



**COUNTRY  
COMPARATIVE  
GUIDES 2023**

# **The Legal 500 Country Comparative Guides**

## **Italy**

# **AVIATION FINANCE & LEASING**

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

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# ITALY

## AVIATION FINANCE & LEASING



### 1. What international aviation conventions has your jurisdiction signed and/or ratified?

Italy has signed and ratified:

1. The 1933 Rome Convention for the unification of certain rules relating to the precautionary attachment of aircraft.
2. The 1944 Chicago Convention on international civil aviation.
3. The 1948 Geneva Convention on the recognition of rights in aircraft.
4. The 1952 Rome Convention for the unification of certain rules relating to damage caused by aircraft to third parties on the surface.
5. The 1958 New York Convention on the recognition and enforcement of foreign arbitral awards.
6. The 1988 Ottawa Convention on international factoring.
7. The 1999 Montreal Convention for the unification of certain rules for international carriage by air.

On 6th of December 2001 Italy signed (but has not yet ratified) the 2001 Cape Town Convention on international interests in mobile equipment and its Protocol on matters specific to aircraft equipment.

On 21st of July 2020, the Italian Senate approved Motion (No. 1-00133) on the ratification of the Cape Town Convention and its Aircraft Protocol. The Italian Government is thus committed to submit to the Parliament the draft law for the ratification of the Convention and its Protocol. The Parliament will then review the draft law in order to conclude the legislative process for the ratification. No further progresses have been made in the legislative procedure as of July 2023.

### 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?

a. Which qualifying declarations (opt-in and opt-out) has your jurisdiction made under the Cape Town Convention:

Not yet ratified. See question No. 1.

b. Does the Cape Town Convention take priority over conflicting national law?

Not yet ratified. See question No. 1.

### 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 Pursuant to Italian law, parties are free to choose which law applies to a contract. Italian Courts will uphold the choice of a foreign governing law if the parties of a contract have agreed on it. This choice can be made also with regard to aircraft leasing contracts, if contractual terms and conditions contained therein comply with Italian public order principles, which include the Italian Constitution principles, the rules set out in public safety regulations and, in general, the mandatory provisions arising from the Italian law system.

b. Security document (for example, mortgage) The Italian Courts will recognise the choice of foreign governing law in any agreement, legal proceedings or action concerning aircraft mortgage. The Italian Courts will hence apply the chosen law, unless it conflicts with the key principles (public order principles, Italian Constitution principles, etc.).

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

A local law mortgage is common and must be registered with the Italian Aircraft Registry as a condition for its effective creation against debtor and third parties.

**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)?**

Italian Courts recognise and enforce judgments rendered by EU Courts in accordance with Regulation (EU) No. 1215/2012.

Article 36 of Regulation (EU) No. 1215/2012 establishes that *“a judgment given in a Member State shall be recognised in the other Member States without any special procedure being required”*. Moreover, Article 37 provides that *“a party who wishes to invoke in a Member State a judgment given in another Member State shall produce”*:

- a. *“a copy of the judgment which satisfies the conditions necessary to establish its authenticity”*;
- b. the certificate issued pursuant to Article 53, which states that Court of origin shall, at the request of any interested party, issue the certificate relating to judgments in civil and commercial matters using the form set out in Annex I of the Regulation.

As regards the recognition and enforcement of final judgments rendered by Courts outside the EU, Italian law establishes that the requirements set out in Article 64 of Law No. 218/1995 must be met. Specifically, the requirements are:

1. the foreign judgment shall be rendered by a competent foreign judge. It means that the judge who rendered the judgment is competent to decide the case according to the Italian principles on jurisdiction;
2. the defendant shall be served with proceedings according to the law of the country where the trial took place;
3. the parties must have appeared before the court in accordance with the law of the

country where the trial took place otherwise the absentia is declared;

4. the judgment must be considered final (i.e. it can no longer be challenged) according to the law where proceedings took place;
5. the judgment cannot be contrary to any other final Italian judgment;
6. no other proceedings between the same parties and concerning the same matter shall be pending before the Italian Courts;
7. the judgment cannot be contrary to Italian principles of public order.

The procedure to be followed to obtain the recognition of a foreign judgment consists in filing an application with the Italian Court of Appeal where the party against whom the judgment shall be executed is domiciled or resides. The application shall provide evidence that the above requirements are satisfied. If these requirements are met, the Italian Court of Appeal issues a decree establishing that the foreign judgment is recognized and enforceable in Italy.

**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 Registration)**

The Italian Aircraft Registry (Registro Aeronautico Nazionale – RAN) is an owner-registry in which ownership interests can be registered. The RAN is held by Italian CAA (Ente Nazionale per l'Aviazione Civile – ENAC). Articles 749 to 756 of Italian Navigation Code (INC) establish that in order to be admitted to navigation aircraft must be registered in the RAN. Under INC provisions and following ENAC Circular (NAV-25E) rules, to obtain the airworthiness certificate the aircraft must first be registered in the RAN.

Article 750 INC provides that, in order to be registered as an owner, the applicant must comply with the nationality requirements set out in Article 756.

The aircraft must be owned, in whole or in majority, by:

1. the Italian State, regions, provinces, municipalities and any other Italian or EU Member State public or private body; or
2. Italian citizens or citizens of another EU

- Member State; or
3. companies established or having their registered office in Italy or in another EU Member State, whose share capital is owned, in whole or in majority, by:
  4. Italian or EU citizens; or
  5. Italian or EU legal person whose Chairman, the majority of Directors and the CEO have Italian or EU citizenship.

For the registration, the aircraft owner, who files an application with the RAN, must submit the following documents:

1. the IM/URA form, available on ENAC website;
2. copy of the identification document of the person who signs the application;
3. original or certified copy of the aircraft purchase contract: the signatures of both the seller and the buyer must be authenticated by a public notary or by a municipal officer. If the contract is executed in Italy, it must be registered with an office of the Agenzia delle Entrate (Italian tax collection Agency); while, if executed abroad, it must meet the following requirements:

1. if the contract is not drafted in Italian, a sworn translation is required;
2. the signatures of all parties must be authenticated by the Italian Embassy or Consulate or by a public notary;
3. if the aircraft owner is a company and if the purchase contract has been authenticated by a municipal officer, it is necessary to submit the power of attorney granted by the company to its authorised representative. In this case, it is also required to submit the Chamber of commerce company registration or the articles of association;
4. the owner is allowed not to present the aircraft purchase contract only in the case of used aircraft, previously registered in another State in the name of the same person applying for registration in Italy. The ownership must be certified (on the certificate of deregistration) by the CAA where the aircraft was previously registered. This exemption does not apply to aircraft registered with the UK registry since the ownership registered therein does not certify the possession of a legal title;

5. deregistration certificate issued by the CAA of origin (for used aircraft) or a certificate of non-registration issued by the CAA of the foreign State of construction of the aircraft (for new aircraft);
6. copy of the application submitted to the ENAC Operations Directorate responsible for issuing the Airworthiness Certificate;
7. Evidence of the payment to ENAC of an amount of €136 for aircraft having max take-off weight (MTOW) under 5.700 kg or of €238 for aircraft having MTOW over 5700kg.

Aircraft operators can also be registered in the RAN on a title other than ownership. In this case, the title for which the registration is required, together with all the information about the aircraft's owner, shall be registered in the RAN and on the aircraft registration certificate.

Paragraph 2 of Article 756 INC provides that ENAC may allow the registration in the RAN of an aircraft whose operating license is held by companies that have the actual availability of the aircraft, even if they are not the owners. In this case, in addition to the information set out in Article 755 INC, both the aircraft registration certificate and the RAN must mention the title, other than ownership, under which the registration is made. In this case, the obligations that Title V of INC imposes on the owner are transferred to the person/company having actual availability of the aircraft.

**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)**

Pursuant to Article 1027 INC it is possible to constitute only voluntary mortgages over aircraft. The mortgage registration procedure requires that the mortgagee and mortgagor execute the mortgage agreement before a public notary. The notarised mortgage agreement shall be registered in the public register and subsequently

entered in the RAN and on the aircraft registration certificate, in compliance with Article 1030 INC. Unregistered mortgages shall be considered null and void. For other procedural steps, see question No. 14.

**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 (for example, proof of title to third parties of ownership)** Articles 750 to 755 INC provide that the aircraft registration in the RAN and on the aircraft registration certificate gives evidence of the aircraft ownership. Hence, any third party can rely upon the registered ownership interest.

**b. Lease (for example, perfects the status of the Lessor under the Lease)**

The main aim of the lease registration is to prove the identity of the aircraft operator. Indeed, the lessee is the person who has the actual availability of the aircraft, becoming its operator. The aircraft operator must inform ENAC regarding this role (Article 874 INC recalling Articles 268 to 270 INC) so as to give the lease contract's registration the value of operating declaration.

Another effect of the lease registration arises from the provision of Article 2704 of the Italian Civil Code (ICC). This provision lists some cases in which the date of an agreement – even if it doesn't result from the authentication of the document – can be considered prior to a certain day so as to protect third parties' rights. The list shall not be deemed exhaustive and it can be completed with other cases enabling the detection of the date of the formation of the contract. This provision applies also for the lease contract registration. Indeed, the day of the lease contract's registration constitutes evidence of the exact and indisputable date of the conclusion of the lease.

The aircraft lease registration does not create security or priority over lessor's unsecured creditors.

**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** The registration of a security document, such as mortgage, in the RAN and on

the aircraft registration certificate produces several effects.

Firstly, the mortgage registration provides public notice of the mortgage towards any third party, which can rely on its existence.

The mortgage registration affects the satisfaction of the mortgagee's interests, because the registration date provides security and priority over all mortgagees whose mortgage is successively recorded.

The mortgage is a right in rem (i.e. a right related to the legal asset and not a mortgagee's personal right). For this reason, the mortgage will follow every subsequent legal change of the aircraft, such as the transfer of the aircraft title. The mortgagee's consent on every legal change related to the aircraft is required. Indeed, it is not possible to deregister an aircraft from the RAN without prior cancellation or release of the mortgage.

Moreover, the transfer of the mortgage by the mortgagee automatically implies the assignment of the credit related to the mortgage. According to Article 2843 ICC, the transfer to the assignee of a mortgage's interest has effect from the registration of this transfer in the RAN.

The mortgage's effects only refer to the secured amount indicated at the time of registration and these effects are extended to the whole aircraft, including airframe, engines and separated parts (see question No. 11 for an exception to this rule).

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

Article 939 INC establishes that the rules on vessels leasing also apply to the aircraft leasing. The lease agreement ensures the operation of the aircraft. The aircraft operational agreements recognized by the Italian law are:

1. operating lease agreement (dry and wet lease);
2. financial lease agreement;
3. sublease agreement. The sublease must be explicitly authorised by the aircraft owner and must be recorded in the RAN, together with the lease contract;
4. loan agreement.

All contracts must be submitted in original or certified copy, signed by all contracting parties and registered with the Agenzia delle Entrate Italian tax collection

Agency) (see question No. 11).

The rules on dry and wet lease are contained in Regulation (EC) No. 1008/2008. Specifically, this Regulation contains the definition of both these agreements (Article 2, paragraph 24 provides the definition of dry lease agreement; while, Article 2, paragraph 25 defines the wet lease agreement). Dry and wet lease agreements are subject to ENAC prior approval, in accordance with European and national aviation safety rules (Article 13, paragraph 2 of Regulation (EC) No. 1008/2008 and ENAC Circular, EAL-07 of the 27th July 2010).

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

Lessor's rights under a lease are granted by the lease interest registration in the RAN.

Article 939-bis INC states that lease agreements of a duration exceeding six months shall be made in writing and entered in the RAN and in the aircraft registration certificate, in order to give evidence to third parties of their existence.

Lease agreements of a duration less than six months can be made orally. In this case, both parties shall appear before an ENAC officer and express their willingness to grant and receive the aircraft in operation. The ENAC officer shall draw up the minutes, which must be signed in his presence by both parties.

To complete the registration, ENAC requires a copy of the leasing contract. This agreement shall previously file with the Italian public register. If the lease agreements were stipulate in a foreign language, the registration on both registries would require a sworn translation into Italian.

The request of the lease transcription in the RAN may be submitted both to Aircraft Registry Organizational Department and to Airport Departments, presenting the following documents:

1. the operating declaration, if the transcription request is submitted directly to the Aircraft Register Organizational Department, or a declaration in place, if the request is submitted to an Airport Department;
2. a copy of the identification document of the operator signing the declaration;
3. the lease contract, in original or in certified copy, registered with Agenzia delle Entrate (Italian tax collection Agency) or the minutes

- of contract drawn up by the ENAC officer;
4. a copy of the identification document of the person who signs the contract and the power of attorney (for companies);
5. the aircraft registration certificate;
6. evidence of the payment of an amount of €104 (for the transcription of the lease agreement when the issuance of a new registration certificate is not required) or of €120 (when a new registration certificate is required) to ENAC.

### 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

A separate registration for aircraft engines is not required. There is not a dedicated registry for engines or separate parts, hence no additional formalities are required.

In the Italian system, there is a presumption of ownership of the engine in favor of the aircraft owner. This implies that any incurred event, right or security established over the aircraft, such as the mortgage, extends to the engine. The extension is excluded if the owner of the engine is a person, different than the aircraft owner, whose ownership interest is proven.

Article 247 INC, regulating the ownership of the spare parts of vessels, also applies to the separate parts to the aircraft (as established by Article 863 INC). Article 247 INC provides that an ownership interest in the engine (or in any other spare part of the aircraft) resulting from a document with indisputable date (see question No. 8) or from the aircraft registration certificate, is effective, valid and enforceable against everyone, including the aircraft owner or any third party.

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

Under the Italian law system, the only security over aircraft is mortgage.

In particular, Article 1027 INC only allows the constitution of voluntary mortgage over the aircraft (see question No. 14 for the procedural aspects of the mortgage registration over the aircraft).

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

A mortgage document shall be drafted in Italian and shall contain some relevant information regarding:

1. the name and personal information of the mortgagor and the mortgagee;
2. the type, model, registration marks and serial number of the mortgaged aircraft;
3. the secured monetary amount.

### 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

Articles 1027 state that the owner may raise a voluntary mortgage on an aircraft. Therefore, the transcription of both the legal and judicial mortgage is excluded.

The constitution of a mortgage must be made by public deed or by a notarized private agreement, containing the specific indication of the identification elements of the aircraft, otherwise it is considered void.

The mortgage on the aircraft must be registered in the RAN and on the aircraft certificate of registration.

To be valid and effective, the mortgage on aircraft shall be executed by the mortgagor, certified by a public notary and registered in the Italian public register.

For the registration in the RAN, the documentation to be submitted is:

1. the IP form filled and signed by the owner of the aircraft. In case of a legal person, the form must contain the company's data and must be signed by the person entitled to represent it;
2. a copy of the identification document of the person who signs the form;
3. original or certified copy of the mortgage agreement, registered with an office of the Agenzia delle Entrate (Italian tax collection Agency);
4. two original copies of mortgage transcription note;
5. the aircraft registration certificate;
6. evidence of payment of an amount of €168 (for mortgages with secured amount up to

€150,000.00) or of €433 (for mortgages with secured amount from €150,000.01 to €7,700,000.00) or of €780 (for mortgages with secured amount from €7,700,000.01 to €31,000,000.00) or of €1,392 (when the secured amount exceeds €31,000,000.00).

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

According to Article 798 INC, an aircraft shall be covered by a valid insurance. There is no requirement in the Italian law system that primary aircraft and/or liability insurances are placed with an Italian insurance company.

Regardless of nationality, any airline operating in Italy, or in any other EU Member State, shall respect the insurance regime provided for in Regulation (EC) No. 785/2004, as amended and modified by Regulation (EU) No. 285/2010. (See question No. 17 for more specific information).

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

Cut-through clauses under insurance and reinsurance documentation are legally effective in Italy since they are not contrary to mandatory rules, public order or morality.

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

Regulation (EC) No. 785/2004, as subsequently amended by Regulation (EU) No. 285/2010, establishes minimum amount for insurance cover for passengers, baggage and cargo.

Indeed, Article 6 of the Regulation provides that:

1. in respect of passengers, the minimum insurance cover shall be 250,000 SDRs per passenger. However, in respect of non-commercial operations by aircraft with a MTOM of 2,700 kg or less, Member States may set a lower level of minimum insurance cover, provided that such cover is at least 100,000 SDRs per passenger;
2. for liability in respect of baggage, the minimum insurance cover shall be 1,131 SDRs

- per passenger in commercial operations;
3. for liability in respect of cargo, the minimum insurance cover shall be 19 SDRs per kilogram in commercial operations.

While, in respect of liability for third parties, Article 7 sets out that the minimum insurance cover per accident, for each and every aircraft, shall be:

1	< 500	0,75
2	< 1000	1,5
3	< 2700	3
4	< 6000	7
5	< 1200	18
6	< 25000	80
7	< 50000	150
8	< 200000	300
9	< 500000	500
10	≥ 500000	700

**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**

There are no remedies available in Italy to enable a mortgagee or a lessor to take the possession of the aircraft without judicial intervention. Remedies other than judicial ones are prohibited by Article 392 of the Italian Penal Code.

In the event of mortgagor or lessee's default or of any violation of mortgagor's or lessee's obligations, the mortgagee or the lessor must bring action before the competent Court.

Regarding events of default under a mortgage, the mortgagee can request the Court to issue an enforcement measure to prevent the loss of the aircraft. The mortgagee may request the Court to recover the

possession of the aircraft or to order the sale of the aircraft. The duration of such proceedings may vary but usually it doesn't last more than a year.

Regarding events of default under a lease agreement, the lessor may also enforce a foreign judgment in Italy, under the condition that it meets the requirements for the recognition of foreign judgments in Italy (see question No. 5). The lessor can request the Court to order seizure of the aircraft or an enforcement order to obtain the repossession of the aircraft. It may take indicatively one or two years to obtain a Court order, but the duration may vary.

**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 IDERA is a measure regulated by the Cape Town Convention which has not been ratified by Italy yet. See question No. 1 for the latest update on the Convention ratification process.

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

The lessee can lawfully prevent the repossession by filing an opposition before the Court which ordered the measure. In this case the lessee must prove that the owner/lessor is not entitled to claim the repossession of the aircraft. See also question No. 21.

**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**

As seen under question 18, repossession of the aircraft shall be sought before the Courts. The consent of the owner is required to proceed with the aircraft's deregistration and in the event of a mortgage on an aircraft, the consent of the mortgagee is required. In the latter case, to complete the deregistration process from

RAN, ENAC requires the aircraft to be released from mortgage.

The aircraft deregistration cannot be prevented by the lessee if different from the owner in whose name the registration is made. To complete the deregistration process, ENAC requires the registration certificate which must be kept on board of the aircraft. In case of aircraft registered in the name of the lessee, to proceed with deregistration, ENAC may require the lessor to provide proof of lessee's default that must have caused the termination of the lease agreement.

**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**

Pursuant to Article 2684 ICC and Article 865 INC, all the agreements implying a transfer of the ownership or other rights in rem over aircraft, must be entered in the RAN and in aircraft certificate of registration. These types of agreements shall be made in writing, authenticated by a public notary and filed with the Italian public register.

For the transfer of ownership, ENAC indicates the following formalities to be complied with:

1. PP form signed by the buyer. If the buyer is a legal person, the form shall include the company's information and must be signed by the person entitled to represent the company;
2. copy of the identification document of the person who signs the form;
3. original or certified copy of the agreement;
4. the signatures of both the seller and the buyer shall be certified by a public notary or a municipal office;
5. if the transfer is made between companies, the following documents are required:
  - a. the authorization to sell and purchase
  - b. the power of attorney to sign on behalf of the company
  - c. the Chamber of commerce company registration or the articles of association
6. the agreement – if concluded in Italy – shall be registered with an office of the Agenzia delle Entrate (Italian tax collection Agency);
7. if the agreement is concluded in a foreign Country it must comply with the requirements

established by the Italian law. If the contract is not drafted in Italian, a sworn translation is required and the agreement shall be legalized and the signatures of all the parties shall be authenticated by the Italian Embassy or Consulate, or by other authorized foreign bodies or notaries;

8. two transcription notes both signed in original;
9. the registration certificate, if any;
10. evidence of payment to ENAC of an amount of €158 (for aircraft already registered) or of an amount of €142 (for aircraft in construction).

The transfer of a mortgage shall comply with the rules and the requirements for its constitution and registration (see question No. 14). While, the assignment of a lease agreement shall be made in writing, shall be notified to and accepted by the assigned party and shall have indisputable date. Both transfers shall be registered in the RAN. In addition to the national provisions, the 1988 Ottawa Convention also applies to the transfer of a lease agreement.

**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)**

Article 1064 INC provides that, not earlier than 30 days and not later than 90 days after the attachment, the distraining creditor or one of the creditors which have obtained an enforceable title against the debtor may request the sale of the aircraft or of a portion thereof, by means of filing an appeal before the competent Court, pursuant to Article 1055 INC.

Such appeal shall be notified to:

1. the debtor/owner;
2. the mortgage creditors and
3. the intervening creditors pursuant to article 499 of the Italian Code of Civil Procedure, with an invitation to send their observations on the terms of the sale.

In case of foreign aircraft, the appeal shall also be notified also to the Consul of the State of which the aircraft has its nationality.

Within 30 days from the notification and not later than 90 days from the attachment, the claimant creditor shall deposit before the registry of the Court having jurisdiction pursuant to article 1055 INC:

1. the application served and
2. the extract from the aircraft's registration, showing the transcribed mortgages.

A file is created, pursuant to article 488 of the Italian Civil Procedure Code, containing:

- i. the attachment deed;
- ii. the certificate referred to in the last paragraph of Article 1061 INC and
- iii. any written observations of the interested parties regarding the conditions of sale.

According to Article 1065 INC, the Court shall appoint the Judge competent for the execution procedure and shall request ENAC to appraise the aircraft, establishing a time limit of not more than 30 days for the filing of the appraisal report. Lastly, Article 1066 INC provides that after 5 days from the filing of the appraisal report, the Judge competent for the execution shall order the sale of the aircraft – with or without auction, – after having heard:

1. the debtor/owner;
2. the claimant;
3. the petitioning creditor;
4. the mortgage creditors;
5. the creditors intervening in the execution and
6. the Consul of the State in which the aircraft has its nationality (in case of foreign aircraft).

The order of sale by auction shall contain the elements referred to in Article 656 INC. The order of sale without auction shall contain the indications referred to in Article 532, second paragraph, of the Italian Civil Procedure code.

**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**

Italian law doesn't provide for a specific taxation on lease rentals, unless the aircraft owner has a permanent establishment in Italy. Article 25, paragraph 4 of Presidential Decree No. 600/1973 establishes that a withholding tax equal to 30% applies on the lease rentals/payments made in favor of a non-resident owner.

**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**

Aircraft purchase operation in Italy generally incurs in VAT, which will be applied to the purchase price at current rate of 22%. The VAT on aircraft's sale applies if:

1. the seller and/or the buyer are tax resident in Italy;
2. the aircraft is registered in the RAN;
3. the aircraft is on the Italian territory at the time of the transfer.

VAT does not apply if:

1. the aircraft is exported within 90 days after the purchase;
2. the buyer is an international airline, operating for profit on international routes

**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**

If the transaction regards the first import of a civil aircraft to or from European Member States, customs duties are generally levied at 0%.

The import of an aircraft from a non-European Country to Italy is subject to a 22% VAT rate and to a 4% customs duties rate.

The payment of VAT can be excluded if the importer is an international airline, operating for profit on international routes. The payment of the custom duties is excluded if the aircraft imported is a civil aircraft, irrespective of the qualification of the importer.

The VAT must be paid by the owner/importer of the aircraft unless any other party with an interest in the importation is considered responsible for the payments by Agenzia delle Entrate (Italian tax collection Agency).

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

European Treaties have recognized, without restriction, the free movement of legally obtained and declared

funds. Hence, it is possible to transfer funds from Italy to another European Member States, and vice versa, without following particular procedures if the transfer is made through banks, another traceable means of transfer or using intermediaries specialized in funds transfers.

The absence of restrictions generally applies also for transfers from or to a non-EU Countries, nevertheless, the transfer shall be made in compliance with the provisions of bilateral agreements in force between Italy and the foreign Country involved in the transfer.

To transfer cash, it is mandatory to comply with the provision under Article 3 of Legislative Decree No. 195/2008, which requires that a transfer of funds exceeding €10,000 must be communicated to the Italian Customs Agency.

## **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?**

The Italian law system doesn't allow the enforcement of security and lessor rights and repossession in a timely manner. This is the reason why the Cape Town Convention is under legislator's evaluation (see questions No. 1 and 18).

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

The current Government committed itself to submit to the Parliament the draft law for them ratification of the Cape Town Convention and its Protocol (see No. question 1).

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

With judgment No. 35138 of 2022, the Italian Supreme Court (Corte di Cassazione) clarified – for the purposes of levying taxation on the income of natural and juridical persons (IRES and IRAP) – what constitutes permanent establishment of a non-resident enterprise engaged in an air transport activity, in the forms of a wet lease contract.

If an enterprise:

- i. offers on the territory of the State at least one service,
- ii. operates both a quota of employees with duties of flight and cabin crew – who start and end a period of service or a series of periods of service on site,
- iii. uses a fleet of aircrafts (equipped with human and technical means capable of demonstrating a non-episodic connection with the territory of the State and capable of generating an economic activity independent of that carried out by the parent company),
- iv. offers services consisting of the performance of domestic flight routes, these circumstances prove that the non-residence enterprise has permanent establishment in Italy and is eligible to tax breaks provided for IRES and IRAP. For VAT purposes the same enterprise shall prove that its structure allows the organization to provide autonomous supply of air transport services without the participation of a parent company.

## **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 Covid-19 emergency required the adoption of Law Decree No. 18 of the 17th of March 2020 – then converted into Law and amended by Law No. 27 of 24 April 2020 – which lays down new provisions for the companies Alitalia S.p.A. and Alitalia Cityliner S.p.A.

Article 79, Paragraphs 3 to 8 of the said Law Decree, authorised the renationalisation of Alitalia through the establishment of a new public company, entirely controlled by the Italian Ministry of Economy and Finance.

On the 9th of October 2020, the Italian Ministry of Economy and Finance, the Ministry of Infrastructure and Transport, the Ministry of Economic Development and

the Ministry of Labour and Social Policies signed the decree for the incorporation of the newco Italia Trasporto Aereo (ITA) S.p.A.: this company has replaced Alitalia and is based in Rome.

On the 25th of May 2021 the Italian Government and the EU Commission have entered into an agreement establishing the divestment of Alitalia, making ITA fully operative. In particular, the Commission and the Italian Government have reached a common understanding on the key parameters deemed necessary to ensure a complete economic discontinuity between ITA and Alitalia. This implies that, on the one hand, ITA had to buy back – by means of public procurements – the management of all Alitalia’s assets and services, such as maintenance, branding and handling services, but it also means, on the other hand, that ITA did not inherit Alitalia’s huge debts and financial issues, thus forming a separate and independent entity.

By means of Decree by the Prime Minister of the 11th of February 2022, procedures were defined for the disposal of the Ministry for the Economy and Finance’s equity investment in ITA. In early April 2022, the Italian Government set a deadline for the submission of the expressions of interest by private companies to take over the majority of the ITA shares.

On the 7th of April 2022, ITA’s privatisation process has begun. On the 18th of April 2022, the deadline for submitting an expression of interest to buy the majority of the ITA expired and, amongst the various bids submitted (by MSC, Deutsche Lufthansa, the US private

equity fund Indigo Partners and by the private equity fund Certares), the one from Lufthansa has been successful.

The Italian Ministry of Economy and Finance and Lufthansa reached an agreement in May 2023, when the merger has been approved and, on the 17th of June 2023, the Italian Supreme Audit Institution (Corte dei Conti) has registered the deed of approval of the agreement for the sale of the minority stake in ITA Airways to Lufthansa.

The contract, signed also by the Ministry for the Economy and Finance, provides for the two-year period (2023-2024) for the acquisition by Lufthansa of the 41% of the share capital of ITA, with an investment of EUR 325 million for the capital increase (the industrial plan 2023-2027 forecasts revenue growth from EUR 2.5 billion in 2023 to EUR 4.1 billion in 2027).

The acquisition process will develop in steps: after the acquisition of 41% of the capital, focusing on the goal that by 2025 ITA will be transformed into a profitable company, the German air carrier will be able to exercise its option to purchase a further 49% of the share and the last step is expected to start in 2028, with the option to acquire the last 10% of ITA’s capital.

The next steps will be the approval of the merger, from the perspective of competition law compliance, by the German and Italian competition authorities and the final approval by the European Commission, tasked with verifying that the merger does not cause significant harm to competition in the European aviation sector.

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