. DISPUTE RESOLUTION AND RECIPROCAL ENFORCEMENT

16.1 Do the laws of the Relevant Jurisdiction permit and recognise an “asymmetric” submission to jurisdiction clause under which the lessee submits to the exclusive jurisdiction of the Courts of England but the Owner
15.2 If the Lease is governed by English Law and a judgment is obtained by the Owner in the English courts, can that judgment be automatically enforced in the Relevant Jurisdiction or will the case have to be re-examined on its merits? If so what procedures must be complied with to enforce such a judgment?

Pursuant to the Council Regulation (EC) No 44/2001, the judgment issued by the court in the UK would be directly enforceable in the Czech Republic (based on the procedure envisaged by the Regulation).

16.3 Is the Relevant Jurisdiction party to the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention) or the 1965 Convention on the Settlement of Investment Disputes Between States and Nationals of Other States (the Washington Convention)? Will the courts of the Relevant Jurisdiction recognise and enforce a decision of an arbitrator?

Yes, the Czech Republic is a party to both the New York Convention and the Washington Convention, meaning decisions of the arbitrators are enforceable.

16.4 What is the usual choice of dispute resolution in international supply contracts involving a lessor or buyer incorporated in or with its main place of business in the Relevant Jurisdiction?

Due to the complexity of international supply contracts disputes and length of the proceedings before the courts, the contracts often contain a dispute resolution clause pursuant to which the potential disputes are to be resolved through arbitration (ICC or similar).

17. AIRCRAFT ENGINES

17.1 If the equipment being leased to the Airline in the Relevant Jurisdiction was an Aircraft Engine either unattached to an airframe or attached to an airframe belonging to a party other than the Aircraft Engine Owner and being leased to the Airline under a separate engine lease agreement, would there be any significant changes to the responses set out above?

Provided the aircraft engine remains unattached to the airframe, the changes to the responses would not be substantial (for instance, please refer to 17.3). As regards the opposite situation, please refer to 17.2.
17.2 In particular, does the Relevant Jurisdiction recognise the separate ownership of the Aircraft Engine by the Aircraft Engine Owner when the Aircraft Engine is attached to an airframe belonging to a person other than the Aircraft Engine Owner?

From the perspective of Czech law, once an engine is mounted on the aircraft, there is a risk it shall be deemed to become its part and loses its character as an individual asset as a result (i.e. the owner of the aircraft would assume the title to the engine). However, the effects should not be irreversible. There is a strong persuasion among the experts on Czech civil law that in case it is possible to mechanically detach a part of the thing that was once an individual object, the ownership title may be re-assumed by the original owner after such detachment. This, however, does not change a fact that a legal position of the engine owner would be severely endangered throughout the duration of the lease once the engine is mounted on the aircraft, as under the prevailing case law and doctrine concerning the rights in rem in general, the engine would become part of the aircraft and thus its ownership would pass to the owner of the aircraft.

We would also like to point out that the outlined doctrine has not been tested yet by the Czech courts with respect to the aircraft engines specifically. Hence it is not possible to currently elaborate on the stance of the Czech courts in relation to the matter.

17.3 Is there a register of Aircraft Engines and is the information given above in relation to registration of Aircraft and the ownership and leasing of Aircraft the same for registration of an Aircraft Engine and the ownership and leasing of such Aircraft Engine at the Aircraft Engine register?

The CAA does not maintain a separate aircraft engine register. Nevertheless, pursuant to the CAA it is possible to register a mortgage with respect to the aircraft engine. In this regard, the owner of the engine is obligated to keep such engine separate from the other spare parts in the warehouse (provided the engine is not incorporated in the aircraft and is used as a spare part) Furthermore, the engine would need to be visibly labelled to demonstrate the existence of the mortgage.

18. ADDITIONAL INFORMATION – IS THERE ANYTHING ELSE WE SHOULD HAVE ASKED?

Are there any other matters, issues, recommended courses of action or steps which can be taken to protect and/or perfect the Owner’s interests, as owner and lessor of the Aircraft in the Relevant Jurisdiction or of which the Owner should be aware when contemplating leasing an aircraft to a company incorporated and operating in the Relevant Jurisdiction?

N/A
Aircraft finance and leasing in England
## 1. PROPOSED TRANSACTION STRUCTURE

### 2. SEARCHES

#### 2.1 Are there any public registers in the Relevant Jurisdiction where a search can be carried out to determine whether an order or resolution for any bankruptcy, bankruptcy protection or similar insolvency proceedings has been registered in relation to the Airline?

#### 2.2 If so, specify which public registers, how long such searches typically take and if the fees are more than USD 100, approximately what fees apply?

## 3. RIGHTS AND EVIDENCE OF OWNERSHIP

#### 3.1 In the case of the transfer of title to an aircraft registered in the Relevant Jurisdiction:

#### 3.2 Other than Insolvency laws (see section 8) are there any laws which may have the effect of defeating the Owner’s right in the aircraft – for example, Government requisition? Do the laws of the Relevant Jurisdiction provide for any compensation in such circumstances?

## 4. THE AIRCRAFT REGISTER – NATIONALITY OF AIRCRAFT

#### 4.1 Has the Relevant Jurisdiction ratified any of:

#### 4.2 If the Relevant Jurisdiction has not ratified the Cape Town Convention, has the Relevant Jurisdiction started official proceedings or given any other official indication that it will accede to or ratify the Cape Town Convention in the near future?

#### 4.3 Is there an Aircraft Register in the Relevant Jurisdiction and if so, what is it called and who operates it?

#### 4.4 If so, in relation to registration:

#### 4.5 In respect of aircraft transactions connected with the Relevant Jurisdiction generally, are there any foreign Aircraft Registers that are commonly used, or should be considered, as alternatives to or in addition to registration with the Relevant Jurisdiction’s Aircraft Register? If so, what is benefit of such registration?

#### 4.6 Are there any other filings or registrations necessary or desirable (other than the registrations already mentioned and Lease Registration – see section 5.7) in the Relevant Jurisdiction in order to ensure the validity, priority or enforceability of the transaction documents, or to perfect the interests of the Owner in the Aircraft or the transaction documents?

## 5. LEASES

#### 5.1 Will the Relevant Jurisdiction recognise the concept of a lease over an aircraft?

#### 5.2 Would the choice of English law to govern the Lease be upheld as a valid choice of law in any action in the Relevant Jurisdiction?

#### 5.3 Must the Lease be in a particular form if it is to be valid and enforceable in the Relevant Jurisdiction (for example, must it be in the language of the Relevant Jurisdiction or be notarised, legalised or have the apostille applied)?

#### 5.4 If the Lease must be in the language of the Relevant Jurisdiction, is it possible under the Relevant Law also to have an English version, and to provide that the English version should prevail in case of conflict with the Relevant Jurisdiction language version?

#### 5.5 Are there any special terms that the Lease must contain or that it is advisable for the Lease to contain?

#### 5.6 Are there any circumstances under which the Lease might be re-characterised under the laws of the Relevant Jurisdiction as:

#### 5.7 Is there a separate register for aircraft leases in the Relevant Jurisdiction?

#### 5.8 If yes, then:
6

ENFORCEMENT OF LEASES (ASSUMING AIRLINE IS NOT IN A FORM OF INSOLVENCY PROTECTION)

6.1 On the occurrence of an event of default under the Lease, assuming that the Owner is permitted to do so under the terms of the Lease, can the Owner terminate the Leasing of the Aircraft under the Lease and enforce the Lease by taking physical possession of the Aircraft?

6.2 If so, can the Owner take physical possession of the Aircraft without the need for judicial proceedings in the Relevant Jurisdiction?

6.3 Where judicial proceedings in the Relevant Jurisdiction are necessary, please provide details of the proceedings, in particular:

6.4 Where judicial proceedings are not necessary, please comment on the time limits relevant to taking possession of the Aircraft, in particular:

6.5 Apart from the judicial proceedings described above and ignoring deregistration (see section 7), is the permission of any other party (including any official body) in the Relevant Jurisdiction required to take possession of the Aircraft?

6.6 Is there any history of actual repossession of aircraft by Owners in the Relevant Jurisdiction? If so, please provide details of any matters or issues of which an Owner should be aware.

6.7 Are there any circumstances in which the sums expressed to be payable under the Lease or obligations expressed to be assumed by the Airline in the Lease are or will be unrecoverable or unenforceable in the Relevant Jurisdiction?

6.8 Are there any restrictions on the ability of the Owner to sell the Aircraft in the Relevant Jurisdiction during the term of the Lease or, following an event of default, on termination of the leasing or pending judicial enforcement of the Lease?

6.9 Are there any export restrictions on export of a repossessed aircraft?

7

DEREGISTRATION POWER OF ATTORNEY/EXPORTATION

7.1 Can the Owner apply for deregistration of the Aircraft either at the end of the lease term or following successful repossession (with or without judicial proceedings) and is there any time period within which such application should be made?

7.2 Is the consent of the Airline required to deregister the Aircraft either by law or as a matter of custom or practice?

7.3 How long does deregistration take, both where there is co-operation from the Airline and where this is no co-operation from the Airline?

7.4 Is it possible to obtain an export licence or export permit in advance?

7.5 Approximately how long does it take to obtain an export licence or export permit? What are the costs involved?

7.6 Is it possible to obtain a certificate of deregistration in advance?

7.7 Will a power of attorney empowering the Owner to deregister and export the Aircraft from the Relevant Jurisdiction, either at the end of the lease term or following successful repossession (with or without judicial proceedings), be enforceable in the Relevant Jurisdiction?

7.8 If the power of attorney was stated to be irrevocable would this be enforceable against the Airline or can the Airline revoke such power of attorney?

7.9 Upon the occurrence of a bankruptcy or insolvency of the Airline is the power of attorney still effective?

8

INSOLVENCY

8.1 In the event that the Airline were to become insolvent either on a balance sheet basis (assets less than liabilities) or unable to pay debts as fall due:

9

TAXATION

9.1 The decision to lease to an airline in the Relevant Jurisdiction assumes that the Owner will not be taxed on receipt of rentals or other payments (including
maintenance reserves) under the Lease except by way of tax on its general income, profits or gains payable by the Owner in its place of incorporation or place of main business (if different). Will there be a requirement for the Owner to pay tax in the Relevant Jurisdiction on lease payments on basis that either the Owner is subject to taxation in the Relevant Jurisdiction by reason only of the leasing of the Aircraft under the Lease and is required to make payment itself; or payment of such tax is by way of the airline being required to withhold and account for tax from lease payments, where:

9.2 VAT: European Union country: under Article 148(f) of the VAT Directive, an exemption from VAT is applied to “supplies” consisting of chartering or hiring of aircraft which are used by airlines operating for reward chiefly on international routes. Therefore:

9.3 Is any stamp duty, notarial or other fee or equivalent payable in respect of the execution of the Lease, a de-registration power of attorney or any other lease related document concerning the aircraft? Will such stamp duty or fee still be payable if the relevant documents are executed and held outside the Relevant Jurisdiction? If any such amount is payable how much is it approximately?

9.4 Can any form of consent, authorisation or licence be obtained exempting the payments referred to in this Section from such tax or duty? If so, how would it be obtained?

9.5 Ignoring any taxation consequence already mentioned and any potential taxation issues if the Owner has any other connection to the Relevant Jurisdiction, is there any other Relevant Jurisdiction taxation consequence of the Owner:

10 EXCHANGE CONTROLS

10.1 Are payments to foreign owners by companies incorporated or registered in the Relevant Jurisdiction subject to any form of exchange or similar control?

10.2 If yes, can any consents, authorisations or licences be obtained to exempt payments from any such control? How would these be obtained? Are such consents, authorisations or licences transferable?

11 INSURANCE

11.1 Is it a legal requirement to insure the Aircraft within the Relevant Jurisdiction?

11.2 If so, is there any restriction on reinsurance of the primary insurance outside the Relevant Jurisdiction?

11.3 Is there a minimum percentage of cover which a local insurer is obliged to retain, and if so, what is it?

11.4 Is it possible for local insurers to assign contracts of reinsurance? If not, is a cut-through clause enforceable?

12 LIABILITY FOR DAMAGE

13 DETENTION/CONFISCATION

13.1 Are there any rights to detain or sell the Aircraft pursuant to drug trafficking, tax or other laws or pursuant to rights of airport or air navigation authorities if the Airline fails to pay when due?

13.2 If so, can the Aircraft be forfeited and sold without the Owner being made aware?

14 SOVEREIGN IMMUNITY

14.1 Is any Airline based in the Relevant Jurisdiction entitled to any form of sovereign or other immunity from suit which might restrict the Owner’s rights under the Lease?

14.2 Can such immunity be validly waived in advance by contract?

15 DISPUTE RESOLUTION AND RECIPROCAL ENFORCEMENT

15.1 Do the laws of the Relevant Jurisdiction permit and recognise an “asymmetric” submission to jurisdiction clause under which the lessee submits to the exclusive jurisdiction of the Courts of England but the Owner has discretion to choose a
jurisdiction other than the Courts of England?

15.2 If the Lease is governed by English Law and a judgment is obtained by the Owner in the English courts, can that judgment be automatically enforced in the Relevant Jurisdiction or will the case have to be re-examined on its merits? If so what procedures must be complied with to enforce such a judgement?

15.3 Is the Relevant Jurisdiction party to the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention) or the 1965 Convention on the Settlement of Investment Disputes Between States and Nationals of Other States (the Washington Convention)? Will the courts of the Relevant Jurisdiction recognise and enforce a decision of an arbitrator?

15.4 What is the usual choice of dispute resolution in international supply contracts involving a lessor or buyer incorporated in or with its main place of business in the Relevant Jurisdiction?

16 AIRCRAFT ENGINES

16.1 If the equipment being leased to the Airline in the Relevant Jurisdiction was an Aircraft Engine either unattached to an airframe or attached to an airframe belonging to a party other than the Aircraft Engine Owner and being leased to the Airline under a separate engine lease agreement, would there be any significant changes to the responses set out above?

16.2 In particular, does the Relevant Jurisdiction recognise the separate ownership of the Aircraft Engine by the Aircraft Engine Owner when the Aircraft Engine is attached to an airframe belonging to a person other than the Aircraft Engine Owner?

16.3 Is there a register of Aircraft Engines and is the information given above in relation to registration of Aircraft and the ownership and leasing of Aircraft the same for registration of an Aircraft Engine and the ownership and leasing of such Aircraft Engine at the Aircraft Engine register?

17 ADDITIONAL INFORMATION – IS THERE ANYTHING ELSE WE SHOULD HAVE ASKED?
1. PROPOSED TRANSACTION STRUCTURE

Relevant Jurisdiction: England

The Aircraft will be purchased by the Owner and leased on an operating lease basis to the Airline pursuant to the Lease.

Is this the usual structure for transactions of this nature in the Relevant Jurisdiction?

Yes

Note: English law is different from the law in Scotland or Northern Ireland. The responses below relate to England and Wales and not to other parts of the United Kingdom.

2. SEARCHES

2.1 Are there any public registers in the Relevant Jurisdiction where a search can be carried out to determine whether an order or resolution for any bankruptcy, bankruptcy protection or similar insolvency proceedings has been registered in relation to the Airline?

Yes, a search can be made at Companies House and at the High Court. While a search conducted in these places will reveal orders for or appointment of most common forms of collective corporate insolvency protection or insolvency proceedings, it may not reveal all forms – for instance, the appointment of a Receiver to charged assets can be initiated out of Court and the Receiver has 14 days to file notice of appointment.

2.2 If so, specify which public registers, how long such searches typically take and if the fees are more than USD 100, approximately what fees apply?

Searches can be made at Companies House and by telephone to the High Court on the same day and the cost is minimal.

3. RIGHTS AND EVIDENCE OF OWNERSHIP

3.1 In the case of the transfer of title to an aircraft registered in the Relevant Jurisdiction:

3.1.1 Is any particular form of transfer required for the transfer to be legally recognised?
No particular form is mandatorily required. In practice a Bill of Sale is generally used.

It is also possible to transfer a beneficial interest by way of creation of a trust.

3.1.2 Must any particular conditions be satisfied for the transfer to be recognised?

The Aircraft or Engine must be located in England or Wales or another country that will recognise a transfer of title in the form proposed for the transaction under English law as a valid method of title transfer under its domestic law.

3.1.3 Will such a transfer still be recognised by the courts of the Relevant Jurisdiction as legally valid where the relevant aircraft is located in another jurisdiction at the time of the transfer?

If the country where the relevant aircraft is located will recognise a transfer of title in the form proposed for the transaction under English law as a valid method of title transfer under its domestic law, yes; if not, then no and local law advice should be taken.

3.1.4 Are any duties, taxes or fees levied on such transfer of ownership?

Where an Aircraft is supplied in England or Wales, VAT may be payable. Generally VAT is not payable where the Aircraft will be used by an Airline operating flights for reward chiefly on international routes (see ECJ case C33-2011 and 9.3 below for more detail). Where there is a supply in the Relevant Jurisdiction to a lessor and the Aircraft will then be supplied under a lease to an Airline operating flights for reward chiefly on international routes then it is usually possible to look through the intermediate step to the final supply to the Airline under the lease.

Aircraft Parts and equipment (including Aircraft Engines) supplied in England or Wales may be zero rated for VAT (so the applicable VAT rate is zero) where they are of a kind ordinarily installed or incorporated in the propulsion, navigation or communications systems, or the general structure and are intended for incorporation or installation in an Aircraft operated by an Airline operating flights for reward chiefly on international routes.

If the Aircraft is to be registered on the UK register then there will be registration fees payable. An aircraft lessor carrying on the trade of leasing in England or Wales may be liable to UK Corporation Taxes on its profits or gains. Specific advice is recommended if this is likely to be the case.

3.2 Other than Insolvency laws (see section 8) are there any laws which may have the effect of defeating the Owner’s right in the aircraft – for example, Government requisition? Do the laws of the Relevant Jurisdiction provide for any compensation in such circumstances?

There are certain other statutory rights which could, in certain circumstances, defeat the Owner’s rights in the Aircraft:

1. Certain designated Airport operators and the CAA have statutory rights of detention of an Aircraft and sister Aircraft in an Airline’s fleet for unpaid airport charges;
2. The Civil Aviation Authority (CAA) has a statutory right to detain an Aircraft and sister aircraft for unpaid Air Navigation charges in the UK and on behalf of certain other countries;

3. In relation to the EU ETS scheme the UK Environment Agency has the right to detain Aircraft and sister aircraft within a fleet operated by (1) a UK administered Airline which has failed to pay a civil penalty within six months of the due date; and (2) an EU operator subject to an operating ban under Article 16(10) of the EU ETS Directive. In each case a right of sale arises to the CAA or the Environment Agency, as the case may be, if, after 56 days from the date of first detention, the relevant amounts remain unpaid. The right of sale requires the leave of the Court before it can be exercised. Recent case law confirms that termination of the lease to a defaulting Airline before detention will defeat the rights of detention of the Aircraft so far as they relate to Airport or Air Navigation charges arising from the operation of sister aircraft in the terminated operator's fleet. The ETS legislation specifically recognises that the right of detention should not apply if an Airline ceases to be the operator of an Aircraft by termination of the lease in its favour.

4. The UK tax authorities may seize goods (which can include an Aircraft) for unpaid taxes. If the unpaid taxes are not then paid within a short period, the goods may be auctioned. The tax authorities may not seize and sell goods (including an Aircraft) which belong to another person so a leased Aircraft should not be seized and sold for the lessee Airline's unpaid taxes.

5. Customs officers have various powers to detain an Aircraft – generally where the Aircraft has been used to carry items liable to forfeiture or which have not cleared customs. Generally the right of detention would not lead to sale without a Court direction.

6. An Aircraft may be detained in relation to various crimes including actual or suspected acts of terrorism or where it has been acquired from the proceeds of crime. Generally the right of detention would not lead to sale without a Court direction.

7. The CAA has rights to detain an Aircraft if it has no Certificate of Airworthiness, does not have the appropriate route licensing, if it is unfit for flight or contravenes air navigation requirements or lacks required certifications. Generally the right of detention would not lead to a sale without a Court direction.

8. Certain liens can arise as a matter of contract or law including a seller’s lien for unpaid purchase price, a repairer’s lien for unpaid amounts related to labour to improve the Aircraft and liens for salvage. These liens are dependent on the lien holder having and maintaining possession of the Aircraft. A lien holder does not have the right of sale although the lien holder could seek a direction for sale of the Aircraft from a Court if the debt it is owed continues to be unpaid for a reasonable period of time.

9. The UK Government has certain statutory rights of requisition but only in the event of a declared Emergency and then only on satisfaction of certain conditions set out in the Civil Contingencies Act 2004. The Act provides the power for requisition with or without compensation but where the predecessor powers were exercised during the Falklands War compensation was generally paid.

10. The Secretary of State within the Department of Transport has rights to detain aircraft. For example, the authorities can prevent aircraft flights where an aircraft does not meet safety or navigation requirements or if it fails to have the necessary certification, including for airworthiness, noise and emissions.

**4. THE AIRCRAFT REGISTER – NATIONALITY OF AIRCRAFT**

4.1 Has the Relevant Jurisdiction ratified any of:

The Chicago Convention of 1944 on International Civil Aviation? 
Yes

The 1948 Geneva Convention on the International Recognition of Rights in Aircraft?
No
The 1933 Convention for the Unification of Certain Rules Relating to the Precautionary Arrest of Aircraft?
No

The 2001 Cape Town Convention on International Interests in Mobile Equipment and the associated Protocol on Matters Specific to Aircraft Equipment (the Cape Town Convention)?
Yes. The United Kingdom ratified the Cape Town Convention on 27 July 2015.

4.2 If the Relevant Jurisdiction has not ratified the Cape Town Convention, has the Relevant Jurisdiction started official proceedings or given any other official indication that it will accede to or ratify the Cape Town Convention in the near future?
Not applicable

4.3 Is there an Aircraft Register in the Relevant Jurisdiction and if so, what is it called and who operates it?
Yes, it is called the UK Register of Civil Aircraft and it is operated by the Civil Aviation Authority. The CAA maintains a website: [http://www.caa.co.uk](http://www.caa.co.uk) from which searches can be made online and which contains other useful information.

There is no separate register and it is not possible to make a separate registration for Aircraft Engines or Spares.

Interests may also be registered at the International Registry if they fall within the scope of the Cape Town Convention.

4.4 If so, in relation to registration:

4.4.1 Who is responsible for registering the Aircraft – is it an owner registry or an operator registry?
It is an owner registry but this vocabulary is loose – the register will record the details of the owner or the operator as “registered Owner” and will note whether they are “Owner” or “Charterer”. The details recorded depend on the details submitted in the application for registration. The register is not definitive as to ownership.

4.4.2 What details would normally be recorded on the Aircraft Register upon registration of an aircraft in the Relevant Jurisdiction? If not normally recorded, is it possible to record the Lease and/or an Aircraft Mortgage on the Aircraft Register?
The main details registered are the identity of the Registered Owner (who may be the owner or charterer (but if charterer, it must be a Qualifying Person and requires the CAA to consent)) and the details of the Aircraft. Aircraft mortgages may be registered on the Aircraft Mortgage Register which is a separate register from the UK Register of Civil Aircraft and, if the security provider is a UK company, Companies House (more information is provided...
4.4.3 If the Aircraft Register is an operator register, is it possible to record the details of the aircraft owner/lessor and any financier with an Aircraft Mortgage?

It is not an operator registry.

4.4.4 If the Aircraft Register is an owner register, is registration on the Aircraft Register definitive to determine ownership of the Aircraft?

No, it is not. The “Registered Owner” may be a charterer and not the owner depending on who made the application for registration, whether both owner and operator qualify for registration on the UK register and whether CAA consent to charterer being registered instead of owner. However, an Aircraft cannot be registered in the UK if it is already registered outside the UK and that other registration would not terminate with registration in the UK.

4.4.5 Are any distinctions made between aircraft employed on international routes and those used purely for domestic flights?

No, not for this purpose. However, for VAT purposes, a distinction is made between airlines operating chiefly on international routes and those that do not with VAT being payable on certain transactions where the operator is not chiefly engaged in international flights for reward.

4.5 What documents and/or consents are required to obtain registration on the Aircraft Register and will these require any formalities (for example, notarisation, legalisation or application of apostille)?

An application form must be completed and signed, a fee paid and evidence supplied of compliance with required minimum insurance criteria, or a declaration that the aircraft will not fly until such criteria is met.

4.6 Are there any restrictions on the legal status and/or nationality/domicile of parties seeking to register an aircraft on the Aircraft Register?

Yes, registration is generally limited to Qualifying Persons which can be summarised as the UK Government, British and European Economic Area nationals including legal persons (which include Scottish partnerships), British Protected persons and Commonwealth bodies. However, some further commentary is required. As noted at paragraph 4.4.4, the CAA has the discretion to register as “Registered Owner” a lessee who is a Qualifying Person. Although Commonwealth bodies are eligible, the CAA will only permit registration if there is not a more appropriate national register in which the relevant Aircraft could be registered. Finally a person who is not a Qualifying Person but who has an ownership interest in an Aircraft and who resides or has a place of business in the UK may be permitted to register at the CAA's discretion. If this is relevant it is recommended that a discussion with the CAA is opened at an early stage.
4.7 In respect of aircraft transactions connected with the Relevant Jurisdiction generally, are there any foreign Aircraft Registers that are commonly used, or should be considered, as alternatives to or in addition to registration with the Relevant Jurisdiction’s Aircraft Register? If so, what is benefit of such registration?

No, there are no foreign registers. However, the International Register is also used and should be considered if the interest falls within the scope of the Cape Town Convention.

4.8 Are there any other filings or registrations necessary or desirable (other than the registrations already mentioned and Lease Registration – see section 5.7) in the Relevant Jurisdiction in order to ensure the validity, priority or enforceability of the transaction documents, or to perfect the interests of the Owner in the Aircraft or the transaction documents?

Aircraft Mortgages and certain other security documents require registration at Companies House where the person giving the mortgage or security document is a UK company (which term includes certain other corporate legal personalities). Although registration is not strictly mandatory, if not registered within 21 days of creation the security constituted by such mortgage or security document is void against creditors of the person giving security and as against certain insolvency officials who might on insolvency be appointed to the person giving security and so not registering within the prescribed time period would remove any advantage of taking such security.

Interests may also be registered at the International Registry if they fall within the scope of the Cape Town Convention.

5. LEASES

5.1 Will the Relevant Jurisdiction recognise the concept of a lease over an aircraft?

Yes.

5.2 Would the choice of English law to govern the Lease be upheld as a valid choice of law in any action in the Relevant Jurisdiction?

Generally yes, the parties are free to choose the applicable law and the choice of English law would be respected. The European Union legislation provides that such choice must not prejudice mandatory provisions of the law of another country to which the lease is closely connected.

5.3 Must the Lease be in a particular form if it is to be valid and enforceable in the Relevant Jurisdiction (for example, must it be in the language of the Relevant Jurisdiction or be notarised, legalised or have the apostille applied)?

No, there are no such requirements.
5.4 If the Lease must be in the language of the Relevant Jurisdiction, is it possible under the Relevant Law also to have an English version, and to provide that the English version should prevail in case of conflict with the Relevant Jurisdiction language version?

N/A

5.5 Are there any special terms that the Lease must contain or that it is advisable for the Lease to contain?

There are no special terms that the lease must contain. Generally leases under English law are reasonably long and comprehensive documents stipulating detailed terms which are entered into after negotiation between lessor and lessee. It is advisable for a prospective lessor or lessee to retain experienced English law lawyers to advise on terms.

5.6 Are there any circumstances under which the Lease might be re-characterised under the laws of the Relevant Jurisdiction as:

5.6.1 a secured loan?

Yes, the Courts in England have in certain circumstances re-characterised sale and leaseback transactions as disguised secured loans (the security element of which would require registration at Companies House or be void against creditors of the person giving security and as against certain insolvency officials who might on insolvency be appointed to the person giving security). A simple operating lease transaction that is not a sale and leaseback would not be at risk of re-characterisation. It is also highly unlikely that a sale and operating lease back transaction would be at risk of re-characterisation. Detailed advice should be obtained for a proposed transaction comprising a sale and finance leaseback or similar.

5.6.2 a finance (or capital) lease?

Although what constitutes a finance lease and an operating lease is defined for tax purposes, the definition refers to Accounting Practice. How these leases are treated depends on the lessee’s accounting standards. January 2019 introduced IFRS16 which moved most operating leases onto the balance sheets of lessees. Operating leases which were previously off-balance sheet are now required to be reported on the lessee's balance sheet, with the exception of short-term leases or low value assets (which will rarely be applicable in relation to aircraft leasing). Lessors are not directly impacted. The risk of recharacterization of a Lease as a finance lease exists in theory and might be exacerbated by asymmetrical accounting treatment between Lessor and Lessee where the Lessee balance sheet recognises obligations under a Lease which support the Finance Lease analysis.

5.7 Is there a separate register for aircraft leases in the Relevant Jurisdiction?

No. As noted at paragraph 4.4.4, the interest of a lessee may, at the discretion of the CAA, be registered as “Registered Owner” but no record of the lease is made.
5.8 If yes, then:

5.8.1 What documentation and/or consents are required for the registration of the Lease?

N/A

5.8.2 What registration fees are payable (if any)?

N/A

5.8.3 What information is recorded on the register? How is the eventual discharge of the Lease recorded?

N/A

5.8.4 Does any registration in respect of the Lease remain valid throughout the tenure of the Lease or does such a registration require periodic renewal? If renewal is required when must this be done and what is the approximate cost of renewal?

N/A

6. ENFORCEMENT OF LEASES (ASSUMING AIRLINE IS NOT IN A FORM OF INSOLVENCY PROTECTION)

6.1 On the occurrence of an event of default under the Lease, assuming that the Owner is permitted to do so under the terms of the Lease, can the Owner terminate the Leasing of the Aircraft under the Lease and enforce the Lease by taking physical possession of the Aircraft?

Yes, this remedy is generally available and is frequently used in lease reposessions. It is possible for the lessee to apply for relief from forfeiture if it believes the action is disproportionate (but it is likely to have to make good any default) or if the repossession is not justified, to seek an injunction on the basis of the warranty of quiet enjoyment and peaceful possession.

6.2 If so, can the Owner take physical possession of the Aircraft without the need for judicial proceedings in the Relevant Jurisdiction?

Yes.

6.3 Where judicial proceedings in the Relevant Jurisdiction are necessary,
please provide details of the proceedings, in particular:

6.3.1 What documents would the Owner as lessor need to present in order to obtain possession of the Aircraft, both before and subsequent to judgment? Can documents be copies?

The documents required by the Owner as lessor to obtain possession of the Aircraft through judicial proceedings will vary from case to case but will include documents evidencing ownership of the Aircraft, documents evidencing a right to repossess the Aircraft or a right to compensation and documents evidencing breach by the lessee of its obligations. This might include a copy of the mortgage, the loan agreement, the lease, documentation relating to the debt, evidence as to when payment was due and documents demonstrating non-payment, evidence of an event of default and/or evidence of service of a notice of default. (Documents which are not in English will need to be translated.)

It is often helpful if original documents are available, but the court in England & Wales will usually accept certified copy documents, where for example urgent action is required and original documents are overseas. Local lawyers can certify that the copy documents are true copies of the originals. Certified true copies can only be made by a person who has the original documents in his or her possession.

6.3.2 What is the approximate cost of issuing proceedings?

The cost of issuing proceedings will vary considerably depending on the nature of the dispute. Where there is a straightforward uncontested right to possession under a lease it is likely that a non-judicial route will be adopted, and so it is more likely that any proceedings in court will relate to complex, contested matters and so can be more costly. Examples might be the need to seek an injunction that the aircraft be returned to the Owner; this might be combined with an application for a freezing order where it is feared that the lessee may dispose of its assets to avoid any judgment. Alternatively, it might be necessary to seek an injunction detaining the aircraft in the jurisdiction while the dispute is determined. The Court has discretion whether to grant such injunctions and will need to be convinced that on balance ordering an injunction is the best course of action.

A dispute is usually resolved in the court by issuing a claim. Where there is an urgent matter to resolve, proceedings can be commenced for urgent interim injunctive relief; this can if necessary be done without notice to the lessee before issuing proceedings. If an interim injunction is granted it is necessary then to issue a claim to have the matter determined conclusively through a full court process.

To issue an application for an injunction the claimant must produce an application notice, a supporting affidavit or statement setting out the background to the case, supported by documents and a draft order and must liaise with court for a hearing, (including payment of a small court fee). Costs vary depending on the complexity of the issues and factual background, but the cost of issuing a straightforward injunction application might cost: £5-10,000. The costs of the steps that follow will vary depending on the process ordered by the court and the response of the opponent.

Issuing a claim in court requires a claimant to draft and issue a claim form, pay a court fee and then, in most cases, to provide greater detail by setting out a comprehensive document giving particulars of the claim. The claim will need to be served on the defendant. The cost of these steps will again vary depending on the complexity of the issues and factual background and the location of the defendant, but in straightforward proceedings issuing proceedings might cost: £10-15,000. In addition, Court fees to issue a claim vary, but even
on high value disputes are currently under £2,000. Again the costs of the steps that follow will vary depending on
the process ordered by the court and the response of the opponent.

Under English law if a party is unsuccessful in an action it is likely to have to bear the reasonable costs of its
opponent, as well as its own legal costs. However, there will always be an element of unrecoverable costs and
parties who are successful in action should not necessarily expect to recover 100% of their costs.

6.3.3 Would the Owner be required to provide a bond, guarantee or other security in
order to issue proceedings?

If a claimant seeks an urgent injunction to prevent the defendant from taking steps in relation to the Aircraft or
seeking repossession, the claimant will have to offer a cross-undertaking in damages. That is the claimant will be
required to promise to reimburse the defendant for any losses incurred if it later becomes clear that the urgent
order was not required. If the defendant is not confident that the promise has real value, for example because
the claimant is located outside of the EU and so is difficult to enforce against, or because the claimant appears to
be impecunious, then the defendant can apply to the court for the cross undertaking to be fortified by the
provision of security for costs. The court can then order a party to produce financial security before continuing to
hear the matter.

In a standard claim the Owner would not as a matter of course be required to provide a bond, guarantee or
other security in order to issue proceedings. However, again if the defendant believes that the claimant would
not be able to meet an order of costs, should the defendant eventually succeed in the proceedings, the
defendant can apply to the court for an order for security for costs against the claimant. Again the court can
order a party to produce security before continuing to hear the matter.

6.3.4 What is an estimate of the normal duration of possession proceedings from time
at which all required documentation is made available – if uncontested?

Uncontested proceedings can be resolved quite promptly. If a defendant makes no response at all to a claim and
14 days expire after service of the particulars of claim, then the claimant can apply to the court for a judgment in
default. This order will usually grant the claimant the remedy it seeks in full. Depending on the speed of the
court in dealing with the application, it may be possible to achieve judgment within a week or two of making the
application. The response of the court can, however, be slow at times. (Time limits vary if the claim form is served
out of the jurisdiction and permission of the court may be required.)

6.3.5 What is an estimate of the normal duration of possession proceedings from time
at which all required documentation is made available – if contested?

Proceedings are likely to be brought in the court if there is not a straightforward right of possession, for example
if the right to repossess is contested, or if it is unclear whether an event of default has occurred. In normal
circumstances it will take at least a year to progress a contested claim through the court and could take
considerably longer; there may also be an appeal process.

If, however, it is clear that the defendant’s arguments have no prospect of success it may be possible to apply for
summary judgment after the defence has been served and to have a court determination within a few months.
Without notice injunction processes can be swift: it can be possible to have an initial determination from the court within a few days, although this would then have to be followed by a fuller claim process. Contested injunction processes could take months to be resolved.

6.4 Where judicial proceedings are not necessary, please comment on the time limits relevant to taking possession of the Aircraft, in particular:

6.4.1 Is there a waiting period before action may be taken?

There is no set period of time but if there is no risk of loss or damage to the Aircraft, the lessee should be notified of the default and given a reasonable period of time to make good the default before action to repossess is taken.

6.4.2 Is there a long stop date by which action must be taken?

The right to take action prescribe after six years if not pursued within that period. The period of six years is extended to twelve years if the lease is entered into as a deed, although this would be unusual.

6.4.3 Is a Public Auction of the aircraft required?

No.

6.5 Apart from the judicial proceedings described above and ignoring deregistration (see section 7), is the permission of any other party (including any official body) in the Relevant Jurisdiction required to take possession of the Aircraft?

There are practical issues such as clearance to repossess an Aircraft which is “airside” at an Airport. Generally a specialist aviation consulting firm with familiarity of such issues would be used to effect repossession. There is, however, no formal permission required – simply compliance with ground security and similar requirements.

6.6 Is there any history of actual repossession of aircraft by Owners in the Relevant Jurisdiction? If so, please provide details of any matters or issues of which an Owner should be aware.

Yes, the self-help remedy of repossession has successfully been used frequently.

6.7 Are there any circumstances in which the sums expressed to be payable under the Lease or obligations expressed to be assumed by the Airline in the Lease are or will be unrecoverable or unenforceable in the Relevant Jurisdiction?

There are a number of circumstances which might affect the recoverability of sums payable or enforceability of
obligations. There is an automatic stay on enforcement of rights when a Company enters administration (a form of collective insolvency protection) although this would not prevent repossession where the lease has been terminated prior to the start of administration. Rent will only be paid during the administration by leave of the administrator or the Court and this is only likely if the administrator will use the leased asset in the business. If the lease is not properly drafted recovery of amounts due after repossession may be compromised and even if well drafted account would need to be taken of the time value of money with a claim for damages being discounted to reflect early receipt of future rent. Other grounds on which the enforceability of obligations under a lease may be challenged by a lessee include mistake, fraud, incapacity of the lessee, illegality, sovereign immunity and public policy. Insolvency rules provide for set aside of a lease that has been entered into within defined time periods before an insolvency where the lease is intended to benefit one creditor over others or where the obligations on the lessee under the lease are significantly below the value of the benefits of the lease. A liquidator may disclaim an onerous contract and a lease may be an onerous contract. It is also worth noting that the administrator has power to sell a leased asset even though it is owned not by the lessee but by the lessor. Broadly the administrator would need to account for value realised. In practice this power is seldom exercised except with agreement of the affected lessor and it is believed has not been utilised in respect of aircraft.

6.8 Are there any restrictions on the ability of the Owner to sell the Aircraft in the Relevant Jurisdiction during the term of the Lease or, following an event of default, on termination of the leasing or pending judicial enforcement of the Lease?

Provided the lessee is not in administration, as a matter of law, the Owner is free to sell at any time (subject to the lease and taking account of the warranty of quiet enjoyment and peaceful possession if the lease has not been terminated for default). Contractually the lease could restrict the Owner’s ability to sell or to assign the lease but this is a matter of contract rather than law. If the lessee is in administration then consent of the administrator or leave of the Court would be required for a sale. Whether this would be given depends on whether the administrator believes the Aircraft is essential to achieving the objectives of the administration or not. Generally administrators will reach a conclusion on this within a few days of appointment.

6.9 Are there any export restrictions on export of a repossessed aircraft?

An Export Certificate of Airworthiness is required. Procedures and requirements differ depending on whether export is to another EASA country, to the US or Canada or to another non-EASA country and further information is available on the CAA website. VAT and Customs Duty may also be applicable and clearance on both may be required depending on the particular circumstances.

7. DEREGISTRATION POWER OF ATTORNEY/EXPORTATION

7.1 Can the Owner apply for deregistration of the Aircraft either at the end of the lease term or following successful repossession (with or without judicial proceedings) and is there any time period within which such application should be made?

The Registered Owner is the person entitled to apply. If the aircraft is to be exported the Export Certificate of Airworthiness should be obtained prior to deregistration. If the Aircraft is repossessed or sold and the
consequence is a Qualifying Person is no longer entitled to the Aircraft then, unless the CAA has exercised discretion to the contrary, the registration of the Aircraft would be void and the certificate of registration should be returned to the CAA.

Under the Cape Town Convention, the Registered Owner may also issue an irrevocable deregistration and export request authorisation (“IDERA”) in favour of an “Authorised Party”. There is a standard CAA form which must be completed and filed with the CAA. Only one IDERA can be issued and recorded at any one time and must relate to an existing international interest created before 1 November 2015. The IDERA gives the Authorised Party the power to request the aircraft is deregistered by submitting a form to the CAA. The consent of the Owner is not required at the time of a deregistration request, but mortgagee consent may be required. If there is a mortgage entry against the aircraft on the Register of Aircraft Mortgages predating 1 November 2015, either the mortgage must be discharged or the mortgagee must give written consent. However, the consent of mortgagees entered onto the Register on or after 1 November 2015 will not be required prior to a deregistration request.

7.2 Is the consent of the Airline required to deregister the Aircraft either by law or as a matter of custom or practice?

The consent of the Airline is not required if the Registered Owner is the owner. The Airline's participation is only required if the Airline is the “Registered Owner” by virtue of the CAA accepting an application for registration from the Airline as lessee. The use of a deregistration power of attorney should allow the Owner to deregister in such circumstances. The terms of the lease would usually include a prohibition on the lessee changing the registration of the Aircraft without consent of Owner.

As per paragraph 7.1 above, consent of a mortgagee under a pre-November 2015 mortgage will be required if the deregistration request is made by an Authorised Person under an IDERA.

7.3 How long does deregistration take, both where there is co-operation from the Airline and where this is no co-operation from the Airline?

If the Registered Owner is the Owner cooperation from the Airline is not required to effect deregistration and deregistration can be completed within a day. If the Airline is the Registered Owner then either the Owner must apply for deregistration in the name of the Airline using a deregistration power of attorney or the Airlines cooperation is required to make the application for deregistration. The CAA should accept use of a correctly drafted and properly executed deregistration power of attorney and deregister the Aircraft within the day on which application is made but it would be prudent to raise the matter with them and check requirements the day before deregistration is requested. If the Airline is the Registered Owner and makes the application then deregistration should occur on the same day the request is made.

The CAA will generally action IDERA deregistration requests under within 3 days, however this can be delayed in a Certificate of Airworthiness is required. The certificate must be obtained prior to deregistration.

7.4 Is it possible to obtain an export licence or export permit in advance?

Export licences are not required for all goods and generally there are no requirements for a licence to export civil aircraft. Where UN sanctions are implemented in the UK there may be a complete prohibition on export to an affected country or an export licence may be required.
7.5 Approximately how long does it take to obtain an export licence or export permit? What are the costs involved?

If an Export Licence is required, currently 70% of licences are processed within 20 working days.

7.6 Is it possible to obtain a certificate of deregistration in advance?

No, but the CAA will, by special arrangement, stay open to facilitate a change in registration.

7.7 Will a power of attorney empowering the Owner to deregister and export the Aircraft from the Relevant Jurisdiction, either at the end of the lease term or following successful repossession (with or without judicial proceedings), be enforceable in the Relevant Jurisdiction?

Yes

Will the courts recognise a power of attorney in the form of an IDERA and governed by English law?

Yes

7.8 If the power of attorney was stated to be irrevocable would this be enforceable against the Airline or can the Airline revoke such power of attorney?

If the power of attorney is given by an English corporate entity, is stated to be irrevocable and is coupled with a security interest then it will be irrevocable.

7.9 Upon the occurrence of a bankruptcy or insolvency of the Airline is the power of attorney still effective?

If the power of attorney is given by an English corporate entity, is stated to be irrevocable and is coupled with a security interest then it will be irrevocable even in the event of a collective insolvency of the Airline. However, where the Airline is in administration, such a power of attorney will not be exercisable except with the consent of the administrators or the court. In practice, third parties dealing with the holder of a power of attorney will commonly refuse to transact without the involvement of the administrators or liquidators.

8. INSOLVENCY

8.1 In the event that the Airline were to become insolvent either on a balance sheet basis (assets less than liabilities) or unable to pay debts as fall due:
8.1.1 Would the airline be required to file for insolvency protection?

No. There is no mandatory requirement to file for insolvency proceedings. However, where an insolvent liquidation has become unavoidable, the directors must take every step to minimise losses to creditors, which may or may not involve ceasing to trade. Failure to take such steps can lead to personal liability for the directors. There are further rules concerning the incurrence of new credit in those circumstances, breach of which can be a criminal offence. Directors who think they may be in such a situation would require detailed advice as to their duties: where a company is insolvent, the directors' principal duties are to the creditors of the company and not its shareholders.

8.1.2 Do the available forms of insolvency protection in the Relevant Jurisdiction involve the appointment of either an officer of the court or a specifically court appointed official to take control of the Airline (an Insolvency Official) while in insolvency protection?

Yes. The most common types of collective insolvency procedure are administration (a rescue process, which creates a statutory moratorium); and liquidation (a terminal process). Both administrators and liquidators are officers of the court but they are not always appointed by the court. An administrator can be appointed by the company, directors or secured creditors of the company by filing notices at court, or can be appointed by those persons or any creditor through application to the court. A liquidator can be appointed by the shareholders of the company by meetings (and approved by a creditors' meeting) and the company, shareholders or creditors by application to the court. There is no process directly equivalent to Chapter 11 in the US whereby the insolvent company's management remain in control but are protected from actions by creditors.

8.1.3 Does the Insolvency Official have authority to negotiate and reach agreement with the Owner in relation to matters such as the payment of unpaid rent, continuation or termination of the Lease and repossession of the Aircraft without the need for court approval?

In the case of administration, yes. Unlike (for example) US insolvency proceedings, all commercial matters in administration are determined by the Insolvency Official without court approval. In the case of liquidation, an Insolvency Official will make all commercial decisions but can in certain circumstances require the sanction of a creditors' committee or the court in order to compromise claims. Actions of Insolvency Officials are capable of being challenged in court (assuming there are good grounds for such a challenge) by interested parties.

8.1.4 Does the commencement of insolvency protection involving the appointment of an Insolvency Official in the Relevant Jurisdiction have the effect of prohibiting the Owner from taking the following actions to enforce the lease after commencement of such protection:

- (a) Applying any security deposit held by the Owner against any unpaid amounts due under the Lease? This question will depend on the precise terms under which the security deposit is held and the applicable collective insolvency proceedings. In administration, there is a moratorium on enforcement of security rights and, if not properly constructed, this would apply to the security deposit arrangements. However, if properly constructed there is a strong argument that the security...
deposit is Financial Collateral and subject to the Financial Collateral Regulations which permit appropriation of the deposit to satisfy unpaid amounts without regard to the moratorium. There are no restrictions on enforcing security in this way in liquidation.

- **(b.)** Accepting payment of rent or other lease payments from:

  1. **the Airline?** After commencement of administration or liquidation, the Owner should only deal with the administrators/liquidators and not other representatives of the insolvent Airline (unless authority has first been evidenced to the Owner). Lease payments can be accepted from the insolvent Airline acting by its administrators or liquidators and, if the administrators or liquidators choose to use the Aircraft, they must pay lease payments for the period of beneficial use as an expense of the insolvency process. Expenses of a collective insolvency process are given favourable priority in a collective insolvency process and rank ahead of the Insolvency Officials’ own remuneration.

  2. **a guarantor?** Assuming the Guarantor is not itself in insolvency proceedings then there is no limitation on accepting payments under the guarantee from the Guarantor. If the guarantee has been correctly drafted then such amounts need not be applied immediately against amounts outstanding under the Lease but can be placed in a “suspense account”, enabling the full claim for unpaid lease amounts to be maintained in the administration/liquidation with a view to maximising recovery.

  3. **a shareholder?** Assuming the shareholder is not itself in insolvency proceedings then there is no limitation on accepting payments from the shareholder.

- **(c.)** Giving notice of default under the lease? Notice of default may be given.

- **(d.)** Obtaining a judgment or arbitral award for unpaid lease payments? After commencement of administration, commencing proceedings or an arbitration process to enforce the lease is prohibited except with the consent of the administrators or leave of the court. A similar prohibition applies in compulsory liquidations (liquidations commenced in court). While there is no automatic moratorium on legal proceedings in liquidations commenced by meeting, a liquidator can apply for (and will usually obtain) a stay on proceedings in such cases if required.

- **(e.)** Giving notice to terminate the leasing of the Aircraft? It is permitted to give contractual notice to terminate the leasing of the Aircraft. However, in administration, it will not be possible to take further steps against the Airline in reliance on that termination except with the consent of the administrators or leave of the court. There is no such prohibition in liquidation except to the extent a stay applies (see (d)).

- **(f.)** Exercising rights to repossess the Aircraft? After commencement of administration, exercising rights to repossess the Aircraft under the lease is prohibited except with the consent of the administrators or leave of the court. However, the Insolvency Official must give possession of the Aircraft to the holder of an International Interest with priority within 60 days, but that right is subject to any prior unregistered rights of lien or detention (see Para 3.1.4 above). There is no such prohibition in liquidation, except to the extent a stay applies (see (d)).

**8.1.5 Can the commencement of Insolvency Proceedings have retrospective effect in relation to any such actions taken before commencement? If so, for what period can there be a look back?**

Yes. There are lookback periods relating to transactions at an undervalue, preference and the creation of floating charges. The lookback period will vary depending on the type of transaction and depending whether the parties were connected or unconnected to the insolvent entity. In general terms, a transaction with a corporate entity that took place more than 2 years prior to the commencement of the insolvency process should not be at risk of review unless the transaction was for the purpose of putting assets beyond the reach of creditors. Separately there are other applicable periods for reviewing the conduct of the directors.
8.1.6 Is there, either under law or as a matter of practice in the Relevant Jurisdiction, a period of time within which the Insolvency Official will either “adopt” the lease and pay rent and other lease payments as an expense of the insolvency or “reject” the lease and permit the Owner to enforce such rights as it may have under the lease?

Under current case law, Insolvency Officials do not “adopt” contracts but the holder of an International Interest with priority is entitled to possession of the Aircraft on or before expiry of a 60 day period so in effect the Insolvency Official must either cure all defaults and perform the lease obligation or give back possession within that timeframe. The right to possession is subject to unregistered rights of lien or detention (see 3.1.4 above). However, the Insolvency Officials will be required to pay as an expense amounts in respect of lease payments for the period of beneficial use of the Aircraft. In practice, administrators and liquidators will try and make decisions about which assets are required quickly after taking office. An Owner would be well advised to contact the administrators of an Airline as soon as possible after appointment to determine the intentions of the administrators. Administrators do not have a formal power to terminate leases but if the leased asset is not required for the purposes of the administration, the administrators will inform the Owner and the Owner could treat this as a repudiatory breach triggering a right to terminate (if one did not exist previously). Where the administrators do not require the Aircraft for the purpose of the administration, the administrators would normally give leave for the Owner to repossess the Aircraft or the court would be expected to make an order to such effect. The insolvent Airline will not be permitted both to retain possession of the Aircraft and not pay lease payments indefinitely. Equivalent rules apply in liquidation save that there is no moratorium and, in addition, the liquidators have the power to “disclaim” onerous contracts and so bring them to an end. In this case the Owner’s rights under the contract are replaced by a claim in damages.

8.1.7 If the lease is “adopted” will the Insolvency Official also pay any unpaid lease payments due as at commencement of the insolvency protection?

Prior to the Cape Town convention taking effect the answer was no - the obligation to pay lease payments as an administration or liquidation expense is only in respect of the period of beneficial use. In practice, if the administrators or liquidators continue to use the Aircraft, lease payments are likely to be due from the date of commencement of the insolvency proceedings. Since the Cape Town took effect the Insolvency Official’s right to retain possession as against the holder of an International Interest is dependent on their curing all defaults within the 60 day “Waiting Period”.

8.1.8 If not or if the lease is “rejected”, would the Owner’s claim for any outstanding sums rank equally with other ordinary unsecured creditors of the Airline?

Yes, unless the Owner has security over assets of the Airline.

8.1.9 Are there certain types of preferred creditors whose claims will rank above claims of the Owner?

Yes. The regimes in administration and liquidation are different. In administration, fixed charge claims, administration expenses, the costs of the administration, preferential claims (these include a prescribed amount for employees and contributions to certain types of pension scheme) and – subject to the prescribed part - floating charge claims rank in priority. The prescribed part is an amount of up to £600,000 for unsecured
creditors that ranks ahead of floating charge claims. In liquidation, the position of unsecured creditors is the same but in some circumstances liquidation expenses rank behind floating charge claims.

8.1.10 If the Aircraft is in the possession of a person other than the Airline at the commencement of Insolvency Protection of the Airline, for example an independent maintenance facility, will such person be entitled, under the laws of the Relevant Jurisdiction, to assert a lien arising under law or contract over the Aircraft in respect of amounts then due and unpaid to such person by the Airline?

No, unless consent of the administrator or leave of the Court is obtained. The assertion of the lien rights would constitute an action to enforce security against the insolvent company contrary to the moratorium which takes effect on commencement of administration. However, the court may make an order to provide the third party with adequate protection (such as equivalent cash collateral) as part of an order requiring a third party to deliver up the Aircraft.

8.1.11 Is a person other than the Airline, for example an airport authority, entitled under the laws of the Relevant Jurisdiction to seize possession of the Aircraft after commencement of Insolvency Protection and assert a lien arising under law or contract over the Aircraft in respect of amounts then due and unpaid to such person by the Airline?

No, the CAA and an airport authority are also subject to the moratorium on enforcing rights once administration has commenced and would also require consent of the administrators or leave of the court. However, the court may make an order to provide the third party with adequate protection (such as equivalent cash collateral) as part of an order requiring a third party to deliver up the Aircraft. Note that while this response correctly reflects the legal position, certain airports and the CAA on behalf of NATS and Eurocontrol asserted rights of detention over aircraft which had been operated by Monarch Airlines at the time it entered administration. In practice lessors paid off these charges to permit quick repossession as the cost of contesting them in Court was disproportionate to the inherent cost of delay in repossessing and redeployment.

9. TAXATION

9.1 The decision to lease to an airline in the Relevant Jurisdiction assumes that the Owner will not be taxed on receipt of rentals or other payments (including maintenance reserves) under the Lease except by way of tax on its general income, profits or gains payable by the Owner in its place of incorporation or place of main business (if different). Will there be a requirement for the Owner to pay tax in the Relevant Jurisdiction on lease payments on basis that either the Owner is subject to taxation in the Relevant Jurisdiction by reason only of the leasing of the Aircraft under the Lease and is required to make payment itself; or payment of such tax is by way of the airline being required to withhold and account for tax from lease payments, where:
9.1.1 the Owner is incorporated and is tax resident in Ireland?

No

9.1.2 the Owner is incorporated and is tax resident in the United Kingdom?

No

9.1.3 the Owner is incorporated and is tax resident in Hong Kong?

No

9.1.4 the Owner is incorporated and is tax resident in Singapore?

No

9.1.5 the Owner is incorporated and is tax resident in Malta?

No

9.1.6 the Owner is incorporated and is tax resident in the Channel Islands?

No

9.1.7 the Owner is incorporated and is tax resident in the Isle of Man?

No

9.1.8 the Owner is incorporated and is tax resident in Mauritius?

No

9.1.9 the Owner is incorporated and is tax resident in Bermuda?

No

9.1.10 the Owner is incorporated and is tax resident in the Cayman Islands?

No
9.2 If there is a requirement in the Relevant Jurisdiction for the airline to withhold tax on lease payments, will the courts of the Relevant Jurisdiction recognise and permit enforcement of a “gross up” clause in the Lease requiring the payment by the Airline of an additional sum to ensure the Owner receives and is entitled to retain the same net amount as would have been received in the absence of the withholding, taking account of any further withholding on account of tax required in relation to such additional sum?

Yes

9.3 VAT: European Union country: under Article 148(f) of the VAT Directive, an exemption from VAT is applied to “supplies” consisting of chartering or hiring of aircraft which are used by airlines operating for reward chiefly on international routes. Therefore:

9.3.1 New lease to airline operating for reward chiefly in domestic routes: VAT will be applied to lease rentals at current rate:

20%

9.3.2 New Lease to airline operating for reward chiefly on international routes: VAT will not be applied to lease rentals by reason of application of exemption:

Yes

9.3.3 Sale of aircraft by an aircraft lessor to another aircraft lessor of an aircraft subject to a lease to an airline operating for reward chiefly in domestic routes:

Assuming that completion and delivery takes place in the UK, VAT will be applied to the purchase price. If the seller and the purchaser are both EU entities and the purchaser supplies its EU VAT Number to the seller then the VAT charge will be a reverse charge. Otherwise VAT will be applied to purchase price at current rate: 20%.

9.3.4 Sale of aircraft by an aircraft lessor to another aircraft lessor of an aircraft subject to a lease to an airline operating for reward chiefly on international routes: VAT will be applied to purchase price:

No

9.3.5 If no, is this because of application of the exemption under Article 148(f) to the airline following the decision in ECJ Case C-33/2011?
9.3.6 If yes, is this because the Relevant Jurisdiction does not apply the decision in ECJ Case C-33/2011?  

N/A

9.3.7 If the transaction involves the first importation of the aircraft into the EU (and assuming the aircraft is intended for use as a civil and not military aircraft) what rate of Customs Duty will apply?  

0% (Due to the availability of end-use relief – the importer must apply to HMRC for authorisation to claim end use relief).  

9.4 Is any stamp duty, notarial or other fee or equivalent payable in respect of the execution of the Lease, a de-registration power of attorney or any other lease related document concerning the aircraft? Will such stamp duty or fee still be payable if the relevant documents are executed and held outside the Relevant Jurisdiction? If any such amount is payable how much is it approximately?  

No stamp duty, notarial or other fee will be payable.  

9.5 Can any form of consent, authorisation or licence be obtained exempting the payments referred to in this Section from such tax or duty? If so, how would it be obtained?  

An importer must apply to HMRC to claim end use relief (0% customs duty on the import of aircraft). If an aircraft owner/lessor receives interest payments from a UK resident corporate borrower, it must obtain a Double Taxation Treaty Passport from HMRC in order to obtain the benefit of any double taxation treaty relief from withholding tax on such interest payments.  

9.6 Ignoring any taxation consequence already mentioned and any potential taxation issues if the Owner has any other connection to the Relevant Jurisdiction, is there any other Relevant Jurisdiction taxation consequence of the Owner:  

9.6.1 Being owner and lessor of an aircraft registered in the Relevant Jurisdiction and operated/leased by a company incorporated or registered in the Relevant Jurisdiction?  

No
9.6.2 Making available a lease facility to a company incorporated or regulated in the Relevant Jurisdiction?

No

9.6.3 Receiving rent and other lease payments under the Lease from the lessee incorporated or registered in the Relevant Jurisdiction?

No

9.6.4 Repossessing the aircraft and exporting the aircraft from the Relevant Jurisdiction?

No - UK direct tax will be chargeable provided that the owner does not have a UK permanent establishment. If the owner has a UK permanent establishment, it may be liable to pay tax on any increase in value of the aircraft in between repossession and export.

9.6.5 Selling the aircraft at a profit, whether such sale is after repossession or is subject to the Lease and the lessee's rights?

No UK direct tax will be chargeable provided that the owner does not have a UK permanent establishment. The sale of Aircraft within the UK attracts a charge to VAT but, again, supplies of certain Aircraft will be zero-rated. Where the sale will be zero-rated, the Seller must either register for UK VAT or apply to the UK tax authority for exemption from registration.

10. EXCHANGE CONTROLS

10.1 Are payments to foreign owners by companies incorporated or registered in the Relevant Jurisdiction subject to any form of exchange or similar control?

No, there is exchange control regime in the Relevant Jurisdiction.

10.2 If yes, can any consents, authorisations or licences be obtained to exempt payments from any such control? How would these be obtained? Are such consents, authorisations or licences transferable?

N/A

11. INSURANCE
11.1 Is it a legal requirement to insure the Aircraft within the Relevant Jurisdiction?

It is a legal requirement that adequate insurance will be maintained but there is no requirement that the risk is placed with insurers or underwriters in the Relevant Jurisdiction.

11.2 If so, is there any restriction on reinsurance of the primary insurance outside the Relevant Jurisdiction?

N/A

11.3 Is there a minimum percentage of cover which a local insurer is obliged to retain, and if so, what is it?

N/A

11.4 Is it possible for local insurers to assign contracts of reinsurance? If not, is a cut-through clause enforceable?

It is possible for an insurer in the Relevant Jurisdiction to assign a contract of reinsurance. There are doubts as to whether a cut-through clause could be enforced by the beneficiary as they are not party to it. There is legislation in the Relevant Jurisdiction which allows a third party beneficiary to enforce a contract to which they are not party to obtain that benefit but this legislation can be and commonly is excluded. With the prevalence of the London primary aviation insurance market, in practice this issue is not significant for transactions involving Airlines in the Relevant Jurisdiction.

12. LIABILITY FOR DAMAGE

Can the Owner be strictly liable – liable without a requirement to prove fault or negligence – for any damage or loss caused by the Aircraft assuming Owner is an innocent owner with no operational control of the Aircraft?

The Owner is strictly liable for loss and damages caused by an aircraft to third parties and properties under the English Civil Aviation Act 1982 when the aircraft is not subject to a lease with a term of 14 days or more, or if the aircraft is wet leased by the Owner. In those circumstances the Act provides that unless the claimant caused or contributed to the loss or damage by its own negligence, the claimant will be able to recover damages without proof of negligence, intention or other cause of action from the Owner, as if the Owner had wilfully been at fault.

Where there is a (dry) lease with a term of 14 days or more the Act passes liability to the lessee and provides that unless the claimant caused or contributed to the loss or damage by its own negligence, the claimant will be able to recover damages without proof of negligence, intention or other cause of action from the lessee, as if the lessee had wilfully been at fault.
The lease would typically ensure that this risk remains with the lessee and the lessee would indemnify the Owner for a liability arising from operation of the Aircraft. In some circumstances the lessee may have a right of counter-indemnity from, for instance, the manufacturer.

13. DETENTION/CONFISCATION

13.1 Are there any rights to detain or sell the Aircraft pursuant to drug trafficking, tax or other laws or pursuant to rights of airport or air navigation authorities if the Airline fails to pay when due?

Please see paragraph 3.2.

13.2 If so, can the Aircraft be forfeited and sold without the Owner being made aware?

Where payment is being sought the relevant authorities would, in any event, be likely to seek payment from the Owner. The Owner may then have to pay the charges and seek indemnification from the lessee or other defaulting party. Legislation supports this process, s.88 of the Civil Aviation Act 1982 requires an aerodrome authority proposing to sell an aircraft as a result of payments due to bring the proposed sale to the notice of interested parties, allowing them to become involved in any proceedings and on any sale the authority must try to achieve the best possible sale price. Once the authorities have a court judgment in their favour, they may enforce that judgment without further notice to the Owner.

On the other hand where it is believed that some illegal activity has taken place, it is likely that the authorities will not wish to “tip off” the Owner before taking steps such as forfeiture.

It is also possible that in the event of hostilities or national emergencies requisitioning might occur without prior notice, although it is likely that the Owner could expect financial compensation.

Although the UK Aircraft Register is an “Owner” registry, in practice the CAA often permit a UK Operator to register as “Owner”. In such a case there may be no public record of the true ownership of the Aircraft leaving the possibility that the Aircraft could be sold on without notice to the Owner. This possibility is more theoretical than real because there is a statutory waiting period of 56 days before the Aircraft can be sold in relation to the statutory powers and because the Aircraft Records should correctly document the ownership and correct, up to date records are essential for a sale of the Aircraft. Where commercially possible an Owner is advised to register the Aircraft in its name on the Aircraft Register even where there is a UK lessee/operator.

14. SOVEREIGN IMMUNITY

14.1 Is any Airline based in the Relevant Jurisdiction entitled to any form of sovereign or other immunity from suit which might restrict the Owner’s rights under the Lease?

In general terms the UK recognises sovereign immunity for States and in some circumstances also where a
separate entity carries out acts under State authority. However, there are a number of important exceptions which are likely to apply to an aircraft leasing transaction: a waiver of sovereign immunity and a submission to the jurisdiction of the English Courts or submission to arbitration, for instance, will suffice to displace sovereign immunity to adjudication. There are currently no civil airlines in the UK which are organs of the UK State and so the issue is more relevant in relation to airlines which are related to another State. Specific advice is recommended in such circumstances.

14.2 Can such immunity be validly waived in advance by contract?

Yes, although this may be limited to immunity from adjudication rather than enforcement of a judgment against State assets. Again, if a transaction with a body which may be an organ of a State is contemplated, specific advice is recommended.

15. DISPUTE RESOLUTION AND RECIPROCAL ENFORCEMENT

15.1 Do the laws of the Relevant Jurisdiction permit and recognise an “asymmetric” submission to jurisdiction clause under which the lessee submits to the exclusive jurisdiction of the Courts of England but the Owner has discretion to choose a jurisdiction other than the Courts of England?

Parties in England & Wales are, in the main, free to contract on the terms they choose, provided these are not illegal, so it is possible to rely on an asymmetric submission to the jurisdiction clause.

Where, however, burdens imposed on parties are not equal, then the court, if called on to exercise its discretion, will often interpret agreements to give the party with the heavier burden the benefit of the doubt on contentious issues.

15.2 If the Lease is governed by English Law and a judgment is obtained by the Owner in the English courts, can that judgment be automatically enforced in the Relevant Jurisdiction or will the case have to be re-examined on its merits? If so what procedures must be complied with to enforce such a judgement?

An English judgement can be enforced in England & Wales automatically without the case being re-examined on its merits.

Once a judgment has been obtained there are a number of enforcement routes, for example:

- The Owner may make a claim to take control of goods. A writ or warrant of control can often be issued administratively by the court office, following production of documents and payment of a fee. This enables an officer of the court to seize and sell the debtor’s goods to satisfy the judgment. This would include the Aircraft and other assets situated in England & Wales. A specialist enforcement officer should be appointed with experience of aircraft. A copy of the writ of control should be attached both outside the plane and in the cockpit to alert people entering the aircraft of the seizure of the plane.
15.3 Is the Relevant Jurisdiction party to the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention) or the 1965 Convention on the Settlement of Investment Disputes Between States and Nationals of Other States (the Washington Convention)? Will the courts of the Relevant Jurisdiction recognise and enforce a decision of an arbitrator?

England is a party to the New York Convention and the Washington Convention and will recognise and enforce a decision of an arbitrator.

15.4 What is the usual choice of dispute resolution in international supply contracts involving a lessor or buyer incorporated in or with its main place of business in the Relevant Jurisdiction?

Dispute resolution choices vary from company to company.

The English High Court is very capable of dealing with aviation disputes and has a good reputation in providing thoroughly considered, commercial decisions. If emergency relief is required it is often advantageous to be able to turn to the court which is experienced in dealing with such matters and has the weight to ensure its decisions are upheld. Contracts governed by English law frequently select the jurisdiction of the courts of England & Wales for the resolution of disputes.

Where there are international parties involved, however, there can sometimes be a preference for arbitration. Parties in international contract often turn to institutions such as the ICC and LCIA to regulate their arbitration. These institutions do have the ability to make some injunctive awards. Arbitration also offers a degree of confidentiality where this is preferred. Arbitration awards can be easier to enforce internationally than court decisions and so contracts with counterparties from a former Soviet Union country or involving a Chinese lessee may well select an arbitration agreement for the resolution of disputes.

16. AIRCRAFT ENGINES

16.1 If the equipment being leased to the Airline in the Relevant Jurisdiction was an Aircraft Engine either unattached to an airframe or attached to an airframe belonging to a party other than the Aircraft Engine Owner and being leased to the Airline under a separate engine lease agreement, would there be any significant changes to the responses set out above?

See 16.2 and 16.3. Subject to 16.2 and 16.3 generally, no significant changes are required in relation to Aircraft Engines.

16.2 In particular, does the Relevant Jurisdiction recognise the separate ownership of the Aircraft Engine by the Aircraft Engine Owner when the
Aircraft Engine is attached to an airframe belonging to a person other than the Aircraft Engine Owner?

Ownership is governed by the laws of contract and will follow the parties’ intentions. Correctly drafted documentation and maintenance of correct Aircraft Engine records will preserve separate ownership of an Aircraft Engine. Lessors of Aircraft Engines are advised to obtain recognition of rights acknowledgements from the owner of airframes to which such Aircraft Engines are attached.

16.3 Is there a register of Aircraft Engines and is the information given above in relation to registration of Aircraft and the ownership and leasing of Aircraft the same for registration of an Aircraft Engine and the ownership and leasing of such Aircraft Engine at the Aircraft Engine register?

There is no register of Aircraft Engines nor is it possible to make any registration entry on the Aircraft Registry.

17. ADDITIONAL INFORMATION – IS THERE ANYTHING ELSE WE SHOULD HAVE ASKED?

Are there any other matters, issues, recommended courses of action or steps which can be taken to protect and/or perfect the Owner's interests, as owner and lessor of the Aircraft in the Relevant Jurisdiction or of which the Owner should be aware when contemplating leasing an aircraft to a company incorporated and operating in the Relevant Jurisdiction?

The full impact of the United Kingdom’s departure from the European Union on the aircraft finance and leasing market is yet to be seen and will depend on how negotiations between the UK Government and the EU progress. For now, during the “transition period” between the UK leaving the EU until the end of 2020, EU law will continue to apply in the UK. There are not, therefore, any immediate changes as a result of the UK leaving the EU.
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version?

5.5 Are there any special terms that the Lease must contain or that it is advisable for the Lease to contain?

5.6 Are there any circumstances under which the Lease might be re-characterised under the laws of the Relevant Jurisdiction as:

6 LEASE REGISTRATION

6.1 Is there a separate register for aircraft leases in the Relevant Jurisdiction?

6.2 If yes, then:

7 ENFORCEMENT OF LEASES (ASSUMING AIRLINE IS NOT IN A FORM OF INSOLVENCY PROTECTION)

7.1 On the occurrence of an event of default under the Lease, assuming that the Owner is permitted to do so under the terms of the Lease, can the Owner terminate the Leasing of the Aircraft under the Lease and enforce the Lease by taking physical possession of the Aircraft?

7.2 If so, can the Owner take physical possession of the Aircraft without the need for judicial proceedings in the Relevant Jurisdiction?

7.3 Where judicial proceedings in the Relevant Jurisdiction are necessary, please provide details of the proceedings, in particular:

8 Where judicial proceedings are not necessary, please comment on the time limits relevant to taking possession of the Aircraft, in particular:

8.1 Is there a waiting period before action may be taken?

8.2 Apart from the judicial proceedings described above and ignoring deregistration (see section 8), is the permission of any other party (including any official body) in the Relevant Jurisdiction required to take possession of the Aircraft?

8.3 Is there any history of actual repossession of aircraft by Owners in the Relevant Jurisdiction? If so, please provide details of any matters or issues of which an Owner should be aware.

8.4 Are there any circumstances in which the sums expressed to be payable under the Lease or obligations expressed to be assumed by the Airline in the Lease are or will be unrecoverable or unenforceable in the Relevant Jurisdiction?

8.5 Are there any restrictions on the ability of the Owner to sell the Aircraft in the Relevant Jurisdiction during the term of the Lease or, following an event of default, on termination of the leasing or pending judicial enforcement of the Lease?

8.6 Are there any export restrictions on export of a repossessed aircraft?

9 DEREGISTRATION POWER OF ATTORNEY/EXPORTATION

9.1 Can the Owner apply for deregistration of the Aircraft either at the end of the lease term or following successful repossession (with or without judicial proceedings) and is there any time period within which such application should be made?

9.2 Is the consent of the Airline required to deregister the Aircraft either by law or as a matter of custom or practice?

9.3 How long does deregistration take, both where there is co-operation from the Airline and where this is no co-operation from the Airline?

9.4 Is it possible to obtain an export licence or export permit in advance?

9.5 Approximately how long does it take to obtain an export licence or export permit? What are the costs involved?

9.6 Is it possible to obtain a certificate of deregistration in advance?

9.7 Will a power of attorney empowering the Owner to deregister and export the Aircraft from the Relevant Jurisdiction, either at the end of the lease term or following successful repossession (with or without judicial proceedings), be enforceable in the Relevant Jurisdiction? Will the courts recognise a power of attorney in the form of an IDERA and governed by English law?
9.8 If the power of attorney was stated to be irrevocable would this be enforceable against the Airline or can the Airline revoke such power of attorney?

9.9 Upon the occurrence of a bankruptcy or insolvency of the Airline is the power of attorney still effective?

10 INSOLVENCY

10.1 In the event that the Airline were to become insolvent either on a balance sheet basis (assets less than liabilities) or unable to pay debts as fall due and payable:

11 TAXATION

11.1 The decision to lease to an airline in the Relevant Jurisdiction assumes that the Owner will not be taxed on receipt of rentals or other payments (including maintenance reserves) under the Lease except by way of tax on its general income, profits or gains payable by the Owner in its place of incorporation or place of main business (if different). Will there be a requirement for the Owner to pay tax in the Relevant Jurisdiction on lease payments on basis that either the Owner is subject to taxation in the Relevant Jurisdiction by reason only of the leasing of the Aircraft under the Lease and is required to make payment itself; or payment of such tax is by way of the airline being required to withhold and account for tax from lease payments, where:

11.2 If there is a requirement in the Relevant Jurisdiction for the airline to withhold tax on lease payments, will the courts of the Relevant Jurisdiction recognise and permit enforcement of a "gross up" clause in the Lease requiring the payment by the Airline of an additional sum to ensure the Owner receives and is entitled to retain the same net amount as would have been received in the absence of the withholding, taking account of any further withholding on account of tax required in relation to such additional sum.

11.3 VAT: European Union country: under Article 148(f) of the VAT Directive (2006/112/EG), an exemption from VAT is applied to "supplies" consisting of chartering or hiring of aircraft which are used by airlines operating for reward chiefly on international routes. Therefore:

11.4 Sale of aircraft by an aircraft lessor to another aircraft lessor of an aircraft subject to a lease to an airline operating for reward chiefly on international routes: VAT will be applied to purchase price:

11.5 Is any stamp duty, notarial or other fee or equivalent payable in respect of the execution of the Lease, a de-registration power of attorney or any other lease related document concerning the aircraft? Will such stamp duty or fee still be payable if the relevant documents are executed and held outside the Relevant Jurisdiction? If any such amount is payable how much is it approximately?

11.6 Can any form of consent, authorisation or licence be obtained exempting the payments referred to in this Section from such tax or duty? If so, how would it be obtained?

12Ignoring any taxation consequence already mentioned and any potential taxation issues if the Owner has any other connection to the Relevant Jurisdiction, is there any other Relevant Jurisdiction taxation consequence of the Owner:

13 EXCHANGE CONTROLS

13.1 Are payments to foreign owners by companies incorporated or registered in the Relevant Jurisdiction subject to any form of exchange or similar control?

14 INSURANCE

14.1 Is it a legal requirement to insure the Aircraft within the Relevant Jurisdiction?

14.2 If so, is there any restriction on reinsurance of the primary insurance outside the Relevant Jurisdiction?
14.3 Is there a minimum percentage of cover which a local insurer is obliged to retain, and if so, what is it?
14.4 Is it possible for local insurers to assign contracts of reinsurance? If not, is a cut-through clause enforceable?

15 LIABILITY FOR DAMAGE

16 DETENTION/CONFISCATION

16.1 Are there any rights to detain or sell the Aircraft pursuant to drug trafficking, tax or other laws or pursuant to rights of airport or air navigation authorities if the Airline fails to pay when due?
16.2 If so, can the Aircraft be forfeited and sold without the Owner being made aware?

17 SOVEREIGN IMMUNITY

17.1 Is any Airline based in the Relevant Jurisdiction entitled to any form of sovereign or other immunity from suit which might restrict the Owner's rights under the Lease?
17.2 Can such immunity be validly waived in advance by contract?

18 DISPUTE RESOLUTION AND RECIPROCAL ENFORCEMENT

18.1 Do the laws of the Relevant Jurisdiction permit and recognise an "asymmetric" submission to jurisdiction clause under which the lessee submits to the exclusive jurisdiction of the Courts of England but the Owner has discretion to choose a jurisdiction other than the Courts of England?
18.2 If the Lease is governed by English Law and a judgment is obtained by the Owner in the English courts, can that judgment be automatically enforced in the Relevant Jurisdiction or will the case have to be re-examined on its merits? If so what procedures must be complied with to enforce such a judgment?
18.3 Is the Relevant Jurisdiction party to the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention) or the 1965 Convention on the Settlement of Investment Disputes between States and Nationals of Other States (the Washington Convention)? Will the courts of the Relevant Jurisdiction recognise and enforce a decision of an arbitrator?
18.4 What is the usual choice of dispute resolution in international supply contracts involving a lessor or buyer incorporated in or with its main place of business in the Relevant Jurisdiction?

19 AIRCRAFT ENGINES

19.1 If the equipment being leased to the Airline in the Relevant Jurisdiction was an Aircraft Engine either unattached to an airframe or attached to an airframe belonging to a party other than the Aircraft Engine Owner and being leased to the Airline under a separate engine lease agreement, would there be any significant changes to the responses set out above?
19.2 In particular, does the Relevant Jurisdiction recognise the separate ownership of the Aircraft Engine by the Aircraft Engine Owner when the Aircraft Engine is attached to an airframe belonging to a person other than the Aircraft Engine Owner?
19.3 Is there a register of Aircraft Engines and is the information given above in relation to registration of Aircraft and the ownership and leasing of Aircraft the same for registration of an Aircraft Engine and the ownership and leasing of such Aircraft Engine at the Aircraft Engine register?

20 ADDITIONAL INFORMATION – IS THERE ANYTHING ELSE WE SHOULD HAVE ASKED?

20.1 Are there any other matters, issues, recommended courses of action or steps which can be taken to protect and/or perfect the Owner's interests, as owner and lessor of the Aircraft in the Relevant Jurisdiction or of which the Owner should be aware when contemplating leasing an aircraft to a company incorporated and operating in the Relevant Jurisdiction?
1. PROPOSED TRANSACTION STRUCTURE

The Aircraft will be purchased by the Owner and leased on an operating lease basis to the Airline pursuant to the Lease.

2. SEARCHES

2.1 Are there any public registers in the Relevant Jurisdiction where a search can be carried out to determine whether an order or resolution for any bankruptcy, bankruptcy protection or similar insolvency proceedings has been registered in relation to the Airline?

Yes

2.2 If so, specify which public registers, how long such searches typically take and if the fees are more than USD 100, approximately what fees apply.

There is a general database for insolvency proceedings in Germany which can be found under: www.insolvenzbekanntmachungen.de. The online access is free of charge and usually permanently available. The database, among other information, reveals if an insolvency proceeding has been commenced relating to the estate of a person or if preservation measures (Sicherungsmaßnahmen) have been ordered by the relevant insolvency court. Also, information as to distributions to creditors and dates for hearings (examination of filed claims etc.) are available.

3. RIGHTS AND EVIDENCE OF OWNERSHIP

3.1 In the case of the transfer of title to an aircraft registered in the Relevant Jurisdiction:

3.1.1 Is any particular form of transfer required for the transfer to be legally recognised?

No. In particular, there is no requirement under German law for documentary proof in form of a bill of sale. Please note however that the German Aviation Authority (Luftfahrtbundesamt – "LBA") requires proof of ownership by a bill of sale for purposes of registering an aircraft in the Aircraft Register (Luftfahrzeugrolle)(cf. 4.6 below).

3.1.2 Must any particular conditions be satisfied for the transfer to be recognised?
Under German law, for a valid transfer of title to a moveable asset there must be (i) an agreement between seller and buyer that title is transferred to buyer and (ii) a transfer of physical possession of the property from seller to buyer. As under realistic scenarios a physical transfer of possession may not always be practical, German law provides for various ways to substitute the need for a physical transfer of possession (e.g. by way of the seller assigning its contractual rights to reclaim possession from a third party).

3.1.3 Will such a transfer still be recognised by the courts of the Relevant Jurisdiction as legally valid where the relevant aircraft is located in another jurisdiction at the time of the transfer?

Yes. Pursuant to Article 45 of the Introductory Act to the German Civil Code (Einführungsgesetz zum Bürgerlichen Gesetzbuch) rights in aircraft are generally governed by the laws of the country where the aircraft is registered (lex registri). Therefore, German law would apply to the transfer of title even if the aircraft at the time of title transfer is located outside Germany (unless the laws of another jurisdiction have a materially closer connection with the matter).

3.1.4 Are any duties, taxes or fees levied on such transfer of ownership?

From a tax perspective the transfer of title to an aircraft would be subject to German income taxation if the seller is German tax resident or maintains a permanent establishment in Germany. An aircraft lessor carrying on the trade of leasing in Germany may be liable to German income taxes on its profits or gains. Specific advice is recommended if this is likely to be the case.

For VAT position, see 10.3.

From a German tax perspective no other fees or taxes should be levied on such transfer of ownership.

3.2 Other than Insolvency laws (see section 9) are there any laws which may have the effect of defeating the Owner's right in the aircraft – for example, Government requisition? Do the laws of the Relevant Jurisdiction provide for any compensation in such circumstances?

Under extraordinary circumstances may the Owner's right in the aircraft be defeated. According to the German Constitution (Grundgesetz) an expropriation by governmental entities is only permissible for public good and may only be ordered by or pursuant to a law that determines the nature and extent of the compensation.

The Aircraft may be subject to requisition and similar rights pursuant to the German Emergency Laws (Bundesleistungsgesetz) for defence purposes and in order to avert an imminent danger to the free and democratic fundamental order of Germany and may be subject to public orders under the laws on the protection of the public security and order (polizeiliche Eingriffsmaßnahmen). However, the German Constitution (Grundgesetz) provides for protection of property from expropriation without adequate compensation. The German Emergency Laws (Bundesleistungsgesetz), for instance, contain detailed provisions for compensation in case of requisition.

Please further note, that the aircraft may also be seized under the German Code of Criminal Procedure (Strafprozessordnung) either temporarily as evidence or permanently in case of confiscation (Verfall) or
4. THE AIRCRAFT REGISTER – NATIONALITY OF AIRCRAFT

4.1 Has the Relevant Jurisdiction ratified any of:

The Chicago Convention of 1944 on International Civil Aviation?
Yes.

The 1948 Geneva Convention on the International Recognition of Rights in Aircraft?
Yes.

The 1933 Convention for the Unification of Certain Rules Relating to the Precautionary Arrest of Aircraft?
Yes.

The 2001 Cape Town Convention on International Interests in Mobile Equipment and the associated Protocol on Matters Specific to Aircraft Equipment (the Cape Town Convention)?
No.

4.2 If the Relevant Jurisdiction has ratified the Cape Town, see the Cape Town Convention Annex.

Not applicable.

4.3 If the Relevant Jurisdiction has not ratified the Cape Town Convention, has the Relevant Jurisdiction started official proceedings or given any other official indication that it will accede to or ratify the Cape Town Convention in the near future?

We are not aware of any indication that Germany will ratify the Cape Town Convention in the near future.

4.4 Is there an Aircraft Register in the Relevant Jurisdiction and if so, what is it called and who operates it?

Yes, there is a register for aircraft in Germany. The register is called Luftfahrzeugrolle (Aircraft Register) and it is operated by the German Civil Aviation Authority (Luftfahrtbundesamt – “LBA”) located in Braunschweig. In addition to the Aircraft Register, there is a separate register for small sport aircraft (Verzeichnis der Luftsportgeräte) which is maintained by individual air sport clubs (Luftsportverbände).
A fee is payable on registration of the aircraft with the Aircraft Register. The amount depends on the weight (Höchstmasse) of the aircraft. For an aircraft with a maximum take-off weight exceeding 150 tons the fee is EUR 4,500. If only the registered owner changes the cost would be approximately EUR 70.

4.5 If so, in relation to registration:

4.5.1 Who is responsible for registering the Aircraft – is it an owner registry or an operator registry?

The owner of the Aircraft is responsible for registering the Aircraft. The Aircraft Register is an owner registry.

4.5.2 What details would normally be recorded on the Aircraft Register upon registration of an aircraft in the Relevant Jurisdiction? If not normally recorded, is it possible to record the Lease and/or an Aircraft Mortgage on the Aircraft Register?

The following information is recorded on the Aircraft Register.

1. Aircraft type and model, serial number of the airframe
2. Nationality and registration mark of the aircraft
3. Number of the page on which the aircraft is registered
4. If applicable, the number of the page on which the aircraft is listed in the Aircraft Mortgage Register (cf. below)
5. Name and address of the owner and (if different) the operator
6. Regular location of the aircraft
7. Use of the aircraft
8. Type of engine, equipment, emergency equipment, and verifications
9. Noise insulation
10. Information regarding liability insurance
11. Date of registration of the aircraft

It is not possible to record the Lease and/or an Aircraft Mortgage on the Aircraft Register. Aircraft Mortgages can only be registered in the Aircraft Mortgage Register (Luftfahrzeugpfandrechtsregister) which is a different register as the Aircraft Register. The Aircraft Mortgage Register is maintained by the local court (Amtsgericht) of Braunschweig. A fee will be payable for the registration of the Aircraft Mortgage with the Aircraft Mortgage Register. The amount depends on the value of the mortgage. In addition, notary fees for the creation of the mortgage will occur.

4.5.3 If the Aircraft Register is an operator register, is it possible to record the details of the aircraft owner/lessor and any financier with an Aircraft Mortgage?

Not applicable.

4.5.4 If the Aircraft Register is an owner register, is registration on the Aircraft Register definitive to determine ownership of the Aircraft?
No. The registration is part of the LBA’s duty to monitor the safety of air traffic in Germany. The registration, therefore, constitutes an act of public administration but will not provide conclusive or even prima facie evidence of title to the Aircraft.

4.5.5 Are any distinctions made between aircraft employed on international routes and those used purely for domestic flights?

No.

4.6 What documents and/or consents are required to obtain registration on the Aircraft Register and will these require any formalities (for example, notarisation, legalisation or application of apostille)?

For the registration on the Aircraft Register the following documents need to be submitted to the LBA:

1. The LBA standard application form.
2. Copies of the owner's constitutional documents (depending on the jurisdiction of incorporation this may be a commercial register extract, certificate of incorporation, certificate of good standing, memorandum and articles of association or similar documents). The documentation must evidence that the owner is a validly existing entity and that the persons signing the registration documents are duly authorised to act on behalf of the owner. The LBA usually requires that documents are provided in notarised and (in case of non-German owners) apostilled form.
3. A declaration of ownership (for instance a bill of sale issued in favour of the owner who is to be registered). The bill of sale will need to be submitted in original form (and will be returned upon request). In some cases, in particular in connection with the registration of older aircraft, the LBA may request documentary proof regarding the previous owners and ask for copies of all bills of sale dating back to the bill of sale issued by the manufacturer of the aircraft. From our experience, the LBA in practice usually does not request that the bills of sale will be notarised and apostilled or translated. Please note however, that the LBA has a wide discretion as regards the documents to be submitted in connection with the declaration of ownership. It is therefore advisable to liaise with the relevant person in charge and to confirm what documentation has to be submitted and which form is required.
4. A declaration of the owner stating, inter alia, that (i) it will comply with the provisions of the German Air Traffic Act (Luftverkehrsgesetz) and the Air Transport Licensing Regulation (Luftverkehrszulassungsordnung – LuftVZO), (ii) the aircraft will be leased on the basis of an operator agreement with a minimum term of 6 months, (iii) the aircraft will, on a regular basis, be operated from Germany and (iv) that the owner will notify the LBA immediately should any of the conditions above change. The document needs to be submitted in original form.
5. In case of a non-German owner: Appointment of a German domiciled authorised receiving agent (Zustellungsbevollmächtigter). The document needs to be submitted in original form.
6. A certificate of deregistration (Löschungsbescheinigung) if the aircraft has previously been registered in another aircraft register or a certificate of non-registration (Nichteintragungsbescheinigung). The certificates have to be submitted in original form unless sent directly to the LBA as facsimile by the relevant foreign authority.
7. Copies of the lease agreement including any head leases and sub leases. The LBA accepts leases in German or English language. If the document is in a different language the LBA may require a certified translation of the relevant documents by a registered translator.

Please note that for the airline to be able to operate the aircraft a separate approval (Luftverkehrszulassung) from
the LBA is required. The approval and the registration in the Aircraft Register are usually applied for and granted at the same time. However, in exceptional circumstances the aircraft can be registered prior to the airline having obtained approval to operate the aircraft. For the approval to operate the aircraft, various other documents (mostly relating to the technical condition of the aircraft and insurance and customs’ matters) need to be submitted to the LBA (e.g. a statement of insurance according to the Air Transport Licensing Regulation (LuftVZO), a noise certificate and a copy of the permission from the radio communication authority (Genehmigung zur Luftfunkstelle), customs’ certificates etc.).

A checklist with all the required documentation for the registration/approval to operate the aircraft can be found on the LBA’s website under www.lba.de/SharedDocs/Downloads/DE/Formulare/T4/Info/Info03.html?nn=569538

Other than the consent of the LBA no further consents are required.

4.7 Are there any restrictions on the legal status and/or nationality/domicile of parties seeking to register an aircraft on the Aircraft Register?

In principal, the following aircraft can be registered in the Aircraft Register:

1. Aircraft not registered in any other aircraft register and exclusively owned by German individuals or entities.
2. Aircraft not registered in any other aircraft register and owned by foreign citizens or foreign entities which are leased to a German individual or entity for a period of at least 6 months.
3. Aircraft which have been purchased by a German individual or entity (and title has not yet been transferred).

An entity is considered to be a German entity when its seat is located in Germany and over 50 % of its assets or capital and the effective control is held by German citizens and if the majority of its authorised representatives or personally liable persons are German citizens. In this context, citizens of the European Union and citizens of states in which the EU Air Traffic Law (Luftverkehrsrecht der Europäischen Gemeinschaft) applies are treated like German citizens. In our experience, however, the LBA refuses to register an aircraft owned by a non-German EU owner unless the aircraft is operated by a German airline.

4.8 In respect of aircraft transactions connected with the Relevant Jurisdiction generally, are there any foreign Aircraft Registers that are commonly used, or should be considered, as alternatives to or in addition to registration with the Relevant Jurisdiction’s Aircraft Register? If so, what is benefit of such registration?

No.

4.9 Are there any other filings or registrations necessary or desirable (other than the registrations already mentioned and Lease Registration - see section 6) in the Relevant Jurisdiction in order to ensure the validity, priority or enforceability of the transaction documents, or to perfect the interests of the Owner in the Aircraft or the transaction documents?

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5. LEASES

5.1 Will the Relevant Jurisdiction recognise the concept of a lease over an aircraft?

Yes, German law recognizes the concept of a lease over an aircraft. Operating leasing is deemed to be a form of rental agreement and, therefore the provisions of the German Civil Code (Bürgerliches Gesetzbuch – BGB) relating to rental agreements are also applicable to operating lease agreements. According to the German Federal Court of Justice (Bundesgerichtshof) a finance lease constitutes an atypical form of rental agreement to which, primarily, the provisions of the German Civil Code (BGB) relating to rental agreements applies.

5.2 Would the choice of English law to govern the Lease be upheld as a valid choice of law in any action in the Relevant Jurisdiction?

The Brexit may have a substantial influence on the answer to this question which cannot be clearly foreseen at the current point in time. It should be noted that there is a transition period (currently to last until 31 December 2020) where the UK, although not an EU member state anymore, is generally treated as if it still was a EU member state. The current (and pre-Brexit) situation is as described below. After the end of the transition period it is possible that a similar situation will be maintained due to (bilateral) treaties but this is currently unclear. In any case, any implications of the Brexit must be reviewed and assessed on a case-by-case basis and subject to the current developments. The choice of foreign law to govern the Lease contract will normally be recognised and given effect by German courts in accordance with (EC) No. 593/2008 ("Rome I"). This regulation provides that the parties to a contract are generally free to choose the applicable law, provided that the choice of foreign law may not be given effect by German courts to the extent that: (i) the parties have not validly agreed on the choice of law according to the law chosen by the parties, (ii) the application of the law chosen by the parties or any term of the Lease is manifestly incompatible with the German public policy (ordre public) in accordance with Article 21 Rome I, (iii) there are overriding mandatory provisions of German or European Community law which pursuant to Article 3 (3) and (4) Rome I and Article 9 (2) Rome I cannot be derogated by the parties, (iv) overriding mandatory provisions (Eingriffsnormen) of the country or state where the Lease has been or is to be performed render its performance illegal in accordance with Article 9 (3) Rome I and/or (v) conflict of law rules contained in international treaties require the application of a law other than the law chosen by the parties.

5.3 Must the Lease be in a particular form if it is to be valid and enforceable in the Relevant Jurisdiction (for example, must it be in the language of the Relevant Jurisdiction or be notarised, legalised or have the apostille applied)?

Assuming the Lease has been agreed in writing, German law does not require a specific form or language for the Lease to be valid and enforceable. If the Lease has to be presented in front of a German court in the course of legal proceedings, the court may require for the Lease to be translated into German. The German Civil Aviation Authority (Luftfahrtbundesamt – "LBA") accepts a lease agreement in German or English language and may, if the Lease is in a different language, require a certified translation.

5.4 If the Lease must be in the language of the Relevant Jurisdiction, is it possible under the Relevant Law also to have an English version, and to
provide that the English version should prevail in case of conflict with the Relevant Jurisdiction language version?

Not applicable.

5.5 Are there any special terms that the Lease must contain or that it is advisable for the Lease to contain?

Generally (and ignoring any specific tax or accounting requirements), it must be clear that the lessor leases the aircraft to the lessee and that the lessee takes the aircraft on lease from the lessor and the lessor and the lessee must agree a lease rental.

5.6 Are there any circumstances under which the Lease might be re-characterised under the laws of the Relevant Jurisdiction as:

5.6.1 a secured loan?

In our view it is unlikely that a lease (which contains the typical elements of an operating lease agreement) will be re-characterised by German tax authorities as a secured loan. However, this may be different in case of a sale and lease back transaction where the lease qualifies as a finance lease or the structure of the transaction resembles a secured loan rather than a lease transaction. In this case, detailed advice should be obtained to analyse any potential risk of a re-characterisation of the lease and its tax consequences.

5.6.2 a finance (or capital) lease?

What constitutes a finance lease for tax purposes is defined by the German Federal Ministry of Finance (decree dated 19 April 1971, IV B/2-S 2170-31/71, 23 December 1991, IV B 2 – S 2170-115/91). As a general rule, a finance lease is given if (i) the contract is agreed for a fixed period of time and the contract may in this time period not be terminated in case of contractual fulfilment of the obligations (Grundmietzeit) and (ii) the lessee (partially) covers with the payments in the fixed period of time at least the production and manufacturing costs as well as all ancillary costs including the costs of financing of the lessor (so called full amortisation leasing and partial amortisation leasing). This shall also be true in case of the lease of immovable goods, such as aircraft (decree dated 21 March 1972, F/IV B 2 – S 2170-11/72). Consequently, if the lease fulfils the above mentioned requirements it may be re-characterised from a tax perspective.

Financing leasing (Finanzierungsleasing) within the meaning of Sec. 1 para. 1a sentence 2 no. 10 German Banking Act (Kreditwesengesetz - KWG) within or into Germany is subject to regulation under the German Banking Act (KWG) and the lessor, as a general rule, requires a permit from the German Federal Financial Supervisory Authority (Bundesanstalt für Finanzdienstleistungsaufsicht - BaFin). The German Banking Act (KWG) provides for exceptions, e.g. in case of special purpose companies (Leasingobjektgesellschaften) provided certain additional requirements are fulfilled.

6. LEASE REGISTRATION

6.1 Is there a separate register for aircraft leases in the Relevant Jurisdiction?
No. In Germany there is no separate register for aircraft leases.

6.2 If yes, then:

6.2.1 What documentation and/or consents are required for the registration of the Lease?

Not applicable.

6.2.2 What registration fees are payable (if any)?

Not applicable.

6.2.3 What information is recorded on the register? How is the eventual discharge of the Lease recorded?

Not applicable.

6.2.4 Does any registration in respect of the Lease remain valid throughout the tenure of the Lease or does such a registration require periodic renewal? If renewal is required when must this be done and what is the approximate cost of renewal?

Not applicable.

7. ENFORCEMENT OF LEASES (ASSUMING AIRLINE IS NOT IN A FORM OF INSOLVENCY PROTECTION)

7.1 On the occurrence of an event of default under the Lease, assuming that the Owner is permitted to do so under the terms of the Lease, can the Owner terminate the Leasing of the Aircraft under the Lease and enforce the Lease by taking physical possession of the Aircraft?

If the Owner validly terminates the Lease, the Lessee is obliged to return the Aircraft to the Owner. However, the Owner as a general rule cannot enforce this claim for repossession by himself without the consent of the Lessee (which can also be expressed in advance in the Lease, but only in individually agreed contracts, not in General Terms and Conditions of the Owner) without taking judicial proceedings (i.e. filing of a suit and subsequently enforcing the judgment through a bailiff).

7.2 If so, can the Owner take physical possession of the Aircraft without the need for judicial proceedings in the Relevant Jurisdiction?
No. If the Lessee does not return the Aircraft to Lessor the Owner is generally not allowed to take physical possession of the Aircraft but has to take judicial proceedings, cf. 7.1.

7.3 Where judicial proceedings in the Relevant Jurisdiction are necessary, please provide details of the proceedings, in particular:

7.3.1 What documents would the Owner as lessor need to present in order to obtain possession of the Aircraft, both before and subsequent to judgment? Can documents be copies?

To receive a judgment against the Lessee, the Owner as lessor needs to convince the court that he is the owner of the Aircraft, that he had leased the Aircraft to the Lessee (or that the Lessee is still in possession of the Aircraft) and that the Lease was validly terminated. He has to submit sufficient proof for these facts if and insofar as the Lessee denies those points. Proof can be given for example by presenting the lease agreement and the notice of termination. Copies of the relevant documents are usually sufficient as long as the opposing party does not dispute the content of, or the authenticity of the signature under, the document. If the opposing party does so, the court may request the Owner to present original documents.

After a judgment is rendered by the court, only the official copy of the judgment is to be presented to the bailiff to enable him to enforce the judgment.

7.3.2 What is the approximate cost of issuing proceedings?

Under German law, court fees are subject to statutory provisions and depend on the value in dispute (which, in this case, would be the value of the aircraft). However, court fees do not increase proportionally by the value of the claim but there is a degression. Court fees have to be paid up front by the plaintiff (this is different in case of interim measures, cf. 7.3.5). Ultimately, the party that loses the lawsuit has to bear the court fees. The same applies for the fees for the enforcement of a judgment, which also depend on the value in dispute. However, please note that even if the plaintiff wins the lawsuit, he remains liable for the payment of the court fees if the opposing party fails to pay the same (e.g. due to insolvency).

7.3.3 Would the Owner be required to provide a bond, guarantee or other security in order to issue proceedings?

Generally, the plaintiff of a lawsuit is not obliged to provide security in order to issue proceedings as the court fees have to be paid up front.

However, Plaintiffs who are domiciled outside the European Union can be required to provide security for the costs of the proceedings. This does not apply if (i) international treaties provide that no such security deposit may be demanded, (ii) the right of the defendant for reimbursement of the costs would be enforceable in the country of domicile based on international treaties; or (iii) the plaintiff possesses real estate assets, or claims secured in rem, in Germany that the value of which suffice to cover the costs of the proceedings.

7.3.4 What is an estimate of the normal duration of possession proceedings from time at which all required documentation is made available – if uncontested?
If the defendant does not contest the claim, a judgment by acknowledgement (Anerkenntnisurteil) will be issued immediately (i.e. within a few days after the defendant has acknowledged the claim). In this case, there will be no oral hearing.

If the defendant does not react to the statement of claim at all or does not appear at an oral hearing, a default judgment (Versäumnisurteil) will be held immediately after the elapse of a deadline set by the court to react or within the oral hearing in which the party does not appear. After such default judgment was rendered, the defendant is entitled to enter a protest (Einspruch) against the judgment within two weeks after the default judgment was served. If the protest is admissible and entered in due time, the proceedings continue.

7.3.5 What is an estimate of the normal duration of possession proceedings from time at which all required documentation is made available – if contested?

Our cautious estimate with respect to the duration of main proceedings at the court of first instance is that this may vary between 4 to 14 months. However, the actual duration depends on the actions of the respective parties and is subject to no other circumstances prolonging the proceedings, such as insolvency proceedings being opened in relation to the lessee. An interim measure may be available - depending on the circumstances – within (a) day(s).

The duration for proving ownership in court proceedings depends on the specific circumstances, in particular documentary and other evidence which might be submitted.

In general, interim measures are available in Germany in the form of a writ of seizure or a preliminary injunction (Arrest oder einstweilige Verfügung), depending on the nature of the claim (a purely monetary claim or a retention or repossession claim). No particular form of the lease is needed in order for interim measures to be available, assuming, however, that the lease complies with form and other legal requirements under the applicable law.

Being able to obtain an interim measure for money or retention (i.e. repossession of an asset) depends on whether the plaintiff is able to demonstrate grounds for a writ of seizure to be issued in the case of seizure against the assets of a potential debtor or grounds for an interim injunction (Arrest-, Verfügungsgrund), i.e. that the plaintiff can demonstrate the statutorily required urgency. Possible causes include threatened disposal or stashing away of the asset, the excessive use of the asset or if a German title would have to be enforced in a foreign country where reciprocity is not ensured. Please note that even if an interim measure for money or repossession can be obtained, the registration court or the bailiff will only seize the asset and register the seizure in the registry or take the aircraft or engine into custody (which, in the case of an engine, could entail storage fees) until a final judgment has been obtained. Neither an aircraft nor an engine would be handed over to the Lessor based on interim measures.

7.4 Where judicial proceedings are not necessary, please comment on the time limits relevant to taking possession of the Aircraft, in particular:

7.4.1 Is there a waiting period before action may be taken?

The Owner cannot take possession of the Aircraft himself but has to institute proceedings against the Lessee (cf.
7.1) However, if the Lease terminates and the Lessee does not fulfil its contractual obligation to return the Aircraft the Owner may institute proceedings immediately.

7.4.2 Is there a long stop date by which action must be taken?

The claim of the Owner for restitution of the aircraft becomes time-barred after 3 years from the end of the year in which the Lease was terminated, unless there are circumstances that interrupt or restart the limitation period (such as the institution of legal proceeding, an acknowledgement of the claim by the other party, negotiations between the parties, a right of the other party to refuse the restitution or other events).

7.4.3 Is a Public Auction of the aircraft required?

No.

7.5 Apart from the judicial proceedings described above and ignoring deregistration (see section 8), is the permission of any other party (including any official body) in the Relevant Jurisdiction required to take possession of the Aircraft?

No.

7.6 Is there any history of actual repossession of aircraft by Owners in the Relevant Jurisdiction? If so, please provide details of any matters or issues of which an Owner should be aware.

There seems to be only one published court resolution in Germany dealing with the recovery of possession of an aircraft (Higher Regional Court (Oberlandesgericht) Brandenburg, of 23 May 2008, 7 U 111/06). However, very little can be drawn from this decision as the basis for this decision was an owner of an aircraft claiming damages against an unpaid MRO-organisation for delaying return of the aircraft.

7.7 Are there any circumstances in which the sums expressed to be payable under the Lease or obligations expressed to be assumed by the Airline in the Lease are or will be unrecoverable or unenforceable in the Relevant Jurisdiction?

(Ignoring any restrictions in case of any insolvency of the Lessee) the obligations of the Lessee may be unrecoverable if the Lease is invalid for any reason, for example if one of the parties had no legal capacity (geschäftsunfähig) when the Lease was concluded, if the Lease is void due to usury (Wucher) according to the principles of German law or if the Lease violates applicable German law.

7.8 Are there any restrictions on the ability of the Owner to sell the Aircraft in the Relevant Jurisdiction during the term of the Lease or, following an event of default, on termination of the leasing or pending judicial enforcement of the Lease?
No. The Owner is entitled to sell the Aircraft at any time.

7.9 Are there any export restrictions on export of a repossessed aircraft?

Generally, there are no restrictions on export of a repossessed aircraft. The owner may, however, require an export licence before exporting the aircraft from Germany (cf. 8.4).

8. DEREGISTRATION POWER OF ATTORNEY/EXPORTATION

8.1 Can the Owner apply for deregistration of the Aircraft either at the end of the lease term or following successful repossession (with or without judicial proceedings) and is there any time period within which such application should be made?

Yes. At the end of the lease term or following a successful repossession the Owner of the Aircraft can apply for deregistration. There is no legal procedure for the deregistration of the Aircraft, however, the Owner has to inform the German Civil Aviation Authority (Luftfahrtbundesamt – "LBA") immediately about every change regarding the information registered in the Aircraft Register (Luftfahrzeugrolle) (cf. 4.5.2 above), if the operator of the Aircraft changes and a new lease agreement is entered into with the new operator. Therefore, no fixed time period within which such application must be made exists, however, the term "immediately" in German law means that the application must be made without undue delay. In practice, the application for deregistration is often submitted to the LBA at the commencement of the redelivery procedure (or when there is certainty as regards the redelivery date). If the owner of the Aircraft is not of German/EU nationality, the LBA will be aware that the lease to the German Airline has terminated and may request the foreign owner to promptly submit an application for deregistration or prove that the Aircraft will be operated by another German Airline on the basis of a lease agreement with a term of more than six months. The LBA has discretion to set a time limit for deregistration and if no action is taken by the Owner, the LBA has the power to deregister the Aircraft ex officio.

8.2 Is the consent of the Airline required to deregister the Aircraft either by law or as a matter of custom or practice?

The consent of the Airline is not required for the deregistration of the Aircraft.

8.3 How long does deregistration take, both where there is co-operation from the Airline and where this is no co-operation from the Airline?

Usually, deregistration does not take very long. From our experience, deregistration can be effected within one or two days. It is advisable though to contact the relevant person at the LBA in advance and to preposition the deregistration application with the LBA. Usually, the LBA agrees to effect the deregistration (and, thereafter, to provide a deregistration certificate) on short notice after it has received instructions to do so. Since no consent of the Airline is required the process should not be delayed. However, we cannot rule out that if the Airline were not to co-operate the process would not be delayed. For instance, there is a requirement to return to the LBA together with the deregistration application form, the original certificate of registration, noise certificate and certificate of airworthiness. Those documents are usually with the Airline. If the Airline wants to hamper the deregistration process it could do so by refusing to hand over the documents mentioned above.
8.4 Is it possible to obtain an export licence or export permit in advance?

Usually, a Certificate of Airworthiness for Export (C of A for Export – Export Lufttüchtigkeitszeugnis) is applied for not earlier than 30 days prior to the redelivery of the aircraft/deregistration from the Aircraft Register. The LBA issues the C of A for Export on the basis of an airworthiness review certificate (European Aviation Safety Agency (“EASA”) Form 15a or 15b) issued by the relevant Continuing Airworthiness Management Organisation (“CAMO”) or the LBA itself on the basis of a recommendation of the CAMO.

In general, an export license is not required. However, an export licence may be required if embargoes imposed by the United Nations or other international organisations, the European Union (to the extent applicable in Germany) or by Germany itself have to be complied with or if parts of the Aircraft qualify as a Dual-Use Item in the meaning of Council Regulation (EC) No. 428/2009 or the German Foreign Trade and Payments Ordinance (Außenwirtschaftsverordnung). Such permit would have to be applied for by the exporter and granted by the competent authority – the Federal Authority for Economy and Export Control (Bundesamt für Wirtschaft und Ausfuhrkontrolle) – prior to the export of the aircraft. Special regulations apply in case that an aircraft is specially designed for military purposes.

8.5 Approximately how long does it take to obtain an export licence or export permit? What are the costs involved?

From our experience, it usually takes approximately 5-6 days to obtain a C of A for Export. However, there is no general rule and the process may take longer/shorter depending on the individual situation. The fee for issuing the C of A for Export is 50% of the fee applicable to the registration of the aircraft, which in return depends on the weight (Höchstmasse) of the aircraft. For an aircraft with a maximum weight of more than 20 tons but not more than 100 tons the fee for the C of A for Export is EUR 500. For an aircraft with a maximum weight of more than 100 tons but not more than 150 tons the fee is EUR 1,250 and for an aircraft with a maximum weight of more than 150 tons the fee is EUR 2,250.

8.6 Is it possible to obtain a certificate of deregistration in advance?

No. The LBA will deregister an aircraft when the owner fails to meet the requirements for registration, the owner requests that the aircraft be deregistered or when the aircraft is registered elsewhere.

8.7 Will a power of attorney empowering the Owner to deregister and export the Aircraft from the Relevant Jurisdiction, either at the end of the lease term or following successful repossession (with or without judicial proceedings), be enforceable in the Relevant Jurisdiction? Will the courts recognise a power of attorney in the form of an IDERA and governed by English law?

In general, a power of attorney which has been validly executed will be enforceable under German law. Article 8 of the German Introductory Act to the Civil Code (Einführungsgesetz zum Bürgerlichen Gesetzbuch – EGBGB) generally stipulates with effect as of 17 June 2017 that the choice of law in a power of attorney is recognised subject to the other party being aware of the choice of law. However, there is no decision of the German Federal Court of Justice (Bundesgerichtshof) or any Higher Regional Court (Oberlandesgerichte) as to the question whether the choice of law in a power of attorney in the form of an IDERA (Irrevocable De-Registration and Export Request Authorization) governed by English law is recognised. Due to the generality of Article 8 EGBGB it is very likely that a power of attorney in the form of an IDERA will be recognized by German courts, subject to the conditions...
8.8 If the power of attorney was stated to be irrevocable would this be enforceable against the Airline or can the Airline revoke such power of attorney?

In general the concept of irrevocability will be recognised under German law. But the courts may limit the scope of this concept by applying restrictions for cause (wichtige Gründe) so that e.g. material changes in the underlying situation of the respective concerned party may entitle it to withdraw a right irrevocably granted or a notice, instruction or other declaration of intent (Willenserklärung) which was stated to be irrevocable.

8.9 Upon the occurrence of a bankruptcy or insolvency of the Airline is the power of attorney still effective?

No. On the commencement of insolvency proceedings (Eröffnung des Insolvenzverfahrens) any power of attorney granted by the Airline, which pertains to those assets which are subject to the insolvency proceedings (that are, basically, most of the assets), would extinguish.

9. INSOLVENCY

9.1 In the event that the Airline were to become insolvent either on a balance sheet basis (assets less than liabilities) or unable to pay debts as fall due and payable:

9.1.1 Would the airline be required to file for insolvency protection?

In the event that the Airline is either insolvent on a balance sheet basis or unable to pay its debts when due and payable, the Airline is required to file for insolvency proceedings under German law. However, it is not required to do so, if the ability to pay its debt has not occurred and is only imminent (drohend).

9.1.2 Do the available forms of insolvency protection in the Relevant Jurisdiction involve the appointment of either an officer of the court or a specifically court appointed official to take control of the Airline (an Insolvency Official) while in insolvency protection?

Yes, upon filing (petition) for commencement of insolvency proceedings and, provided, that sufficient liquidity is available at the debtor to pay the minimum costs of insolvency proceedings, the Insolvency Court appoints either a (preliminary) insolvency administrator (an “Insolvency Official!”) or, upon request of the debtor, the Insolvency Court rules that the debtor shall manage its affairs under supervision of an insolvency monitor (Sachwalter), provided, that no circumstances are known which lead to the expectation that the creditors of the debtor would be disadvantaged through such debtor in possession proceedings (Eigenverwaltung).

9.1.3 Does the Insolvency Official have authority to negotiate and reach agreement with the Owner in relation to matters such as the payment of unpaid rent, continuation...
or termination of the Lease and repossession of the Aircraft without the need for court approval? Whether the Insolvency Official has such authority depends on certain circumstances:

A preliminary Insolvency Official (vorläufiger Insolvenzverwalter) generally does not have such authority by virtue of law. In general, a preliminary Insolvency Official is appointed by the Insolvency Court, if the court deems the appointment to be necessary, e.g. in case that the debtor's business is still ongoing and/or if substantive assets are available at the debtor.

Nevertheless the Insolvency Court has the authority to impose a prohibition on the debtor (Airline) to dispose of its assets. In such case, the authority and ability to dispose of the assets is transferred to the preliminary Insolvency Official. In this case, the preliminary Insolvency Official would have the authority to negotiate contracts, to take legal acts regarding these contracts (e.g. to terminate the lease), claim rights regarding the Airline, e.g. (re-)possession of the Airline, etc. However, if such authority remains with the debtor (Airline), the preliminary Insolvency Official is entitled to request the insolvency court's approval for such acts. In this case, legally, the acts would be taken by the debtor (Airline) with the approval of the preliminary Insolvency Official and the Insolvency Court. The basic premise for the Insolvency Court to approve such acts, which have been submitted to it, is whether such acts are required to continue the business of the debtor.

9.1.4 Does the commencement of insolvency protection involving the appointment of an Insolvency Official in the Relevant Jurisdiction have the effect of prohibiting the Owner from taking the following actions to enforce the lease:

- (a.) Applying any security deposit held by the Owner against any unpaid amounts due under the Lease? Yes, the Owner is prohibited from taking such acts.
- (b.) Accepting payment of rent or other lease payments from:

  1. (i.) the Airline? It has to be distinguished between the following periods:

     ■ upon commencement of preliminary insolvency proceedings (Insolvenzeröffnungsverfahren) the answer is no. The Owner is not prohibited from accepting payments from the Airline. However, when accepting payments from the Airline the Owner runs the risk that, upon commencement of insolvency proceedings (Insolvenzverfahren), the Insolvency Official will claw back (zurückfordern) any such payments made by the Airline prior to the date of said commencement (this risk occurs even if the preliminary Insolvency Official approved such payment by the Airline, as the Insolvency Official is legally not bound by the decision of the preliminary Insolvency Official).

     ■ upon commencement of insolvency proceedings (Insolvenzverfahren), not only preliminary insolvency proceedings (Insolvenzeröffnungsverfahren), the answer is yes, the Owner is prohibited from accepting payments (rent or other lease payments) as disposals of the assets (including cash payments) by the debtor (Aircraft) are void by virtue of law (the Owner would only be entitled to obtain rights in rem, provided that he acted in good faith (Sec. 81 para. 1 sentence 1 of the German Insolvency Statute (Insolvenzordnung – InsO) in connection with Sec. 16, 17 German Act Governing Rights in Aircraft (Gesetz über Rechte an Luftfahrzeugen - LuftFzgG). However, the Insolvency Official is obliged to pay the rent to the Owner until termination of the lease contract has been effectuated (i.e. for a minimum period of three months following the commencement of
insolvency proceedings) provided that the insolvency estate has sufficient funds to compensate its preferential creditors (Massegläubiger).

2. (ii.) a guarantor? The Owner is not prohibited from accepting payments either during preliminary insolvency proceedings or after commencement of insolvency proceedings.

3. (iii.) a shareholder? Same as for (ii): The Owner is not prohibited from accepting payments either during preliminary insolvency proceedings or after commencement of insolvency proceedings.

- (c.) giving notice of default under the lease? No. However, if insolvency proceedings have been filed for, the Owner (Lessor) may only terminate the lease contract due to defaults that occurred after the filing for commencement of insolvency proceedings.

- (d.) obtaining a judgment or arbitral award for unpaid lease payments? No. However any such judgment would not be enforceable (vollstreckbar) if it has been obtained during the month before the filing (petition) for commencement of the insolvency proceeding or after such filing (petition) as such enforcement would be void by virtue of law. Upon commencement of insolvency proceedings (Insolvenzverfahren), any pending lawsuit will be suspended and only be continued if the Insolvency Official makes an affirmative statement as to the continuation of such lawsuit. The same applies during the preliminary insolvency proceeding, provided, that a preliminary Insolvency Official has been appointed and the ability to dispose of the assets has been transferred to the preliminary Insolvency Official.

- (e.) giving notice to terminate the leasing of the Aircraft? Yes, the termination of the lease contract by the Lessor is not permitted upon commencement of the insolvency proceeding because the German law provides for continuation of contracts that pertain to immovable assets, which includes lease contracts regarding aircrafts. However, a termination right for the Lessor remains in case it is due to defaults that occurred after the filing of insolvency proceedings. The Insolvency Official on the other hand has a right to terminate such contract (Sec. 109 InsO) with a notice period of three months.

- (f.) exercising rights to repossess the Aircraft? It has to be distinguished between the following periods:
  - Upon commencement of insolvency proceedings (Insolvenzverfahren), not only preliminary insolvency proceedings (Insolvenzeröffnungsverfahren), the Owner is prohibited from repossessing the Aircraft given that the lease contract continues by virtue of law, unless the Insolvency Official makes use of his statutory right to terminate the contract with three months period of notice, in such case, the right of the Owner (Lessor) to repossess the Aircraft occurs upon effectiveness of such termination by the Insolvency Official or, alternatively, if the Insolvency Official fails to fulfill the debtors’ contractual duties to pay rent or make any other lease payments during the continuation of the lease contract, the Owner (Lessor) would have his contractual rights with regard to the lease contract.
  - upon commencement of preliminary insolvency proceedings the answer is no, the Owner is not prohibited from exercising rights to repossess the Aircraft, unless the Insolvency Court has ruled that such asset (Aircraft) shall remain with the debtor in order for the debtor (or the preliminary Insolvency Official respectively) to continue its business. Such ruling by the Insolvency Court will only be granted if the asset(s) at issue (Aircrafts) are critical for continuing the debtor’s business. If such court ruling has been issued and, consequently, the assets have not been transferred to the Owner, the Owner would have a claim for compensation of loss in value (Wertverlust) incurred through continuation of the use of the aircraft by the debtor.

9.1.5 Can the commencement of Insolvency Proceedings have retrospective effect in relation to any such actions taken before commencement? If so, for what period can there be a look back?
Yes, generally, related to two types of actions:

- The filing (petition) for insolvency proceedings effects that enforcement actions/measures (Vollstreckungsmaßnahmen) are void by virtue of law, provided, that (i) such actions have taken place during the last month prior to the filing (petition) and (ii) resulted in a security right relating to an asset of the debtors' insolvency estate (e.g. security right relating to the aircraft).
- In case the Insolvency Official exercises claw back rights (Insolvenzanfechtung) against the Owner, such rights cover the period of three months prior to the filing (petition) date or up to 10 years prior to the filing (petition) date in case of wilful misconduct.

9.1.6 Is there, either under law or as a matter of practice in the Relevant Jurisdiction, a period of time within which the Insolvency Official will either "adopt" the lease and pay rent and other lease payments as an expense of the insolvency or "reject" the lease and permit the Owner to enforce such rights as it may have under the lease?

Yes, the German insolvency law (Sec. 108 para. 1 InsO) provides that the lease contracts continues during the insolvency proceeding, unless the Insolvency Official terminates such agreement with a period of notice (Kündigungsfrist) of three months, regardless of any longer contractually defined period of notice (Sec. 109 InsO). The Insolvency Official will regularly have to make that decision at an early stage of the insolvency proceedings because if he decides not to terminate the agreement, he will have to make the lease payments to the Lessor as a priority expense (Masseverbindlichkeit) even though he would have a statutory termination right to end the agreement and to save costs for the estate.

9.1.7 If the lease is "adopted" will the Insolvency Official also pay any unpaid lease payments due as at commencement of the insolvency protection?

In such case, i.e. if the lease contract continues ("the lease is adopted"), the Insolvency Official is only obliged to make lease payments as priority expenses regarding the period after the commencement of insolvency proceedings. All due lease payments arising from before the commencement of insolvency proceedings are classified as general (ordinary) unsecured claims only entitled for pro rata share (equally with all other general unsecured claims).

9.1.8 If not or if the lease is "rejected", would the Owner's claim for any outstanding sums rank equally with other ordinary unsecured creditors of the Airline?

Yes, the Owner would claim for a rank equally with other ordinary unsecured creditors of the Airline (unless the Owner has a security right).

9.1.9 Are there certain types of preferred creditors whose claims will rank above claims of the Security Trustee/Owner?

Generally, as the Owner's claims rank equally with all other general (ordinary) unsecured claims, those claims which are classified as preferential liabilities (e.g. claims which are the result of legal acts taken by the Insolvency
Official and his costs, creditors committee's costs, insolvency court fees, fees for servicers/advisors engaged throughout the Insolvency Proceedings etc.) rank above. In case that the Owner's claims rank as priority claim (Masseverbindlichkeiten) (see above during the continuation of the lease contract until the termination of the lease contract by the Insolvency Official), these claims rank equally with all other priority expense claims (see the types above); only in case that the assets available at the debtor are not sufficient to pay all expenses, the expenses regarding the Insolvency Proceeding (i.e. Insolvency Official's costs, creditors committee's costs, insolvency court fees) would rank above all other priority liabilities (such as the claims of the Owner).

9.1.10 If the Aircraft is in the possession of a person other than the Airline at the commencement of Insolvency Protection of the Airline, for example an independent maintenance facility, will such person be entitled, under the laws of the Relevant Jurisdiction, to assert a lien arising under law or contract over the Aircraft in respect of amounts then due and unpaid to such person by the Airline?

Such person could be entitled to assert a lien which would lead to a preferred right upon commencement of the insolvency proceeding: Sec. 75 through 77 of the LuftFzgG recognize a lien in favour of a person, provided, that such person has a claim for compensation due to extraordinary disbursements (Aufwendungen) in order to maintain/protect the aircraft. Such lien would result in a preferred right in the insolvency proceeding entitling such person to receive the proceeds from liquidation of the Aircraft (Sec. 49, 50 InsO).

9.1.11 Is a person other than the Airline, for example an airport authority, entitled under the laws of the Relevant Jurisdiction to seize possession of the Aircraft after commencement of Insolvency Protection (Proceedings) and asset a lien arising under law or contract over the Aircraft in respect of amounts then due and unpaid to such person by the Airline.

Provided, that the person has a security right pursuant to Sec. 75 et. seq. LuftFzgG, such person has a right for segregation in insolvency proceedings (Sec. 47 InsO). However, such right can only be enforced through foreclosure relating to the Aircraft. The provisions on enforcement of immovable assets (Immobiliarvollstreckung) apply (Sec. 49 InsO), Sec. 171a German Act Governing Auctions and Sequestrations of Immovables (Gesetz über die Zwangsversteigerung und die Zwangsverwaltung – ZVG) and Sec. 88 para. 1 LuftFzgG). Hence, the Owner is not entitled to use the Aircraft, but is only entitled to initiate foreclosure.

10. TAXATION

10.1 The decision to lease to an airline in the Relevant Jurisdiction assumes that the Owner will not be taxed on receipt of rentals or other payments (including maintenance reserves) under the Lease except by way of tax on its general income, profits or gains payable by the Owner in its place of incorporation or place of main business (if different). Will there be a requirement for the Owner to pay tax in the Relevant Jurisdiction on lease payments on basis that either the Owner is subject to taxation in the Relevant Jurisdiction by reason only of the leasing of the Aircraft under the Lease and is required to make payment itself; or payment of such tax is by way of the
airline being required to withhold and account for tax from lease payments, where:

10.1.1 the Owner is incorporated and is tax resident in Ireland?

No. DTT: yes There will be a limited tax liability of the Owner under German tax law. However, no withholding tax will be withheld by the airline on the lease payments. Income from lease payments is generally subject to tax at the place of actual management or seat of the company (Art. 7, 8 Double Taxation Treaty (“DTT”) Ireland). As a result, the lease payments should not be subject to tax in Germany.

10.1.2 the Owner is incorporated and is tax resident in the United Kingdom?

No. DTT: yes There will be a limited tax liability of the Owner under German tax law. However, no withholding tax will be withheld by the airline on the lease payments. Income from lease payments will be subject to tax at the place of management or the seat of the company (Art. 8, 7 DTT-UK). As a result, the lease payments should not be subject to tax in Germany.

10.1.3 the Owner is incorporated and is tax resident in Hong Kong?

Yes. DTT: no There will be a limited tax liability of the Owner under German tax law. However, no withholding tax will be withheld by the airline on the lease payments. There is no DTT between Germany and Hong Kong. Assuming that the Owner is subject to corporate and trade tax, the tax rate should amount to approximately 30% of the income. Please note that a tax exemption may apply in case that the Owner derives commercial income from the lease of the aircraft, the country of residence does prescribe a corresponding tax exemption for German tax residents for such income and that the German Ministry for Transport, Building and Urban Development considers the tax exemptions as harmless for transport political purposes.

10.1.4 the Owner is incorporated and is tax resident in Singapore?

No. DTT: yes There will be a limited tax liability of the Owner under German tax law. However, no withholding tax will be withheld by the airline on the lease payments. Income from lease payments will be subject to tax at the place of actual management of the company (Art. 8 DTT-Singapore). As a result, the lease payments should not be subject to tax in Germany.

10.1.5 the Owner is incorporated and is tax resident in Malta?

No. DTT: yes There will be a limited tax liability of the Owner under German tax law. However, no withholding tax will be withheld by the airline on the lease payments. Income from lease payments will be subject to tax at the place of actual management or the seat of the company (Art. 8, 7 DTT-Malta). As a result, the lease payments should not be subject to tax in Germany.

10.1.6 the Owner is incorporated and is tax resident in the Channel Islands (Jersey and Guernsey)?
Yes. DTT: no. There will be a limited tax liability of the Owner under German tax law. However, no withholding tax will be withheld by the airline on the lease payments. There is no DTT between Germany and Guernsey. There is a DTT between Germany and Jersey. However, the DTT has no effect on the case at hand. Thus, Jersey can be treated as if there is no DTT. Assuming that the Owner is subject to corporate and trade tax, the tax rate should amount to approximately 30% of the income. Please note that a tax exemption may apply in case that the Owner derives commercial income from the lease of the aircraft, the country of residence does prescribe a corresponding tax exemption for German tax residents for such income and that the German Ministry for Transport, Building and Urban Development considers the tax exemptions as harmless for transport political purposes.

10.1.7 the Owner is incorporated and is tax resident in the Isle of Man?

Yes. DTT: no. There will be a limited tax liability of the Owner under German tax law. However, no withholding tax will be withheld by the airline on the lease payments. There is no DTT between Germany and the Isle of Man. Assuming that the Owner is subject to corporate and trade tax, the tax rate should amount to approximately 30% of the income. Please note that a tax exemption may apply in case that the Owner derives commercial income from the lease of the aircraft, the country of residence does prescribe a corresponding tax exemption for German tax residents for such income and that the German Ministry for Transport, Building and Urban Development considers the tax exemptions as harmless for transport political purposes.

10.1.8 the Owner is incorporated and is tax resident in Mauritius?

No. DTT: yes. There will be a limited tax liability regarding the Owner under German tax law. However, no withholding tax will be withheld by the airline on the lease payments. Income from lease payments will be subject to tax at the place of actual management of the company (Art. 8, 7 DTT-Mauritius). As a result, the lease payments should not be subject to tax in Germany.

10.1.9 the Owner is incorporated and is tax resident in Bermuda?

Yes. DTT: no. There will be a limited tax liability regarding the Owner under German tax law. However, no withholding tax will be withheld by the airline on the lease payments. There is no DTT between Germany and Bermuda. Assuming that the Owner is subject to corporate and trade tax, the tax rate should amount to approximately 30% of the income. Please note that a tax exemption may apply in case that the Owner derives commercial income from the lease of the aircraft, the country of residence does prescribe a corresponding tax exemption for German tax residents for such income and that the German Ministry for Transport, Building and Urban Development considers the tax exemptions as harmless for transport political purposes.

10.1.10 the Owner is incorporated and is tax resident in the Cayman Islands?

Yes. DTT: no. There will be a limited tax liability regarding the Owner under German tax law. However, no withholding tax will be withheld by the airline on the lease payments. There is no DTT between Germany and the Cayman Islands. Assuming that the Owner is subject to corporate and trade tax, the tax rate should amount to approximately 30% of the income. Please note that a tax exemption may apply in case that the Owner derives commercial income from the lease of the aircraft, the country of residence does prescribe a corresponding tax exemption for German tax residents for such income and that the German Ministry for Transport, Building and Urban Development considers the tax exemptions as harmless for transport political purposes.
10.2 If there is a requirement in the Relevant Jurisdiction for the airline to withhold tax on lease payments, will the courts of the Relevant Jurisdiction recognise and permit enforcement of a "gross up" clause in the Lease requiring the payment by the Airline of an additional sum to ensure the Owner receives and is entitled to retain the same net amount as would have been received in the absence of the withholding, taking account of any further withholding on account of tax required in relation to such additional sum.

Not applicable, since there should be no legal basis for withholding taxes in Germany.

10.3 VAT: European Union country: under Article 148(f) of the VAT Directive (2006/112/EG), an exemption from VAT is applied to "supplies" consisting of chartering or hiring of aircraft which are used by airlines operating for reward chiefly on international routes. Therefore:

10.3.1 New lease to airline operating for reward chiefly in domestic routes: VAT will be applied to lease rentals at current rate: 19%

10.3.2 New Lease to airline operating for reward chiefly on international routes:

VAT will not be applied to lease rentals by reason of application of exemption: yes (due to Sec. 8 para. 2 of German VATA)

10.3.3 Sale of aircraft by an aircraft lessor to another aircraft lessor of an aircraft subject to a lease to an airline operating for reward chiefly in domestic routes: VAT will be applied to the purchase price. If the seller and the purchaser are both EU entities and the purchaser supplies its EU VAT Number to the seller then the VAT charge will be a reverse charge. Otherwise VAT will be applied to purchase price at current rate: 19%

No VAT if the sale qualifies as transfer of a whole business/partial business within the meaning of Sec. 1 para. 1a German VATA).

10.3.4 Sale of aircraft by an aircraft lessor to another aircraft lessor of an aircraft subject to a lease to an airline operating for reward chiefly on international routes: VAT will be applied to purchase price:

No.

If no, is this because of application of the exemption under Article 148(f) to the airline following the decision in ECJ Case C-33/2011?
Yes (But under German VAT, the tax exemption was already applicable before the ECJ decision.)

10.3.5 If the transaction involves the first importation of the aircraft into the EU (and assuming the aircraft is intended for use as a civil and not military aircraft) what rate of Customs Duty will apply?

The rate of Costsms Duty for a fixed wing aircraft (Starrflügelflugzeug) with a weight of more than 2 tons amounts to 2.7%. An exemption from Costums Duty may be possible. Whether or not the exemption is applicable, has to be verified on a case-by-case basis.

10.4 Is any stamp duty, notarial or other fee or equivalent payable in respect of the execution of the Lease, a de-registration power of attorney or any other lease related document concerning the aircraft? Will such stamp duty or fee still be payable if the relevant documents are executed and held outside the Relevant Jurisdiction? If any such amount is payable how much is it approximately?

There should from a tax perspective be neither a stamp duty, nor any other fee or equivalent payable in respect of the execution of the Lease or any of the other documents referred to above.

10.5 Can any form of consent, authorisation or licence be obtained exempting the payments referred to in this Section from such tax or duty? If so, how would it be obtained?

No.

10.6 Ignoring any taxation consequence already mentioned and any potential taxation issues if the Owner has any other connection to the Relevant Jurisdiction, is there any other Relevant Jurisdiction taxation consequence of the Owner:

10.6.1 being owner and lessor of an aircraft registered in the Relevant Jurisdiction and operated/leased by a company incorporated or registered in the Relevant Jurisdiction?

The Owner should principally be subject to a limited tax liability in Germany with his income from the lease of the respective aircraft and with his profit from a sale of the aircraft, if any, unless a respective DTT prescribes that the right of taxation is with the country of residence/management of the Owner.

10.6.2 making available a lease facility to a company incorporated or regulated in the Relevant Jurisdiction?

The Owner should principally be subject to a limited tax liability in Germany with his income from the lease of the
respective facility and with his profit from a sale of the facility, if any, unless a respective DTT prescribes that the right of taxation is with the country of residence/management of the Owner.

10.6.3 Receiving rent and other lease payments under the Lease from the lessee incorporated or registered in the Relevant Jurisdiction?

The Owner should principally be subject to a limited tax liability in Germany with his income from the rent and other lease payments under the Lease from the lessee unless a respective DTT prescribes that the right of taxation is with the country of residence of the Owner.

10.6.4 Repossessing the aircraft and exporting the aircraft from the Relevant Jurisdiction?

The repossession and export of the aircraft from Germany following the end of the Lease should principally not give rise to any tax consequences in Germany. The export of the aircraft should be value added tax exempt in Germany and with respect to customs, the above mentioned should apply vice versa (cf. 10.3.)

10.6.5 Selling the aircraft at a profit, whether such sale is after repossession or is subject to the Lease and the lessee’s rights?

The owner should principally be subject to a limited tax liability in Germany with the profit derived from the sale of the aircraft unless a respective DTT prescribes that the right of taxation is with the country of residence/management of the Owner.

11. EXCHANGE CONTROLS

11.1 Are payments to foreign owners by companies incorporated or registered in the Relevant Jurisdiction subject to any form of exchange or similar control?

Generally speaking, payments to foreigners are free from control. However, pursuant to Sec. 67 para. 1 German Foreign Trade and Payments Ordinance (Außenwirtschaftsverordnung – AWV) as a general rule currency transfers made for the account of foreigners have to be notified to the German Federal Bank (Deutsche Bundesbank). Exceptions apply for (i) payments that do not exceed a threshold of EUR 12,500, (ii) payments for the import, export or transfer of goods, and (iii) payments for the granting, receipt or repayment of loans, including the justification and repayment of credit balances, with an originally agreed term or termination deadline of not more than twelve months (cf. Sec. 67 para. 2 German Foreign Trade and Payments Ordinance (AWV)). The reporting requirement does not imply a licensing requirement.

For domestic financial institutions, i.e. financial institutions incorporated in Germany, Sec. 70 German Foreign Trade and Payments Ordinance (AWV) imposes specific reporting requirements vis-à-vis the Deutsche Bundesbank. Inter alia, financial institutions have to report incoming and outgoing payments for interest payments and similar revenues and expenses excluding interest on securities received from or made to foreigners on their own account (Sec. 70 para. 1 no. 3 German Foreign Trade and Payments Ordinance (AWV). To the extent that payments pursuant to Sec. 70 para. 1 German Foreign Trade and Payments Ordinance (AWV)
must be reported, Sec. 67 shall not apply (Sec. 70 para. 5 German Foreign Trade and Payments Ordinance (AWV)).

To fulfil the reporting requirements special forms have to be used and reporting deadlines have to be obeyed. In addition to the general reporting requirement pursuant to the German Foreign Trade and Payments Ordinance, embargo regulations imposed by the European Union may provide for licensing or reporting requirements, if payments are made or are received from a sanctioned country/entity. In this case, the Deutsche Bundesbank is the competent authority for granting the respective licences.

11.2 If yes, can any consents, authorisations or licences be obtained to exempt payments from any such control? How would these be obtained? Are such consents, authorisations or licences transferable?

Sec. 73 German Foreign Trade and Payments Ordinance (AWV) provides for the possibility that the German Federal Bank (Deutsche Bundesbank) permits simplified reports or derogations of reporting deadlines or procedures for individual persons or groups of persons required to submit reports or exempt on a temporary or revocable basis individual persons or groups of persons required to submit reports form a reporting requirement.

Licences granted under export control laws generally are not transferable as they depend on the reliability of the party holding the license.

12. INSURANCE

12.1 Is it a legal requirement to insure the Aircraft within the Relevant Jurisdiction?

Yes, there is an obligation to insure the Aircraft based on international treaties, regulations of the European Union and national laws partially complementing these provisions.

The obligation to insure initially affects air carriers and aircraft operators as defined in Regulation (EC) No. 785/2004 being directly applicable in Germany. Regulation (EC) No. 785/2004 assumes that the person in whose name the aircraft is registered is the aircraft operator, unless such person provides evidence that a different person is the operator of the aircraft. Such different person notably may be the lessee in which case only the lessee is obligated to maintain appropriate insurance.

In addition, a duty to insure also exists in Germany for "Luftfahrzeughalter" (aircraft keepers) as defined in German law. "Luftfahrzeughalter" is the person who has the aircraft in use for its own account and who has physical control (Verfügungsgewalt) over the aircraft. The term "Luftfahrzeughalter" is thus not completely identical with that of the aircraft operator as defined in Regulation (EC) No. 785/2004. However, if on the basis of the underlying lease agreement between the owner and the lessee physical control of the aircraft is with the lessee, the duty to insure solely affects the lessee.

The obligation to maintain liability insurance primarily relates to aircraft third party (bodily injury/property damage), passenger (including passengers' checked and unchecked baggage and personal effects), cargo and mail legal liability and liability for delayed conveyance.

12.2 If so, is there any restriction on reinsurance of the primary insurance
outside the Relevant Jurisdiction?

No, however the primary insurance contract must be concluded with an insurer who is authorised to perform business operations in the aviation insurance lines (Luftfahrtversicherungssparte) in Germany. It may be a German insurer, a non-German insurer with an authorised branch in Germany or an EU/EEA insurer who has notified its business activities in Germany in accordance with European regulatory law.

Insurance with a foreign insurer which does not fulfil the requirements set out in the preceding paragraph is only permitted for an aircraft registered outside Germany provided the relevant foreign state recognises the insurance of German aircraft with an EU/EEA insurer (principle of reciprocity). The principle of reciprocity is supposed to avoid a situation where the aircraft keeper (Luftfahrzeughalter) must conclude national insurance which complies with both the relevant foreign and German law requirements.

12.3 Is there a minimum percentage of cover which a local insurer is obliged to retain, and if so, what is it?

In our view, also full transfer of the risk and thus also mere fronting by the primary insurer authorised to carry out insurance business in Germany is possible. However, the law does not expressly regulate this issue.

12.4 Is it possible for local insurers to assign contracts of reinsurance? If not, is a cut-through clause enforceable?

Primary insurers may assign their claims under reinsurance contracts to the original insured. In addition, from the perspective of the original insured, a cut-through clause is generally enforceable.

In case of an insolvency of the primary insurer, however, in both scenarios there is a risk that the insolvency administrator may successfully contest payment of the reinsurer to the original insured and for this reason such payment would have to be given back. Thus, the concrete structuring of the relevant clause is determinative particularly when it comes down to the cut-through scenario.

Whether the reinsurer is prepared to agree a cut-through clause is ultimately also an economic issue. From a legal perspective, a reinsurer may refuse to agree on a cut-through clause arguing that there is a risk that the German insurance regulation authority could deem such arrangement to be primary insurance business requiring a permission under applicable German law. However, we are not aware of any case in which the German regulatory authority has taken such view.

13. LIABILITY FOR DAMAGE

Can the Owner be strictly liable - liable without a requirement to prove fault or negligence - for any damage or loss caused by the Aircraft assuming Owner is an innocent owner with no operational control of the Aircraft?

Liability by law:

Since the Owner has no operational control of the Aircraft, the operator of the Aircraft is in principle the addressee of any compensation claims. In line with that, pursuant to Sec. 33 of the German Air Traffic Act only

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the operator is liable for personal injuries and material damages that have arisen through the operation of the Aircraft.

Furthermore, it can be regarded as market practice in Aircraft leasing contracts that the operator bears sole responsibility.

Nevertheless, the liability of the Owner vis-à-vis third parties could result from the German Product Liability Act (Produkthaftungsgesetz - ProdHaftG) and/or from Sec. 823 para. 1 of the German Civil Code (Bürgerliches Gesetzbuch – BGB).

Strict liability of the Owner could arise from a violation of the German Product Liability Act (ProdHaftG) if the Owner is the importer of the Aircraft from outside the EEA. The law provides for a liability without fault for damages - namely for personal injuries and damages to personal property - arising from the use of a defective product. The definition of a "defective" product is the essence of the product liability. A product (here: Aircraft) can only be regarded to be defective if it does not provide the safety which a user is entitled to expect. The time when the product is placed on the (EEA-) market is decisive.

Any liability under the German Product Liability Act (ProdHaftG) is limited to EUR 85 Million per case. This also applies to cases involving foreign parties, provided that the German Product Liability Act (ProdHaftG) applies.

If the injured party has a valid claim against the Owner and another third party (e.g. the manufacturer of the Aircraft), the Owner and such other third party will generally be jointly liable and - depending on the respective case – the Owner may be entitled to compensation from the third party who is ultimately responsible for the damages.

Sec. 823 para. 1 of the German Civil Code (BGB) may apply if the Owner violates its duties of care. The main duty of care is to maintain the Aircraft in an appropriate manner so that it does not endanger any people or property. This duty can be transferred to the lessee contractually. In addition, liability under Sec. 823 of the German Civil Code (BGB) could result from the (wrongful) selection or supervision of the persons to whom the duties of care are transferred. However, any liability based on (wrongful) selection or supervision requires the fault (i.e. negligence or wilful intent) of the Owner under German law.

Liability by contract:

If the lease agreement is governed by German law the lessee could assert warranty claims against the Owner for defects of the Aircraft pursuant to Sec. 536a of the German Civil Code (BGB). This liability does not require fault of the Owner if the defect of the Aircraft already existed at the time the lease agreement was concluded. However such claims can be excluded or limited in the warranty provisions of the lease agreement and – as already mentioned above - excluding or at least limiting the liability can be regarded as being quite common.

14. DETENTION/CONFISCATION

14.1 Are there any rights to detain or sell the Aircraft pursuant to drug trafficking, tax or other laws or pursuant to rights of airport or air navigation authorities if the Airline fails to pay when due?
The Aircraft could be seized under the German Code of Criminal Procedure (Strafprozessordnung) either temporarily as evidence or permanently in case of confiscation or deprivation (Einziehung) of the object as laid down in the German Criminal Code (Strafgesetzbuch). However, confiscation and deprivation orders with respect to third party property generally require either some degree of involvement in criminal or regulatory offences, or that the object constitutes a danger to the public or there is a risk that the object will serve the commission of unlawful acts. In the latter two cases, adequate compensation is generally provided unless there is some degree of responsibility attributable to the third party. For example, the owner may be deprived of the Aircraft, if it has been used as a vessel for drug trafficking, in which the owner is involved to some degree. In serious cases of narcotics offences, the German Narcotics Act (Betäubungsmittelgesetz) eases the requirements for confiscation of objects acquired as result of the unlawful acts (incl. surrogates) or for the purpose of committing them by lowering the standard of proof.

German police are authorised under the Federal Police Act (Bundespolizeigesetz) to seize an aircraft, if necessary to avert an imminent danger and keep it in custody until the danger is averted. The aggrieved party is to be notified of the seizure. In case of police custody being unbearable or in case of rejection of the aggrieved party to take back the aircraft, the aircraft can be sold to the public. In that case, the aggrieved party has to be heard before the sale and the proceeds of the auction are to be paid out to him or her.

Under extraordinary circumstances, primarily for defence purposes and in order to avert an imminent danger to the free and democratic fundamental order of Germany, the Aircraft may be subject to requisition by governmental entities under the German Emergency Laws (Bundesleistungsgesetz).

The German tax authority may take enforcement measures against the aircraft (as immovable asset) to enforce tax debt of the Owner. The German Tax Code (Abgabenordnung) refers to the general rules of compulsory judicial execution and public sale laid down in the German Code of Civil Procedure (Zivilprozessordnung – ZPO) and its related statutes. The procedure of public sale as such is not different than it would be in case of a private creditor’s enforcement against the aircraft following a civil court decision. This is a highly formalised procedure including notification of the Owner of the upcoming public sale. As a general rule, enforcement measures can only be undertaken against assets of the respective tax debtor. Where the tax debtor is not the Owner of the aircraft (e.g. the airline), enforcement measures may be undertaken against the rights and claims this tax debtor does have (e.g. rights and claims against the Owner, incl. right to transfer of title).

Other governmental entities may also be authorised to enforce public law debts other than tax debts of the Owner of the aircraft (e.g. air navigation fees). The same procedure as with tax authorities applies under the Administrative Enforcement Act (Verwaltungsvollstreckungsgesetz).

Unpaid airport fees may lead to the formalised procedure of compulsory judicial enforcement in favour of the creditor (e.g. the airport operating company) under the German Code of Civil Procedure (ZPO). Interim measures in favour of the creditor may be admissible in order to prevent frustration of (payment) claims.

14.2 If so, can the Aircraft be forfeited and sold without the Owner being made aware?

If the formal procedures as described under 14.1 are complied with and the third party rights of the Owner are recognised, the Owner should be notified. Where enforcement measures are taken (erroneously) against title or other rights of the Owner in compulsory judicial enforcement procedures that are actually directed against a third party, the Owner has a legal remedy in form of a suit to intervene and to ensure its rights (Drittwidewiderspruchsklage).
15. SOVEREIGN IMMUNITY

15.1 Is any Airline based in the Relevant Jurisdiction entitled to any form of sovereign or other immunity from suit which might restrict the Owner's rights under the Lease?

An Airline is generally not entitled to any right of sovereign immunity from judicial proceedings in Germany. Please note however that certain aircraft may not be arrested. According to the law on the inadmissibility of arrest of aircraft (Gesetz über die Unzulässigkeit der Sicherungsbeschlagnahme von Luftfahrzeugen) this applies to aircraft which (i) are exclusively used for state or postal services, (ii) are actually in service on a regular line of public transport or are indispensable reserve aircraft, or (iii) are used for the carriage of persons or goods for consideration, where they are ready to start on such carriage.

15.2 Can such immunity be validly waived in advance by contract?

Not applicable.

16. DISPUTE RESOLUTION AND RECIPROCAL ENFORCEMENT

As a general remark, it should be noted that the Brexit may have a substantial influence on the answer to the questions below which cannot be clearly foreseen at the current point in time. The United Kingdom has exited the European Union on 31 January 2020, 12am CET. It should be noted that there is a transition period (currently to last until 31 December 2020) where the UK, although not an EU member state anymore, is generally treated as if it still was a EU member state. The current (and pre-Brexit) situation is as described below. After the end of the transition period it is possible that a similar situation will be maintained due to (bilateral) treaties but this is currently unclear. In any case, any implications of the Brexit must be reviewed and assessed on a case-by-case basis and subject to the current developments.

16.1 Do the laws of the Relevant Jurisdiction permit and recognise an "asymmetric" submission to jurisdiction clause under which the lessee submits to the exclusive jurisdiction of the Courts of England but the Owner has discretion to choose a jurisdiction other than the Courts of England?

1. Whether an "asymmetric" submission to jurisdiction clause will be recognized depends - in the first place - on the recognition of a submission to a foreign jurisdiction.

Generally, German courts will recognize and give effect to the choice of a foreign forum subject to the requirements of EU Regulation No. 1215/2012 dated 12 December 2012 on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters ("EU No. 1215/2012") if such foreign place of jurisdiction is located within the EU, the leasing agreement does not concern immovable property and provided that the agreement of the parties to the lease to submit to the jurisdiction of an EU court is valid under the law applicable to the lease agreement. Note that certain formal requirements apply in respect of a valid choice of jurisdiction in accordance with EU No. 1215/2012 for example, the place of jurisdiction must normally be agreed in a (written) document executed by all parties.
There is to our knowledge no higher court ruling in Germany on the question whether an aircraft is movable or immovable property within the meaning of EU No 1215/2012. However, the question does not only arise in relation to EU No. 1215/2012 but also in relation to Article 4 and Article 11 Rome I where the same wording is used. Regarding both regulations there is no common position among German legal scholars. Very few scholars take the position that an aircraft should be treated as an immovable property. Other scholars take the position that the question has to be answered in accordance with the lex rei sitae, i.e. in accordance with the law of the country where the property is situated. However, according to the prevailing opinion of German legal scholars which we consider to be correct, an aircraft is considered as moveable property within the meaning of EU No. 1215/2012 (and Rome I).

If the lease parties have agreed to a place of jurisdiction outside the EU, German courts will accept the jurisdiction of such foreign forum subject to Sec. 38, 40 of the German Code of Civil Procedure (Zivilprozessordnung) provided that all parties to the lease are merchants (i.e. not consumers), the lease does not concern immovable property and the agreement to submit to the jurisdiction of an non-EU court is valid under the law applicable to the lease agreement.

2. Regarding "asymmetric" clauses in particular, we note that the French Cour de Cassation and the Bulgarian High Court have ruled that "asymmetric" jurisdiction clauses are void. However, the French Cour de Cassation did not explicitly state whether its ruling is based on local French law or on EU No. 1215/201 The Italian Corte di Cassazione in 2012 as well as the High Court of Justice in England and Wales in 2017, however, upheld a "asymmetric" jurisdiction clauses.

We are not aware of any decision of the German Federal Court of Justice (Bundesgerichtshof) regarding "asymmetric" jurisdiction clauses. Whether or not the German Federal Court of Justice (Bundesgerichtshof) would follow the opinion of the French Cour de Cassation and the Bulgarian High Court cannot be said with certainty. There are indications that the Higher Regional Court of Dresden (Oberlandesgericht Dresden) accepted such a clause and according to the prevailing opinion of German legal scholars such a clause should be valid in Germany.

16.2 If the Lease is governed by English Law and a judgment is obtained by the Owner in the English courts, can that judgment be automatically enforced in the Relevant Jurisdiction or will the case have to be re-examined on its merits? If so what procedures must be complied with to enforce such a judgment?

Generally, German courts will not re-examine foreign judgments on the merits prior to the recognition and enforcement in Germany, save for an ordre public test which is applied in most cases. The procedures to be adhered to and the grounds for opposing the recognition and enforcement of a foreign judgment in Germany vary depending on the country of origin of the judgment since different statues, EU regulations or international treaties may apply.

The recognition and enforcement of a final and conclusive judgement (Anerkennung und Vollstreckung rechtskräftiger Urteile) rendered by a court of another EU member state (the Brexit-transition period to be observed) is subject to the requirements and limitations of (i) EU Regulation No. 1215/2012 dated 12 December 2012 on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters ("EU No. 1215/2012") and Sec. 1112 et seq. of the German Code of Civil Procedure (Zivilprozessordnung – ZPO) or (ii) in the case of an enforcement of uncontested claims, subject to Regulation (EC) No. 805/2004 of the European Parliament and the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims ("EC
To enforce a judgment from another EU member state, the judgment creditor must file with the competent enforcement authority in Germany (i) an enforceable copy of the foreign judgment, the authenticity of which can be verified, and (ii) a certificate pursuant to Article 53 of EU No. 1215/2012, certifying that the judgment is enforceable and containing an extract of the judgment as well as, where appropriate, relevant information on the recoverable costs of the proceedings and the calculation of interest. The competent authorities for enforcement in Germany are the bailiffs (Gerichtsvollzieher), the local courts (Amtsgerichte) and the offices of the land register (Grundbuchämter), depending on the nature of the claim to be enforced.

The judgment debtor may successfully challenge the order for enforcement of a foreign judgment from another EU-member state in Germany in accordance with EU No. 1215/2012:

1. (i.) if recognition and enforcement of the judgment is manifestly contrary to German public policy (ordre public),
2. (ii.) where the judgment was given in default of appearance, if the defendant was not served with the document which instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable him to arrange for his defence, unless the defendant failed to commence proceedings to challenge the judgment when it was possible for him to do so,
3. (iii.) if the judgment is irreconcilable with a judgment given in a dispute between the same parties in the member state in which recognition is sought,
4. (iv.) if the judgment is irreconcilable with an earlier judgment given in another member state or in a third country or state involving the same cause of action and between the same parties, provided that the earlier judgment fulfils the conditions necessary for its recognition in the member state addressed.

The foregoing does not apply in respect of the enforcement of uncontested claims pursuant to an European Enforcement Order made in accordance with EC No. 805/2004. In this case, compliance with ordre public is not controlled. The enforcement of a judgment confirmed by a European Enforcement Order may only be refused if the judgment is irreconcilable with an earlier judgment given in another member state or in a third country or state involving the same cause of action and between the same parties, provided that the earlier judgment fulfils the conditions necessary for its recognition in the member state addressed.

It is currently unclear and should be assessed on an up to date and case-by-case basis how the situation will change after the Brexit transition period.

16.3 Is the Relevant Jurisdiction party to the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention) or the 1965 Convention on the Settlement of Investment Disputes between States and Nationals of Other States (the Washington Convention)? Will the courts of the Relevant Jurisdiction recognise and enforce a decision of an arbitrator?

Germany is a party to the New York Convention and the Washington Convention.

As a general rule, German courts will recognise and enforce the decision of an arbitrator. The enforcement of awards of arbitral tribunals situated outside Germany is subject to the German Code of Civil Procedure (ZPO), the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New Yorker Übereinkommen über die Anerkennung und Vollstreckung ausländischer Schiedsverfahren (New Yorker-Übereinkommen)) of 10 June 1958 and
certain other international agreements. Awards of arbitral tribunals situated in Germany are enforced in Germany in accordance with the German Code of Civil Procedure (ZPO).

16.4 What is the usual choice of dispute resolution in international supply contracts involving a lessor or buyer incorporated in or with its main place of business in the Relevant Jurisdiction?

Dispute resolution choices vary from company to company. From our experience, most aircraft lease agreements are governed by either English or New York Law and as such the parties submit to the jurisdiction of the courts of England and Wales or New York respectively. Lease agreements involving only German parties often contemplate jurisdiction of German courts.

17. AIRCRAFT ENGINES

17.1 If the equipment being leased to the Airline in the Relevant Jurisdiction was an Aircraft Engine either unattached to an airframe or attached to an airframe belonging to a party other than the Aircraft Engine Owner and being leased to the Airline under a separate engine lease agreement, would there be any significant changes to the responses set out above?

See 17.2 and 17.3. Subject to 17.2 and 17.3 generally, no significant changes are required in relation to Aircraft Engines.

17.2 In particular, does the Relevant Jurisdiction recognise the separate ownership of the Aircraft Engine by the Aircraft Engine Owner when the Aircraft Engine is attached to an airframe belonging to a person other than the Aircraft Engine Owner?

Under German law, ownership of an airframe automatically extends to any parts (such as engines), if (i) such parts are attached to the airframe in a manner that they form an integral component (wesentlicher Bestandteil within the meaning of Sec. 93 of the German Civil Code (Bürgerliches Gesetzbuch - BGB)) of the airframe and (ii) the airframe is considered to be the main part (Hauptsache) (Sec. 947, 93 of the German Civil Code (BGB)). Integral components (wesentliche Bestandteile) cannot be the object of separate legal rights. Parts of a thing (Sache) are considered to be integral components if the parts cannot be separated from each other without physically destroying one or the other (or both) or changing the nature of one or the other (or both). The prevailing opinion in legal literature is that aircraft engines (given that they can typically be separated and interchanged from the airframe relatively easily) do not form integral components of the airframe and that, therefore, title to a German registered airframe does not automatically extend to an Engine installed on such airframe if full legal title (Eigentum) to the Engine rests with a third party. We share this view, but note however that, as far as we are aware there is no recent decision from a higher regional court (Oberlandesgericht) or the German Federal Court of Justice (Bundesgerichtshof) which supports this view.

17.3 Is there a register of Aircraft Engines and is the information given above in relation to registration of Aircraft and the ownership and leasing of Aircraft the same for registration of an Aircraft Engine and the ownership and leasing
of such Aircraft Engine at the Aircraft Engine register?

There is no separate register in Germany for Aircraft Engines.

Please note that it is not possible to register a mortgage over an engine with the German Aircraft Mortgage Register (Luftfahrzeugpfandrechtsregister). However, an Engine can be the subject of other security interests (such as statutory liens and contractual liens).

18. ADDITIONAL INFORMATION – IS THERE ANYTHING ELSE WE SHOULD HAVE ASKED?

Are there any other matters, issues, recommended courses of action or steps which can be taken to protect and/or perfect the Owner’s interests, as owner and lessor of the Aircraft in the Relevant Jurisdiction or of which the Owner should be aware when contemplating leasing an aircraft to a company incorporated and operating in the Relevant Jurisdiction?

No.
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6.1 Is there a separate register for aircraft leases in the Relevant Jurisdiction?

6.2 If yes, then:

7 ENFORCEMENT OF LEASES (ASSUMING AIRLINE IS NOT IN A FORM OF INSOLVENCY
PROTECTION)

7.1 On the occurrence of an event of default under the Lease, assuming that the Owner
is permitted to do so under the terms of the Lease, can the Owner terminate the
Leasing of the Aircraft under the Lease and enforce the Lease by taking physical
possession of the Aircraft?

7.2 If so, can the Owner take physical possession of the Aircraft without the need for
judicial proceedings in the Relevant Jurisdiction?

7.3 Where judicial proceedings in the Relevant Jurisdiction are necessary, please provide
details of the proceedings, in particular:

7.4 Where judicial proceedings are not necessary, please comment on the time limits
relevant to taking possession of the Aircraft, in particular:

7.5 Apart from the judicial proceedings described above and ignoring deregistration (see
section 8), is the permission of any other party (including any official body) in the
Relevant Jurisdiction required to take possession of the Aircraft?

7.6 Is there any history of actual repossession of aircraft by Owners in the Relevant
Jurisdiction? If so, please provide details of any matters or issues of which an Owner
should be aware.

7.7 Are there any circumstances in which the sums expressed to be payable under the
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7.8 Are there any restrictions on the ability of the Owner to sell the Aircraft in the
Relevant Jurisdiction during the term of the Lease or, following an event of default, on
termination of the leasing or pending judicial enforcement of the Lease?

7.9 Are there any export restrictions on export of a repossessed aircraft?

8 DEREGISTRATION POWER OF ATTORNEY/EXPORTATION

8.1 Can the Owner apply for deregistration of the Aircraft either at the end of the lease
term or following successful repossession (with or without judicial proceedings) and is
there any time period within which such application should be made?

8.2 Is the consent of the Airline required to deregister the Aircraft either by law or as a
matter of custom or practice?

8.3 How long does deregistration take, both where there is co-operation from the Airline
and where this is no co-operation from the Airline?

8.4 Is it possible to obtain an export licence or export permit in advance?

8.5 Approximately how long does it take to obtain an export licence or export permit?
What are the costs involved?

8.6 Is it possible to obtain a certificate of deregistration in advance?

8.7 Will a power of attorney empowering the Owner to deregister and export the Aircraft
from the Relevant Jurisdiction, either at the end of the lease term or following
successful repossession (with or without judicial proceedings), be enforceable in the
Relevant Jurisdiction? Will the courts recognise a power of attorney in the form of an
8.8 If the power of attorney was stated to be irrevocable would this be enforceable against the Airline or can the Airline revoke such power of attorney?

8.9 Upon the occurrence of a bankruptcy or insolvency of the Airline is the power of attorney still effective?

9.1 In the event that the Airline were to become insolvent either on a balance sheet basis (assets less than liabilities) or unable to pay debts as fall due:

10.1 The decision to lease to an airline in the Relevant Jurisdiction assumes that the Owner will not be taxed on receipt of rentals or other payments (including maintenance reserves) under the Lease except by way of tax on its general income, profits or gains payable by the Owner in its place of incorporation or place of main business (if different). Will there be a requirement for the Owner to pay tax in the Relevant Jurisdiction on lease payments on basis that either the Owner is subject to taxation in the Relevant Jurisdiction by reason only of the leasing of the Aircraft under the Lease and is required to make payment itself; or payment of such tax is by way of the airline being required to withhold and account for tax from lease payments, where:

10.2 If there is a requirement in the Relevant Jurisdiction for the airline to withhold tax on lease payments, will the courts of the Relevant Jurisdiction recognise and permit enforcement of a “gross up” clause in the Lease requiring the payment by the Airline of an additional sum to ensure the Owner receives and is entitled to retain the same net amount as would have been received in the absence of the withholding, taking account of any further withholding on account of tax required in relation to such additional sum.

10.3 VAT: European Union country: under Article 148(f) of the VAT Directive, an exemption from VAT is applied to “supplies” consisting of chartering or hiring of aircraft which are used by airlines operating for reward chiefly on international routes. Therefore:

10.4 Is any stamp duty, notarial or other fee or equivalent payable in respect of the execution of the Lease, a deregistration power of attorney or any other lease related document concerning the aircraft? Will such stamp duty or fee still be payable if the relevant documents are executed and held outside the Relevant Jurisdiction? If any such amount is payable how much is it approximately?

10.5 Can any form of consent, authorisation or licence be obtained exempting the payments referred to in this Section from such tax or duty? If so, how would it be obtained?

10.6 Ignoring any taxation consequence already mentioned and any potential taxation issues if the Owner has any other connection to the Relevant Jurisdiction, is there any other Relevant Jurisdiction taxation consequence of the Owner:

11.1 Are payments to foreign owners by companies incorporated or registered in the Relevant Jurisdiction subject to any form of exchange or similar control?

11.2 If yes, can any consents, authorisations or licences be obtained to exempt payments from any such control? How would these be obtained? Are such consents, authorisations or licences transferable?

12.1 Is it a legal requirement to insure the Aircraft within the Relevant Jurisdiction?

12.2 If so, is there any restriction on reinsurance of the primary insurance outside the Relevant Jurisdiction?
12.3 Is there a minimum percentage of cover which a local insurer is obliged to retain, and if so, what is it?
12.4 Is it possible for local insurers to assign contracts of reinsurance? If not, is a cut-through clause enforceable?

13 LIABILITY FOR DAMAGE

14 DETENTION/CONFISCATION

14.1 Are there any rights to detain or sell the Aircraft pursuant to drug trafficking, tax or other laws or pursuant to rights of airport or air navigation authorities if the Airline fails to pay when due?
14.2 If so, can the Aircraft be forfeited and sold without the Owner being made aware?

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15.1 Is any Airline based in the Relevant Jurisdiction entitled to any form of sovereign or other immunity from suit which might restrict the Owner's rights under the Lease?
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16 DISPUTE RESOLUTION AND RECIPROCAL ENFORCEMENT

16.1 Do the laws of the Relevant Jurisdiction permit and recognise an "asymmetric" submission to jurisdiction clause under which the lessee submits to the exclusive jurisdiction of the Courts of England but the Owner has discretion to choose a jurisdiction other than the Courts of England?
16.2 If the Lease is governed by English Law and a judgment is obtained by the Owner in the English courts, can that judgment be automatically enforced in the Relevant Jurisdiction or will the case have to be re-examined on its merits? If so what procedures must be complied with to enforce such a judgment?
16.3 Is the Relevant Jurisdiction party to the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention) or the 1965 Convention on the Settlement of Investment Disputes Between States and Nationals of Other States (the Washington Convention)? Will the courts of the Relevant Jurisdiction recognise and enforce a decision of an arbitrator?
16.4 What is the usual choice of dispute resolution in international supply contracts involving a lessor or buyer incorporated in or with its main place of business in the Relevant Jurisdiction?

17 AIRCRAFT ENGINES

17.1 If the equipment being leased to the Airline in the Relevant Jurisdiction was an Aircraft Engine either unattached to an airframe or attached to an airframe belonging to a party other than the Aircraft Engine Owner and being leased to the Airline under a separate engine lease agreement, would there be any significant changes to the responses set out above?
17.2 In particular, does the Relevant Jurisdiction recognise the separate ownership of the Aircraft Engine by the Aircraft Engine Owner when the Aircraft Engine is attached to an airframe belonging to a person other than the Aircraft Engine Owner?
17.3 Is there a register of Aircraft Engines and is the information given above in relation to registration of Aircraft and the ownership and leasing of Aircraft the same for registration of an Aircraft Engine and the ownership and leasing of such Aircraft Engine at the Aircraft Engine register?

18 ADDITIONAL INFORMATION – IS THERE ANYTHING ELSE WE SHOULD HAVE ASKED?
1. PROPOSED TRANSACTION STRUCTURE

The Aircraft will be purchased by the Owner and leased on an operating lease basis to the Airline pursuant to the Lease.

Is this the usual structure for transactions of this nature in the Relevant Jurisdiction?

Yes.

Usually the Owner is an SPV established in a tax favoured jurisdiction (e.g. Ireland) who will lease the aircraft to the Hungarian Airline.

2. SEARCHES

2.1 Are there any public registers in the Relevant Jurisdiction where a search can be carried out to determine whether an order or resolution for any bankruptcy, bankruptcy protection or similar insolvency proceedings has been registered in relation to the Airline?

Yes, a free search can be made at the company register and the online version of the Company Gazette (the latter is always up-to-date). However, such a register is capable of disclosing insolvency proceedings (bankruptcy and liquidation, including the appointment of the insolvency administrator) which have been commenced with final and binding decision of the court. If the procedure has not yet come to this phase, only the debtor company can submit a request to the Judicial Office to certify whether or not any insolvency request (i.e. which has not yet been decided with a final and binding decision) has been filed with the court.

2.2 If so, specify which public registers, how long such searches typically take and if the fees are more than USD 100, approximately what fees apply.

Online Company Gazette (http://www.e-cegkozlony.gov.hu/) – free of charge and immediate result (content: court decisions and certain publications of the company).

Online company register (https://www.e-cegjegyzek.hu/index.html) – free of charge and immediate result (company data).

Database of Judicial Office – currently free of charge and usually takes 3-4 business days – request can be submitted only by the debtor company (content: status of insolvency proceedings), paper based but can be submitted and received by email.
3. RIGHTS AND EVIDENCE OF OWNERSHIP

3.1 In the case of the transfer of title to an aircraft registered in the Relevant Jurisdiction:

3.1.1 Is any particular form of transfer required for the transfer to be legally recognised?

No particular form is mandatorily required. Usually, an English law Bill of Sale is used.

3.1.2 Must any particular conditions be satisfied for the transfer to be recognised?

No particular conditions are to be satisfied. An aircraft is registered into the Hungarian aircraft register if documentation is submitted to the aviation agency which evidences that the Owner has acquired the ownership title over the aircraft.

Hungarian aviation agency (in Hungarian: Nemzeti Közlekedési Hatóság Légügyi Hivatala; hereinafter "HAA") has no competence to examine the validity of the ownership title prior to registration of the owner of the aircraft into the register. An administrative requirement is that the Owner shall submit the registration request to the HAA within 30 days from acquisition of such ownership title.

3.1.3 Will such a transfer still be recognised by the courts of the Relevant Jurisdiction as legally valid where the relevant aircraft is located in another jurisdiction at the time of the transfer?

If the country where the relevant aircraft is located will recognise a transfer of title in the form proposed for the transaction under Hungarian or any other law as a valid method of title transfer under its domestic law, yes; if not, then no and local law advice should be taken.

3.1.4 Are any duties, taxes or fees levied on such transfer of ownership?

No duties, taxes or fees are levied on the transfer of ownership, however, in order to operate an Aircraft in Hungary, registration fees will be incurred. For further details, please refer to our answer under 6.2.2.

3.2 Other than Insolvency laws (see section 9) are there any laws which may have the effect of defeating the Owner’s right in the aircraft – for example, Government requisition? Do the laws of the Relevant Jurisdiction provide for any compensation in such circumstances?

There are certain statutory rights which could, in certain circumstances, defeat the Owner’s rights in the Aircraft:

3.2.1 An Aircraft may be detained in relation to various crimes including actual or
suspected acts of terrorism or where it has been acquired from the proceeds of crime. Right of detention would authorise the court to decide on sale of the Aircraft unless the owner of such Aircraft requests the court to deliver up the Aircraft to the owner.

3.2.2 The Hungarian tax authorities may seize goods (which can include an Aircraft) for unpaid taxes. If the unpaid taxes are not then paid within a three months’ period, the goods may be auctioned. The tax authorities may not seize and sell goods (including an Aircraft) which belong to another person so a leased Aircraft should not be seized and sold for the lessee Airline’s unpaid taxes.

3.2.3 In relation to the EU ETS scheme and the unpaid charges which the Hungarian aviation authority may levy (e.g. in case of no certificate of airworthiness), the Hungarian tax authority has the right to detain Aircraft under the same rules specified above in point.

3.2.4 Customs officers (custom office has been integrated into the tax authorities) have power to detain an Aircraft where the Aircraft has been used to carry items which have not cleared customs. Right of detention would not lead to sale since the leased Aircraft should not be sold.

3.2.5 Certain liens can arise as a matter of contract or law including a repairer’s lien for unpaid amounts related to labour to improve the Aircraft and liens for salvage. These liens are dependent on the lien holder having and maintaining possession of the Aircraft. A lien holder does not have the right of sale.

4. THE AIRCRAFT REGISTER – NATIONALITY OF AIRCRAFT

4.1 Has the Relevant Jurisdiction ratified any of:

4.1.1 The Chicago Convention of 1944 on International Civil Aviation?

Yes.

4.1.2 The 1948 Geneva Convention on the International Recognition of Rights in Aircraft?

Yes.
4.1.3 The 1933 Convention for the Unification of Certain Rules Relating to the Precautionary Arrest of Aircraft?

Yes.

4.1.4 The 2001 Cape Town Convention on International Interests in Mobile Equipment and the associated Protocol on Matters Specific to Aircraft Equipment (the Cape Town Convention)?

No.

4.2 If the Relevant Jurisdiction has ratified the Cape Town Convention, see the Cape Town Convention Annex.

N/A

4.3 If the Relevant Jurisdiction has not ratified the Cape Town Convention, has the Relevant Jurisdiction started official proceedings or given any other official indication that it will accede to or ratify the Cape Town Convention in the near future?

Notwithstanding that Hungary has not ratified the Cape Town Convention, it is deemed to be directly applicable in Hungary (as one of the Member States of the European Union) upon the accession to the Cape Town Convention by the European Union. We also note that it is arguable whether or not the European Union had exclusive competence to accede to the Cape Town Convention. Until local law expressly governs, it cannot be declared that all rights and obligations (including the effect of the registration of the international interests) arising or which could arise from the Cape Town Convention will be effective against third parties in Hungary.

We are not aware of any official proceedings or other official indication that Hungary will accept laws to enable third parties to refer to the Cape Town Convention as applicable regulation in Hungary.

4.4 Is there an Aircraft Register in the Relevant Jurisdiction and if so, what is it called and who operates it?

Yes. The name of the register is the aircraft register, in Hungarian: “légi jármű lajstrom” (the “Aircraft Register”) which is operated by the HAA.

4.5 If so, in relation to registration:

4.5.1 Who is responsible for registering the Aircraft – is it an owner registry or an operator registry?

The interested persons are free to agree on whom will become responsible for the registration of the aircraft; it
could be the owner, the operator or any other person with legitimate interest. From a practical perspective, in case of a lease agreement, it is generally the lessee who is responsible for the registration.

Registration request must be submitted within 30 days from the acquisition of the ownership title over the aircraft.

4.5.2 What details would normally be recorded on the Aircraft Register upon registration of an aircraft in the Relevant Jurisdiction? If not normally recorded, is it possible to record the Lease and/or an Aircraft Mortgage on the Aircraft Register?

The following data are recorded in the Aircraft Register and disclosed when registration certificates and the extract from the Aircraft Register are requested to issue by the HAA: registration mark; type of the aircraft; manufacturer serial number, year of manufacture; manufacturer of the aircraft; type of the engine; owner of the aircraft and its address; operator of the aircraft and its address; operating base (e.g. Liszt Ferenc Airport, Budapest). However, this data is less than information which need to be submitted to the HAA in the registration procedure (see point 4.6).

The Lease is not registered with the Aircraft Register notwithstanding that the lease documentation is to be filed with the HAA. However, the Airline will be registered as operator of the Aircraft.

The Aircraft Mortgage is required to be registered with the aircraft register for perfection of this security. The Aircraft Register records the following about the Aircraft Mortgage: identification details of the Aircraft (such as registration mark; type of the aircraft; type of the engine; manufacturers serial number, year of manufacture); name and other identification details of the mortgagor; name and other identification details of the mortgagee; secured amount; document on which basis the registration was made; ranking and type of the mortgage (i.e. mortgage over a movable asset) and date of registration.

4.5.3 If the Aircraft Register is an operator register, is it possible to record the details of the aircraft owner/lessor and any financier with an Aircraft Mortgage?

Yes.

4.5.4 If the Aircraft Register is an owner register, is registration on the Aircraft Register definitive to determine ownership of the Aircraft?

Yes.

4.5.5 Are any distinctions made between aircraft employed on international routes and those used purely for domestic flights?

No.

The operating base (see point 4.5.2) is to be recorded in the Aircraft Register. This airport (from which the Aircraft is operated or the operation is organised) is required to be in Hungary irrespective of whether the Aircraft is employed on international routes or it is used for domestic flights.
If the Aircraft is permanently operated outside Hungary and the supervision of the HAA is not possible, the HAA ex officio will deregister the Aircraft from the Aircraft Register.

4.6 What documents and/or consents are required to obtain registration on the Aircraft Register and will these require any formalities (for example, notarisation, legalisation or application of apostille)?

The following documents are required to be submitted for registration:

- (a.) registration request which must list the following data: type of the aircraft; country of the manufacturer; name of the engine; purpose of operation of aircraft; manufacturer serial number; year of manufacture; maximum taking off weight of the aircraft; type and number of the engines; registration mark which has been determined in advance (if any); the name of owner of the aircraft and its address and the name of the operator and its address;
- (b.) document evidencing the ownership title over the Aircraft;
- (c.) consent of the owner or the operator (depending who submits the request to the HAA)
- (d.) clearance certificate of the custom office
- (e.) document evidencing the total flight time of the aircraft and total number of take-offs

These documents require certain formalities; usually notarisation, legalisation or apostille depending on the place of execution.

In case the Aircraft is already registered in another country but it is intended to be registered in Hungary, the following documents are required in addition to the documents listed above:

- (i.) export certificate of airworthiness or individual certificate of airworthiness;
- (ii.) acknowledgment of the technical-commercial takeover of the Aircraft;
- (iii.) Aircraft type certificate; and
- (iv.) deregistration certificate from the aviation authority of the country where the Aircraft is currently registered.

4.7 Are there any restrictions on the legal status and/or nationality/domicile of parties seeking to register an aircraft on the Aircraft Register?

No.

4.8 In respect of aircraft transactions connected with the Relevant Jurisdiction generally, are there any foreign Aircraft Registers that are commonly used, or should be considered, as alternatives to or in addition to registration with the Relevant Jurisdiction’s Aircraft Register? If so, what is benefit of such registration?

We are not aware of such alternative registration.

4.9 Are there any other filings or registrations necessary or desirable (other
than the registrations already mentioned and Lease Registration – see section 6) in the Relevant Jurisdiction in order to ensure the validity, priority or enforceability of the transaction documents, or to perfect the interests of the Owner in the Aircraft or the transaction documents?

No.

5. LEASES

5.1 Will the Relevant Jurisdiction recognise the concept of a lease over an aircraft?

Yes.

5.2 Would the choice of English law to govern the Lease be upheld as a valid choice of law in any action in the Relevant Jurisdiction?

Yes.

5.3 Must the Lease be in a particular form if it is to be valid and enforceable in the Relevant Jurisdiction (for example, must it be in the language of the Relevant Jurisdiction or be notarised, legalised or have the apostille applied)?

No such requirements apply.

Notwithstanding that, lease documentation to be submitted to the HAA must be in the Hungarian language or certified Hungarian translation must be filed with the HAA. The HAA might accept English language lease documentation without any translation but it must be check with the HAA in advance since officially they are entitled to reject such documents.

In order to avoid the complete translation of documents (if necessary), the HAA accepts the official translation of an excerpt of the document which contains the relevant clauses from the documents. It is also possible to submit bilingual documents to the HAA.

5.4 If the Lease must be in the language of the Relevant Jurisdiction, is it possible under the Relevant Law also to have an English version, and to provide that the English version should prevail in case of conflict with the Relevant Jurisdiction language version?

Yes.

5.5 Are there any special terms that the Lease must contain or that it is
advisable for the Lease to contain?

Identification of the parties and the leased asset(s) in question is necessary. Otherwise, there is no other requirement of the HAA to be included into the lease documentation. Regulation of the following in the Lease is advisable: agreement in the Lease, obligation of the parties, leasing fees, obligation of submission of the lease document with the HAA, taxation and possibility of a sub-lease.

5.6 Are there any circumstances under which the Lease might be re-characterised under the laws of the Relevant Jurisdiction as:

5.6.1 a secured loan?

No.

5.6.2 a finance (or capital) lease?

Yes.

The HAA has no competence to re-characterise the Lease.

Notwithstanding that, if the Hungarian financial supervisory authority (which is the National Bank of Hungary) when monitoring the financial sector in Hungary, detects that a service provider is offering finance leasing to/in Hungary as a business line, it has the power to examine such activity.

Under Hungarian financial law, if a finance lease (as defined below) is provided to or in Hungary as a business line (i.e. not on an individual basis), it will be subject to the licence of the National Bank of Hungary or if providing such service on a cross-border basis (from any member state of OECD or EEA) is permitted, to the licence of the home country of the lessor.

6. LEASE REGISTRATION

6.1 Is there a separate register for aircraft leases in the Relevant Jurisdiction?

No.

6.2 If yes, then:

6.2.1 What documentation and/or consents are required for the registration of the Lease?

The same requirements shall apply which are detailed in connection with the registration of the Aircraft in point 4.6.
6.2.2 What registration fees are payable (if any)?

Registration fee is to be paid to the HAA in the amount of HUF 69,000 (approx. EUR 220).

6.2.3 What information is recorded on the register? How is the eventual discharge of the Lease recorded?

Operation of the Aircraft by the operator is recorded whereas the Lease as such cannot be registered with the Aircraft Register (no separate register for the Lease). In this respect, the name of the operator/lessee and its address is registered. Additionally, the operating licence of the Airline shall list the respective Aircraft.

At the end of the term of the Lease, either the owner of the Aircraft or the lessee are entitled to request deregistration of the Aircraft from the Aircraft Register. Also, the record of reference to the Aircraft will be deleted from the operating licence of the Airline.

6.2.4 Does any registration in respect of the Lease remain valid throughout the tenure of the Lease or does such a registration require periodic renewal? If renewal is required when must this be done and what is the approximate cost of renewal?

No renewal is required.

7. ENFORCEMENT OF LEASES (ASSUMING AIRLINE IS NOT IN A FORM OF INSOLVENCY PROTECTION)

7.1 On the occurrence of an event of default under the Lease, assuming that the Owner is permitted to do so under the terms of the Lease, can the Owner terminate the Leasing of the Aircraft under the Lease and enforce the Lease by taking physical possession of the Aircraft?

Yes.

If the lessee prevents the Owner from repossessing the Aircraft, the Owner may request the court to order an interim measure first in order for the Owner to be able to repossess the Aircraft prior to any court decision on the unlawful action of the lessee in refusing to deliver up the Aircraft to the Owner. Such interim measure will be ordered if it is likely that the legal interests of the Owner could be jeopardized. The Owner would be entitled to request the competent notary public to provide the Owner with the legal protection of possession. However, if the lessee refuses to deliver up the Aircraft upon receipt of the notice of the notary public, the notary public will not have competence to make any decision but must refer the case to the court.

If the lessee had any claim against the lessor (e.g. compensation or warranty claims) arising from the Lease, the lessee would be entitled to refuse to hand over the Aircraft to the Owner until due payment of such claims.
7.2 If so, can the Owner take physical possession of the Aircraft without the need for judicial proceedings in the Relevant Jurisdiction?

Yes.

7.3 Where judicial proceedings in the Relevant Jurisdiction are necessary, please provide details of the proceedings, in particular:

7.3.1 What documents would the Owner as lessor need to present in order to obtain possession of the Aircraft, both before and subsequent to judgment? Can documents be copies?

The Owner needs to present the lease documentation and the documents certifying that the Lease has been terminated or that it has expired (unless the lease agreement is sufficient for this purpose). Registration certificate to be obtained from the HAA related to the ownership title over the Aircraft is also to be presented to the court.

Each document needs to be presented in original or certified copies and together with its official Hungarian language translation (if applicable).

7.3.2 What is the approximate cost of issuing proceedings?

If the lawsuit is initiated before the ordinary Hungarian court, the court fee will be 6% of the amount of the claim which cannot exceed HUF 1.5 million (approx. EUR 4,800).

7.3.3 Would the Owner be required to provide a bond, guarantee or other security in order to issue proceedings?

If the lawsuit is initiated before the ordinary Hungarian court by a non-Hungarian claimant, at the request of the respondent, such claimant will have to give security to cover the procedural costs except for certain cases (e.g. the claim of the claimant acknowledged by the respondent). Unless otherwise is agreed by the parties, the security shall be delivered by way of cash deposit.

7.3.4 What is an estimate of the normal duration of possession proceedings from time at which all required documentation is made available – if uncontested?

About six months if the governing law of the contract is Hungarian law. However, if the governing law of any of the documents in the lawsuit is not Hungarian law, the court will contact the competent authorities to obtain a legal opinion about such governing law. This may significantly prolong the procedure.

Since lease agreements are generally governed by English law or the laws of State of New York, a Hungarian enforcement court will contact the competent authorities to obtain a legal opinion about such governing law. This may significantly (one year can be estimated) prolong the procedure in addition to the six months that would apply in case of a Hungarian law governed lease agreement.
7.3.5 What is an estimate of the normal duration of possession proceedings from time at which all required documentation is made available – if contested?

About 12 or 18 months if only Hungarian law governs the underlying documents and between two and 2.5 years if the governing law is not Hungarian.

7.4 Where judicial proceedings are not necessary, please comment on the time limits relevant to taking possession of the Aircraft, in particular:

7.4.1 Is there a waiting period before action may be taken?

No.

7.4.2 Is there a long stop date by which action must be taken?

No (except statue of limitation)

7.4.3 Is a Public Auction of the aircraft required?

No.

7.5 Apart from the judicial proceedings described above and ignoring deregistration (see section 8), is the permission of any other party (including any official body) in the Relevant Jurisdiction required to take possession of the Aircraft?

No.

7.6 Is there any history of actual repossession of aircraft by Owners in the Relevant Jurisdiction? If so, please provide details of any matters or issues of which an Owner should be aware.

No.

7.7 Are there any circumstances in which the sums expressed to be payable under the Lease or obligations expressed to be assumed by the Airline in the Lease are or will be unrecoverable or unenforceable in the Relevant Jurisdiction?

There are no such circumstances, except for the Insolvency Proceedings where a strict ranking of satisfaction of creditors' claims applies.
7.8 Are there any restrictions on the ability of the Owner to sell the Aircraft in the Relevant Jurisdiction during the term of the Lease or, following an event of default, on termination of the leasing or pending judicial enforcement of the Lease?

If court enforcement procedure has been already commenced in Hungary and the Aircraft is subject of such enforcement (i.e. the Aircraft is seized by the bailiff), the Aircraft can be sold only by the bailiff. Otherwise, the Owner is not restricted to sell the Aircraft as long as the Aircraft is in the ownership of the Owner. If any financier or other third party takes security over the Aircraft (which is registered in Hungary), agrees with the Owner in a Hungarian security agreement on an out-of-court enforcement procedure and an event of default occurs, such security beneficiary will be entitled to sell the Aircraft (usually in an auction).

7.9 Are there any export restrictions on export of a repossessed aircraft?

No.

8. DEREGISTRATION POWER OF ATTORNEY/EXPORTATION

8.1 Can the Owner apply for deregistration of the Aircraft either at the end of the lease term or following successful repossession (with or without judicial proceedings) and is there any time period within which such application should be made?

Yes, the Owner can apply for deregistration of the Aircraft without any restriction in time.

8.2 Is the consent of the Airline required to deregister the Aircraft either by law or as a matter of custom or practice?

Yes.

8.3 How long does deregistration take, both where there is co-operation from the Airline and where this is no co-operation from the Airline?

The HAA shall close the procedure within maximum 60 days from receipt of the deregistration request. Consent of the lessee is to be filed with the HAA since the Airline is registered in the Aircraft Register as the operator of the Aircraft.

8.4 Is it possible to obtain an export licence or export permit in advance?

No export licence is required for exporting an aircraft from Hungary.
8.5 Approximately how long does it take to obtain an export licence or export permit? What are the costs involved?

N/A

8.6 Is it possible to obtain a certificate of deregistration in advance?

No. Deregistration certificate will be issued if no claim is outstanding in connection with the Aircraft (claims of any creditor who are beneficiary of a right registered in the aircraft register (e.g. pledge right)), unless this beneficiary gives its consent to the deregistration irrespective of its outstanding claims having not yet been paid.

8.7 Will a power of attorney empowering the Owner to deregister and export the Aircraft from the Relevant Jurisdiction, either at the end of the lease term or following successful repossession (with or without judicial proceedings), be enforceable in the Relevant Jurisdiction? Will the courts recognise a power of attorney in the form of an IDERA and governed by English law?

Yes.

8.8 If the power of attorney was stated to be irrevocable would this be enforceable against the Airline or can the Airline revoke such power of attorney?

Power of attorney under Hungarian law cannot be irrevocable (Section 6:15 (4) of the Civil Code). However, since deregistration powers of attorney are usually governed by foreign law (mostly by English law) which is acceptable by the HAA, the above cannot be a risk in such deregistration procedures.

8.9 Upon the occurrence of a bankruptcy or insolvency of the Airline is the power of attorney still effective?

Deregistration powers of attorney should remain effective upon the occurrence of the insolvency of the Airline. However, if liquidation proceedings (one type of the Hungarian insolvency proceedings) are commenced against the Airline, the insolvency officer (liquidator) will have the right to revoke such power of attorney even though it is irrevocably given under any other foreign law. Notwithstanding the above, the revocation of such a power of attorney would not adversely affect the registration procedure in a sense that the Owner is also entitled to request for deregistration.

9. INSOLVENCY

9.1 In the event that the Airline were to become insolvent either on a balance sheet basis (assets less than liabilities) or unable to pay debts as fall due:

9.1.1 Would the airline be required to file for insolvency protection?
No, the airline is not obliged to file for insolvency protection. However, if the Airline decides to terminate in a voluntary solvent winding-up procedure (in Hungarian: végelszámlás) and the administrator appointed by the Airline becomes aware of the airline being unable to pay its debts, the administrator will be obliged to file for insolvency protection.

9.1.2 Do the available forms of insolvency protection in the Relevant Jurisdiction involve the appointment of either an officer of the court or a specifically court appointed official to take control of the Airline (an Insolvency Official) while in insolvency protection?

Yes.

9.1.3 Does the Insolvency Official have authority to negotiate and reach agreement with the Owner in relation to matters such as the payment of unpaid rent, continuation or termination of the Lease and repossession of the Aircraft without the need for court approval?

The Insolvency Official has no authority to negotiate and reach agreement with the Owner about the payment of unpaid rent irrespective of whether the Owner is a creditor in the Insolvency Proceedings. Creditors' claims must be satisfied in accordance with the relevant law which regulates the ranking of recovery of such claims.

As regards the continuation or termination of the Lease, the Insolvency Official can negotiate and reach agreement with the Owner unless such negotiation would cover any payment obligation of the Airline (which is subject to the mandatory insolvency regime).

Since the Aircraft does not form part of the liquidation assets, the Insolvency Official would be obliged to allow repossession of the Aircraft.

Re-negotiation of the Lease is possible only if the management of the Airline (i.e. not the Insolvency Official) initiates to reach a settlement with each creditor in order for the Airline to be able to survive this liquidation.

9.1.4 Does the commencement of insolvency protection involving the appointment of an Insolvency Official in the Relevant Jurisdiction have the effect of prohibiting the Owner from taking the following actions to enforce the lease after commencement of such protection:

- applying any security deposit held by the Owner against any unpaid amounts due under the Lease? Yes. However, (1) in bankruptcy proceedings, enforcement of security deposit would be prohibited by the Owner unless the Owner is a specified financial institution, and (2) in liquidation proceedings, enforcement of security deposit must occur within three months from the commencement of the liquidation proceedings (two months in case of those debtors which are designated by the Hungarian Government as a company with increased strategic importance).
- accepting payment of rent or other lease payments from:
- (i.) the Airline? After commencement of liquidation proceedings rent can only be accepted from or with consent of the Liquidator since any rent paid by the insolvent company is part of the pool of funds available to all creditors from which such rental would be paid by the Liquidator as an expense of the Liquidation.
- (ii.) a guarantor? Assuming the Guarantor is not itself in liquidation proceedings then there is no limitation on accepting payments under the guarantee from the Guarantor.
- (iii.) a shareholder? Assuming the shareholder is not itself in liquidation proceedings then there is no limitation on accepting payments from the shareholder. Such payments may be vulnerable to being set aside if the shareholder is threatened with insolvency at the time of payment and within a defined period is subject to formal liquidation proceedings.

- giving notice of default under the lease? No. However, please note that any payment obligation of the Airline which are not yet due and payable until the commencement date of the liquidation proceedings, will become due simultaneously with the commencement of the liquidation.
- obtaining a judgment or arbitral award for unpaid lease payments? Yes.
- giving notice to terminate the leasing of the Aircraft? No. Also, please note in point (c) above.
- exercising rights to repossess the Aircraft? No.

9.1.5 Can the commencement of Insolvency Proceedings have retrospective effect in relation to any such actions taken before commencement? If so, for what period can there be a look back?

Yes, the liquidator is entitled to terminate any agreement or declaration made by the debtor company prior to the commencement of the liquidation proceedings. Additionally, the liquidator is entitled to challenge certain pre-insolvency transactions. The legal consequence of a successful challenge can be the restoration of the original status. The above are N/A to the bankruptcy proceedings (which are the other Insolvency Proceedings).

9.1.6 Is there, either under law or as a matter of practice in the Relevant Jurisdiction, a period of time within which the Insolvency Official will either “adopt” the lease and pay rent and other lease payments as an expense of the insolvency or “reject” the lease and permit the Owner to enforce such rights as it may have under the lease?

It is subject to the discretion of the Insolvency Official to decide for or against the continuation of the Lease during the liquidation proceedings. Decision is to be made in the interest of the creditors of the Airline. In case of the other Insolvency Proceedings (bankruptcy), the operation of the Airline should neither be terminated nor suspended (the management will not change).

If continuation of operation is decided for, lease payment during the liquidation will be deemed to be a liquidation cost to be paid when they will become due.

9.1.7 If the lease is “adopted” will the Insolvency Official also pay any unpaid lease payments due as at commencement of the insolvency protection?

No. The Insolvency Official is required to register the unpaid (pre-insolvency) lease payments as a creditor’s claim.

9.1.8 If not or if the lease is “rejected”, would the Owner’s claim for any outstanding
s BrowserRouter equal with other ordinary unsecured creditors of the Airline?

Yes.

9.1.9 Are there certain types of preferred creditors whose claims will rank above claims of the Owner?

Yes. Those creditors who have claims secured with pledge are entitled to seek recovery first from the purchase price which is to be collected by the liquidator from the sale of the pledged assets. Such secured claims are followed in the order of priority of creditors’ claims by liquidation costs which include both pre- and post-commencement employee salary payments and other employee arrears, those pre-commencement social security payments (including pension claims) and related taxes, annuity and similar costs, claims of private individuals (e.g., damages), excluding those in respect of unsecured bonds and other social security payments (including pre-commencement pension claims and other social security payments).

9.1.10 If the Aircraft is in the possession of a person other than the Airline at the commencement of Insolvency Protection of the Airline, for example an independent maintenance facility, will such person be entitled, under the laws of the Relevant Jurisdiction, to assert a lien arising under law or contract over the Aircraft in respect of amounts then due and unpaid to such person by the Airline?

Yes. This person would have the right to keep the Aircraft in its possession until the Airline pays its due and payable debts to such a person.

9.1.11 Is a person other than the Airline, for example an airport authority, entitled under the laws of the Relevant Jurisdiction to seize possession of the Aircraft after commencement of Insolvency Protection and assert a lien arising under law or contract over the Aircraft in respect of amounts then due and unpaid to such person by the Airline.

No.

10. TAXATION

10.1 The decision to lease to an airline in the Relevant Jurisdiction assumes that the Owner will not be taxed on receipt of rentals or other payments (including maintenance reserves) under the Lease except by way of tax on its general income, profits or gains payable by the Owner in its place of incorporation or place of main business (if different). Will there be a requirement for the Owner to pay tax in the Relevant Jurisdiction on lease payments on basis that either the Owner is subject to taxation in the Relevant
Jurisdiction by reason only of the leasing of the Aircraft under the Lease and is required to make payment itself; or payment of such tax is by way of the airline being required to withhold and account for tax from lease payments, where:

10.1.1 the Owner is incorporated and is tax resident in Ireland?

No.

10.1.2 the Owner is incorporated and is tax resident in the United Kingdom?

No.

10.1.3 the Owner is incorporated and is tax resident in Hong Kong?

No.

10.1.4 the Owner is incorporated and is tax resident in Singapore?

No.

10.1.5 the Owner is incorporated and is tax resident in Malta?

No.

10.1.6 the Owner is incorporated and is tax resident in the Channel Islands?

No. (No DTT is available.)

10.1.7 the Owner is incorporated and is tax resident in the Isle of Man?

No. (No DTT is available.)

10.1.8 the Owner is incorporated and is tax resident in Mauritius?

No. (No DTT is available.)

10.1.9 the Owner is incorporated and is tax resident in Bermuda?

No. (No DTT is available.)
10.1.10 the Owner is incorporated and is tax resident in the Cayman Islands?

No. (No DTT is available.)

10.2 If there is a requirement in the Relevant Jurisdiction for the airline to withhold tax on lease payments, will the courts of the Relevant Jurisdiction recognise and permit enforcement of a “gross up” clause in the Lease requiring the payment by the Airline of an additional sum to ensure the Owner receives and is entitled to retain the same net amount as would have been received in the absence of the withholding, taking account of any further withholding on account of tax required in relation to such additional sum.

Yes.

10.3 VAT: European Union country: under Article 148(f) of the VAT Directive, an exemption from VAT is applied to “supplies” consisting of chartering or hiring of aircraft which are used by airlines operating for reward chiefly on international routes. Therefore:

10.3.1 New lease to airline operating for reward chiefly in domestic routes: VAT will be applied to lease rentals at current rate:

27%

10.3.2 New Lease to airline operating for reward chiefly on international routes: VAT will not be applied to lease rentals by reason of application of exemption:

Correct.

10.3.3 Sale of aircraft by an aircraft lessor to another aircraft lessor of an aircraft subject to a lease to an airline operating for reward chiefly in domestic routes: VAT will be applied to the purchase price. If the seller and the purchaser are both EU entities and the purchaser supplies its EU VAT Number to the seller then the VAT charge will be a reverse charge. Otherwise VAT will be applied to purchase price at current rate:

27%

10.3.4 Sale of aircraft by an aircraft lessor to another aircraft lessor of an aircraft subject to a lease to an airline operating for reward chiefly on international routes: VAT will be applied to purchase price:
10.3.4.1 If no, is this because of application of the exemption under Article 148(f) to the airline following the decision in ECJ Case C-33/2011?

Yes

10.3.4.2 If yes, is this because the Relevant Jurisdiction does not apply the decision in ECJ Case C-33/2011?

N/A

10.3.5 If the transaction involves the first importation of the aircraft into the EU (and assuming the aircraft is intended for use as a civil and not military aircraft) what rate of Customs Duty will apply?

0%

10.4 Is any stamp duty, notarial or other fee or equivalent payable in respect of the execution of the Lease, a deregistration power of attorney or any other lease related document concerning the aircraft? Will such stamp duty or fee still be payable if the relevant documents are executed and held outside the Relevant Jurisdiction? If any such amount is payable how much is it approximately?

No stamp duty is applicable. Notarial fees could apply if the Lease is executed in front of a Hungarian notary public in form of a notarial deed.

10.5 Can any form of consent, authorisation or licence be obtained exempting the payments referred to in this Section from such tax or duty? If so, how would it be obtained?

No.

10.6 Ignoring any taxation consequence already mentioned and any potential taxation issues if the Owner has any other connection to the Relevant Jurisdiction, is there any other Relevant Jurisdiction taxation consequence of the Owner:

10.6.1 being owner and lessor of an aircraft registered in the Relevant Jurisdiction and operated/leased by a company incorporated or registered in the Relevant Jurisdiction?
10.6.2 making available a lease facility to a company incorporated or regulated in the Relevant Jurisdiction?

No.

10.6.3 receiving rent and other lease payments under the Lease from the lessee incorporated or registered in the Relevant Jurisdiction?

No.

10.6.4 repossessing the aircraft and exporting the aircraft from the Relevant Jurisdiction?

No.

10.6.5 selling the aircraft at a profit, whether such sale is after repossession or is subject to the Lease and the lessee’s rights?

No Hungarian corporate income tax will arise provided that the owner does not have a Hungarian permanent establishment. The sale of aircraft itself will not create a permanent establishment for corporate income tax purposes. The sale of Aircraft would be VATable transaction in Hungary unless the Aircraft is to be used by an international airline.

11. EXCHANGE CONTROLS

11.1 Are payments to foreign owners by companies incorporated or registered in the Relevant Jurisdiction subject to any form of exchange or similar control?

No.

11.2 If yes, can any consents, authorisations or licences be obtained to exempt payments from any such control? How would these be obtained? Are such consents, authorisations or licences transferable?

N/A
12. INSURANCE

12.1 Is it a legal requirement to insure the Aircraft within the Relevant Jurisdiction?

No. The Aircraft can be insured for aviation liability in different ways: either by a domestic insurer (locally seated), or by a local branch of an EU based insurer (FOE passport) or directly by an EU based insurer through cross border service (FOS passport). The applicable Hungarian insurance regulations are based on 785/2004 EC Regulation of the European Parliament and of the Council of 21 April 2004 on insurance requirements for air carriers and aircraft operators (as amended by the 285/2010 EC regulation). Air carriers and aircraft operators shall be insured in line with the regulation regards to their aviation liability in respect of passengers, baggage, cargo and third parties. The insured risks shall include acts of war, terrorism, hijacking, acts of sabotage, unlawful seizure of aircraft and civil commotion. The regulation addresses the liability exposure and does not require property insurance with regard to the Aircraft itself.

12.2 If so, is there any restriction on reinsurance of the primary insurance outside the Relevant Jurisdiction?

Certain restrictions apply to reinsurances if the primary insurance is provided by a domestic insurer (ceding company). According to Hungarian laws, the primary insurance can be reinsured outside of Hungary only if (i) the reinsurer is an EU based company having the appropriate reinsurance license in its home county; or (ii) the reinsurer is a third country reinsurer which provides its service in Hungary through its Hungarian branch or on the basis of an international treaty.

12.3 Is there a minimum percentage of cover which a local insurer is obliged to retain, and if so, what is it?

No.

12.4 Is it possible for local insurers to assign contracts of reinsurance? If not, is a cut-through clause enforceable?

The local insurers (ceding company) have liberty to assign the reinsurance agreements unless the agreement itself restricts such an assignment. Also, under the Hungarian laws, the cut-through clause appears to be enforceable since this manifests a subrogation which is fully admitted and does not require the beneficiary third party for being involved in the privity (i.e. to be a signatory to subrogation). Otherwise, the local laws only allow direct claims against the reinsurer if the insurer is under liquidation procedure and the policyholders/insureds take the creditors' position. In this case the reinsurer can also be litigated before the local courts.

13. LIABILITY FOR DAMAGE

13.1 Can the Owner be strictly liable – liable without a requirement to prove fault or negligence – for any damage or loss caused by the Aircraft assuming Owner is an innocent owner with no operational control of the Aircraft?
14. DETENTION/CONFISCATION

14.1 Are there any rights to detain or sell the Aircraft pursuant to drug trafficking, tax or other laws or pursuant to rights of airport or air navigation authorities if the Airline fails to pay when due?

No. Should the Airline fail to fulfil any of its payment obligations, an enforcement procedure can be initiated by its creditor. If the tax authority enforces its claims against the Airline, the tax authority will be entitled to take protective measures (e.g. seizure). However, only those assets of the Airline would be subject to such protective measures (and the enforcement procedure as well) which are in the ownership of the Airline. If the Aircraft Register records the Owner’s ownership title over the Aircraft, neither the tax authority nor any bailiff can assume that the Aircraft which is in the possession of the Airline, belongs to the assets of the Airline.

Notwithstanding the above, the Aircraft can be seized in a criminal procedure for investigation purpose (e.g. if it is assumed by the criminal authorities that the Aircraft was used as an instrument to prepretrate a criminal offence). In addition, if it is established in a final and binding judgement by a criminal court that the Aircraft was indeed used as an instrument to perpetrate a criminal offence (in particular if the Aircraft was used for drug trafficking purposes), the Aircraft is subject to confiscation as a result of which the ownership title of same devolves upon the Hungarian State. The Hungarian Criminal Code also provides, however, that confiscation shall not be ordered if the Aircraft is not owned by the perpetrator, provided that the Owner was unaware of the perpetration of the criminal act, unless the confiscation is prescribed mandatory under international legal commitments.

14.2 If so, can the Aircraft be forfeited and sold without the Owner being made aware?

No.

15. SOVEREIGN IMMUNITY

15.1 Is any Airline based in the Relevant Jurisdiction entitled to any form of sovereign or other immunity from suit which might restrict the Owner’s rights under the Lease?

Generally, the Airline is not entitled to any immunity from suit, execution or other similar legal procedure under Hungarian law.

Should the Hungarian State become majority shareholder of the Airline, the Hungarian State could not waive any immunity with respect of: (i) present or future “premises of the mission” as defined in the Vienna Convention on Diplomatic Relations signed in 1961, (ii) “consular premises” as defined in the Vienna Convention on Consular Relations signed in 1963, (iii) any other property or assets used solely for official state purposes in Hungary or elsewhere, or (iv) military property or military assets of Hungary related thereto.
In addition to the above carve-out, it is also important to note that if the Hungarian Government designated the Airline as a company with enhanced strategic importance, special laws would apply to the Insolvency Proceedings. Although no immunity would be applicable in this case either, the rights of the Owner, if it is deemed to be a lessor as well, would be restricted. Such companies with enhanced strategic importance are entitled to benefit from an extraordinary moratorium regarding the Insolvency Proceedings. During the term of this moratorium, no creditor may terminate or rescind any agreement entered into with this company (e.g. Lease), nor can such agreements be automatically terminated due to insolvency. The licenses and permits of such companies may not be revoked during the moratorium and the management is obliged to establish a reserve for payments which are expected to be made during the course of this moratorium (and which payments pertain to the continuation of the activities, if so decided by the liquidator).

15.2 Can such immunity be validly waived in advance by contract?

No.

**16. DISPUTE RESOLUTION AND RECIPROCAL ENFORCEMENT**

16.1 Do the laws of the Relevant Jurisdiction permit and recognise an “asymmetric” submission to jurisdiction clause under which the lessee submits to the exclusive jurisdiction of the Courts of England but the Owner has discretion to choose a jurisdiction other than the Courts of England?

Yes.

However, the lessee’s agreement to submit to the exclusive jurisdiction of the Court’s of England will be limited by the exclusive jurisdiction of the Hungarian courts under Article 24(3) of the Council Regulation (EC) No 1215/2012 of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (“Brussels I Recast”) in proceedings which have as their object the validity of entries in public registers (such as the Aircraft Register).

16.2 If the Lease is governed by English Law and a judgment is obtained by the Owner in the English courts, can that judgment be automatically enforced in the Relevant Jurisdiction or will the case have to be re-examined on its merits? If so what procedures must be complied with to enforce such a judgment?

The case will not be re-examined on its merits since a final and non-appealable English court decision must be recognised in Hungary according to the Brussels I Recast, except for the below cases:

- such recognition is manifestly contrary to public policy in Hungary;
- it was given in default of appearance, if the defendant was not served with the document which instituted the proceedings or with an equivalent document in sufficient time and such a way as to enable him to arrange for his defence, unless the defendant failed to commence proceedings to
challenge the judgment when it was possible for him so to do;

- it is irreconcilable with the judgment given in a dispute between the same parties in Hungary;
- it is irreconcilable with an earlier judgment given in another Member State of the European Union or in a third State involving the same cause of action and between the same parties, provided that the earlier judgment fulfils the conditions necessary for its recognition in Hungary; or
- the judgment conflicts with the provisions of the Brussels I Recast dealing with jurisdiction in matters relating to insurance, jurisdiction over consumer contracts and exclusive jurisdiction.

The judgment cannot be automatically enforced since the enforcement is subject to this judgement being declared an enforceable document by the competent Hungarian court (exequatur). Since this pre-enforcement court procedure cannot mean the re-examination of the judgement, this court procedure is for the purpose of checking whether the judgement can be recognised under the Brussels I Recast and excluding the existence of any of the above exceptions.

16.3 Is the Relevant Jurisdiction party to the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention) or the 1965 Convention on the Settlement of Investment Disputes Between States and Nationals of Other States (the Washington Convention)? Will the courts of the Relevant Jurisdiction recognise and enforce a decision of an arbitrator?

Yes. Hungary has ratified both of the New York Convention and the Washington Convention. The Decision of an arbitrator will be recognised and enforced in Hungary in accordance with the New York Convention. With regards to the Washington Convention, following the decision of 6 March 2018 of the European Court of Justice in Case C-284/16 Achmea v Slovak Republic, the Hungarian Government issued a Declaration on 16 January 2019 in which it stated that it request the courts not to enforce any Award rendered on the basis of an intra-EU bilateral investment treaty. It is unclear whether the courts will adhere to the Government’s request or enforce such an Award as there is no precedent for the enforcement of ICSID Awards in Hungary.

16.4 What is the usual choice of dispute resolution in international supply contracts involving a lessor or buyer incorporated in or with its main place of business in the Relevant Jurisdiction?

A lessor or buyer incorporated within or having its main place of business in Hungary will usually seek for the arbitration agreement to submit any dispute to the Permanent Court of Arbitration attached to the Hungarian Chamber of Commerce and Industry, where the costs of arbitration are significantly lower than at more reputable international institutions and the enforcement of interim measures and preliminary orders within Hungary is easier. In international supply contracts where the state is a party or that may attract state attention it is generally preferred to choose one of the main international arbitration institutions (ICC, LCIA or VIAC) as the dispute resolution forum. However, in our experience having due regard to the particularities of the aviation sector and the difficulty of obtaining Hungarian arbitrators who are learned in English law, if the agreement is governed by English law then the usual choice of dispute resolution forum will be ordinary English courts.

17. AIRCRAFT ENGINES

17.1 If the equipment being leased to the Airline in the Relevant Jurisdiction
was an Aircraft Engine either unattached to an airframe or attached to an airframe belonging to a party other than the Aircraft Engine Owner and being leased to the Airline under a separate engine lease agreement, would there be any significant changes to the responses set out above?

From the perspective of registration, no, since the Aviation Authority is of the view that the Aircraft has to be considered a single asset (any and all components of the Aircraft belong to the Aircraft and cannot be separately treated from legal point of view) notwithstanding that the Aircraft consists of the airframe and the engine which can be under separate ownership. Accordingly, if the Aircraft Engine Owner is different from the Owner of the Aircraft (airframe), the Aircraft Engine Owner cannot be registered with the aircraft register. Neither can any mortgage be established over only the Aircraft Engine and registered with the aircraft register. This latter does not prevent creation of a mortgage over the Aircraft Engine only and registering it with the general register of mortgages over as a mortgage over a movable asset. In summary, ownership and other contractual rights of an Aircraft Engine owner can be protected on a contractual basis which can be further strengthened with registration of a mortgage over the engines created separately from any aircraft mortgage.

17.2 In particular, does the Relevant Jurisdiction recognise the separate ownership of the Aircraft Engine by the Aircraft Engine Owner when the Aircraft Engine is attached to an airframe belonging to a person other than the Aircraft Engine Owner?

No, in the context of the registration of the Aircraft Engine Owner and the Aircraft Owner separately. However, it is not excluded to establish a mortgage over the Aircraft Engine (as an usual movable asset) separately from the airframe.

17.3 Is there a register of Aircraft Engines and is the information given above in relation to registration of Aircraft and the ownership and leasing of Aircraft the same for registration of an Aircraft Engine and the ownership and leasing of such Aircraft Engine at the Aircraft Engine register?

No.

18. ADDITIONAL INFORMATION – IS THERE ANYTHING ELSE WE SHOULD HAVE ASKED?

Are there any other matters, issues, recommended courses of action or steps which can be taken to protect and/or perfect the Owner's interests, as owner and lessor of the Aircraft in the Relevant Jurisdiction or of which the Owner should be aware when contemplating leasing an aircraft to a company incorporated and operating in the Relevant Jurisdiction?

N/A
Aircraft finance and leasing in Italy
PROPOSED TRANSACTION STRUCTURE

2.1 Are there any public registers in the Relevant Jurisdiction where a search can be carried out to determine whether an order or resolution for any bankruptcy, bankruptcy protection or similar insolvency proceedings has been registered in relation to the Airline?

2.2 If so, specify which public registers, how long such searches typically take and if the fees are more than USD 100, approximately what fees apply.

SEARCHES

3.1 In the case of the transfer of title to an aircraft registered in the Relevant Jurisdiction:

3.2 Other than Insolvency laws (see section 9) are there any laws which may have the effect of defeating the Owner’s right in the aircraft – for example, Government requisition? Do the laws of the Relevant Jurisdiction provide for any compensation in such circumstances?

RIGHTS AND EVIDENCE OF OWNERSHIP

4.1 Has the Relevant Jurisdiction ratified any of:

4.2 If the Relevant Jurisdiction has ratified the Cape Town, see the Cape Town Convention Annex.

4.3 If the Relevant Jurisdiction has not ratified the Cape Town Convention, has the Relevant Jurisdiction started official proceedings or given any other official indication that it will accede to or ratify the Cape Town Convention in the near future?

4.4 Is there an Aircraft Register in the Relevant Jurisdiction and if so, what is it called and who operates it?

4.5 If so, in relation to registration:

4.6 Are there any restrictions on the legal status and/or nationality/domicile of parties seeking to register an aircraft on the Aircraft Register?

4.7 In respect of aircraft transactions connected with the Relevant Jurisdiction generally, are there any foreign Aircraft Registers that are commonly used, or should be considered, as alternatives to or in addition to registration with the Relevant Jurisdiction’s Aircraft Register? If so, what is benefit of such registration?

4.8 Are there any other filings or registrations necessary or desirable (other than the registrations already mentioned and Lease Registration – see section 6) in the Relevant Jurisdiction in order to ensure the validity, priority or enforceability of the transaction documents, or to perfect the interests of the Owner in the Aircraft or the transaction documents?

THE AIRCRAFT REGISTER – NATIONALITY OF AIRCRAFT

5.1 Will the Relevant Jurisdiction recognise the concept of a lease over an aircraft?

5.2 Would the choice of English law to govern the Lease be upheld as a valid choice of law in any action in the Relevant Jurisdiction?

5.3 Must the Lease be in a particular form if it is to be valid and enforceable in the Relevant Jurisdiction (for example, must it be in the language of the Relevant Jurisdiction or be notarised, legalised or have the apostille applied)?

5.4 If the Lease must be in the language of the Relevant Jurisdiction, is it possible under the Relevant Law also to have an English version, and to provide that the English version should prevail in case of conflict with the Relevant Jurisdiction language version?

5.5 Are there any special terms that the Lease must contain or that it is advisable for the Lease to contain?
5.6 Are there any circumstances under which the Lease might be re-characterised under the laws of the Relevant Jurisdiction as:

6 LEASE REGISTRATION
6.1 Is there a separate register for aircraft leases in the Relevant Jurisdiction?
6.2 If yes, then:

7 ENFORCEMENT OF LEASES (ASSUMING AIRLINE IS NOT IN A FORM OF INSOLVENCY PROTECTION)
7.1 On the occurrence of an event of default under the Lease, assuming that the Owner is permitted to do so under the terms of the Lease, can the Owner terminate the Leasing of the Aircraft under the Lease and enforce the Lease by taking physical possession of the Aircraft?
7.2 If so, can the Owner take physical possession of the Aircraft without the need for judicial proceedings in the Relevant Jurisdiction?
7.3 Where judicial proceedings in the Relevant Jurisdiction are necessary, please provide details of the proceedings, in particular:
7.4 Where judicial proceedings are not necessary, please comment on the time limits relevant to taking possession of the Aircraft, in particular:
7.5 Apart from the judicial proceedings described above and ignoring deregistration (see section 8), is the permission of any other party (including any official body) in the Relevant Jurisdiction required to take possession of the Aircraft?
7.6 Is there any history of actual repossession of aircraft by Owners in the Relevant Jurisdiction? If so, please provide details of any matters or issues of which an Owner should be aware.
7.7 Are there any circumstances in which the sums expressed to be payable under the Lease or obligations expressed to be assumed by the Airline in the Lease are or will be unrecoverable or unenforceable in the Relevant Jurisdiction?
7.8 Are there any restrictions on the ability of the Owner to sell the Aircraft in the Relevant Jurisdiction during the term of the Lease or, following an event of default, on termination of the leasing or pending judicial enforcement of the Lease?
7.9 Are there any export restrictions on export of a repossessed aircraft?

8 DEREGISTRATION POWER OF ATTORNEY/EXPORTATION
8.1 Can the Owner apply for deregistration of the Aircraft either at the end of the lease term or following successful repossession (with or without judicial proceedings) and is there any time period within which such application should be made?
8.2 Is the consent of the Airline required to deregister the Aircraft either by law or as a matter of custom or practice?
8.3 How long does deregistration take, both where there is co-operation from the Airline and where this is no co-operation from the Airline?
8.4 Is it possible to obtain an export licence or export permit in advance?
8.5 Approximately how long does it take to obtain an export licence or export permit? What are the costs involved?
8.6 Is it possible to obtain a certificate of deregistration in advance?
8.7 Will a power of attorney empowering the Owner to deregister and export the Aircraft from the Relevant Jurisdiction, either at the end of the lease term or following successful repossession (with or without judicial proceedings), be enforceable in the Relevant Jurisdiction? Will the courts recognise a power of attorney in the form of an IDERA and governed by English law?
8.8 Upon the occurrence of a bankruptcy or insolvency of the Airline is the power of attorney still effective?

9 INSOLVENCY
9.1 In the event that the Airline were to become insolvent either on a balance sheet basis
(assets less than liabilities) or unable to pay debts as fall due:

10   TAXATION
10.1 The decision to lease to an airline in the Relevant Jurisdiction assumes that the Owner will not be taxed on receipt of rentals or other payments (including maintenance reserves) under the Lease except by way of tax on its general income, profits or gains payable by the Owner in its place of incorporation or place of main business (if different). Will there be a requirement for the Owner to pay tax in the Relevant Jurisdiction on lease payments on basis that either the Owner is subject to taxation in the Relevant Jurisdiction by reason only of the leasing of the Aircraft under the Lease and is required to make payment itself;

10.2 If there is a requirement in the Relevant Jurisdiction for the airline to withhold tax on lease payments, will the courts of the Relevant Jurisdiction recognise and permit enforcement of a “gross up” clause in the Lease requiring the payment by the Airline of an additional sum to ensure the Owner receives and is entitled to retain the same net amount as would have been received in the absence of the withholding, taking account of any further withholding on account of tax required in relation to such additional sum.

10.3 Under Article 148(f) of the VAT Directive, an exemption from VAT is applied to “supplies” consisting of chartering or hiring of aircraft which are used by airlines operating for reward chiefly on international routes. Therefore:

10.4 Is any stamp duty, notarial or other fee or equivalent payable in respect of the execution of the Lease, a de-registration power of attorney or any other lease related document concerning the aircraft? Will such stamp duty or fee still be payable if the relevant documents are executed and held outside the Relevant Jurisdiction? If any such amount is payable how much is it approximately?

10.5 Can any form of consent, authorisation or licence be obtained exempting the payments referred to in this Section from such tax or duty? If so, how would it be obtained?

10.6 Ignoring any taxation consequence already mentioned and any potential taxation issues if the Owner has any other connection to the Relevant Jurisdiction, is there any other Relevant Jurisdiction taxation consequence of the Owner:

11   EXCHANGE CONTROLS
11.1 Are payments to foreign owners by companies incorporated or registered in the Relevant Jurisdiction subject to any form of exchange or similar control?

11.2 If yes, can any consents, authorisations or licences be obtained to exempt payments from any such control? How would these be obtained? Are such consents, authorisations or licences transferable?

12   INSURANCE
12.1 Is it a legal requirement to insure the Aircraft within the Relevant Jurisdiction?

12.2 If so, is there any restriction on reinsurance of the primary insurance outside the Relevant Jurisdiction?

12.3 Is it possible for local insurers to assign contracts of reinsurance?

13   LIABILITY FOR DAMAGE
13.1 Can the Owner be strictly liable – liable without a requirement to prove fault or negligence – for any damage or loss caused by the Aircraft assuming Owner is an innocent owner with no operational control of the Aircraft?

14   DETENTION/CONFISCATION
14.1 Are there any rights to detain or sell the Aircraft pursuant to drug trafficking, tax or other laws or pursuant to rights of airport or air navigation authorities if the Airline fails to pay when due?
14.2 If so, can the Aircraft be forfeited and sold without the Owner being made aware?

15 SOVEREIGN IMMUNITY

15.1 Is any Airline based in the Relevant Jurisdiction entitled to any form of sovereign or other immunity from suit which might restrict the Owner’s rights under the Lease?

15.2 Can such immunity be validly waived in advance by contract?

16 DISPUTE RESOLUTION AND RECIPROCAL ENFORCEMENT

16.1 Do the laws of the Relevant Jurisdiction permit and recognise an “asymmetric” submission to jurisdiction clause under which the lessee submits to the exclusive jurisdiction of the Courts of England but the Owner has discretion to choose a jurisdiction other than the Courts of England?

16.2 If the Lease is governed by English Law and a judgment is obtained by the Owner in the English courts, can that judgment be automatically enforced in the Relevant Jurisdiction or will the case have to be re-examined on its merits? If so what procedures must be complied with to enforce such a judgment?

16.3 Is the Relevant Jurisdiction party to the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention) or the 1965 Convention on the Settlement of Investment Disputes Between States and Nationals of Other States (the Washington Convention)? Will the courts of the Relevant Jurisdiction recognise and enforce a decision of an arbitrator?

16.4 What is the usual choice of dispute resolution in international supply contracts involving a lessor or buyer incorporated in or with its main place of business in the Relevant Jurisdiction?

17 AIRCRAFT ENGINES

17.1 If the equipment being leased to the Airline in the Relevant Jurisdiction was an Aircraft Engine either unattached to an airframe or attached to an airframe belonging to a party other than the Aircraft Engine Owner and being leased to the Airline under a separate engine lease agreement, would there be any significant changes to the responses set out above?

17.2 In particular, does the Relevant Jurisdiction recognise the separate ownership of the Aircraft Engine by the Aircraft Engine Owner when the Aircraft Engine is attached to an airframe belonging to a person other than the Aircraft Engine Owner?

17.3 Is there a register of Aircraft Engines and is the information given above in relation to registration of Aircraft and the ownership and leasing of Aircraft the same for registration of an Aircraft Engine and the ownership and leasing of such Aircraft Engine at the Aircraft Engine register?

18 ADDITIONAL INFORMATION – IS THERE ANYTHING ELSE WE SHOULD HAVE ASKED?
1. PROPOSED TRANSACTION STRUCTURE

The Aircraft will be purchased by the Owner and leased on an operating lease basis to the Airline pursuant to the Lease.

Is this the usual structure for transactions of this nature in the Relevant Jurisdiction?

Yes

2. SEARCHES

2.1 Are there any public registers in the Relevant Jurisdiction where a search can be carried out to determine whether an order or resolution for any bankruptcy, bankruptcy protection or similar insolvency proceedings has been registered in relation to the Airline?

Yes.

2.2 If so, specify which public registers, how long such searches typically take and if the fees are more than USD 100, approximately what fees apply.

Searches can be made at the competent Court or at the competent Companies' Registry (to be identified on the basis of the place where the relevant Airline has its registered office).

On the same date of the application, the Court or the Companies' Registry issues the so called “good standing certificate” giving evidence of any order or resolution for bankruptcy or insolvency proceedings in relation to the Airline.

The cost for obtaining such certificate is less than USD 100.

The Court decision of adjudication in bankruptcy of an airline must be also registered in the Italian Aircraft Registry.

3. RIGHTS AND EVIDENCE OF OWNERSHIP

3.1 In the case of the transfer of title to an aircraft registered in the Relevant Jurisdiction:

3.1.1 Is any particular form of transfer required for the transfer to be legally recognised?

According to Article 864 of the Italian Navigation Code (INC) the deeds of transfer of the ownership of aircrafts must be executed in writing in order to be valid.
Furthermore, for the purposes of the registration in the National Aeronautic Register (as better explained under 3.1.2) the relevant agreement must be notarized.

3.1.2 Must any particular conditions be satisfied for the transfer to be recognised?

The purchase of an aircraft is subject to the Italian Civil Code provisions relating to the sale of registered movable assets. In particular, the deed of transfer of the ownership of an aircraft shall be registered in the National Aeronautic Register (“RAI”) held by Ente Nazionale per l’Aviazione Civile ("ENAC") and for this purpose the agreement must be notarized.

3.1.3 Will such a transfer still be recognised by the courts of the Relevant Jurisdiction as legally valid where the relevant aircraft is located in another jurisdiction at the time of the transfer?

Assuming that the relevant agreement is executed before an Italian notary and is subject to Italian law, the location of the relevant aircraft is not relevant for the purposes of the validity of the transfer.

3.1.4 Are any duties, taxes or fees levied on such transfer of ownership?

Where an Aircraft is supplied in Italy VAT shall be payable. Generally zero rate VAT (i.e. exemption with the right to deduction) is applicable where the Aircraft will be used by an Airline operating flights for reward chiefly on international routes.

Aircraft Parts and equipment (including Aircraft Engines) supplied in Italy may be zero rated for VAT where they are of a kind ordinarily installed or incorporated in the propulsion, navigation or communications systems, or the general structure and are intended for incorporation or installation in an Aircraft operated by an Airline operating flights for reward chiefly on international routes.

See 10.3 for more details

3.2 Other than Insolvency laws (see section 9) are there any laws which may have the effect of defeating the Owner’s right in the aircraft – for example, Government requisition? Do the laws of the Relevant Jurisdiction provide for any compensation in such circumstances?

According to Italian Criminal Law, within the context of a criminal proceeding, the Public Prosecutor, in the course of the criminal investigations, may apply real precautionary measures against the Aircraft, such as orders freezing property ("sequestro probatorio") pursuant to article 253 and seq. of the Italian Criminal Procedure Code, and preventive seizure ("sequestro preventivo") pursuant to article 321 of the Italian Criminal Procedure Code. Such measures may be applied even if the Aircraft is owned by third parties. No compensation is provided.

Also, Italian Tax Authorities have the authority to seize goods (including Aircrafts) for unpaid taxes, with the possibility to request and obtain the sale of the goods through auction in case of persistent default to pay said taxes. Please note that seizure can be requested over the Aircraft for unpaid taxes due by the legitimate owner of
4. THE AIRCRAFT REGISTER – NATIONALITY OF AIRCRAFT

4.1 Has the Relevant Jurisdiction ratified any of:

The Chicago Convention of 1944 on International Civil Aviation?
Yes

The 1948 Geneva Convention on the International Recognition of Rights in Aircraft?
Yes

The 1933 Convention for the Unification of Certain Rules Relating to the Precautionary Arrest of Aircraft?
Yes

The 2001 Cape Town Convention on International Interests in Mobile Equipment and the associated Protocol on Matters Specific to Aircraft Equipment (the Cape Town Convention)?
No

4.2 If the Relevant Jurisdiction has ratified the Cape Town, see the Cape Town Convention Annex.

4.3 If the Relevant Jurisdiction has not ratified the Cape Town Convention, has the Relevant Jurisdiction started official proceedings or given any other official indication that it will accede to or ratify the Cape Town Convention in the near future?

There are no public notices available in this respect.

4.4 Is there an Aircraft Register in the Relevant Jurisdiction and if so, what is it called and who operates it?

In Italy aircraft are enrolled at the Italian Aeronautic Register (Registro Aeronautico Italiano “RAI”) held by National Civil Aviation Authority (Ente Nazionale per l’Aviazione Civile “ENAC”).

4.5 If so, in relation to registration:

4.5.1 Who is responsible for registering the Aircraft – is it an owner registry or an
operator registry?

Both the owner and the operator must be registered in the RAI.
If the operator does not require the registration, the request can be filed by the owner.

4.5.2 What details would normally be recorded on the Aircraft Register upon registration of an aircraft in the Relevant Jurisdiction? If not normally recorded, is it possible to record the Lease and/or an Aircraft Mortgage on the Aircraft Register?

The following details are recorded in the RAI: (i) name, place of birth, nationality and domicile of the aircraft’s owner in case of natural person and details of the company in case of legal entity; (ii) registration mark of the aircraft and (iii) description of the aircraft.

Aircraft Mortgages and Leases are recorded in the RAI.

4.5.3 If the Aircraft Register is an operator register, is it possible to record the details of the aircraft owner/lessor and any financier with an Aircraft Mortgage?

Yes, the details of the of the aircraft owner/lessor and any mortgagee are registered in the RAI.

4.5.4 If the Aircraft Register is an owner register, is registration on the Aircraft Register definitive to determine ownership of the Aircraft?

Yes.

4.5.5 Are any distinctions made between aircraft employed on international routes and those used purely for domestic flights?

No

4.6 What documents and/or consents are required to obtain registration on the Aircraft Register and will these require any formalities (for example, notarisation, legalisation or application of apostille)?

In order to obtain the registration on the RAI the owner of the aircraft shall deliver the following documents to ENAC: (i) Mod. IM/URA (i.e. the application form for the registration on RAI); (ii) copy of the ID card of the signatory; (iii) notarial deed of transfer of the ownership of the aircraft recorded with the Italian Tax Revenue Office; (iv) certificate of deregistration or no-registration issued by the competent Authority of the State of origin of the aircraft (requested only in case of second hand aircraft); (v) copy of the application filed with the competent ENAC’s Operations Department (Direzione Operazioni) for the issuance of the Certificate of Airworthiness (Certificato di Navigabilità); (vi) proof of the owner’s nationality and (vii) receipt of stamp duties payment.
4.7 Are there any restrictions on the legal status and/or nationality/domicile of parties seeking to register an aircraft on the Aircraft Register?

As regards the nationality/domicile of parties, according to Article 750 of the INC an aircraft can be registered under the RAI held by ENAC provided that national requirements set forth in article 756 of INC are met. Pursuant to Article 756 of the INC the national requirements are met if the aircraft belongs to: (i) the Italian State, region, municipalities and any other Italian or EU public or private entity; (ii) Italian or EU citizen or (iii) companies incorporated or having their registered office in Italy or in any other EU member State whose share capital is wholly or in majority part owned by Italian or EU citizens or Italian or other EU companies having the same shareholding and as whose Chairman, the majority of directors and managing director are Italian or EU citizens. According to Article 751 of the INC an aircraft cannot be registered in a foreign national aviation registry and on RAI at the same time.

4.8 In respect of aircraft transactions connected with the Relevant Jurisdiction generally, are there any foreign Aircraft Registers that are commonly used, or should be considered, as alternatives to or in addition to registration with the Relevant Jurisdiction’s Aircraft Register? If so, what is benefit of such registration?

No.

4.9 Are there any other filings or registrations necessary or desirable (other than the registrations already mentioned and Lease Registration – see section 6) in the Relevant Jurisdiction in order to ensure the validity, priority or enforceability of the transaction documents, or to perfect the interests of the Owner in the Aircraft or the transaction documents?

No.

5. LEASES

5.1 Will the Relevant Jurisdiction recognise the concept of a lease over an aircraft?

Yes.

5.2 Would the choice of English law to govern the Lease be upheld as a valid choice of law in any action in the Relevant Jurisdiction?

Yes, the parties can freely choose the law governing the Lease. The choice of English law must not prejudice Italian law mandatory provisions.

5.3 Must the Lease be in a particular form if it is to be valid and enforceable in the Relevant Jurisdiction (for example, must it be in the language of the
Relevant Jurisdiction or be notarised, legalised or have the apostille applied)?

In order to be valid and enforceable under Italian Law the Lease has to be executed in writing. Furthermore, for the purposes of the registration in the RAI the Lease must be notarized and therefore it has to be drafted in Italian language.

5.4 If the Lease must be in the language of the Relevant Jurisdiction, is it possible under the Relevant Law also to have an English version, and to provide that the English version should prevail in case of conflict with the Relevant Jurisdiction language version?

As mentioned under 5.3 above, since the Lease agreement has to be notarized in order to be registered in the RAI, it must be drafted in Italian. It is not possible to provide that the English version should prevail.

5.5 Are there any special terms that the Lease must contain or that it is advisable for the Lease to contain?

There are no specific terms that a Lease agreement must contain.

5.6 Are there any circumstances under which the Lease might be re-characterised under the laws of the Relevant Jurisdiction as:

5.6.1 a secured loan?

No, as a secured loan implies the creation of a security according to the relevant law provisions.

5.6.2 a finance (or capital) lease?

There might be a risk of re-categorization of an operating lease as financial lease (which is a restricted activity subject to licence requirements), where there is evidence that the purpose of the transaction is the sale of the aircraft rather than its use by the lessee (e.g. if there are clauses providing for the obligation of the lessee to exercise a purchase option at the end of the lease).

6. LEASE REGISTRATION

6.1 Is there a separate register for aircraft leases in the Relevant Jurisdiction?

No.

6.2 If yes, then:

6.2.1 What documentation and/or consents are required for the registration of the
6.2.2 What registration fees are payable (if any)?

N/A

6.2.3 What information is recorded on the register? How is the eventual discharge of the Lease recorded?

N/A

6.2.4 Does any registration in respect of the Lease remain valid throughout the tenure of the Lease or does such a registration require periodic renewal? If renewal is required when must this be done and what is the approximate cost of renewal?

N/A

7. ENFORCEMENT OF LEASES (ASSUMING AIRLINE IS NOT IN A FORM OF INSOLVENCY PROTECTION)

7.1 On the occurrence of an event of default under the Lease, assuming that the Owner is permitted to do so under the terms of the Lease, can the Owner terminate the Leasing of the Aircraft under the Lease and enforce the Lease by taking physical possession of the Aircraft?

Leasing is regulated under ordinary rules of Italian Law, meaning that event of default under the Lease may give right to the Owner to terminate the leasing of the Aircraft.

Also Ottawa Convention dated May 26, 1988 is applicable to leasing of aircraft, being excluded only by express agreement by the parties of the contract. Said convention provides for the possibility for the Owner to retake possession of the Aircraft following to termination of the Lease contract (Art. 13.2.a).

Under Italian Law the Owner can take physical possession of the Aircraft exclusively on the basis of a judicial order.

7.2 If so, can the Owner take physical possession of the Aircraft without the need for judicial proceedings in the Relevant Jurisdiction?

No. please see answer under 6.1 above.
Please note that following termination, if the Airline continues operating the Aircraft notwithstanding the notice of termination the Airline will not be exonerated from liabilities arising out of the use of the Aircraft. In case of late delivery of the Aircraft notwithstanding the notice of termination, Airline could also be liable vis-à-vis the Owner for further deterioration of the Aircraft.

Please also note that the judicial decision contains the order not to dispose of the Aircraft and not to move it from the place notified in the order.

7.3 Where judicial proceedings in the Relevant Jurisdiction are necessary, please provide details of the proceedings, in particular:

7.3.1 What documents would the Owner as lessor need to present in order to obtain possession of the Aircraft, both before and subsequent to judgment? Can documents be copies?

As a general rule, the Owner shall provide documentation evidencing title of property of the Aircraft as well as the Lease Contract and the service of the termination notice.

The documents must be original or certified copies.

7.3.2 What is the approximate cost of issuing proceedings?

The material costs for proceedings vary depending on the value of the claim, ranging from approximately Euro 250 to Euro 1.700, plus costs for notifications of the order issued, copies to be obtained by chanceries, etc.

7.3.3 Would the Owner be required to provide a bond, guarantee or other security in order to issue proceedings?

According to Italian Civil Code, a “bond” can be requested by the Judge in case of request of an order of attachment/arrest, to be issued in a so-called “urgent” procedure.

The aim is to provide for possible subsequent compensation for liabilities in favour of the Airline, if the attachment is found not to be due, and the amount of the bond is not fixed and is decided by the Judge.

7.3.4 What is an estimate of the normal duration of possession proceedings from time at which all required documentation is made available – if uncontested?

Attachment orders under urgent procedures are granted quickly and notification of the order is served also via telefax to the Captain of the Aircraft, ordering not to leave the airport where the Aircraft lays, with all relevant consequences and liabilities in case of violation by the Captain.

Ordinary proceedings aiming at obtaining a decision over the validity of the termination and the right to take possession of the Aircraft are longer and may last up to two years, though they may be anticipated by interim proceedings.
7.3.5 What is an estimate of the normal duration of possession proceedings from time at which all required documentation is made available – if contested?

Opposition by Airline may trigger a new proceeding or a sub-stage of the existing one, implying a timing ranging from two to three years.

However, usually the standard procedure is pursued by the Owner by obtaining very quickly an attachment order, following which the Airline seldom files opposition and normally allows the Owner to re-take possession of the Aircraft.

7.4 Where judicial proceedings are not necessary, please comment on the time limits relevant to taking possession of the Aircraft, in particular:

7.4.1 Is there a waiting period before action may be taken?

No, save for different contractual provisions.

In any case, termination of contract is typically anticipated by a “formal payment injunction” sent to the defaulting party, requesting it to perform the payment of overdue instalments/lease rentals within a deadline following which the contract will be automatically considered terminated. Such term is normally set in 15 days.

7.4.2 Is there a long stop date by which action must be taken?

Action for payment of instalment/lease rentals is subject to a long stop date equal to:

- Five years in case of “leasing di godimento”, meaning a leasing contract whereby the rentals are paid solely for using the asset;
- Ten years in case of “leasing traslativo”, meaning a leasing contract whereby a portion of the rentals consist in partial payment of the price for the future purchase of the asset.

Action for claiming restitution of the asset which is unduly retained by the lessee is subject to a long stop date equal to 20 years.

Please also be aware that according to the INC creditors of the Owner of the Aircraft are not entitled to start enforcement actions over the Aircraft while operated by an airline, unless a special authorisation by Italian Ministry of Transports is issued.

7.4.3 Is a Public Auction of the aircraft required?

No.

7.5 Apart from the judicial proceedings described above and ignoring
deregistration (see section 8), is the permission of any other party (including any official body) in the Relevant Jurisdiction required to take possession of the Aircraft?

No

7.6 Is there any history of actual repossession of aircraft by Owners in the Relevant Jurisdiction? If so, please provide details of any matters or issues of which an Owner should be aware.

No

7.7 Are there any circumstances in which the sums expressed to be payable under the Lease or obligations expressed to be assumed by the Airline in the Lease are or will be unrecoverable or unenforceable in the Relevant Jurisdiction?

According to Italian Law, obligations (including payment of sums expressed to be payable under the Lease) may result in unrecoverable or unenforceable if the obligation is validly challenged by the lessee for being illegal or contrary to mandatory laws, sovereign immunity and public policy, or being the result of mistake, fraud, incapacity of the lessee.

Also, limits to enforcement arise in case of insolvency of the lessee, which triggers an automatic stay of all enforcement actions already started or yet to be commenced.

7.8 Are there any restrictions on the ability of the Owner to sell the Aircraft in the Relevant Jurisdiction during the term of the Lease or, following an event of default, on termination of the leasing or pending judicial enforcement of the Lease?

The Owner is generally free to sell the Aircraft, unless the Lease agreement provides for an express prohibition. The Lease shall continue with the buyer as new lessor.

7.9 Are there any export restrictions on export of a repossessed aircraft?

No

8. DEREGISTRATION POWER OF ATTORNEY/EXPORTATION

8.1 Can the Owner apply for deregistration of the Aircraft either at the end of the lease term or following successful repossession (with or without judicial proceedings) and is there any time period within which such application should be made?
According to Article 760 of the INC, the request for deregistration of the Aircraft must be filed by the Owner or by the lessee by returning to the RAI the certificate of registration and the certificate of airworthiness of the Aircraft. The INC does not provide for any specific term within which the application for deregistration should be made.

8.2 Is the consent of the Airline required to deregister the Aircraft either by law or as a matter of custom or practice?

No

8.3 How long does deregistration take, both where there is co-operation from the Airline and where this is no co-operation from the Airline?

There is no specific indication of the timing of the deregistration process, which is quite straightforward. However, if the Airline is still using the aircraft, deregistration may prove to be difficult and probably would require the Owner to take possession of the aircraft or obtain an arrest order by the Court.

8.4 Is it possible to obtain an export licence or export permit in advance?

Although there is no statutory provision preventing the Owner from seeking an export license (“certificato di navigabilità per esportazione”) from ENAC before the end of the lease term, please note that it is advisable to do so after said term.

Indeed, in order to issue the export license, ENAC will carry out through inspections on the relevant aircraft, which needs to be at the Owner’s full disposal so to allow the appointed technicians to carry out the necessary checks.

Furthermore, please note that an export license has a 60 days validity counting from the issuing date. Therefore, in case the Owner requires such license after the said term, ENAC shall carry out further inspections and issue a new license.

8.5 Approximately how long does it take to obtain an export licence or export permit? What are the costs involved?

There are no statutory terms and that it mostly depends on the aircraft to be licensed and its maintenance condition:

1. if the aircraft to be licensed is in a good state of repairs (e.g. recently used for flight services) and all the required documents are in order, then the procedure usually lasts no longer than 30 days;
2. on the contrary, if the state of repairs is defective, the required documents are lacking and/or not in order and the aircraft has not been used for air navigation for a considerable time, more in-depth inspections (thus, a longer time to obtain the license) will be required. In this case, it is not possible to make estimation in advance: timing will differ on a case by case basis.

The costs involved are the fees for the ENAC technician assigned to carry out the necessary inspections to obtain the export license. The amount cannot be estimated in advance as such costs are usually determined on an hourly rate basis taking into account the actual time the appointed technician dedicated to the procedure.
8.6 Is it possible to obtain a certificate of deregistration in advance?

No.

8.7 Will a power of attorney empowering the Owner to deregister and export the Aircraft from the Relevant Jurisdiction, either at the end of the lease term or following successful repossession (with or without judicial proceedings), be enforceable in the Relevant Jurisdiction? Will the courts recognise a power of attorney in the form of an IDERA and governed by English law?

A power of attorney empowering the Owner to deregister and export the Aircraft from the Relevant Jurisdiction, either at the end of the lease term or following successful repossession will be recognised by Italian jurisdiction, and the Owner shall then obtain the export licence (please refer to 8.4 above).

Considering that Italy has not ratified the Cape Town Convention yet, Italian courts should not recognise a power of attorney in the form of an IDERA.

8.8 If the power of attorney was stated to be irrevocable would this be enforceable against the Airline or can the Airline revoke such power of attorney?

Under Italian Law a PoA may be irrevocable when it is also granted for the benefit of the appointed attorney. If the PoA is irrevocable the Airline cannot autonomously revoke it.

8.9 Upon the occurrence of a bankruptcy or insolvency of the Airline is the power of attorney still effective?

Yes but may be revoked by the Court appointed receiver. It must be noted that the declaration of bankruptcy does not imply the termination of the lease contract.

9. INSOLVENCY

9.1 In the event that the Airline were to become insolvent either on a balance sheet basis (assets less than liabilities) or unable to pay debts as fall due:

9.1.1 Would the airline be required to file for insolvency protection?

Yes. According to Italian bankruptcy law directors would face criminal liabilities if do not file for insolvency unlawfully delaying the bankruptcy declaration.

9.1.2 Do the available forms of insolvency protection in the Relevant Jurisdiction involve the appointment of either an officer of the court or a specifically court appointed official to take control of the Airline (an Insolvency Official) while in insolvency
9.1.3 Does the Insolvency Official have authority to negotiate and reach agreement with the Owner in relation to matters such as the payment of unpaid rent, continuation or termination of the Lease and repossession of the Aircraft without the need for court approval?

Yes. The Insolvency Official or the Extraordinary Administration, as applicable, has the right to decide on continuation or termination of pending contracts, including Leasing agreements.

9.1.4 Does the commencement of insolvency protection involving the appointment of an Insolvency Official in the Relevant Jurisdiction have the effect of prohibiting the Owner from taking the following actions to enforce the lease after commencement of such protection:

- (a) Applying any security deposit held by the Owner against any unpaid amounts due under the Lease? Yes
- (b) Accepting payment of rent or other lease payments from:
  1. (i) the Airline? Yes
  2. (ii) a guarantor? No
  3. (iii) a shareholder? No
- (c) Giving notice of default under the lease? No. It must be noted that according to Italian Bankruptcy law, contractual clauses providing for the termination in case of adjudication in bankruptcy are not enforceable.
- (d) Obtaining a judgment or arbitral award for unpaid lease payments? No, although in order to obtain payment of the due amounts the Owner shall file a proof of claim petition in the insolvency procedure.
- (e) Giving notice to terminate the leasing of the Aircraft? No, please see answer under 8.1.4(c) above.
- (f) Exercising rights to repossess the Aircraft? Yes. Enforcement-ad interim actions against bankrupt party cannot be started or are suspended following to declaration of bankruptcy.

9.1.5 Can the commencement of Insolvency Proceedings have retrospective effect in relation to any such actions taken before commencement? If so, for what period can there be a look back?
Yes, the lookback period may vary from six months to 1 year before commencement, depending on the relevant action and requires evidence that the counterparty was aware of the insolvency status of the bankrupt entity (which is assumed by operation of law under certain circumstances).

9.1.6 Is there, either under law or as a matter of practice in the Relevant Jurisdiction, a period of time within which the Insolvency Official will either “adopt” the lease and pay rent and other lease payments as an expense of the insolvency or “reject” the lease and permit the Owner to enforce such rights as it may have under the lease?

No. The Owner may request that the Insolvency Judge fixes a date within which the Receiver has to decide whether to continue or terminate the Lease.

9.1.7 If the lease is “adopted” will the Insolvency Official also pay any unpaid lease payments due as at commencement of the insolvency protection?

The matter is partially disputed. According to certain stances of case law, amounts accrued until the date the Insolvency Official communicates the “adoption” of the lease, will have to be inserted in the claims against the bankrupt party and will rank as secured/unsecured credits according to their title. According to other stances, in case of “adoption” of the lease, all amounts due for rentals accrued will have to be fully paid.

9.1.8 If not or if the lease is “rejected”, would the Owner’s claim for any outstanding sums rank equally with other ordinary unsecured creditors of the Airline?

Yes.

9.1.9 Are there certain types of preferred creditors whose claims will rank above claims of the Owner?

Yes. Credits arisen in the course of bankruptcy procedure are paid as preferential credits, as well as judicial expenses, or credits granted with special privileges such as, as a way of example, credits of employees.

9.1.10 If the Aircraft is in the possession of a person other than the Airline at the commencement of Insolvency Protection of the Airline, for example an independent maintenance facility, will such person be entitled, under the laws of the Relevant Jurisdiction, to assert a lien arising under law or contract over the Aircraft in respect of amounts then due and unpaid to such person by the Airline?

No.

9.1.11 Is a person other than the Airline, for example an airport authority, entitled under the laws of the Relevant Jurisdiction to seize possession of the Aircraft after
commencement of Insolvency Protection and assert a lien arising under law or contract over the Aircraft in respect of amounts then due and unpaid to such person by the Airline.

Yes. ENAC may prevent the Aircraft to leave the airport under circumstances described under 4.1 below.

10. TAXATION

10.1 The decision to lease to an airline in the Relevant Jurisdiction assumes that the Owner will not be taxed on receipt of rentals or other payments (including maintenance reserves) under the Lease except by way of tax on its general income, profits or gains payable by the Owner in its place of incorporation or place of main business (if different). Will there be a requirement for the Owner to pay tax in the Relevant Jurisdiction on lease payments on basis that either the Owner is subject to taxation in the Relevant Jurisdiction by reason only of the leasing of the Aircraft under the Lease and is required to make payment itself;

Italian tax rules don’t provide with a specific taxation on lease payments, except if the Owner has a permanent establishment (PE) in Italy (in principle, lease payments only do not give rise to a PE).

or payment of such tax is by way of the airline being required to withhold and account for tax from lease payments, where:

According to art. 25, par. 4 of Presidential Decree N° 600/1973 a withholding tax (Wht) equal to 30% applies on the lease payments in the benefit of a non-resident Owner, except if claiming protection by DTT may be invoked.

10.1.1 the Owner is incorporated and is tax resident in Ireland?

Yes. DTT Yes. No Wht applies;

10.1.2 the Owner is incorporated and is tax resident in the United Kingdom?

Yes. DTT Yes. Rate of 8%;

10.1.3 the Owner is incorporated and is tax resident in Hong Kong?

Yes. DTT Yes. Rate of 15%;

10.1.4 the Owner is incorporated and is tax resident in Singapore?

Yes DTT Yes. Rate of 15%;

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10.1.5 the Owner is incorporated and is tax resident in Malta?

Yes DTT Yes. Rate of 10%;

10.1.6 the Owner is incorporated and is tax resident in the Channel Islands?

Yes. 30% DTT No;

10.1.7 the Owner is incorporated and is tax resident in the Isle of Man?

Yes. 30% DTT No;

10.1.8 the Owner is incorporated and is tax resident in Mauritius?

Yes DTT Yes. Rate of 15%;

10.1.9 the Owner is incorporated and is tax resident in Bermuda?

Yes. 30% DTT No;

10.1.10 the Owner is incorporated and is tax resident in the Cayman Islands?

Yes. 30% DTT No.

10.2 If there is a requirement in the Relevant Jurisdiction for the airline to withhold tax on lease payments, will the courts of the Relevant Jurisdiction recognise and permit enforcement of a “gross up” clause in the Lease requiring the payment by the Airline of an additional sum to ensure the Owner receives and is entitled to retain the same net amount as would have been received in the absence of the withholding, taking account of any further withholding on account of tax required in relation to such additional sum.

We are not aware of Supreme Italian Tax Court decisions on the topic.

10.3 Under Article 148(f) of the VAT Directive, an exemption from VAT is applied to “supplies” consisting of chartering or hiring of aircraft which are used by airlines operating for reward chiefly on international routes. Therefore:

New lease to airline operating for reward chiefly in domestic routes: VAT will be applied to lease rentals at current
New Lease to airline operating for reward chiefly on international routes: VAT will not be applied to lease rentals by reason of application of exemption: Yes

Sale of aircraft by an aircraft lessor to another aircraft lessor of an aircraft subject to a lease to an airline operating for reward chiefly in domestic routes: VAT will be applied to the purchase price. If the seller and the purchaser are both EU entities and the purchaser supplies its EU VAT Number to the seller then the VAT charge will be a reverse charge. Otherwise VAT will be applied to purchase price at current rate: 22%

Sale of aircraft by an aircraft lessor to another aircraft lessor of an aircraft subject to a lease to an airline operating for reward chiefly on international routes: VAT will be applied to purchase price: No.

If no, is this because of application of the exemption under Article 148(f) to the airline following the decision in ECJ Case C-33/2011? Yes, even if Italian Tax Authority has not recognized yet that earlier adverse resolutions are superseded by the ECJ Case C-33/2011.

If the transaction involves the first importation of the aircraft into the EU (and assuming the aircraft is intended for use as a civil and not military aircraft) what rate of Customs Duty will apply? Customs Duties are generally levied at 0% for civil Aircrafts.

10.4 Is any stamp duty, notarial or other fee or equivalent payable in respect of the execution of the Lease, a de-registration power of attorney or any other lease related document concerning the aircraft? Will such stamp duty or fee still be payable if the relevant documents are executed and held outside the Relevant Jurisdiction? If any such amount is payable how much is it approximately?

Stamp duty applies on the Lease agreement and on the warranties released to the Leasing Company, for a fix amount of EUR 16 per agreement.

Also Notarial fees apply.

10.5 Can any form of consent, authorisation or licence be obtained exempting the payments referred to in this Section from such tax or duty? If so, how would it be obtained?

No

10.6 Ignoring any taxation consequence already mentioned and any potential taxation issues if the Owner has any other connection to the Relevant Jurisdiction, is there any other Relevant Jurisdiction taxation consequence of the Owner:
10.6.1 Being owner and lessor of an aircraft registered in the Relevant Jurisdiction and operated/leased by a company incorporated or registered in the Relevant Jurisdiction?
No.

10.6.2 Making available a lease facility to a company incorporated or regulated in the Relevant Jurisdiction?
No.

10.6.3 Receiving rent and other lease payments under the Lease from the lessee incorporated or registered in the Relevant Jurisdiction?
No.

10.6.4 Repossessing the aircraft and exporting the aircraft from the Relevant Jurisdiction?
No.

10.6.5 Selling the aircraft at a profit, whether such sale is after repossession or is subject to the Lease and the lessee’s rights?

Income Tax both for IRES and IRAP purposes applies on the gains realized by the seller at a rate of about 31 %, except if claiming protection by DTT may be invoked. The sale of Aircraft within the UK attracts a charge to VAT but, again, supplies of the Aircrafts that will be used by an Airline operating flights for reward chiefly on international routes will be zero-rated.

11. EXCHANGE CONTROLS

11.1 Are payments to foreign owners by companies incorporated or registered in the Relevant Jurisdiction subject to any form of exchange or similar control?
No

11.2 If yes, can any consents, authorisations or licences be obtained to exempt payments from any such control? How would these be obtained? Are such consents, authorisations or licences transferable?

N/A
12. INSURANCE

12.1 Is it a legal requirement to insure the Aircraft within the Relevant Jurisdiction?

Yes. According to Article 798 of the INC, an aircraft cannot fly if it is not covered by a valid insurance. There is no requirement in the Relevant Jurisdiction that primary aircraft and/or liability insurances are placed with an Italian insurance company.

12.2 If so, is there any restriction on reinsurance of the primary insurance outside the Relevant Jurisdiction?

No

12.3 Is there a minimum percentage of cover which a local insurer is obliged to retain, and if so, what is it?

No

12.4 Is it possible for local insurers to assign contracts of reinsurance?

Yes

13. LIABILITY FOR DAMAGE

13.1. Can the Owner be strictly liable – liable without a requirement to prove fault or negligence – for any damage or loss caused by the Aircraft assuming Owner is an innocent owner with no operational control of the Aircraft?

According to Ottawa Convention as implemented in Italy, the Lessor is exempted by liabilities arising from the Aircraft vis-à-vis the Airline, save for cases when the possible damage arises from the legitimate reliance put by the Airline in the suitability of the Aircraft, which, in any case, represents a circumstance whereby the Airline has to prove fault or negligence by the Lessor.

Lessor is also exempted from damages to third parties arising from the use of the Aircraft, given that Lease contracts typically ensure that risks remains with the lessee.

These provisions do not exclude the liability of the Lessor acting as owner of the Aircraft. In such case it may be held liable for manufacturing defects.
14.1 Are there any rights to detain or sell the Aircraft pursuant to drug trafficking, tax or other laws or pursuant to rights of airport or air navigation authorities if the Airline fails to pay when due?

If Airline fails to pay, according to the Italian Criminal and Civil Law, the Aircraft may be seized and may be confiscated.

14.2 If so, can the Aircraft be forfeited and sold without the Owner being made aware?

The property of the Aircraft in case of Lease Contract stays at the Owner. Also, according to Italian Law criminal liability is on a personal basis and cannot be extended to third parties which have not participated in the crime. Hence, the Aircraft legally owned by the Owner cannot be sold.

15. SOVEREIGN IMMUNITY

15.1 Is any Airline based in the Relevant Jurisdiction entitled to any form of sovereign or other immunity from suit which might restrict the Owner’s rights under the Lease?

No real “immunity” exists under Italian Law, although according to INC there are restrictions on possibility to start enforcement or ad-interim procedures against the Aircraft whenever it is used for:

- (a.) government purposes;
- (b.) serving flight lines, unless a specific authorisation by the Ministry of Transport is obtained;
- (c.) transportation for consideration of person and/or goods, which are “ready to leave" or “currently flying", unless the actions are proposed by a creditor due to airline’s debts related to the trip that the aircraft is about to start or is currently involved in.

The Aircraft is considered “ready to leave” when the captain has obtained authorisation from ENAC. Also, according to INC, ENAC may prevent the Aircraft to leave an airport in case duties related to security obligations for navigation are not respected, as well as in case the Airline or the captain did not respect duties imposed by sanitary and customs rules.

ENAC may also prevent the Aircraft to leave the airport if obligations related to taxes, rights, tariffs, also due to ENAV (i.e. the Italian company which provides the Air Traffic Control service) are not respected by the Airline.

15.2 Can such immunity be validly waived in advance by contract?

No

16. DISPUTE RESOLUTION AND RECIPROCAL ENFORCEMENT
16.1 Do the laws of the Relevant Jurisdiction permit and recognise an “asymmetric” submission to jurisdiction clause under which the lessee submits to the exclusive jurisdiction of the Courts of England but the Owner has discretion to choose a jurisdiction other than the Courts of England?

As already mentioned, it is possible to register at RAI aircrafts which are not owned by the authorised airline, being merely leased by same. However, please note that according to INC, property and security rights over such kind of aircraft are expressly regulated by Italian Law.

Save for such aspects, it is possible for parties of the Lease contract to freely provide clauses on jurisdiction and applicable law, provided that compulsory Italian Laws regulating the matter are respected (such as the mentioned rules related to enforcement procedures or stop-orders by ENAC issued to the Airline).

16.2 If the Lease is governed by English Law and a judgment is obtained by the Owner in the English courts, can that judgment be automatically enforced in the Relevant Jurisdiction or will the case have to be re-examined on its merits? If so what procedures must be complied with to enforce such a judgment?

English Courts’ decision are validly recognised and enforceable in Italy provided that requirements of public order are respected and/or no violation of Italian substantial rules will arise from recognition of foreign decision. To have the foreign decision “accepted” in Italy or declared “enforceable” it is necessary to file to the competent Court of Appeal a request vested with a set of documents comprising the authenticated copy of the foreign decision. The Court of Appeal carries out checks on the “suitability” with Italian rules of the decision, which is not examined on the merits.

16.3 Is the Relevant Jurisdiction party to the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention) or the 1965 Convention on the Settlement of Investment Disputes Between States and Nationals of Other States (the Washington Convention)? Will the courts of the Relevant Jurisdiction recognise and enforce a decision of an arbitrator?

Yes, Italy is part of both mentioned Conventions. In Italy, foreign arbitral awards are recognised similarly as foreign decisions are (see previous answer), though recognition/enforcement of same is not possible in case the subject decided by arbitrator(s) could have not been decided by arbitrator(s) under Italian Law; or if the award contains statements in breach of Italian public order.

16.4 What is the usual choice of dispute resolution in international supply contracts involving a lessor or buyer incorporated in or with its main place of business in the Relevant Jurisdiction?

The choice of dispute resolution is typically “imposed” by the Owner/Lessor according to their jurisdiction, though specific airline sector may impose the choice of the Lessee’s governing law for various issues related to enforcement/ad interim measures. A preference for arbitration is often expressed, both for confidentiality and for the need to obtain quicker decisions/awards.
17. AIRCRAFT ENGINES

17.1 If the equipment being leased to the Airline in the Relevant Jurisdiction was an Aircraft Engine either unattached to an airframe or attached to an airframe belonging to a party other than the Aircraft Engine Owner and being leased to the Airline under a separate engine lease agreement, would there be any significant changes to the responses set out above?

No particular changes. Engines are considered as separate part of the Aircraft according to Art. 862 of INC, meaning that any right related to them shall result by written form and shall be registered at RAI in order to be publically notified to third parties.

17.2 In particular, does the Relevant Jurisdiction recognise the separate ownership of the Aircraft Engine by the Aircraft Engine Owner when the Aircraft Engine is attached to an airframe belonging to a person other than the Aircraft Engine Owner?

Yes. Please refer to answer under 16.1 above.

17.3 Is there a register of Aircraft Engines and is the information given above in relation to registration of Aircraft and the ownership and leasing of Aircraft the same for registration of an Aircraft Engine and the ownership and leasing of such Aircraft Engine at the Aircraft Engine register?

No. There is no specific register. Any information related to property or other rights over Engines shall be recorded at RAI in order to be publically notified to third parties claiming any right against the owner of the Aircraft.

18. ADDITIONAL INFORMATION – IS THERE ANYTHING ELSE WE SHOULD HAVE ASKED?

Are there any other matters, issues, recommended courses of action or steps which can be taken to protect and/or perfect the Owner's interests, as owner and lessor of the Aircraft in the Relevant Jurisdiction or of which the Owner should be aware when contemplating leasing an aircraft to a company incorporated and operating in the Relevant Jurisdiction?

N/A
Aircraft finance and leasing in Netherlands
1 PROPOSED TRANSACTION STRUCTURE

2 SEARCHES

2.1 Are there any public registers in the Relevant Jurisdiction where a search can be carried out to determine whether an order or resolution for any bankruptcy, bankruptcy protection or similar insolvency proceedings has been registered in relation to the Airline?

2.2 If so, specify which public registers, how long such searches typically take and if the fees are more than USD 100, approximately what fees apply.

3 RIGHTS AND EVIDENCE OF OWNERSHIP

3.1 In the case of the transfer of title to an aircraft registered in the Relevant Jurisdiction:

3.2 Other than Insolvency laws (see section 9) are there any laws which may have the effect of defeating the Owner’s right in the aircraft – for example, Government requisition? Do the laws of the Relevant Jurisdiction provide for any compensation in such circumstances?

4 THE AIRCRAFT REGISTER – NATIONALITY OF AIRCRAFT

4.1 Has the Relevant Jurisdiction ratified any of:

4.2 If the Relevant Jurisdiction has not ratified the Cape Town Convention, has the Relevant Jurisdiction started official proceedings or given any other official indication that it will accede to or ratify the Cape Town Convention in the near future?

4.3 Is there an Aircraft Register in the Relevant Jurisdiction and if so, what is it called and who operates it?

4.4 If so, in relation to registration:

4.5 What documents and/or consents are required to obtain registration on the Aircraft Register and will these require any formalities (for example, notarisation, legalisation or application of apostille)?

4.6 Are there any restrictions on the legal status and/or nationality/domicile of parties seeking to register an aircraft on the Aircraft Register?

4.7 In respect of aircraft transactions connected with the Relevant Jurisdiction generally, are there any foreign Aircraft Registers that are commonly used, or should be considered, as alternatives to or in addition to registration with the Relevant Jurisdiction’s Aircraft Register? If so, what is benefit of such registration?

4.8 Are there any other filings or registrations necessary or desirable (other than the registrations already mentioned and Lease Registration – see section 6) in the Relevant Jurisdiction in order to ensure the validity, priority or enforceability of the transaction documents, or to perfect the interests of the Owner in the Aircraft or the transaction documents?

5 LEASES

5.1 Will the Relevant Jurisdiction recognise the concept of a lease over an aircraft?

5.2 Would the choice of English law to govern the Lease be upheld as a valid choice of law in any action in the Relevant Jurisdiction?

5.3 Must the Lease be in a particular form if it is to be valid and enforceable in the Relevant Jurisdiction (for example, must it be in the language of the Relevant Jurisdiction or be notarised, legalised or have the apostille applied)?

5.4 If the Lease must be in the language of the Relevant Jurisdiction, is it possible under the Relevant Law also to have an English version, and to provide that the English version should prevail in case of conflict with the Relevant Jurisdiction language version?

5.5 Are there any special terms that the Lease must contain or that it is advisable for the
5.6 Are there any circumstances under which the Lease might be re-characterised under the laws of the Relevant Jurisdiction as:

6 LEASE REGISTRATION

6.1 Is there a separate register for aircraft leases in the Relevant Jurisdiction?
6.2 If yes, then:

7 ENFORCEMENT OF LEASES (ASSUMING AIRLINE IS NOT SUBJECT TO A FORM OF INSOLVENCY PROTECTION)

7.1 On the occurrence of an event of default under the Lease, assuming that the Owner is permitted to do so under the terms of the Lease, can the Owner terminate the Leasing of the Aircraft under the Lease and enforce the Lease by taking physical possession of the Aircraft?
7.2 If so, can the Owner take physical possession of the Aircraft without the need for judicial proceedings in the Relevant Jurisdiction?
7.3 Where judicial proceedings in the Relevant Jurisdiction are necessary, please provide details of the proceedings, in particular:
7.4 Where judicial proceedings are not necessary, please comment on the time limits relevant to taking possession of the Aircraft, in particular:
7.5 Apart from the judicial proceedings described above and ignoring deregistration (see section 8), is the permission of any other party (including any official body) in the Relevant Jurisdiction required to take possession of the Aircraft?
7.6 Is there any history of actual repossession of Aircraft by Owners in the Relevant Jurisdiction? If so, please provide details of any matters or issues of which an Owner should be aware.
7.7 Are there any circumstances in which the sums expressed to be payable under the Lease or obligations expressed to be assumed by the Airline in the Lease are or will be unrecoverable or unenforceable in the Relevant Jurisdiction?
7.8 Are there any restrictions on the ability of the Owner to sell the Aircraft in the Relevant Jurisdiction during the term of the Lease or, following an event of default, on termination of the leasing or pending judicial enforcement of the Lease?
7.9 Are there any export restrictions on export of a repossessed aircraft?

8 DEREGISTRATION POWER OF ATTORNEY/EXPORTATION

8.1 Can the Owner apply for deregistration of the Aircraft either at the end of the lease term or following successful repossession (with or without judicial proceedings) and is there any time period within which such application should be made?
8.2 Is the consent of the Airline required to deregister the Aircraft either by law or as a matter of custom or practice?
8.3 How long does deregistration take, both where there is co-operation from the Airline and where there is no co-operation from the Airline?
8.4 Is it possible to obtain an export licence or export permit in advance?
8.5 Approximately how long does it take to obtain an export licence or export permit? What are the costs involved?
8.6 Is it possible to obtain a certificate of deregistration in advance?
8.7 Will a power of attorney empowering the Owner to deregister and export the Aircraft from the Relevant Jurisdiction, either at the end of the lease term or following successful repossession (with or without judicial proceedings), be enforceable in the Relevant Jurisdiction? Will the courts recognise a power of attorney in the form of an IDERA and governed by English law?
8.8 If the power of attorney was stated to be irrevocable would this be enforceable against the Airline or can the Airline revoke such power of attorney?
8.9 Upon the occurrence of a bankruptcy or insolvency of the Airline is the power of
In the event that the Airline were to become insolvent either on a balance sheet basis (assets less than liabilities) or unable to pay debts as fall due:

The decision to lease to an airline in the Relevant Jurisdiction assumes that the Owner will not be taxed on receipt of rentals or other payments (including maintenance reserves) under the Lease except by way of tax on its general income, profits or gains payable by the Owner in its place of incorporation or place of main business (if different). Will there be a requirement for the Owner to pay tax in the Relevant Jurisdiction on lease payments on basis that either the Owner is subject to taxation in the Relevant Jurisdiction by reason only of the leasing of the Aircraft under the Lease and is required to make payment itself; or payment of such tax is by way of the airline being required to withhold and account for tax from lease payments, where:

If there is a requirement in the Relevant Jurisdiction for the Airline to withhold tax on lease payments, will the courts of the Relevant Jurisdiction recognise and permit enforcement of a “gross up” clause in the Lease requiring the payment by the Airline of an additional sum to ensure the Owner receives and is entitled to retain the same net amount as would have been received in the absence of the withholding, taking account of any further withholding on account of tax required in relation to such additional sum.

VAT: European Union country: under Article 148(f) of the VAT Directive, an exemption from VAT is applied to “supplies” consisting of chartering or hiring of aircraft which are used by airlines operating for reward chiefly on international routes. Therefore:

Is any stamp duty, notarial or other fee or equivalent payable in respect of the execution of the Lease, a de-registration power of attorney or any other lease related document concerning the aircraft? Will such stamp duty or fee still be payable if the relevant documents are executed and held outside the Relevant Jurisdiction? If any such amount is payable how much is it approximately?

Can any form of consent, authorisation or licence be obtained exempting the payments referred to in this Section from such tax or duty? If so, how would it be obtained?

Ignoring any taxation consequence already mentioned and any potential taxation issues if the Owner has any other connection to the Relevant Jurisdiction, is there any other

Are payments to foreign owners by companies incorporated or registered in the Relevant Jurisdiction subject to any form of exchange or similar control?

If yes, can any consents, authorisations or licences be obtained to exempt payments from any such control? How would these be obtained? Are such consents, authorisations or licences transferable?

Is it a legal requirement to insure the Aircraft within the Relevant Jurisdiction?

If so, is there any restriction on reinsurance of the primary insurance outside the Relevant Jurisdiction?

Is there a minimum percentage of cover which a local insurer is obliged to retain, and if so, what is it?

Is it possible for local insurers to assign contracts of reinsurance? If not, is a cut-through clause enforceable?
LIABILITY FOR DAMAGE
13.1 Can the Owner be strictly liable – liable without a requirement to prove fault or negligence – for any damage or loss caused by the Aircraft assuming the Owner is an innocent owner with no operational control of the Aircraft?

DETENTION/CONFISCATION
14.1 Are there any rights to detain or sell the Aircraft pursuant to drug trafficking, tax or other laws or pursuant to rights of airport or air navigation authorities if the Airline fails to pay when due?
14.2 If so, can the Aircraft be forfeited and sold without the Owner being made aware?

SOVEREIGN IMMUNITY
15.1 Is any Airline based in the Relevant Jurisdiction entitled to any form of sovereign or other immunity from suit which might restrict the Owner's rights under the Lease?
15.2 Can such immunity be validly waived in advance by contract?

DISPUTE RESOLUTION AND RECIPROCAL ENFORCEMENT
16.1 Do the laws of the Relevant Jurisdiction permit and recognise an "asymmetric" submission to jurisdiction clause under which the lessee submits to the exclusive jurisdiction of the Courts of England but the Owner has discretion to choose a jurisdiction other than the Courts of England?
16.2 If the Lease is governed by English Law and a judgment is obtained by the Owner in the English courts, can that judgment be automatically enforced in the Relevant Jurisdiction or will the case have to be re-examined on its merits? If so what procedures must be complied with to enforce such a judgment?
16.3 Is the Relevant Jurisdiction party to the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention) or the 1965 Convention on the Settlement of Investment Disputes Between States and Nationals of Other States (the "Washington Convention")? Will the courts of the Relevant Jurisdiction recognise and enforce a decision of an arbitrator?
16.4 What is the usual choice of dispute resolution in international supply contracts involving a lessor or buyer incorporated in or with its main place of business in the Relevant Jurisdiction?

AIRCRAFT ENGINES
17.1 If the equipment being leased to the Airline in the Relevant Jurisdiction was an Aircraft Engine either unattached to an airframe or attached to an airframe belonging to a party other than the Aircraft Engine Owner and being leased to the Airline under a separate engine lease agreement, would there be any significant changes to the responses set out above?
17.2 In particular, does the Relevant Jurisdiction recognise the separate ownership of the Aircraft Engine by the Aircraft Engine Owner when the Aircraft Engine is attached to an airframe belonging to a person other than the Aircraft Engine Owner?
17.3 Is there a register of Aircraft Engines and is the information given above in relation to registration of Aircraft and the ownership and leasing of Aircraft the same for registration of an Aircraft Engine and the ownership and leasing of such Aircraft Engine at the Aircraft Engine register?
1. PROPOSED TRANSACTION STRUCTURE

Please note that all questions relating to the registration of Leases and Aircraft Mortgages in the Netherlands are subject to the condition that:

- the Aircraft will be purchased by the Owner and leased on an operating lease basis to the Airline pursuant to the Lease;
- the Lease will be registered in the Nationality Register in The Netherlands; and
- the Aircraft Mortgage will be registered in the Nationality Register in the Netherlands.

Is this is the usual structure for transactions of this nature in the Relevant Jurisdiction?

Yes.

2. SEARCHES

2.1 Are there any public registers in the Relevant Jurisdiction where a search can be carried out to determine whether an order or resolution for any bankruptcy, bankruptcy protection or similar insolvency proceedings has been registered in relation to the Airline?

Yes, there are public registers in The Netherlands where such searches may be carried out. Please note that while a search thus conducted will reveal whether an order or resolution for any bankruptcy, bankruptcy protection or similar insolvency proceedings has been registered in relation to the Airline, it may not reveal all forms of pending procedures.

2.2 If so, specify which public registers, how long such searches typically take and if the fees are more than USD 100, approximately what fees apply.

Searches can be performed at:

- the bankruptcy chamber of the District Court, here the searches free of charge;
- the Central Insolvency Register (on-line search), here the searches free of charge; and
- the trade register of the Dutch Chamber of Commerce (on-line search), here minimal charges apply (in any case below USD 100).

In all cases results of the searches can be obtained instantly.

3. RIGHTS AND EVIDENCE OF OWNERSHIP

3.1 In the case of the transfer of title to an aircraft registered in the Relevant Jurisdiction:
3.1.1 Is any particular form of transfer required for the transfer to be legally recognised?

Yes, ownership can be transferred by execution of a notarial deed before a notary in The Netherlands. Such notarial deed must be registered in the Public Register in order for the transfer of title to the Aircraft to be perfected. It is also possible to transfer a beneficial interest in an Aircraft.

3.1.2 Must any particular conditions be satisfied for the transfer to be recognised?

The Aircraft or Engine must be located: (i) in The Netherlands, (ii) in another country that recognises a transfer of title in the form as required under Dutch law, or (iii) in another country that recognises the title transfer as a valid method of title transfer under its domestic law pursuant to the Geneva Convention.

3.1.3 Will such a transfer still be recognised by the courts of the Relevant Jurisdiction as legally valid where the relevant aircraft is located in another jurisdiction at the time of the transfer?

Yes, provided that the Aircraft or Engine is located in a country that recognises the transfer of title in the form as required under Dutch law or another country that recognises the title transfer as a valid method of title transfer under its domestic law pursuant to the Geneva Convention.

If the Aircraft or Engine is located in another country, which does not recognise the transfer in a manner as set out above, the courts of the Relevant Jurisdiction will not recognise the transfer and local law advice should be taken at the time of preparing the transfer of title to the Aircraft outside the Relevant Jurisdiction.

3.1.4 Are any duties, taxes or fees levied on such transfer of ownership?

Yes. Duties levied by the Nationality Register are EUR 150. Duties levied by the Public Register are approximately EUR 250.

No Dutch corporate income tax is due by the Owner under the assumption that the Owner does not have a permanent establishment in the Netherlands. The sale of an Aircraft (or parts thereof) and of Aircraft equipment within the Netherlands is generally subject to Dutch VAT. However, if the Aircraft is used by Airlines operating chiefly on international routes, the supply may be zero-rated for VAT purposes.

3.2 Other than Insolvency laws (see section 9) are there any laws which may have the effect of defeating the Owner’s right in the aircraft – for example, Government requisition? Do the laws of the Relevant Jurisdiction provide for any compensation in such circumstances?

Requisition of an Aircraft by the Government is possible, provided that (i) such requisition serves the public interest of the country, and (ii) the Government compensates the Owner in full for its damages. Other laws which may have an effect on the Owner’s right in the Aircraft are explained under 14.1 (e.g. confiscation by the tax authorities).
4. THE AIRCRAFT REGISTER – NATIONALITY OF AIRCRAFT

4.1 Has the Relevant Jurisdiction ratified any of:

4.1.1 The Chicago Convention of 1944 on International Civil Aviation (the “Chicago Convention")?

Yes

4.1.2 The 1948 Geneva Convention on the International Recognition of Rights in Aircraft (the “Geneva Convention")?

Yes

4.1.3 The 1933 Rome Convention for the Unification of Certain Rules Relating to the Precautionary Arrest of Aircraft (the “Rome Convention")?

Yes

4.1.4 The 2001 Cape Town Convention on International Interests in Mobile Equipment and the associated Protocol on Matters Specific to Aircraft Equipment (the “Cape Town Convention")?

No

4.2 If the Relevant Jurisdiction has not ratified the Cape Town Convention, has the Relevant Jurisdiction started official proceedings or given any other official indication that it will accede to or ratify the Cape Town Convention in the near future?

The Netherlands has not ratified the Cape Town Convention although the Dutch Government had initially expressed its intention to do so. Currently, however, there are no plans to ratify the Cape Town Convention.

4.3 Is there an Aircraft Register in the Relevant Jurisdiction and if so, what is it called and who operates it?

There are two Aircraft Registers:

- The Dutch Civil Aircraft Register (in Dutch: Nederlands Register voor Burgerluchtvaartuigen) kept by
the Civil Aviation Authority of the Human Environment and Transport Inspectorate (in Dutch: Inspectie Verkeer en Waterstaat, divisie Luchtvaart) (the "Nationality Register"); and
- The Dutch Aircraft Title Register (in Dutch: Register van Teboekgestelde Luchtvaartuigen) (the "Public Register").

4.4 If so, in relation to registration:

4.4.1 Who is responsible for registering the Aircraft – is it an owner registry or an operator registry?

Both the Owner and the Lessee are responsible for the registration of the Aircraft in the Nationality Register, even though that register is an operator registry. Permits relating to the production of noise and pollution and certificates with respect to technical features are both issued by the Civil Aviation Authority. Both are required to be delivered for purposes of the registration of the Aircraft in the Nationality Register.

4.4.2 What details would normally be recorded on the Aircraft Register upon registration of an aircraft in the Relevant Jurisdiction? If not normally recorded, is it possible to record the Lease and/or an Aircraft Mortgage on the Aircraft Register?

Under Dutch law only:

- the ownership of an Aircraft;
- a right of mortgage created in respect of an Aircraft;
- the right to acquire an Aircraft pursuant to a sale and purchase agreement entered into or to be entered into by the by purchase combined with the holder of such a right’s possession of the Aircraft;
- rights to possession of Aircraft under leases with a duration of at least six months, can be registered in the Public Register, provided the Aircraft is recorded in the Nationality Register.

4.4.3 If the Aircraft Register is an operator register, is it possible to record the details of the aircraft owner/lessor and any financier with an Aircraft Mortgage?

Yes, it is possible to record the details of the aircraft owner/lessor and any financier to be recorded in the Nationality Register. Aircraft Mortgages that are governed by Dutch law must be registered in the Public Register once the Aircraft Mortgage has been executed by a civil-law notary in The Netherlands.

4.4.4 If the Aircraft Register is an owner register, is registration on the Aircraft Register definitive to determine ownership of the Aircraft?

Yes. The owner has the obligation to keep the registered owner information, as recorded in the Public Register, up-to-date.

4.4.5 Are any distinctions made between aircraft employed on international routes and those used purely for domestic flights?
4.5 What documents and/or consents are required to obtain registration on the Aircraft Register and will these require any formalities (for example, notarisation, legalisation or application of apostille)?

Registration of the Aircraft with the Nationality Register requires the filing of a form and numerous certificates/permits (on noise/pollution/technical features, etc).

Registration of the Aircraft in the Public Register requires the approval of the District Court in the Netherlands and the submission of a form in the Public Register. This form can only be filed by a civil-law notary registered in the Netherlands. The notary will require a power of attorney including a legalised signature and an apostil i.e. (if legalised outside the Netherlands). The District Court will charge approximately EUR 600 for its approval, the registration of the form with the Public Register costs approximately EUR 100.

4.6 Are there any restrictions on the legal status and/or nationality/domicile of parties seeking to register an aircraft on the Aircraft Register?

There are no such restrictions in the Netherlands for the Public Register. The Nationality Register has requirements pertaining to the operator, relating to the operating permit as included in Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the Community (Recast).

4.7 In respect of aircraft transactions connected with the Relevant Jurisdiction generally, are there any foreign Aircraft Registers that are commonly used, or should be considered, as alternatives to or in addition to registration with the Relevant Jurisdiction’s Aircraft Register? If so, what is benefit of such registration?

No. Although, there is some a debate with respect to the potential benefits of the registration of Aircraft in the Caribbean parts of the Kingdom of the Netherlands, since these parts have ratified the Cape Town Convention.

4.8 Are there any other filings or registrations necessary or desirable (other than the registrations already mentioned and Lease Registration – see section 6) in the Relevant Jurisdiction in order to ensure the validity, priority or enforceability of the transaction documents, or to perfect the interests of the Owner in the Aircraft or the transaction documents?

No.

5. LEASES

5.1 Will the Relevant Jurisdiction recognise the concept of a lease over an
aerospace?

Yes

5.2 Would the choice of English law to govern the Lease be upheld as a valid choice of law in any action in the Relevant Jurisdiction?

In order to enjoy Geneva Convention protection, the Lease is required to be governed by Dutch law. It is common practice to register a one-page notarial deed stipulating a Lease governed by Dutch law, which refers to a detailed English law Lease attached to the Dutch law Lease in the form of an annex. All responses below relate to such a registered Lease.

5.3 Must the Lease be in a particular form if it is to be valid and enforceable in the Relevant Jurisdiction (for example, must it be in the language of the Relevant Jurisdiction or be notarised, legalised or have the apostille applied)?

In order for the Lease to be valid and enforceable in The Netherlands, the Lease must be executed in the form of a notarial deed by a civil-law notary in the Netherlands, acting on behalf of the Lessor and the Lessee under two separate powers of attorney. These powers of attorney must be legalised and apostilled (if signed in another country than the Netherlands).

5.4 If the Lease must be in the language of the Relevant Jurisdiction, is it possible under the Relevant Law also to have an English version, and to provide that the English version should prevail in case of conflict with the Relevant Jurisdiction language version?

Filings with the Public Register must be made in Dutch.

However, the notarial deed can be executed in English, provided that a sworn-translation is made available as well. The Dutch translation of the deed must be registered with the Public Register. Nevertheless, the English language version of the deed will prevail.

5.5 Are there any special terms that the Lease must contain or that it is advisable for the Lease to contain?

The term of the Lease must be at least six months.

5.6 Are there any circumstances under which the Lease might be re-characterised under the laws of the Relevant Jurisdiction as:

5.6.1 a secured loan?

No such legal precedents are known in the field of Aviation.
5.6.2 a finance (or capital) lease?

No such legal precedents are known in the field of Aviation.

6. LEASE REGISTRATION

6.1 Is there a separate register for aircraft leases in the Relevant Jurisdiction?

Yes, the Public Register.

6.2 If yes, then:

6.2.1 What documentation and/or consents are required for the registration of the Lease?

A notarial deed executed by a civil-law notary in The Netherlands on behalf of the Lessor and the Lessee on the basis of two powers of attorney.

If an Aircraft Mortgage is vested on the Aircraft, usually consent of the Mortgagee is required for the creation of the Lease.

6.2.2 What registration fees are payable (if any)?

The Public Register charges approximately EUR 200 per registration.

6.2.3 What information is recorded on the register? How is the eventual discharge of the Lease recorded?

The notarial deed, as referred to under 6.2.1, must include at least the details of the Lessee and the term of the Lease. It is possible to include additional information. However, since the deed will be registered in its entirety with the Public Register, all information included in such notarial deed will be available for third parties.

A Lease can be terminated pursuant to (i) the execution of a notarial deed entailing the discharge of the Lease by a civil-law notary, and (ii) the registration of such deed with the Public Register. It is common practice that the Lessor grants a deregistration power of attorney at the start of the Lease.

6.2.4 Does any registration in respect of the Lease remain valid throughout the tenure of the Lease or does such a registration require periodic renewal? If renewal is required when must this be done and what is the approximate cost of renewal?

No periodical renewal of the registration is required.
Additional registration costs will only be accrued upon amendment of the Lease (in practice such amendments merely include a change of the parties to the Lease or the term of the Lease). Dutch law does not know the concept of ‘novation’ of the Lease.

Registration can be updated retrospectively, if the term of the Lease at registration is still at least of six months.

The Public Register would again charge approximately EUR 200 for updating the registration.

7. ENFORCEMENT OF LEASES (ASSUMING AIRLINE IS NOT SUBJECT TO A FORM OF INSOLVENCY PROTECTION)

7.1 On the occurrence of an event of default under the Lease, assuming that the Owner is permitted to do so under the terms of the Lease, can the Owner terminate the Leasing of the Aircraft under the Lease and enforce the Lease by taking physical possession of the Aircraft?

The Owner can take physical possession of the Aircraft due to its ownership. This remedy is generally available. The Lease as such is not an enforcement method under Dutch law. It is possible for the Lessee to apply for relief from forfeiture if it believes the action is disproportionate (but it is likely to have to make good any default) or if the repossession is not justified.

Responses hereafter relate to a Lease registered in the Public Register or governed by Dutch law.

7.2 If so, can the Owner take physical possession of the Aircraft without the need for judicial proceedings in the Relevant Jurisdiction?

No. If the Owner wants to take physical possession of the Aircraft, the Owner has to start legal proceedings against the Lessee (the “Main Proceedings”).

Next to Main Proceedings, the Owner has to obtain the permission of the competent Provisional Relief Court (in Dutch: voorzieningenrechter), before it may take physical possession of the Aircraft (the “Relief Proceedings”). The Owner has to start the Relief Proceedings with the Provisional Relief Court authorised in the district where the Aircraft is located or authorised in the district where the Aircraft is expected to land.

7.3 Where judicial proceedings in the Relevant Jurisdiction are necessary, please provide details of the proceedings, in particular:

7.3.1 What documents would the Owner as lessor need to present in order to obtain possession of the Aircraft, both before and subsequent to judgment? Can documents be copies?

Main Proceedings start with a writ of summons (in Dutch: dagvaarding). During the Main Proceedings the Owner
will have to provide evidence that (i) the Lease has been validly terminated, and that (ii) it is the rightful owner of the Aircraft. Documents which will be necessary to provide the required evidence will vary from case to case, but might include a copy of the Lease, evidence when payment was due and documents demonstrating non-payment, evidence of an event of default and/or evidence of service of a notice of default, an extract from the Public Register providing proof of the Ownership.

In order to start Relief Proceedings, the Owner has to submit an application (in Dutch: verzoekschrift) requesting for permission to take physical possession of the Aircraft to the authorised Provisional Relief Court. The Owner has to provide evidence that (i) it is the Owner of the Aircraft, and (ii) that the Aircraft is not subject to any prohibition to take physical possession (this requirement is only applicable to (a) Aircraft with the Dutch nationality, which is registered in the Public Register, and (b) Aircraft which has the nationality of one of the Member States of Rome Convention).

Once the permission of the Provisional Relief Court has been obtained, a bailiff will conduct the actual possession on behalf of the Owner. After the bailiff has taken possession over the Aircraft and during the Main Proceedings the air traffic control will prohibit the Aircraft from take-off. Furthermore, the Aircraft can be placed in a hangar or on a separate platform, preventing the Aircraft physically from take-off. Finally, the bailiff can take the Aircraft in judicial deposit (in Dutch: gerechtelijke bewaring), pursuant to which the Aircraft will be transported to a judicial custodian. The aforementioned restrictions will be eliminated, once the court has ruled in the Main Proceedings.

The bailiff must serve the report of seizure (in Dutch: proces verbaal), pursuant to which he has taken physical possession of the Aircraft, to the Owner.

If the place of residence of the Owner is located in a state where the Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents), and repealing Council Regulation (EC) No 1348/2000 (the “Regulation”) applies, the report of seizure must be sent in accordance with the provisions of the Regulation.

The Convention on the service abroad of judicial and extrajudicial documents in civil or commercial matters 1965 ("Hague Convention") remains applicable in the relations between the Netherlands and the states which are not bound by the Regulation, but which are party to the Hague Convention.

If the place of residence of the Owner is located outside the European Union, and the Hague Convention does not apply, the provisions of the Dutch Code of Civil Procedure (“DCCP”) apply. Furthermore, the bailiff will register the official report with the Public Register.

In the Netherlands, courts are free to assess the value of most evidence provided by the parties. Only authentic deeds and judgments have conclusive evidentiary value (in Dutch: dwingende bewijskracht).

If the Aircraft is not located in the Netherlands, but is located in a state that is a party to the Rome Convention it is debated whether a court order on seizure of the Aircraft would be enforceable in such state. In this respect, stipulations protecting the interests of the Lessor which are included in the Lease can be of importance.

7.3.2 What is the approximate cost of issuing proceedings?

An estimate of the costs depends on the structure of agreements and response of the Lessee.

7.3.3 Would the Owner be required to provide a bond, guarantee or other security in order to issue proceedings?
The Owner does not have to provide any security prior to the legal proceedings taking place. However, the Owner must reimburse the Lessee for any losses if (i) the Owner levied an attachment contrary to the specific provisions regarding attachments on Aircraft (e.g. when an attachment is levied on an Aircraft contrary to a legal prohibition), or if (ii) the Owner has levied the attachment without any reasonable grounds.

7.3.4 What is an estimate of the normal duration of possession proceedings from time at which all required documentation is made available – if uncontested?

The Provisional Relief Court has to grant its approval during the Relief Proceedings before the Owner may take physical possession of the Aircraft. The Provisional Relief Court decides upon the request of the Owner and after having conducted a concise investigation.

In principle, the Airline cannot contest the request of the Owner during the Relief Proceedings. However, the Airline can contest the attachment during the Main Proceedings or during separate preliminary relief proceedings (in Dutch: kort geding). The duration of the Main Proceedings depends on the circumstances of the specific case. The processing time in the first instance will often last up to a year (subject to any additional (procedural) complexities or other reasons for delay on the side of parties or court). Appeal with the Court of Appeal and appeal in cassation with the Supreme Court usually take longer than a year each. The preliminary relief proceedings can be started at short notice. The duration of such proceedings will vary between a few days (in case of immediate urgency) and approximately six weeks.

7.3.5 What is an estimate of the normal duration of possession proceedings from time at which all required documentation is made available – if contested?

Please be referred to answer 7.3.4.

7.4 Where judicial proceedings are not necessary, please comment on the time limits relevant to taking possession of the Aircraft, in particular:

7.4.1 Is there a waiting period before action may be taken?

There is no set period of time but if there is no risk of loss or damage to the Aircraft, the Lessee should in general be notified of the default and given a reasonable period of time to remedy the default before action to repossess is taken. Naturally, the Lease could stipulate the possibility of an immediate repossession.

7.4.2 Is there a long stop date by which action must be taken?

According to Dutch law the right to take action prescribes after five years if not pursued within that period.

7.4.3 Is a Public Auction of the aircraft required?

No. This would be required at a seizure by a mortgagee or third party.
7.5 Apart from the judicial proceedings described above and ignoring deregistration (see section 8), is the permission of any other party (including any official body) in the Relevant Jurisdiction required to take possession of the Aircraft?

There are practical issues such as clearance to repossess an Aircraft which is “airside” at an Airport, as well as the possibility to move or store the Aircraft at the Airport. Generally a specialist aviation consulting firm with familiarity of such issues is used to effect repossession. There is, however, no formal permission required – simply compliance with ground security and similar requirements.

7.6 Is there any history of actual repossession of Aircraft by Owners in the Relevant Jurisdiction? If so, please provide details of any matters or issues of which an Owner should be aware.

Yes, we are aware that there have been successful repossessions in the Netherlands. Practical issues such as obtaining permits/certificates and possibilities for storage or transport of the Aircraft and/or Engines can be challenging.

7.7 Are there any circumstances in which the sums expressed to be payable under the Lease or obligations expressed to be assumed by the Airline in the Lease are or will be unrecoverable or unenforceable in the Relevant Jurisdiction?

It is possible that sums remain unrecoverable in case the Airline has been declared bankrupt. When the Lessee has been declared bankrupt, both the bankruptcy trustee and the Lessor may terminate the Lease taking into account a common term of notice for such leases.

The bankruptcy trustee will divide the bankruptcy estate among all creditors. The rental claims of the Lessor accrued after the bankruptcy (in Dutch: boedelvorderingen) will be paid out of the bankruptcy estate immediately. The rental claims accrued before the Lessee has been declared bankrupt (in Dutch: concurrente vorderingen) may remain unrecoverable, since these claims have a low priority in the bankruptcy estate.

7.8 Are there any restrictions on the ability of the Owner to sell the Aircraft in the Relevant Jurisdiction during the term of the Lease or, following an event of default, on termination of the leasing or pending judicial enforcement of the Lease?

The Owner is free to sell the Aircraft at any time (subject to the Lease if the Lease has not been terminated pursuant to the occurrence of a default). Contractually the Lease could restrict the Owner’s ability to sell the Aircraft or to assign the Lease but this is rather a matter of contract than a matter of law.

7.9 Are there any export restrictions on export of a repossessed aircraft?

After the Owner has repossessed the Aircraft, there are no export restrictions which prohibit the Owner from exporting the Aircraft.
8. DEREGISTRATION POWER OF ATTORNEY/EXPORTATION

8.1 Can the Owner apply for deregistration of the Aircraft either at the end of the lease term or following successful repossession (with or without judicial proceedings) and is there any time period within which such application should be made?

The Owner can apply for deregistration from both the Public Register and the Nationality Register at any time.

The Nationality Register will deregister the Aircraft from the Nationality Register on its own initiative if the actual operator does not qualify for registration purposes.

8.2 Is the consent of the Airline required to deregister the Aircraft either by law or as a matter of custom or practice?

In order to deregister the Lease from the Public Register the consent of the Airline is required. As an alternative the consent can be given by way of a court order. However, it is common practice to have a power of attorney for deregistration in place. The Lessee provides such power of attorney at the start of the Lease.

As a matter of custom, the consent of the Lessee is also required for deregistration of the Aircraft from the Nationality Register.

8.3 How long does deregistration take, both where there is co-operation from the Airline and where there is no co-operation from the Airline?

If all powers of attorney and notarial deeds have been prepared, deregistration from the Public Register and subsequently from the Nationality Register should be possible in one day. However, due to the limited opening hours of the Public Register, it is common that one working day lapses between the execution of the document and the filing with the Public Register.

8.4 Is it possible to obtain an export licence or export permit in advance?

Export licences are not required for all goods and generally there are no requirements for a licence to export civil Aircraft if there is no military end use. If UN and/or EU sanctions have been implemented by the Dutch government there may be a complete prohibition on export to an affected country. Alternatively, an export licence may be required.

8.5 Approximately how long does it take to obtain an export licence or export permit? What are the costs involved?

If an Export Licence is required, most licences are granted within 2 months. However, depending on whether the relevant ministry has to be consulted by the customs authority, this may take up to 4 months. There are no costs involved for the party requesting the export license.
8.6 Is it possible to obtain a certificate of deregistration in advance?

If communicated with the Nationality Register the certificate of deregistration can be prepared in advance. However, the Nationality Register will only issue such certificate upon deregistration. The Nationality Register is in direct contact with Civil Aviation Authorities in most countries. As a result it can confirm that deregistration has taken effect.

8.7 Will a power of attorney empowering the Owner to deregister and export the Aircraft from the Relevant Jurisdiction, either at the end of the lease term or following successful repossession (with or without judicial proceedings), be enforceable in the Relevant Jurisdiction? Will the courts recognise a power of attorney in the form of an IDERA and governed by English law?

Such a power of attorney will be enforceable (although no specific legal precedents are known in this respect). However, the Dutch courts can always rule differently on the basis of general legal principles, such as reasonableness and fairness (in Dutch: redelijkheid en billijkheid). Please note that the notary requires a subsequent power of attorney for deregistration from the Public Register, which has to be governed by Dutch law.

8.8 If the power of attorney was stated to be irrevocable would this be enforceable against the Airline or can the Airline revoke such power of attorney?

In general such power of attorney cannot be revoked. However, the Dutch courts may rule differently on the basis of general grounds such as reasonableness and fairness.

8.9 Upon the occurrence of a bankruptcy or insolvency of the Airline is the power of attorney still effective?

Under the Dutch law an irrevocable power of attorney terminates upon the principal having been declared bankrupt.

**9. INSOLVENCY**

9.1 In the event that the Airline were to become insolvent either on a balance sheet basis (assets less than liabilities) or unable to pay debts as fall due:

9.1.1 Would the airline be required to file for insolvency protection?

No, the Airline is not required to file for its own bankruptcy. However, the directors of the Airline must undertake everything to minimise losses to creditors, which may or may not involve ceasing to trade. Failure to take such steps can lead to personal liability of the directors.
9.1.2 Do the available forms of insolvency protection in the Relevant Jurisdiction involve the appointment of either an officer of the court or a specifically court appointed official to take control of the Airline (an Insolvency Official) while in insolvency protection?

Yes, the court appoints two insolvency officials:

- a supervisory judge (in Dutch: rechter-commissaris), who will supervise the liquidation process, and
- a bankruptcy trustee (in Dutch: curator), who is trusted with the administration and liquidation of the bankruptcy estate. It is not possible to influence the court with respect to the appointment of these two officials.

9.1.3 Does the Insolvency Official have authority to negotiate and reach agreement with the Owner in relation to matters such as the payment of unpaid rent, continuation or termination of the Lease and repossession of the Aircraft without the need for court approval?

Once the Lessee has been declared bankrupt, the bankruptcy trustee is exclusively authorised to act on behalf of the bankruptcy estate. As a result the bankruptcy trustee can decide on continuation or termination of the Lease on behalf of the estate.

During a bankruptcy, strict rules apply with respect to the payment of creditors. Rental claims accrued after commencement of the bankruptcy, qualify as estate claims (in Dutch: boedelvorderingen). Rental claims accrued before the commencement of the bankruptcy qualify as unsecured claims (in Dutch: concurrente vorderingen). Different regimes apply to both types of claims. The bankruptcy trustee shall liquidate the assets and divide their proceeds accordance with statutory priority rules.

During the bankruptcy, the supervisory judge may declare a cooling-off period (in Dutch: afkoelingsperiode) in order to enable the bankruptcy trustee to make an inventory of the estate. A cooling-off period can be declared for a period of two months and may be extended with another two months. The cooling-off period affects the rights of all creditors. During such cooling-off period the Owner will not be allowed to take physical possession of the Aircraft without the consent of the supervisory judge.

9.1.4 Does the commencement of insolvency protection involving the appointment of an Insolvency Official in the Relevant Jurisdiction have the effect of prohibiting the Owner from taking the following actions to enforce the lease after commencement of such protection:

- applying any security deposit held by the Owner against any unpaid amounts due under the Lease? The Owner may set-off unpaid lease instalments against such security deposit. The Owner may also set-off lease instalments accrued after termination of the Lease with a maximum of three months. Further lease instalments or damages resulting from early termination of the Lease cannot be off-set against the security deposit.
- accepting payment of rent or other lease payments from:
  - i. the Airline? If the Lease has not been terminated, the bankruptcy trustee will pay the
Owner on behalf of the bankruptcy estate of the Airline. The Lessee may accept these payments.

- ii. a guarantor? Yes, the Lessor can accept payments (e.g. lease instalments or damages) from third parties if this has been agreed between the third party and the Lessor. Payments by third parties may have negative effects on potential rights of recourse of the third party towards the bankruptcy estate.

- iii. a shareholder? Please be referred to answer 9.1.4 (b).

- Giving notice of default under the lease? Yes, the Owner may give a notice of default. However, giving notice of a default is not a requirement for termination of the Lease by the Lessor in case the Lessee has been declared bankrupt.

- Obtaining a judgment or arbitral award for unpaid lease payments? The Owner cannot start legal proceedings against the Airline. If the Owner wants to receive payment for its claim, it has to file its claim with the bankruptcy trustee. The bankruptcy trustee will assess the claim and will either recognize or contest such claim. Afterwards, the claim will be discussed during the creditors’ meeting (in Dutch: verificatievergadering), during which the trustee and the other creditors can dispute each claim filed with the bankruptcy trustee. If no consent is reached during the meeting, the disputed claims will be dealt with by a court during separate legal proceedings (in Dutch: renvooiprocedure).

- Giving notice to terminate the leasing of the Aircraft? Yes, the Owner may terminate the Lease.

- Exercising rights to repossess the Aircraft? Yes, it is possible to take physical possession over the Aircraft. However, as set out in paragraph 9.1.3, a cooling-off period may be declared pursuant to which the Owner may be limited in its possibilities repossess the Aircraft during the cooling-off period.

9.1.5 Can the commencement of Insolvency Proceedings have retrospective effect in relation to any such actions taken before commencement? If so, for what period can there be a look back?

The bankruptcy has retrospective effect until 00:00 of the day of commencement of the bankruptcy. Furthermore the bankruptcy trustee may terminate any legal act commenced by the debtor without it having a legal obligation to do so of which the debtor knew or ought to have known when performing such legal act that such act would cause damage to its other creditors. However, if such legal act has been commenced in favour of a third party who paid in return, the bankruptcy trustee may only terminate the legal act if the third party had the same knowledge with respect to prejudicing the interests of other creditors. The knowledge with respect to prejudicing other creditors interests is presumed to exist, if the voluntary legal act was performed within one year before commencement of the bankruptcy.

The bankruptcy trustee may terminate legal acts involving payment of claims pursuant to a due debt in two situations: (1) if the creditor knew that a party had filed a request for bankruptcy at the time of the payment by the debtor, or (2) if the payment is the result of an agreement between the creditor and the debtor with the purpose to favour a creditor over the other creditors.

As a result of the termination of the legal acts the goods/ moneys involved will be retransferred to the bankruptcy estate.

If the goods/moneys have been obtained by a third party in the meantime, these goods/moneys can only be retransferred to the bankruptcy estate if the third party knew that the creditors of the debtor were prejudiced by the actions of the debtor. However, if the third party obtained the goods/moneys in good faith (in Dutch: te goeder trouw), it will be protected against any such actions from the bankruptcy trustee.
9.1.6 Is there, either under law or as a matter of practice in the Relevant Jurisdiction, a period of time within which the Insolvency Official will either “adopt” the lease and pay rent and other lease payments as an expense of the insolvency or “reject” the lease and permit the Owner to enforce such rights as it may have under the lease?

If the bankruptcy trustee wishes to adopt the Lease, he will inform the Lessor of his intentions to do so as soon as possible. If the bankruptcy trustee wishes to end the Lease it will have to take a notice period of three months into account. The same notice period has to be taken into account if the Lessor wishes to end the Lease.

9.1.7 If the lease is “adopted” will the Insolvency Official also pay any unpaid lease payments due as at commencement of the insolvency protection?

The lease instalments due as at the commencement of the bankruptcy of the debtor will qualify as unsecured claims. These claims can be filed with the bankruptcy trustee, who will deal with these claims in the manner as set out in paragraph 9.1.3.

9.1.8 If not or if the lease is “rejected”, would the Owner’s claim for any outstanding sums rank equally with other ordinary unsecured creditors of the Airline?

The Lease instalments qualify as unsecured claims. Such claims have a low priority in bankruptcy proceedings. The unsecured rental claims rank equally to other unsecured claims.

9.1.9 Are there certain types of preferred creditors whose claims will rank above claims of the Owner?

Yes. Creditors with estate claims (e.g. bankruptcy costs and other claims accrued after commencement of the bankruptcy) are the highest ranking claims. The bankruptcy trustee will pay these creditors directly and in full (if possible) out of the bankruptcy estate.

The preferred creditors (e.g. the tax authorities, the Employee Insurance Agency, employees) will be paid by the bankruptcy trustee out of revenues of the liquidated assets. After deduction of the estate claims and the preferred claims, the remainder will be used for payment of the lower ranking claims: the unsecured claims.

Furthermore, the secured creditors (i.e. mortgagees / pledgees / retentors) may foreclose their rights and liquidate the corresponding assets as if no bankruptcy proceedings had been commenced. The secured creditors will be remunerated from these proceeds. Any surplus will fall in the bankruptcy estate.

9.1.10 If the Aircraft is in the possession of a person other than the Airline at the commencement of Insolvency Protection of the Airline, for example an independent maintenance facility, will such person be entitled, under the laws of the Relevant Jurisdiction, to assert a lien arising under law or contract over the Aircraft in respect of amounts then due and unpaid to such person by the Airline?
No, such provisions only apply to goods which fall in the bankruptcy estate. The Airline is owned by the Lessor, therefore the Aircraft will not be subject to such provisions.

9.1.11 Is a person other than the Airline, for example an airport authority, entitled under the laws of the Relevant Jurisdiction to seize possession of the Aircraft after commencement of Insolvency Protection and assert a lien arising under law or contract over the Aircraft in respect of amounts then due and unpaid to such person by the Airline.

Please be referred to the answer in paragraph 9.1.10.

10. TAXATION

10.1 The decision to lease to an airline in the Relevant Jurisdiction assumes that the Owner will not be taxed on receipt of rentals or other payments (including maintenance reserves) under the Lease except by way of tax on its general income, profits or gains payable by the Owner in its place of incorporation or place of main business (if different). Will there be a requirement for the Owner to pay tax in the Relevant Jurisdiction on lease payments on basis that either the Owner is subject to taxation in the Relevant Jurisdiction by reason only of the leasing of the Aircraft under the Lease and is required to make payment itself; or payment of such tax is by way of the airline being required to withhold and account for tax from lease payments, where:

10.1.1 the Owner is incorporated and is tax resident in Ireland?

No

10.1.2 the Owner is incorporated and is tax resident in the United Kingdom?

No

10.1.3 the Owner is incorporated and is tax resident in Hong Kong?

No

10.1.4 the Owner is incorporated and is tax resident in Singapore?

No
10.1.5 the Owner is incorporated and is tax resident in Malta?
No

10.1.6 the Owner is incorporated and is tax resident in the Channel Islands?
No

10.1.7 the Owner is incorporated and is tax resident in the Isle of Man?
No

10.1.8 the Owner is incorporated and is tax resident in Mauritius?
No

10.1.9 the Owner is incorporated and is tax resident in Bermuda?
No

10.1.10 the Owner is incorporated and is tax resident in the Cayman Islands?
No

10.2 If there is a requirement in the Relevant Jurisdiction for the Airline to withhold tax on lease payments, will the courts of the Relevant Jurisdiction recognise and permit enforcement of a “gross up” clause in the Lease requiring the payment by the Airline of an additional sum to ensure the Owner receives and is entitled to retain the same net amount as would have been received in the absence of the withholding, taking account of any further withholding on account of tax required in relation to such additional sum.

Yes, but taking into account our response to Question 10.1 this does not seem to be relevant.

10.3 VAT: European Union country: under Article 148(f) of the VAT Directive, an exemption from VAT is applied to “supplies” consisting of chartering or hiring of aircraft which are used by airlines operating for reward chiefly on international routes. Therefore:

10.3.1 New lease to airline operating for reward chiefly in domestic routes: VAT will be
applied to lease rentals at current rate:

21%

10.3.2 New Lease to airline operating for reward chiefly on international routes: VAT will not be applied to lease rentals by reason of application of exemption:

0%

10.3.3 Sale of aircraft by an aircraft lessor to another aircraft lessor of an aircraft subject to a lease to an airline operating for reward chiefly in domestic routes: VAT will be applied to the purchase price. If the seller and the purchaser are both EU entities and the purchaser supplies its EU VAT Number to the seller then the VAT charge will be a reverse charge. Otherwise VAT will be applied to purchase price at current rate:

21%

10.3.4 Sale of aircraft by an aircraft lessor to another aircraft lessor of an aircraft subject to a lease to an airline operating for reward chiefly on international routes: VAT will be applied to purchase price:

No

10.3.5 If no, is this because of application of the exemption under Article 148(f) to the airline following the decision in ECJ Case C-33/2011?

Yes

10.3.6 Is this because of application of the exemption under Article 148(f) to the airline following the decision in ECJ Case C-33/2011?

No, because of earlier Dutch regulation.

10.3.7 If the transaction involves the first importation of the aircraft into the EU (and assuming the aircraft is intended for use as a civil and not military aircraft) what rate of Customs Duty will apply?

Generally 0%

10.4 Is any stamp duty, notarial or other fee or equivalent payable in respect
of the execution of the Lease, a de-registration power of attorney or any other lease related document concerning the aircraft? Will such stamp duty or fee still be payable if the relevant documents are executed and held outside the Relevant Jurisdiction? If any such amount is payable how much is it approximately?

The Lease can be registered in the Public Register (see our response to Question 5 Leases). Besides costs to execute the notarial deed before a notary in The Netherlands, the Public Register charges app. EUR 200 on registration fees.

10.5 Can any form of consent, authorisation or licence be obtained exempting the payments referred to in this Section from such tax or duty? If so, how would it be obtained?

No.

10.6 Ignoring any taxation consequence already mentioned and any potential taxation issues if the Owner has any other connection to the Relevant Jurisdiction, is there any other Relevant Jurisdiction taxation consequence of the Owner:

10.6.1 being owner and lessor of an aircraft registered in the Relevant Jurisdiction and operated/leased by a company incorporated or registered in the Relevant Jurisdiction?

No.

10.6.2 making available a lease facility to a company incorporated or regulated in the Relevant Jurisdiction?

No.

10.6.3 receiving rent and other lease payments under the Lease from the lessee incorporated or registered in the Relevant Jurisdiction?

No.

10.6.4 repossessing the aircraft and exporting the aircraft from the Relevant Jurisdiction?

No.
10.6.5 selling the aircraft at a profit, whether such sale is after repossession or is subject to the Lease and the lessee’s rights?

No Dutch corporate income tax is due by the Owner under the assumption that the Owner does not have a permanent establishment in the Netherlands. The sale of an Aircraft (or parts thereof) and Aircraft equipment within the Netherlands is generally subject to Dutch VAT. However, if the Aircraft is used by Airlines operating for reward chiefly on international routes, the supply may be zero-rated for VAT purposes.

11. EXCHANGE CONTROLS

11.1 Are payments to foreign owners by companies incorporated or registered in the Relevant Jurisdiction subject to any form of exchange or similar control?

N/A

11.2 If yes, can any consents, authorisations or licences be obtained to exempt payments from any such control? How would these be obtained? Are such consents, authorisations or licences transferable?

N/A

12. INSURANCE

12.1 Is it a legal requirement to insure the Aircraft within the Relevant Jurisdiction?

Regulation (EC) No. 785/2004 of the European Parliament and of the Council of 21 April 2004 on insurance requirements for air carriers and aircraft operators, which is applicable in the Relevant Jurisdiction, provides that air carriers and Aircraft operators are legally required to be insured as regards their aviation-specific liability in respect of passengers, baggage, cargo and third parties. The regulation provides the minimum insured amounts for the different categories. The insured risks shall include acts of war, terrorism, hijacking, acts of sabotage, unlawful seizure of Aircraft and civil commotion. There is no requirement that the risk is placed with insurers or underwriters in the Relevant Jurisdiction.

12.2 If so, is there any restriction on reinsurance of the primary insurance outside the Relevant Jurisdiction?

N/A

12.3 Is there a minimum percentage of cover which a local insurer is obliged to retain, and if so, what is it?
12.4 Is it possible for local insurers to assign contracts of reinsurance? If not, is a cut-through clause enforceable?

It is possible for an insurer in the Relevant Jurisdiction to assign a contract of reinsurance. If the contract of reinsurance contains a clause giving a third party (the insured) the right to claim (directly) under the reinsurance policy, this clause will make the third party a party to the contract of reinsurance as soon as the third party unilaterally accepts the right by notifying one of the parties of the reinsurance contract of its acceptance. Unless the contract of reinsurance provides otherwise, the stipulator (reinsured) under the reinsurance contract can retract the third party clause (in Dutch: derdenbeding) until the third party clause is accepted by the third party.

13. LIABILITY FOR DAMAGE

13.1 Can the Owner be strictly liable – liable without a requirement to prove fault or negligence – for any damage or loss caused by the Aircraft assuming the Owner is an innocent owner with no operational control of the Aircraft?

Dutch law draws a distinction between the concepts of "owner" and "carrier". A carrier is subdivided into "actual carrier" and "contracting carrier". According to Dutch law both may be held liable under certain circumstances for any damage or loss caused by the Aircraft. The Netherlands is a party to the Convention for Unification of Certain Rules for International Carriage by Air ("Montreal Convention"). The concepts of "actual carrier" and "contracting carrier" are incorporated in the Montreal Convention. Both may be held liable in certain circumstances. However, the Owner of an Aircraft may be held liable through tort law if the act which caused the loss or damage may be attributed to him. This obviously depends on the nature and basis of the liability. Furthermore, the contract between the owner and Airline is important in this matter (in case the parties included provisions about liability in the contract).

Strict liability is a form of liability that is not based on an act or omission but on a certain role or title. It implies that one is liable for the damages suffered by another without the existence of culpability. Dutch law does not impose a strict liability of the innocent Owner for faults or omissions of the Operator/Lessee.

14. DETENTION/CONFISCATION

14.1 Are there any rights to detain or sell the Aircraft pursuant to drug trafficking, tax or other laws or pursuant to rights of airport or air navigation authorities if the Airline fails to pay when due?

Attachment of the Aircraft is possible and might result in the sale of the Aircraft. Please be referred to the answers to Question 7.

The Dutch tax authorities may seize goods (which can include an Aircraft) for unpaid taxes. If the unpaid taxes are not paid within a short period after the seizure, the goods may be sold in a public auction. The tax authorities
may not seize and sell goods (including an Aircraft) which are owned by a person other than the person with the
tax debts. As a consequence a leased Aircraft cannot not be seized and sold in connection with the Airline's
unpaid taxes. This would be different if the Owner would be liable for unpaid taxes of the Lessee, but this very
unlikely to happen.

14.2 If so, can the Aircraft be forfeited and sold without the Owner being
made aware?

No, see 14.1.

15. SOVEREIGN IMMUNITY

15.1 Is any Airline based in the Relevant Jurisdiction entitled to any form of
sovereign or other immunity from suit which might restrict the Owner’s rights
under the Lease?

The Dutch Supreme Court has accepted the doctrine of relative immunity. The starting point is state immunity.
There are currently no Airlines in the Netherlands which are entitled to sovereign or other immunity. The issue is
more relevant in relation to Airlines which are registered in another state. We recommend obtaining specific local
law advice in such circumstances.

15.2 Can such immunity be validly waived in advance by contract?

Again, if a transaction with a party which is entitled to sovereign or other immunity is contemplated, we
recommend obtaining specific local law advice.

16. DISPUTE RESOLUTION AND RECIPROCAL
ENFORCEMENT

16.1 Do the laws of the Relevant Jurisdiction permit and recognise an
"asymmetric" submission to jurisdiction clause under which the lessee
submits to the exclusive jurisdiction of the Courts of England but the Owner
has discretion to choose a jurisdiction other than the Courts of England?

There are no statutory provisions of Dutch law that prohibit asymmetric submission to jurisdiction clauses.
Furthermore, the parties in the Netherlands have freedom of contract. Since Dutch law constitutes freedom of
contract it is possible to rely on asymmetric submission to jurisdiction clauses.
However, the Court has discretion to choose a jurisdiction in case the requested jurisdiction has no connecting
factor with the parties (unless both parties have appointed a judge by contract to have exclusive jurisdiction in a
case).

16.2 If the Lease is governed by English Law and a judgment is obtained by
the Owner in the English courts, can that judgment be automatically enforced in the Relevant Jurisdiction or will the case have to be re-examined on its merits? If so what procedures must be complied with to enforce such a judgment?

The Netherlands and the UK are both parties to Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (the "Brussels Regulation").

Article 39 of the Brussels Regulation provides the following: judgments of a member state which are enforceable in that member state also enjoy enforceability in the other member state without a declaration being required.

Article 41 of the Brussels Regulation refers as a general rule to the law of the requested member state to regulate the enforcement procedure of the judgments given in another state, which shall be executed under the same conditions as a purely domestic decision.

To facilitate the enforcement of foreign resolutions within the EU, the Brussels Regulation provides for a standard form in Annex 1. At the request of the interested party the court shall issue a certificate in the form of Annex 1. The applicant has to submit the form to the competent authority of the member state where enforcement is to take place, together with a copy of the judgment which satisfies the requirements for it to be considered authentic.

Judgements from English courts can therefore be enforced directly in the Netherlands, without a declaration of enforceability. The person against whom enforcement is sought is entitled to apply for refusal of the recognition or enforcement of a judgment.

16.3 Is the Relevant Jurisdiction party to the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention) or the 1965 Convention on the Settlement of Investment Disputes Between States and Nationals of Other States (the "Washington Convention")? Will the courts of the Relevant Jurisdiction recognise and enforce a decision of an arbitrator?

The Netherlands is a party to the New York Convention and Washington Convention and will recognise and enforce foreign arbitral awards.

The party concerned may choose between application of the provisions of the DCCP or the provisions of the New York Convention. As the Netherlands have opted for reciprocity, awards rendered in a state that has not ratified the New York Convention may only be enforced on the basis of the rules of the DCCP. Provisions of the DCCP provide for nearly identical provisions as the New York Convention with respect to refusal of recognition and enforcement.

16.4 What is the usual choice of dispute resolution in international supply contracts involving a lessor or buyer incorporated in or with its main place of business in the Relevant Jurisdiction?
17. AIRCRAFT ENGINES

17.1 If the equipment being leased to the Airline in the Relevant Jurisdiction was an Aircraft Engine either unattached to an airframe or attached to an airframe belonging to a party other than the Aircraft Engine Owner and being leased to the Airline under a separate engine lease agreement, would there be any significant changes to the responses set out above?

Yes. See 17.2 and 17.3, significant changes are required in relation to Aircraft Engines.

17.2 In particular, does the Relevant Jurisdiction recognise the separate ownership of the Aircraft Engine by the Aircraft Engine Owner when the Aircraft Engine is attached to an airframe belonging to a person other than the Aircraft Engine Owner?

No. This is a well-known problem for which protection should be sought (e.g. by creating a mortgage over the Aircraft, which automatically includes a right of mortgage over the Aircraft Engine, or by creating a right of pledge over the Aircraft Engine under the condition of detachment). A right of mortgage over the Aircraft might as well include a right of pledge over the spare parts after these have been detached (including the Aircraft Engine).

17.3 Is there a register of Aircraft Engines and is the information given above in relation to registration of Aircraft and the ownership and leasing of Aircraft the same for registration of an Aircraft Engine and the ownership and leasing of such Aircraft Engine at the Aircraft Engine register?

There is no separate register. Aircraft Engine serial numbers are registered in the Public Register. In practice, this registration is hardly ever updated if Aircraft Engines are changed.
1. PROPOSED TRANSACTION STRUCTURE
   1.1 Is this the usual structure for transactions of this nature in the Relevant Jurisdiction?

2. SEARCHES
   2.1 Are there any public registers in the Relevant Jurisdiction where a search can be carried out to determine whether an order or resolution for any bankruptcy, bankruptcy protection or similar insolvency proceedings has been registered in relation to the Airline?
   2.2 If so, specify which public registers, how long such searches typically take and if the fees are more than USD 100, approximately what fees apply.

3. RIGHTS AND EVIDENCE OF OWNERSHIP
   3.1 In the case of the transfer of title to an aircraft registered in the Relevant Jurisdiction:
   3.2 Other than Insolvency laws (see section 9) are there any laws which may have the effect of defeating the Owner’s right in the aircraft – for example, Government requisition? Do the laws of the Relevant Jurisdiction provide for any compensation in such circumstances?

4. THE AIRCRAFT REGISTER – NATIONALITY OF AIRCRAFT
   4.1 Has the Relevant Jurisdiction ratified any of:
   4.2 If the Relevant Jurisdiction has ratified the Cape Town, see the Cape Town Convention Annex.
   4.3 If the Relevant Jurisdiction has not ratified the Cape Town Convention, has the Relevant Jurisdiction started official proceedings or given any other official indication that it will accede to or ratify the Cape Town Convention in the near future?
   4.4 Is there an Aircraft Register in the Relevant Jurisdiction and if so, what is it called and who operates it?
   4.5 If so, in relation to registration:
   4.6 What documents and/or consents are required to obtain registration on the Aircraft Register and will these require any formalities (for example, notarisation, legalisation or application of apostille)?
   4.7 Are there any restrictions on the legal status and/or nationality/domicile of parties seeking to register an aircraft on the Aircraft Register?
   4.8 In respect of aircraft transactions connected with the Relevant Jurisdiction generally, are there any foreign Aircraft Registers that are commonly used, or should be considered, as alternatives to or in addition to registration with the Relevant Jurisdiction’s Aircraft Register? If so, what is benefit of such registration?
   4.9 Are there any other filings or registrations necessary or desirable (other than the registrations already mentioned and Lease Registration – see section 6) in the Relevant Jurisdiction in order to ensure the validity, priority or enforceability of the transaction documents, or to perfect the interests of the Owner in the Aircraft or the transaction documents?

5. LEASES
   5.1 Will the Relevant Jurisdiction recognise the concept of a lease over an aircraft?
   5.2 Would the choice of English law to govern the Lease be upheld as a valid choice of law in any action in the Relevant Jurisdiction?
   5.3 Must the Lease be in a particular form if it is to be valid and enforceable in the Relevant Jurisdiction (for example, must it be in the language of the Relevant Jurisdiction or be notarised, legalised or have the apostille applied)?
   5.4 If the Lease must be in the language of the Relevant Jurisdiction, is it possible under
the Relevant Law also to have an English version, and to provide that the English version should prevail in case of conflict with the Relevant Jurisdiction language version?

5.5 Are there any special terms that the Lease must contain or that it is advisable for the Lease to contain?

5.6 Are there any circumstances under which the Lease might be re-characterised under the laws of the Relevant Jurisdiction as:

6 LEASE REGISTRATION

6.1 Is there a separate register for aircraft leases in the Relevant Jurisdiction?

6.2 If yes, then:

7 ENFORCEMENT OF LEASES (ASSUMING AIRLINE IS NOT IN A FORM OF INSOLVENCY PROTECTION)

7.1 On the occurrence of an event of default under the Lease, assuming that the Owner is permitted to do so under the terms of the Lease, can the Owner terminate the Leasing of the Aircraft under the Lease and enforce the Lease by taking physical possession of the Aircraft?

7.2 If so, can the Owner take physical possession of the Aircraft without the need for judicial proceedings in the Relevant Jurisdiction?

7.3 Where judicial proceedings in the Relevant Jurisdiction are necessary, please provide details of the proceedings, in particular:

7.4 What documents would the Owner as lessor need to present in order to obtain possession of the Aircraft, both before and subsequent to judgment? Can documents be copies?

7.5 What is the approximate cost of issuing proceedings?

7.6 Would the Owner be required to provide a bond, guarantee or other security in order to issue proceedings?

7.7 What is an estimate of the normal duration of possession proceedings from time at which all required documentation is made available – if uncontested?

7.8 What is an estimate of the normal duration of possession proceedings from time at which all required documentation is made available – if contested?

7.9 Where judicial proceedings are not necessary, please comment on the time limits relevant to taking possession of the Aircraft, in particular:

7.10 Apart from the judicial proceedings described above and ignoring deregistration (see section 8), is the permission of any other party (including any official body) in the Relevant Jurisdiction required to take possession of the Aircraft?

7.11 Is there any history of actual repossession of aircraft by Owners in the Relevant Jurisdiction? If so, please provide details of any matters or issues of which an Owner should be aware.

7.12 Are there any circumstances in which the sums expressed to be payable under the Lease or obligations expressed to be assumed by the Airline in the Lease are or will be unrecoverable or unenforceable in the Relevant Jurisdiction?

7.13 Are there any restrictions on the ability of the Owner to sell the Aircraft in the Relevant Jurisdiction during the term of the Lease or, following an event of default, on termination of the leasing or pending judicial enforcement of the Lease?

7.14 Are there any export restrictions on export of a repossessed aircraft?

8 DEREGISTRATION POWER OF ATTORNEY/EXPORTATION

8.1 Can the Owner apply for deregistration of the Aircraft either at the end of the lease term or following successful repossession (with or without judicial proceedings) and is there any time period within which such application should be made?

8.2 Is the consent of the Airline required to deregister the Aircraft either by law or as a matter of custom or practice?
8.3 How long does deregistration take, both where there is co-operation from the Airline and where this is no co-operation from the Airline?
8.4 Is it possible to obtain an export licence or export permit in advance?
8.5 Approximately how long does it take to obtain an export licence or export permit? What are the costs involved?
8.6 Is it possible to obtain a certificate of deregistration in advance?
8.7 Will a power of attorney empowering the Owner to deregister and export the Aircraft from the Relevant Jurisdiction, either at the end of the lease term or following successful repossession (with or without judicial proceedings), be enforceable in the Relevant Jurisdiction? Will the courts recognise a power of attorney in the form of an IDERA and governed by English law?
8.8 If the power of attorney was stated to be irrevocable would this be enforceable against the Airline or can the Airline revoke such power of attorney?
8.9 Upon the occurrence of a bankruptcy or insolvency of the Airline is the power of attorney still effective?

9 INSOLVENCY
9.1 In the event that the Airline were to become insolvent either on a balance sheet basis (assets less than liabilities) or unable to pay debts as fall due:

10 TAXATION
10.1 The decision to lease to an airline in the Relevant Jurisdiction assumes that the Owner will not be taxed on receipt of rentals or other payments (including maintenance reserves) under the Lease except by way of tax on its general income, profits or gains payable by the Owner in its place of incorporation or place of main business (if different). Will there be a requirement for the Owner to pay tax in the Relevant Jurisdiction on lease payments on basis that either the Owner is subject to taxation in the Relevant Jurisdiction by reason only of the leasing of the Aircraft under the Lease and is required to make payment itself; or payment of such tax is by way of the airline being required to withhold and account for tax from lease payments, where:

10.2 If there is a requirement in the Relevant Jurisdiction for the airline to withhold tax on lease payments, will the courts of the Relevant Jurisdiction recognise and permit enforcement of a “gross up” clause in the Lease requiring the payment by the Airline of an additional sum to ensure the Owner receives and is entitled to retain the same net amount as would have been received in the absence of the withholding, taking account of any further withholding on account of tax required in relation to such additional sum.

10.3 VAT: European Union country: under Article 148(f) of the VAT Directive, an exemption from VAT is applied to “supplies” consisting of chartering or hiring of aircraft which are used by airlines operating for reward chiefly on international routes. Therefore:

10.4 Is any stamp duty, notarial or other fee or equivalent payable in respect of the execution of the Lease, a de-registration power of attorney or any other lease related document concerning the aircraft? Will such stamp duty or fee still be payable if the relevant documents are executed and held outside the Relevant Jurisdiction? If any such amount is payable how much is it approximately?

10.5 Can any form of consent, authorisation or licence be obtained exempting the payments referred to in this Section from such tax or duty? If so, how would it be obtained?

10.6 Ignoring any taxation consequence already mentioned and any potential taxation issues if the Owner has any other connection to the Relevant Jurisdiction, is there any other Relevant Jurisdiction taxation consequence of the Owner:

11 EXCHANGE CONTROLS
11.1 Are payments to foreign owners by companies incorporated or registered in the Relevant Jurisdiction subject to any form of exchange or similar control?

11.2 If yes, can any consents, authorisations or licences be obtained to exempt payments from any such control? How would these be obtained? Are such consents, authorisations or licences transferable?

12 INSURANCE

12.1 Is it a legal requirement to insure the Aircraft within the Relevant Jurisdiction?

12.2 If so, is there any restriction on reinsurance of the primary insurance outside the Relevant Jurisdiction?

12.3 Is there a minimum percentage of cover which a local insurer is obliged to retain, and if so, what is it?

12.4 Is it possible for local insurers to assign contracts of reinsurance? If not, is a cut-through clause enforceable?

13 LIABILITY FOR DAMAGE

13.1 Can the Owner be strictly liable – liable without a requirement to prove fault or negligence – for any damage or loss caused by the Aircraft assuming Owner is an innocent owner with no operational control of the Aircraft?

14 DETENTION/CONFISCATION

14.1 Are there any rights to detain or sell the Aircraft pursuant to drug trafficking, tax or other laws or pursuant to rights of airport or air navigation authorities if the Airline fails to pay when due?

14.2 If so, can the Aircraft be forfeited and sold without the Owner being made aware?

15 SOVEREIGN IMMUNITY

15.1 Is any Airline based in the Relevant Jurisdiction entitled to any form of sovereign or other immunity from suit which might restrict the Owner's rights under the Lease?

15.2 Can such immunity be validly waived in advance by contract?

16 DISPUTE RESOLUTION AND RECIPROCAL ENFORCEMENT

16.1 Do the laws of the Relevant Jurisdiction permit and recognise an "asymmetric" submission to jurisdiction clause under which the lessee submits to the exclusive jurisdiction of the Courts of England but the Owner has discretion to choose a jurisdiction other than the Courts of England?

16.2 If the Lease is governed by English Law and a judgment is obtained by the Owner in the English courts, can that judgment be automatically enforced in the Relevant Jurisdiction or will the case have to be re-examined on its merits? If so what procedures must be complied with to enforce such a judgment?

16.3 Is the Relevant Jurisdiction party to the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention) or the 1965 Convention on the Settlement of Investment Disputes Between States and Nationals of Other States (the Washington Convention)? Will the courts of the Relevant Jurisdiction recognise and enforce a decision of an arbitrator?

16.4 What is the usual choice of dispute resolution in international supply contracts involving a lessor or buyer incorporated in or with its main place of business in the Relevant Jurisdiction?

17 AIRCRAFT ENGINES

17.1 If the equipment being leased to the Airline in the Relevant Jurisdiction was an Aircraft Engine either unattached to an airframe or attached to an airframe belonging to a party other than the Aircraft Engine Owner and being leased to the Airline under a separate engine lease agreement, would there be any significant changes to the responses set out above?

17.2 In particular, does the Relevant Jurisdiction recognise the separate ownership of the
Aircraft Engine by the Aircraft Engine Owner when the Aircraft Engine is attached to an airframe belonging to a person other than the Aircraft Engine Owner?

17.3 Is there a register of Aircraft Engines and is the information given above in relation to registration of Aircraft and the ownership and leasing of Aircraft the same for registration of an Aircraft Engine and the ownership and leasing of such Aircraft Engine at the Aircraft Engine register?

18 ADDITIONAL INFORMATION – IS THERE ANYTHING ELSE WE SHOULD HAVE ASKED?
1. PROPOSED TRANSACTION STRUCTURE

The Aircraft will be purchased by the Owner and leased on an operating lease basis to the Airline pursuant to a lease.

1.1 Is this the usual structure for transactions of this nature in the Relevant Jurisdiction?

Yes

2. SEARCHES

2.1 Are there any public registers in the Relevant Jurisdiction where a search can be carried out to determine whether an order or resolution for any bankruptcy, bankruptcy protection or similar insolvency proceedings has been registered in relation to the Airline?

Yes. Searches regarding bankruptcy, commencement of liquidation or rehabilitation proceedings which have been already registered with the relevant court, can be performed in the National Court Register (information on details disclosed in the National Court Register is also available online).

2.2 If so, specify which public registers, how long such searches typically take and if the fees are more than USD 100, approximately what fees apply.

No fees apply for online searches. Costs of obtaining the extract from the National Court Register are minor.

3. RIGHTS AND EVIDENCE OF OWNERSHIP

3.1 In the case of the transfer of title to an aircraft registered in the Relevant Jurisdiction:

3.1.1 Is any particular form of transfer required for the transfer to be legally should be recognised?

In general, other than written form for the transfer agreement there is no specific form of the transfer required. Usually, Polish Civil Aviation Authorities accept the bill of sale as evidence that the transfer took place.

3.1.2 Must any particular conditions be satisfied for the transfer to be recognised?
Assuming that the sale agreement is governed by the laws other than Polish, no particular conditions are required to be satisfied for the transfer to be recognised.

If the sale agreement is governed by Polish law, then under Polish law, the price must be paid and the physical possession of the aircraft must be transferred from the seller to the buyer. In the consequence of sale, certain other formalities may apply, depending on the circumstances (each specific case requires a separate in-depth analysis).

If the aircraft is registered with the Polish Register of Civil aircraft, the bill of sale, (together with any other document providing for any changes to the registration of aircraft), needs to be filed with the Civil Aviation Authority within 14 days from its execution.

### 3.1.3 Will such a transfer still be recognised by the courts of the Relevant Jurisdiction as legally valid where the relevant aircraft is located in another jurisdiction at the time of the transfer?

Yes. Assuming that such transfer would be valid and binding under the law governing the transfer which has been elected by the parties (e.g. English law), the courts of Poland should recognise such transfer even if the aircraft is located in another jurisdiction at the time of the transfer.

### 3.1.4 Are any duties, taxes or fees levied on such transfer of ownership?

Polish Civil Aviation Authority apart from other, minor fees e.g. associated with filing the PoA or the lease agreement would not charge any fee for registering the transfer of ownership of the aircraft.

As a rule, purchase of an aircraft is subject to VAT in Poland. However, in the case when the purchaser is an entity engaged mainly in the international transport, purchase may benefit from 0% VAT tax rate.

### 3.2 Other than Insolvency laws (see section 9) are there any laws which may have the effect of defeating the Owner’s right in the aircraft – for example, Government requisition? Do the laws of the Relevant Jurisdiction provide for any compensation in such circumstances?

An airport operator has a right to retain an aircraft to secure payment of the landing fees and reimbursement of any damage caused by the Aircraft/Aircraft operator to the airport.

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### 4. THE AIRCRAFT REGISTER – NATIONALITY OF AIRCRAFT

#### 4.1 Has the Relevant Jurisdiction ratified any of:

The Chicago Convention of 1944 on International Civil Aviation?

Yes
The 1948 Geneva Convention on the International Recognition of Rights in Aircraft?
No

The 1933 Convention for the Unification of Certain Rules Relating to the Precautionary Arrest of Aircraft?
Yes

The 2001 Cape Town Convention on International Interests in Mobile Equipment and the associated Protocol on Matters Specific to Aircraft Equipment (the Cape Town Convention)?
No, but please note however that the Poland is bound by the laws of the European Union, which has ratified the Cape Town Convention.

4.2 If the Relevant Jurisdiction has ratified the Cape Town, see the Cape Town Convention Annex.
No

4.3 If the Relevant Jurisdiction has not ratified the Cape Town Convention, has the Relevant Jurisdiction started official proceedings or given any other official indication that it will accede to or ratify the Cape Town Convention in the near future?
No

4.4 Is there an Aircraft Register in the Relevant Jurisdiction and if so, what is it called and who operates it?
Register of Civil Aircraft in Poland is maintained by the President of the Polish Civil Aviation Authority.

4.5 If so, in relation to registration:

4.5.1 Who is responsible for registering the Aircraft – is it an owner registry or an operator registry?

Register of Civil Aircraft is an Owner type of the registry and any registration, de-registration or amendments to the registration can be performed by the Owner, the User of the aircraft authorised by the Owner or on the basis of the general rules attorney-in-fact appointed by the owner.

Please note however that notification of the amendments to the information disclosed in the register should be entered in the register within 14 days of its occurrence.
If the Owner or authorised User has not filed the notification referred to above, the President of the Polish Civil Aviation Authority may, after a single unsuccessful call, make an entry to that effect ex officio, indicating that fact in the register.

4.5.2 What details would normally be recorded on the Aircraft Register upon registration of an aircraft in the Relevant Jurisdiction? If not normally recorded, is it possible to record the Lease and/or an Aircraft Mortgage on the Aircraft Register?

The following details are recorded in the Aircraft Register and are reflected in the Certificate of Registration:

- Date of production and entry into the register
- Registration number
- Aircraft manufacturer
- Serial number
- Name of the Owner and its details
- Polish registration mark
- Type of aircraft, class of the aircraft and manufacturer’s designation;
- encumbrances established over an aircraft (usually pledges)
- operator/lessee /user of the aircraft and its details

4.5.3 If the Aircraft Register is an operator register, is it possible to record the details of the aircraft owner/lessor and any financier with an Aircraft Mortgage?

In general, the Aircraft register is an Owner type of register, therefore it is compulsory to disclose the owner’s details. Encumbrances in the form of Polish security interests (usually pledges - civil and/or registered) and an entity in a favour of which they are established, are disclosed in the Polish Register of Civil Aircraft and are reflected in the Certificate of Registration.

4.5.4 If the Aircraft Register is an owner register, is registration on the Aircraft Register definitive to determine ownership of the Aircraft?

Yes, details disclosed in the register are valid against third parties.

4.5.5 Are any distinctions made between aircraft employed on international routes and those used purely for domestic flights?

N/A

4.6 What documents and/or consents are required to obtain registration on the Aircraft Register and will these require any formalities (for example, notarisation, legalisation or application of apostille)?

Registration of the aircraft should be performed by the Owner or person authorised by the Owner – on its
behalf. Polish registration marks should be reserved at the Polish Civil Aircraft Register and following documents (in originals or copies certified by the notary public or public authority) are required to register the Aircraft in the Polish Register on Civil Aircraft:

- application addressed to the President of the Civil Aviation Authority including the details of the Owner and the details of the lessee, details of the aircraft (MSN, technical details in order to determine the type of the aircraft), photographs of the aircraft;
- a statement that the aircraft is not registered in another country’s register;
- documents confirming the existence of the ownership title to the aircraft and any security interest in rem;
- noise certificate (however, we have received information from the Civil Aviation Authority that this certificate is not required at the stage of initial application);
- a radio licence to use an on-board air radio station (issued by the Polish Office for Electronic Communication); and
- SAD customs clearance document (for aircraft imported from outside the European Union).
- Agreement described in Article 41 sec. 1 of the Aviation Law.

Please note that although a valid airworthiness certificate is not required for entry into the register (and to issue a CoR), it is required for the actual operation of the aircraft.

4.7 Are there any restrictions on the legal status and/or nationality/domicile of parties seeking to register an aircraft on the Aircraft Register?

In general, an aircraft can be registered in the Polish Register of Civil Aircraft, if the Owner of the lessee/operator is a Polish entity or foreign person that is domiciled in Poland. In certain circumstances President of the Polish Civil Aviation Authority by the way a decision can register an aircraft in the Polish Aircraft Register if the conditions for registration (owner/lessee/operator being a Polish company/person or foreign person domiciled in Poland) are not met.

4.8 In respect of aircraft transactions connected with the Relevant Jurisdiction generally, are there any foreign Aircraft Registers that are commonly used, or should be considered, as alternatives to or in addition to registration with the Relevant Jurisdiction’s Aircraft Register? If so, what is benefit of such registration?

No. We have not come across such practice.

4.9 Are there any other filings or registrations necessary or desirable (other than the registrations already mentioned and Lease Registration – see section 6) in the Relevant Jurisdiction in order to ensure the validity, priority or enforceability of the transaction documents, or to perfect the interests of the Owner in the Aircraft or the transaction documents?

Each time that: (i) there are any changes to the owner/user or, lessee of an aircraft, they need to be reflected in the Certificate of Registration carried on board of the aircraft (ii) the Polish law governed pledges over an aircraft or airframe and engines are established, establishment of such pledges should be disclosed in the Certificate of Registration carried on board of the aircraft.
5. LEASES

5.1 Will the Relevant Jurisdiction recognise the concept of a lease over an aircraft?

Yes. Polish law recognises the concept of lease over an aircraft.

5.2 Would the choice of English law to govern the Lease be upheld as a valid choice of law in any action in the Relevant Jurisdiction?

Yes

5.3 Must the Lease be in a particular form if it is to be valid and enforceable in the Relevant Jurisdiction (for example, must it be in the language of the Relevant Jurisdiction or be notarised, legalised or have the apostille applied)?

A lease agreement under Polish law must be executed in written form, otherwise it is null and void. A Polish sworn translation should be provided to the Polish Civil Aviation Authority. Due to the size of these agreements, the Polish Civil Aviation Authority accepts the translation of the extract containing essentialia negotii of such agreement (i.e. parties, clause under which the leasing is made, event of default, termination).

5.4 If the Lease must be in the language of the Relevant Jurisdiction, is it possible under the Relevant Law also to have an English version, and to provide that the English version should prevail in case of conflict with the Relevant Jurisdiction language version?

Yes, there are no restrictions as to which language version should prevail.

5.5 Are there any special terms that the Lease must contain or that it is advisable for the Lease to contain?

Under Polish law, the agreement on leasing is regulated under provisions of the Civil Code, tax law and accounting regulations. Among others, the following conditions need to be fulfilled in order for the lease agreement to be considered as such (in addition to the conditions referred to in 5.6.3 and 5.6.4 below): it needs to be in a written form, physical possession of the aircraft needs to be transferred form the lessor to the lessee and the lessee needs to pay the lease rent in instalments. Certain other provisions (described, among others, below) apply depending on whether the lease is an operating or finance lease.

5.6 Are there any circumstances under which the Lease might be re-characterised under the laws of the Relevant Jurisdiction as:
5.6.1 a secured loan?

No

5.6.2 a finance (or capital) lease?

No (please refer to 5.6.3 and 5.6.4)

If so, please advise:

5.6.3 in what circumstances will such re-characterisation arise?

Polish tax law distinguishes the operating lease and the finance lease. At this point, it should be underlined as a potential field where the re-characterisation may occur, if certain provisions (described below) of the lease agreements will apply in case of operating/finance lease.

Under Polish law, operating lease is characterised as such when (among others) the following criteria are met: (i) the sum of the lessee instalments under the lease agreement less the VAT corresponds at least to the initial value of the leased fixed asset; (ii) the lessee makes no depreciation write-offs (the finance lessor takes the depreciation write-offs); (iii) the term of the lease is at least 40% of the statutory depreciation life of the asset under polish tax law. Under the operating lease the lease instalments constitute tax deductible costs, in full.

The finance lease distinguishes from the operating lease mainly by two factors: (i) the lessee makes the depreciation write-offs; and (ii) the lease instalment is divided in two parts: principal and interest and only interest constitutes tax deductible costs.

On the basis of Polish VAT regulations, in principle, the finance lease is treated as a supply of goods, whereas operating lease is treated rather as provision of services.

5.6.4 will such re-characterisation result in additional registration requirements (e.g., to register security)?

Please note that this will only occur if re-characterisation from operating lease into finance lease occurs. If ownership is transferred to the lessee at end of the term of the finance lease, additional obligations would be imposed to register changes in the ownership of the aircraft in the Polish Register of Civil Aircraft.

5.6.5 what will be the effect of such re-characterisation on the rights of the Owner in an insolvency of the Airline?

N/A

5.6.6 what other consequences may arise (please include any consequences in relation to repossession rights and also to the recovery of ‘termination sums’ due under the
6. LEASE REGISTRATION

6.1 Is there a separate register for aircraft leases in the Relevant Jurisdiction?

No. There is no separate register for registration of aircraft leases except for the Polish Register of Civil Aircraft. Each time, lease agreement, needs to be filed with the Polish Register of Civil Aircraft.

If the lease agreement is in English, a sworn translation is required for the purposes of filing the lease agreement with the Polish Register of Civil Aircraft.

6.2 If yes, then:

6.2.1 What documentation and/or consents are required for the registration of the Lease?

N/A

6.2.2 What registration fees are payable (if any)?

N/A

6.2.3 What information is recorded on the register? How is the eventual discharge of the Lease recorded?

N/A

6.2.4 Does any registration in respect of the Lease remain valid throughout the tenure of the Lease or does such a registration require periodic renewal? If renewal is required when must this be done and what is the approximate cost of renewal?

N/A

7. ENFORCEMENT OF LEASES (ASSUMING AIRLINE IS NOT IN A FORM OF INSOLVENCY PROTECTION)
7.1 On the occurrence of an event of default under the Lease, assuming that the Owner is permitted to do so under the terms of the Lease, can the Owner terminate the Leasing of the Aircraft under the Lease and enforce the Lease by taking physical possession of the Aircraft?

On the occurrence of an event of default, the Owner may terminate the Lease, effective immediately (unless the Lease provides for a termination period).

Events of default entitling the Owner to terminate the Lease are listed in the Polish Civil Code and include: 1) lack of proper conservation of the Aircraft, 2) use of the Aircraft in contravention to the Lease, 3) default in lease payments and 4) allowing for the Aircraft to be used by a third party. Other events of default entitling the Owner to termination may also be defined in the Lease – these should be explicitly described, so as to leave no room for doubt whether an event of default has occurred. As a general rule, prior to termination, the Owner will need to provide the Lessee with a notice to cure. There are, however, some doubts in the legal doctrine and court precedents whether events of default other than described in points 1) – 4) above (i.e. envisaged directly by the Polish Civil Code) can be enforceable grounds for termination.

Once the Lease is terminated, if the Lessee refuses to voluntarily return the Aircraft, the Owner may not enforce physical possession of the Aircraft of his own accord. Such "self-help" is prohibited under Polish law and the Lessee's possession will warrant legal protection, regardless of whether he is acting in good faith.

7.2 If so, can the Owner take physical possession of the Aircraft without the need for judicial proceedings in the Relevant Jurisdiction?

As a rule, involuntary, physical repossession of the Aircraft will need to be preceded by judicial proceedings commenced by the owner.

7.3 Where judicial proceedings in the Relevant Jurisdiction are necessary, please provide details of the proceedings, in particular:

The type of judicial proceedings in a given case will depend on whether security was provided by the Lessee on the Lease. In practice, security would typically take the form of the Lessee’s voluntary submission to enforcement, executed under a notarial deed. The submission to enforcement is not a security in a strict sense (although it is frequently called as such) but rather a tool to expedite the enforcement proceedings. The notarial deed comprises the lessee’s representation that he submits himself to enforcement through involuntary repossession of the Aircraft in enforcement proceedings. In such a case, judicial proceedings only require obtaining an enforcement clause on the notarial deed and commencing enforcement proceedings.

If the abovementioned security has not been established, the Owner will need to file a recovery claim against the Lessee in standard judicial proceedings.

In the answers to the questions below we take into account two scenarios:

1. the Lessee has executed a voluntary submission to enforcement in the form of a notarial deed; and
2. the Lessee has not established such security and the Owner files a recovery claim.
7.4 What documents would the Owner as lessor need to present in order to obtain possession of the Aircraft, both before and subsequent to judgment? Can documents be copies?

1. In order to obtain an enforcement clause, the Owner must submit the original notarial deed comprising the submission to enforcement and documents proving that the conditions triggering the submission have occurred, e.g., the notice to cure (if applicable) and notice of termination of the Lease. These documents must be executed as either a public document (e.g., a notarial deed) or a private document with officially authenticated signatures (e.g., by a notary public). The Owner should also submit proof of receipt of the notices by the Lessee and proof of payment of the court fee. The notarial deed will be returned to the Owner together with an enforcement clause stamped on the deed, which the Owner may then submit to the court bailiff of his choosing in order to commence enforcement proceedings.

2. In judicial proceedings, the Owner may prove the existence of its claim for repossession with all allowable evidentiary measures, including documents, witnesses and expert witnesses. As a rule, the documents may be submitted as copies, but should be authenticated by an advocate or legal advisor if the Owner has professional representation. The court may obligate the Owner to present originals of the documents.

Subsequent to judgment, the Owner may obtain an enforcement clause on the judgment (which will be granted once the judgment is final and non-appealable) and apply to a court bailiff to commence enforcement proceedings.

7.5 What is the approximate cost of issuing proceedings?

1. There is no cost for an application for an enforcement clause issued for the court judgement. The cost of an application for an enforcement clause issued for the voluntary submission to enforcement (which is a frequently used security) is PLN 50 (approx. EUR 12).

2. The court costs in judicial is varying depending on the value of the subject of the dispute or the value of the subject of the appeal and amounting to:

   1. up to PLN 500 - PLN 30 (approx. EUR 7);
   2. over PLN 500 up to PLN 1,500 - PLN 100 (approx. EUR 23);
   3. over PLN 1,500 up to PLN 4,000 - PLN 200 (approx. EUR 46);
   4. over PLN 4,000 up to PLN 7,500 - PLN 400 (approx. EUR 92);
   5. over PLN 7,500 up to PLN 10,000 - PLN 500 (approx. EUR 116);
   6. over PLN 10,000 up to PLN 15,000 - PLN 750 (approx. EUR 174);
   7. over PLN 15,000 up to PLN 20,000 - PLN 1,000 (approx. EUR 230).

If the abovementioned value exceeds PLN 20,000, a proportionate fee equal to 5% of that value shall be charged but up to no more than PLN 200,000 (approx. EUR 46,512).

Please note that all conversions from PLN to EUR were made at the exchange rate as of 3 March 2020.

The above costs only comprise the court costs of first instance proceedings. In particular, they do not include the costs of legal representation, which vary on a case-by-case basis.

7.6 Would the Owner be required to provide a bond, guarantee or other
security in order to issue proceedings?

1. No. The Owner is only required to pay the court fee described in point 7.5 subpoint 2 above.
2. As a rule, no. However, if the Owner is domiciled outside of Poland or an EU state, on the opposing party's application, the court may oblige him to pay a deposit as security against future court costs. This obligation may be avoided if the Owner proves, for instance, that he has sufficient funds in Poland to pay potential court costs or that the parties agreed on Polish jurisdiction of the dispute.

7.7 What is an estimate of the normal duration of possession proceedings from time at which all required documentation is made available – if uncontested?

1. Depending on the court to which the application is made, as a rule, the proceedings could take from one week up to one month.
2. According to statistics published by the Polish Ministry of Justice for the year 2018, the average duration of civil proceedings in Poland was 4.1 months.

7.8 What is an estimate of the normal duration of possession proceedings from time at which all required documentation is made available – if contested?

1. If the enforcement clause is contested (i.e. the Lessee files an objection), the proceedings could last up to six months.
2. The duration of judicial proceedings in two instances is very difficult to ascertain, as this depends on a variety of circumstances, including the number of hearings and witnesses, as well as the time it takes for the files to be transmitted between the court of the first instance and the court of appeal. As a rule, judicial proceedings before the in two instances may last a total of 1.5 to 2.5 years.

7.9 Where judicial proceedings are not necessary, please comment on the time limits relevant to taking possession of the Aircraft, in particular:

N/A

7.9.1 Is there a waiting period before action may be taken?

N/A

7.9.2 Is there a long stop date by which action must be taken?

N/A

7.9.3 Is a Public Auction of the aircraft required?

N/A
7.10 Apart from the judicial proceedings described above and ignoring deregistration (see section 8), is the permission of any other party (including any official body) in the Relevant Jurisdiction required to take possession of the Aircraft?

Subject to public law regulations, under private law no other permission is required to take possession of the Aircraft. However, pursuant to Polish aviation law, the administrator of an airport may hold the Aircraft in temporary custody, as security for outstanding claims for airport fees and damage caused to the airport by the operator of the Aircraft. Such custody expires if the Owner submits adequate security. In certain circumstances the Aircraft may also be seized under the Rome Convention of 1933, to which Poland is a party.

7.11 Is there any history of actual repossession of aircraft by Owners in the Relevant Jurisdiction? If so, please provide details of any matters or issues of which an Owner should be aware.

Aircraft Leases are an expanding market in Poland, particularly due to the ever-growing number of airline operators. However, no significant cases of actual repossession have yet been reported.

7.12 Are there any circumstances in which the sums expressed to be payable under the Lease or obligations expressed to be assumed by the Airline in the Lease are or will be unrecoverable or unenforceable in the Relevant Jurisdiction?

Assuming that the Lease is subject to Polish law and the case is decided by a Polish court, as a rule there would be no such circumstances in which sums express payable under the Lease or obligations assumed by the Airline would be unrecoverable or unenforceable. However, there are at least two significant exceptions to this rule: 1) if the court establishes that certain provisions of the Lease expressing obligations of the Airline are null and void, or 2) if the Lease sets out exorbitantly high contractual penalties for instances of non-performance of the non-pecuniary obligations under the Lease (e.g. for not returning the Aircraft in accordance with the Lease). In the first case, the court will refuse to enforce a provision which it finds to be contrary to the law (e.g. if the Airline assumes an obligation which is in contravention to the nature of the Lease). In the second case, on the Lessee’s application the court may decide that the contractual penalties are exorbitantly high and lower their amount in its judgment.

If the Lease is subject to foreign law and the case is adjudicated in a foreign jurisdiction, this may entail a variety of payments or obligations which would not be enforceable in Poland. For example, if a foreign court awarded the Owner punitive damages, such a judgment would be refused enforcement by a Polish court, as Polish law does not recognise the concept of punitive damages.

7.13 Are there any restrictions on the ability of the Owner to sell the Aircraft in the Relevant Jurisdiction during the term of the Lease or, following an event of default, on termination of the leasing or pending judicial enforcement of the Lease?

As a rule, there are no such restrictions. If the Owner sells the Aircraft during the term of the Lease, the buyer
enters into the contract in the place of the Owner. The Owner is obliged to inform the Lessee of the sale. If the Owner sells the Aircraft during pending judicial proceedings, this will not affect the proceedings (subject to the condition that the Owner was not encumbered with an interim order prohibiting him from selling the Aircraft). In such a case, the buyer will be able to join the proceedings in the place of the Owner, but only with the Lessee’s consent. If the Lessee does not consent, the subsequent judgment will describe the Owner, and not the buyer, as plaintiff. However, the buyer may then be granted an enforcement clause in his favour, if the transfer of ownership is documented with a public document or a private document with officially authenticated signatures.

7.14 Are there any export restrictions on export of a repossessed aircraft?

As a matter of private law, assuming that the repossession was carried out in enforcement proceedings on the basis of a final and non-appealable judgment (enforcement title) and no interim order was placed on the aircraft, there would be no restrictions on the export of an Aircraft. Subject to the statutory requirements for exporting the aircraft, there are no restrictions under Polish aviation law on export of a repossessed aircraft.

8. DEREGISTRATION POWER OF ATTORNEY/EXPORTATION

8.1 Can the Owner apply for deregistration of the Aircraft either at the end of the lease term or following successful repossession (with or without judicial proceedings) and is there any time period within which such application should be made?

The Owner can apply for deregistration of the Aircraft. There is no time limit.

8.2 Is the consent of the Airline required to deregister the Aircraft either by law or as a matter of custom or practice?

Under Polish law there is no requirement for the lessee’s consent in order for the Owner to de-register the aircraft. If such provisions are implemented contractually, this would be considered as customary practice rather than a statutory requirement.

8.3 How long does deregistration take, both where there is co-operation from the Airline and where this is no co-operation from the Airline?

Upon filing all documents (some of them, such as the Certificate of Registration, are carried on board the aircraft), with the Civil Aviation Authority, it is possible to receive the deregistration decision even on the same day. If there is no cooperation form the Airline (e.g. they operate the aircraft and they cannot deliver the Certificate of Registration) and the lease agreement has expired, it gives grounds for the Owner to de-register the aircraft from the Polish Register of Civil Aircraft.

8.4 Is it possible to obtain an export licence or export permit in advance?

No.
8.5 Approximately how long does it take to obtain an export licence or export permit? What are the costs involved?

The export certificate of airworthiness is usually issued on the same day as the decision on de-registration of the aircraft from the Polish Register on Civil Aircraft. Fees for issuing the export certificate of airworthiness depend on the weight of the aircraft and are in the following amounts:

- for aircraft of up to 2,730 kg – PLN 113 (approx. EUR 26)
- for aircraft from 2,730 kg to 5,700 kg – PLN 336 (approx. EUR 78)
- for aircraft from 5,700 kg to 20,000 kg – PLN 544 (approx. EUR 127)
- for aircraft above 20,000 kg – PLN 1667 (approx. EUR 388)

Please note that all conversions from PLN to EUR were made at the exchange rate as of 3 March 2020.

8.6 Is it possible to obtain a certificate of deregistration in advance?

If the aircraft is operating then the de-registration decision cannot be issued in advance. In certain cases, if there are no grounds for keeping the aircraft registered with the Polish Register, President of Civil Aviation Authority may decide to retain the aircraft registered with the Polish Register of Civil Aircraft.

8.7 Will a power of attorney empowering the Owner to deregister and export the Aircraft from the Relevant Jurisdiction, either at the end of the lease term or following successful repossession (with or without judicial proceedings), be enforceable in the Relevant Jurisdiction? Will the courts recognise a power of attorney in the form of an IDERA and governed by English law?

Bearing in mind that the Polish Aircraft Register is an Owner type of register, the Owner does not need a power of attorney to deregister and export the aircraft. In consequence, no Power of Attorney is needed. IDERA power of attorney is granted by the lessee in favour of the Owner. Under Polish law, the Owner does not need empowerment to make any changes in the Aircraft Register, de-registration of the Aircraft from the Aircraft Register or the export of the Aircraft upon the de-registration.

It can be done the other way around – the Owner can grant a power of attorney in favour of the lessee or the lender (particular persons acting on their behalf) to de-register the aircraft from the Polish register. The Owner can also appoint a lawyer to conduct the proceedings on de-registration and export of the aircraft.

8.8 If the power of attorney was stated to be irrevocable would this be enforceable against the Airline or can the Airline revoke such power of attorney?

In general, a power of attorney may be designated as irrevocable if it is justified by the nature of a legal relationship which the power of attorney is based on. However, in certain circumstances (e.g. due to the underlying legal relationship which justifies the irrevocability of power of attorney becoming null and void or due to other “important reasons”), a grantor may revoke the power of attorney regardless of the fact that it was designated as irrevocable.
8.9 Upon the occurrence of a bankruptcy or insolvency of the Airline is the power of attorney still effective?

No in case of declaration of bankruptcy.

9. INSOLVENCY

9.1 In the event that the Airline were to become insolvent either on a balance sheet basis (assets less than liabilities) or unable to pay debts as fall due:

9.1.1 Would the airline be required to file for insolvency protection?

Yes, under the Polish Bankruptcy Law, an application to declare a company bankrupt should be filed with the competent court within 30 days from satisfying either of the bankruptcy tests.

9.1.2 Do the available forms of insolvency protection in the Relevant Jurisdiction involve the appointment of either an officer of the court or a specifically court appointed official to take control of the Airline (an Insolvency Official) while in insolvency protection?

Yes/no If no, what other form is possible?

Yes, an insolvency officer should be appointed (receiver, court supervisor or administrator, as the case may be). The scope of the Insolvency Official’s control over the bankruptcy estate depends mainly on the type of the bankruptcy procedures.

9.1.3 Does the Insolvency Official have authority to negotiate and reach agreement with the Owner in relation to matters such as the payment of unpaid rent, continuation or termination of the Lease and repossession of the Aircraft without the need for court approval?

Yes

9.1.4 Does the commencement of insolvency protection involving the appointment of an Insolvency Official in the Relevant Jurisdiction have the effect of prohibiting the Owner from taking the following actions to enforce the lease after commencement of such protection:

- applying any security deposit held by the Owner against any unpaid amounts due under the Lease? No
- accepting payment of rent or other lease payments from:
1. (i.) the Airline? Yes (for the period preceding declaration of bankruptcy. No, if after such declaration the official receiver decides to continue the leasing
2. (ii.) a guarantor? No
3. (iii.) a shareholder? No
   • giving notice of default under the lease? Yes
   • obtaining a judgment or arbitral award for unpaid lease payments? No
   • giving notice to terminate the leasing of the Aircraft? Yes, if after such declaration the official receiver decides to continue the leasing and the official receiver breaches it.
   • exercising rights to repossess the Aircraft? Yes, if the official receiver terminates the lease under the relevant provision of the Polish Bankruptcy Law

9.1.5 Can the commencement of Insolvency Proceedings have retrospective effect in relation to any such actions taken before commencement? If so, for what period can there be a look back?

Yes, in respect of payments by the Airline (if on no arm’s length terms) within 12 months preceding filing the bankruptcy petition.

9.1.6 Is there, either under law or as a matter of practice in the Relevant Jurisdiction, a period of time within which the Insolvency Official will either “adopt” the lease and pay rent and other lease payments as an expense of the insolvency or “reject” the lease and permit the Owner to enforce such rights as it may have under the lease?

Yes, it can be done within 3 months of the declaration of bankruptcy.

9.1.7 If the lease is “adopted” will the Insolvency Official also pay any unpaid lease payments due as at commencement of the insolvency protection?

No, those amounts will be paid within the bankruptcy proceedings and divided among all creditors.

9.1.8 If not or if the lease is “rejected”, would the Owner’s claim for any outstanding sums rank equally with other ordinary unsecured creditors of the Airline?

Yes

9.1.9 Are there certain types of preferred creditors whose claims will rank above claims of the Owner?

Yes, ordinary unsecured creditor’s claims rank second (principal) or third (interest) behind costs of receivables under employment relationships and certain farmers’ receivables for a period of three years prior to the declaration of bankruptcy, certain receivables that arose in debt restructuring proceedings if bankruptcy was declared upon the consideration of a simplified petition for bankruptcy, and receivables arose under financing provided for under an arrangement adopted in debt restructuring proceedings and granted in relation to the
performance of such an arrangement, if bankruptcy was declared upon the consideration of a petition for bankruptcy filed not later than three months after the said arrangement has been finally set aside.

Claims secured by mortgage, pledge, financial pledge, registered pledge, treasury pledge, or a security assignment or a security transfer are subject to satisfaction from the proceeds of the sale of the unencumbered assets, decreased by costs associated with sale. These secured claims are satisfied in their order of precedence while any unsatisfied portion after realisation of security falls into second (principal) or third (interest) category.

9.1.10 If the Aircraft is in the possession of a person other than the Airline at the commencement of Insolvency Protection of the Airline, for example an independent maintenance facility, will such person be entitled, under the laws of the Relevant Jurisdiction, to assert a lien arising under law or contract over the Aircraft in respect of amounts then due and unpaid to such person by the Airline?

No

9.1.11 Is a person other than the Airline, for example an airport authority, entitled under the laws of the Relevant Jurisdiction to seize possession of the Aircraft after commencement of Insolvency Protection and assert a lien arising under law or contract over the Aircraft in respect of amounts then due and unpaid to such person by the Airline.

No

10. TAXATION

10.1 The decision to lease to an airline in the Relevant Jurisdiction assumes that the Owner will not be taxed on receipt of rentals or other payments (including maintenance reserves) under the Lease except by way of tax on its general income, profits or gains payable by the Owner in its place of incorporation or place of main business (if different). Will there be a requirement for the Owner to pay tax in the Relevant Jurisdiction on lease payments on basis that either the Owner is subject to taxation in the Relevant Jurisdiction by reason only of the leasing of the Aircraft under the Lease and is required to make payment itself; or payment of such tax is by way of the airline being required to withhold and account for tax from lease payments, where:

10.1.1 the Owner is incorporated and is tax resident in Ireland?

DTT – yes: withholding tax– no. According to the DTT between Poland and Ireland, lease payments as a rule are treated as business profits and are not taxable in Poland.
10.1.2 the Owner is incorporated and is tax resident in the United Kingdom?

DTT – yes, withholding tax – two possibilities, depending on the main area of activity of the Owner and significance of lease agreements in its business portfolio:

- When aircraft leasing is incidental to the main area of activity of the Owner that mainly operates aircraft in international traffic – leasing revenues are, as a rule, not taxable in Poland;
- Otherwise: withholding tax: yes; rate: 5% – under certain circumstances, that consider, for example, providing an original copy of the tax residence certificate of the Owner or lessor.

10.1.3 the Owner is incorporated and is tax resident in Hong Kong?

DTT – no; withholding tax: yes; rate: 20% under certain conditions.

10.1.4 the Owner is incorporated and is tax resident in Singapore?

DTT – yes, withholding tax – two possibilities, depending on the main area of activity of the Owner and significance of lease agreements in its business portfolio:

- When aircraft leasing is incidental to the main area of activity of the Owner that mainly operates aircraft in international traffic – leasing revenues are, as a rule, not taxable in Poland;
- Otherwise: withholding tax: yes; rate: 2% under certain conditions.

10.1.5 the Owner is incorporated and is tax resident in Malta?

DTT – yes; withholding tax: yes; rate: 10% under certain conditions.

10.1.6 the Owner is incorporated and is tax resident in the Channel Islands?

DTT – no; withholding tax: yes; rate: in general – 20%.

10.1.7 the Owner is incorporated and is tax resident in the Isle of Man?

DTT – no; withholding tax: yes; rate: in general – 20%.

10.1.8 the Owner is incorporated and is tax resident in Mauritius?

DTT – no; withholding tax: yes; rate: in general – 20%.

10.1.9 the Owner is incorporated and is tax resident in Bermuda?
10.1.10 The Owner is incorporated and is tax resident in the Cayman Islands?

DTT – no; withholding tax: yes; rate: in general – 20%.

Generally, in Polish tax jurisdiction an Airline which is a lessee is required to withhold and account for tax from lease payments in case if the Owner does not have its registered office or management in the territory of the Republic of Poland. In principle, the lease of an aircraft is deemed by Polish tax authorities as a use of an industrial or transport device and the revenues from such are subjected to withholding tax in the rate of 20%.

Those provisions may, however, be altered by the double taxation agreements to which the Republic of Poland is a party. The lack of such results in the necessity of application of the abovementioned general provisions. Note: each particular case should be considered separately, because tax obligation in the considered scope may differ according to main area of activity of the parties of an agreement, shareholder relation between the parties, etc.

Please note, that since 2019 r. additional conditions regarding withholding tax were introduced to the Polish law. In the case when Polish company makes payments, which according to Polish law are subject to withholding tax, and applies an exemption or reduced withholding tax rate or does not collect tax, it should exercise an appropriate level of due diligence in checking whether the recipient is able to benefit from DTT.

In cases when the paying company is applying an exemption or reduced withholding tax rate under a DTT this obligation includes determining if the recipient is the beneficial owner of the payment.

10.2 If there is a requirement in the Relevant Jurisdiction for the airline to withhold tax on lease payments, will the courts of the Relevant Jurisdiction recognise and permit enforcement of a “gross up” clause in the Lease requiring the payment by the Airline of an additional sum to ensure the Owner receives and is entitled to retain the same net amount as would have been received in the absence of the withholding, taking account of any further withholding on account of tax required in relation to such additional sum.

“Gross up” clause is recognised and its enforcement is permitted by courts and tax authorities in Poland.

10.3 VAT: European Union country: under Article 148(f) of the VAT Directive, an exemption from VAT is applied to “supplies” consisting of chartering or hiring of aircraft which are used by airlines operating for reward chiefly on international routes. Therefore:

10.3.1 New lease to airline operating for reward chiefly in domestic routes: VAT will be applied to lease rentals at current rate:

23%
10.3.2 New Lease to airline operating for reward chiefly on international routes: VAT will not be applied to lease rentals by reason of application of exemption: 
No, lease Will be subject to zero VAT rate

10.3.3 Sale of aircraft by an aircraft lessor to another aircraft lessor of an aircraft subject to a lease to an airline operating for reward chiefly in domestic routes: VAT will be applied to the purchase price. If the seller and the purchaser are both EU entities and the purchaser supplies its EU VAT Number to the seller then the VAT charge will be a reverse charge. Otherwise VAT will be applied to purchase price at current rate: 
23%

10.3.4 Sale of aircraft by an aircraft lessor to another aircraft lessor of an aircraft subject to a lease to an airline operating for reward chiefly on international routes: VAT will be applied to purchase price: 
23%

10.3.5 If the transaction involves the first importation of the aircraft into the EU (and assuming the aircraft is intended for use as a civil and not military aircraft) what rate of Customs Duty will apply? 
Depends on country of origin.

10.4 Is any stamp duty, notarial or other fee or equivalent payable in respect of the execution of the Lease, a de-registration power of attorney or any other lease related document concerning the aircraft? Will such stamp duty or fee still be payable if the relevant documents are executed and held outside the Relevant Jurisdiction? If any such amount is payable how much is it approximately? 
In general, there would be no additional notarial fee or equivalent payable. The need to pay stamp duty may arise for the power of attorney in the case of taking actions in front of Polish administrative authorities (17 PLN per attorney mentioned in the power of attorney). In the case of using a notarial power of attorney or other official documents in front of Polish authorities it is necessary to legalise them or obtain apostille. 
Note: each particular case should be considered separately.

10.5 Can any form of consent, authorisation or licence be obtained exempting the payments referred to in this Section from such tax or duty? If so, how would it be obtained?
The sole possibility of tax exemption considers withholding tax, but it requires satisfying jointly three conditions, namely:

- The particular shareholder relation between the lessee and the Owner (which must be established in EU/EEA) – (direct holding of no less 25% of shares in the equity);
- The minimal duration of such links – uninterrupted period of two years;
- The proper documenting of the entitlement for exemption that must be filed with tax authority.

10.6 Ignoring any taxation consequence already mentioned and any potential taxation issues if the Owner has any other connection to the Relevant Jurisdiction, is there any other Relevant Jurisdiction taxation consequence of the Owner:

10.6.1 being owner and lessor of an aircraft registered in the Relevant Jurisdiction and operated/leased by a company incorporated or registered in the Relevant Jurisdiction?

The fact that the aircraft is registered in Poland does not have any tax effects and does not affect the above-outlined tax situation of the Owner.

10.6.2 making available a lease facility to a company incorporated or regulated in the Relevant Jurisdiction?

In principle, no additional requirements.

10.6.3 receiving rent and other lease payments under the Lease from the lessee incorporated or registered in the Relevant Jurisdiction?

In principle, there is none.

10.6.4 repossessing the aircraft and exporting the aircraft from the Relevant Jurisdiction?

In principle, there is none.

10.6.5 selling the aircraft at a profit, whether such sale is after repossession or is subject to the Lease and the lessee's rights?

In principle, there is none.

**Note**: each case should be considered separately, especially depending on the type of leasing agreement (operational or financial) and especially in terms of VAT.
11. EXCHANGE CONTROLS

11.1 Are payments to foreign owners by companies incorporated or registered in the Relevant Jurisdiction subject to any form of exchange or similar control?

Except for certain sanctions imposed by EU and decisions of other international bodies binding in Poland and subject to certain provisions of the Polish Act implementing the European anti-money laundering directive, there are no restrictions or limits on payments/capital flows to foreign owners within the EU, OECD and EEA member states.

11.2 If yes, can any consents, authorisations or licences be obtained to exempt payments from any such control? How would these be obtained? Are such consents, authorisations or licences transferable?

Please refer to our answer on question 11.1 above.

12. INSURANCE

12.1 Is it a legal requirement to insure the Aircraft within the Relevant Jurisdiction?

There is no requirement to effect primary insurance partly or wholly in the Polish insurance market or through Polish entities.

12.2 If so, is there any restriction on reinsurance of the primary insurance outside the Relevant Jurisdiction?

In accordance with Polish law there are some restrictions in this area. A foreign reinsurance company that has its registered office in a non-member state of the European Union may take up and conduct reinsurance activity in the territory of the Republic of Poland only:

- via the main branch (the taking-up of reinsurance activity by the main branch shall be subject to an authorisation of the supervision authority),
- directly from the territory of the state of its registered office if the solvency system of this country, in accordance with Article 172 of Directive 2009/138/EC, has been deemed as equivalent or temporarily equivalent to the solvency system established within the European Union, or .
- directly from the territory of the state of its registered office if the contract referred to in Article 175 of Directive 2009/138/EC has been entered into with this country.

There are no such restrictions on insurance companies that have their registered office in a member state of the European Union.
12.3 Is there a minimum percentage of cover which a local insurer is obliged to retain, and if so, what is it?

No

12.4 Is it possible for local insurers to assign contracts of reinsurance? If not, is a cut-through clause enforceable?

Yes. The assignment of reinsurance contracts is possible under Polish law. The Insurance Activity Act provides directly that the conclusion of reinsurance contracts is an insurance operation (art. 3 sec. 3 point 1a).

Enforceability of a cut-through clause may be questioned under Polish law. The doctrine of law claims that a reinsurance contract does not create any legal relationship between a policyholder and a reinsurance company. In particular a policyholder is not empowered to submit a claim directly against a reinsurance company. Furthermore the Insurance and Reinsurance Activity Act does not allow the reinsurance companies to make direct payments under insurance agreements.

13. LIABILITY FOR DAMAGE

13.1 Can the Owner be strictly liable – liable without a requirement to prove fault or negligence – for any damage or loss caused by the Aircraft assuming Owner is an innocent owner with no operational control of the Aircraft?

As a matter of Polish law, the Owner should not generally be liable for any action or inaction of a lessee in respect of the operation of the Aircraft. This is based on the assumption that the Owner is not involved in the actual operation of the Aircraft.

14. DETENTION/CONFISCATION

14.1 Are there any rights to detain or sell the Aircraft pursuant to drug trafficking, tax or other laws or pursuant to rights of airport or air navigation authorities if the Airline fails to pay when due?

An airport operator is entitled to retain an aircraft in order to secure due and payable landing fees and reimbursement of any damage caused to the airport by the aircraft or the aircraft operator.

Under Polish law and only in certain limited circumstances (listed below), it is possible to detain a foreign owned aircraft in Poland to prevent its use. Such detention requires an administrative decision to be issued by the President of the Civil Aviation Authority.

Circumstances that allow for such decision being issued are as follows:
- the aircraft is in an inappropriate technical condition, is being used by unauthorised persons or, if it has been established that the rules of the safe operation of aircraft have been violated;
- the aircraft is in danger of an act of unlawful interference in civil aviation;
- a document confirming the conclusion of the compulsory civil liability insurance agreement or confirming payment of the insurance premium has not been presented – if the obligation to execute the compulsory civil liability insurance results from the provisions on the insurance for air carriers and aircraft operators;
- if it has been established that international agreements or provisions have been violated by aircraft operators or members of their crews, to the extent that this directly threatens the security of the flight.

Furthermore, an Aircraft could be forfeited under Polish criminal law, subject to a court’s decision, if it was used for criminal activities.

14.2 If so, can the Aircraft be forfeited and sold without the Owner being made aware?

No.

15. SOVEREIGN IMMUNITY

15.1 Is any Airline based in the Relevant Jurisdiction entitled to any form of sovereign or other immunity from suit which might restrict the Owner’s rights under the Lease?

Under Polish law, airlines, inclusive of State-owned (wholly or partially) companies, are not entitled to any form of immunity against suit. Thus, there are no particular restrictions concerning the possibility to bring an action against such companies – they are not privileged in this respect.

15.2 Can such immunity be validly waived in advance by contract?

N/A

16. DISPUTE RESOLUTION AND RECIPROCAL ENFORCEMENT

16.1 Do the laws of the Relevant Jurisdiction permit and recognise an “asymmetric” submission to jurisdiction clause under which the lessee submits to the exclusive jurisdiction of the Courts of England but the Owner has discretion to choose a jurisdiction other than the Courts of England?

There are no provisions of Polish law that would expressly prohibit such a submission to jurisdiction. Such prohibitions are also not expressly included in Regulation No. 1215/2012 on jurisdiction and the recognition and

However, in light of certain Polish and European case law it cannot be excluded that a Polish court would not recognise such a submission to jurisdiction under Polish law and assume that it lacks jurisdiction.

16.2 If the Lease is governed by English Law and a judgment is obtained by the Owner in the English courts, can that judgment be automatically enforced in the Relevant Jurisdiction or will the case have to be re-examined on its merits? If so what procedures must be complied with to enforce such a judgment?

In the interim period of Brexit (until 31 December 2020) the provisions of Regulation No. 1215/2012 (as amended by the Regulation (EU) No 542/2014 of the European Parliament and of the Council) will still apply. This regulation applies to the recognition and enforcement of an English court judgment in Poland. Consequently, such a judgment shall be recognised and enforced in Poland without any special procedure being required. A Polish court may refuse recognition or enforcement upon the application of a party against whom proceedings have been commenced. The Regulation contains an exhaustive list of circumstances under which recognition and enforcement may be refused. These include: 1) if recognition/enforcement is manifestly contrary to public policy, 2) if the defendant was not served with the document which instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable him to arrange for his defence, 3) if the judgment is irreconcilable with a judgment given between the same parties in Poland or with an earlier judgment given in another Member State or in a third State involving the same cause of action and between the same parties, provided that the earlier judgment fulfils the conditions necessary for its recognition/enforcement in Poland. According to the Regulation, an English judgment shall not be re-examined by a Polish court in its merits, under no circumstances.

After the expiry of the interim period, in the absence of a bilateral or multilateral convention in this respect, provisions of the Polish Civil Procedure Code will apply.

According to Polish Civil Procedure Code decisions of foreign state courts issued in civil matters are recognised by virtue of law unless there exist obstacles as specified in Article 1146 of the Civil Procedure Code. The Polish court will not re-examine the case on its merits.

For the decision to become enforceable:

1. It has to be enforceable in the state of issuance,
2. It has to be enforced by way of execution,
3. There should be no obstacles described in Art. 1146 § 1 and 2 of the Civil Procedure Code, and
4. The Polish court will have to issue an enforcement clause.

The enforcement clause is issued by a regional court for the place of the debtor’s residence or registered office or, if there is no such court, the district court in whose area execution is to be conducted.

A person who claims recognition of a decision of a foreign state court is obliged to present:

1. an official copy of the decision;
2. a document certifying that the ruling is non-appealable unless it is evident from the content of the decision that it is non-appealable;
3. certified translation into Polish of the documents referred to above.

If a decision was issued in proceedings in which the defendant did not defend on the merits of the case, a document must be presented to confirm that the initial pleading has been served on the defendant.

The issuance an enforcement clause for the court decision is free of charge.

Please note that the Poland is a party to Convention on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters (the Lugano Convention). We note that despite that United Kingdom has not signed the Lugano Convention it was incorporated into the English legal system through domestic act and it may be possible that the provisions of this convention will apply. However due to the fact that the Lugano Convention was not signed by the United Kingdom application of its provisions is a matter of English law.

16.3 Is the Relevant Jurisdiction party to the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention) or the 1965 Convention on the Settlement of Investment Disputes Between States and Nationals of Other States (the Washington Convention)? Will the courts of the Relevant Jurisdiction recognise and enforce a decision of an arbitrator?

The Republic of Poland is party to the New York Convention, but not to the Washington Convention.

Polish courts will recognise and enforce an arbitral award (issued in a state which is party to the New York Convention) pursuant to the provisions of the New York Convention. The Convention provides very limited grounds for refusal of recognition and enforcement and is interpreted restrictively by Polish courts.

16.4 What is the usual choice of dispute resolution in international supply contracts involving a lessor or buyer incorporated in or with its main place of business in the Relevant Jurisdiction?

Based on our experience, in supply contracts involving one party domiciled in Poland, arbitration is becoming an increasingly popular choice for dispute resolution.

17. AIRCRAFT ENGINES

17.1 If the equipment being leased to the Airline in the Relevant Jurisdiction was an Aircraft Engine either unattached to an airframe or attached to an airframe belonging to a party other than the Aircraft Engine Owner and being leased to the Airline under a separate engine lease agreement, would there be any significant changes to the responses set out above?

No significant changes in respect of leasing. In general, there are no restrictions on the separate lease
17.2 In particular, does the Relevant Jurisdiction recognise the separate ownership of the Aircraft Engine by the Aircraft Engine Owner when the Aircraft Engine is attached to an airframe belonging to a person other than the Aircraft Engine Owner?

Polish law recognises the concept of the separate ownership of aircraft engines. Aircraft engines are not subject to registration in the Polish Register of Civil Aircraft.

Polish law protects the lessor and financier of aircraft engines by permitting the establishment of separate registered/civil law pledges regarding the aircraft engines. Furthermore a tool for enforcement – submission to enforcement by the lessee - is available in respect of aircraft engines. Depending on the structure of the transaction, submission to enforcement can be used by the creditor/lessor in case of lessee default.

17.3 Is there a register of Aircraft Engines and is the information given above in relation to registration of Aircraft and the ownership and leasing of Aircraft the same for registration of an Aircraft Engine and the ownership and leasing of such Aircraft Engine at the Aircraft Engine register?

There is no separate register of aircraft engines.

18. ADDITIONAL INFORMATION – IS THERE ANYTHING ELSE WE SHOULD HAVE ASKED?

Are there any other matters, issues, recommended courses of action or steps which can be taken to protect and/or perfect the Owner’s interests, as owner and lessor of the Aircraft in the Relevant Jurisdiction or of which the Owner should be aware when contemplating leasing an aircraft to a company incorporated and operating in the Relevant Jurisdiction?

In case a bank grants some facilities with a view to financing the sale of an Aircraft, it will usually require a pledge over the underlying Aircraft to cover any default under the Finance Documents. Such a pledge, if it is established in the form of a civil (ordinary) pledge requires the dispossession of the pledged assets to either the pledgee itself or a third party pledgeholder. Therefore, if a civil pledge is established, the borrower cannot be the operator of the Aircraft as it would imply a dispossession and the impossibility to operate it. The above requirement of dispossession is not applicable to registered pledges (i.e. the pledgor under a registered pledge may be allowed to keep the free disposal of the pledged assets, and to lease, transform or sell the assets that are pledged, under certain conditions). Both types of pledges are widely used in aviation finance (civil pledges are created when possible in order to serve as an interim security until the registration of registered pledges; registered pledges are only valid as of their registration which can take up to two months).

Given the current predominant market practice (where a borrower is also an owner of the Aircraft and a lessor and a separate entity is a lessee / an operator (an airline directly or through a dedicated SPV) the above issues are theoretical as there is actual change in possession from the borrower/owner/pledgor to the operator (a third party).
It is also worth mentioning that it is a good practice to create separate pledges over airframes and engines, due to the fact that airlines often switch engines between airframes of the same type in their fleet.
Aircraft finance and leasing in Portugal
1 PROPOSED TRANSACTION STRUCTURE

2 SEARCHES

2.1 Are there any public registers in the Relevant Jurisdiction where a search can be carried out to determine whether an order or resolution for any bankruptcy, bankruptcy protection or similar insolvency proceedings has been registered in relation to the Airline?

2.2 If so, specify which public registers, how long such searches typically take and if the fees are more than USD 100, approximately what fees apply.

3 RIGHTS AND EVIDENCE OF OWNERSHIP

3.1 In the case of the transfer of title to an aircraft registered in the Relevant Jurisdiction:

3.2 Must any particular conditions be satisfied for the transfer to be recognised?

3.3 Will such a transfer still be recognised by the courts of the Relevant Jurisdiction as legally valid where the relevant aircraft is located in another jurisdiction at the time of the transfer?

3.4 Are any duties, taxes or fees levied on such transfer of ownership?

3.5 Other than Insolvency laws (see section 9) are there any laws which may have the effect of defeating the Owner’s right in the aircraft – for example, Government requisition? Do the laws of the Relevant Jurisdiction provide for any compensation in such circumstances?

4 THE AIRCRAFT REGISTER – NATIONALITY OF AIRCRAFT

4.1 Has the Relevant Jurisdiction ratified any of:

4.2 If the Relevant Jurisdiction has ratified the Cape Town, see the Cape Town Convention Annex.

4.3 If the Relevant Jurisdiction has not ratified the Cape Town Convention, has the Relevant Jurisdiction started official proceedings or given any other official indication that it will accede to or ratify the Cape Town Convention in the near future?

4.4 If so, in relation to registration:

4.5 What documents and/or consents are required to obtain registration on the Aircraft Register and will these require any formalities (for example, notarisation, legalisation or application of apostille)?

4.6 Are there any restrictions on the legal status and/or nationality/domicile of parties seeking to register an aircraft on the Aircraft Register?

4.7 Are there any other filings or registrations necessary or desirable (other than the registrations already mentioned and Lease Registration – see section 6) in the Relevant Jurisdiction in order to ensure the validity, priority or enforceability of the transaction documents, or to perfect the interests of the Owner in the Aircraft or the transaction documents?

5 LEASES

5.1 Will the Relevant Jurisdiction recognise the concept of a lease over an aircraft?

5.2 Would the choice of English law to govern the Lease be upheld as a valid choice of law in any action in the Relevant Jurisdiction?

5.3 Must the Lease be in a particular form if it is to be valid and enforceable in the Relevant Jurisdiction (for example, must it be in the language of the Relevant Jurisdiction or be notarised, legalised or have the apostille applied)?

5.4 If the Lease must be in the language of the Relevant Jurisdiction, is it possible under the Relevant Law also to have an English version, and to provide that the English version should prevail in case of conflict with the Relevant Jurisdiction language version?
5.5 Are there any special terms that the Lease must contain or that it is advisable for the Lease to contain?

5.6 Are there any circumstances under which the Lease might be re-characterised under the laws of the Relevant Jurisdiction as:

6 LEASE REGISTRATION

6.1 Is there a separate register for aircraft leases in the Relevant Jurisdiction?

6.2 If yes, then:

7 ENFORCEMENT OF LEASES (ASSUMING AIRLINE IS NOT IN A FORM OF INSOLVENCY PROTECTION)

7.1 On the occurrence of an event of default under the Lease, assuming that the Owner is permitted to do so under the terms of the Lease, can the Owner terminate the Leasing of the Aircraft under the Lease and enforce the Lease by taking physical possession of the Aircraft?

7.2 Is there any history of actual repossession of aircraft by Owners in the Relevant Jurisdiction? If so, please provide details of any matters or issues of which an Owner should be aware.

7.3 If so, can the Owner take physical possession of the Aircraft without the need for judicial proceedings in the Relevant Jurisdiction?

7.4 Where judicial proceedings in the Relevant Jurisdiction are necessary, please provide details of the proceedings, in particular:

7.5 Where judicial proceedings are not necessary, please comment on the time limits relevant to taking possession of the Aircraft, in particular:

7.6 Apart from the judicial proceedings described above and ignoring deregistration (see section 8), is the permission of any other party (including any official body) in the Relevant Jurisdiction required to take possession of the Aircraft?

7.7 Are there any circumstances in which the sums expressed to be payable under the Lease or obligations expressed to be assumed by the Airline in the Lease are or will be unrecoverable or unenforceable in the Relevant Jurisdiction?

7.8 Are there any circumstances in which the sums expressed to be payable under the Lease or obligations expressed to be assumed by the Airline in the Lease are or will be unrecoverable or unenforceable in the Relevant Jurisdiction?

7.9 Are there any restrictions on the ability of the Owner to sell the Aircraft in the Relevant Jurisdiction during the term of the Lease or, following an event of default, on termination of the leasing or pending judicial enforcement of the Lease?

7.10 Are there any export restrictions on export of a repossessed aircraft?

8 DEREGISTRATION POWER OF ATTORNEY/EXPORTATION

8.1 Can the Owner apply for deregistration of the Aircraft either at the end of the lease term or following successful repossession (with or without judicial proceedings) and is there any time period within which such application should be made?

8.2 Is the consent of the Airline required to deregister the Aircraft either by law or as a matter of custom or practice?

8.3 How long does deregistration take, both where there is co-operation from the Airline and where this is no co-operation from the Airline?

8.4 Is it possible to obtain an export licence or export permit in advance?

8.5 Approximately how long does it take to obtain an export licence or export permit? What are the costs involved?

8.6 Is it possible to obtain a certificate of deregistration in advance?

8.7 Will a power of attorney empowering the Owner to deregister and export the Aircraft from the Relevant Jurisdiction, either at the end of the lease term or following successful repossession (with or without judicial proceedings), be enforceable in the Relevant Jurisdiction?
8.8 If the power of attorney was stated to be irrevocable would this be enforceable against the Airline or can the Airline revoke such power of attorney?

8.9 Upon the occurrence of a bankruptcy or insolvency of the Airline is the power of attorney still effective?

9 INSOLVENCY

9.1 In the event that the Airline were to become insolvent either on a balance sheet basis (assets less than liabilities) or unable to pay debts as fall due:

10 TAXATION

10.1 The decision to lease to an airline in the Relevant Jurisdiction assumes that the Owner will not be taxed on receipt of rentals or other payments (including maintenance reserves) under the Lease except by way of tax on its general income, profits or gains payable by the Owner in its place of incorporation or place of main business (if different). Will there be a requirement for the Owner to pay tax in the Relevant Jurisdiction on lease payments on basis that either the Owner is subject to taxation in the Relevant Jurisdiction by reason only of the leasing of the Aircraft under the Lease and is required to make payment itself; or payment of such tax is by way of the airline being required to withhold and account for tax from lease payments, where:

10.2 If there is a requirement in the Relevant Jurisdiction for the airline to withhold tax on lease payments, will the courts of the Relevant Jurisdiction recognise and permit enforcement of a “gross up” clause in the Lease requiring the payment by the Airline of an additional sum to ensure the Owner receives and is entitled to retain the same net amount as would have been received in the absence of the withholding, taking account of any further withholding on account of tax required in relation to such additional sum.

10.3 VAT: European Union country: under Article 148(f) of the VAT Directive, an exemption from VAT is applied to “supplies” consisting of chartering or hiring of aircraft which are used by airlines operating for reward chiefly on international routes. Therefore:

10.4 Is any stamp duty, notarial or other fee or equivalent payable in respect of the execution of the Lease, a de-registration power of attorney or any other lease related document concerning the aircraft? Will such stamp duty or fee still be payable if the relevant documents are executed and held outside the Relevant Jurisdiction? If any such amount is payable how much is it approximately?

10.5 Can any form of consent, authorisation or licence be obtained exempting the payments referred to in this Section from such tax or duty? If so, how would it be obtained?

10.6 Ignoring any taxation consequence already mentioned and any potential taxation issues if the Owner has any other connection to the Relevant Jurisdiction, is there any other Relevant Jurisdiction taxation consequence of the Owner:

11 EXCHANGE CONTROLS

11.1 Are payments to foreign owners by companies incorporated or registered in the Relevant Jurisdiction subject to any form of exchange or similar control?

11.2 If yes, can any consents, authorisations or licences be obtained to exempt payments from any such control? How would these be obtained? Are such consents, authorisations or licences transferable?

12 INSURANCE

12.1 Is it a legal requirement to insure the Aircraft within the Relevant Jurisdiction?

12.2 If so, is there any restriction on reinsurance of the primary insurance outside the Relevant Jurisdiction?

12.3 Is there a minimum percentage of cover which a local insurer is obliged to retain, and
if so, what is it?

12.4 Is it possible for local insurers to assign contracts of reinsurance? If not, is a cut-through clause enforceable?

13 LIABILITY FOR DAMAGE

13.1 Can the Owner be strictly liable – liable without a requirement to prove fault or negligence – for any damage or loss caused by the Aircraft assuming Owner is an innocent owner with no operational control of the Aircraft?

14 DETENTION/CONFISCATION

14.1 Are there any rights to detain or sell the Aircraft pursuant to drug trafficking, tax or other laws or pursuant to rights of airport or air navigation authorities if the Airline fails to pay when due?

14.2 If so, can the Aircraft be forfeited and sold without the Owner being made aware?

15 SOVEREIGN IMMUNITY

15.1 Is any Airline based in the Relevant Jurisdiction entitled to any form of sovereign or other immunity from suit which might restrict the Owner's rights under the Lease?

15.2 Can such immunity be validly waived in advance by contract?

16 DISPUTE RESOLUTION AND RECIPROCAL ENFORCEMENT

16.1 Do the laws of the Relevant Jurisdiction permit and recognise an "asymmetric" submission to jurisdiction clause under which the lessee submits to the exclusive jurisdiction of the Courts of England but the Owner has discretion to choose a jurisdiction other than the Courts of England?

16.2 If the Lease is governed by English Law and a judgment is obtained by the Owner in the English courts, can that judgment be automatically enforced in the Relevant Jurisdiction or will the case have to be re-examined on its merits? If so what procedures must be complied with to enforce such a judgment?

16.3 Is the Relevant Jurisdiction party to the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention) or the 1965 Convention on the Settlement of Investment Disputes Between States and Nationals of Other States (the Washington Convention)? Will the courts of the Relevant Jurisdiction recognise and enforce a decision of an arbitrator?

16.4 What is the usual choice of dispute resolution in international supply contracts involving a lessor or buyer incorporated in or with its main place of business in the Relevant Jurisdiction?

17 AIRCRAFT ENGINES

17.1 If the equipment being leased to the Airline in the Relevant Jurisdiction was an Aircraft Engine either unattached to an airframe or attached to an airframe belonging to a party other than the Aircraft Engine Owner and being leased to the Airline under a separate engine lease agreement, would there be any significant changes to the responses set out above?

17.2 In particular, does the Relevant Jurisdiction recognise the separate ownership of the Aircraft Engine by the Aircraft Engine Owner when the Aircraft Engine is attached to an airframe belonging to a person other than the Aircraft Engine Owner?

17.3 Is there a register of Aircraft Engines and is the information given above in relation to registration of Aircraft and the ownership and leasing of Aircraft the same for registration of an Aircraft Engine and the ownership and leasing of such Aircraft Engine at the Aircraft Engine register?

18 ADDITIONAL INFORMATION – IS THERE ANYTHING ELSE WE SHOULD HAVE ASKED?
1. PROPOSED TRANSACTION STRUCTURE

The Aircraft will be purchased by the Owner and leased on an operating lease basis to the Airline pursuant to the Lease.

Is this the usual structure for transactions of this nature in the Relevant Jurisdiction?

Yes.

2. SEARCHES

2.1 Are there any public registers in the Relevant Jurisdiction where a search can be carried out to determine whether an order or resolution for any bankruptcy, bankruptcy protection or similar insolvency proceedings has been registered in relation to the Airline?

Yes, an electronic search can be made at Register of the Ministry of Justice, available via an online platform (Citius).

2.2 If so, specify which public registers, how long such searches typically take and if the fees are more than USD 100, approximately what fees apply.

Searches can be made instantly and there is no associated cost.

3. RIGHTS AND EVIDENCE OF OWNERSHIP

3.1 In the case of the transfer of title to an aircraft registered in the Relevant Jurisdiction:

3.1.1 Is any particular form of transfer required for the transfer to be legally recognised?

No particular form is mandatorily required. In practice a Bill of Sale is generally used.

3.1.2 Must any particular conditions be satisfied for the transfer to be recognised?

Apart from the documentation mentioned below necessary for the registration, no.

3.1.3 Will such a transfer still be recognised by the courts of the Relevant
Jurisdiction as legally valid where the relevant aircraft is located in another jurisdiction at the time of the transfer?

Yes.

3.1.4 Are any duties, taxes or fees levied on such transfer of ownership?

Transfer of ownership of aircraft registered in Portugal is not liable to VAT provided such aircraft is used by an airline operating for reward chiefly on international routes.

The transfer of ownership of aircraft parts or equipment of the above mentioned aircraft (used by an airline operating for reward chiefly on international routes) shall also not be liable to Portuguese VAT.

If the Aircraft is to be registered on the Portuguese register then there will be registration fees payable.

3.2 Other than Insolvency laws (see section 9) are there any laws which may have the effect of defeating the Owner’s right in the aircraft – for example, Government requisition? Do the laws of the Relevant Jurisdiction provide for any compensation in such circumstances?

Government Requisition is possible but only in the event of war or serious national emergency. Compensation would then be due. Seizure of the aircraft could also take place if it was being used for illegal purposes. Airport Managing Entities have statutory rights of detention of Aircraft for unpaid airport charges and the National Aviation Authority (NAA) has a statutory right to detain, on a temporary or definitive basis, an Aircraft if it has no Certificate of Airworthiness, does not have the appropriate route licensing, if it is unfit for flight or contravenes air navigation requirements or lacks required certifications. Generally the right of detention would not lead to a sale without a Court direction. The tax authorities may seize goods (which can include an Aircraft) for unpaid taxes. If the unpaid taxes are not then paid within a given period, the goods may be auctioned. Customs officers have various powers to detain an aircraft – generally where the Aircraft has been used to carry items liable to forfeiture or which have not cleared customs. Generally the right of detention would not lead to sale without a Court direction. Certain liens can arise as a matter of contract or law, e.g. a seller’s lien for unpaid purchase price. A lien holder does not have the right of sale although the lien holder could seek a direction for sale of the Aircraft from a Court of the debt it is owed continues to be unpaid for a reasonable period of time.

4. THE AIRCRAFT REGISTER – NATIONALITY OF AIRCRAFT

4.1 Has the Relevant Jurisdiction ratified any of:

The Chicago Convention of 1944 on International Civil Aviation?

Yes

The 1948 Geneva Convention on the International Recognition of Rights in Aircraft?

Yes
The 1933 Convention for the Unification of Certain Rules Relating to the Precautionary Arrest of Aircraft?

No

The 2001 Cape Town Convention on International Interests in Mobile Equipment and the associated Protocol on Matters Specific to Aircraft Equipment (the Cape Town Convention)?

No

4.2 If the Relevant Jurisdiction has ratified the Cape Town, see the Cape Town Convention Annex.

4.3 If the Relevant Jurisdiction has not ratified the Cape Town Convention, has the Relevant Jurisdiction started official proceedings or given any other official indication that it will accede to or ratify the Cape Town Convention in the near future?

No.

Is there an Aircraft Register in the Relevant Jurisdiction and if so, what is it called and who operates it? Yes, it is called the National Aeronautical Register (Registo Aeronáutico Nacional) and it is operated by the National Aviation Authority (NAA). It is possible to make a separate registration for Aircraft Engines or Spares.

4.4 If so, in relation to registration:

4.4.1 Who is responsible for registering the Aircraft – is it an owner registry or an operator registry?

It is an owner registry.

4.4.2 What details would normally be recorded on the Aircraft Register upon registration of an aircraft in the Relevant Jurisdiction? If not normally recorded, is it possible to record the Lease and/or an Aircraft Mortgage on the Aircraft Register?

The main details registered are the identity of the Owner, the details of the Aircraft (e.g., manufacturer and year of manufacture, model, serial number, number of engines, intended use and usual aerodrome) and its use. Aircraft leases and mortgages may be registered under the ‘registration of other acts’ procedure and form. Fractional ownerships and the percentages held in the ideal quota of an aircraft are also registrable.

4.4.3 If the Aircraft Register is an operator register, is it possible to record the details of the aircraft owner/lessor and any financier with an Aircraft Mortgage?

It is not an operator registry but it is possible to register e.g., lessors and mortgages.
4.4.4 If the Aircraft Register is an owner register, is registration on the Aircraft Register definitive to determine ownership of the Aircraft?

No, it is not but the “Registered Owner” will be presumed to be the owner. However, an Aircraft cannot be registered in the Portugal if it is already registered outside Portugal and that other registration would not terminate with registration in the Portugal.

4.4.5 Are any distinctions made between aircraft employed on international routes and those used purely for domestic flights?

No.

4.5 What documents and/or consents are required to obtain registration on the Aircraft Register and will these require any formalities (for example, notarisation, legalisation or application of apostille)?

An application form must be completed and signed, a fee paid and evidence supplied of compliance with required minimum insurance criteria. The following documents are required: agreement or document of sale (Bill of Sale); deregistration certificate from the Aeronautical Registry of the country of previous registration or certificate of non-registration; customs clearance certificate in the case of an imported aircraft belonging to a non-EU country; two photographs of the aircraft, with a photograph of the front and a profile with the marks of nationality and registration painted in 9x12 format, borderless and printed with natural colours. Documents issued in foreign countries must be signed by a notary and be legalized by a notary involved with the affixing of the Apostille as per Articles 3 and 4 of the Hague Convention of 05.10.1961 on the Suppression of the Requirement Legalization for Foreign Public Documents, or duly notarized and legalized by diplomatic or consular officer from the Portuguese embassy or consulate there. Documents issued in Portugal shall contain the signatures of the legal representatives recognized under the law with the words “in the capacity and authority to act”.

4.6 Are there any restrictions on the legal status and/or nationality/domicile of parties seeking to register an aircraft on the Aircraft Register?

No.

In respect of aircraft transactions connected with the Relevant Jurisdiction generally, are there any foreign Aircraft Registers that are commonly used, or should be considered, as alternatives to or in addition to registration with the Relevant Jurisdiction’s Aircraft Register? If so, what is benefit of such registration?

No.

4.8 Are there any other filings or registrations necessary or desirable (other than the registrations already mentioned and Lease Registration – see section 6) in the Relevant Jurisdiction in order to ensure the validity, priority or
enforceability of the transaction documents, or to perfect the interests of the Owner in the Aircraft or the transaction documents?

No.

5. LEASES

5.1 Will the Relevant Jurisdiction recognise the concept of a lease over an aircraft?

Yes

5.2 Would the choice of English law to govern the Lease be upheld as a valid choice of law in any action in the Relevant Jurisdiction?

Generally yes, the parties are free to choose the applicable law and the choice of English law would be respected except for the Mortgage Agreement, if applicable, which has to be governed by Portuguese law.

5.3 Must the Lease be in a particular form if it is to be valid and enforceable in the Relevant Jurisdiction (for example, must it be in the language of the Relevant Jurisdiction or be notarised, legalised or have the apostille applied)?

Lease agreements have to be submitted for approval by the NAA at least 15 working days in advance before operations are due to start. Exceptions are made for some short term leases (no more than five days duration). For NAA approval, documentation in Portuguese or English or duly translated into Portuguese by certified translator is required. Please note also that in case of conflict submitted to Portuguese Courts, all documentation must be translated into Portuguese. For registration purposes, the original or a certified copy of the Lease Agreement must be produced. Documents issued in foreign countries must contain the signatures of duly recognized notary and be legalized by a notary involved with the affixing of the Apostille as per Articles 3 and 4 of the Hague Convention of 05.10.1961 on the Suppression of the Requirement Legalization for Foreign Public Documents, or duly notarized and legalized by diplomatic or consular officer from the Portuguese embassy or consulate there. Documents issued in Portugal shall contain the signatures of the legal representatives recognized under the law with the words “in the capacity and authority to act”.

5.4 If the Lease must be in the language of the Relevant Jurisdiction, is it possible under the Relevant Law also to have an English version, and to provide that the English version should prevail in case of conflict with the Relevant Jurisdiction language version?

N/A

5.5 Are there any special terms that the Lease must contain or that it is advisable for the Lease to contain?
The Lease Agreements must refer to the reasons for signing a lease agreement, which should be framed to fit one of the cases set in the NAA's applicable Regulation 32/2003, as last amended by Regulation 832/2010, that (essentially temporary reinforcement of fleets or aircraft temporary substitution). In accordance with the Operator's and the Aircraft nationality (national, EU or other) and the type of Lease Agreement (dry lease-out/in, wet-lease in/out), there are other requirements. There are also are terms that are advisable, e.g., the possibility of subleasing and the obligation to return forthwith and without delay the leased aircraft in case of termination of the lease agreement, regardless of the grounds of termination. It is advisable for a prospective lessor or lessee to retain experienced Portuguese law lawyers to advise on terms.

5.6 Are there any circumstances under which the Lease might be re-characterised under the laws of the Relevant Jurisdiction as:

5.6.1 a secured loan?

No, in general no although this would ultimately depend on the substance of the Lease Agreement and the Parties' behaviours in implementing it. The Courts in Portugal are free to characterise an agreement in light of its content and practical application regardless of the Parties' intentions or classification of the agreement.

5.6.2 a finance (or capital) lease?

It would depend on the terms of agreement but there is the possibility that the Lease could constitute a finance lease (basically lessee has an option at the end of the agreement to acquire the property of the goods by paying a residual amount).

If, on the basis of these responses a proposed transaction appears to have constituents which could suggest a re-characterisation risk, we recommend detailed advice is obtained.

6. LEASE REGISTRATION

6.1 Is there a separate register for aircraft leases in the Relevant Jurisdiction?

There is no separate registry but a lease should be registered under a separate form ('other acts') and is subject to NAA's prior approval.

6.2 If yes, then:

6.2.1 What documentation and/or consents are required for the registration of the Lease?

The Lease Agreement.

6.2.2 What registration fees are payable (if any)?

Currently none.
6.2.3 What information is recorded on the register? How is the eventual discharge of the Lease recorded?

Parties and date of entry into force and end date of Lease Agreement. Discharges of leases may be recorded via the submission of application for register of 'other acts'.

6.2.4 Does any registration in respect of the Lease remain valid throughout the tenure of the Lease or does such a registration require periodic renewal? If renewal is required when must this be done and what is the approximate cost of renewal?

The registration remains valid throughout the term of the Lease (the registration form already asks for the starting and end dates of the lease).

7. ENFORCEMENT OF LEASES (ASSUMING AIRLINE IS NOT IN A FORM OF INSOLVENCY PROTECTION)

7.1 On the occurrence of an event of default under the Lease, assuming that the Owner is permitted to do so under the terms of the Lease, can the Owner terminate the Leasing of the Aircraft under the Lease and enforce the Lease by taking physical possession of the Aircraft?

Yes, in certain circumstances. Please refer to next answer for details.

7.2 Is there any history of actual repossession of aircraft by Owners in the Relevant Jurisdiction? If so, please provide details of any matters or issues of which an Owner should be aware.

Yes, the Owner’s direct repossession has successfully been used but it is exceptional, the general rule being the need for judicial proceedings and obtaining of a Court Order.

7.3 If so, can the Owner take physical possession of the Aircraft without the need for judicial proceedings in the Relevant Jurisdiction?

The Lease Agreement should typically provide for the Lessor to be able to repossess the aircraft in the case of an Event of Default by the Lessee. A Financier/Lessor willing to repossess its Aircraft may either do so by way of enforcing its contractual rights (if any) under the Aircraft Lease Agreement (including the use of an irrevocable power of attorney from the Lessee, if existing) or by taking legal action against the Lessee. Self-help, in the sense of direct action by the Lessor to physically repossess the Aircraft is only possible if there is no absolute available recourse to the authorities. Thus, judicial intervention is not usually required unless the Lessee seeks to contend that such repossession is wrongful or undue. In any event, it is not unusual for the Lessor to need certain cooperation from the Lessee, e.g., to have access to the airport, to the aircraft and to the technical books, in order to obtain the certificate of airworthiness for export issued by the NAA. Upon such measures shall have been taken, the Lessor has to notify the NAA about the facts and attach evidence that the Aircraft Lease
Agreement has been terminated accordingly. Should the Lessor obtain no cooperation from the Lessee, the only alternative shall be to initiate court proceedings against the latter, e.g., an injunction for provisional claim to possession followed within 30 days by the main suit to claim possession.

7.4 Where judicial proceedings in the Relevant Jurisdiction are necessary, please provide details of the proceedings, in particular:

7.4.1 What documents would the Owner as lessor need to present in order to obtain possession of the Aircraft, both before and subsequent to judgment? Can documents be copies?

Essentially the Lease Agreement, title and registration of the Aircraft and all other documentation that could be relevant for proving that said Agreement has been terminated/ended. Documents can be copies and duly certified copies (lawyers or notaries can provide these) are equivalent to originals.

7.4.2 What is the approximate cost of issuing proceedings?

Variable according to the value to be attributed to the proceedings.

7.4.3 Would the Owner be required to provide a bond, guarantee or other security in order to issue proceedings?

No.

7.4.4 What is an estimate of the normal duration of possession proceedings from time at which all required documentation is made available – if uncontested?

Somewhere between six months to two years.

7.4.5 What is an estimate of the normal duration of possession proceedings from time at which all required documentation is made available – if contested?

Somewhere between two to four/five years (assuming the exhaustion of all possible appeals and thus a res judicata judgment).

7.5 Where judicial proceedings are not necessary, please comment on the time limits relevant to taking possession of the Aircraft, in particular:

7.5.1 Is there a waiting period before action may be taken?

There is no set period of time but if there is no risk of loss or damage to the Aircraft, the lessee should be notified of the default and given a reasonable period of time to make good the default before action to repossess is
7.5.2 Is there a long stop date by which action must be taken?

N/A

7.5.3 Is a Public Auction of the aircraft required?

No.

7.6 Apart from the judicial proceedings described above and ignoring deregistration (see section 8), is the permission of any other party (including any official body) in the Relevant Jurisdiction required to take possession of the Aircraft?

There are practical issues such as clearance to repossess an Aircraft which is “airside” at an Airport. Generally a specialist aviation consulting firm with familiarity of such issues would be used to effect repossession. There is, however, no formal permission required – simply compliance with ground security and similar requirements.

7.7 Are there any circumstances in which the sums expressed to be payable under the Lease or obligations expressed to be assumed by the Airline in the Lease are or will be unrecoverable or unenforceable in the Relevant Jurisdiction?

There are a number of circumstances which might affect the recoverability of sums payable or enforceability of obligations. There is an automatic stay on enforcement of credit rights when a Company enters Special Revitalization Process (a form of pre-insolvency protection).

Rent will only be paid during the Administration by leave of the Administrator or the Court and this is only likely if the Administrator believe the leased asset is essential to turn around of the business and is willing to “adopt” the lease.

Other grounds on which the enforceability of obligations under a lease may be challenged by a lessee include mistake fraud, incapacity of the lessee, illegality, sovereign immunity and public policy. Insolvency rules provide for the setting aside of a lease that has been entered into within defined time periods before an insolvency
where the lease is intended to benefit one creditor over others or where the obligations on the lessee under the lease are significantly below the value of the benefits of the lease. A Liquidator may disclaim an onerous contract and a lease may be an onerous contract.

It is also worth noting that the Administrator has power to sell a leased asset even though it is owned not by the lessee but by the lessor. Broadly the Administrator would need to account for value realised. In practice this power is seldom exercised except with agreement of the affected lessor and it is believed has not been considered appropriate in respect of aircraft.

7.9 Are there any restrictions on the ability of the Owner to sell the Aircraft in the Relevant Jurisdiction during the term of the Lease or, following an event of default, on termination of the leasing or pending judicial enforcement of the Lease?

Provided the lessee is not in Administration, as a matter of law, the Owner is free to sell at any time (subject to the lease and taking account of the warranty of quiet enjoyment and peaceful possession if the lease has not been terminated for default). Contractually the lease could restrict the Owner’s ability to sell or to assign the lease. If the lessee is in Administration then consent of the Administrator or leave of the Court would be required for a sale.

7.10 Are there any export restrictions on export of a repossessed aircraft?

An Export Certificate of Airworthiness is required. Procedures and requirements differ depending on the destination of the export. VAT and Customs Duty may also be applicable and clearance on both may be required depending on the particular circumstances.

8. DEREGISTRATION POWER OF ATTORNEY/EXPORTATION

8.1 Can the Owner apply for deregistration of the Aircraft either at the end of the lease term or following successful repossession (with or without judicial proceedings) and is there any time period within which such application should be made?

Yes (but previous cancelation of lease should be asked for in the latter case) and no.

8.2 Is the consent of the Airline required to deregister the Aircraft either by law or as a matter of custom or practice?

No.

8.3 How long does deregistration take, both where there is co-operation from the Airline and where this is no co-operation from the Airline?

Variable in accordance with the workload of the NAA.
8.4 Is it possible to obtain an export licence or export permit in advance?

Export licences are not required for all goods and generally there are no requirements for a licence to export civil aircraft. Where UN sanctions are implemented in Portugal there may be a complete prohibition on export to an affected country or an export licence may be required.

8.5 Approximately how long does it take to obtain an export licence or export permit? What are the costs involved?

Variable in accordance with the workload of the competent authorities.

8.6 Is it possible to obtain a certificate of deregistration in advance?

No.

8.7 Will a power of attorney empowering the Owner to deregister and export the Aircraft from the Relevant Jurisdiction, either at the end of the lease term or following successful repossession (with or without judicial proceedings), be enforceable in the Relevant Jurisdiction?

Yes.

Will the courts recognise a power of attorney in the form of an IDERA and governed by English law?

Yes.

8.8 If the power of attorney was stated to be irrevocable would this be enforceable against the Airline or can the Airline revoke such power of attorney?

Yes.

8.9 Upon the occurrence of a bankruptcy or insolvency of the Airline is the power of attorney still effective?

No, unless the power of attorney was essential for actions to avoid foreseeable damages to the insolvent estate (and until the administrator takes the necessary measures).

9. INSOLVENCY

9.1 In the event that the Airline were to become insolvent either on a balance sheet basis (assets less than liabilities) or unable to pay debts as fall due:
9.1.1 Would the airline be required to file for insolvency protection?

It is mandatory to do so in the period of 30 days from the date of awareness of the insolvency. The company is considered to be insolvent if it is unable to meet its obligations due. Portuguese law establishes a legal presumption of the situation of insolvency three months after general failure to comply with certain obligations, e.g., payment of tax debts, payment of social security, payment of debts arising from an employment contract, payment of rentals of any type of lease or instalments of the purchase price or loan repayments secured by a mortgage on the debtor's business premises or head office. With the declaration of insolvency, the company directors will lose their powers to manage and to dispose assets of the insolvent which will be assumed by the insolvency administrator.

9.1.2 Do the available forms of insolvency protection in the Relevant Jurisdiction involve the appointment of either an officer of the court or a specifically court appointed official to take control of the Airline (an Insolvency Official) while in insolvency protection?

Yes, after the insolvency is declared, the court appoints an Insolvency Administrator empowered to manage the company in order to obtain the satisfaction of creditors through an Insolvency Plan (based mainly in the company's recovery) or through Liquidation (sale of assets of the insolvent).

Besides the insolvency process, there is also a special restructuring process aiming the recovery of a company that is in a “difficult economic situation” or in a “situation of imminent insolvency” to establish negotiations with the creditors. This process also involves the appointment of a Provisional Insolvent Administrator which will have to authorize certain “particularly relevant acts”.

9.1.3 Does the Insolvency Official have authority to negotiate and reach agreement with the Owner in relation to matters such as the payment of unpaid rent, continuation or termination of the Lease and repossession of the Aircraft without the need for court approval?

Yes. The declaration of insolvency does not suspend the lease contract where the insolvent is the lessee. However, the Insolvency Administrator may terminate the contract by giving with 60 days notice in advance. There is no need for an authorisation of the court but the Insolvency Administrator acts are supervised at any time, with the possibility of removal and replacement of an Insolvency Administrator.

9.1.4 Does the commencement of insolvency protection involving the appointment of an Insolvency Official in the Relevant Jurisdiction have the effect of prohibiting the Owner from taking the following actions to enforce the lease after commencement of such protection:

- Applying any security deposit held by the Owner against any unpaid amounts due under the Lease? Yes. Once the insolvency is declared by the Court, the assets of the insolvent are all frozen with the insolvency estate. This means that the Owner will have to claim the credit within the insolvency proceedings. Please note that, as general rule, the security deposit is not a security in rem.
and for that reason it create contractual rights between the parties. The provisions of the Lease relating to the deposit would be relevant and might impact on the conclusions above.

- **accepting payment of rent or other lease payments from:**
  1. (i.) the Airline? After the insolvency is declared, the Insolvency Administrator is empowered to manage the company and it is he who must make any payments.
  2. (ii.) a guarantor? No.
  3. (iii.) a shareholder? No.

- **giving notice of default under the lease?** No.
- **obtaining a judgment or arbitral award for unpaid lease payments?** No. Any credit against the insolvent company should be claimed within the insolvency proceedings.
- **giving notice to terminate the leasing of the Aircraft?** After the insolvency is declared, Portuguese law only prevents the Owner to terminate the contract based on unpaid rents or financial deterioration of the lessee.
- **exercising rights to repossess the Aircraft?** This question will depend on whether the Insolvency Administrator decides to perform of the contracts or decides to terminate the contract. If it is decided to perform the contract, it is not possible to recover the Aircraft; on the other hand, if it is decided to terminate the contract, the Owner can exercise his rights to repossess the Aircraft immediately.

9.1.5 Can the commencement of Insolvency Proceedings have retrospective effect in relation to any such actions taken before commencement? If so, for what period can there be a look back?

Yes. Pursuant to Portuguese Insolvency law, the Insolvency Administrator can void or claw back detrimental acts to the insolvent within the two years prior to the date of initiation of proceedings. Acts or omissions that diminish, frustrate, make difficult, endanger or delay the settlement of creditors are deemed detrimental. Additionally, some acts are assumed to be detrimental, without admission of evidence to the contrary (none of which can be found in the structure of the transaction, however).

9.1.6 Is there, either under law or as a matter of practice in the Relevant Jurisdiction, a period of time within which the Insolvency Official will either “adopt” the lease and pay rent and other lease payments as an expense of the insolvency or “reject” the lease and permit the Owner to enforce such rights as it may have under the lease?

The Insolvency Administrator may terminate the contract by way of 60 days prior notice. There is no specific time limit to do so but in practice Insolvency Administrators tend to take such decisions as soon as possible. In case the Insolvency Administrator decides to perform the contract, the credits resulting from the contract that have already become due before the insolvency is declared shall be ranked as ordinary unsecured claims; the credits that have become overdue after the insolvency is declared are priority claims on the insolvent's estate. Please note that the costs of the insolvency shall be paid firstly and before any claim in the insolvency.

9.1.7 If the lease is “adopted” will the Insolvency Official also pay any unpaid lease payments due as at commencement of the insolvency protection?

Please see 8.1.6 above.
9.1.8 If not or if the lease is “rejected”, would the Owner’s claim for any outstanding sums rank equally with other ordinary unsecured creditors of the Airline?

Yes. Please see also 8.1.9.

9.1.9 Are there certain types of preferred creditors whose claims will rank above claims of the Owner?

As regards the rank of credits in an insolvency proceedings, it is important to distinguish between: (i) costs of the insolvency, i.e. the credits arising out of the insolvency situation (e.g. costs of the insolvency proceeding, payment of the insolvency administrator´s fees, any n “super priority” debt created after the declaration of insolvency); and (ii) claims in the insolvency, for example all the credits over the insolvent with a patrimonial nature or secured by assets included in the insolvent´s estate.

The costs of the insolvency shall be paid firstly and before any claim in the insolvency.

The Insolvency Administrator shall rank the claims in the insolvency respecting the following order of priority: (i) specific preferential credits; (ii) secured credits; (iii) general preferential credits; (iv) ordinary unsecured credits; and (v) subordinated credits.

9.1.10 If the Aircraft is in the possession of a person other than the Airline at the commencement of Insolvency Protection of the Airline, for example an independent maintenance facility, will such person be entitled, under the laws of the Relevant Jurisdiction, to assert a lien arising under law or contract over the Aircraft in respect of amounts then due and unpaid to such person by the Airline?

No, because the Aircraft is owned by Owner until the end of the lease and the person in possession of the Aircraft would be unable to assert a lien over a good that is the property of a third party to the Lessee/bailee relationship.

9.1.11 Is a person other than the Airline, for example an airport authority, entitled under the laws of the Relevant Jurisdiction to seize possession of the Aircraft after commencement of Insolvency Protection and assert a lien arising under law or contract over the Aircraft in respect of amounts then due and unpaid to such person by the Airline.

No, all creditors have to follow the insolvency proceedings and, as above, the Aircraft is owned by Owner until the end of the lease.

10. TAXATION

10.1 The decision to lease to an airline in the Relevant Jurisdiction assumes
that the Owner will not be taxed on receipt of rentals or other payments (including maintenance reserves) under the Lease except by way of tax on its general income, profits or gains payable by the Owner in its place of incorporation or place of main business (if different). Will there be a requirement for the Owner to pay tax in the Relevant Jurisdiction on lease payments on basis that either the Owner is subject to taxation in the Relevant Jurisdiction by reason only of the leasing of the Aircraft under the Lease and is required to make payment itself; or payment of such tax is by way of the airline being required to withhold and account for tax from lease payments, where:

As a preliminary remark, we note that under Portuguese domestic legislation, the income deriving from the lease of an aircraft is qualified as a royalty, which, being due to a non-resident company, is liable to withholding tax at a 25% rate. However, this may be reduced under the Double Tax Treaty (DTT) in force between Portugal and the country of residence of the beneficiary of the income.

10.1.1 the Owner is incorporated and is tax resident in Ireland?

Yes/no DTT yes/no If yes, rate:
Qualified as royalty under the DTT Portugal-Ireland. Income liable to withholding tax in Portugal at the rate of 10% (DTT rate), provided the Portuguese paying company is in possession of a residency certificate duly signed by the Irish tax authorities attesting that the owner is resident in Ireland (until the 20th of the month following that in which the income amount was computed or the payment was made).

10.1.2 the Owner is incorporated and is tax resident in the United Kingdom?

Yes/no DTT yes/no If yes, Rate:
Qualified as royalty under the DTT Portugal-UK. Income liable to withholding tax in Portugal at the rate of 5% (DTT rate), provided the Portuguese paying company is in possession of a residency certificate duly signed by the UK tax authorities attesting that the owner is resident in UK (until the 20th of the month following that in which the income amount was computed or the payment was made).

10.1.3 the Owner is incorporated and is tax resident in Hong Kong?

Yes/no DTT yes/no If yes, Rate:
Qualified as business income under the DTT Portugal-Hong Kong. Income can only be subject to tax in the country of residence of the owner, meaning that no withholding tax will be due in Portugal, provided the Portuguese paying company is in possession of a residency certificate duly signed by the Hong Kong tax authorities attesting that the owner is resident in Hong Kong (until the 20th of the month following that in which the payment was made).

10.1.4 the Owner is incorporated and is tax resident in Singapore?

Yes/no DTT yes/no If yes, Rate:
Qualified as royalty under the DTT Portugal-Singapore. Income liable to withholding tax in Portugal at the rate of
10% (DTT rate), provided the Portuguese paying company is in possession of a residency certificate duly signed by the Singapore tax authorities attesting that the owner is resident in Singapore (until the 20th of the month following that in which the income amount was computed or the payment was made).

10.1.5 the Owner is incorporated and is tax resident in Malta?

Yes/no DTT yes/no If yes, Rate:
Qualified as royalty under the DTT Portugal-Malta. Income liable to withholding tax in Portugal at the rate of 10% (DTT rate), provided the Portuguese paying company is in possession of a residency certificate duly signed by Malta tax authorities attesting that the owner is resident in Malta (until the 20th of the month following that in which the income amount was computed or the payment was made).

10.1.6 the Owner is incorporated and is tax resident in the Channel Islands?

Yes/no DTT yes/no If yes, Rate:
No DTT between both countries. Since the Channel Islands are considered as a tax haven under Portuguese law, income is liable to withholding tax at an increased 35% rate.

10.1.7 the Owner is incorporated and is tax resident in the Isle of Man?

Yes/no DTT yes/no If yes, Rate:
No DTT between both countries. Since the Isle of Man is considered as a tax haven under Portuguese law, income is liable to withholding tax at an increased 35% rate.

10.1.8 the Owner is incorporated and is tax resident in Mauritius?

Yes/no DTT yes/no If yes, rate:
No DTT between both countries. Since the Mauritius is considered as a tax haven under Portuguese law, income is liable to withholding tax at an increased 35% rate.

10.1.9 the Owner is incorporated and is tax resident in Bermuda?

Yes/no DTT yes/no If yes, Rate:
No DTT between both countries. Since Bermuda is considered as a tax haven under Portuguese law, income is liable to withholding tax at an increased 35% rate.

10.1.10 the Owner is incorporated and is tax resident in the Cayman Islands?

Yes/no DTT yes/no If yes, Rate:
No DTT between both countries. Since the Cayman Islands are considered as a tax haven under Portuguese law, income is liable to withholding tax at an increased 35% rate.

10.2 If there is a requirement in the Relevant Jurisdiction for the airline to withhold tax on lease payments, will the courts of the Relevant Jurisdiction
recognise and permit enforcement of a “gross up” clause in the Lease requiring the payment by the Airline of an additional sum to ensure the Owner receives and is entitled to retain the same net amount as would have been received in the absence of the withholding, taking account of any further withholding on account of tax required in relation to such additional sum.

Gross up clauses are acceptable from a Portuguese perspective. If the parties are considered as being related, the increase of the cost shall be analysed from a transfer pricing perspective.

10.3 VAT: European Union country: under Article 148(f) of the VAT Directive, an exemption from VAT is applied to “supplies” consisting of chartering or hiring of aircraft which are used by airlines operating for reward chiefly on international routes. Therefore:

10.3.1 New lease to airline operating for reward chiefly in domestic routes: VAT will be applied to lease rentals at current rate:

6%

10.3.2 New Lease to airline operating for reward chiefly on international routes: VAT will not be applied to lease rentals by reason of application of exemption:

Yes

10.3.3 Sale of aircraft by an aircraft lessor to another aircraft lessor of an aircraft subject to a lease to an airline operating for reward chiefly in domestic routes: VAT will be applied to the purchase price. If the seller and the purchaser are both EU entities and the purchaser supplies its EU VAT Number to the seller then the VAT charge will be a reverse charge. Otherwise VAT will be applied to purchase price at current rate:

6%

10.3.4 Sale of aircraft by an aircraft lessor to another aircraft lessor of an aircraft subject to a lease to an airline operating for reward chiefly on international routes: VAT will be applied to purchase price:

No

10.3.4.1 If no, is this because of application of the exemption under Article 148(f) to the airline following the decision in ECJ Case C-33/2011?
10.3.4.2 If yes, is this because the Relevant Jurisdiction does not apply the decision in ECJ Case C-33/2011?

N/A

10.3.5 If the transaction involves the first importation of the aircraft into the EU (and assuming the aircraft is intended for use as a civil and not military aircraft) what rate of Customs Duty will apply?

0%

10.4 Is any stamp duty, notarial or other fee or equivalent payable in respect of the execution of the Lease, a de-registration power of attorney or any other lease related document concerning the aircraft? Will such stamp duty or fee still be payable if the relevant documents are executed and held outside the Relevant Jurisdiction? If any such amount is payable how much is it approximately?

N/A

10.5 Can any form of consent, authorisation or licence be obtained exempting the payments referred to in this Section from such tax or duty? If so, how would it be obtained?

N/A

10.6 Ignoring any taxation consequence already mentioned and any potential taxation issues if the Owner has any other connection to the Relevant Jurisdiction, is there any other Relevant Jurisdiction taxation consequence of the Owner:

10.6.1 being owner and lessor of an aircraft registered in the Relevant Jurisdiction and operated/leased by a company incorporated or registered in the Relevant Jurisdiction?

N/A

10.6.2 making available a lease facility to a company incorporated or regulated in the Relevant Jurisdiction?

N/A
10.6.3 receiving rent and other lease payments under the Lease from the lessee incorporated or registered in the Relevant Jurisdiction?

N/A

10.6.4 repossessing the aircraft and exporting the aircraft from the Relevant Jurisdiction?

N/A

10.6.5 selling the aircraft at a profit, whether such sale is after repossession or is subject to the Lease and the lessee's rights?

N/A

**11. EXCHANGE CONTROLS**

11.1 Are payments to foreign owners by companies incorporated or registered in the Relevant Jurisdiction subject to any form of exchange or similar control?

No, there is no exchange control regime in the Relevant Jurisdiction.

11.2 If yes, can any consents, authorisations or licences be obtained to exempt payments from any such control? How would these be obtained? Are such consents, authorisations or licences transferable?

N/A

**12. INSURANCE**

12.1 Is it a legal requirement to insure the Aircraft within the Relevant Jurisdiction?

It is a legal requirement that adequate insurance will be maintained but there is no requirement that the risk is placed with insurers or underwriters in the Relevant Jurisdiction. For Lease Agreements, there is a need to produce an insurance certificate that covers hull risks, civil liability as regards third parties, passengers, baggage, cargo and mail, including risks of war (and in some cases, the risks assumed by lessor and lessee should be specified).

12.2 If so, is there any restriction on reinsurance of the primary insurance outside the Relevant Jurisdiction?
12.3 Is there a minimum percentage of cover which a local insurer is obliged to retain, and if so, what is it?

N/A

12.4 Is it possible for local insurers to assign contracts of reinsurance? If not, is a cut-through clause enforceable?

Yes.

13. LIABILITY FOR DAMAGE

13.1 Can the Owner be strictly liable – liable without a requirement to prove fault or negligence – for any damage or loss caused by the Aircraft assuming Owner is an innocent owner with no operational control of the Aircraft?

Yes, Owners or Operators are strictly liable as regards damages caused to third parties on the ground by an aircraft during flight or by objects detached from said aircraft and for the damages caused by the aircraft while on the ground (either in motion or immobilised) and except if the damages were caused by those sustaining the damages or in case of natural cataclysm, wars, revolutions, armed conflicts and use of atomic weapons.

14. DETENTION/CONFISCATION

14.1 Are there any rights to detain or sell the Aircraft pursuant to drug trafficking, tax or other laws or pursuant to rights of airport or air navigation authorities if the Airline fails to pay when due?

Yes.

14.2 If so, can the Aircraft be forfeited and sold without the Owner being made aware?

No.

15. SOVEREIGN IMMUNITY

15.1 Is any Airline based in the Relevant Jurisdiction entitled to any form of sovereign or other immunity from suit which might restrict the Owner’s rights under the Lease?
15.2 Can such immunity be validly waived in advance by contract?
N/A

16. DISPUTE RESOLUTION AND RECIPROCAL ENFORCEMENT

16.1 Do the laws of the Relevant Jurisdiction permit and recognise an “asymmetric” submission to jurisdiction clause under which the lessee submits to the exclusive jurisdiction of the Courts of England but the Owner has discretion to choose a jurisdiction other than the Courts of England?

Yes, but to the extent that the Owner’s choice of jurisdiction would have a link with the underlying relationship.

16.2 If the Lease is governed by English Law and a judgment is obtained by the Owner in the English courts, can that judgment be automatically enforced in the Relevant Jurisdiction or will the case have to be re-examined on its merits? If so what procedures must be complied with to enforce such a judgment?

Yes, such a judgment could be automatically enforced in Portugal subject to and in accordance with the terms of the EU Regulation No. 1215/2012 on the jurisdiction and the recognition and enforcement of judgments in civil and commercial matters provided that the Lease Agreement’s clause to submit to the jurisdiction of an EU Court is valid under the law applicable to the Lease Agreement. Note that certain formalities apply in respect of a valid choice of jurisdiction in accordance with EU No.1215/2012, for example, the place of jurisdiction must normally be agreed in a (written) document executed by all parties.

16.3 Is the Relevant Jurisdiction party to the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention) or the 1965 Convention on the Settlement of Investment Disputes Between States and Nationals of Other States (the Washington Convention)? Will the courts of the Relevant Jurisdiction recognise and enforce a decision of an arbitrator?

Yes and yes.

16.4 What is the usual choice of dispute resolution in international supply contracts involving a lessor or buyer incorporated in or with its main place of business in the Relevant Jurisdiction?

International Arbitration, e.g. ICC Arbitration.
17. AIRCRAFT ENGINES

17.1 If the equipment being leased to the Airline in the Relevant Jurisdiction was an Aircraft Engine either unattached to an airframe or attached to an airframe belonging to a party other than the Aircraft Engine Owner and being leased to the Airline under a separate engine lease agreement, would there be any significant changes to the responses set out above?

No.

17.2 In particular, does the Relevant Jurisdiction recognise the separate ownership of the Aircraft Engine by the Aircraft Engine Owner when the Aircraft Engine is attached to an airframe belonging to a person other than the Aircraft Engine Owner?

Yes.

17.3 Is there a register of Aircraft Engines and is the information given above in relation to registration of Aircraft and the ownership and leasing of Aircraft the same for registration of an Aircraft Engine and the ownership and leasing of such Aircraft Engine at the Aircraft Engine register?

Yes.

18. ADDITIONAL INFORMATION – IS THERE ANYTHING ELSE WE SHOULD HAVE ASKED?

Are there any other matters, issues, recommended courses of action or steps which can be taken to protect and/or perfect the Owner’s interests, as owner and lessor of the Aircraft in the Relevant Jurisdiction or of which the Owner should be aware when contemplating leasing an aircraft to a company incorporated and operating in the Relevant Jurisdiction?

N/A
Aircraft finance and leasing in Serbia
1 PROPOSED TRANSACTION STRUCTURE

2 SEARCHES

2.1 Are there any public registers in the Relevant Jurisdiction where a search can be carried out to determine whether an order or resolution for any bankruptcy, bankruptcy protection or similar insolvency proceedings has been registered in relation to the Airline?

2.2 If so, specify which public registers, how long such searches typically take and if the fees are more than US$100, approximately what fees apply.

3 RIGHTS AND EVIDENCE OF OWNERSHIP

3.1 In the case of the transfer of title to an aircraft registered in the Relevant Jurisdiction:

3.2 Other than Insolvency laws (see section 9) are there any laws which may have the effect of defeating the Owner’s right in the aircraft – for example, Government requisition? Do the laws of the Relevant Jurisdiction provide for any compensation in such circumstances?

4 THE AIRCRAFT REGISTER - NATIONALITY OF AIRCRAFT

4.1 Has the Relevant Jurisdiction ratified any of:

4.2 If the Relevant Jurisdiction has ratified the Cape Town, see the Cape Town Convention Annex.

4.3 If the Relevant Jurisdiction has not ratified the Cape Town Convention, has the Relevant Jurisdiction started official proceedings or given any other official indication that it will accede to or ratify the Cape Town Convention in the near future?

4.4 Is there an Aircraft Register in the Relevant Jurisdiction and if so, what is it called and who operates it?

4.5 If so, in relation to registration:

4.6 What documents and/or consents are required to obtain registration on the Aircraft Register and will these require any formalities (for example, notarisation, legalisation or application of apostille)?

4.7 Are there any restrictions on the legal status and/or nationality/domicile of parties seeking to register an aircraft on the Aircraft Register?

4.8 In respect of aircraft transactions connected with the Relevant Jurisdiction generally, are there any foreign Aircraft Registers that are commonly used, or should be considered, as alternatives to or in addition to registration with the Relevant Jurisdiction's Aircraft Register?

4.9 Are there any other filings or registrations necessary or desirable (other than the registrations already mentioned and Lease Registration - see section 6) in the Relevant Jurisdiction in order to ensure the validity, priority or enforceability of the transaction documents, or to perfect the interests of the Owner in the Aircraft or the transaction documents?

5 LEASES

5.1 Will the Relevant Jurisdiction recognise the concept of a lease over an aircraft?

5.2 Would the choice of English law to govern the Lease be upheld as a valid choice of law in any action in the Relevant Jurisdiction?

5.3 Must the Lease be in a particular form if it is to be valid and enforceable in the Relevant Jurisdiction (for example, must it be in the language of the Relevant Jurisdiction or be notarised, legalised or have the apostille applied)?

5.4 If the Lease must be in the language of the Relevant Jurisdiction, is it possible under the Relevant Law also to have an English version, and to provide that the English version should prevail in case of conflict with the Relevant Jurisdiction language
5.5 Are there any special terms that the Lease must contain or that it is advisable for the Lease to contain?

5.6 Are there any circumstances under which the Lease might be re-characterised under the laws of the Relevant Jurisdiction as:

6 LEASE REGISTRATION

6.1 Is there a separate register for aircraft leases in the Relevant Jurisdiction?

6.2 If yes, then:

7 ENFORCEMENT OF LEASES (ASSUMING AIRLINE IS NOT IN A FORM OF INSOLVENCY PROTECTION)

7.1 On the occurrence of an event of default under the Lease, assuming that the Owner is permitted to do so under the terms of the Lease, can the Owner terminate the leasing of the Aircraft under the Lease and enforce the Lease by taking physical possession of the Aircraft?

7.2 If so, can the Owner take physical possession of the Aircraft without the need for judicial proceedings in the Relevant Jurisdiction?

7.3 Where judicial proceedings in the Relevant Jurisdiction are necessary, please provide details of the proceedings, in particular:

7.4 Where judicial proceedings are not necessary, please comment on the time limits relevant to taking possession of the Aircraft, in particular:

7.5 Apart from the judicial proceedings described above and ignoring deregistration (see section 8), is the permission of any other party (including any official body) in the Relevant Jurisdiction required to take possession of the Aircraft?

7.6 Is there any history of actual repossession of aircraft by Owners in the Relevant Jurisdiction?

7.7 Are there any circumstances in which the sums expressed to be payable under the Lease or obligations expressed to be assumed by the Airline in the Lease are or will be unrecoverable or unenforceable in the Relevant Jurisdiction?

7.8 Are there any restrictions on the ability of the Owner to sell the Aircraft in the Relevant Jurisdiction during the term of the Lease or, following an event of default, on termination of the leasing or pending judicial enforcement of the Lease?

7.9 Are there any export restrictions on export of a repossessed aircraft?

8 DEREGISTRATION POWER OF ATTORNEY/EXPORTATION

8.1 Can the Owner apply for deregistration of the Aircraft either at the end of the lease term or following successful repossession (with or without judicial proceedings) and is there any time period within which such application should be made?

8.2 Is the consent of the Airline required to deregister the Aircraft either by law or as a matter of custom or practice?

8.3 How long does deregistration take, both where there is co-operation from the Airline and where this is no co-operation from the Airline?

8.4 Is it possible to obtain an export licence or export permit in advance?

8.5 Approximately how long does it take to obtain an export licence or export permit? What are the costs involved?

8.6 Is it possible to obtain a certificate of deregistration in advance?

8.7 Will a power of attorney empowering the Owner to deregister and export the Aircraft from the Relevant Jurisdiction, either at the end of the lease term or following successful repossession (with or without judicial proceedings), be enforceable in the Relevant Jurisdiction? Will the courts recognise a power of attorney in the form of an IDERA and governed by English law?

8.8 If the power of attorney was stated to be irrevocable would this be enforceable against the Airline or can the Airline revoke such power of attorney?
8.9 Upon the occurrence of a bankruptcy or insolvency of the Airline is the power of attorney still effective?

9 INSOLVENCY

9.1 In the event that the Airline were to become insolvent either on a balance sheet basis (assets less than liabilities) or unable to pay debts as fall due:

10 TAXATION

10.1 The decision to lease to an airline in the Relevant Jurisdiction assumes that the Owner will not be taxed on receipt of rentals or other payments (including maintenance reserves) under the Lease except by way of tax on its general income, profits or gains payable by the Owner in its place of incorporation or place of main business (if different). Will there be a requirement for the Owner to pay tax in the Relevant Jurisdiction on lease payments on basis that either the Owner is subject to taxation in the Relevant Jurisdiction by reason only of the leasing of the Aircraft under the Lease and is required to make payment itself; or payment of such tax is by way of the airline being required to withhold and account for tax from lease payments, where:

10.2 If there is a requirement in the Relevant Jurisdiction for the airline to withhold tax on lease payments, will the courts of the Relevant Jurisdiction recognise and permit enforcement of a “gross up” clause in the Lease requiring the payment by the Airline of an additional sum to ensure the Owner receives and is entitled to retain the same net amount as would have been received in the absence of the withholding, taking account of any further withholding on account of tax required in relation to such additional sum.

10.3 Will the importation of the Aircraft into the Relevant Jurisdiction and/or the leasing of the Aircraft to the Airline give rise to any VAT, sales or use tax or any customs, import or excise duties? Are there any other applicable taxes, for example stamp duties and documentary taxes? Does VAT apply on a sale of an aircraft leased to an airline in the Relevant Jurisdiction between Two aircraft lessors with the sale expressly subject to the lease?

10.4 Is any stamp duty, notarial or other fee or equivalent payable in respect of the execution of the Lease, a de-registration power of attorney or any other lease related document concerning the aircraft? Will such stamp duty or fee still be payable if the relevant documents are executed and held outside the Relevant Jurisdiction? If any such amount is payable how much is it approximately?

10.5 Can any form of consent, authorisation or licence be obtained exempting the payments referred to in this Section from such tax or duty? If so, how would it be obtained?

10.6 Ignoring any taxation consequence already mentioned and any potential taxation issues if the Owner has any other connection to the Relevant Jurisdiction, is there any other Relevant Jurisdiction taxation consequence of the Owner:

11 EXCHANGE CONTROLS

11.1 Are payments to foreign owners by companies incorporated or registered in the Relevant Jurisdiction subject to any form of exchange or similar control?

11.2 If yes, can any consents, authorisations or licences be obtained to exempt payments from any such control? How would these be obtained? Are such consents, authorisations or licences transferable?

12 INSURANCE

12.1 Is it a legal requirement to insure the Aircraft within the Relevant Jurisdiction?

12.2 If so, is there any restriction on reinsurance of the primary insurance outside the Relevant Jurisdiction?
12.3 Is there a minimum percentage of cover which a local insurer is obliged to retain, and if so, what is it?
12.4 Is it possible for local insurers to assign contracts of reinsurance? If not, is a cut-through clause enforceable?

13 LIABILITY FOR DAMAGE

14 DETENTION/CONFISCATION

14.1 Are there any rights to detain or sell the Aircraft pursuant to drug trafficking, tax or other laws or pursuant to rights of airport or air navigation authorities if the Airline fails to pay when due?
14.2 If so, can the Aircraft be forfeited and sold without the Owner being made aware?

15 SOVEREIGN IMMUNITY

15.1 Is any Airline based in the Relevant Jurisdiction entitled to any form of sovereign or other immunity from suit which might restrict the Owner's rights under the Lease?
15.2 Can such immunity be validly waived in advance by contract?

16 DISPUTE RESOLUTION AND RECIPROCAL ENFORCEMENT

16.1 Do the laws of the Relevant Jurisdiction permit and recognise an "asymmetric" submission to jurisdiction clause under which the lessee submits to the exclusive jurisdiction of the Courts of England but the Owner has discretion to choose a jurisdiction other than the Courts of England?
16.2 If the Lease is governed by English Law and a judgment is obtained by the Owner in the English courts, can that judgment be automatically enforced in the Relevant Jurisdiction or will the case have to be re-examined on its merits? If so what procedures must be complied with to enforce such a judgment?
16.3 Is the Relevant Jurisdiction party to the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention) or the 1965 Convention on the Settlement of Investment Disputes Between States and Nationals of Other States (the Washington Convention)? Will the courts of the Relevant Jurisdiction recognise and enforce a decision of an arbitrator?

17 AIRCRAFT ENGINES

17.1 If the equipment being leased to the Airline in the Relevant Jurisdiction was an Aircraft Engine either unattached to an airframe or attached to an airframe belonging to a party other than the Aircraft Engine Owner and being leased to the Airline under a separate engine lease agreement, would there be any significant changes to the responses set out above?
17.2 In particular, does the Relevant Jurisdiction recognise the separate ownership of the Aircraft Engine by the Aircraft Engine Owner when the Aircraft Engine is attached to an airframe belonging to a person other than the Aircraft Engine Owner?
17.3 Is there a register of Aircraft Engines and is the information given above in relation to registration of Aircraft and the ownership and leasing of Aircraft the same for registration of an Aircraft Engine and the ownership and leasing of such Aircraft Engine at the Aircraft Engine register?

18 ADDITIONAL INFORMATION – IS THERE ANYTHING ELSE WE SHOULD HAVE ASKED?
1. PROPOSED TRANSACTION STRUCTURE

The Aircraft will be purchased by the Owner and leased on an operating lease basis to the Airline pursuant to the Lease.

Is this is the usual structure for transactions of this nature in the Relevant Jurisdiction?

Yes.

2. SEARCHES

2.1 Are there any public registers in the Relevant Jurisdiction where a search can be carried out to determine whether an order or resolution for any bankruptcy, bankruptcy protection or similar insolvency proceedings has been registered in relation to the Airline?

Yes; all of the above information is published in the Official Gazette of the republic of Serbia and also on the website of the Serbian Business Registers Agency ("SBRA").

2.2 If so, specify which public registers, how long such searches typically take and if the fees are more than US$100, approximately what fees apply.

Both data published in the Official Gazette and data published by SBRA constitute publicly available and immediately accessible data for which no fees are charged.

3. RIGHTS AND EVIDENCE OF OWNERSHIP

3.1 In the case of the transfer of title to an aircraft registered in the Relevant Jurisdiction:

3.1.1 Is any particular form of transfer required for the transfer to be legally recognised?

When ownership rights and other property rights over an aircraft are acquired based on a legal transaction, such legal transaction will only produce effect if it is compiled in written form.

Ownership over an aircraft can also be acquired on the basis of a court decision, or other competent authority, on the basis of inheritance as well as on other basis as prescribed by the law.

The legal transaction must also be notarised by the notary public, both in case of ownership transfer and in case of lease.
3.1.2 Must any particular conditions be satisfied for the transfer to be recognised?

In addition to the above mentioned written form and notarisation, the aircraft must be inscribed into the Aircraft Registry ("AR"). Inscription in the AR has definitive effect as to ownership.

3.1.3 Will such a transfer still be recognised by the courts of the Relevant Jurisdiction as legally valid where the relevant aircraft is located in another jurisdiction at the time of the transfer?

Yes – this notwithstanding possible views of the court of foreign jurisdiction where the aircraft is located.

3.1.4 Are any duties, taxes or fees levied on such transfer of ownership?

Yes, such transfer is subject to VAT at a 20% rate. Also, such transfer is subject to notarisation and thus notarisation fee, which is dependent on the sale price. Change of ownership in the AR is subject to EUR 30 administrative fee.

3.2 Other than Insolvency laws (see section 9) are there any laws which may have the effect of defeating the Owner’s right in the aircraft – for example, Government requisition? Do the laws of the Relevant Jurisdiction provide for any compensation in such circumstances?

Expropriation cannot apply to aircraft. For the purpose of expropriation, the Expropriation Act applies to real estate and defines real estate as only “land and construction objects”.

However, in case the engine/aircraft is used to commit a criminal offense, according to the relevant provisions of the Criminal Proceedings Act it may be temporarily seized in criminal proceedings. The seized asset is returned upon completion of criminal proceedings, unless there are reasons stipulated by law for which the asset should be permanently seized i.e. protection of public safety and safeguarding of public morals.

According to the Serbian Air Traffic Act ("ATA"), the air traffic inspector is authorised to temporarily limit or prohibit the use of an aircraft/engine if such aircraft/engine does not comply with technical requirements and standards. The inspector is not, however, authorised to seize the aircraft/engine.

4. THE AIRCRAFT REGISTER - NATIONALITY OF AIRCRAFT

4.1 Has the Relevant Jurisdiction ratified any of:

The Chicago Convention of 1944 on International Civil Aviation?

Yes, deposited notification of adherence on 14 December 2000

The 1948 Geneva Convention on the International Recognition of Rights in Aircraft?
Yes.

The 1933 Convention for the Unification of Certain Rules Relating to the Precautionary Arrest of Aircraft?

No.

The 2001 Cape Town Convention on International Interests in Mobile Equipment and the associated Protocol on Matters Specific to Aircraft Equipment (the Cape Town Convention)?

No.

4.2 If the Relevant Jurisdiction has ratified the Cape Town, see the Cape Town Convention Annex.

N/A

4.3 If the Relevant Jurisdiction has not ratified the Cape Town Convention, has the Relevant Jurisdiction started official proceedings or given any other official indication that it will accede to or ratify the Cape Town Convention in the near future?

Not that we are aware of.

4.4 Is there an Aircraft Register in the Relevant Jurisdiction and if so, what is it called and who operates it?

Yes, there is an Aircraft Register in Serbia, it is called the Aircraft Register (Registar vazduhoplova) and it is operated by the Civil Aviation Directorate (“CAD”).

4.5 If so, in relation to registration:

4.5.1 Who is responsible for registering the Aircraft - is it an owner registry or an operator registry?

Only aircraft that are registered with the Aircraft Registry can be used in air traffic. The Aircraft is registered upon request of the owner or upon request of the user. When the user requests registration, it must first obtain authorisation from the owner of aircraft.

4.5.2 What details would normally be recorded on the Aircraft Register upon registration of an aircraft in the Relevant Jurisdiction?

Each aircraft has its own designated Registry section which includes the following three pages:
The Lease and Aircraft Mortgage are normally registered in the Aircraft Registry. However, the newly introduced changes to the Air Traffic Obligations and Property Rights Act ("ATOPRA") prescribe optional rather than mandatory registration of Lease.

4.5.3 If the Aircraft Register is an operator register, is it possible to record the details of the aircraft owner/lessor and any financier with an Aircraft Mortgage?

Details of the aircraft owner/lessor are normally recorded. Financier with an Aircraft Mortgage can be inscribed in the AR.

4.5.4 If the Aircraft Register is an owner register, is registration on the Aircraft Register definitive to determine ownership of the Aircraft?

Ownership title over an aircraft is acquired by inscription of aircraft in the AR. The AR constitutes a public register, consequently there is the presumption that all data included in the AR is correct. This presumption may only be rebutted before the court in Serbia.

4.5.5 Are any distinctions made between aircraft employed on international routes and those used purely for domestic flights?

In relation to registration no distinction is made between aircraft employed on international routes and those used purely for domestic flights.

4.6 What documents and/or consents are required to obtain registration on the Aircraft Register and will these require any formalities (for example, notarisation, legalisation or application of apostille)?

In order to obtain registration on the Aircraft Register, in addition to information provided in the designated form (please see answer under 4.5.2) the following documents are required:

1. Excerpt from the business registry for the owner/user/person filing the form;
2. Evidence of ownership or evidence of usage rights.

4.7 Are there any restrictions on the legal status and/or nationality/domicile of parties seeking to register an aircraft on the Aircraft Register?
According to the ATA an aircraft may be registered in the AR if the aircraft is not inscribed in a foreign aircraft register, if it fulfills the conditions set forth in the certificate on type of aircraft, and if it is able to participate safely in air traffic, provided that:

1. partial or whole owner of aircraft is the Republic of Serbia, or is a legal person or an entrepreneur registered in Serbia;
2. partial or whole owner of aircraft is a citizen of the Republic of Serbia having domicile in Serbia or outside of Serbia, under the condition that the habitual base of the aircraft is located in the Republic of Serbia;
3. user of aircraft is a legal person, entrepreneur or a physical person having seat or domicile in the Republic of Serbia

Where owner or user of aircraft is a foreign physical or legal person, the aircraft may be registered only upon prior consent for registration obtained from the Ministry of Construction, Traffic and Infrastructure.

Where an aircraft has been deleted from a foreign registry for the purpose of registration with the AR, the request for registration must be accompanied by the aircraft export certificate of airworthiness issued by the authorities of the state of origin or by an aircraft airworthiness certificate issued by the Directorate based on a basic aircraft check-up.

4.8 In respect of aircraft transactions connected with the Relevant Jurisdiction generally, are there any foreign Aircraft Registers that are commonly used, or should be considered, as alternatives to or in addition to registration with the Relevant Jurisdiction's Aircraft Register?

No.

If so, what is benefit of such registration?

N/A

4.9 Are there any other filings or registrations necessary or desirable (other than the registrations already mentioned and Lease Registration - see section 6) in the Relevant Jurisdiction in order to ensure the validity, priority or enforceability of the transaction documents, or to perfect the interests of the Owner in the Aircraft or the transaction documents?

No.

5. LEASES

5.1 Will the Relevant Jurisdiction recognise the concept of a lease over an aircraft?
Yes.

5.2 Would the choice of English law to govern the Lease be upheld as a valid choice of law in any action in the Relevant Jurisdiction?

Yes.

5.3 Must the Lease be in a particular form if it is to be valid and enforceable in the Relevant Jurisdiction (for example, must it be in the language of the Relevant Jurisdiction or be notarised, legalised or have the apostille applied)?

The lease must be in written form and notarised by a Serbian notary, hence also in Serbian language.

Also, before taking an aircraft on lease, a domestic operator must first obtain a permission from the CAD for the conclusion of the lease agreement.

Where a domestic operator leases an aircraft to a foreign operator, the CAD permission is necessary only if the aircraft is leased with the crew. If a domestic operator leases to a foreign operator an aircraft without the crew, the domestic operator is only required to inform the CAD of the lease.

5.4 If the Lease must be in the language of the Relevant Jurisdiction, is it possible under the Relevant Law also to have an English version, and to provide that the English version should prevail in case of conflict with the Relevant Jurisdiction language version?

It is possible under Serbian law to also have an English version.

It is possible to provide that the English version should prevail. However, please note that, in case of interpretation of the Lease before Serbian courts, the English version (i.e. the prevailing one) will first need to be translated into Serbian for the Serbian court to be able to interpret it. In this scenario, it is questionable whether the nuances in the English language would be reflected in the Serbian translation.

5.5 Are there any special terms that the Lease must contain or that it is advisable for the Lease to contain?

The lease must contain the following mandatory elements:

1. Subject of lease;
2. Rent;
3. Type of lease;
4. Terms of maintenance and usage of aircraft; and
5. Supervision over aircraft usage.

5.6 Are there any circumstances under which the Lease might be re-
characterised under the laws of the Relevant Jurisdiction as:

5.6.1 a secured loan?

Yes - if it does not contain all of the terms listed under 5.5 above and provides for extension of finance in such a way that the lease can be interpreted as provision of security

5.6.2 a finance (or capital) lease?

Yes - if it contains a clause providing for transfer of ownership over the aircraft

6. LEASE REGISTRATION

6.1 Is there a separate register for aircraft leases in the Relevant Jurisdiction?

There is no separate register for aircraft leases, but the lease can be registered within the general registration of aircraft (under the section “usage rights”).

6.2 If yes, then:

6.2.1 What documentation and/or consents are required for the registration of the Lease?

The lease agreement must be submitted along with the registration application in order to provide evidence for the registered usage rights.

6.2.2 What registration fees are payable (if any)?

N/A

6.2.3 What information is recorded on the register? How is the eventual discharge of the Lease recorded?

The only data that is registered is the name of the lessee with the accompanying lease agreement.

6.2.4 Does any registration in respect of the Lease remain valid throughout the tenure of the Lease or does such a registration require periodic renewal?

It does not require periodic renewal.

If renewal is required when must this be done and what is the approximate cost of renewal?
7. ENFORCEMENT OF LEASES (ASSUMING AIRLINE IS NOT IN A FORM OF INSOLVENCY PROTECTION)

7.1 On the occurrence of an event of default under the Lease, assuming that the Owner is permitted to do so under the terms of the Lease, can the Owner terminate the Leasing of the Aircraft under the Lease and enforce the Lease by taking physical possession of the Aircraft?

The Owner must first terminate the Lease Agreement, thus depriving the Lessee of legal basis for its possession. However, the owner may not take possession of the aircraft by means of self-help. Self-help remedies are only available to the holder of the asset (presumably in this case the lessee) if there is an immediate, unauthorised assault against the asset, such as attempt by third parties to steal the engine or damage it. In order to be permitted, self-help needs to be necessary and proportionate to the circumstances and to the imminent peril.

In fact, in case of breach of above limits of permitted self-help, the lessor may be held criminally liable for vigilantism and charged with a monetary fine or imprisonment of up to one year.

In addition, ownership over an aircraft (and, if registered, lease of an aircraft) are information registered in the AC being a public registry. In respect of any information inscribed in a public registry, there is a presumption that such information is valid and that third parties are aware of them.

7.2 If so, can the Owner take physical possession of the Aircraft without the need for judicial proceedings in the Relevant Jurisdiction?

No. Please see answer under 7.1 above.

7.3 Where judicial proceedings in the Relevant Jurisdiction are necessary, please provide details of the proceedings, in particular:

7.3.1 What documents would the Owner as lessor need to present in order to obtain possession of the Aircraft, both before and subsequent to judgment? Can documents be copies?

The Owner as lessor would need to provide an original excerpt from the relevant registry demonstrating its ownership title over the aircraft, notarised if applicable to the country of origin, and accompanied by a certified translation in Serbian. The Owner as lessor would possibly be required to submit certified copies of documents based on which it acquired the ownership over the aircraft – purchase agreement and the like.

7.3.2 What is the approximate cost of issuing proceedings?

The Serbian court will request payment of the court fees stipulated by the Court Fees Act (“CFA”). In addition to
potential obligation of the plaintiff to post a bond, the plaintiff is obliged to pay the court fees for filing the legal action and for issuing the first instance judgment. Other fees (e.g. fee for filing the appeal, for proposing expert witness etc.) will be incurred by the party which undertakes/requests such evidence. The amount of court fees depends on the value of the case, but there are limitations.

Likely legal costs in litigation include:

- the first instance court fees of up to RSD 390,000 (approx. EUR 3,400) for filing the claim plus RSD 390,000 (approx. EUR 3,400) for issuing the first instance judgment
- the second instance court fees of up to RSD 390,000 (approx. EUR 3,400) only in case of filing the appeal against the first instance judgment, and in that event it is necessary to pay additional RSD 390,000 (approx. EUR 3,400) for issuing the second instance judgment + RSD 195,000 (approx. EUR 1,700) only in case for filing legal response against the appeal;
- enforcement proceedings fees of up to RSD 195,000 (approx. EUR 1,700) for filing the enforcement proposal plus RSD 195,000 (approx. EUR 1,700) for issuing first instance enforcement decision;
- the third instance court fees of up to RSD 780,000 (approx. EUR 6,700) only in case of filing the extraordinary appeal against the first instance judgment, and in that event it is necessary to pay additional RSD 1,170,000 (approx. EUR 10,000) for issuing the third instance judgment + RSD 195,000 (approx. EUR 1,700) only in case for filing legal response against the extraordinary appeal;
- costs of expert opinions and any other evidence – to be incurred by the party requesting such evidence; and
- (potentially significant) attorneys’ fees.

7.3.3 Would the Owner be required to provide a bond, guarantee or other security in order to issue proceedings?

A foreign lessor is free to utilize the Serbian courts only if the lessee has its registered seat in Serbia. If this condition is satisfied, the lessor can bring proceedings before the Serbian courts.

Once the lessor brings proceedings before the Serbian courts, it may be required to post a bond. The obligation to post a bond is excluded where there is reciprocity with the State of registered seat of the lessor. This is true if the State of the lessor is signatory to:

1. a bilateral treaty with Serbia; or
2. the Hague Convention on Civil Procedure (1 March 1954); or

If neither 1), 2) or 3) is satisfied (which is the case with both the Republic of Ireland and the United States), an opinion may be requested from the Serbian Ministry of Justice regarding existence of formal or factual reciprocity. If the obtained opinion is positive, the lessor cannot be obliged to post a bond when bringing proceedings before Serbian courts.

If there is no reciprocity, the lessor may be ordered by the court to post a bond as security for potential damage which the Serbian defendant might incur through litigation. The court order is not ordered automatically, rather, it may only be issued upon request of the Serbian defendant. If the lessor fails to post a bond within the deadline set by the court order, the claim will be considered withdrawn. Please note that, if the parties explicitly agreed on exclusive competence of a foreign court (e.g. New York or Ireland), then the Serbian court may, upon objection of the defendant, find that it is not competent to hear the
dispute and dismiss the lessor's claim.

7.3.4 What is an estimate of the normal duration of possession proceedings from time at which all required documentation is made available – if uncontested?

Time scale of proceedings cannot be predicted in exact terms. However, assuming that the proceedings end in the first instance, the very minimum (and unlikely) time scale is approximately 6 months for obtaining the first instance judgement.

Please note that, regardless of the type of breach or likelihood of success, under Serbian law a party may only give up its right to appeal after the first instance decision has already been rendered.

7.3.5 What is an estimate of the normal duration of possession proceedings from time at which all required documentation is made available – if contested?

Time scale of proceedings depends largely on whether the dispute revolves around legal or factual issues. Proceedings may be significantly prolonged and the exact time scale cannot be predicted with certainty.

If only legal issues are a matter of dispute, and assuming that the proceedings end in the first instance, the very minimum (and unlikely) time scale is approximately six months for obtaining the first instance judgement. It is more likely, however, that proceedings are prolonged, often significantly. In case of dispute on facts and, consequently, drawing of evidence, the likely time scale for first instance proceedings is prolonged by at least additional six months to one year.

The minimum timescale for obtaining a second instance judgement is approximately nine months to one year.

The time scale for third instance proceedings varies depending on the extraordinary remedy, but is likely to last one year at the very minimum.

7.4 Where judicial proceedings are not necessary, please comment on the time limits relevant to taking possession of the Aircraft, in particular:

7.4.1 Is there a waiting period before action may be taken?

N/A

7.4.2 Is there a long stop date by which action must be taken?

N/A

7.4.3 Is a Public Auction of the aircraft required?

N/A
7.5 Apart from the judicial proceedings described above and ignoring deregistration (see section 8), is the permission of any other party (including any official body) in the Relevant Jurisdiction required to take possession of the Aircraft?

No.

7.6 Is there any history of actual repossession of aircraft by Owners in the Relevant Jurisdiction?

No. If so, please provide details of any matters or issues of which an Owner should be aware.

7.7 Are there any circumstances in which the sums expressed to be payable under the Lease or obligations expressed to be assumed by the Airline in the Lease are or will be unrecoverable or unenforceable in the Relevant Jurisdiction?

Other than in bankruptcy, it is highly unlikely that the sums expressed to be payable under the Lease/obligations expressed to be assumed by the Airline in the Lease would be unrecoverable or unenforceable in Serbia.

However, where the Lessee is a wholly or a predominantly State-owned company, there is a theoretical risk that, upon completion of judicial proceedings in favour of the Owner, the sums owned under the Lease may still be unrecoverable – all this based on a regulation entitling the Government to block payments from the state treasury, even where there is a court decision regarding payment.

7.8 Are there any restrictions on the ability of the Owner to sell the Aircraft in the Relevant Jurisdiction during the term of the Lease or, following an event of default, on termination of the leasing or pending judicial enforcement of the Lease?

In accordance with the ATOPRA, a statutory pledge is established over an aircraft, for the purpose of securing:

1. expenses incurred by creditors in enforcement proceedings seeking to settle their claims against the aircraft;
2. remuneration for provided services of search and salvation of aircraft; and
3. extraordinary expenses incurred for aircraft maintenance.

Holder of a statutory pledge over an aircraft is entitled to request inscription of its pledge in the Registry of Pledges kept with the SBRA. According to the ATOPRA, its claim will rank in priority to all other claims against the aircraft.

In addition to the specific provisions of the ATOPRA that apply to aircraft, the general provisions of the Obligations Act (“OA”) provide for two types of statutory liens that may apply to the engine:
1) Retention rights
Any creditor holding a claim that has fallen due, having in its possession an asset of the debtor, may retain the asset of the debtor as security for its claim. Where the debtor has become insolvent, retention rights may be exercised even if the claim is not yet due.

If the creditor is provided with other type of security, it automatically loses its retention rights over the asset of the debtor. Otherwise, the creditor may settle its claim in the same way as a pledgee would – from the sale proceeds of the asset. However, the creditor must inform the debtor of the planned sale in due time.

2) Statutory pledge of service provider
According to the relevant provisions of the OA, the service provider in a service agreement (ugovor o delu) holds a pledge over the manufactured or repaired asset, as security for remuneration for the work done and cost of the material used, as well as for other contractual claims related to such asset. The pledge is effective so long as the service provider willingly keeps the asset in its possession.

7.9 Are there any export restrictions on export of a repossessed aircraft?
No, there are no export restrictions on export of a repossessed aircraft.

8. DEREGRINATION POWER OF ATTORNEY/EXPORTATION

8.1 Can the Owner apply for deregistration of the Aircraft either at the end of the lease term or following successful repossession (with or without judicial proceedings) and is there any time period within which such application should be made?

The owner can apply for deregistration of the Aircraft and there is no time period within which such application should be made.

8.2 Is the consent of the Airline required to deregister the Aircraft either by law or as a matter of custom or practice?

Yes, both the owner and the user i.e. Airline need to provide their consents for the aircraft to be deregistered.

8.3 How long does deregistration take, both where there is co-operation from the Airline and where this is no co-operation from the Airline?

Deregistration normally takes up to seven days from the moment the request is submitted. Deregistration is not possible if there is no consent of Airline.

8.4 Is it possible to obtain an export licence or export permit in advance?

There is no export licence or permit, but export customs documents can be obtained in advance.
8.5 Approximately how long does it take to obtain an export licence or export permit? What are the costs involved?

Export customs documents can usually be obtained in just a few days. Costs involve freight agent costs and minor customs administrative fees.

8.6 Is it possible to obtain a certificate of deregistration in advance?

No.

8.7 Will a power of attorney empowering the Owner to deregister and export the Aircraft from the Relevant Jurisdiction, either at the end of the lease term or following successful repossession (with or without judicial proceedings), be enforceable in the Relevant Jurisdiction? Will the courts recognise a power of attorney in the form of an IDERA and governed by English law?

There is no provision in the Serbian mandatory rules, which would preclude (an irrevocable) export and deregistration Power of Attorney from producing effect. However, a Power of Attorney does not constitute an enforceable title under the Enforcement and Security Act ("ESA"). This means that refusal by the lessee to comply with the Power of Attorney/hand over the aircraft would not prevent regular litigation proceedings and would not provide the lessor with any additional protection/summary procedure.

Similarly, there is no provision in the Serbian mandatory rules, which would preclude the courts from recognising a power of attorney in the form of an IDERA and governed by English law.

8.8 If the power of attorney was stated to be irrevocable would this be enforceable against the Airline or can the Airline revoke such power of attorney?

Please see answer under 8.7 above.

8.9 Upon the occurrence of a bankruptcy or insolvency of the Airline is the power of attorney still effective?

Yes.

9. INSOLVENCY

9.1 In the event that the Airline were to become insolvent either on a balance sheet basis (assets less than liabilities) or unable to pay debts as fall due:

9.1.1 Would the airline be required to file for insolvency protection?
The airline would not be required to file for insolvency protection. However, insolvency would likely be instigated by any one of the creditors or by the liquidation manager where liquidation is not successful or by the airline itself but only as a discretionary right.

9.1.2 Do the available forms of insolvency protection in the Relevant Jurisdiction involve the appointment of either an officer of the court or a specifically court appointed official to take control of the Airline (an Insolvency Official) while in insolvency protection?

Yes, the court appoints an Insolvency Administrator which replaces the management of the Airline while the airline is in insolvency. This applies to both forms of insolvency in Serbian law: reorganisation as well as bankruptcy.

9.1.3 Does the Insolvency Official have authority to negotiate and reach agreement with the Owner in relation to matters such as the payment of unpaid rent, continuation or termination of the Lease and repossession of the Aircraft without the need for court approval?

In commercial transactions an Aircraft has the status of real estate. In this sense, the Lease continues to produce effect upon opening of insolvency while the Owner can only settle its claims that arose prior to insolvency, within insolvency proceedings.

The Insolvency Administrator is entitled to terminate the Lease with 30 days’ notice, regardless of the terms of the Lease. In this case, the Owner would be entitled to claim damages, but only up to the amount of half year rent.

If the Lease remains, then the Insolvency Administrator has to settle its obligations arising therefrom, while the claims against the Airline arising from the Lease will be considered as claims against the insolvency pool of assets.

9.1.4 Does the commencement of insolvency protection involving the appointment of an Insolvency Official in the Relevant Jurisdiction have the effect of prohibiting the Owner from taking the following actions to enforce the lease after commencement of such protection:

- Applying any security deposit held by the Owner against any unpaid amounts due under the Lease? No.
- Accepting payment of rent or other lease payments from:
  1. (i) the Airline? No, if such payment is made by the Insolvency Administrator
  2. (ii) a guarantor? No
  3. (iii) a shareholder? No
- giving notice of default under the lease? Yes, if due to default by Airline upon opening of insolvency proceedings.
- obtaining a judgment or arbitral award for unpaid lease payments? Yes.
- giving notice to terminate the leasing of the Aircraft? Yes, if the Owner wishes to terminate due to
default of Airline that took place upon opening of insolvency proceedings.

- **exercising rights to repossess the Aircraft?** No, under the condition that the repossession is carried out within insolvency proceedings.

### 9.1.5 Can the commencement of Insolvency Proceedings have retrospective effect in relation to any such actions taken before commencement? If so, for what period can there be a look back?

The commencement of Insolvency Proceedings can have a claw-back effect if the actions taken before commencement: 1) can be qualified as detrimental to other creditors/privileging the Owner; and 2) if they fall within the prescribed time window for claw-back.

Commercial transactions and other commercial actions concluded or undertaken prior to the opening of insolvency, which jeopardise the pari passu settlement of/cause damages to insolvency creditors, as well as commercial transactions and other actions privileging certain creditors, may be rebutted for the Airline by the Insolvency Administrator.

### 9.1.6 Is there, either under law or as a matter of practice in the Relevant Jurisdiction, a period of time within which the Insolvency Official will either “adopt” the lease and pay rent and other lease payments as an expense of the insolvency or “reject” the lease and permit the Owner to enforce such rights as it may have under the lease?

The Insolvency Administrator is entitled to terminate the Lease with 30 days’ notice, regardless of the terms of the Lease. In this case, the Owner would be entitled to claim damages, but only up to the amount of half year rent.

### 9.1.7 If the Lease remains, then the Insolvency Administrator has to settle its obligations arising therefrom, while the claims against the Airline arising from the Lease will be considered as claims against the insolvency pool of assets. If the lease is “adopted” will the Insolvency Official also pay any unpaid lease payments due as at commencement of the insolvency protection?

Please see answer under 9.1.6 above

### 9.1.8 If not or if the lease is “rejected”, would the Owner’s claim for any outstanding sums rank equally with other ordinary unsecured creditors of the Airline?

Yes.

### 9.1.9 Are there certain types of preferred creditors whose claims will rank above claims of the Owner?
Lessor’s monetary claim towards the lessee ranks behind expenses of insolvency proceedings, obligations of the insolvency asset pool (e.g. employee claims) and secured creditors.

In relation to the asset – no claims rank in priority to the lessor if the lessor is the owner of the asset. The owner is not considered to be an insolvency creditor. It is entitled to request that the asset be excluded from the insolvency pool of assets. However, if its ownership title is disputed, the lessor must provide the excerpt from the Aircraft Registry and evidence its ownership title before courts in Serbia.

9.1.10 If the Aircraft is in the possession of a person other than the Airline at the commencement of Insolvency Protection of the Airline, for example an independent maintenance facility, will such person be entitled, under the laws of the Relevant Jurisdiction, to assert a lien arising under law or contract over the Aircraft in respect of amounts then due and unpaid to such person by the Airline?

In addition to the specific provisions of the ATOPRA that apply to aircraft (please see answer under 7.8 above), the general provisions of the OA provide for two types of statutory liens that may apply to the engine:

1. **Retention rights**
   Any creditor holding a claim that has fallen due, having in its possession an asset of the debtor, may retain the asset of the debtor as security for its claim. Where the debtor has become insolvent, retention rights may be exercised even if the claim is not yet due.
   If the creditor is provided with other type of security, it automatically loses its retention rights over the asset of the debtor. Otherwise, the creditor may settle its claim in the same way as a pledgee would – from the sale proceeds of the asset. However, the creditor must inform the debtor of the planned sale in due time.

2. **Statutory pledge of service provider**
   According to the relevant provisions of the OA, the service provider in a service agreement (govor o delu) holds a pledge over the manufactured or repaired asset, as security for remuneration for the work done and cost of the material used, as well as for other contractual claims related to such asset. The pledge is effective so long as the service provider willingly keeps the asset in its possession.

9.1.11 Is a person other than the Airline, for example an airport authority, entitled under the laws of the Relevant Jurisdiction to seize possession of the Aircraft after commencement of Insolvency Protection and assert a lien arising under law or contract over the Aircraft in respect of amounts then due and unpaid to such person by the Airline?

In addition to retention rights set forth under 9.1.10 above, in accordance with the ATOPRA, a statutory pledge is established over an aircraft, for the purpose of securing:

1. expenses incurred by creditors in enforcement proceedings seeking to settle their claims against the aircraft;
2. remuneration for provided services of search and salvation of aircraft; and
3. extraordinary expenses incurred for aircraft maintenance.
Holder of a statutory pledge over an aircraft is entitled to request inscription of its pledge in the Registry of Pledges kept with the SBRA. According to the ATOPRA, its claim will rank in priority to all other claims against the aircraft.

10. TAXATION

10.1 The decision to lease to an airline in the Relevant Jurisdiction assumes that the Owner will not be taxed on receipt of rentals or other payments (including maintenance reserves) under the Lease except by way of tax on its general income, profits or gains payable by the Owner in its place of incorporation or place of main business (if different). Will there be a requirement for the Owner to pay tax in the Relevant Jurisdiction on lease payments on basis that either the Owner is subject to taxation in the Relevant Jurisdiction by reason only of the leasing of the Aircraft under the Lease and is required to make payment itself; or payment of such tax is by way of the airline being required to withhold and account for tax from lease payments, where:

10.1.1 the Owner is incorporated and is tax resident in Ireland?

DTT – Yes.

The applicable DTT treats income from lease of aircraft as income from performing international traffic, if an aircraft is leased without crew and fuel, while the leasing represents Lessor's auxiliary business activity. Such income is taxable only in Ireland. The Lessor must prove it is an Irish resident prior to lease payment by the Lessee, otherwise, general 20% WHT rate will apply instead.

Provided that the Owner is a non-resident, and that no PE was constituted in Serbia, the Owner is not subject to the Serbian Corporate Income Tax (“CIT”) on the lease income received from Serbia. Principally, a lease of an aircraft itself does not constitute a PE. Still, if the Owner has a branch or constitutes a PE in Serbia, withholding tax (“WHT”) will not apply on lease payments, but CIT will apply instead.

10.1.2 the Owner is incorporated and is tax resident in the United Kingdom?

DTT – Yes.

The applicable DTT treats income from lease of commercial equipment as royalties subject to a 10% WHT in Serbia, provided that a lessor is the beneficial owner of such income. The Lessor must prove it is a UK resident prior to lease payment by the Lessee, otherwise, general 20% WHT rate will apply instead.

Provided that the Owner is a non-resident, and that no PE was constituted in Serbia, the Owner is not subject to the CIT on the lease income received from Serbia. Principally, a lease of an aircraft itself does not constitute a PE. Still, if the Owner has a branch or constitutes a PE in Serbia, WHT will not apply on lease payments, but CIT will apply instead.
10.1.3 the Owner is incorporated and is tax resident in Hong Kong?

DTT – No.

Lease payments are subject to a special 25% WHT rate.

Provided that the Owner is a non-resident, and that no PE was constituted in Serbia, the Owner is not subject to the CIT on the lease income received from Serbia. Principally, a lease of an aircraft itself does not constitute a PE. Still, if the Owner has a branch or constitutes a PE in Serbia, WHT will apply in the moment of lease payment.

10.1.4 the Owner is incorporated and is tax resident in Singapore?

DTT – No.

Lease payments are subject to a general 20% WHT rate.

Provided that the Owner is a non-resident, and that no PE was constituted in Serbia, the Owner is not subject to the CIT on the lease income received from Serbia. Principally, a lease of an aircraft itself does not constitute a PE. Still, if the Owner has a branch or constitutes a PE in Serbia, WHT will not apply on lease payments.

10.1.5 the Owner is incorporated and is tax resident in Malta?

DTT – Yes.

The applicable DTT treats income from lease of commercial equipment as royalties subject to a 10% WHT in Serbia, provided that a lessor is the beneficial owner of such income. The Lessor must prove it is a resident of Malta prior to lease payment by the Lessee, otherwise, general 20% WHT rate will apply instead.

Provided that the Owner is a non-resident, and that no PE was constituted in Serbia, the Owner is not subject to the CIT on the lease income received from Serbia. Principally, a lease of an aircraft itself does not constitute a PE. Still, if the Owner has a branch or constitutes a PE in Serbia, WHT will not apply on lease payments, but CIT will apply instead.

10.1.6 the Owner is incorporated and is tax resident in the Channel Islands?

DTT – No.

Lease payments to residents of Guernsey and Jersey are subject to a special 25% WHT rate.

Provided that the Owner is a non-resident, and that no PE was constituted in Serbia, the Owner is not subject to the CIT on the lease income received from Serbia. Principally, a lease of an aircraft itself does not constitute a PE. Still, if the Owner has a branch or constitutes a PE in Serbia, WHT will apply in the moment of lease payment.

10.1.7 the Owner is incorporated and is tax resident in the Isle of Man?
DTT – No.

Lease payments are subject to a special 25% WHT rate.

Provided that the Owner is a non-resident, and that no PE was constituted in Serbia, the Owner is not subject to the CIT on the lease income received from Serbia. Principally, a lease of an aircraft itself does not constitute a PE. Still, if the Owner has a branch or constitutes a PE in Serbia, WHT will apply in the moment of lease payment.

10.1.8 the Owner is incorporated and is tax resident in Mauritius?

DTT – No.

Lease payments are subject to a special 25% WHT rate.

Provided that the Owner is a non-resident, and that no PE was constituted in Serbia, the Owner is not subject to the CIT on the lease income received from Serbia. Principally, a lease of an aircraft itself does not constitute a PE. Still, if the Owner has a branch or constitutes a PE in Serbia, WHT will apply in the moment of lease payment.

10.1.9 the Owner is incorporated and is tax resident in Bermuda?

DTT – No.

Lease payments are subject to a special 25% WHT rate.

Provided that the Owner is a non-resident, and that no PE was constituted in Serbia, the Owner is not subject to the CIT on the lease income received from Serbia. Principally, a lease of an aircraft itself does not constitute a PE. Still, if the Owner has a branch or constitutes a PE in Serbia, WHT will apply in the moment of lease payment.

10.1.10 the Owner is incorporated and is tax resident in the Cayman Islands?

DTT – No.

Lease payments are subject to a special 25% WHT rate.

Provided that the Owner is a non-resident, and that no PE was constituted in Serbia, the Owner is not subject to the CIT on the lease income received from Serbia. Principally, a lease of an aircraft itself does not constitute a PE. Still, if the Owner has a branch or constitutes a PE in Serbia, WHT will apply in the moment of lease payment.

10.2 If there is a requirement in the Relevant Jurisdiction for the airline to withhold tax on lease payments, will the courts of the Relevant Jurisdiction recognise and permit enforcement of a “gross up” clause in the Lease requiring the payment by the Airline of an additional sum to ensure the
Owner receives and is entitled to retain the same net amount as would have been received in the absence of the withholding, taking account of any further withholding on account of tax required in relation to such additional sum.

The Owner (Lessor) will be subject to a WHT on lease of movable assets. The WHT is usually calculated and paid (deducted) by the income payer (Lessee). Exceptionally, if the Lessee is not required to calculate and pay WHT, the Owner is required to file a tax return in Serbia, at the place of Lessee's registered seat, via a tax proxy within 30 days from the receipt of lease payment, where upon the decision of the Tax Authority on the amount of the tax liability, the Owner will be required to pay taxes in Serbia.

The “gross up” clause is not only recognised and enforceable in Serbia, as a part of contract price determination, but in order for the income recipient (Lessor) to retain the agreed upon net amount, it is also highly recommended to implement an “extended gross up” clause, which would shift the burden to the payer of income (Lessee) of any VAT, WHT, customs and stamp duties, any other fiscal or para-fiscal charges, and any other tax, duty or charge that may be introduced in the future, including any increase in existing taxes, duties or charges.

10.3 Will the importation of the Aircraft into the Relevant Jurisdiction and/or the leasing of the Aircraft to the Airline give rise to any VAT, sales or use tax or any customs, import or excise duties? Are there any other applicable taxes, for example stamp duties and documentary taxes? Does VAT apply on a sale of an aircraft leased to an airline in the Relevant Jurisdiction between Two aircraft lessors with the sale expressly subject to the lease?

Serbian VAT at a 20% rate would apply on importation or leasing of an aircraft in Serbia. If a non-resident Lessor does not have a branch, a PE or a tax proxy in Serbia, Lessee would apply the reverse charge mechanism, but would not be entitled to deduct input VAT. However, if an aircraft is leased for use in international traffic, such lease would be VAT free.

If an aircraft is used for personal transportation, amateur or sports flying, such use would give rise to a special Aircraft Usage Tax, which is payable by the aircraft user (Lessee).

Importation of an aircraft is subject to a customs duty at a rate of 1%. Zero rate applies for importation from EU Member States, CEFTA states, Russia, etc. Freight agent charges and minor customs administrative fees may apply as well.

Sale of an aircraft located in Serbia between two non-resident Lessors may trigger VAT.

10.4 Is any stamp duty, notarial or other fee or equivalent payable in respect of the execution of the Lease, a de-registration power of attorney or any other lease related document concerning the aircraft? Will such stamp duty or fee still be payable if the relevant documents are executed and held outside the Relevant Jurisdiction? If any such amount is payable how much is it approximately?
It is recommended to notarise the Aircraft Lease Agreement in Serbia, as for non-tax purposes an aircraft is treated as an immovable asset. The amount of a notarial fee is dependent on the value of the agreement.

In addition, if the Lessor chooses to register the lease agreement with the AR, additional fee of RSD 150,000 would apply.

10.5 Can any form of consent, authorisation or licence be obtained exempting the payments referred to in this Section from such tax or duty? If so, how would it be obtained?

N/A

10.6 Ignoring any taxation consequence already mentioned and any potential taxation issues if the Owner has any other connection to the Relevant Jurisdiction, is there any other Relevant Jurisdiction taxation consequence of the Owner:

10.6.1 being owner and lessor of an aircraft registered in the Relevant Jurisdiction and operated/leased by a company incorporated or registered in the Relevant Jurisdiction?

All payments from the Lessee to the Lessor are subject to Serbian transfer pricing rules. A Lessor is considered a related party:

1. if it (in)directly holds or controls at least 25% of the Lessor’s shares or voting rights in the Lessee, or
2. if it has the same legal entities or individuals participating in control, management or capital of both the Lessee and the Lessor in the same percentage, or
3. if it is a non-resident legal entity from a preferential tax jurisdiction (“tax heaven”), irrelevant of the percentage.

10.6.2 making available a lease facility to a company incorporated or regulated in the Relevant Jurisdiction?

WHT on interest payments, transfer pricing and thin capitalisation rules may be applicable to a lease facility provided by a non-resident.

10.6.3 The Serbian thin capitalisation rules specify that interest and related costs in connection with a loan from a related party exceeding 4:1 debt-to-equity ratio (10:1 for banks and financial leasing companies) will not be deductible for tax purposes. Receiving rent and other lease payments under the Lease from the lessee incorporated or registered in the Relevant Jurisdiction?

N/A
Export of an aircraft is principally not subject to any taxes or customs export duties. Freight agent charges and administrative fees may apply.

10.6.5 Selling the aircraft at a profit, whether such sale is after repossession or is subject to the Lease and the lessee’s rights?

Selling of an aircraft in Serbia is subject to VAT. Hence, selling an aircraft by the Lessor after repossession in Serbia may trigger VAT and raise some tax issues for the Lessor.

In addition, if the VAT does not apply, RETT at a rate of 2.5% may be applicable instead. In such a case, the seller is obliged to file a tax return via a tax proxy and pay the RETT.

**11. EXCHANGE CONTROLS**

11.1 Are payments to foreign owners by companies incorporated or registered in the Relevant Jurisdiction subject to any form of exchange or similar control?

In principle, payments to non-residents are free of any restrictions.

11.2 If yes, can any consents, authorisations or licences be obtained to exempt payments from any such control? How would these be obtained? Are such consents, authorisations or licences transferable?

N/A

**12. INSURANCE**

12.1 Is it a legal requirement to insure the Aircraft within the Relevant Jurisdiction?

Yes, the Mandatory Insurance Act and the ATA require mandatory insurance of an aircraft. Also, based on information obtained from the CAD, the only form of mandatory insurance is the insurance of the aircraft against potential damages incurred by third parties.

12.2 If so, is there any restriction on reinsurance of the primary insurance outside the Relevant Jurisdiction?

Yes, the primary insurance must first be reinsured with a local insurer prior to any further reinsurance outside Serbia.

12.3 Is there a minimum percentage of cover which a local insurer is obliged
to retain, and if so, what is it?

The regulations are not clear on this point, but it appears that there is no minimum percentage of cover which a local insurer is obliged to retain.

12.4 Is it possible for local insurers to assign contracts of reinsurance? If not, is a cut-through clause enforceable?

It is possible for local insurance to assign contracts of reinsurance. There is no explicit provision in the Serbian mandatory rules rendering a cut-through clause unenforceable.

13. LIABILITY FOR DAMAGE

Can the Owner be strictly liable - liable without a requirement to prove fault or negligence - for any damage or loss caused by the Aircraft assuming Owner is an innocent owner with no operational control of the Aircraft? There are no provisions of Serbian law that explicitly prescribe cases in which an owner of an aircraft would be held strictly liable for a claim arising out of the use and operation of Aircraft by the Airline.

However, the risk cannot be entirely excluded because, in certain cases, it appears that the carrier could be partly or fully exonerated by proving liability of third parties (presumably, Aircraft Owner).

According to the relevant provisions of the Montreal Convention (Unification of Certain Rules for International Carriage by Air – Montreal, 28 May 1999) and the corresponding provisions of the ATOPRA, the carrier which already paid damages to incurred by claimants due to failure to board, delay, or flight cancellation, is still entitled to fully or partly exonerate itself by proving liability of third parties. Although the risk appears to be minimal, it can be contemplated that, in a particular situation, the airline company would reclaim damages paid to claimants by proving exclusive liability of the Aircraft owner.

14. DETENTION/CONFISCATION

14.1 Are there any rights to detain or sell the Aircraft pursuant to drug trafficking, tax or other laws or pursuant to rights of airport or air navigation authorities if the Airline fails to pay when due?

In case the Aircraft is used to commit a criminal offense, according to the relevant provisions of the Criminal Proceedings Act it may be temporarily seized in criminal proceedings. The seized asset is returned upon completion of criminal proceedings, unless there are reasons stipulated by law for which the asset should be permanently seized i.e. protection of public safety and safeguarding of public morals.

According to the ATA, the air traffic inspector is authorised to temporarily limit or prohibit the use of an aircraft/engine if such aircraft/engine does not comply with technical requirements and standards. The inspector is not, however, authorised to seize the aircraft/engine.

14.2 If so, can the Aircraft be forfeited and sold without the Owner being made aware?
The seized asset is returned upon completion of criminal proceedings, unless there are reasons stipulated by law for which the asset should be permanently seized i.e. protection of public safety and safeguarding of public morals. In such a case, although highly unlikely, it may be conceived that the aircraft is sold without the Owner being informed of it.

15. SOVEREIGN IMMUNITY

15.1 Is any Airline based in the Relevant Jurisdiction entitled to any form of sovereign or other immunity from suit which might restrict the Owner’s rights under the Lease?

No such immunity from suit is provided by Serbian regulations. However, in accordance with the recently adopted Insolvency Act ("IA"), a legal entity established by the Government cannot enter insolvency. The national Airline i.e. Air Serbia is a Government-founded and Government predominantly-owned legal entity. As such, Air Serbia would potentially be exempt from insolvency proceedings. However, the courts have only applied this provision under the condition that it is proved that the legal entity is predominantly State-financed.

15.2 Can such immunity be validly waived in advance by contract?

No, the provisions of the IA constitute mandatory rules of Serbian law.

16. DISPUTE RESOLUTION AND RECIPROCAL ENFORCEMENT

16.1 Do the laws of the Relevant Jurisdiction permit and recognise an “asymmetric” submission to jurisdiction clause under which the lessee submits to the exclusive jurisdiction of the Courts of England but the Owner has discretion to choose a jurisdiction other than the Courts of England?

Yes, the laws of Serbia permit and recognise the described “asymmetric” submission clause.

16.2 If the Lease is governed by English Law and a judgment is obtained by the Owner in the English courts, can that judgment be automatically enforced in the Relevant Jurisdiction or will the case have to be re-examined on its merits? If so what procedures must be complied with to enforce such a judgment?

Judgements of foreign courts are recognised in Serbia if the condition of reciprocity is satisfied. Reciprocity will exist if:

1. there is a bilateral treaty on recognition of foreign judgments between the relevant foreign jurisdiction and Serbia (diplomatic reciprocity); or
2. laws in the relevant jurisdiction provide for recognition of Serbian judgments (formal reciprocity); or
3. there is no diplomatic or formal reciprocity, but in practice the courts in the relevant jurisdiction
recognise Serbian judgments and courts in Serbia in practice recognise judgments rendered in the relevant foreign jurisdiction (factual reciprocity).

There is no diplomatic reciprocity between Serbia and England.

In order to establish whether there is formal or factual reciprocity with a certain foreign jurisdiction, an official opinion needs to be obtained from the Serbian Ministry of Justice.

16.3 Is the Relevant Jurisdiction party to the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention) or the 1965 Convention on the Settlement of Investment Disputes Between States and Nationals of Other States (the Washington Convention)? Will the courts of the Relevant Jurisdiction recognise and enforce a decision of an arbitrator?

Yes, Serbia is party to both the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention) and the 1965 Convention on the Settlement of Investment Disputes Between States and Nationals of Other States (the Washington Convention).

1. there would be no need for recognition of a foreign award; and
2. most probably the assets of defendant would be located in the Relevant Jurisdiction i.e. in Serbia.

Alternatively, a different choice of dispute resolution can be stipulated if the courts of Serbia (based on diplomatic or factual reciprocity) recognise court decisions rendered in the jurisdiction in question.

17. AIRCRAFT ENGINES

17.1 If the equipment being leased to the Airline in the Relevant Jurisdiction was an Aircraft Engine either unattached to an airframe or attached to an airframe belonging to a party other than the Aircraft Engine Owner and being leased to the Airline under a separate engine lease agreement, would there be any significant changes to the responses set out above?

No, but please note that no separate registry is kept for aircraft engines and the only data which is recorded and concerns aircraft engines is the type of engine – not the registration number.

17.2 In particular, does the Relevant Jurisdiction recognise the separate ownership of the Aircraft Engine by the Aircraft Engine Owner when the Aircraft Engine is attached to an airframe belonging to a person other than the Aircraft Engine Owner?

Yes, but such ownership is not separately recorded due to the fact that engines are considered movables and no separate registry of engines is kept with the CAD.
17.3 Is there a register of Aircraft Engines and is the information given above in relation to registration of Aircraft and the ownership and leasing of Aircraft the same for registration of an Aircraft Engine and the ownership and leasing of such Aircraft Engine at the Aircraft Engine register?

No, please see answer under 17.1 above.

18. ADDITIONAL INFORMATION – IS THERE ANYTHING ELSE WE SHOULD HAVE ASKED?

Are there any other matters, issues, recommended courses of action or steps which can be taken to protect and/or perfect the Owner’s interests, as owner and lessor of the Aircraft in the Relevant Jurisdiction or of which the Owner should be aware when contemplating leasing an aircraft to a company incorporated and operating in the Relevant Jurisdiction?

Please note that, due to a very limited and underdeveloped market in this area, Serbian regulations remain unclear and there is insufficient practice by courts and other authorities.
PROPOSED TRANSACTION STRUCTURE

2.1 Are there any public registers in the Relevant Jurisdiction where a search can be carried out to determine whether an order or resolution for any bankruptcy, bankruptcy protection or similar insolvency proceedings has been registered in relation to the Airline?

2.2 If so, specify which public registers, how long such searches typically take and if the fees are more than US$100, approximately what fees apply.

SEARCHES

3.1 In the case of the transfer of title to an aircraft registered in the Relevant Jurisdiction:

3.2 Other than Insolvency laws (see section 9) are there any laws which may have the effect of defeating the Owner’s right in the aircraft – for example, Government requisition? Do the laws of the Relevant Jurisdiction provide for any compensation in such circumstances?

RIGHTS AND EVIDENCE OF OWNERSHIP

4.1 Has the Relevant Jurisdiction ratified any of:

4.2 If the Relevant Jurisdiction has ratified the Cape Town, see the Cape Town Convention Annex.

4.3 If the Relevant Jurisdiction has not ratified the Cape Town Convention, has the Relevant Jurisdiction started official proceedings or given any other official indication that it will accede to or ratify the Cape Town Convention in the near future?

4.4 Is there an Aircraft Register in the Relevant Jurisdiction and if so, what is it called and who operates it?

4.5 If so, in relation to registration:

4.6 What documents and/or consents are required to obtain registration on the Aircraft Register and will these require any formalities (for example, notarisation, legalisation or application of apostille)?

4.7 Are there any restrictions on the legal status and/or nationality/domicile of parties seeking to register an aircraft on the Aircraft Register?

4.8 In respect of aircraft transactions connected with the Relevant Jurisdiction generally, are there any foreign Aircraft Registers that are commonly used, or should be considered, as alternatives to or in addition to registration with the Relevant Jurisdiction’s Aircraft Register? If so, what is benefit of such registration?

4.9 Are there any other filings or registrations necessary or desirable (other than the registrations already mentioned and Lease Registration - see section 6) in the Relevant Jurisdiction in order to ensure the validity, priority or enforceability of the transaction documents, or to perfect the interests of the Owner in the Aircraft or the transaction documents?

THE AIRCRAFT REGISTER - NATIONALITY OF AIRCRAFT

5.1 Will the Relevant Jurisdiction recognise the concept of a lease over an aircraft?

5.2 Would the choice of English law to govern the Lease be upheld as a valid choice of law in any action in the Relevant Jurisdiction?

5.3 Must the Lease be in a particular form if it is to be valid and enforceable in the Relevant Jurisdiction (for example, must it be in the language of the Relevant Jurisdiction or be notarised, legalised or have the apostille applied)?

5.4 If the Lease must be in the language of the Relevant Jurisdiction, is it possible under the Relevant Law also to have an English version, and to provide that the English version should prevail in case of conflict with the Relevant Jurisdiction language?
5.5 Are there any special terms that the Lease must contain or that it is advisable for the Lease to contain?

5.6 Are there any circumstances under which the Lease might be re-characterised under the laws of the Relevant Jurisdiction as:

6 LEASE REGISTRATION

6.1 Is there a separate register for aircraft leases in the Relevant Jurisdiction?

6.2 If yes, then:

7 ENFORCEMENT OF LEASES (ASSUMING AIRLINE IS NOT IN A FORM OF INSOLVENCY PROTECTION)

7.1 On the occurrence of an event of default under the Lease, assuming that the Owner is permitted to do so under the terms of the Lease, can the Owner terminate the Leasing of the Aircraft under the Lease and enforce the Lease by taking physical possession of the Aircraft?

7.2 If so, can the Owner take physical possession of the Aircraft without the need for judicial proceedings in the Relevant Jurisdiction?

7.3 Where judicial proceedings in the Relevant Jurisdiction are necessary, please provide details of the proceedings, in particular:

7.4 Where judicial proceedings are not necessary, please comment on the time limits relevant to taking possession of the Aircraft, in particular:

7.5 Is there any history of actual repossession of aircraft by Owners in the Relevant Jurisdiction? If so, please provide details of any matters or issues of which an Owner should be aware.

7.6 Are there any circumstances in which the sums expressed to be payable under the Lease or obligations expressed to be assumed by the Airline in the Lease are or will be unrecoverable or unenforceable in the Relevant Jurisdiction?

7.7 Are there any restrictions on the ability of the Owner to sell the Aircraft in the Relevant Jurisdiction during the term of the Lease or, following an event of default, on termination of the leasing or pending judicial enforcement of the Lease?

7.8 Are there any export restrictions on export of a repossessed aircraft?

8 DEREGISTRATION POWER OF ATTORNEY/EXPORTATION

8.1 Can the Owner apply for deregistration of the Aircraft either at the end of the lease term or following successful repossession (with or without judicial proceedings) and is there any time period within which such application should be made?

8.2 Is the consent of the Airline required to deregister the Aircraft either by law or as a matter of custom or practice?

8.3 How long does deregistration take, both where there is co-operation from the Airline and where this is no co-operation from the Airline?

8.4 Is it possible to obtain an export licence or export permit in advance?

8.5 Approximately how long does it take to obtain an export licence or export permit? What are the costs involved?

8.6 Is it possible to obtain a certificate of deregistration in advance?

8.7 Will a power of attorney empowering the Owner to deregister and export the Aircraft from the Relevant Jurisdiction, either at the end of the lease term or following successful repossession (with or without judicial proceedings), be enforceable in the Relevant Jurisdiction? Will the courts recognise a power of attorney in the form of an IDERA and governed by English law?

8.8 If the power of attorney was stated to be irrevocable would this be enforceable against the Airline or can the Airline revoke such power of attorney?

8.9 Upon the occurrence of a bankruptcy or insolvency of the Airline is the power of attorney still effective?
9 INSOLVENCY
9.1 In the event that the Airline were to become insolvent either on a balance sheet basis (assets less than liabilities) or unable to pay debts as fall due:

10 TAXATION
10.1 The decision to lease to an airline in the Relevant Jurisdiction assumes that the Owner will not be taxed on receipt of rentals or other payments (including maintenance reserves) under the Lease except by way of tax on its general income, profits or gains payable by the Owner in its place of incorporation or place of main business (if different). Will there be a requirement for the Owner to pay tax in the Relevant Jurisdiction on lease payments on basis that either the Owner is subject to taxation in the Relevant Jurisdiction by reason only of the leasing of the Aircraft under the Lease and is required to make payment itself; or payment of such tax is by way of the airline being required to withhold and account for tax from lease payments, where:

10.2 If there is a requirement in the Relevant Jurisdiction for the airline to withhold tax on lease payments, will the courts of the Relevant Jurisdiction recognise and permit enforcement of a “gross up” clause in the Lease requiring the payment by the Airline of an additional sum to ensure the Owner receives and is entitled to retain the same net amount as would have been received in the absence of the withholding, taking account of any further withholding on account of tax required in relation to such additional sum.

10.3 VAT: European Union country: under Article 148(f) of the VAT Directive, an exemption from VAT is applied to “supplies” consisting of chartering or hiring of aircraft which are used by airlines operating for reward chiefly on international routes.

10.4 Sale of aircraft by an aircraft lessor to another aircraft lessor of an aircraft subject to a lease to an airline operating for reward chiefly on international routes: VAT will be applied to purchase price: No, the VAT exemption will apply (please refer to point 10.3 above). If no, is this because of application of the exemption under Article 148(f) to the airline following the decision in ECJ Case C-33/2011?

10.5 If the transaction involves the first importation of the aircraft into the EU (and assuming the aircraft is intended for use as a civil and not military aircraft) what rate of Customs Duty will apply?

10.6 Is any stamp duty, notarial or other fee or equivalent payable in respect of the execution of the Lease, a de-registration power of attorney or any other lease related document concerning the aircraft? Will such stamp duty or fee still be payable if the relevant documents are executed and held outside the Relevant Jurisdiction? If any such amount is payable how much is it approximately?

10.7 Can any form of consent, authorisation or licence be obtained exempting the payments referred to in this Section from such tax or duty? If so, how would it be obtained?

10.8 Ignoring any taxation consequence already mentioned and any potential taxation issues if the Owner has any other connection to the Relevant Jurisdiction, is there any other Relevant Jurisdiction taxation consequence of the Owner:

11 EXCHANGE CONTROLS
11.1 Are payments to foreign owners by companies incorporated or registered in the Relevant Jurisdiction subject to any form of exchange or similar control?

11.2 If yes, can any consents, authorisations or licences be obtained to exempt payments from any such control? How would these be obtained? Are such consents, authorisations or licences transferable?

12 INSURANCE
12.1 Is it a legal requirement to insure the Aircraft within the Relevant Jurisdiction?
12.2 If so, is there any restriction on reinsurance of the primary insurance outside the Relevant Jurisdiction?
12.3 Is there a minimum percentage of cover which a local insurer is obliged to retain, and if so, what is it?
12.4 Is it possible for local insurers to assign contracts of reinsurance? If not, is a cut-through clause enforceable?

13 LIABILITY FOR DAMAGE

14 DETENTION/CONFISCATION
14.1 Are there any rights to detain or sell the Aircraft pursuant to drug trafficking, tax or other laws or pursuant to rights of airport or air navigation authorities if the Airline fails to pay when due?
14.2 If so, can the Aircraft be forfeited and sold without the Owner being made aware?

15 SOVEREIGN IMMUNITY
15.1 Is any Airline based in the Relevant Jurisdiction entitled to any form of sovereign or other immunity from suit which might restrict the Owner's rights under the Lease?
15.2 Can such immunity be validly waived in advance by contract?

16 DISPUTE RESOLUTION AND RECIPROCAL ENFORCEMENT
16.1 Do the laws of the Relevant Jurisdiction permit and recognise an “asymmetric” submission to jurisdiction clause under which the lessee submits to the exclusive jurisdiction of the Courts of England but the Owner has discretion to choose a jurisdiction other than the Courts of England?
16.2 If the Lease is governed by English Law and a judgment is obtained by the Owner in the English courts, can that judgment be automatically enforced in the Relevant Jurisdiction or will the case have to be re-examined on its merits? If so, what procedures must be complied with to enforce such a judgment?
16.3 Is the Relevant Jurisdiction party to the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention) or the 1965 Convention on the Settlement of Investment Disputes Between States and Nationals of Other States (the Washington Convention)? Will the courts of the Relevant Jurisdiction recognise and enforce a decision of an arbitrator?
16.4 What is the usual choice of dispute resolution in international supply contracts involving a lessor or buyer incorporated in or with its main place of business in the Relevant Jurisdiction?

17 AIRCRAFT ENGINES
17.1 If the equipment being leased to the Airline in the Relevant Jurisdiction was an Aircraft Engine either unattached to an airframe or attached to an airframe belonging to a party other than the Aircraft Engine Owner and being leased to the Airline under a separate engine lease agreement, would there be any significant changes to the responses set out above?
17.2 In particular, does the Relevant Jurisdiction recognise the separate ownership of the Aircraft Engine by the Aircraft Engine Owner when the Aircraft Engine is attached to an airframe belonging to a person other than the Aircraft Engine Owner?
17.3 Is there a register of Aircraft Engines and is the information given above in relation to registration of Aircraft and the ownership and leasing of Aircraft the same for registration of an Aircraft Engine and the ownership and leasing of such Aircraft Engine at the Aircraft Engine register?

18 ADDITIONAL INFORMATION – IS THERE ANYTHING ELSE WE SHOULD HAVE ASKED?

19 Footnotes
1. PROPOSED TRANSACTION STRUCTURE

Relevant Jurisdiction: Slovenia

The Aircraft will be purchased by the Owner and leased on an operating lease basis to the Airline pursuant to the Lease.

Is this is the usual structure for transactions of this nature in the Relevant Jurisdiction?

Yes.

2. SEARCHES

2.1 Are there any public registers in the Relevant Jurisdiction where a search can be carried out to determine whether an order or resolution for any bankruptcy, bankruptcy protection or similar insolvency proceedings has been registered in relation to the Airline?

Yes, a search can be made at the Agency of the Republic of Slovenia for Public Legal Records and Related Services ("AJPES"), which provides access to official public information on business entities in Slovenia. Pursuant to the Financial Operations, Insolvency Proceedings and Compulsory Dissolution Act ("ZFPPIPP"), AJPES provides data and other information about insolvency proceedings (bankruptcy, compulsory settlement, liquidation) of natural persons and legal entities taking place before bankruptcy courts. While AJPES provides information on all Slovenian business entities being subject to insolvency proceedings, Airlines are no exception to this rule. However, the ZFPPIPP provides for certain information which is not published – e.g., published information in the preventive restructuring proceeding is considerably more limited compared to bankruptcy or compulsory settlement proceeding.

2.2 If so, specify which public registers, how long such searches typically take and if the fees are more than US$100, approximately what fees apply.

AJPES provides direct online access to official public information. The website is available non-stop. No fees for searches with regard to insolvency proceedings information apply.

3. RIGHTS AND EVIDENCE OF OWNERSHIP

3.1 In the case of the transfer of title to an aircraft registered in the Relevant Jurisdiction:

3.1.1 Is any particular form of transfer required for the transfer to be legally
recognised?

The agreement by which the title on an aircraft is transferred shall be in written form, otherwise it has no legal effect.

The above stated does not apply in case of: (i) the title on an aircraft is acquired by inheritance or by public auction; (ii) transfer of the title to the insurance company under the provisions of insurance law. In accordance with the decision of the Supreme Court of the Republic of Slovenia, a contract on transfer of the property right on the aircraft shall be valid even if not concluded in written form if the contracting parties fully or partly perform the obligations arising therefrom, unless it clearly follows otherwise from the purpose for which the form was prescribed.

3.1.2 Must any particular conditions be satisfied for the transfer to be recognised?

Title on the aircraft is transferred with the entry in the aircraft register of the Civil Aviation Agency of the Republic of Slovenia on the basis of a legal transaction.

3.1.3. Will such a transfer still be recognised by the courts of the Relevant Jurisdiction as legally valid where the relevant aircraft is located in another jurisdiction at the time of the transfer?

If the country where the relevant aircraft is located will recognize a transfer of title in the form proposed for the transaction under Slovenian law as a valid method of title transfer under its domestic law, yes; if not, then no and local law advice should be taken.

3.1.4 Are any duties, taxes or fees levied on such transfer of ownership?

Supply of aircrafts in Slovenia is normally subject to taxation with VAT. The current general VAT rate in Slovenia is 22% and the current reduced VAT rate is 9,5%.

However, an exemption from VAT is available where the aircraft will be used “for operating for reward chiefly on international routes”. The Slovenian VAT Act has no further guidance as to whether this means that the company has to use the aircraft for international flights only or whether a combined use (domestic and international) is allowed. If combined use should arise, it is possible to address this issue with the Tax Authority and ask for a ruling.

The same VAT regime is also applicable to:

- the supply of goods for fuelling and provisioning of an aircraft;
- the supply, modification, repair, maintenance, chartering and hiring of an aircraft;
- the supply, hiring, repair and maintenance of equipment incorporated or used therein;
- the supply of services for the direct needs of an aircraft or of their cargoes.

If the supplier of an aircraft is either established in Slovenia or has a permanent establishment in Slovenia, the corporate income tax consequences may also arise (e.g. taxation of capital gain upon the sale of airplane,
taxation of income generated with lease). The current corporate income tax rate in Slovenia is 19%.

3.2 Other than Insolvency laws (see section 9) are there any laws which may have the effect of defeating the Owner’s right in the aircraft – for example, Government requisition? Do the laws of the Relevant Jurisdiction provide for any compensation in such circumstances?

In accordance with the Obligations and Real Rights in Air Navigation Act and Maritime Code, under the enforcement procedure an attachment / seizure of an aircraft can be performed. The following cannot be subject to the enforcement procedure: (i) military and other state aircrafts and aircrafts for medical and humanitarian purposes; (ii) foreign aircraft flying in accordance with applicable regulations over the territory of the Republic of Slovenia or land at an airport in the territory of the Republic of Slovenia due to force majeure or for reasons of safety in aviation (aircraft emergency), as long as the force majeure or reasons for safety in aviation lasts, as well as if an aircraft lands at the request of the competent authority; (iii) an aircraft owned by a debtor engaged in an economic activity if it is strictly necessary for the debtor to carry on his business.

An aircraft referred to under point (ii) above may be subject to the enforcement procedure and securing of a claim in case of enforcement or securing of a claim arising during its flight through the territory of the Republic of Slovenia or while the aircraft was in that territory.

An aircraft referred to under point (iii) above shall not be exempted from an enforcement if the enforcement is conducted to repay the claim from the loan with which the aircraft was purchased or the claim is secured by a lien on that aircraft. Further, there is no exemption from the enforcement when enforcement is conducted to repay the following claims:

- the damage caused by the aircraft in the flight or on the ground as a result of death, health detriment or other injury to persons or suffered by the aircraft persons as a result of its exploitation;
- for search and rescue, to assist or to guard the aircraft;
- from a contract of transport or other contract for the exploitation of the aircraft subject to enforcement;
- from the provision, repair and equipping of the aircraft subject to enforcement.

4. THE AIRCRAFT REGISTER - NATIONALITY OF AIRCRAFT

4.1 Has the Relevant Jurisdiction ratified any of:

The Chicago Convention of 1944 on International Civil Aviation?

Yes

The 1948 Geneva Convention on the International Recognition of Rights in Aircraft?

Yes

The 1933 Convention for the Unification of Certain Rules Relating to the Precautionary
Arrest of Aircraft?

No

The 2001 Cape Town Convention on International Interests in Mobile Equipment and the associated Protocol on Matters Specific to Aircraft Equipment (the Cape Town Convention)?

No

4.2 If the Relevant Jurisdiction has ratified the Cape Town, see the Cape Town Convention Annex.

4.3 If the Relevant Jurisdiction has not ratified the Cape Town Convention, has the Relevant Jurisdiction started official proceedings or given any other official indication that it will accede to or ratify the Cape Town Convention in the near future?

Currently there are no official proceedings or any other official indication that the Republic of Slovenia will ratify the Cape Town Convention in the near future.

4.4 Is there an Aircraft Register in the Relevant Jurisdiction and if so, what is it called and who operates it?

Yes, there is; it is called Aircraft Register of the Republic of Slovenia. It is operated by Civil Aviation Agency of the Republic of Slovenia.

4.5 If so, in relation to registration:

4.5.1 Who is responsible for registering the Aircraft - is it an owner registry or an operator registry?

It is an owner registry. The Aircraft is entered in the registry upon the application of the owner / owners (if more than one). The relevant documentation from which the owner demonstrates its ownership has to be enclosed to the application. The foreign Aircraft may be registered upon the application of the operator if certain requirements are fulfilled and the applicant submits the Charter-Party Agreement for the duration of min. six months and permission of the owner for registering the Aircraft in the Register.

4.5.2 What details would normally be recorded on the Aircraft Register upon registration of an aircraft in the Relevant Jurisdiction? If not normally recorded, is it possible to record the Lease and/or an Aircraft Mortgage on the Aircraft Register?
The main details registered are the identity of Registered Owner (who may be the owner or charterer), mortgages as well as other rights on the Aircraft, method of acquisition and the details of the Aircraft. The owner or charterer are obliged to notify the CAA of any changes regarding the details recorded in the Aircraft Register.

4.5.3 If the Aircraft Register is an operator register, is it possible to record the details of the aircraft owner/lessor and any financier with an Aircraft Mortgage?

As noted above, the Aircraft Register in Slovenia is an owner register.

4.5.4 If the Aircraft Register is an owner register, is registration on the Aircraft Register definitive to determine ownership of the Aircraft?

Yes, ownership is acquired with the entry into the register. Please note that Owner and Operator are registered. However, an Aircraft cannot be registered in the Republic of Slovenia if it is already registered outside the Republic of Slovenia.

4.5.5 Are any distinctions made between aircraft employed on international routes and those used purely for domestic flights?

No.

4.6 What documents and/or consents are required to obtain registration on the Aircraft Register and will these require any formalities (for example, notarisation, legalisation or application of apostille)?

An application form must be completed and signed, a fee paid and evidence supplied:

- evidence regarding the purchase of an Aircraft (e.g. invoice, sale and purchase agreement);
- customs declaration;
- export certificate of airworthiness if the aircraft has been imported;
- certificate of citizenship for the owner or the operator;
- certificate on deletion from the relevant registry of a foreign state if the Aircraft is imported from a non-EU state;
- declaratory decision of the court regarding the ownership or the change in ownership and some other documents.

If the registration proceeding is conducted by a third person on behalf of another company or any other natural person, authorization of the Power of attorney by a notary public is required.

4.7 Are there any restrictions on the legal status and/or nationality/domicile of parties seeking to register an aircraft on the Aircraft Register?

The applicant has to be national of the Republic of Slovenia. Companies majority-owned by Slovenians or under de facto control of Slovenians, associations, flight schools, local community of the Republic of Slovenia, the
Republic of Slovenia itself and citizens as well as legal persons of the EU and EEA are equated with the Slovenian nationals.

4.8 In respect of aircraft transactions connected with the Relevant Jurisdiction generally, are there any foreign Aircraft Registers that are commonly used, or should be considered, as alternatives to or in addition to registration with the Relevant Jurisdiction’s Aircraft Register? If so, what is benefit of such registration?

No.

4.9 Are there any other filings or registrations necessary or desirable (other than the registrations already mentioned and Lease Registration - see section 6) in the Relevant Jurisdiction in order to ensure the validity, priority or enforceability of the transaction documents, or to perfect the interests of the Owner in the Aircraft or the transaction documents?

Aircraft Mortgages require registration with the Aircraft Register of the Republic of Slovenia. The mortgage agreement must be in writing.

5. LEASES

5.1 Will the Relevant Jurisdiction recognise the concept of a lease over an aircraft?

Yes.

5.2 Would the choice of English law to govern the Lease be upheld as a valid choice of law in any action in the Relevant Jurisdiction?

The parties are free to choose the law governing the contract, therefore English law might be upheld as a valid choice of law. However, if all elements relevant to the situation at the time of the choice of governing law are located in a country other than the country the law of which has been chosen, the choice of the parties shall not prejudice the application of provisions of the law of that other country which cannot be derogated from by agreement.

5.3 Must the Lease be in a particular form if it is to be valid and enforceable in the Relevant Jurisdiction (for example, must it be in the language of the Relevant Jurisdiction or be notarised, legalised or have the apostille applied)?

The Lease must be in writing, otherwise the Lease is null and void. No other requirements as to language, notarisation, etc., apply.¹
5.4 If the Lease must be in the language of the Relevant Jurisdiction, is it possible under the Relevant Law also to have an English version, and to provide that the English version should prevail in case of conflict with the Relevant Jurisdiction language version?

The Lease must be in Slovenian language only if presented to the court (for instance, in case of a dispute). In such case, the Lease has to be translated in Slovenian language by a sworn translator. Otherwise, the Lease may be in English language, which may be the prevailing version as well.

5.5 Are there any special terms that the Lease must contain or that it is advisable for the Lease to contain?

Operating Lease is not specifically regulated by Slovenian law, nonetheless such lease is common in business practice. Therefore, parties to the Lease are free to contractually determine the subject matter of the Lease, which will be respected by the courts as far as the parties remain in line with mandatory provisions of Slovenian law. In business practice it is common for the lease to be determined in detail in the lease agreements and general conditions to such agreements.

5.6 Are there any circumstances under which the Lease might be re-characterised under the laws of the Relevant Jurisdiction as:

5.6.1 a secured loan?

No, provided the lessor (or its successor as lessor) retains ownership of the leased property, then the lease should not be re-characterised as a secured loan.

5.6.2 a finance (or capital) lease?

No, since the Owner is and remains the titleholder in case of operating lease. To the contrary, in case of finance lease it is more common that the Owner remains the title holder only until the Lessee fulfils all his/her obligations.

6. LEASE REGISTRATION

6.1 Is there a separate register for aircraft leases in the Relevant Jurisdiction?

No. The Operator (Lessee) of an Aircraft (if not the Owner) is registered separately as an Operator of a particular Aircraft within the Register of Aircrafts.

6.2 If yes, then:
6.2.1 What documentation and/or consents are required for the registration of the Lease?

Not applicable.

6.2.2 What registration fees are payable (if any)?

Not applicable.

6.2.3 What information is recorded on the register? How is the eventual discharge of the Lease recorded?

Not applicable.

6.2.4 Does any registration in respect of the Lease remain valid throughout the tenure of the Lease or does such a registration require periodic renewal? If renewal is required when must this be done and what is the approximate cost of renewal?

Not applicable.

7. ENFORCEMENT OF LEASES (ASSUMING AIRLINE IS NOT IN A FORM OF INSOLVENCY PROTECTION)

7.1 On the occurrence of an event of default under the Lease, assuming that the Owner is permitted to do so under the terms of the Lease, can the Owner terminate the Leasing of the Aircraft under the Lease and enforce the Lease by taking physical possession of the Aircraft?

Yes, it is common that the lessor terminates the Lease if the Lessee fails to fulfil his/her obligations. According to the Obligations and Real Rights in Air Navigation Act, the Owner may terminate the Lease if the Lessee fails to fulfil his/her obligations within 15 days after maturity of these obligations and is at the same time entitled to reimbursement of costs. However, if the Lessee fulfils all obligations after the time limit of 15 days but prior to Owner’s statement on termination of the Agreement, the Lease Agreement is not terminated. The law does not prohibit taking physical possession of the Aircraft.

7.2 If so, can the Owner take physical possession of the Aircraft without the need for judicial proceedings in the Relevant Jurisdiction?

Yes, though detailed advice should be obtained on contract wording regarding retaking physical possession. The only limitation provided for by the law is determined by the Consumer Protection Act, which stipulates that if the Lessee is a consumer, the Owner cannot take physical possession of the leased property and demand from the Lessee to fulfil all his/her obligations at the same time. If the Lessee is not a consumer, the parties to the Lease...
are free to determine the consequences of the termination of the Lease.

7.3 Where judicial proceedings in the Relevant Jurisdiction are necessary, please provide details of the proceedings, in particular:

7.3.1 What documents would the Owner as lessor need to present in order to obtain possession of the Aircraft, both before and subsequent to judgment? Can documents be copies?

Not applicable.

7.3.2 What is the approximate cost of issuing proceedings?

Not applicable.

7.3.3 Would the Owner be required to provide a bond, guarantee or other security in order to issue proceedings?

Not applicable.

7.3.4 What is an estimate of the normal duration of possession proceedings from time at which all required documentation is made available – if uncontested?

Not applicable.

7.3.5 What is an estimate of the normal duration of possession proceedings from time at which all required documentation is made available – if contested?

Not applicable.

7.4 Where judicial proceedings are not necessary, please comment on the time limits relevant to taking possession of the Aircraft, in particular:

7.4.1 Is there a waiting period before action may be taken?

Apart from the general time limit for payment of the Lessee’s obligations, i.e. within 15 days from the date of maturity of his/her obligations prior to which the Owner cannot terminate the Lease, there is no waiting period for taking possession of the Aircraft.

7.4.2 Is there a long stop date by which action must be taken?
All claims from commercial contracts (i.e. contracts concluded by and between commercial entities) become statute-barred after three years.

7.4.3 Is a Public Auction of the aircraft required?

No.

Apart from the judicial proceedings described above and ignoring deregistration (see section 8), is the permission of any other party (including any official body) in the Relevant Jurisdiction required to take possession of the Aircraft?

No.

7.5 Is there any history of actual repossession of aircraft by Owners in the Relevant Jurisdiction? If so, please provide details of any matters or issues of which an Owner should be aware.

We are not aware of such cases.

7.6 Are there any circumstances in which the sums expressed to be payable under the Lease or obligations expressed to be assumed by the Airline in the Lease are or will be unrecoverable or unenforceable in the Relevant Jurisdiction?

After the insolvency occurs the debtor shall not make commitments and payments other than those needed for the regular business operations. After the commencement of the compulsory settlement proceeding, the debtor may conduct only regular business operations and settle business liabilities arising out of such business operations. In addition, debtor's payment orders may be executed only subject to prior approval of the administrator. In bankruptcy proceeding, the debtor also has the right to cancel rental and lease contracts concluded prior to the initiation of bankruptcy proceedings.

7.7 Are there any restrictions on the ability of the Owner to sell the Aircraft in the Relevant Jurisdiction during the term of the Lease or, following an event of default, on termination of the leasing or pending judicial enforcement of the Lease?

Provided the Lessee is not in insolvency procedure, the law does not prohibit the Owner to sell the Aircraft at any time. Nevertheless, the parties may contractually agree on certain limitations thereof. If, however, the Lessee is in bankruptcy procedure, the bankruptcy administrator has a right to terminate the Lease agreement; please see below under 9.1.3. Generally, bankruptcy administrators decide to terminate the lease agreements and return the leased property. Please note that this only applies in cases where the Lessee is in bankruptcy procedure and not in other insolvency proceedings.

7.8 Are there any export restrictions on export of a repossessed aircraft?
Deregistration is required before the Aircraft may be exported and registered abroad. For this purpose, the original registration document has to be returned to the CAA, a valid Certificate of Airworthiness is required as well as the deletion of all entered third party rights on the Aircraft.

8. DEREGISTRATION POWER OF ATTORNEY/EXPORTATION

8.1 Can the Owner apply for deregistration of the Aircraft either at the end of the lease term or following successful repossession (with or without judicial proceedings) and is there any time period within which such application should be made?

The Owner of the Aircraft entered into the Aircraft Register is entitled to apply for deregistration. A Certificate of Airworthiness has to be enclosed to such an application and all third party rights on the Aircraft (for example mortgages) have to be deleted from the register prior to deregistration. Finally, the original certificate of registration has to be returned to the CAA for deregistration.

A lease is a contractual obligation and does not affect the deregistration procedure. However, the Owner's rights may be restricted with the contractual provisions, meaning that the Owner will bear the consequences under the law of the obligations when conducting an action contrary to the agreement.

8.2 Is the consent of the Airline required to deregister the Aircraft either by law or as a matter of custom or practice?

No, the Airline's participation is only required if the Airline is the Owner of the Aircraft.

8.3 How long does deregistration take, both where there is co-operation from the Airline and where this is no co-operation from the Airline?

Co-operation of the Airline is only required if the Airline is the Owner. Deregistration is usually completed within a week in a simple case (i.e. no third party right in rem rights etc.)

8.4 Is it possible to obtain an export licence or export permit in advance?

No, export permit is required, merely a confirmation of deregistration and the payment of an administrative fee of approximately EUR 100.00.

8.5 Approximately how long does it take to obtain an export licence or export permit? What are the costs involved?

See above.

8.6 Is it possible to obtain a certificate of deregistration in advance?
No, contacts with the Slovenian Aviation Agency in advance may nevertheless speed up the deregistration process.

8.7 Will a power of attorney empowering the Owner to deregister and export the Aircraft from the Relevant Jurisdiction, either at the end of the lease term or following successful repossession (with or without judicial proceedings), be enforceable in the Relevant Jurisdiction? Will the courts recognise a power of attorney in the form of an IDERA and governed by English law?

Please note that Slovenia did not sign the Cape Town Convention on International Interests in Mobile Equipment and the Aircraft Protocol. Hence, the enforceability of a IDERA Power of Attorney is subject to the general legal framework. The Slovenian CAA explained that in principle IDERA Power of Attorney would suffice for deregistration and export of an Aircraft.

8.8 If the power of attorney was stated to be irrevocable would this be enforceable against the Airline or can the Airline revoke such power of attorney?

The Airline may revoke such power of attorney.

8.9 Upon the occurrence of a bankruptcy or insolvency of the Airline is the power of attorney still effective?

The power of attorney remains valid until revoked. However, a proxy shall only be allowed to conduct those legal transactions for which the power of attorney was given or, in case of a general power of attorney, a proxy is allowed to conduct legal transactions appertaining to ordinary business. No power of attorney is required for representing a client as creditor in the insolvency proceeding.

9. INSOLVENCY

9.1 In the event that the Airline were to become insolvent either on a balance sheet basis (assets less than liabilities) or unable to pay debts as fall due:

9.1.1 Would the airline be required to file for insolvency protection?

When a company becomes insolvent, the management shall, within one month following the occurrence of insolvency, present to the supervisory board a report on financial restructuring measures. The management has to give its opinion as to whether there is the probability of a minimum of 50 per cent for the successful execution of financial restructuring, the result of which would be regained liquidity and solvency of the company. If the management is of opinion there is not at least 50 per cent possibility, it shall file a petition for commencement of a bankruptcy proceeding. If the management estimates that insolvency may not be wholly eliminated with adoption of financial restructuring measures and it is of opinion there is a probability of a minimum of 50 per cent for the successful execution of compulsory settlement, the management shall file a petition for commencement of the compulsory settlement proceeding.
9.1.2 Do the available forms of insolvency protection in the Relevant Jurisdiction involve the appointment of either an officer of the court or a specifically court appointed official to take control of the Airline (an Insolvency Official) while in insolvency protection?

Yes. An administrator is appointed by the court when the decision on commencement of the bankruptcy/compulsory settlement proceeding is adopted. The exception here are the compulsory settlement proceedings over certain companies where the court appoints the administrator the following day after the institution of such proceeding. In the bankruptcy proceeding, with appointment of the administrator the powers of the debtor’s representatives, holders of procuration and other persons authorised to represent the debtor, as well as the powers of the management of the debtor to conduct its operations, expire. In the compulsory settlement proceeding, an administrator is obliged to supervise and examine the debtor’s business and the fulfilment of its obligations.

9.1.3 Does the Insolvency Official have authority to negotiate and reach agreement with the Owner in relation to matters such as the payment of unpaid rent, continuation or termination of the Lease and repossession of the Aircraft without the need for court approval?

In the compulsory settlement proceeding, the debtor’s operations shall be limited only to the performance of regular operations associated with the performance of its business activity, which is supervised by the administrator. The administrator is empowered to file a proposition to the court to prohibit certain operations and acts, which are not in line with the above-mentioned limitation. In the bankruptcy proceeding, the administrator conducts the operations of the debtor and represents it, inter alia, in legal transactions which the insolvent debtor may carry out pursuant to the Insolvency Act. In addition, rules on mutually unfulfilled bilateral contract could apply. In such case, the insolvent debtor has the right to either withdraw from such a contract or to honour the contract. If the debtor withdraws from the contract (for which the consent of the court is required), the Owner shall have an exclusion right, meaning that it can request from the insolvent debtor to deliver the Aircraft in its possession. If the debtor decides to honour the contract, the Owner is not required to register his/her claims in the insolvency proceeding, but is rather paid according to the Lease agreement and based on the rules concerning the payment of the costs of bankruptcy proceedings.

9.1.4 Does the commencement of insolvency protection involving the appointment of an Insolvency Official in the Relevant Jurisdiction have the effect of prohibiting the Owner from taking the following actions to enforce the lease after commencement of such protection:

- Applying any security deposit held by the Owner against any unpaid amounts due under the Lease? No.
- Accepting payment of rent or other lease payments from:
  - (i) the Airline? After commencement of the bankruptcy proceeding, the administrator with consent of the court decides which transactions may be carried out with regard to admissible operations of the insolvent debtor, e.g. continuation of operation by the Airline. In the compulsory settlement proceeding, since payments of rent or other lease payments
for aircraft would be considered liabilities arising from the performance of regular business activity of the Airline, the Airline would be permitted to continue to make such payments. In both, bankruptcy and compulsory settlement proceeding, the administrator/debtor has the right to withdraw from the mutually unfulfilled bilateral contract; please see above under 9.1.3.

- (ii) a guarantor? The Owner may accept payments from the guarantor if he/she is not subject to the insolvency proceeding.
- (iii) a shareholder? Assuming a personally liable shareholder is not himself in insolvency proceedings then there is no limitation on accepting payments from such shareholder.

- **giving notice of default under the lease?** The Owner is not prohibited from giving such notice, however the legal consequences of the initiation of bankruptcy proceedings have effect only for creditors’ claims which incurred before the initiation of bankruptcy proceedings.
- **obtaining a judgment or arbitral award for unpaid lease payments?** After insolvency proceedings have been initiated, issuing an order on execution or securing against the insolvent debtor is not permitted. All proceedings are generally suspended when an insolvency proceeding is initiated.
- **giving notice to terminate the leasing of the Aircraft?** The Owner may still give notice to terminate the lease.
- **exercising rights to repossess the Aircraft?** Since the Owner owns the Aircraft, he has an exclusion right, which grants him the possibility to request from the insolvent debtor to deliver him/her the Aircraft.

9.1.5 Can the commencement of Insolvency Proceedings have retrospective effect in relation to any such actions taken before commencement? If so, for what period can there be a look back?

Generally, the legal consequences of commencement of bankruptcy proceedings come into effect as of the beginning of the day of publication of the notice of the commencement of bankruptcy proceedings. However, all legal transactions and other legal actions which the debtor in bankruptcy has concluded or carried out in the period as of the beginning of the 12 months prior to the introduction of bankruptcy proceedings up to the initiation of bankruptcy proceedings may be challenged within six months after the commencement of the bankruptcy proceeding. In certain cases, even legal transactions carried out by the debtor in the period as of the beginning of the 36 months prior to the introduction of bankruptcy proceedings up to the initiation of bankruptcy proceedings may be challenged.

9.1.6 Is there, either under law or as a matter of practice in the Relevant Jurisdiction, a period of time within which the Insolvency Official will either “adopt” the lease and pay rent and other lease payments as an expense of the insolvency or “reject” the lease and permit the Owner to enforce such rights as it may have under the lease?

In line with one of the core principles of insolvency proceedings under Slovenian law, i.e. the principle of conducting insolvency proceedings in such a manner as to strive for the optimum conditions for payment of creditors, the administrator may, within one month of the initiation of the bankruptcy proceeding, ask the court for the approval of completion or continuation of debtor’s operations:

- Completion of debtor’s operations that were started prior to initiation of bankruptcy proceeding: such completion is permitted if it is necessary to prevent a reduction of the bankruptcy estate and if such completion does not cause a delay in selling of the bankruptcy estate and provided the risks are limited;
Continuation of debtor’s operations: continuation is permitted if more favourable conditions are reached for the sale of assets of the debtor which are used in such operations, as a business whole, than in case of completion of operation and provided the risks are limited.

In both bases, the court makes a decision also based on the opinion of the creditors’ committee. As already stated under question 9.1.3 above, the administrator has also the right either to withdraw from mutually unfulfilled bilateral contract or to honour such contract. In the bankruptcy proceeding, the administrator may exercise the right to withdrawal within three months after the initiation of bankruptcy proceedings or within three months of being notified of existence of such contract, whichever is later, while in the compulsory settlement proceeding, the administrator may exercise such right one month after the initiation of the proceeding at latest. Court’s approval for withdrawal is required.

9.1.7 If the lease is “adopted” will the Insolvency Official also pay any unpaid lease payments due as at commencement of the insolvency protection?

No legal consequences of the initiation of bankruptcy proceeding apply for the mutually unfulfilled bilateral contracts. Consequently, if the debtor does not withdraw from such a contract, it has to pay the obligations arising out of the mutually unfulfilled bilateral contracts towards the creditor in line with such contract and such payments will be, simply put, considered as costs of bankruptcy proceedings, meaning they will be paid before any claims by other creditors.

9.1.8 If not or if the lease is “rejected”, would the Owner’s claim for any outstanding sums rank equally with other ordinary unsecured creditors of the Airline?

Yes.

9.1.9 Are there certain types of preferred creditors whose claims will rank above claims of the Owner?

Yes, there are creditors with the right to separate settlement. Creditors with the right to separate settlement are creditors who are enforcing their claims, which are secured with a right to separate settlement in the insolvency proceeding. The right to separate settlement is a right that ensures that creditor’s claims are paid from certain assets of the insolvent debtor before the claims of other creditors of such debtor are paid from such assets. This is a statutory definition. In practice, these provisions refer to creditors that have secured their claims with pledges of certain assets of the insolvent debtor and therefore have the right to repay their (secured) claims from the pledged assets before other (unsecured) claims. Moreover, of all unsecured claims, priority claims are paid from the common distribution estate with first priority order.

9.1.10 If the Aircraft is in the possession of a person other than the Airline at the commencement of Insolvency Protection of the Airline, for example an independent maintenance facility, will such person be entitled, under the laws of the Relevant Jurisdiction, to assert a lien arising under law or contract over the Aircraft in respect of amounts then due and unpaid to such person by the Airline?

When certain kinds of contracts, e.g. contract for work, contract of mandate, commission agency contract etc. are
entered into, a contractual party who is obliged to perform specific transactions, acts, or deeds, in return for payment could claim to have a lawful lien on the Aircraft in its possession in order to secure payment for work performed and costs. In the event a debtor becomes insolvent, such creditor is entitled to a retention right even though his claim is not yet due.

9.1.11 Is a person other than the Airline, for example an airport authority, entitled under the laws of the Relevant Jurisdiction to seize possession of the Aircraft after commencement of Insolvency Protection and assert a lien arising under law or contract over the Aircraft in respect of amounts then due and unpaid to such person by the Airline.

No. If security was not established prior to commencement of the insolvency proceeding, no person is entitled to assert a lien after the commencement of insolvency proceeding.

10. TAXATION

10.1 The decision to lease to an airline in the Relevant Jurisdiction assumes that the Owner will not be taxed on receipt of rentals or other payments (including maintenance reserves) under the Lease except by way of tax on its general income, profits or gains payable by the Owner in its place of incorporation or place of main business (if different). Will there be a requirement for the Owner to pay tax in the Relevant Jurisdiction on lease payments on basis that either the Owner is subject to taxation in the Relevant Jurisdiction by reason only of the leasing of the Aircraft under the Lease and is required to make payment itself; or payment of such tax is by way of the airline being required to withhold and account for tax from lease payments, where:

10.1.1 the Owner is incorporated and is tax resident in Ireland?

Payments of lease amounts (rental fees) from Slovenia to Ireland are not subject to Withholding Tax according to Slovene domestic tax legislation. Consequently, DTT relief should not be required, even though a DTT with Ireland is in place.

10.1.2 the Owner is incorporated and is tax resident in the United Kingdom?

Payments of lease amounts (rental fees) from Slovenia to United Kingdom are not subject to Withholding Tax according to Slovene domestic tax legislation. Consequently, DTT relief should not be required, even though a DTT with United Kingdom is in place.

10.1.3 the Owner is incorporated and is tax resident in Hong Kong?
Payments of lease amounts (rental fees) from Slovenia to Hong Kong are not subject to Withholding Tax according to Slovene domestic tax legislation. No DTT with Hong Kong is in place.

10.1.4 the Owner is incorporated and is tax resident in Singapore?

Payments of lease amounts (rental fees) from Slovenia to Singapore are not subject to Withholding Tax according to Slovene domestic tax legislation. Consequently, DTT relief should not be required, even though a DTT with Singapore is in place.

10.1.5 the Owner is incorporated and is tax resident in Malta?

Payments of lease amounts (rental fees) from Slovenia to Malta are not subject to Withholding Tax according to Slovene domestic tax legislation. Consequently, DTT relief should not be required, even though a DTT with Malta is in place.

10.1.6 the Owner is incorporated and is tax resident in the Channel Islands?

Payments of lease amounts (rental fees) from Slovenia to Channel Islands are not subject to Withholding Tax according to Slovene domestic tax legislation. No DTT with Channel Islands is in place.

10.1.7 the Owner is incorporated and is tax resident in the Isle of Man?

Payments of lease amounts (rental fees) from Slovenia to Isle of Man are not subject to Withholding Tax according to Slovene domestic tax legislation. Consequently, DTT relief should not be required, even though a DTT with Isle of Man is in place.

10.1.8 the Owner is incorporated and is tax resident in Mauritius?

Payments of lease amounts (rental fees) from Slovenia to Mauritius are not subject to Withholding Tax according to Slovene domestic tax legislation. No DTT with Mauritius is in place.

10.1.9 the Owner is incorporated and is tax resident in Bermuda?

Payments of lease amounts (rental fees) from Slovenia to Bermuda are not subject to Withholding Tax according to Slovene domestic tax legislation. No DTT with Bermuda is in place.

10.1.10 the Owner is incorporated and is tax resident in the Cayman Islands?

Payments of lease amounts (rental fees) from Slovenia to Cayman Islands are not subject to Withholding Tax according to Slovene domestic tax legislation. No DTT with Cayman Islands is in place.

10.2 If there is a requirement in the Relevant Jurisdiction for the airline to withhold tax on lease payments, will the courts of the Relevant Jurisdiction
recognise and permit enforcement of a “gross up” clause in the Lease requiring the payment by the Airline of an additional sum to ensure the Owner receives and is entitled to retain the same net amount as would have been received in the absence of the withholding, taking account of any further withholding on account of tax required in relation to such additional sum.

Not applicable, as the payments of lease amounts (rental fees) from Slovenia are not subject to Withholding Tax as per Slovenian national tax legislation.

10.3 VAT: European Union country: under Article 148(f) of the VAT Directive, an exemption from VAT is applied to “supplies” consisting of chartering or hiring of aircraft which are used by airlines operating for reward chiefly on international routes.

Therefore, as the operating lease of an aircraft is treated as a supply of services, it may also benefit from VAT exemption, if the aircraft will be used “for operating for reward chiefly on international routes”. Unfortunately, within the Slovene VAT Act there is no further guidance as to whether this means that the company has to use the aircraft for international flights only, or whether a combined use (domestic and international) is allowed. If combined use should arise, it is possible to address this issue with the Tax Authority and ask for a ruling.

10.3.1 New lease to airline operating for reward chiefly in domestic routes: VAT will be applied to lease rentals at current rate:

22%

10.3.2 New Lease to airline operating for reward chiefly on international routes: VAT will not be applied to lease rentals by reason of application of exemption:

Yes (please refer to point 10.3 above).

10.3.3 Sale of aircraft by an aircraft lessor to another aircraft lessor of an aircraft subject to a lease to an airline operating for reward chiefly in domestic routes: VAT will be applied to the purchase price. If the seller and the purchaser are both EU entities and the purchaser supplies its EU VAT Number to the seller then the VAT charge will be a reverse charge. Otherwise VAT will be applied to purchase price at current rate:

22%

10.3.4 Sale of aircraft by an aircraft lessor to another aircraft lessor of an aircraft subject to a lease to an airline operating for reward chiefly on international routes: VAT will be applied to purchase price: No, the VAT
exemption will apply (please refer to point 10.3 above). If no, is this because of application of the exemption under Article 148(f) to the airline following the decision in ECJ Case C-33/2011?

Yes, the ECJ ruling confirms our understanding of Article 148(f) of the VAT Directive.

10.3.5 If the transaction involves the first importation of the aircraft into the EU (and assuming the aircraft is intended for use as a civil and not military aircraft) what rate of Customs Duty will apply?

0% customs apply to civil aircraft, falling under codes 8802 20 00 10, 8802 30 0010 or 8802 40 00 10 of EU Customs Tariff (TARIC).

10.4 Is any stamp duty, notarial or other fee or equivalent payable in respect of the execution of the Lease, a de-registration power of attorney or any other lease related document concerning the aircraft? Will such stamp duty or fee still be payable if the relevant documents are executed and held outside the Relevant Jurisdiction? If any such amount is payable how much is it approximately?

No stamp duties are foreseen in respect of the execution of the Lease.

10.5 Can any form of consent, authorisation or licence be obtained exempting the payments referred to in this Section from such tax or duty? If so, how would it be obtained?

If there is an option for any tax or duty exemption, usually the competent authority publishes the forms required to obtain such relief.

10.6 Ignoring any taxation consequence already mentioned and any potential taxation issues if the Owner has any other connection to the Relevant Jurisdiction, is there any other Relevant Jurisdiction taxation consequence of the Owner:

10.6.1 being owner and lessor of an aircraft registered in the Relevant Jurisdiction and operatedleased by a company incorporated or registered in the Relevant Jurisdiction?

No specific tax consequences in Slovenia.

10.6.2 making available a lease facility to a company incorporated or regulated in the Relevant Jurisdiction?
No specific tax consequences, except if a lease facility is an immovable property (real estate) located in Slovenia.

In the latter case, VAT registration in Slovenia would be obligatory, as the place of supply of services related to immovable property located in Slovenia (including granting of rights to use immovable property), is deemed to be in Slovenia. In addition to that, the payments for the lease of immovable property, located in Slovenia, are subject to 15% Withholding Tax in Slovenia (the rate cannot be further diminished with applicable DTTs).

10.6.3 Receiving rent and other lease payments under the Lease from the lessee incorporated or registered in the Relevant Jurisdiction?

No specific tax consequences in Slovenia.

10.6.4 Repossessing the aircraft and exporting the aircraft from the Relevant Jurisdiction?

No specific tax consequences in Slovenia.

10.6.5 Selling the aircraft at a profit, whether such sale is after repossession or is subject to the Lease and the lessee's rights?

No specific tax consequences in Slovenia, except if the owner of the aircraft is either established in Slovenia or has a permanent establishment in Slovenia. In such case, the corporate income tax consequences may arise (i.e. taxation of capital gain upon the sale of an airplane). The current corporate income tax rate in Slovenia is 19%.

11. EXCHANGE CONTROLS

11.1 Are payments to foreign owners by companies incorporated or registered in the Relevant Jurisdiction subject to any form of exchange or similar control?

No, there is no exchange control regime applicable in Slovenia.

11.2 If yes, can any consents, authorisations or licences be obtained to exempt payments from any such control? How would these be obtained? Are such consents, authorisations or licences transferable?

Not applicable.

12. INSURANCE
12.1 Is it a legal requirement to insure the Aircraft within the Relevant Jurisdiction?

If the Aircraft is registered in the Republic of Slovenia, it shall be insured within the Slovenia in accordance with the Compulsory Motor Third-Party Liability Insurance Act and relevant EU legislation, whereas also insurers from the EU Member States and from the third countries are entitled to carry out insurance operations related thereto, either through a branch office or directly, provided that they meet the conditions prescribed by the Insurance Act.

12.2 If so, is there any restriction on reinsurance of the primary insurance outside the Relevant Jurisdiction?

No.

12.3 Is there a minimum percentage of cover which a local insurer is obliged to retain, and if so, what is it?

Not applicable.

12.4 Is it possible for local insurers to assign contracts of reinsurance? If not, is a cut-through clause enforceable?

Yes. Cut-through clause represents ius quaesitium tertio. Under the Slovenian legislation, if a contract establishes a right in favour of a third person, the third person acquires the right directly against the debtor, unless agreed otherwise or unless it follows otherwise from the circumstances of the transaction. The debtor may exercise all objections against the third person that the former holds against the contracting party from the contract in favour of the third person.

Also, the contracting party has the right to request from the other contracting party to perform the contractual obligation towards the third person. A contracting party that is entitled to request that the fellow contracting party perform an obligation to a third person may revoke or amend the right established in favour of the third person at any time until the third person declares that the right is accepted.

If the third person refuses the right established in his/her favour or if the contracting party revokes it, the right shall pertain to the contracting party, unless agreed otherwise or unless it follows otherwise from the nature of the transaction.

13. LIABILITY FOR DAMAGE

Can the Owner be strictly liable - liable without a requirement to prove fault or negligence - for any damage or loss caused by the Aircraft assuming Owner is an innocent owner with no operational control of the Aircraft?

Yes. Under the Obligations and Real Rights in Air Navigation Act the owner of the aircraft can be held liable for the damages, which result on the ground for case of death, health detriment or other injuries of people as well as...
for the damage on objects, caused directly by the plane in flight or people or cargo or other items that have either fallen or have been thrown from such a plane. This includes the damage that has arisen due solely to the flight through the airspace, if the damage had arisen as a consequence of actions against the regulations on safety in aviation.

When an Aircraft is subject to lease, a Lessee is liable for the above-mentioned damages. Furthermore, the owner of the aircraft is deemed liable for damages, which arise due to fault that has made the aircraft unusable, has diminished its use from agreed or normal use in case the fault had already been present when the aircraft was given to lessee.

The person responsible for above-stated damages shall not be liable if he proves: i) that the damage was caused by the act of the injured party or the accomplishment of the injured party's assistant; ii) that the aircraft causing the damage was illegally exploited by someone else, and the responsible person took all necessary steps to prevent it.

**14. DETENTION/CONFISCATION**

14.1 Are there any rights to detain or sell the Aircraft pursuant to drug trafficking, tax or other laws or pursuant to rights of airport or air navigation authorities if the Airline fails to pay when due?

The state prosecution authorities may invoke the right to detain an object which has been used as an instrument to perform a criminal activity or even a minor offence. Such “instrument of crime” may even be destroyed in the following procedure.

Further, the tax authority may file a motion for interim measure in a tax procedure, if the rightful holder of an airplane has failed to pay its due tax obligations, requesting that an airplane is to be confiscated and eventually sold in the following execution procedure. An answer regarding the eventual particular airport/air navigation authorities would require an in-depth analysis of the various legal fields and would exceed the scope of this survey.

14.2 If so, can the Aircraft be forfeited and sold without the Owner being made aware?

In an eventual execution procedure, in the course of which an aircraft was confiscated, the Owner would be made aware of an eventual forfeit and sale.

**15. SOVEREIGN IMMUNITY**

15.1 Is any Airline based in the Relevant Jurisdiction entitled to any form of sovereign or other immunity from suit which might restrict the Owner’s rights under the Lease?

No, Adria Airways does not enjoy sovereign immunity. An answer exceeding the question of sovereign immunity
is outside of the scope of this survey.

15.2 Can such immunity be validly waived in advance by contract?

See above.

16. DISPUTE RESOLUTION AND RECIPROCAL ENFORCEMENT

16.1 Do the laws of the Relevant Jurisdiction permit and recognise an “asymmetric” submission to jurisdiction clause under which the lessee submits to the exclusive jurisdiction of the Courts of England but the Owner has discretion to choose a jurisdiction other than the Courts of England?

The laws of Slovenia do not provide a possibility of an “asymmetric” submission to a jurisdiction clause as described, but also not exclude such submission. If the aircraft is registered in Slovenia, an exclusive jurisdiction of Slovenian courts is applicable with respect to leases and right in rem rights as well as possession of the aircraft. If the aircraft would be submitted to other registry outside Slovenia the determination of the jurisdiction may potentially be in disposition of the parties.

16.2 If the Lease is governed by English Law and a judgment is obtained by the Owner in the English courts, can that judgment be automatically enforced in the Relevant Jurisdiction or will the case have to be re-examined on its merits? If so, what procedures must be complied with to enforce such a judgment?

In general such judgement could be automatically enforced in Slovenia if it is recognised by the Slovenian courts, without additional re-examination on the merits. The judgement can only be recognised in case of reciprocity between the jurisdictions and in case the decision has already been declared as final. Slovenian legislation provides the possibility to enforce the following decisions: court decision, court settlement and a decision of other bodies, which are deemed as equal to a court decision or court settlement (i.e. arbitral awards).

The proceeding for the recognition is commenced upon a motion. For the recognition of such a decision the applicant must provide the foreign court decision or its certified copy and provide a certificate of decision being final by the foreign court or other entity, which has published the decision. Further a confirmation of enforceability in the country of execution is required. Providing that the decision is not in the formal language of the court, this decision must be translated by a certified translator. On the first instance the sole judge of the district court decides whether all conditions for the recognition are fulfilled and issues a decision on the recognition.

The decision cannot be automatically enforced if the matter is already pending before the Slovenian courts or in case another foreign decision had already been recognised on the same matter. Further, hindrance for recognition of a foreign decision is conflict with the ordre public.

The EU Regulation No. 1215/2012 dated 12 December 2012 on Jurisdiction and the Recognition and
Enforcement of Judgments in Civil and Commercial Matters ("EU No. 1215/2012") provides that a judgment given in a Member State shall be recognised in the other Member States without any special procedure being required.

In accordance with the above written, Slovenian courts will recognize and give effect to the choice of a foreign forum subject to the requirements of EU No. 1215/2012 if such foreign place of jurisdiction is located within the EU, the leasing agreement does not concern immovable property and provided that the agreement of the parties to the lease to submit to the jurisdiction of an EU court is valid under the law applicable to the lease agreement. The EU No. 1215/2012 provides for two forms, namely, the certificate concerning a judgment and the certificate concerning an authentic instrument/court settlement.

Note that certain formal requirements apply in respect of a valid choice of jurisdiction in accordance with EU No. 1215/2012, for example, the place of jurisdiction must normally be agreed in a (written) document executed by all parties.

16.3 Is the Relevant Jurisdiction party to the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention) or the 1965 Convention on the Settlement of Investment Disputes Between States and Nationals of Other States (the Washington Convention)? Will the courts of the Relevant Jurisdiction recognise and enforce a decision of an arbitrator?

Yes. The Relevant Jurisdiction is a party to the New York Convention as well as the Washington Convention.

The courts of the Relevant Jurisdiction provide for a possibility of a recognition and enforceability of a foreign arbitral award upon the recognition of the District Court of Ljubljana. The recognition and enforcement are decided upon under the rules of the NYC Convention. For the recognition an original or a certified copy of the foreign arbitral award shall be provided. The arbitral agreement must be concluded as provided under the provisions of Arbitration Act.

16.4 What is the usual choice of dispute resolution in international supply contracts involving a lessor or buyer incorporated in or with its main place of business in the Relevant Jurisdiction?

The legislation in the Relevant Jurisdiction provides for various dispute resolution techniques, whereas in our experience litigation before the Slovenian courts still prevails. In each dispute brought in front of a judge there is a possibility for the parties to opt for a mediation proceeding or to settle their dispute.

17. AIRCRAFT ENGINES

17.1 If the equipment being leased to the Airline in the Relevant Jurisdiction was an Aircraft Engine either unattached to an airframe or attached to an airframe belonging to a party other than the Aircraft Engine Owner and being leased to the Airline under a separate engine lease agreement, would there be any significant changes to the responses set out above?
If the Aircraft Engine is unattached to an airframe or if the dispute does not concern the validity of the register entry in the event of separate ownership (see below) the exclusive jurisdiction of Slovenian courts is not applicable.

The above written applies to attached Aircraft Engines in the event of separate ownership as well.

17.2 In particular, does the Relevant Jurisdiction recognise the separate ownership of the Aircraft Engine by the Aircraft Engine Owner when the Aircraft Engine is attached to an airframe belonging to a person other than the Aircraft Engine Owner?

Yes, the Aircraft Engine may be in separate ownership if explicitly so agreed and entered in the Register of Aircrafts by the Owner.

17.3 Is there a register of Aircraft Engines and is the information given above in relation to registration of Aircraft and the ownership and leasing of Aircraft the same for registration of an Aircraft Engine and the ownership and leasing of such Aircraft Engine at the Aircraft Engine register?

There is no separate register for Aircraft Engines; separate ownership for Aircraft engine is entered at a particular Aircraft entry if applicable.

18. ADDITIONAL INFORMATION – IS THERE ANYTHING ELSE WE SHOULD HAVE ASKED?

Are there any other matters, issues, recommended courses of action or steps which can be taken to protect and/or perfect the Owner’s interests, as owner and lessor of the Aircraft in the Relevant Jurisdiction or of which the Owner should be aware when contemplating leasing an aircraft to a company incorporated and operating in the Relevant Jurisdiction?

Not applicable.
Footnotes

1 According to the provisions of Obligations and Real Rights in Air Navigation Act on regular lease, which are applicable to operating lease by analogy.

Back to the text occurrence
Aircraft finance and leasing in Spain
PROPOSED TRANSACTION STRUCTURE

2.1 Are there any public registers in the Relevant Jurisdiction where a search can be carried out to determine whether an order or resolution for any bankruptcy, bankruptcy protection or similar insolvency proceedings has been registered in relation to the Airline?

2.2 If so, specify which public registers, how long such searches typically take and if the fees are more than USD 100, approximately what fees apply.

SEARCHES

3.1 In the case of the transfer of title to an aircraft registered in the Relevant Jurisdiction:

RIGHTS AND EVIDENCE OF OWNERSHIP

4.1 Has the Relevant Jurisdiction ratified any of:

4.2 If the Relevant Jurisdiction has ratified the Cape Town, see the Cape Town Convention Annex.

4.3 If the Relevant Jurisdiction has not ratified the Cape Town Convention, has the Relevant Jurisdiction started official proceedings or given any other official indication that it will accede to or ratify the Cape Town Convention in the near future?

4.4 Is there an Aircraft Register in the Relevant Jurisdiction and if so, what is it called and who operates it?

4.5 If so, in relation to registration:

4.6 What documents and/or consents are required to obtain registration on the Aircraft Register and will these require any formalities (for example, notarisation, legalisation or application of apostille)?

4.7 Are there any restrictions on the legal status and/or nationality/domicile of parties seeking to register an aircraft on the Aircraft Register?

4.8 In respect of aircraft transactions connected with the Relevant Jurisdiction generally, are there any foreign Aircraft Registers that are commonly used, or should be considered, as alternatives to or in addition to registration with the Relevant Jurisdiction's Aircraft Register? If so, what is benefit of such registration?

4.9 Are there any other filings or registrations necessary or desirable (other than the registrations already mentioned and Lease Registration - see section 6) in the Relevant Jurisdiction in order to ensure the validity, priority or enforceability of the transaction documents, or to perfect the interests of the Owner in the Aircraft or the transaction documents?

THE AIRCRAFT REGISTER - NATIONALITY OF AIRCRAFT

5.1 Will the Relevant Jurisdiction recognise the concept of a lease over an aircraft?

5.2 Would the choice of English law to govern the Lease be upheld as a valid choice of law in any action in the Relevant Jurisdiction?

5.3 Must the Lease be in a particular form if it is to be valid and enforceable in the Relevant Jurisdiction (for example, must it be in the language of the Relevant Jurisdiction or be notarised, legalised or have the apostille applied)?

5.4 If the Lease must be in the language of the Relevant Jurisdiction, is it possible under the Relevant Law also to have an English version, and to provide that the English version should prevail in case of conflict with the Relevant Jurisdiction language version?

5.5 Are there any special terms that the Lease must contain or that it is advisable for the Lease to contain?

5.6 Are there any circumstances under which the Lease might be re-characterised under
the laws of the Relevant Jurisdiction as:

6 LEASE REGISTRATION
6.1 Is there a separate register for aircraft leases in the Relevant Jurisdiction?
6.2 If yes, then:

7 ENFORCEMENT OF LEASES (ASSUMING AIRLINE IS NOT IN A FORM OF INSOLVENCY PROTECTION)
7.1 On the occurrence of an event of default under the Lease, assuming that the Owner is permitted to do so under the terms of the Lease, can the Owner terminate the Leasing of the Aircraft under the Lease and enforce the Lease by taking physical possession of the Aircraft?
7.2 If so, can the Owner take physical possession of the Aircraft without the need for judicial proceedings in the Relevant Jurisdiction?
7.3 Where judicial proceedings in the Relevant Jurisdiction are necessary, please provide details of the proceedings, in particular:
7.4 Where judicial proceedings are not necessary, please comment on the time limits relevant to taking possession of the Aircraft, in particular: Not applicable.
7.5 Apart from the judicial proceedings described above and ignoring deregistration (see section 8), is the permission of any other party (including any official body) in the Relevant Jurisdiction required to take possession of the Aircraft?
7.6 Is there any history of actual repossession of aircraft by Owners in the Relevant Jurisdiction?
7.7 Are there any circumstances in which the sums expressed to be payable under the Lease or obligations expressed to be assumed by the Airline in the Lease are or will be unrecuperable or unenforceable in the Relevant Jurisdiction?
7.8 Are there any restrictions on the ability of the Owner to sell the Aircraft in the Relevant Jurisdiction during the term of the Lease or, following an event of default, on termination of the leasing or pending judicial enforcement of the Lease?
7.9 Are there any export restrictions on export of a repossessed aircraft?

8 DEREGISTRATION POWER OF ATTORNEY/EXPORTATION
8.1 Can the Owner apply for deregistration of the Aircraft either at the end of the lease term or following successful repossession (with or without judicial proceedings) and is there any time period within which such application should be made?
8.2 Is the consent of the Airline required to deregister the Aircraft either by law or as a matter of custom or practice?
8.3 How long does deregistration take, both where there is co-operation from the Airline and where this is no co-operation from the Airline?
8.4 Is it possible to obtain an export licence or export permit in advance?
8.5 Approximately how long does it take to obtain an export licence or export permit?
8.6 What are the costs involved?
8.7 Is it possible to obtain a certificate of deregistration in advance?
8.8 Will a power of attorney empowering the Owner to deregister and export the Aircraft from the Relevant Jurisdiction, either at the end of the lease term or following successful repossession (with or without judicial proceedings), be enforceable in the Relevant Jurisdiction? Will the courts recognise a power of attorney in the form of an IDERA and governed by English law?
8.9 If the power of attorney was stated to be irrevocable would this be enforceable against the Airline or can the Airline revoke such power of attorney?
8.10 Upon the occurrence of a bankruptcy or insolvency of the Airline is the power of attorney still effective?

9 INSOLVENCY
9.1 In the event that the Airline were to become insolvent either on a balance sheet basis
10.1 The decision to lease to an airline in the Relevant Jurisdiction assumes that the Owner will not be taxed on receipt of rentals or other payments (including maintenance reserves) under the Lease except by way of tax on its general income, profits or gains payable by the Owner in its place of incorporation or place of main business (if different). Will there be a requirement for the Owner to pay tax in the Relevant Jurisdiction on lease payments on basis that either the Owner is subject to taxation in the Relevant Jurisdiction by reason only of the leasing of the Aircraft under the Lease and is required to make payment itself; or payment of such tax is by way of the airline being required to withhold and account for tax from lease payments, where:

10.2 If there is a requirement in the Relevant Jurisdiction for the airline to withhold tax on lease payments, will the courts of the Relevant Jurisdiction recognise and permit enforcement of a “gross up” clause in the Lease requiring the payment by the Airline of an additional sum to ensure the Owner receives and is entitled to retain the same net amount as would have been received in the absence of the withholding, taking account of any further withholding on account of tax required in relation to such additional sum.

10.3 VAT: European Union country: under Article 148(f) of the VAT Directive, an exemption from VAT is applied to “supplies” consisting of chartering or hiring of aircraft which are used by airlines operating for reward chiefly on international routes. Therefore:

10.4 Can any form of consent, authorisation or licence be obtained exempting the payments referred to in this Section from such tax or duty? If so, how would it be obtained?

10.5 Ignoring any taxation consequence already mentioned and any potential taxation issues if the Owner has any other connection to the Relevant Jurisdiction, is there any other Relevant Jurisdiction taxation consequence of the Owner:

11.1 Are payments to foreign owners by companies incorporated or registered in the Relevant Jurisdiction subject to any form of exchange or similar control?

11.2 If yes, can any consents, authorisations or licences be obtained to exempt payments from any such control? How would these be obtained? Are such consents, authorisations or licences transferable?

12.1 Is it a legal requirement to insure the Aircraft within the Relevant Jurisdiction?

12.2 If so, is there any restriction on reinsurance of the primary insurance outside the Relevant Jurisdiction?

12.3 Is there a minimum percentage of cover which a local insurer is obliged to retain, and if so, what is it?

12.4 Is it possible for local insurers to assign contracts of reinsurance? If not, is a cut-through clause enforceable?

13.1 Are there any rights to detain or sell the Aircraft pursuant to drug trafficking, tax or other laws or pursuant to rights of airport or air navigation authorities if the Airline fails to pay when due?

13.2 If so, can the Aircraft be forfeited and sold without the Owner being made aware?

15.1 Is any Airline based in the Relevant Jurisdiction entitled to any form of sovereign or
other immunity from suit which might restrict the Owner's rights under the Lease?

15.2 Can such immunity be validly waived in advance by contract?

16 DISPUTE RESOLUTION AND RECIPROCAL ENFORCEMENT

16.1 Do the laws of the Relevant Jurisdiction permit and recognise an "asymmetric" submission to jurisdiction clause under which the lessee submits to the exclusive jurisdiction of the Courts of England but the Owner has discretion to choose a jurisdiction other than the Courts of England?

16.2 If the Lease is governed by English Law and a judgment is obtained by the Owner in the English courts, can that judgment be automatically enforced in the Relevant Jurisdiction or will the case have to be re-examined on its merits? If so what procedures must be complied with to enforce such a judgment?

16.3 Is the Relevant Jurisdiction party to the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention) or the 1965 Convention on the Settlement of Investment Disputes Between States and Nationals of Other States (the Washington Convention)? Will the courts of the Relevant Jurisdiction recognise and enforce a decision of an arbitrator?

16.4 What is the usual choice of dispute resolution in international supply contracts involving a lessor or buyer incorporated in or with its main place of business in the Relevant Jurisdiction?

17 AIRCRAFT ENGINES

17.1 If the equipment being leased to the Airline in the Relevant Jurisdiction was an Aircraft Engine either unattached to an airframe or attached to an airframe belonging to a party other than the Aircraft Engine Owner and being leased to the Airline under a separate engine lease agreement, would there be any significant changes to the responses set out above?

17.2 In particular, does the Relevant Jurisdiction recognise the separate ownership of the Aircraft Engine by the Aircraft Engine Owner when the Aircraft Engine is attached to an airframe belonging to a person other than the Aircraft Engine Owner?

17.3 Is there a register of Aircraft Engines and is the information given above in relation to registration of Aircraft and the ownership and leasing of Aircraft the same for registration of an Aircraft Engine and the ownership and leasing of such Aircraft Engine at the Aircraft Engine register?

18 ADDITIONAL INFORMATION – IS THERE ANYTHING ELSE WE SHOULD HAVE ASKED?

19 Footnotes
1. PROPOSED TRANSACTION STRUCTURE

The Aircraft will be purchased by the Owner and leased on an operating lease basis to the Airline pursuant to the Lease.

Is this the usual structure for transactions of this nature in the Relevant Jurisdiction? Yes.

2. SEARCHES

2.1 Are there any public registers in the Relevant Jurisdiction where a search can be carried out to determine whether an order or resolution for any bankruptcy, bankruptcy protection or similar insolvency proceedings has been registered in relation to the Airline?

Yes.

2.2 If so, specify which public registers, how long such searches typically take and if the fees are more than USD 100, approximately what fees apply.

The Insolvency Public Registry would be the relevant registry to run such search. It provides information regarding all Spanish companies, including Airlines, being subject to insolvency proceedings. According to the article 3 of the Royal Decree 892/2013, of 15 November, regulating the Insolvency Public Registry, the access to this Registry is public, permanent and costless. In addition, anyone is entitled to access the Registry, without needing to justify or manifest any legitimate interest.

3. RIGHTS AND EVIDENCE OF OWNERSHIP

3.1 In the case of the transfer of title to an aircraft registered in the Relevant Jurisdiction:

3.1.1 Is any particular form of transfer required for the transfer to be legally recognised?

In order to have legal effect, the agreement by which the ownership to an aircraft is transferred has to be executed as a public deed which must be recorded in the Spanish Movable Property Registry.

3.1.2 Must any particular conditions be satisfied for the transfer to be recognised?
In accordance with the article 182 of Decree of 14 December 1956, approving the Commercial Registry Regulations, the registration of the transfer of title to an aircraft in the Spanish Movable Property Registry requires public deed or formally authenticated document.

3.1.3 Will such a transfer still be recognised by the courts of the Relevant Jurisdiction as legally valid where the relevant aircraft is located in another jurisdiction at the time of the transfer?

Yes, if the country where the relevant aircraft is located recognises the form of transfer proposed for the transaction under Spanish law as a valid method of transfer under its domestic law. Otherwise, local law advice should be taken.

3.1.4 Are any duties, taxes or fees levied on such transfer of ownership?

When an aircraft is supplied, repaired, transformed, full chartered or leased in Spain, despite there being no import or export of such aircraft, it is nevertheless treated as an exportation. Therefore, the transfer would be exempted from VAT. However, there are some requirements to be met regarding the nature of the acquirer:

1. (i.) The purchaser needs to be a company dedicated essentially to the international air navigation as a commercial transporter of goods and/or passengers.
2. (ii.) The purchaser has to use the aircraft in its commercial activity.

When the mentioned requirements are not fulfilled, the general VAT tax rate (21%) would be applicable. See 10.3 below for more detail.

Aircraft parts and equipment (including aircraft engines) supplied, repaired, transformed or leased in Spain will be exempted of VAT when used in aircraft exempted of VAT.

If the aircraft is to be registered in Spain, the Special Tax on certain means of transport, which is applied to the registration of aircraft, shall be paid.

An aircraft lessor carrying on the trade of leasing in Spain may be liable to Spanish Corporate Tax on its profits or gains. Specific advice is recommended if this is likely to be the case.

If the transaction is made through a public document, a tax over that document will have to be paid by the purchaser of the good. The tax rates applicable will range depending on the length of the document, from 0.30 cents per sealed document or 0.15 per folio.

Additionally, autonomic tax rates are also applicable (this tax can range between a 0.5%-1.5% of the value of the asset). In the case where the Autonomic Community has not approved its own tax rates, which is not probable, a 0.5% of the value of the aircraft will be applicable.

3.1.5 Other than Insolvency laws (see section 9) are there any laws which may have the effect of defeating the Owner's right in the aircraft – for example, Government requisition? Do the laws of the Relevant Jurisdiction provide for any compensation in
such circumstances?

According to Act 48/1960, of 21 July, on Aerial Navigation, the Government, by agreement of Council of Ministers, may order the requisition or confiscation of aircraft located in national territory, provided that serious circumstances of public interest are met, and requisition compensation shall be paid.

4. THE AIRCRAFT REGISTER - NATIONALITY OF AIRCRAFT

4.1 Has the Relevant Jurisdiction ratified any of:

The Chicago Convention of 1944 on International Civil Aviation?

Yes

The 1948 Geneva Convention on the International Recognition of Rights in Aircraft?

No

The 1933 Convention for the Unification of Certain Rules Relating to the Precautionary Arrest of Aircraft?

Yes

The 2001 Cape Town Convention on International Interests in Mobile Equipment and the associated Protocol on Matters Specific to Aircraft Equipment (the Cape Town Convention)?

Yes

4.2 If the Relevant Jurisdiction has ratified the Cape Town, see the Cape Town Convention Annex.

4.3 If the Relevant Jurisdiction has not ratified the Cape Town Convention, has the Relevant Jurisdiction started official proceedings or given any other official indication that it will accede to or ratify the Cape Town Convention in the near future?

Not applicable.

4.4 Is there an Aircraft Register in the Relevant Jurisdiction and if so, what is it called and who operates it?

Yes, there is. In the Spanish Jurisdiction, aircrafts are registered in two different registries: (i) the Aircraft Matriculation Registry, an administrative registry that confers Spanish nationality to aircrafts; (ii) and the Spanish
Movable Property Registry, which is a property registry. Ownership and in rem agreements must be registered in both registries.

While the Spanish Movable Property Registry is operated by the Association of Land and Mercantile Registrars of Spain which is part of the Ministry of Justice, the Aircraft Matriculation Registry is run by the personal of the Juridical- Air Force Corps, part of on the Ministry of Development.

4.5 If so, in relation to registration:

4.5.1 Who is responsible for registering the Aircraft - is it an owner registry or an operator registry?

The Aircraft Matriculation Registry is an operator registry; therefore, the person responsible for registering the aircraft is the operator of the aircraft.

Regarding the aircraft registration on the Movable Property Registry, it shall be carried out by its owner.

4.5.2 What details would normally be recorded on the Aircraft Register upon registration of an aircraft in the Relevant Jurisdiction? If not normally recorded, is it possible to record the Lease and/or an Aircraft Mortgage on the Aircraft Register?

The first inscription of an aircraft, according to article 181 of the Decree of 14 December 1956, approving the Commercial Registry Regulations, shall contain the following details: (i) aircraft number in the matriculation Registry; (ii) manufacture phase; (iii) trademark, name (if any), distinguishing marks, number and power of the engines, fuselage, load and passengers capacity, any other features for a better identification, as well as; (iv) its value; (v) usual aircraft parking; (vi) insurance contracts entered into, especially those which are compulsory, including the information related to the insurance entity, type and amount of the insurance, and policy number.

Additionally, Aircraft Mortgage and Lease shall be registered in both Aircraft Matriculation Registry and Spanish Movable Property Registry in order to be fully valid under Spanish Law and recognized in those countries as part of the Aircraft Protocol, together with the Cape Town Convention.

4.5.3 If the Aircraft Register is an operator register, is it possible to record the details of the aircraft owner/lessor and any financier with an Aircraft Mortgage?

Yes, the details of the aircraft owner/lessor and financier shall be registered in the Aircraft Matriculation Registry (operator registry).

4.5.4 If the Aircraft Register is an owner register, is registration on the Aircraft Register definitive to determine ownership of the Aircraft?

Yes, the registration with the Spanish Movable Property Registry (owner registry) determines the ownership of the Aircraft.
4.5.5 Are any distinctions made between aircraft employed on international routes and those used purely for domestic flights?

No, there are not.

4.6 What documents and/or consents are required to obtain registration on the Aircraft Register and will these require any formalities (for example, notarisation, legalisation or application of apostille)?

The documents required to obtain the registration on the Aircraft Matriculation Registry are:

- Photocopy of previous authorization of aircraft registration.
- Application of aircraft registration (Mod-2).
- If the applicant is an individual of the European Economic Space, it shall attach photocopy of the NIF, or corresponding identity document; if the applicant is a legal entity, photocopy of the CIF or similar document is required.
- Payment of the respective taxes and fees.
- Title deed which verifies the ownership of the aircraft.
- Unique Administrative Document which shall accredit import from the last country (non EEA-member). It must identify the aircraft and engines.
- Declaration of special taxes, over certain means of transport.
- Certificate of the insuring company.
- Original certificate, issued by the Aircraft Register, from the country of last registration, containing detail of cancellation entries.

On the other hand, in order to obtain the registration of an aircraft in the Spanish Movable Property Registry the acquisition agreement has to be granted as a public deed or a formally authenticated document.

4.7 Are there any restrictions on the legal status and/or nationality/domicile of parties seeking to register an aircraft on the Aircraft Register?

Yes, there are. According to article 11 of the Decree 384/2015, of 22 May, on Aircraft Matriculation Registry Regulations, an aircraft can be registered by: (i) a natural person, national of any Member State, providing that she/he has its domicile in Spain; (ii) a legal person of any Member State and (iii) applicants of other states if their residence or permanent establishment is located in Spain and destine the aircraft for private purposes.

4.8 In respect of aircraft transactions connected with the Relevant Jurisdiction generally, are there any foreign Aircraft Registers that are commonly used, or should be considered, as alternatives to or in addition to registration with the Relevant Jurisdiction’s Aircraft Register? If so, what is benefit of such registration?

No.

4.9 Are there any other filings or registrations necessary or desirable (other
than the registrations already mentioned and Lease Registration - see section 6) in the Relevant Jurisdiction in order to ensure the validity, priority or enforceability of the transaction documents, or to perfect the interests of the Owner in the Aircraft or the transaction documents?

According to the Decree 384/2015, of 22 May, on Aircraft Matriculation Registry Regulations, mortgages and in rem agreements must be also registered.

5. LEASES

5.1 Will the Relevant Jurisdiction recognise the concept of a lease over an aircraft?

Yes. Under the Decree 384/2015, of 22 May, on Aircraft Matriculation Registry Regulations, the concept of lease over an aircraft is recognised, since it states that aircrafts may be object of lease or any other form of possession authorized by law.

5.2 Would the choice of English law to govern the Lease be upheld as a valid choice of law in any action in the Relevant Jurisdiction?

In the absence of Spanish rules governing this sort of contracts, the applicable regulation is the Regulation (EC) No 593/2008 of the European Parliament and of the Council, of 17 June 2008, on the law applicable to contractual obligations (Rome I). The article 3 sets forth freedom of choice, which means that the parties to a contract are to choose the governing law. Therefore, English law would be a valid choice providing that the parties have chosen it.

However, if the law chosen is that of a country other than that relating most closely to the contract, the provisions of the latter law need to be respected. In addition, should the contract relate to one or more Member States, the applicable law chosen, other than that of a Member State, must not contradict the provisions of EU law.

5.3 Must the Lease be in a particular form if it is to be valid and enforceable in the Relevant Jurisdiction (for example, must it be in the language of the Relevant Jurisdiction or be notarised, legalised or have the apostille applied)?

In order to be recordable in both registries, the Lease must be notarised and, in case of a foreign document, it must be also apostilled.

In addition, Spanish Registrars and/or Spanish Courts may require the Lease and all relevant supporting documents to be sworn, translated into Spanish language by an official translator (traductor jurado) and apostilled in accordance with The Hague Convention, as the case may be, as a condition precedent to its recording with the relevant registry and/or admissibility as evidence or proof and/or before deeming them to be in proper form for enforcement.

5.4 If the Lease must be in the language of the Relevant Jurisdiction, is it
possible under the Relevant Law also to have an English version, and to provide that the English version should prevail in case of conflict with the Relevant Jurisdiction language version?

Yes, it would be possible. In this regard, please note that for submission to court that the Lease needs to be sworn translated into Spanish language by an official translator (traductor jurado) and appostilled in accordance with the Hague Convention, as the case may be, in case English language prevails.

5.5 Are there any special terms that the Lease must contain or that it is advisable for the Lease to contain?

Since Spanish law doesn’t regulate lease agreements, they will be subject to the principle of contractual freedom. Nevertheless, it is recommended that the lease agreement includes all the aircraft features for a good identification, as well as the typical provisions for these kind of agreements.

5.6 Are there any circumstances under which the Lease might be re-characterised under the laws of the Relevant Jurisdiction as:

5.6.1 a secured loan?

No.

5.6.2 a finance (or capital) lease?

Yes, in case the purpose of the lease is to finance its acquisition it can be re-characterised as a so called “leasing agreement” which is not defined as a different type of lease by Spanish law but it is recognized as a different type of agreement by the Spanish case law.

6. LEASE REGISTRATION

6.1 Is there a separate register for aircraft leases in the Relevant Jurisdiction?

No.

6.2 If yes, then:

6.2.1 What documentation and/or consents are required for the registration of the Lease?

Not applicable.
6.2.2 What registration fees are payable (if any)?

Not applicable.

6.2.3 What information is recorded on the register? How is the eventual discharge of the Lease recorded?

Not applicable.

6.2.4 Does any registration in respect of the Lease remain valid throughout the tenure of the Lease or does such a registration require periodic renewal? If renewal is required when must this be done and what is the approximate cost of renewal?

Not applicable.

7. ENFORCEMENT OF LEASES (ASSUMING AIRLINE IS NOT IN A FORM OF INSOLVENCY PROTECTION)

7.1 On the occurrence of an event of default under the Lease, assuming that the Owner is permitted to do so under the terms of the Lease, can the Owner terminate the Leasing of the Aircraft under the Lease and enforce the Lease by taking physical possession of the Aircraft?

The Owner can unilaterally declare the termination of the leasing agreement. The lessee can then accept the termination (irrespective of the debt accrued, that shall be paid in any case unless agreed otherwise) or reject it. In this last case, the Owner would be obliged to initiate an ordinary declarative proceeding to obtain a judicial declaration of termination of the leasing agreement and an order of repossession on the Aircraft. Otherwise, the Owner cannot take physical possession of the Aircraft unless the lessee accepts the termination and agrees to voluntarily give back the Aircraft to the Owner.

7.2 If so, can the Owner take physical possession of the Aircraft without the need for judicial proceedings in the Relevant Jurisdiction?

The Owner cannot, in any case, take physical possession of the Aircraft without the need for judicial proceedings (unless a voluntary termination agreement is reached between the parties, as explained in point 7.1 above).

7.3 Where judicial proceedings in the Relevant Jurisdiction are necessary, please provide details of the proceedings, in particular:

7.3.1 What documents would the Owner as lessor need to present in order to obtain possession of the Aircraft, both before and subsequent to judgment? Can documents
be copies?

The main documents to be presented by the Owner would be the certificates from the relevant registers proving its ownership, the leasing agreement and the documents evidencing the breach of the contractual obligations by the lessee that would entail the necessary termination of the leasing agreement and the subsequent obligation of the lessee of delivering the Aircraft back to the Owner. The documents to be provided should be originals, whenever possible.

7.3.2 What is the approximate cost of issuing proceedings?

It is not possible to provide an approximate cost, since it would depend on the amount of the claim, which, in its turn, must be fixed as an amount equal to the lease rent of a whole year.

7.3.3 Would the Owner be required to provide a bond, guarantee or other security in order to issue proceedings?

No.

7.3.4 What is an estimate of the normal duration of possession proceedings from time at which all required documentation is made available – if uncontested?

The duration of an ordinary procedure may substantially vary from court to court, depending on the load of work of the relevant court before which the proceedings are being held. A rough estimation would be of between eight months to one year for the first instance, and around one year for the appeal on a second instance before the corresponding Provincial Court. The duration of the subsequent enforcement proceedings, in case the lessee does not voluntarily comply with the terms of the judgment, is almost unpredictable.

7.3.5 What is an estimate of the normal duration of possession proceedings from time at which all required documentation is made available – if contested?

Same answer as point 7.3.4.

7.4 Where judicial proceedings are not necessary, please comment on the time limits relevant to taking possession of the Aircraft, in particular: Not applicable.

7.4.1 Is there a waiting period before action may be taken?

7.4.2 Is there a long stop date by which action must be taken?

7.4.3 Is a Public Auction of the aircraft required?
7.5 Apart from the judicial proceedings described above and ignoring deregistration (see section 8), is the permission of any other party (including any official body) in the Relevant Jurisdiction required to take possession of the Aircraft?

No, no special permission shall be required once a final judgment is obtained, apart from the compliance with any formal issues determined by the circumstances under which the repossession would take place.

7.6 Is there any history of actual repossession of aircraft by Owners in the Relevant Jurisdiction?

If so, please provide details of any matters or issues of which an Owner should be aware.
Yes, cases of repossession of aircraft by the lessors can be found in Spanish Case Law.

7.7 Are there any circumstances in which the sums expressed to be payable under the Lease or obligations expressed to be assumed by the Airline in the Lease are or will be unrecoverable or unenforceable in the Relevant Jurisdiction?

No, there are not, apart from the cases in which the insolvency of the Airline is declared by the relevant court.

7.8 Are there any restrictions on the ability of the Owner to sell the Aircraft in the Relevant Jurisdiction during the term of the Lease or, following an event of default, on termination of the leasing or pending judicial enforcement of the Lease?

There are no restrictions and the Owner can sell at any time, unless it is contractually agreed otherwise.

7.9 Are there any export restrictions on export of a repossessed aircraft?

For the purposes of Regulation (EC) No. 428/2009 establishing a Community regime for the control of exports of dual use goods (for example, aircraft), repossession is a form of export and, therefore, an export licence is required where the destiny of the aircraft is a non-member country.

8. DEREGISTRATION POWER OF ATTORNEY/EXPORTATION

8.1 Can the Owner apply for deregistration of the Aircraft either at the end of the lease term or following successful repossession (with or without judicial proceedings) and is there any time period within which such application should be made?

The Civil Aircraft Register may, ex officio or at the request of a party, proceed to the cancellation of the
In order to cancel the registration of an aircraft leased at the request of its registered owner, the owner shall provide, among others, original and photocopy of the resolution document of the lease or document showing the agreement of both parties to cancel the registration and a certificate of the Movable Property Registry stating that the aircraft was inscribed in favor of the applicant and is free of any charges and liens.

There is no time requirement for submission of this application.

Additionally, in those cases where the registered holder is the holder of the aircraft by virtue of an annotated legal title, whose validity has expired, the Movable Property Registry may proceed ex officio to cancel the registration of the aircraft.

8.2 Is the consent of the Airline required to deregister the Aircraft either by law or as a matter of custom or practice?

No. The consent of the Airline is only required if it is the Aircraft's owner.

8.3 How long does deregistration take, both where there is co-operation from the Airline and where this is no co-operation from the Airline?

Co-operation of the Airline is only required if the Airline is the Owner. Deregistration is usually completed within three weeks.

8.4 Is it possible to obtain an export licence or export permit in advance?

In accordance with Regulation (EC) No. 428/2009 establishing a Community regime for the control of exports of dual use goods (for example, aircraft), an export licence is required where the destiny is a non-member country.

8.5 Approximately how long does it take to obtain an export licence or export permit? What are the costs involved?

If an export licence is required, it takes approximately one month to obtain it and there are no administrative costs involved.

8.6 Is it possible to obtain a certificate of deregistration in advance?

No.

8.7 Will a power of attorney empowering the Owner to deregister and export the Aircraft from the Relevant Jurisdiction, either at the end of the lease term or following successful repossession (with or without judicial proceedings), be enforceable in the Relevant Jurisdiction? Will the courts recognise a power of attorney in the form of an IDERA and governed by English law?
Insofar as the Owner is the only person entitled to deregister the Aircraft, a power of attorney would not be required for such purposes.

8.8 If the power of attorney was stated to be irrevocable would this be enforceable against the Airline or can the Airline revoke such power of attorney?

Not applicable.

8.9 Upon the occurrence of a bankruptcy or insolvency of the Airline is the power of attorney still effective?

Not applicable.

9. INSOLVENCY

9.1 In the event that the Airline were to become insolvent either on a balance sheet basis (assets less than liabilities) or unable to pay debts as fall due:

9.1.1 Would the airline be required to file for insolvency protection?

Yes. The Spanish Insolvency Act (Law 22/2003, of July 9th) sets forth the legal obligation for companies in a situation of insolvency, as defined in the Act (i.e. inability to comply with its ordinary course obligations) to file for insolvency proceedings within the two months following the moment at which the company becomes insolvent or becomes aware of such insolvency. Failure to comply with such obligation may give rise to liability on the part of the insolvent company's directors.

9.1.2 Do the available forms of insolvency protection in the Relevant Jurisdiction involve the appointment of either an officer of the court or a specifically court appointed official to take control of the Airline (an Insolvency Official) while in insolvency protection?

Yes. An “Insolvency Administration” is appointed by the competent Court and depending on the circumstances of the insolvency (mainly, whether the proceedings filed by the insolvent company itself, within the legally established deadline, or they were started by a creditor) the Airline’s directors would maintain their managing powers or these would be transferred wholly to the aforementioned Insolvency Administration.

9.1.3 Does the Insolvency Official have authority to negotiate and reach agreement with the Owner in relation to matters such as the payment of unpaid rent, continuation or termination of the Lease and repossession of the Aircraft without the need for court approval?

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Payment of unpaid rent (accrued before the declaration of the insolvency of the airline), cannot be negotiated by the Insolvency Administration, in accordance with the principle of "par condicio creditorum" and will be subject to the order of priority for payment within the insolvency proceedings. As regards the rents accrued as from the declaration of insolvency, they would be considered as "créditos contra la masa" ("credits against the estate") and should be paid with preference over debts of the debtor which are subject to the insolvency proceedings.

From the declaration of insolvency, the termination of the Lease (if it is considered beneficial for the insolvent party) would be subject to an agreement in which the Insolvency Administration must intervene and that should be authorized by the Court before which the insolvency proceedings are being held. The Owner can also give notice of the termination of the Lease due to the breach of the contractual obligations by the lessee, and the issue should be decided by means of a judgment entered within an incidental procedure before the Court in which the insolvency proceedings are being held.

9.1.4 Does the commencement of insolvency protection involving the appointment of an Insolvency Official in the Relevant Jurisdiction have the effect of prohibiting the Owner from taking the following actions to enforce the lease after commencement of such protection:

- **Applying any security deposit held by the Owner against any unpaid amounts due under the Lease?** Yes
- **Accepting payment of rent or other lease payments from:**
  1. (i.) **the Airline?** The payment of rents/debts accrued prior to the declaration of insolvency can only take place within the insolvency proceedings. Rents or debts accrued after the declaration of insolvency may be paid directly by the insolvent Airline (debtor) or the Insolvency Administration, in case the debtor has been deprived of its managerial powers.
  2. (ii.) **a guarantor?** No. A guarantor could make payments of unpaid rents or other lease payments as long as any guarantee conditions are met. The guarantor would then become creditor of the debtor and may file its claim within the insolvency proceedings in order to have its subrogation claim credit recognized.
  3. (iii.) **a shareholder?** No.
- **giving notice of default under the lease?** Yes. The owner can only terminate the lease agreement by filing an incidental claim in which it requests that termination, on the grounds of a breach of the payment obligations, irrespective of whether that breach is prior or subsequent to the declaration of insolvency, and apply for the repossession of the Aircraft. It must be noted that the Commercial Judge may dismiss the claim for termination even if the breach actually existed, and maintain the agreement in place, ordering the payment of all pending amounts against the estate, provided that the Judge considers that the relevant agreement is beneficial to the debtor and all the creditors.
- **obtaining a judgment or arbitral award for unpaid lease payments?** Yes. As regards the lease payments accrued prior to the declaration of insolvency, the creditor cannot file declarative proceedings against the debtor after that declaration. If the procedure was filed before the declaration of insolvency, it will be followed until a final and definitive judgment is rendered and its result will be reflected in the insolvency proceedings. If the creditor wishes to terminate the lease agreement on the grounds of lack of payment of amounts accrued before or after the declaration of insolvency, and also obtain payment of those amounts, please see (c) above.
- **giving notice to terminate the leasing of the Aircraft?** Please see (c) above.
9.1.5 Can the commencement of Insolvency Proceedings have retrospective effect in relation to any such actions taken before commencement? If so, for what period can there be a look back?

No. The commencement of Insolvency Proceedings in itself does not affect any of the aforementioned actions, given that they had already been taken or started. The ordinary declarative proceedings started before the declaration of insolvency may continue until a final judgment is entered by the corresponding court. As regards the enforcement proceedings started before the declaration of insolvency, they would be suspended as from the date of such declaration of insolvency, until the termination of the insolvency proceedings.

Nevertheless, under Spanish Insolvency law, the Insolvency Administration could exercise what is known as a “claw-back action”, by which it can request for the rescission of contracts, agreements and operations in general entered into into the Airline and a third party two years before its declaration of insolvency, where that operation is deemed to be detrimental to the assets of the Airline.

9.1.6 Is there, either under law or as a matter of practice in the Relevant Jurisdiction, a period of time within which the Insolvency Official will either “adopt” the lease and pay rent and other lease payments as an expense of the insolvency or “reject” the lease and permit the Owner to enforce such rights as it may have under the lease?

The lease would remain in full force after commencement of insolvency proceedings, i.e., the declaration of insolvency does not affect the effectiveness of the lease agreement. In accordance with the answers already provided above, the Insolvency Administration can only intervene in order to propose or support an agreement for the termination of the lease (in case it is favourable to the insolvency proceedings), and the execution of such agreement would be subject to the authorization of the Court. For the event that the Insolvency Administration or the Airline fails to pay the rents/amounts accrued, please see 9.1.4. c).

9.1.7 If the lease is “adopted” will the Insolvency Official also pay any unpaid lease payments due as at commencement of the insolvency protection?

Yes, the debtor or the Insolvency Administration should pay all outstanding amounts against the estate.

9.1.8 If not or if the lease is “rejected”, would the Owner’s claim for any outstanding sums rank equally with other ordinary unsecured creditors of the Airline?

In case the lease agreement is terminated within the corresponding incidental procedure, outstanding debts accrued before the declaration of insolvency would rank as “ordinary credits” (junior to “privileged credits” and senior to “subordinate credits”), which can be fairly described as ordinary unsecured claims; the outstanding debts accrued from the start of the insolvency proceedings should be paid against the estate.

9.1.9 Are there certain types of preferred creditors whose claims will rank above claims of the Owner?
Yes. Any creditors with in rem security (mortgages, pledges, etc.) are referred to as special privileged creditors and have preference to collect payment over the collateral; and others such as tax authorities, workers, etc., which are considered general privileged creditors, who have preference over ordinary creditors over the assets of the debtor which have not been given as collateral.

9.1.10 If the Aircraft is in the possession of a person other than the Airline at the commencement of Insolvency Protection of the Airline, for example an independent maintenance facility, will such person be entitled, under the laws of the Relevant Jurisdiction, to assert a lien arising under law or contract over the Aircraft in respect of amounts then due and unpaid to such person by the Airline?

No. Retention rights such as possessory liens cease their effect when insolvency proceedings are commenced. The Spanish Insolvency Act only recognises as an exception in cases in which the retention is declared in accordance with administrative, tax, labour or social security rules.

9.1.11 Is a person other than the Airline, for example an airport authority, entitled under the laws of the Relevant Jurisdiction to seize possession of the Aircraft after commencement of Insolvency Protection and assert a lien arising under law or contract over the Aircraft in respect of amounts then due and unpaid to such person by the Airline.

No. The Aircraft being property of the Owner, not the Airline, no third party is entitled to neither seize it nor assert any lien on it based on debts by the Airline, with the only exception being where the retention is declared in accordance with administrative, tax, labour or social security rules.

10. TAXATION

10.1 The decision to lease to an airline in the Relevant Jurisdiction assumes that the Owner will not be taxed on receipt of rentals or other payments (including maintenance reserves) under the Lease except by way of tax on its general income, profits or gains payable by the Owner in its place of incorporation or place of main business (if different). Will there be a requirement for the Owner to pay tax in the Relevant Jurisdiction on lease payments on basis that either the Owner is subject to taxation in the Relevant Jurisdiction by reason only of the leasing of the Aircraft under the Lease and is required to make payment itself; or payment of such tax is by way of the airline being required to withhold and account for tax from lease payments, where:

10.1.1 the Owner is incorporated and is tax resident in Ireland?
The income obtained by the Owner for the lease of bareboat aircrafts could be qualified as business profits for Spanish Non-Resident Income Tax purposes (“NRIT”) according to the pronouncement issued by the National High Court on 26 June 2017. Under this scenario, income obtained by the Owner would not be subject to taxation in Spain according to the Double Tax Treaty signed between Spain and Ireland.

On the other hand, if said income is qualified as a royalty (which is the criterion followed by the Spanish General Directorate of Taxes and the Spanish Administrative-Economic Court), said income would be subject to withholding tax at the 4% tax rate established by the NRIT Law 1.

On this basis, the Owner will be taxed by NRIT at a 4% tax rate (the amounts withheld by the lessee could be deducted and, if this were the case, reimbursed).

Notwithstanding the above there is a tax exemption in article 14.1.g) of the NRIT Law for the lease of aircrafts, on a bareboat basis, by foreign entities which may not be deemed to have a permanent establishment (“PE”) in Spain, when used for international flights 2.

In the case of lease of an aircraft not in a bareboat charter, income received by the Owner would not be subject to taxation in Spain according to the applicable Double Tax Treaty for being considered as business profits.

In case of the Owner acting through a PE in Spain, income obtained would be subject to NRIT being applicable a 25% tax rate (again any withholding made by the lessee could be deducted). Additional tax rate (19%) would arise over the income retrieved by the parent company.

10.1.2 the Owner is incorporated and is tax resident in the United Kingdom?

Same comments as in section 10.1.1. (please note that we did not take into account the effects of a hard Brexit scenario).

10.1.3 the Owner is incorporated and is tax resident in Hong Kong?

Same comments as in section 10.1.1.

10.1.4 the Owner is incorporated and is tax resident in Singapore?

Same comments as in section 10.1.1.

10.1.5 the Owner is incorporated and is tax resident in Malta?

Same comments as in section 10.1.1.

10.1.6 the Owner is incorporated and is tax resident in the Channel Islands?

The Channel Islands are considered a tax haven by Spanish law, therefore, there is not double tax treaty signed by Spain with said territory.
Due to the above, the lease of an aircraft on a bareboat charter basis, without a permanent establishment, would be subject to taxation in Spain. Said income would be taxed by NRIT at the 4% tax rate.

However, the NRIT exemption established in article 14.1.g) could be applicable if the requirements mentioned in section 10.1.1. above are met.

On the other hand, if the lease is not carried out on a bareboat charter basis, said income would be taxed by NRIT (at the 4% tax rate) and the above exemption would not be applicable, in any case. In case of the Owner acting through a PE in Spain, income obtained would be subject to NRIT being applicable a 25% tax rate. Additional tax rate (19%) would arise over the income retrieved by the parent company.

Where a tax rate is applicable in accordance with the mentioned legislation, the tax amount shall be withheld by the lessee over the amount paid to the lessor. Said amount would be deductible for the lessor.

10.1.7 the Owner is incorporated and is tax resident in the Isle of Man?

Same comments as in section 10.1.6.

10.1.8 the Owner is incorporated and is tax resident in Mauritius?

Same comments as in section 10.1.6.

10.1.9 the Owner is incorporated and is tax resident in Bermuda?

Same comments as in section 10.1.6.

10.1.10 the Owner is incorporated and is tax resident in the Cayman Islands?

Same comments as in section 10.1.6.

10.2 If there is a requirement in the Relevant Jurisdiction for the airline to withhold tax on lease payments, will the courts of the Relevant Jurisdiction recognise and permit enforcement of a “gross up” clause in the Lease requiring the payment by the Airline of an additional sum to ensure the Owner receives and is entitled to retain the same net amount as would have been received in the absence of the withholding, taking account of any further withholding on account of tax required in relation to such additional sum.

Yes.

10.3 VAT: European Union country: under Article 148(f) of the VAT Directive,
an exemption from VAT is applied to “supplies” consisting of chartering or hiring of aircraft which are used by airlines operating for reward chiefly on international routes. Therefore:

10.3.1 New lease to airline operating for reward chiefly in domestic routes: VAT will be applied to lease rentals at current rate:

21%

10.3.2 New Lease to airline operating for reward chiefly on international routes: VAT will not be applied to lease rentals by reason of application of exemption:

Yes, provided that the recipient of said service would be the company engaged in the international air navigation using the aircraft for this purpose and that its activity is the remunerated transportation of persons or goods.

10.3.3 Sale of aircraft by an aircraft lessor to another aircraft lessor of an aircraft subject to a lease to an airline operating for reward chiefly in domestic routes:

VAT will be applied to the purchase price. If the seller and the purchaser are both EU entities and the purchaser provides with its EU VAT Number to the seller, then the VAT charge will be a reverse charge given that the aircraft is made available to the acquirer in the country in which it is established. Otherwise VAT will be applied to purchase price at current rate: 21%

10.3.4 Sale of aircraft by an aircraft lessor to another aircraft lessor of an aircraft subject to a lease to an airline operating for reward chiefly on international routes:

VAT will be applied to purchase price: yes, at 21%, provided that the purchaser of said service is not itself a company engaged in international air navigation using the aircraft for this purpose. In this sense, please see our comments above regarding the reverse charge mechanism.

10.3.5 If yes, is this because of the exemption under Article 148(f) is applied to the airline disregarding the decision in ECJ Case C-33/2011?

No, it is because the application of article 22.Four of Spanish VAT legislation, which transposes article 148 of the Directive stating that for the application of the exemption the recipient of said service should be the company engaged in the international air navigation using the aircraft for this purpose.

If the transaction involves the first importation of the aircraft into the EU (and assuming the aircraft is intended for use as a civil and not military aircraft) what rate of Customs Duty will apply?

0%
10.4 Is any stamp duty, notarial or other fee or equivalent payable in respect of the execution of the Lease, a de-registration power of attorney or any other lease related document concerning the aircraft? Will such stamp duty or fee still be payable if the relevant documents are executed and held outside the Relevant Jurisdiction? If any such amount is payable how much is it approximately?

If any phase of the transaction is made through a “public document”, a tax on that document will have to be paid by the acquirer of the good. The tax rates applicable will range depending on the extension of the document, from 0.30 cents per sealed document or 0.15 per folio.

A public document would be required for the granting of the power of attorney and the Lease, provided that it is going to be registered. Mortgages have also to be notarised, as explained.

Moreover, local regional tax rates are also applicable (this tax can range between a 0.5%-1.5% on the value of the asset) in the event of certain public documents registrable in a public registry (Leases and mortgages). This tax will be also applicable if the registrable document is signed outside Spain. The following are applicable rates up to date are:

<table>
<thead>
<tr>
<th>Autonomous Region</th>
<th>Percentage</th>
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</thead>
<tbody>
<tr>
<td>Andalucía</td>
<td>1,50%</td>
</tr>
<tr>
<td>Aragón</td>
<td>1,50%</td>
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<tr>
<td>Asturias</td>
<td>1,20%</td>
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<tr>
<td>Islas Baleares</td>
<td>1,20%</td>
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<tr>
<td>Islas Canarias</td>
<td>0,75%/1,00%</td>
</tr>
<tr>
<td>Cantabria</td>
<td>1,50%</td>
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<tr>
<td>Castilla La-Mancha</td>
<td>1,50%</td>
</tr>
</tbody>
</table>
10.5 Can any form of consent, authorisation or licence be obtained exempting the payments referred to in this Section from such tax or duty? If so, how would it be obtained?

If an exemption is applicable, the lessee should file a “negative” tax return communicating to the Spanish Tax Authority that the income received is exempt from NRIT and, additionally, an annual summary.

10.6 Ignoring any taxation consequence already mentioned and any potential taxation issues if the Owner has any other connection to the Relevant Jurisdiction, is there any other Relevant Jurisdiction taxation consequence of the Owner:
10.6.1 being owner and lessor of an aircraft registered in the Relevant Jurisdiction and operated/leased by a company incorporated or registered in the Relevant Jurisdiction?

No.

10.6.2 making available a lease facility to a company incorporated or regulated in the Relevant Jurisdiction?

Interests obtained by the Owner would be taxed by Spanish NRIT if the lender is not an EU entity.

10.6.3 Receiving rent and other lease payments under the Lease from the lessee incorporated or registered in the Relevant Jurisdiction?

No.

10.6.4 Repossessing the aircraft and exporting the aircraft from the Relevant Jurisdiction?

No.

10.6.5 Selling the aircraft at a profit, whether such sale is after repossession or is subject to the Lease and the lessee’s rights?

No.

11. EXCHANGE CONTROLS

11.1 Are payments to foreign owners by companies incorporated or registered in the Relevant Jurisdiction subject to any form of exchange or similar control?

No, there is no applicable exchange control in Spain.

11.2 If yes, can any consents, authorisations or licences be obtained to exempt payments from any such control? How would these be obtained? Are such consents, authorisations or licences transferable?

Not applicable.
12. INSURANCE

12.1 Is it a legal requirement to insure the Aircraft within the Relevant Jurisdiction?

It is a legal requirement that adequate insurance will be maintained but there is no requirement that the risk is placed with insurers or underwriters in the Relevant Jurisdiction.

12.2 If so, is there any restriction on reinsurance of the primary insurance outside the Relevant Jurisdiction?

Not applicable.

12.3 Is there a minimum percentage of cover which a local insurer is obliged to retain, and if so, what is it?

Not applicable

12.4 Is it possible for local insurers to assign contracts of reinsurance? If not, is a cut-through clause enforceable?

As stated in the 12.1 above, it is not necessary to use reinsurance.

Cut-through clauses are not valid under Spanish legislation, insofar as article 78 of the Act on Insurance Contract prohibits direct claim by the insured against the reinsurer.

13. LIABILITY FOR DAMAGE

Can the Owner be strictly liable - liable without a requirement to prove fault or negligence - for any damage or loss caused by the Aircraft assuming Owner is an innocent owner with no operational control of the Aircraft?

No. In accordance with the Aerial Navigation Act as well as the Montreal Convention, of May 28, 1999, ratified by Spain, the carrier is liable for the damages caused during a flight.

14. DETENTION/CONFISCATION

14.1 Are there any rights to detain or sell the Aircraft pursuant to drug trafficking, tax or other laws or pursuant to rights of airport or air navigation authorities if the Airline fails to pay when due?
Article 16 of the Convention on International Civil Aviation provides the appropriate authorities with the possibility of searching an aircraft of the other contracting States, in order to inspect the certificates and other documents related to the aircraft.

On the one hand, Aerial Security Act 21/2003, of 7 July states that in the event that any kind of breach of safety regulations is found, after a search of an aircraft, the Director-General for Civil Aviation shall take appropriate measures such as detaining the aircraft, provided that the irregularities committed are serious.

On the other hand, the Directive 2004/36/EC sets forth a procedure for ramp inspections of third-country aircraft landing at airports located in the Member States in order to verify if those meet the international security regulations. The Directive provides the possibility of detaining the aircraft if it poses a risk to aerial security and safety.

In addition, under the Spanish Criminal Code, an Aircraft used as an instrument to commit a crime (e.g. drug trafficking), may be confiscated by a Court during the time of the investigation.

14.2 If so, can the Aircraft be forfeited and sold without the Owner being made aware?

No.

15. SOVEREIGN IMMUNITY

15.1 Is any Airline based in the Relevant Jurisdiction entitled to any form of sovereign or other immunity from suit which might restrict the Owner's rights under the Lease?

No. Every airline licensed to operate in Spain is a regular commercial company, regardless of its ownership, and does not enjoy sovereign immunity or any other kind of immunity that may prevent the Owner from bringing to Court (or to any other contractually agreed dispute resolution mechanism) any legal action arising out of the Lease.

15.2 Can such immunity be validly waived in advance by contract?

Not applicable.

16. DISPUTE RESOLUTION AND RECIPROCAL ENFORCEMENT

16.1 Do the laws of the Relevant Jurisdiction permit and recognise an “asymmetric” submission to jurisdiction clause under which the lessee submits to the exclusive jurisdiction of the Courts of England but the Owner
has discretion to choose a jurisdiction other than the Courts of England?

The validity of such a clause has always been widely discussed in Spain. However, a recent order of the Madrid Regional Court of 18 October 2013 has admitted the validity of an asymmetric submission to jurisdiction clause. This order states that the principle of contractual freedom should prevail on choosing the applicable forum. Basing on Article 25.1 of the Council Regulation (EC) No 44/2001 of 22 December 2000 (Brussels I), its admissibility is clear. Moreover, in accordance with the Spanish Organic Law on Judicial Power the parties are not required to submit only to Spanish Courts. Finally, the Spanish Civil Procedure Act states that “Explicit submission shall be understood as that agreed upon by the parties involved with specification of the judicial district to whose courts they submit themselves”. Specifying a jurisdiction, does not contradict the idea that the parties submit to more than one jurisdiction.

Therefore, although the validity of this sort of clauses hasn’t been generally admitted in Spain, it seems that, according to the recent case law and basing on the applicable legislation, Spain must recognise an asymmetric submission to jurisdiction clause.

16.2 If the Lease is governed by English Law and a judgment is obtained by the Owner in the English courts, can that judgment be automatically enforced in the Relevant Jurisdiction or will the case have to be re-examined on its merits? If so what procedures must be complied with to enforce such a judgment?

In accordance with Brussels I, that judgment will be recognised in Spain without any special procedure being required, unless being subject to the exceptions provided by the Regulation, which are as follows:

- such recognition is manifestly contrary to public policy in the EU country in which recognition is sought;
- the defendant was not served with the document that instituted the proceedings in sufficient time and in such a way as to enable the defendant to arrange for his/her defence;
- it is irreconcilable with a judgment given in a dispute between the same parties in the EU country in which recognition is sought;
- it is irreconcilable with an earlier judgment given in another EU or non-EU country involving the same cause of action and the same parties.

The English judgment cannot be re-examined on its merits.

16.3 Is the Relevant Jurisdiction party to the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention) or the 1965 Convention on the Settlement of Investment Disputes Between States and Nationals of Other States (the Washington Convention)? Will the courts of the Relevant Jurisdiction recognise and enforce a decision of an arbitrator?

Yes, Spain is party to the New York Convention and the Washington Convention.

Spanish Courts allow the enforcement and recognition of arbitrator decisions, according to The New York
16.4 What is the usual choice of dispute resolution in international supply contracts involving a lessor or buyer incorporated in or with its main place of business in the Relevant Jurisdiction?

Spanish legislation provides different alternative disputes resolutions, such as arbitration or mediation proceedings, which are out-of-court solutions. Spanish legislation encourages the use of these alternative measures promoting access to them prior to access to courts. Nevertheless, the usual choice of dispute resolution is court procedure.

17. AIRCRAFT ENGINES

17.1 If the equipment being leased to the Airline in the Relevant Jurisdiction was an Aircraft Engine either unattached to an airframe or attached to an airframe belonging to a party other than the Aircraft Engine Owner and being leased to the Airline under a separate engine lease agreement, would there be any significant changes to the responses set out above?

Please see 17.2 and 17.3 below. Subject to 17.2 and 17.3 generally, no significant changes are required in relation to Aircraft Engines.

17.2 In particular, does the Relevant Jurisdiction recognise the separate ownership of the Aircraft Engine by the Aircraft Engine Owner when the Aircraft Engine is attached to an airframe belonging to a person other than the Aircraft Engine Owner?

Yes, if explicitly agreed by parties, since the ownership is governed by the laws of contract and will follow the parties’ intentions. If documentation and maintenance of Aircraft Engine records are correctly drafted, the ownership of an Aircraft Engine could be preserved separately from the rest of the Aircraft.

17.3 Is there a register of Aircraft Engines and is the information given above in relation to registration of Aircraft and the ownership and leasing of Aircraft the same for registration of an Aircraft Engine and the ownership and leasing of such Aircraft Engine at the Aircraft Engine register?

There is not any register of Aircraft Engines in Spain. However, even though it is not usual, engines may be subject to separate security interests which must be recorded with the Movable Property Registry.

18. ADDITIONAL INFORMATION – IS THERE ANYTHING ELSE WE SHOULD HAVE ASKED?
Are there any other matters, issues, recommended courses of action or steps which can be taken to protect and/or perfect the Owner's interests, as owner and lessor of the Aircraft in the Relevant Jurisdiction or of which the Owner should be aware when contemplating leasing an aircraft to a company incorporated and operating in the Relevant Jurisdiction?
Footnotes

1 Please note that the article 14.1.m) establishes an exemption for royalties paid to a company located in other EU member state when both companies are associated (i.e. being participated in at least 25% for the same company, or, having one of them at least 25% of the stake of the other company).

2 Please note that said exemption will also apply when the grade of use in international flights represents more than 50% of the total distance flighted by all the aircrafts leased by the lessee.
PROPOSED TRANSACTION STRUCTURE

2.1 Are there any public registers in the Relevant Jurisdiction where a search can be carried out to determine whether an order or resolution for any bankruptcy, bankruptcy protection or similar bankruptcy proceedings has been registered in relation to the Airline?

2.2 If so, specify which public registers, how long such searches typically take and if the fees are more than USD 100, approximately what fees apply.

SEARCHES

3.1 In the case of the transfer of title to an aircraft registered in the Relevant Jurisdiction:

3.2 Other than Insolvency laws (see section 9) are there any laws which may have the effect of defeating the Owner's right in the aircraft – for example, Government requisition? Do the laws of the Relevant Jurisdiction provide for any compensation in such circumstances?

RIGHTS AND EVIDENCE OF OWNERSHIP

4.1 Has the Relevant Jurisdiction ratified any of:

4.2 If the Relevant Jurisdiction has ratified the Cape Town Convention, see the Cape Town Convention Annex.

4.3 If the Relevant Jurisdiction has not ratified the Cape Town Convention, has the Relevant Jurisdiction started official proceedings or given any other official indication that it will accede to or ratify the Cape Town Convention in the near future?

4.4 Is there an Aircraft Register in the Relevant Jurisdiction and if so, what is it called and who operates it?

4.5 If so, in relation to registration:

4.6 What documents and/or consents are required to obtain registration on the Aircraft Register and will these require any formalities (for example, notarisation, legalisation or application of apostille)?

4.7 Are there any restrictions on the legal status and/or nationality/domicile of parties seeking to register an aircraft on the Aircraft Register?

4.8 In respect of aircraft transactions connected with the Relevant Jurisdiction generally, are there any foreign Aircraft Registers that are commonly used, or should be considered, as alternatives to or in addition to registration with the Relevant Jurisdiction's Aircraft Register? If so, what is the benefit of such registration?

4.9 Are there any other filings or registrations necessary or desirable (other than the registrations already mentioned and Lease Registration – see section 6) in the Relevant Jurisdiction in order to ensure the validity, priority or enforceability of the transaction documents, or to perfect the interests of the Owner in the Aircraft or the transaction documents?

THE AIRCRAFT REGISTER – NATIONALITY OF AIRCRAFT

5.1 Will the Relevant Jurisdiction recognise the concept of a lease over an aircraft?

5.2 Would the choice of English law to govern the Lease be upheld as a valid choice of law in any action in the Relevant Jurisdiction?

5.3 Must the Lease be in a particular form if it is to be valid and enforceable in the Relevant Jurisdiction (for example, must it be in the language of the Relevant Jurisdiction or be notarised, legalised or have the apostille applied)?

5.4 If the Lease must be in the language of the Relevant Jurisdiction, is it possible under the Relevant Law also to have an English version, and to provide that the English version should prevail in case of conflict with the Relevant Jurisdiction language?
Are there any special terms that the Lease must contain or that it is advisable for the Lease to contain?

Are there any circumstances under which the Lease might be re-characterised under the laws of the Relevant Jurisdiction as:

6 LEASE REGISTRATION

6.1 Is there a separate register for Aircraft leases in the Relevant Jurisdiction?

6.2 If yes, then:

7 ENFORCEMENT OF LEASES (ASSUMING AIRLINE IS NOT IN A FORM OF INSOLVENCY PROTECTION)

7.1 On the occurrence of an event of default under the Lease, assuming that the Owner is permitted to do so under the terms of the Lease, can the Owner terminate the Leasing of the Aircraft under the Lease and enforce the Lease by taking physical possession of the Aircraft?

7.2 If so, can the Owner take physical possession of the Aircraft without the need for judicial proceedings in the Relevant Jurisdiction?

7.3 Where judicial proceedings in the Relevant Jurisdiction are necessary, please provide details of the proceedings, in particular:

7.4 Where judicial proceedings are not necessary, please comment on the time limits relevant to taking possession of the Aircraft, in particular:

7.5 Apart from the judicial proceedings described above and ignoring deregistration (see section 8), is the permission of any other party (including any official body) in the Relevant Jurisdiction required to take possession of the Aircraft?

7.6 Is there any history of actual repossession of Aircraft by Owners in the Relevant Jurisdiction? If so, please provide details of any matters or issues of which an Owner should be aware.

7.7 Are there any circumstances in which the sums expressed to be payable under the Lease or obligations expressed to be assumed by the Airline in the Lease are or will be unrecoverable or unenforceable in the Relevant Jurisdiction?

7.8 Are there any restrictions on the ability of the Owner to sell the Aircraft in the Relevant Jurisdiction during the term of the Lease or, following an event of default, on termination of the leasing or pending judicial enforcement of the Lease?

7.9 Are there any export restrictions on export of a repossessed aircraft?

8 DEREGISTRATION POWER OF ATTORNEY/EXPORTATION

8.1 Can the Owner apply for deregistration of the Aircraft either at the end of the lease term or following successful repossession (with or without judicial proceedings) and is there any time period within which such application should be made?

8.2 Is the consent of the Airline required to deregister the Aircraft either by law or as a matter of custom or practice?

8.3 How long does deregistration take, both where there is co-operation from the Airline and where this is no co-operation from the Airline?

8.4 Is it possible to obtain an export licence or export permit in advance?

8.5 Approximately how long does it take to obtain an export licence or export permit? What are the costs involved?

8.6 Is it possible to obtain a certificate of deregistration in advance?

8.7 Will a power of attorney empowering the Owner to deregister and export the Aircraft from the Relevant Jurisdiction, either at the end of the lease term or following successful repossession (with or without judicial proceedings), be enforceable in the Relevant Jurisdiction? Will the courts recognise a power of attorney in the form of an IDERA and governed by English law?

8.8 If the power of attorney was stated to be irrevocable would this be enforceable
against the Airline or can the Airline revoke such power of attorney?

8.9 Upon the occurrence of a bankruptcy or insolvency of the Airline is the power of attorney still effective?

9 INSOLVENCY

9.1 In the event that the Airline were to become insolvent either on a balance sheet basis (assets less than liabilities) or unable to pay debts as fall due:

10 EXCHANGE CONTROLS

10.1 Are payments to foreign owners by companies incorporated or registered in the Relevant Jurisdiction subject to any form of exchange or similar control?

10.2 If yes, can any consents, authorisations or licences be obtained to exempt payments from any such control? How would these be obtained? Are such consents, authorisations or licences transferable?

11 INSURANCE

11.1 Is it a legal requirement to insure the Aircraft within the Relevant Jurisdiction?

11.2 If so, is there any restriction on reinsurance of the primary insurance outside the Relevant Jurisdiction?

11.3 Is there a minimum percentage of cover which a local insurer is obliged to retain, and if so, what is it?

11.4 Is it possible for local insurers to assign contracts of reinsurance? If not, is a cut-through clause enforceable?

12 LIABILITY FOR DAMAGE

12.1 Can the Owner be strictly liable - liable without a requirement to prove fault or negligence - for any damage or loss caused by the Aircraft assuming Owner is an innocent owner with no operational control of the Aircraft?

13 DETENTION/CONFISCATION

13.1 Are there any rights to detain or sell the Aircraft pursuant to drug trafficking, tax or other laws or pursuant to rights of airport or air navigation authorities if the Airline fails to pay when due?

13.2 If so, can the Aircraft be forfeited and sold without the Owner being made aware?

14 SOVEREIGN IMMUNITY

14.1 Is any Airline based in the Relevant Jurisdiction entitled to any form of sovereign or other immunity from suit which might restrict the Owner's rights under the Lease?

14.2 Can such immunity be validly waived in advance by contract?

15 DISPUTE RESOLUTION AND RECIPROCAL ENFORCEMENT

15.1 Do the laws of the Relevant Jurisdiction permit and recognise an "asymmetric" submission to jurisdiction clause under which the lessee submits to the exclusive jurisdiction of the Courts of England but the Owner has discretion to choose a jurisdiction other than the Courts of England?

15.2 If the Lease is governed by English Law and a judgment is obtained by the Owner in the English courts, can that judgment be automatically enforced in the Relevant Jurisdiction or will the case have to be re-examined on its merits? If so what procedures must be complied with to enforce such a judgment?

15.3 Is the Relevant Jurisdiction party to the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention) or the 1965 Convention on the Settlement of Investment Disputes between States and Nationals of Other States (the Washington Convention)? Will the courts of the Relevant Jurisdiction recognise and enforce a decision of an arbitrator?

15.4 What is the usual choice of dispute resolution in international supply contracts involving a lessor or buyer incorporated in or with its main place of business in the
Relevant Jurisdiction?

ADDITIONAL INFORMATION – IS THERE ANYTHING ELSE WE SHOULD HAVE ASKED?
1. PROPOSED TRANSACTION STRUCTURE

An aircraft is typically financed through a finance lease rather than an operating lease (see 5.6.2 below).

2. SEARCHES

2.1 Are there any public registers in the Relevant Jurisdiction where a search can be carried out to determine whether an order or resolution for any bankruptcy, bankruptcy protection or similar bankruptcy proceedings has been registered in relation to the Airline?

There is no official federal or cantonal public register of pending or closed bankruptcy proceedings. However, liquidation of a company due to bankruptcy is registered in the Commercial Register at the seat of the company. An (informal) excerpt from the Commercial Register can be obtained from the website www.zefix.ch. Moreover, information relating to bankruptcy proceedings – such as the opening of bankruptcy proceedings, collocation plan, revocation of bankruptcy, suspension of bankruptcy proceedings and closure of bankruptcy proceedings – is published in the Swiss Official Gazette of Commerce (SOGC) and the cantonal Official Gazette at the seat of the company. SOGC provides on its website (www.shab.ch) a free of charge database for all SOGC notices which were published within the last three years. The SOGC online database is usually permanently available and the search results are provided instantly.

2.2 If so, specify which public registers, how long such searches typically take and if the fees are more than USD 100, approximately what fees apply.

See above 2.1.

3. RIGHTS AND EVIDENCE OF OWNERSHIP

3.1 In the case of the transfer of title to an aircraft registered in the Relevant Jurisdiction:

3.1.1 Is any particular form of transfer required for the transfer to be legally recognised?

A distinction has to be made between aircrafts registered in the Swiss aircraft register (Luftfahrzeugregister) (Aircraft Register) and aircrafts also registered in the Swiss aircraft record (Luftfahrzeugbuch) (Aircraft Record) (see 4.4 below).

If the aircraft is registered in the Aircraft Register: Aircrafts qualify as movable assets and are subject to the rules of the Swiss Civil Code. The transfer of title to a moveable asset requires (i) a valid agreement between the seller
and the buyer which is not subject to any formal requirements, (ii) a generally implicit in rem contract under which
the parties declare their intent to complete the transfer of title, and (iii) a transfer of physical possession over the
movable asset from the seller to the buyer.

If the aircraft is registered in the Aircraft Record: Although an aircraft clearly constitutes a movable asset, as soon
as it is registered in the Aircraft Record rules similar to those governing immovable property apply. The conditions
for a valid transfer of title over such aircrafts are (i) a valid agreement between the seller and the buyer which
must be in written form, and (ii) registration of the new owner in the Aircraft Record on the previous owner's
request. The Swiss Federal Office of Civil Aviation (FOCA) provides a corresponding application form on its
website (www.bazl.admin.ch) that should be used for the filing. The transfer of title is effective once the new
owner is registered.

3.1.2 Must any particular conditions be satisfied for the transfer to be recognised?

See 3.1.1 above.

3.1.3 Will such a transfer still be recognised by the courts of the Relevant Jurisdiction as
legally valid where the relevant aircraft is located in another jurisdiction at the time of
the transfer?

Under Swiss law a distinction has to be made between the agreement generating obligations between parties
(o obligating act) and the actual performance of the obligations (act of disposal). The parties are free to choose the
law governing their obligating act (e.g. sale and purchase agreement or lease agreement).

With regard to the act of disposal (e.g. transfer of ownership), if the aircraft is registered in the Aircraft Register
only, the lex rei sitae applies to the act of disposal (i.e. foreign law if the aircraft is located in a foreign country).
According to article 104 of the Federal Act on Private International Law, the parties may submit the act of
disposal to the law of the state of shipment or of destination or to the law which governs the underlying legal
transaction. However, such choice of law may not be asserted against third parties. In case the parties choose
Swiss law to govern the act of disposal, the transfer will be recognized provided it was executed in accordance
with Swiss law, i.e. the aircraft was physically transferred to the buyer.

If the aircraft is registered in the Aircraft Record, the Federal Aircraft Record Act (ARA) applies and a transfer will
be recognized to the extent it is in line with the requirements set forth in the ARA (i.e. registration of the new
owner in the Aircraft Record).

3.1.4 Are any duties, taxes or fees levied on such transfer of ownership?

If the aircraft is registered in the Aircraft Register: To register the change of ownership a fee amounting to 1/2 of
the aircraft registration fee applies. The aircraft registration fee ranges between CHF 300 and CHF 600,
depending on the type and the maximum take-off weight of the aircraft. Hence, a fee up to a maximum of CHF
300 can be levied for the registration of the change of ownership.

If the aircraft is registered in the Aircraft Record: A fee amounting to 1/2 of the aircraft registration fee applies to
the mandatory registration of the change of ownership. The aircraft registration fee ranges between CHF 195
and CHF 10,320 and is calculated based on the maximum take-off weight of the aircraft (CHF 9 per 100
kilograms). Hence, a fee up to a maximum of CHF 5,600 can be levied for the registration of the change of ownership.

Taxes: In general, Switzerland levies VAT at the rate of 8% on the supply and import of aircraft which will be registered in Switzerland. According to article 23 para. 2(8) of the Federal Act on Value Added Tax, an exception to this rule exists in case of supply of aircrafts to airlines which carry on air transport and charter business commercially and whose turnovers from international flights exceed those from domestic traffic. This exception applies to supplies of aircrafts to air carriers domiciled abroad as well as to those domiciled in Switzerland. The Federal Tax Administration maintains a list of Swiss domiciled air carriers that qualify for these exceptions.

3.2 Other than Insolvency laws (see section 9) are there any laws which may have the effect of defeating the Owner’s right in the aircraft – for example, Government requisition? Do the laws of the Relevant Jurisdiction provide for any compensation in such circumstances?

Expropriation: The Swiss Constitution (Bundesverfassung) guarantees one’s property rights. The expropriation of such rights by the government is only permissible if it is in the public interest, proportionate, has a legal basis, and is compensated.

Seizure by prosecution or court: In criminal proceedings, assets belonging to the accused or a third party may be seized provided they can be used as evidence. Hence, if an aircraft had been used for criminal activities the prosecution could order its confiscation. In addition the court shall, irrespective of the criminal liability of any person, order the seizure of objects that have been used or were intended to be used for the commission of an offence in the event that such objects constitute a future danger to public safety, morals or public order.

Seizure in case of an aircraft accident or serious incident: In case of an accident or a serious incident involving aircrafts, the investigating authority has the right to seize the aircraft and other assets in order to clarify the facts of the case.

Seizure by FOCA: In case of statutory violations, FOCA has the right to seize aircrafts provided their further use would endanger the public security or their abusive use is to be feared.

Seizure by police: Switzerland does not have a Police Act on federal level, instead, every canton has its own. According to the Police Act of the Canton of Zurich, the police can seize assets to avert a significant danger and keep it in custody until the danger is averted.

Retention rights: See 9.1.10 below.

4. THE AIRCRAFT REGISTER – NATIONALITY OF AIRCRAFT

4.1 Has the Relevant Jurisdiction ratified any of:

The Chicago Convention of 1944 on International Civil Aviation?

Yes.
The 1948 Geneva Convention on the International Recognition of Rights in Aircraft?

Yes.

The 1933 Convention for the Unification of Certain Rules Relating to the Precautionary Arrest of Aircraft?

Yes.

The 2001 Cape Town Convention on International Interests in Mobile Equipment and the associated Protocol on Matters Specific to Aircraft Equipment (the Cape Town Convention)?

No. The Cape Town convention has been signed, but not yet ratified.

4.2 If the Relevant Jurisdiction has ratified the Cape Town Convention, see the Cape Town Convention Annex.

N/A

4.3 If the Relevant Jurisdiction has not ratified the Cape Town Convention, has the Relevant Jurisdiction started official proceedings or given any other official indication that it will accede to or ratify the Cape Town Convention in the near future?

Switzerland has signed the Cape Town Convention on 16 November 2001. However, the ratification process is still on hold. No official information is available as to whether the government will ratify it any time soon.

4.4 Is there an Aircraft Register in the Relevant Jurisdiction and if so, what is it called and who operates it?

FOCA holds two registries, the Aircraft Register and the Aircraft Record.

The Aircraft Register contains detailed information regarding Swiss registered aircraft, including the name of the owner of the aircraft. Please note that the registration has no legal effect regarding the title to the aircraft and does not provide any proof of it.

In the Aircraft Record material rights relating to aircraft (e.g. ownership, aircraft liens and preregistrations) can be recorded. Please note that the registration is optional and that, if registered, the aircraft will be subject to rules similar to those applying to immovable property. In particular, transfer of title over such aircraft is effective only if it has been registered in the Aircraft Record. Furthermore, the acquisition of rights on the aircraft by a third party relying in good faith on the information contained in the Aircraft Record is in principle protected.

4.5 If so, in relation to registration:
4.5.1 Who is responsible for registering the Aircraft – is it an owner registry or an operator registry?

The owner of the aircraft is responsible for registering the aircraft in the Aircraft Register. A request of the owner is necessary for the registration in the Aircraft Record.

4.5.2 What details would normally be recorded on the Aircraft Register upon registration of an aircraft in the Relevant Jurisdiction? If not normally recorded, is it possible to record the Lease and/or an Aircraft Mortgage on the Aircraft Register?

The following minimum information is being recorded in the Aircraft Register: (i) date of registration, (ii) sign of registration, (iii) manufacturer, (iv) aircraft model, (v) serial number, and (vi) name and address of the owner.

The lease and/or an aircraft mortgage cannot be recorded in the Aircraft Register, but both can be recorded in the Aircraft Record (see 4.4 above and 6.1 below).

4.5.3 If the Aircraft Register is an operator register, is it possible to record the details of the aircraft owner/lessor and any financier with an Aircraft Mortgage?

N/A

4.5.4 If the Aircraft Register is an owner register, is registration on the Aircraft Register definitive to determine ownership of the Aircraft?

No. The registration in the Aircraft Register has no legal effect regarding title to the aircraft.

The ownership of the aircraft can be determined by requesting an excerpt from the Aircraft Record, provided the aircraft is recorded in the Aircraft Record. The Aircraft Record is public and consequently an objection of not knowing its content is excluded. The acquisition of a right on the aircraft by a third party relying in good faith on the registration of such right in the Aircraft Record is in principle protected.

4.5.5 Are any distinctions made between aircraft employed on international routes and those used purely for domestic flights?

No.

4.6 What documents and/or consents are required to obtain registration on the Aircraft Register and will these require any formalities (for example, notarisation, legalisation or application of apostille)?

FOCA provides on its website guidelines and forms concerning the registration and certification of aircraft in the Aircraft Register. The first step in the registration procedure is to reserve a registration mark for the aircraft; for
this purpose the corresponding reservation form has to be completed. After the provided details have been verified, the aircraft will be assigned a registration mark and the owner will receive an invoice, together with an administrative and technical checklist citing the documents required for registration.

The registration procedure will be initiated as soon as all the required documents have been submitted. In addition to the application for registration, the owner must submit the following:

1. Documents that provide evidence of the applicant's ownership over the aircraft. For this purpose, either a proof of ownership (FOCA Form) or an unconditional transfer of title signed by the last registered owner (bill of sale) may be used. Receipts cannot be used as proof of ownership.
2. Registered companies with seat in Switzerland are required to enclose a certified, up-to-date excerpt from the commercial register (https://www.zefix.admin.ch).
3. Associations are required to provide proof that at least two-thirds of their members as well as the committee and chairperson are resident in Switzerland and Swiss citizens or foreign citizen with equal status as Swiss citizens due to inter-governmental agreements.
4. Natural persons are required to provide proof of Swiss citizenship.
5. Foreign citizens are required to submit official confirmation from the relevant authorities that they hold a residence permit for Switzerland (category B or C). Furthermore, they are obliged to submit a declaration to the effect that the aircraft concerned will normally be operated from within Switzerland. This requirement can only be met if the home base of the aircraft concerned is in fact in Switzerland.
6. In the event of shared ownership, all owners must be listed. One of the owners must be designated as the officially responsible owner. The relevant forms are provided for this purpose by FOCA.
7. An official confirmation must be provided to the effect that the aircraft concerned has either never been entered in the country of manufacture or in the aircraft register in the country of residence of the predecessor (in title) of the applicant (certificate of non-registration), or that it has been deleted from the aircraft register in the country in which it was last registered (certificate of cancellation of registration).
8. In case of a used aircraft imported to Switzerland from a foreign country, proof of proper maintenance must be provided.

The documents generally need to be in written form, no further formalities are required.

4.7 Are there any restrictions on the legal status and/or nationality/domicile of parties seeking to register an aircraft on the Aircraft Register?

Yes. Please see 4.6 above.

4.8 In respect of aircraft transactions connected with the Relevant Jurisdiction generally, are there any foreign Aircraft Registers that are commonly used, or should be considered, as alternatives to or in addition to registration with the Relevant Jurisdiction’s Aircraft Register? If so, what is the benefit of such registration?

No.

4.9 Are there any other filings or registrations necessary or desirable (other than the registrations already mentioned and Lease Registration – see section
6) in the Relevant Jurisdiction in order to ensure the validity, priority or enforceability of the transaction documents, or to perfect the interests of the Owner in the Aircraft or the transaction documents?

Ownership and other material rights relating to an aircraft can be recorded in the Aircraft Record. The Aircraft Record is public and consequently an objection of not knowing its content is excluded. The acquisition of a right on the aircraft by a third party relying in good faith on the registration of such right in the Aircraft Record is in principle protected.

5. LEASES

5.1 Will the Relevant Jurisdiction recognise the concept of a lease over an aircraft?

Yes. Swiss law recognizes the concept of a lease over an aircraft, although the lease agreement as such is not regulated in the Swiss Code of Obligations as a separate type of agreement.

5.2 Would the choice of English law to govern the Lease be upheld as a valid choice of law in any action in the Relevant Jurisdiction?

A distinction has to be made between the agreement generating obligations between the parties (obligating act) and the actual performance of the obligations which creates or changes the ownership with respect to a right in rem (act of disposal). The parties are free to choose the law governing their obligating act (e.g. sale and purchase agreement or lease agreement). With regard to the act of disposal (e.g. transfer of ownership), the parties' choice depends on where the aircraft is registered.

If the aircraft is registered in the Aircraft Register, the lex rei sitae applies to the act of disposal (i.e. Swiss law if the aircraft is located in Switzerland). According to article 104 of the Federal Act on Private International Law, the parties may submit the act of disposal to the law of the state of shipment or of destination or to the law which governs the underlying legal transaction. However, such choice of law may not be asserted against third parties.

If the aircraft is registered in the Aircraft Record, the ARA applies to the act of disposal and the parties cannot agree on another law.

5.3 Must the Lease be in a particular form if it is to be valid and enforceable in the Relevant Jurisdiction (for example, must it be in the language of the Relevant Jurisdiction or be notarised, legalised or have the apostille applied)?

Under Swiss law no formal requirements apply to a lease agreement. However, for evidentiary purposes a written form of the lease agreement is highly recommended.

5.4 If the Lease must be in the language of the Relevant Jurisdiction, is it possible under the Relevant Law also to have an English version, and to provide that the English version should prevail in case of conflict with the
5.5 Are there any special terms that the Lease must contain or that it is advisable for the Lease to contain?

There are no mandatory terms which need to be included in the lease agreement. However, among others, it is recommended to include events-of-default and acceleration provisions and a repossession procedure in case of a premature termination of the lease agreement. Also, potential tax risks need to be assessed and – to the extent possible – be covered by the lease agreement.

Please note that if an aircraft is registered in the Aircraft Record, the right to use the aircraft can be registered in the Aircraft Record provided the right is granted under a lease agreement or a charter agreement with a term of at least six months.

5.6 Are there any circumstances under which the Lease might be re-characterised under the laws of the Relevant Jurisdiction as:

5.6.1 a secured loan?

Yes. As set forth under 1.1 above, the prevailing financing of aircrafts in Switzerland occurs through finance lease rather than operating lease. To the extent that such an agreement entails elements of a credit agreement and provides for security, a re-characterisation may not be excluded. The name of an agreement is not decisive. As the qualification is important for accounting and tax purposes, an analysis on a case by case basis is advisable.

5.6.2 a finance (or capital) lease?

Yes. In any case where an operating lease also entails elements of a finance lease, there is a risk that the operating lease is re-characterised as finance lease (and vice versa).

The Swiss Code of Obligations neither defines lease agreements nor distinguishes between operating and finance leases. Further, the legal classification of a lease agreement is generally disputed. However, according to the prevailing doctrine, a finance lease typically involves three parties, the term of the lease is longer compared to an operating lease and usually entails an option of the lessee to buy the lease object at the end of the lease term. In contrast, an operating lease usually involves two parties, runs for a shorter period of time and does not entail an option of the lessee to buy the lease object at the end of the lease term. As the qualification is important for accounting and tax purposes, an analysis on a case by case basis is advisable.

6. LEASE REGISTRATION

6.1 Is there a separate register for Aircraft leases in the Relevant Jurisdiction?
There is no separate register for aircraft leases in Switzerland. However, if the aircraft is registered in the Aircraft Record, the right to use such aircraft can be registered in the Aircraft Record provided the right is granted under a lease agreement or a charter agreement with a term of at least six months.

Although aircraft leases cannot be registered in the Aircraft Register, the lessee can be registered in the Aircraft Register as operator of the registered aircraft subject to the requirements applicable to the registration of ownership (apart from the ownership requirement).

6.2 If yes, then:

6.2.1 What documentation and/or consents are required for the registration of the Lease?

The registration requires the filing of the corresponding FOCA form and a copy of the lease or charter agreement.

6.2.2 What registration fees are payable (if any)?

The fee for the registration of a lease depends on the time necessary to perform the registration, but is limited to CHF 1,200.

6.2.3 What information is recorded on the register? How is the eventual discharge of the Lease recorded?

The Aircraft Record registers the holder of the right to use an aircraft. Deletion of the annotation is only possible with the consent of the holder of the right or on the basis of a court judgement.

6.2.4 Does any registration in respect of the Lease remain valid throughout the tenure of the Lease or does such a registration require periodic renewal? If renewal is required when must this be done and what is the approximate cost of renewal?

There is no requirement for periodic renewal.

7. ENFORCEMENT OF LEASES (ASSUMING AIRLINE IS NOT IN A FORM OF INSOLVENCY PROTECTION)

7.1 On the occurrence of an event of default under the Lease, assuming that the Owner is permitted to do so under the terms of the Lease, can the Owner terminate the Leasing of the Aircraft under the Lease and enforce the Lease by taking physical possession of the Aircraft?

The lease can be terminated by the owner. If the owner validly terminates the lease, the lessee is obliged to
return the aircraft to the owner.

7.2 If so, can the Owner take physical possession of the Aircraft without the need for judicial proceedings in the Relevant Jurisdiction?

No. If the lessee does not return the aircraft, the owner is generally not allowed to take physical possession of the aircraft, but has to take judicial proceedings.

7.3 Where judicial proceedings in the Relevant Jurisdiction are necessary, please provide details of the proceedings, in particular:

7.3.1 What documents would the Owner as lessor need to present in order to obtain possession of the Aircraft, both before and subsequent to judgment? Can documents be copies?

The owner as lessor has a contractual claim for repossession and a claim based on ownership. To receive a judgment against the lessee, the owner needs to convince the court that he is the owner of the aircraft, that he has leased the aircraft to the lessee and that the lease was validly terminated. To prove the above, the owner may submit the lease agreement, the notice of termination, and the chain of title from the first owner of the aircraft or an excerpt from the Aircraft Record. Copies of the relevant documents are usually sufficient as long as the opposing party does not dispute the content of or the authenticity of the signature under the document.

7.3.2 What is the approximate cost of issuing proceedings?

Under Swiss law the court fees are subject to statutory provisions and depend on the value in dispute (i.e. value of the aircraft), the time exposure and the difficulties of the case. The costs may only be assessed on a case-to-case basis.

7.3.3 Would the Owner be required to provide a bond, guarantee or other security in order to issue proceedings?

The court may demand that the plaintiff make an advance payment up to the amount of the expected court costs. Other security is generally not required.

7.3.4 What is an estimate of the normal duration of possession proceedings from time at which all required documentation is made available – if uncontested?

If the claim is uncontested, depending on the facts of the case and the competent court, proceedings could last between six months and one year.

7.3.5 What is an estimate of the normal duration of possession proceedings from time at which all required documentation is made available – if contested?
If the claim is contested, depending on the facts of the case and the competent court, proceedings could last between 1.5 and several years.

7.4 Where judicial proceedings are not necessary, please comment on the time limits relevant to taking possession of the Aircraft, in particular:

7.4.1 Is there a waiting period before action may be taken?

N/A

7.4.2 Is there a long stop date by which action must be taken?

N/A

7.4.3 Is a Public Auction of the Aircraft required?

N/A

7.5 Apart from the judicial proceedings described above and ignoring deregistration (see section 8), is the permission of any other party (including any official body) in the Relevant Jurisdiction required to take possession of the Aircraft?

No.

7.6 Is there any history of actual repossession of Aircraft by Owners in the Relevant Jurisdiction? If so, please provide details of any matters or issues of which an Owner should be aware.

We are not aware of any published case in Switzerland dealing with repossession of aircraft by the owner.

7.7 Are there any circumstances in which the sums expressed to be payable under the Lease or obligations expressed to be assumed by the Airline in the Lease are or will be unrecoverable or unenforceable in the Relevant Jurisdiction?

In addition to restrictions in case of insolvency of the lessee, the obligations of the lessee could be unrecoverable if the lease agreement is invalid for any reason or if the obligations under the lease agreement no longer exist (e.g. due to set off or statute of limitation).

7.8 Are there any restrictions on the ability of the Owner to sell the Aircraft in the Relevant Jurisdiction during the term of the Lease or, following an event
of default, on termination of the leasing or pending judicial enforcement of the Lease?

No. The owner is free to sell the aircraft at any time unless provided otherwise in the lease agreement.

7.9 Are there any export restrictions on export of a repossessed aircraft?

For the export of an aircraft, an export airworthiness inspection may be required. Further, the regulations of the country of destination have to be observed. FOCA recommends the seller to get in touch with the civil aviation authorities in the country concerned.

8. DEREGISTRATION POWER OF ATTORNEY/EXPORTATION

8.1 Can the Owner apply for deregistration of the Aircraft either at the end of the lease term or following successful repossession (with or without judicial proceedings) and is there any time period within which such application should be made?

The owner of the aircraft can apply for deregistration of the aircraft in the Aircraft Register. If the aircraft is also registered in the Aircraft Record, the aircraft first needs to be deregistered in the Aircraft Record. There is no time period within which such applications needs to be made.

8.2 Is the consent of the Airline required to deregister the Aircraft either by law or as a matter of custom or practice?

If the lessee's right to use the aircraft is registered in the Aircraft Record, FOCA informs the lessee of the deregistration request and – as a matter of practice – generally requires the consent of the lessee.

8.3 How long does deregistration take, both where there is co-operation from the Airline and where this is no co-operation from the Airline?

If the aircraft is registered in the Aircraft Register, deregistration time mainly depends on the applicant and the time he needs to provide all documents necessary for deregistration. Once FOCA is in receipt of all required documents, deregistration is usually completed within a few business days.

If the aircraft is also registered in the Aircraft Record, deregistration requires the consent of the mortgagee and the lessee. The aircraft will be deleted in the Swiss Aircraft Record three months after the application for deregistration has been filed, provided the aircraft has not been seized or the realisation of a pledge has not been set in motion.

8.4 Is it possible to obtain an export licence or export permit in advance?

Upon request, FOCA issues an export certificate of airworthiness after the needed examination and maintenance
work has been completed. In addition, the regulations of the country of destination have to be observed.

8.5 Approximately how long does it take to obtain an export licence or export permit? What are the costs involved?

The time to get the export certificate of airworthiness depends on the time needed for the examination and maintenance work. The costs of such a certificate depend on the time exposure and the type and weight of the aircraft. The cost may range between CHF 200 and CHF 36,000.

8.6 Is it possible to obtain a certificate of deregistration in advance?

No. A certificate of deregistration is issued by FOCA only upon request.

8.7 Will a power of attorney empowering the Owner to deregister and export the Aircraft from the Relevant Jurisdiction, either at the end of the lease term or following successful repossession (with or without judicial proceedings), be enforceable in the Relevant Jurisdiction? Will the courts recognise a power of attorney in the form of an IDERA and governed by English law?

A power of attorney, if subject to Swiss law, is revocable at any time by operation of mandatory Swiss law. As Switzerland is not a signatory state to the Cape Town Convention, Swiss courts are not bound by the Cape Town Convention and its provisions with respect to an IDERA (Irrevocable De-Registration and Export Request Authorization). Thus, it cannot be completely excluded that a Swiss court would hold the irrevocability of an IDERA to be inconsistent with Swiss public policy and, thus, would recognize a revocation without regard to the choice of English law under the IDERA.

8.8 If the power of attorney was stated to be irrevocable would this be enforceable against the Airline or can the Airline revoke such power of attorney?

See question 8.7.

8.9 Upon the occurrence of a bankruptcy or insolvency of the Airline is the power of attorney still effective?

No. The power of attorney will extinguish upon the occurrence of bankruptcy or insolvency.

9. INSOLVENCY

9.1 In the event that the Airline were to become insolvent either on a balance sheet basis (assets less than liabilities) or unable to pay debts as fall due:
9.1.1 Would the airline be required to file for insolvency protection?

If there is good cause to suspect overindebtedness, an interim balance sheet must be drawn up and submitted to a licensed auditor for examination. If the interim balance sheet shows that the claims of the company’s creditors are not covered, whether the assets are appraised at going concern or liquidation values, the board of directors must notify the court unless certain company creditors subordinate their claims to those of all other company creditors to the extent of the capital deficit. On receiving notification the court commences bankruptcy proceedings. If the company is clearly overindebted and the board of directors fails to notify the court of this, then the auditor will notify the court.

The court may grant a stay of bankruptcy proceedings on request of the board of directors or a creditor where there is a prospect of financial restructuring; in such case the court will order measures to preserve the company’s assets. However, a stay of bankruptcy proceedings is not common in practice.

9.1.2 Do the available forms of insolvency protection in the Relevant Jurisdiction involve the appointment of either an officer of the court or a specifically court appointed official to take control of the Airline (an Insolvency Official) while in insolvency protection?

In case of a granted stay of bankruptcy proceedings, the court may appoint an administrative receiver (Sachwalter) and either deprive the board of directors of its power of disposal or make its resolutions conditional on the consent of the administrative receiver. The court may appoint one or more natural or legal person as administrative receiver.

If bankruptcy proceedings are opened and the proceeds of the inventoried assets are likely to cover the costs of ordinary proceedings, the first creditor committee decides whether the bankruptcy office (Konkursamt) or one or more persons shall form the bankruptcy administration (Konkursverwaltung).

9.1.3 Does the Insolvency Official have authority to negotiate and reach agreement with the Owner in relation to matters such as the payment of unpaid rent, continuation or termination of the Lease and repossession of the Aircraft without the need for court approval?

The bankruptcy administration has to maintain and realize the bankruptcy estate and to represent the estate in court proceedings. Under Swiss law, bankruptcy proceedings do not automatically lead to the termination of the lease agreement. In general, the lease as agreed by the parties will remain valid. The bankruptcy administration is entitled – but not obliged – in the debtor’s stead to fulfill synallagmatic contracts which had not or had only partially been fulfilled at the time of opening of bankruptcy proceedings. If the owner requests the handing over of the aircraft based on an ownership claim, the bankruptcy administration may not approve such request on its own, but has to wait for the decision of the second creditor committee. If the bankruptcy administration denies the claim, the owner has to file a suit with the court within 20 days.

9.1.4 Does the opening of insolvency protection involving the appointment of an Insolvency Official in the Relevant Jurisdiction have the effect of prohibiting the Owner from taking the following actions to enforce the lease after opening of such protection:
• (a.) Applying any security deposit held by the Owner against any unpaid amounts due under the Lease? Yes. The owner is prohibited from taking such acts if the security deposit held by the owner is part of the bankruptcy estate and not part of the estate of the owner.

• (b.) Accepting payment of rent or other lease payments from:

1. (i.) the Airline? Acts of the debtor after opening of bankruptcy proceedings in relation to assets belonging to the bankrupt estate are invalid towards the creditors. The payment could hence be reclaimed from the owner by the bankruptcy administration.

2. (ii.) a guarantor? The owner is not prohibited from accepting payments from a guarantor.

3. (iii.) a shareholder? The owner is not prohibited from accepting payments from a shareholder.

• (c.) giving notice of default under the lease? Notice of default may be given.

• (d.) obtaining a judgment or arbitral award for unpaid lease payments? After the opening of bankruptcy proceedings, court proceedings against the lessee and bankruptcy estate, respectively, may no longer be initiated in Switzerland and pending court proceedings are stayed. The owner has to file its claims for unpaid lease payments with the bankruptcy office within one month after the opening of bankruptcy proceedings were announced. It is disputed whether the same applies to arbitration proceedings.

• (e.) giving notice to terminate the leasing of the Aircraft? The owner may request security for future payments if the lessee is in bankruptcy proceedings. The owner needs to give an adequate deadline to the lessee and the bankruptcy administration for providing such securities in written form. If no security is furnished to the lessor within the set deadline, the lessor may terminate the contract with immediate effect.

• (f.) exercising rights to repossess the Aircraft? In general, the opening of bankruptcy proceedings does not prohibit the owner from exercising its rights to repossess the aircraft. However, the owner cannot take action against the airline itself, but has to file its claim with the bankruptcy office.

9.1.5 Can the opening of Bankruptcy proceedings have retrospective effect in relation to any such actions taken before opening? If so, for what period can there be a look back?

The opening of bankruptcy proceedings itself does not have a retrospective effect on such actions. However, the bankruptcy administration and the creditors may challenge certain transactions of the lessee that were undertaken before the opening of the proceedings (so called “Anfechtungsklagen”). Defendants in this case are persons with whom the lessee concluded such transactions (e.g. the owner).

Following transactions may be challenged:

1. All gifts and unpaid disposals made by debtor in the year prior to the opening of bankruptcy proceedings. Transactions which include a disproportionate counter-performance are deemed equivalent to a gift.

2. Certain acts (granting of collaterals, unusual settlement of debt or payment of unmatured debt) of the debtor carried out in the year prior to the opening of bankruptcy proceedings, provided they were at that time already overindebted.

3. All transactions carried out by the debtor five years prior to the opening of bankruptcy proceedings with the intent of disadvantaging their creditors or giving a preferential treatment only to certain creditors.
9.1.6 Is there, either under law or as a matter of practice in the Relevant Jurisdiction, a period of time within which the Insolvency Official will either “adopt” the lease and pay rent and other lease payments as an expense of the insolvency or “reject” the lease and permit the Owner to enforce such rights as it may have under the lease?

No, there is no time period within which the bankruptcy administration is required to “adopt” or “reject” the lease.

9.1.7 If the lease is “adopted” will the Insolvency Official also pay any unpaid lease payments due as at opening of the insolvency protection?

No. Unpaid lease payments which were due before the opening of the bankruptcy proceedings are classified as ordinary unsecured claims (third class, see question 9.1.9) and will not be paid separately. These claims have to be filed in the bankruptcy proceedings.

9.1.8 If not or if the lease is “rejected”, would the Owner’s claim for any outstanding sums rank equally with other ordinary unsecured creditors of the Airline?

Yes. The owner’s claim for any outstanding sums would rank equally with other ordinary unsecured creditors (third class, see question 9.1.9). However, if the owner’s claims had been secured, they would be satisfied directly out of the proceeds from the realisation of the collateral.

9.1.9 Are there certain types of preferred creditors whose claims will rank above claims of the Owner?

Yes. Secured claims are satisfied directly out of the proceeds from the realisation of the collateral. Unsecured claims and uncovered parts of secured claims are satisfied out of the proceeds of the remainder of the bankruptcy estate in the order of their class. The first and second class will rank above the claims of the owner. The first class includes, among others, certain claims of employees and certain claims of insured persons derived from the Federal Statute on Accident Insurance and from facultative pension schemes and claims of pension funds against employers. The second class includes, among others, contributions due under certain federal statutes (such as, for example, the Federal Statute on old-age and survivor’s insurance, the Federal Statute on disability insurance, and the Federal Statute on accident insurance). The claim of the owner would rank in the third class with all other ordinary unsecured claims. Creditors of the same class are equal among themselves. Creditors of a class only receive proceeds once all creditors of the class or classes above have been satisfied.

9.1.10 If the Aircraft is in the possession of a person other than the Airline at the commencement of Insolvency Protection of the Airline, for example an independent maintenance facility, will such person be entitled, under the laws of the Relevant Jurisdiction, to assert a lien arising under law or contract over the Aircraft in respect of amounts then due and unpaid to such person by the Airline?

Under Swiss law, a creditor has a statutory right of retention over movable assets which have come into his possession with the debtor’s consent to secure a claim against the debtor which is intrinsically connected with
the retained asset. The creditor can exploit the retained asset in the same way as a pledged asset. However, if the debtor (airline) is not the actual owner of the aircraft, the right of retention arises only if the owner explicitly or implicitly agreed to the creation of the retention situation. If the owner did not agree thereto, the creditor may only assert a right of retention if he was in good faith at the time of the transfer of possession. The good faith requirement relates to the entitlement of the possessor to transfer possession over the aircraft to the creditor.

However, if the aircraft is registered in the Aircraft Record, the creditor may not assert a right of retention. Further, a retention right may not be exercised to the extent it conflicts with the provisions of the 1933 Rome Convention for the Unification of Certain Rules Relating to the Precautionary Arrest of Aircraft.

9.1.11 Is a person other than the Airline, for example an airport authority, entitled under the laws of the Relevant Jurisdiction to seize possession of the Aircraft after commencement of Insolvency Protection and assert a lien arising under law or contract over the Aircraft in respect of amounts then due and unpaid to such person by the Airline.

Under Swiss law, a right of retention can only be asserted by persons who are in possession of the movable assets with the debtor's consent at time of assertion. Therefore, persons not in possession of the aircraft or in possession of the aircraft without the debtor's consent cannot assert a lien over the asset in question.

Moreover, according to the Federal Aviation Act and the 1933 Rome Convention for the Unification of Certain Rules Relating to the Precautionary Arrest of Aircraft, aircraft actually put in service on a regular line of public transportation and any other aircraft assigned to transportation of person or property for hire are exempted from arrest.

10. EXCHANGE CONTROLS

10.1 Are payments to foreign owners by companies incorporated or registered in the Relevant Jurisdiction subject to any form of exchange or similar control?

No. Payments to non-residents are free of any restrictions from a Swiss law perspective.

10.2 If yes, can any consents, authorisations or licences be obtained to exempt payments from any such control? How would these be obtained? Are such consents, authorisations or licences transferable?

N/A

11. INSURANCE

11.1 Is it a legal requirement to insure the Aircraft within the Relevant
Jurisdiction?

No, there is no legal requirement to insure the aircraft itself under Swiss law.

However, the operator (Halter) of an aircraft is obliged to maintain liability insurance for damages caused to third parties on the ground and for damages caused to passengers. The operator is the person that uses the aircraft on its own account and has the actual control over the aircraft. Further, aircraft operators who carrier goods and persons on a professional basis must also maintain liability insurance for damages caused to luggage and goods. It is no legal requirement to insure the Aircraft within the Relevant Jurisdiction.

11.2 If so, is there any restriction on reinsurance of the primary insurance outside the Relevant Jurisdiction?

N/A

11.3 Is there a minimum percentage of cover which a local insurer is obliged to retain, and if so, what is it?

N/A

11.4 Is it possible for local insurers to assign contracts of reinsurance? If not, is a cut-through clause enforceable?

Yes, it is possible for local insurers to assign contracts of reinsurance.

12. LIABILITY FOR DAMAGE

Can the Owner be strictly liable - liable without a requirement to prove fault or negligence - for any damage or loss caused by the Aircraft assuming Owner is an innocent owner with no operational control of the Aircraft?

No, the owner is not liable for any damage or loss caused by the aircraft as long as he does not qualify as operator or carrier or manufacturer of the aircraft (see 11.1 above).

13. DETENTION/CONFISCATION

13.1 Are there any rights to detain or sell the Aircraft pursuant to drug trafficking, tax or other laws or pursuant to rights of airport or air navigation authorities if the Airline fails to pay when due?

Seizure by prosecution or court: In criminal proceedings, assets belonging to the accused or a third party may be
seized provided they can be used as evidence. Hence, if an aircraft had been used for criminal activities, the prosecution could order its seizure. In addition the court shall, irrespective of the criminal liability of any person, order the seizure of objects that have been used or were intended to be used for the commission of an offence in the event that such objects constitute a future danger to public safety, morals or public order.

Seizure in case of an aircraft accident or serious incident: In case of an accident or a serious incident involving aircrafts, the investigating authority has the right to seize the aircraft and other assets in order to clarify the facts of the case.

Seizure by FOCA: In case of statutory violations, FOCA has the right to seize aircrafts provided their further use would endanger the public security or an abusive use is to be feared.

Tax Authorities: According to the Federal Act on direct Federal Taxation, if the debtor does not pay the tax debt after an overdue notice, enforcement measures against the aircraft may be taken in order to enforce the tax debt of the owner. The debt enforcement will be governed by the Federal Debt Enforcement and Bankruptcy Act.

Retention rights: Under Swiss law, a creditor has a statutory right of retention over movable assets which have come into his possession with the debtor's consent to secure a claim against the debtor which is intrinsically connected with the retained asset. The creditor can exploit the retained asset in the same way as a pledged asset. However, if the debtor (airline) is not the actual owner of the aircraft, the right of retention arises only if the owner explicitly or implicitly agreed to the creation of the retention situation. If the owner did not agree thereto, the creditor may only assert a right of retention if he was in good faith at the time of the transfer of possession. The good faith requirement relates to the entitlement of the possessor to transfer possession over the aircraft to the creditor.

However, if the aircraft is registered in the Aircraft Record, the creditor may not assert a right of retention. Further, a retention right may not be exercised to the extent it conflicts with the provisions of the 1933 Rome Convention for the Unification of Certain Rules Relating to the Precautionary Arrest of Aircraft.

13.2 If so, can the Aircraft be forfeited and sold without the Owner being made aware?

It is unlikely that the aircraft is forfeited and sold without the owner being made aware of it.

14. SOVEREIGN IMMUNITY

14.1 Is any Airline based in the Relevant Jurisdiction entitled to any form of sovereign or other immunity from suit which might restrict the Owner’s rights under the Lease?

No. However, according to the Federal Aviation Act, the following aircrafts are not subject to precautionary attachments: (i) aircrafts exclusively used for state services, (ii) aircrafts in service for a regular line of public transport or indispensable reserve aircrafts, or (iii) aircrafts used for the carriage of persons or goods for consideration and already prepared to take-off.
14.2 Can such immunity be validly waived in advance by contract?

N/A

15. DISPUTE RESOLUTION AND RECIPROCAL ENFORCEMENT

15.1 Do the laws of the Relevant Jurisdiction permit and recognise an “asymmetric” submission to jurisdiction clause under which the lessee submits to the exclusive jurisdiction of the Courts of England but the Owner has discretion to choose a jurisdiction other than the Courts of England?

“Asymmetric” jurisdiction clauses are not explicitly regulated under Swiss law and whether such clauses are valid under Swiss law has not yet been decided by the Federal Supreme Court. However, the vast majority of Swiss scholars recognizes such “asymmetric” jurisdiction clauses.

15.2 If the Lease is governed by English Law and a judgment is obtained by the Owner in the English courts, can that judgment be automatically enforced in the Relevant Jurisdiction or will the case have to be re-examined on its merits? If so what procedures must be complied with to enforce such a judgment?

Currently (i.e. before BREXIT), the recognition and enforcement of a foreign judgement made by an English court in Switzerland is subject to the limitations set forth in the Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters done at Lugano on 30 October 2007 (Lugano Convention). In particular, and without limiting the foregoing, a Swiss court may refuse to recognise or enforce such judgement if:

1. the recognition or enforcement is manifestly contrary to the principle of public policy (“ordre public”) (art. 34 para. 1 and art. 45 Lugano Convention);
2. the judgement was not properly served (art. 34 para. 2 and art. 45 Lugano Convention);
3. it is irreconcilable with a judgment given in a dispute between the same parties in Switzerland (art. 34 para. 3 and art. 45 Lugano Convention);
4. it is irreconcilable with an earlier judgment given in another state bound by the Lugano Convention or in a third state involving the same cause of action between the same parties, provided that the earlier judgment fulfils the conditions necessary for its recognition in Switzerland (art. 34 para. 4 and art. 45 Lugano Convention); or
5. such recognition or enforcement would not be in line with art. 35 of the Lugano Convention.

Following BREXIT, the recognition and enforcement of a foreign judgment made by an English court in Switzerland will be subject to the limitations set forth in the Swiss Federal Private International Law Statute (PILS). Inter alia, the recognition and enforcement of a foreign judgment in Switzerland is subject to the following PILS rules:

- a Swiss court may refuse to give effect to any foreign judgement if such judgement is inconsistent with Swiss public policy (art. 27 para. 1 PILS);
- a Swiss court may refuse to give effect to any foreign judgement if a party to such judgement can
establish that:

- (i) under the laws of its domicile such party had not received proper service of process (art. 27 para. 2 lit. a PILS);
- (ii) the judgement was rendered in violation of fundamental principles of Swiss procedural law, in particular the right to be heard (art. 27 para. 2 lit. b PILS);
- (iii) a lawsuit between the same parties concerning the same case was first initiated or decided in Switzerland or first decided in a third country, provided the requirements for the recognition of such decision are met (art. 27 para. 2 lit. c PILS).

15.3 Is the Relevant Jurisdiction party to the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention) or the 1965 Convention on the Settlement of Investment Disputes between States and Nationals of Other States (the Washington Convention)? Will the courts of the Relevant Jurisdiction recognise and enforce a decision of an arbitrator?

Yes. Switzerland is party to both the New York Convention and the Washington Convention. A final and non-appealable award rendered by the competent arbitral tribunal will be recognised and enforceable in Switzerland in accordance with and subject to the rules of the New York Convention.

15.4 What is the usual choice of dispute resolution in international supply contracts involving a lessor or buyer incorporated in or with its main place of business in the Relevant Jurisdiction?

Dispute resolution choices vary from contract to contract. If Swiss parties are involved, arbitration under the Swiss Rules of International Arbitration is commonly used. However, if also foreign parties are involved, the Rules of Arbitration of the International Chamber of Commerce are often chosen.

16. ADDITIONAL INFORMATION – IS THERE ANYTHING ELSE WE SHOULD HAVE ASKED?

Are there any other matters, issues, recommended courses of action or steps which can be taken to protect and/or perfect the Owner's interests, as owner and lessor of the Aircraft in the Relevant Jurisdiction or of which the Owner should be aware when contemplating leasing an aircraft to a company incorporated and operating in the Relevant Jurisdiction?