This country-specific Q&A provides an overview of aviation finance & leasing laws and regulations applicable in India.

For a full list of jurisdictional Q&As visit here.
1. What international aviation conventions has your jurisdiction signed and/or ratified?

India has been playing a vital role in the formulation and ratification of many international law instruments. India also has a proven record of compliance with international law instruments relating to aviation and has been setting global standards by providing an immense contribution to the global aviation industry. Foremost of which, India became the founder member of the International Civil Aviation Organization (“ICAO”) by putting its signature to the Convention on International Civil Aviation (“The Chicago Convention”) on December 7th, 1944 and subsequently ratifying it on March 1st, 1947. The Chicago Convention became effective for India from April 4th, 1947. The main objectives of the Chicago Convention are to develop the principles and techniques of international air navigation and to promote the planning and development of international airport transport. In this regard, the Bureau of Civil Aviation Security, as per Annex 17 to the Chicago Convention lays down aviation security standards in India for airport and airline operators and their security agencies which are responsible for implementing such measures.

At present, India is a party to a total of 43 (Forty-Three) international aviation conventions. One of the other major conventions which have had a major impact on Indian Aviation includes (“The Cape Town Convention”) and the Protocol on Matters Specific to Aircraft Equipment (“Protocol”) which are read and interpreted together as a single document. The aim of the Cape Town Convention is to standardize transactions involving aircraft instruments and to create international standards for the registration of the contract of sale including default mechanisms in relation to repossession and bankruptcy laws. It also aims to achieve efficient financing if high-value mobile equipment such as airframes, helicopters and engines, in order to make airline operations as cost-effective as possible. In this regard, Ministry of Civil Aviation (“MoCA”) which is the governing body of aircraft operations in India, proposed the Cape Town Convention Bill, 2018 (“The Bill”) in the year 2018 to enable various stakeholders to avail the benefit of India’s accession to the Cape Town Convention. However, the proposed Bill is still under deliberation.

India is also a signatory to the Warsaw Convention, 1929 which was later amended by the Hague Protocol, 1955 and further amended by the Montreal Convention, 1999 to which India became a member in 2009. The objective of the Montreal Convention is to impose strict penalties on air carriers in the event of any negligence leading to the death of passengers and it also fixes a higher insurance premium for any air disasters on international flights. In order to give effect to the Montreal Convention, the Carriage by Air (Amendment) Act, 2009 was enacted which takes care of the aspects of the Montreal Convention.

Another major convention that bolsters the aviation industry which India has ratified is the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958 (“The New York Convention”). When an arbitral award is made in a country that is a signatory to the New York Convention, which is further notified as a reciprocating territory, it is treated as a foreign award in India.
2. If your jurisdiction has signed and ratified the Cape Town Convention: a. Which qualifying declarations (opt-in and opt-out) has your jurisdiction made under the Cape Town Convention? b. Does the Cape Town Convention take priority over conflicting national law?

As mentioned above, India became a party to Cape Town Convention on July 01st, 2008 after depositing the instruments of Accession with the depository with the International Institute for the Unification of Private Law, commonly known as UNIDROIT on March 31st, 2008 along with the Declarations under the convention. India has opted to apply several articles the most salient of which are enumerated below:

India has made a declaration under Article XXX(1) for a choice of law under Article VIII of the to the Protocol.

Further, India made a declaration under Article XXX(2) and has opted to apply Article X of the Protocol on modification of provisions regarding relief pending a final determination. India shall apply the provisions of Article X in its entirety. The number of working days in respect to the remedies specified under Article 13(1)(a),(b) and (c) of the Cape Town Convention on relief pending final determination for the preservation of aircraft object and their value, possession, control or custody of aircraft objects and immobilisation of the aircraft objects to be capped at 10 (Ten) working days. In case of lease or management of aircraft objects and the income thereof, sale and application or proceeds from aircraft objects under Article 13(1)(d) on relief pending final determination of the Cape Town Convention to be limited to 30 (Thirty) working days.

India has also opted to apply general opt-in declarations under Article XXX(3) in respect of Article XI of the Protocol on remedies on insolvency. It provides for the application of Alternative A in its entirety to all types of insolvency proceedings and prescribes a waiting period of 2 (Two) calendar months for the purposes of Article XI(3) of that Alternative. Similarly, with regard to the opt-in declaration under Article XXX(1) of Certain Provisions in respect of Article XII of the Protocol on insolvency assistance, the courts of India in which the aircraft object is situated as per the laws of India, shall cooperate to the maximum extent possible with foreign courts and foreign insolvency administrators in carrying out the provisions mentioned under Article XI on remedies of insolvency.

In addition to the above, opt-in declarations under Article XXX(1) in respect of Article XIII of the Protocol on de-registration and export request authorisation, India shall be applying to the provisions given under Article XIII. In the event that a debtor has provided an irrevocable de-registration and export request authorisation substantially in the form as required by the Protocol and submitted an authorisation for providing a record to the registry authority, such authorisation shall also be recorded. The person who has been issued such authorisation or its certified designee shall be the sole person who will be entitled to exercise the remedies as given under Article IX(1) of the Protocol on modification of default remedies provisions. Such entitlement is subjected to authorisation and the applicable aviation safety laws and
regulations. The authorisation so provided may not be revoked by the debtor without the prior written consent of the authorized party. The registry authority shall strike-off an authorisation from the registry at the request of the authorised party. The registry authority and other administrative authorities in India are bound to cooperate and assist the authorised party in the exercise of their remedies as provided under Article IX of the Protocol.

Under Article 39(1)(a) of the Cape Town Convention, there are certain categories of non-consensual rights or interests which have priority under the Indian laws over an interest in an aircraft object which is an interest equivalent to that of the holder of a registered international interest.

Such interest shall have priority over a registered international interest irrespective of the fact whether insolvency proceedings have been initiated or not. The interest may also include lien or other rights of Indian authority pertaining to taxes or any other unpaid charges emanating from the use of the aircraft object and such charges are owed by the operator of the airlines since the default was declared by the airline under the respective contract to finance or lease of such an aircraft object. Liens also include Mechanics Lien.

Additionally, Article 39(1)(b) of the Cape Town Convention has been modified to include a reference to ‘India‘ which effectively means that nothing in the Cape Town Convention shall affect any rights of the intergovernmental organisation to which India is a member or other private provider of public services in India to arrest or detain an aircraft object under the laws for payment of amounts which is owed to the Government of India.

In respect of Article 53 of the Cape Town Convention on the determination of courts, all High Courts within their respective territorial jurisdiction should be the relevant courts for the purposes of Article 1 of the Cape Town Convention on definitions and Chapter XII on jurisdiction.

A joint reading of Article 51 and Article 253 of the Constitution of India empowers executives to enter international conventions such as the Cape Town Convention which are binding upon the Republic of India in its entirety. The position is however subject to the fact that such convention must not be in contravention with the existing municipal laws of India.


3. Will a court uphold the choice of a foreign governing law in respect of the following contracts and if so, please also state any conditions or formality requirements to this recognition a. Lease and b. Security document (for example, mortgage)?

a. Lease
Domestic courts in India uphold foreign law as the governing law and recognise the parties’ freedom to choose the proper law of contract. Indian courts will generally recognise foreign law-governed lease agreements in relation to aircraft and engines, and submission to a foreign jurisdiction, if it is not opposed to the public policy of India.

An Indian court administering a non-Indian law is however unlikely to enforce such law if it is contrary to the laws of India and/or if it is against Indian public policy. Further, an Indian court may also refuse to stay a suit or proceeding in favour of a clause providing for the jurisdiction of a foreign court based on the principle of *forum non conveniens*, notwithstanding the submission of the parties to the foreign jurisdiction.

It may be noted that irrespective of a choice of foreign governing law, in the event a lease agreement provides for indemnification, the parties will be required to ensure that any payment of indemnity made by a person resident in India to a person resident outside India be in compliance with the Foreign Exchange Management Act, 1999 and laws formulated by the Reserve Bank of India (“RBI”) in this regard. Further, the remittance for proceeds, during a foreign exchange crisis or in times of national emergency may also be required to be approved by the RBI, or may also be temporarily suspended or restricted.

b. Security document (for example, mortgage)

‘Aircraft objects’ as defined in the Cape Town Convention, include aircraft, engines, helicopters and private jets. In India, aircraft, engines, helicopters and private jets are defined as movable assets. As per the laws in India, the security over a movable property is created by way of hypothecation. The security in relation to a finance lease for an aircraft/engine where the ownership interest will at the end of the term of the lease transfer to the lessee is created by way of hypothecation (as against mortgage, which is created on the immovable property).

If the aircraft is in the territory of India (irrespective of the situation of the owner or the lessee), it is advisable to create the security on such aircraft as per the governing laws of India. Therefore, in case of a finance lease on aircraft, the security document will be a deed of hypothecation governed by Indian laws. This ensures that the security is perfected and enforceable in accordance with the laws of India.

4. **Please confirm whether it is (i) customary and (ii) necessary to also take a local law mortgage and if so, why?**

As discussed above, a mortgage in India is created over immovable properties. Aircraft being a movable property, the security created thereon is by way of hypothecation. The security document executed in relation to aircraft is a deed of hypothecation which creates a security interest over the aircraft. The security then created is filed with the registrar of companies (“RoC”) and endorsed on the Certificate of Registration.
5. Are foreign judgments recognized and enforceable by courts of your jurisdiction and if so, please also state any conditions or formality requirements to this recognition (for example, do you require a local court order confirming such recognition)?

Judgment obtained by Courts in Reciprocating Territories as defined below can be enforced without filing a fresh suit on Judgment, provided the Judgment so passed in the Reciprocating Territory meets with the criteria enumerated below:

**Reciprocating Territories**

As per Section 44A of the Civil Procedure Code, 1908 ("CPC"), where a foreign judgment has been rendered by a superior court in any country or territory outside India, which the Government of India has by a notification declared to be a reciprocating territory, it may be enforced in India by proceedings in execution as if the judgment had been rendered by the relevant court of India. The proceedings in execution confirm the recognition of such a judgment.

Such a judgment must comply with the requirements set out in Section 13 of the CPC, which provides that a suit to enforce a foreign judgment shall be conclusive to any matter thereby directly adjudicated by between the same parties or between parties under whom they or any of them claim, litigating under the same title except where: (A) the judgment: (i) has not been pronounced by a court of competent jurisdiction; (ii) has not been given on the merits of the case; (iii) is founded on an incorrect view of international law or refusal to recognize the law of India (where applicable); (iv) was rendered in proceedings opposed to the laws of natural justice, and (v) has been obtained by fraud, or (B) a claim of breach of Indian laws in force is sustained. The suit must be brought in India within 3 years from the date of the judgment.

United Kingdom, Singapore, Hong Kong are some of the reciprocating territories notified by the Government of India. Recently, the United Arab Emirates has also been declared a reciprocating territory.

**Non-reciprocating Territories**

A judgment of a non-reciprocating territory is not executed directly by the Indian Courts. In such cases, a fresh suit has to be filed on the basis of the judgment, which is considered as the cause of action for the said suit. In such a suit, the judgment passed by the non-reciprocating territory stands reduced to evidence.

6. Is your aircraft registry an owner-register (registering ownership interests) or an operator-register (registering interests as operator)? Please also state any conditions, procedural steps or formality requirements for such registration and explain how this is evidenced (for example, the issuance of a Certificate of
DGCA maintains an aircraft registry in India. The registry records information pertaining to the type of aircraft, the year of manufacture of the aircraft, the full name and address of the owner or lessor and operator or lessee of the aircraft. As per Rule 36 of Aircraft Rules, such a register is open to inspection by the public during official hours. As stated, the DGCA aircraft register is an owner-lessee registry which includes details of the operator in case it is different from the owners. No separate register for aircraft engines is maintained by DGCA and once the registry is undertaken with DGCA, there is no requirement to register the aircraft ownership with any other registry. In the event the aircraft object is leased, in addition to the information mentioned above, further details like name, address and nationality of the lessor and lessee along with the period of validity of the lease agreement will be required.

As per Airworthiness Procedures Manual, aircraft owner must register his interest in the aircraft object with DGCA by filing Form CA-28 by providing the required documentation such as the bill of entry, proof of ownership, name, nationality and addresses of directors of the owner, lessor, security interest holder and operator along with the requisite fee. As per Rule 30 of the Aircraft Rules, after scrutiny of the application and documents and upon satisfaction of all the requirements, airworthiness directorate shall issue Certificate of Registration which has details such as type of aircraft, the serial number of the manufacturer, year of manufacture, name, nationality and address of the owner of the aircraft and date of registration along with the period of such registration. DGCA has prescribed a timeline of 2 (Two) working days from the receipt of the form, fees and required documents for an aircraft object to be registered to issue a Certificate of Registration. There is no requirement of obtaining title to the engine of the aircraft. The Certificate of Registration issued by DGCA is acceptable evidence in courts of law to substantiate interest in the aircraft object.

7. Is there a security document register in your jurisdiction where a mortgagee’s interests will be recorded? If so, please also state any conditions, procedural steps or formality requirements for such registration and explain how this is evidenced (for example, the issuance of a certificate or official stamp on the security document)

For movable property in India, the deed of hypothecation is the correct security document. Usually, a deed of hypothecation is entered into between the operator and the owner/financier who is the beneficiary of this hypothecation. In the event of default such as non-repayment by the operator, a receiver appointed by the beneficiary of hypothecation may take possession of the hypothecated object and sell such an object without any intervention of the court. Such a deed of hypothecation, however, must clearly empower the owner/financier to take such possession.

There is no separate requirement of maintaining a register of aircraft security. However, Civil Aviation Requirements (“CAR”) which provide detailed requirements and compliance
procedures, require the owner of the aircraft to provide a notarised copy of the security document which evidences the creation of charge which is to be submitted with DGCA. In turn, DGCA will endorse the beneficiary of hypothecation on the Certificate of Registration. If the airline operator under such security document is an Indian company of a company with a registered place of business in India, such airline operator within a time period of 30 (Thirty) days must register the charge on aircraft object so created with the relevant RoC with the prescribed form, documents and fees.

RoC shall acknowledge the creation of charge in the form of hypothecation by providing a certificate in such regard. RoC also maintains a register of charges and records details of nature and details of the instrument creating such charge.

8. What is the effect of registration of: a. Ownership interest (for example, proof of title to third parties of ownership) b. Lease (for example, perfects the status of the Lessor under the Lease) c. Security document (for example, secures priority over later registered security). If there are any interests that could rank prior to the security document please state these

a. Ownership interest

As stated above, courts in India would accept the Certificate of Registration issued by DGCA as evidence of lessor, financier or ownership interest in the aircraft object. The register of DGCA is a notation register. The title to the aircraft must not be defective or absent as per DGCA.

b. Lease

As the DGCA registry being an owner-lessee registry, there is no separate register for leases and engines which are maintained in India. In the case of a leased aircraft, additional details such as names, nationality and address of the lessor and lessee must be provided along with the duration or validity of such lease agreement.

c. Security document

In India, the priority of charges taken as per the date of creation of such charge, as registered with RoC and not on the basis of the date of registration of charges subject to such charges being registered with the RoC as per the process explained above and due acknowledgment by RoC should also be received.

9. What types of lease are recognized in your jurisdiction (for example, translation, notarization, apostille, legalization etc.)?

Indian courts recognise lease deeds which are in the English language or otherwise
translated. If an agreement for lease has been executed outside of India, it will be required to be stamped in accordance with the stamping laws of the relevant state and within the prescribed period when it is brought into India.

Additionally, the agreement for lease will be required to be notarized before it is submitted to the governmental authorities in India (including the DGCA).

10. **What formalities are required to perfect Lessor’s rights under a lease in your jurisdiction?**

As discussed above, the register maintained by DGCA records the details of the owner/lessor of the aircraft. Therefore, in case of a leased aircraft, registration of the details of the lease (including the details of the lessor and lessee, and the period of validity of the lease agreement) with the DGCA furthers the perfection of the lessor’s rights in the aircraft.

11. **Are the ownership rights relating to engines recognized as separate and distinct from the ownership of the rest of the aircraft in your jurisdiction? Please highlight any separate registration, filing or additional formalities that are required to be completed to perfect Lessor’s interest in the engines**

Engine constitutes as an ‘aircraft object’ as defined in the Cape Town Convention, which has been ratified by India. As discussed above, there is no separate register for engines maintained in India. However, despite there being no register for engines, the title and ownership rights in engines are recognized by way of the documents executed and filed with the authorities in relation thereto, such as the lease/finance agreement or deed of hypothecation.

When an engine is leased/financed or hypothecated separately from the aircraft, the engine is treated as a movable property as per the laws of India, and the procedure for lease and hypothecation of movable property applies on the engine.

The lease agreement also records the evidence of the owner’s/lessor’s title and beneficial interest (present and future) in relation to the engines. Usually, a lease agreement dealing with the engine also mandates that the nameplate of the owner/lessor be affixed thereto.

12. **What form does security over aircraft generally take in your jurisdiction?**

As per the laws in India, the security over a movable property is created by way of hypothecation. An aircraft is deemed to be a movable asset.

The two modes of leasing recognized in India in relation to aircraft are operating lease and finance lease. An operating lease creates no ownership interest in favour of the lessee, therefore there are no security documents required to be executed for an operating lease on
an aircraft. A finance lease, however, is akin to a loan with the option to purchase the aircraft. As aircraft are movable assets, the security in relation to finance lease on aircraft is created by way of hypothecation.

13. **Are there any particular terms or characteristics that such a security document must take (for instance, a cap on the secured liabilities)?**

The owner and the lessee of the aircraft usually execute a deed of hypothecation as a security document in relation to the finance lease. This deed provides for a charge on the aircraft and all the legal interests therein, in favour of the owner which lasts through the security period. A security period usually ends upon transfer of title in the aircraft, from the owner to the lessee, in terms of the finance lease agreement.

The deed of hypothecation contains provisions entitling the owner of the aircraft (who is treated as the lender for the purposes of the deed) in the event of default to repossess and sell the hypothecated aircraft for proceeds, without requiring court intervention.

Usually, the deed of hypothecation also provides for the requirement by the lessee to: (i) register the hypothecation with the RoC; and (ii) indemnify the owner in case the owner is required to exercise its repossession or sale rights in case of a default.

It is to be noted that in case of hypothecation, courts in India have been consistent in upholding the lender’s right to take possession of the hypothecated property and/or sell it, provided the deed provides for the same.

14. **Are there any perfection requirements for such security document? If so, please state any conditions, procedural steps, formality requirements or documentation (for example, corporates, list of directors etc.) required to effect this**

The security created over the aircraft by way of hypothecation is required to be registered with the relevant RoC. The applicable law sets out that the registration of such security is made within 30 (Thirty) days from the date of creation of the charge.

The mandatory details for registration of creation of charge with the RoC include: (i) the instrument of creation of charge; (ii) particulars of all joint charge holders; and (iii) if there is any acquisition of property which is already subjected to charge, then a copy of the instrument evidencing the charge and acquisition.

A certificate of registration of charge is generated consequent upon approval by the RoC. The register of charges maintained by the RoC is a public document that records the registration details of the creation and modification of charges. This register of charges is deemed notice to third parties regarding the existence of a particular charge.
It is also recommended that the deed of hypothecation be filed and recorded with the DGCA. It ensures that the security interest along with the details of the hypothecation is endorsed on the Certificate of Registration. Further, the details of security should also be registered on the International Registry maintained under the Cape Town Convention and Protocol.

The stamp duty on the deed of hypothecation so executed will also be required to be paid in accordance with the stamp duty payable in the relevant state.

15. **Summarize any captive insurance regime in your jurisdiction as applicable to aviation.**

An operator shall maintain existing insurance for an amount which is adequate to cover the liabilities towards passengers, baggage, crew, cargo, flight and third-party risks in compliance with the requirements of the Carriage by Air Act, 1972. An operator may be required to furnish evidence that it maintains adequate insurance covering its liabilities. Indian registered aircraft may be insured by an Indian insurance company that is registered with insurance regulatory authority. The insurance company in turn would seek reinsurance as there is a requirement of re-insurance retention equivalent to 5% (Five) percent with the General Insurance Company of India (as per current regulations).

During the lease term of the aircraft, the obligation is usually on the lessee to effect and maintain the insurances. The insurance is led by underwriters of recognised international standing who regularly participate in aviation insurance in established markets like New York or London.

16. **Are cut-through clauses under the insurance and reinsurance documentation legally effective in your jurisdiction?**

Cut-through clauses are used in India and are visible in aircraft leasing financing documents. However, payments to be made under the cut-through clause would require approval from a statutory authority in India.

17. **Are there minimum requirements for the amount of third-party liability cover that must be in place in your jurisdiction?**

As per the Carriage by Air Act, 1972 and in view of operating guidelines by the Civil Aviation, Government of India and in addition to India being a signatory to Montreal Convention which aims to protect passengers in the event of loss in the case of accidents while travelling by Air. Operating permits will only be issued if the operator has an adequate insurance policy covering third party risks amongst others and the policy cover should be based on third party transactions and numbers of the operator.

As discussed above, the operator shall at all times be required to maintain current insurance
for an amount adequate to cover liability towards passengers, baggage, crew, cargo, hull loss and third party risks.

18. **Can a mortgagee (or equivalent security interest holder) or lessor following an event of default under a mortgage (or equivalent security document) or lease, respectively, take possession of the aircraft without judicial intervention in your jurisdiction? Please also state any conditions, procedural steps, formality requirements or documentation (for example, original, legalized, translated Lease/Mortgage, corporates etc.) required to effect this**

The additional security provided under lease agreements usually include: (i) the irrevocable deregistration and export request authorization (“IDERA”) under the Cape Town Convention; and (ii) the deregistration power of attorney (“DPOA”) duly stamped and notarised under laws of India.

If the owner/lessor in an event of default submits the IDERA to the DGCA, it enables the deregistration and repossession of the aircraft, without the need for judicial intervention in India. A deed of hypothecation (specifically enabling the owner/lessor to repossess or sell the aircraft for proceeds) together with a valid DPOA executed by the lessee in favour of the owner/lessor, also supplements the deregistration process.

It is recommended that a duly stamped and notarised DPOA, executed by the lessee in favour of the owner/lessor be filed with the DGCA in addition to the IDERA. Such filing ensures speedier enforcement.

The DGCA also checks if there are any pending dues with any airport or oil companies etc. Upon confirmation that there are no such pending dues, the DGCA permits the de-registration. This was recently applied in case of deregistration of Jet Airways’ aircraft.

19. **How can a mortgagee (or equivalent security interest holder), lessor under a lease or designee/beneficiary of an IDERA deregister the aircraft? Please also state any conditions, procedural steps, formality requirements or documentation (for example, original, legalized, translated Lease/Mortgage/IDERA etc.) required to effect this**

The deregistration of an aircraft in India is made by the owner or its authorised representatives. For cancellation of the registration of the aircraft in the event of default, the holder of IDERA will be required to apply to the DGCA, by submitting the IDERA and the DPOA. In the normal course, such cancellation should be requested before the expiry of the lease on the aircraft.

In India, the Aircraft Rules provides for the process of deregistration of an aircraft. In 2017, Rule 30 of the Aircraft Rules was amended to provide that the DGCA should de-register the
aircraft within five working days of receipt of the application for deregistration along with the original or notarised copy of the IDERA. The holder of the IDERA is also required to certify that all the registered interests in the aircraft, ranking in priority, have been discharged as of the date of the application, or that the holders of such interest have consented to such deregistration.

20. **Can the government or the lessee lawfully prevent the repossession or deregistration and if so, in what circumstances**

**Government**

If there are any payments owed to the government of India (for e.g. Airports Authority of India) in relation to the aircraft, the government either itself or through an entity providing services or performing the functions thereof has the authority and right to detain, attach or sell the aircraft for payment of amounts owed. However, the courts in India have recently rendered judgments where the DGCA was directed to deregister the aircraft, without requiring a court order, and irrespective of whether a government lien existed or was asserted on the aircraft, so long as the owner/lessor has a valid IDERA.

**Lessee**

It is not usual for the lessee’s to be able to prevent the repossession or deregistration by the owner/lessor. In our experience, such a situation arises when the lessee deliberately delays the deregistration process by raising disputes regarding ownership of the aircraft, its airworthiness, wrongful termination of the lease agreement, etc. Typically, the lease agreement will set out the rights of the parties and recourse available to them in case of a dispute (such as disputes in relation to the event of default, a default in payments, grounds for termination (with or without cause).

We have seen cases prior to 2015, where lessees in India objected to the deregistration of the aircraft, on grounds that they have a purchase option and therefore an acquired equity interest in the aircraft through the payment of rent (in the form of principal and interest payment) to the lessor under the financial lease agreement. It may however be noted, that the Cape Town Convention was not applicable at the time of adjudication of such cases.

In 2015, India amended its Aircraft Rules in line with the Cape Town Convention to provide protection for lessors and financiers and specifically required the DGCA to deregister an aircraft with certain conditions.

21. **If judicial intervention is required, please describe the process? Please also state any procedural steps, length of time to complete and advise as to documentation required**
If the owner/lessor chooses not to follow the deregistration process through application to DGCA as set out above, or in the event that the DGCA fails or refuses to deregister the aircraft, the owner/lessor may initiate legal action to repossess the aircraft. As the DGCA is a government body, the owner/lessor will be required to file a writ petition in the High Court of the state within whose jurisdiction the DGCA’s order was passed. Such writ shall seek to quash the order passed by the DGCA refusing the deregistration, and request the court to issue a direction to the DGCA to rehear the application for deregistration and repossession.

22. **How is legal title transferred under the laws of your jurisdiction? Please also state any conditions, procedural steps, formality requirements or documentation (for example, corporates etc.) required to effect this**

The instrument involved in transferring the legal title in India is a sale agreement executed between the seller and the buyer or a bill of sale between the seller and the buyer of the aircraft. In the event of execution of such instrument in a different jurisdiction than India and if such instrument is brought to India through any physical or electronic means, such instrument becomes liable to be charged under relevant sections of Indian Stamp Act or the Stamp Act which is in force in the relevant State where such instrument is placed.

As per the Airworthiness Procedures Manual, if an aircraft is sold to another person or a company, the registered owner shall notify the same to DGCA. In addition, the application must be accompanied by an affidavit, authorised by a notary from the previous owner confirming his ownership and also indicating the details of the new owner and full proceeds of the sale are received by the previous owner. The registered owner must return the Certificate of Registration before the cancellation of the registration.

As stated above in part D(9) of this document, in addition, to be charged under the relevant stamp duty, such an instrument must additionally be notarised to be submitted to DGCA as a requirement. It is also necessary for the parties to obtain valid corporate approval when entering into such instruments.

India generally recognizes a title transfer that is valid under the governing law of such an instrument unless such recognition is against public policy in India or if such choice of law appears to be taken in order to avoid certain mandatory requirements under Indian laws.

23. **Are there any restrictions on the sale of an aircraft following enforcement (for example, the requirement to obtain a court order or conduct a public auction or other action in order to sell the aircraft upon enforcement)**

Enforcement can be through a deed of hypothecation as explained under part 7 of this document under which the beneficiary of hypothecation may enforce his interest in the aircraft in the event of default or upon expiry of the deed. The deed of hypothecation must be clear on the aspects of procedures in relation to the enforcement post-event of default.
Other methods of enforcement may be carried out through Insolvency and Bankruptcy Code, 2016 ("IBC") under which once the authority allows commencement of proceedings under IBC, a moratorium of a definite period becomes applicable during which recovery of any property in the possession of defaulter is prohibited for the period of the moratorium.

For the secured creditors, enforcement may be advisable through Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 ("SARFAESI").

Under both SARFAESI and IBC, the process of auction is largely involved, in order to achieve the maximum value of the assets. Usually, a bidder who is scrutinised through a process, offering the best value for the asset is preferred.

24. Would lease rentals be subject to tax (for example, withholding or income tax)? Please also state if there are any conditions for such tax to be imposed and any steps usually taken to mitigate this

Aircraft leases are of three types – dry lease consisting of finance Lease and operating Lease, and wet-lease (ACMI) consisting of aircraft, crew, maintenance and insurance. A dry lease typically involves only the aircraft and engines. Lease rentals which are payable to a non-resident for using the aircraft object for conducting operations in India either by a resident or a non-resident would be taxable in India as royalty under the domestic tax law, along with withholding tax at the rate of 10% (Ten) percent plus applicable surcharge and cess on a gross basis. However, the tax liability would be subject to the benefits gained from applicable Double Taxation Avoidance Agreements ("DTAA") and other tax treaties signed between India and the other reciprocal country(ies).

Lease rental payments are subject to the Goods and Services Tax ("GST") regime in India. However, given that leasing of aircraft reduces the cost of airline operations, the Revenue Department in India has categorized the GST levy on the aircraft imported on the lease as ‘nil’. The GST applicable to maintenance, repair and overhaul services has recently been reduced to 5% (Five) percent from the earlier 18% (Eighteen) percent. Scheduled operators also enjoy exemption from paying custom duties on import of aircraft and its spare parts into India via lease route.

25. Would a sale of an aircraft in your jurisdiction incur sales tax? Please also provide details of amount or calculation and any steps usually taken to mitigate this

In India, tax on sale transactions can be imposed mostly by State Governments while inter-State sales are taxable by the Central Government. Under Central Sales Tax Act, 1956, it states that a sale or purchase of goods shall be deemed to take place in course of import only if such import is effected by a transfer of documents of title to the goods. Additionally, as stated earlier, the GST for import of aircraft to India on lease is categorised as ‘nil’ and the same is also exempted from the levy of customs duties. Also, GST applicable on the sale of
aircraft for a purpose other than personal use will attract 5% (Five) percent GST. In the case of the sale of aircraft for personal use, the GST has been pegged at 28% (Twenty-Eight) percent.

26. **Are there any restrictions on the import or export of aircraft in your jurisdiction and would such importation or exportation incur any liability as to customs or taxes? Please also state if any consents or approvals are required and the procedural steps taken to obtain these, and any procedural steps or formality requirements to mitigate any taxes**

**To import an aircraft into India:**

In order to import an aircraft in India, it is important to obtain the Import Export Code Number (“IEC”) from the office of the Director-General of Foreign Trade Office which is a one time process. When an application is made to the Directorate of Air Transport (“DAT”) for import, in-principle approval is provided by DAT in this regard. Once the applicant receives in-principle approval, an application to DGCA to obtain a no-objection certificate for import must be made.

As stated above, the GST applicable to import of the aircraft on lease is ‘nil’ which is only applicable to the scheduled operators and in addition to it, aircraft parts have been exempted from customs duty. Non-scheduled operators and private aircraft shall be levied with the applicable custom duty as decided by revenue authorities.

**To export an aircraft from India:**

Similarly, as the process described above, the exporter shall obtain the IEC number from the office of the Director-General of Foreign Trade and register itself with DGCA. In India, aircraft and aircraft parts are classified under the Indian Tariff Code under chapter 88. The aircraft engines and their parts thereof are eligible for exemption from the customs duty.

27. **Are there any foreign exchange restrictions on transfers of funds**

Pursuant to RBI circular, Authorised Dealer Banks were able to permit airline companies to remit up to USD 1,000,000 (One Million) per aircraft towards security deposit for payment of lease rentals with the lessor for import of aircraft/aircraft engines. The same may be done without a standby letter of credit or guarantee from an authorised dealer bank in order to make aircraft and engine rentals more feasible.

Later, the limit of USD 1,000,000 (One Million) was subsequently revised to USD 50,000,000 (Fifty Million). RBI has also clarified that the only requirement on authorised dealer bank is to ensure the requisite approval of DGCA for import of aircraft has been obtained and approval from MoCA will not be required.
RBI has further clarified that authorised dealers may allow remittance of payment of lease rentals, the opening of letter of credit towards security deposit etc. in respect of import of aircraft/aircraft engine/helicopter on an operating lease basis. Financial lease transaction however, which has the option to purchase the asset by the end of the lease period will require prior approval from the RBI in addition to the indemnity and other payments involved in the transaction.

28. **How successful have foreign creditors and lessors been in enforcing their security and lessor rights over and successfully repossessing aircraft in a timely manner?**

Indian courts have had limited opportunities to deal with issues pertaining to the enforcement of security in case of aircraft leases and repossession thereof. By way of recent judgments, the Delhi High Court has recognized the mandatory nature of Rule 30(7) of the Aircraft Rules and upheld the duty cast upon the DGCA to deregister an aircraft on the basis of an IDERA, ensuring speedier repossession of aircraft by lessors and owners.

The case laws to date deal extensively with India’s international obligations under the Cape Town Convention and with deregistration, however, courts generally do not deal with the issue of physical export of an aircraft from India under the Cape Town Convention, and the same is dealt by the aviation authorities in India.

Over the past few years, there have been several airlines in India that have stopped operating for various reasons. The latest of which has also been admitted for insolvency under IBC. However, in the majority of such cases, the leased aircraft, which were still in an airworthy condition were allowed to be deregistered under the IDERA/DPOA and the statutory authorities allowed the lessor/Owner to deregister and repossess the aircraft back from the Lessee.

Summary judgment process available under the CPC is also an effective method in cases where a foreign lessor is seeking recovery of unpaid rent and other monies under the lease.

29. **What government led reforms affecting creditor and lessor rights are currently underway in the aviation sector in your jurisdiction?**

Considering the non-application of certain provisions of the Cape Town Convention and the Protocol in India, there remains a need for a separate legislation for securing their full implementation in India. In view of this, the MoCA released a draft of the Bill which seeks to give primacy to the provisions of the Cape Town Convention and Protocol, overriding any conflicting provision contained in any other law in force, including the IBC (which presently governs insolvency proceedings in India, including in the aviation sector). It further empowers the Central Government to make rules, as necessary, for implementation of the Cape Town Convention and Protocol.
When enacted, the Bill would give the Cape Town Convention and Protocol the force of the law in India. This would ensure, inter alia, that disputes between lessors and operating companies would be resolved within a more specialised framework, best suited for the aviation sector.

30. Please describe any interesting legal development in your jurisdiction (for instance, decided court cases or arbitral awards) which affect creditor and lessor rights?

As discussed above, recent judgments rendered in India and the amendment of the Aircraft Rules provide protection for lessors and financiers.

The amendment to the Aircraft Rules was made in 2017 to bring it in line with the Cape Town Convention, requiring that the DGCA should deregister an aircraft within five working days of application being received from the IDERA holder, without seeking consent or any document from the operator of the aircraft or any other person.

The DGCA thereafter issued an Aeronautical Information Circular in 2018 which deals with ‘Standard Operating Procedure for Implementation of Rule 32A of the Aircraft Rules Relating to Export of Aircraft Covered under Cape Town Convention’. It sets up the procedure to be followed by the DGCA after receipt of a deregistration application received from an IDERA Holder.

In the recent proceedings which were commenced under the IBC concerning Jet Airways, the National Company Law Appellate Tribunal allowed the Dutch trustee administrator to attend meetings of the Committee of Creditors of the corporate debtor – Jet Airways (India) Limited. The Dutch trustee administrator was also allowed to work with the resolution professional for the Indian entity of Jet Airways. It also included a reference to the concept of cross border insolvency protocol in relation to IBC.

31. Please discuss any relevant governmental regulations implemented in your country to help alleviate the financial and other difficulties faced by airlines in your jurisdiction caused by CoVid 19 and whether that will impact rights of lessors (who lease aircraft to the airlines) and lenders (who finance such aircraft which are mortgaged in favour of the lenders)? Are such governmental regulations expected to be in place until the difficulties faced by airlines caused by the CoVid 19 subside or are they more long term?

The DGCA issued regulations which help alleviate operational difficulties faced by airlines during CoVid 19. Specifically in relation to maintaining aircraft airworthiness and usage of aircraft.

The DGCA has allowed aircraft intended for cargo operations, off-shore helicopter operations, medical evacuation flights, or flights specially approved by the DGCA to extend the validity of
their Airworthiness Review Certificate for a limited period during CoVid. This has been facilitated till July 3, 2020 or till the normal functioning of the concerned authority is resumed, whichever is earlier.

The DGCA has also allowed scheduled/non-scheduled operators to use the available passenger category aircraft (without configuration change) for the carriage of cargo, considering the extra-ordinary situation faced during CoVid 19.

Further, the Bombay High Court very recently passed an interim order directing flight operators to allow the passengers to occupy the middle seat strictly in compliance with the DGCA circulars and the applicable guidelines issued from time to time by the concerned authorities. However, the matter is currently sub-judice.

In addition to the abovementioned measures, RBI has allowed a moratorium on payments of term loans starting from March 1st, 2020 till August 31st, 2020. The government also suspended the relevant sections of IBC for a period of 6 (Six) months for any default occurring post March 25th, 2020 to prevent companies from being forced into insolvency proceedings due to any default triggered by CoVID-19 crisis. Such provisions are likely to be rolled back before the end of this year, once the situation improves.