

# Legal 500

## Country Comparative Guides 2024

### United Kingdom

### Aviation Finance & Leasing

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The Milbank logo, featuring the word "Milbank" in a red serif font, is contained within a white rectangular box.

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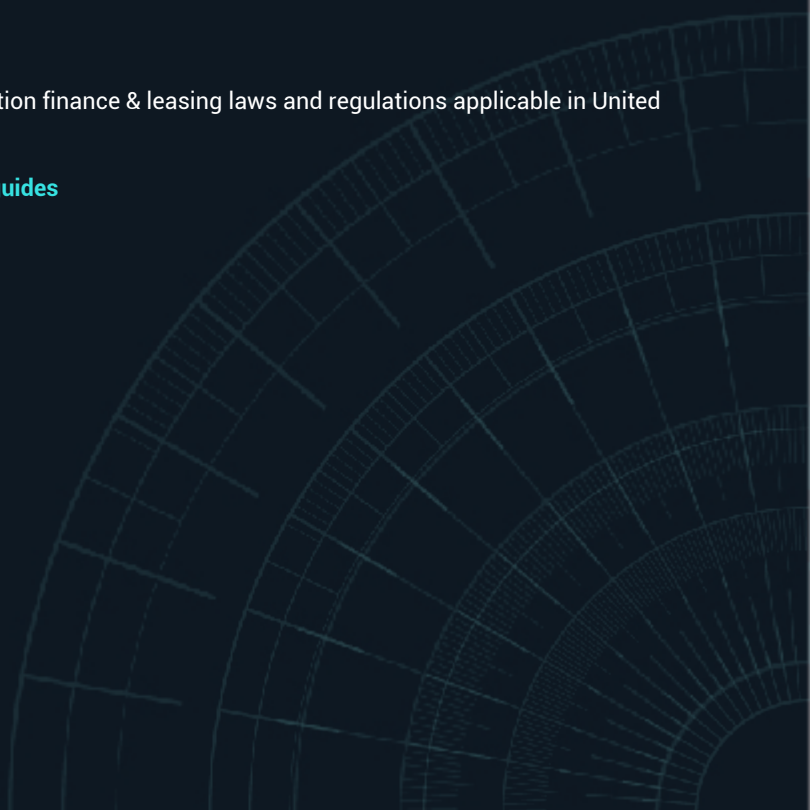
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This country-specific Q&A provides an overview of aviation finance & leasing laws and regulations applicable in United Kingdom.

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## United Kingdom: Aviation Finance & Leasing

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

The UK is a signatory to and has ratified (a) the Chicago Convention; (b) the Cape Town Convention; (c) the Geneva Protocol and (d) the Hague Convention. The UK is also a signatory to and has acceded to the New York Convention.

The UK is a signatory to the Geneva Convention but has not, as of yet, ratified or acceded to it. As a result, its terms do not apply as part of English domestic law. The UK is also not a signatory to the 1933 Rome Convention on precautionary arrest.

### 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: The UK has made declarations under the Cape Town Convention regarding:

- a. the priority of non-consensual rights or interests and statutory detention rights without registration (including possessory liens for maintenance or repair work carried out on the aircraft object and any arrest and detention rights in effect under domestic UK law including for the non-payment of amounts due in respect of public services relating to that aircraft object) under Article 39 of the Convention;
- b. determination of courts and exercise of treaty remedies without leave of court under Article 54 of the Convention;
- c. choice of law under Article VIII of the Protocol; and
- d. Alternative A Insolvency under Article XI of the Protocol.

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

Under the English *lex situs* rule, an aircraft security interest would only be effectively created if it is validly created under the laws of the jurisdiction where the asset was located at the time of creation. By contrast, under the Cape Town Convention, an international interest over an aircraft is created once the Cape Town Convention's validity conditions are satisfied and constitutes an autonomous class of interest recognized among the Contracting States, regardless of whether it has been validly created pursuant to national law. This contrasts with the English *lex situs* rule.

However, it should be noted that this will only apply where international interests are validly created under the Cape Town Convention. If the Cape Town Convention does not apply to a transaction, the validity of a security interest (which is not an international interest) will continue to be determined in accordance with English *lex situs* rule.

In addition, the Cape Town Convention Regulations also confirm that international interests are recognised as a matter of English law and have effect when the conditions of the Cape Town Convention are met, with no further requirements to determine whether the *lex situs* rule has been satisfied.

### 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

An English court will generally uphold a choice of governing law by the parties to the lease, in part because English law accords primacy to the parties' contractual intentions.

Specifically, in relation to governing law provisions in favour of the courts of an EU member state, as at the end of the Brexit transition period (which ended at 23:00 on 31 December 2020), Regulation (EC) No 593/2008 on the law applicable to contractual obligations ("Rome I") was implemented into UK domestic law by virtue of The Law Applicable to Contractual Obligations and Non-

Contractual Obligations (amendment etc.) (EU Exit) Regulations 2019. Under this UK domestic law, although the UK has now left the EU (and thus Rome I ceases to apply to the UK), the English Courts will continue to give effect to governing law provisions in favour of the court of an EU member state. However, under this regime, the parties' choice of governing law will be overridden in certain circumstances, including:

- a. where all the other elements relevant to the situation at the time of the choice of law are located in a country other than the country whose law has been chosen, the parties' choice of law will not prejudice the application of the provisions of the law of that other country which cannot be derogated from by contract;
- b. where all the other elements relevant to the situation at the time of the choice of law are located in one or more of the UK and the EU members states (each a "relevant state"), the parties' choice of law other than that of a relevant state will not prejudice the application of provisions of EU law which cannot be derogated from by contract;
- c. a choice of the law of a particular country will not restrict the application of overriding mandatory provisions of the law of the country of performance of an obligation arising out of the contract (insofar as they render performance of the contract unlawful) or the application of overriding mandatory provisions (i.e., provisions which are crucial for safeguarding the public interests of a country) of the law of the forum (i.e. the country in which the claim is being heard); and
- d. where the application of a provision of the parties' chosen law is incompatible with the public policy of the forum (i.e., the country in which the claim is heard), the courts of that country may decline to apply that provision.

*(b) Security document (for example, mortgage)*

Please refer to the responses to 3(a) and also note the point on the lex situs rule in the response to question 2(b) above.

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

As noted in the response to question 2(b) above, where the Cape Town Convention applies to a transaction, a validly created international interest may afford lessors and financiers the benefits of the Cape Town Convention. However, the Civil Aviation Authority continues to maintain a UK mortgage register, and a mortgage

registered on the mortgage register will take priority over all other unregistered or subsequently registered mortgages. In practice financiers have continued to register any mortgage over a UK-registered aircraft on the mortgage register, in addition to making filings at the International Registry.

**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)?**

A mortgagee who has obtained a foreign judgment for the payment of the debt will usually only wish to have the judgment recognised and enforced in England should the mortgagor have insufficient assets in the foreign country to meet the sum due. As set out below, there are a number of regimes that apply to the recognition and enforcement of foreign judgments in England, depending on the origin of the judgment and when the proceedings were commenced.

Judgments from EU member states and EFTA states obtained in connection with proceedings commenced prior to 31 December 2020

Whilst the UK was a member of the EU and prior to the end of the Brexit transition period (which ended at 23:00 on 31 December 2020), EU law (and any international agreements to which the EU is a party) continued to apply to the UK. Two regimes to which the EU is a party are relevant in this regard: (i) Regulation (EC) No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters ("Recast Brussels"); and (ii) the 2007 Lugano Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (the "Lugano Convention").

Recast Brussels applies to proceedings commenced on or after 10 January 2015 in any of the EU member states. Under this regulation, judgments of the courts of one EU member state may be recognised and enforced in other EU member states without the need to follow special procedures. Although, following the end of the Brexit transition period, Recast Brussels has ceased to apply to the UK, the English courts will continue to enforce judgments of the courts of EU member states obtained in connection with proceedings commenced prior to 31 December 2020.

The Lugano Convention applies to all EU states and the EFTA states (namely, Iceland, Norway and Switzerland but excluding Liechtenstein). It contains similar provisions to Recast Brussels for the recognition and enforcement of foreign judgments as between EU and EFTA states. Under the convention, judgments from the courts of one signatory state can be enforced in another signatory state without the need to follow special procedures. The UK applied to accede to the Lugano Convention in its own right in April 2020 but the unanimous approval of all current signatory states, including the EU, is required in order for accession to occur. On 28 June 2021, the European Commission sent a Communication to the Swiss Federal Council as Depositary of the Lugano Convention, formally blocking the UK's accession. As such, following the end of the Brexit transition period, the Lugano Convention has ceased to apply to the UK, although the English courts will continue to enforce judgments of the courts of signatory states obtained in connection with proceedings commenced prior to 31 December 2020.

#### Judgments from Hague Choice of Courts Convention and/or Hague Judgments Convention countries

All EU member states, Mexico, Singapore and Montenegro are bound as contracting parties to the 2005 Hague Convention on Choice of Court Agreements (the "Hague Choice of Courts Convention"). This convention came into force on 1 October 2015, at which time the EU (and all its member states, including the UK) acceded to it. Following the end of the Brexit transition period, the UK has acceded to the Hague Choice of Courts Convention in its own right (effective from 1 January 2021). The convention provides that a judgment given by a court in a contracting state designated in an exclusive jurisdiction agreement shall be recognised and enforced in other contracting states (although it only applies to exclusive jurisdiction agreements concluded after its entry into force for the state of the chosen court). As at the start of December 2024, there remains some disagreement between the EU and UK as to whether the Hague Convention entered into force in the UK on 1 October 2015 or 1 January 2021, but this will not impact the enforcement of judgments of the courts of any contacting state by the English courts.

In addition, on 27 June 2024, the UK ratified the Hague Convention of 2 July 2019 on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters (the "Hague Judgments Convention"). At the time of writing, the Hague Judgments Convention will come into force on 1 July 2025 in England and Wales only.

The Hague Judgments Convention includes an obligation for the contracting states to recognise and enforce judgments issued by the courts of such states in respect of commercial and civil matters (subject to certain exceptions). Therefore, it goes further than the Hague Choice of Courts Convention in that it provides for the enforcement of judgments based on non-exclusive jurisdiction clauses are also within its scope provided, in both cases, that certain criteria are met.

#### Judgments from Commonwealth countries: the statutory regime

Under various pieces of legislation, the English courts will enforce judgments (provided such judgments meet certain conditions) from recognised courts in most Commonwealth countries including: Australia, Bahamas, Barbados, Bermuda, British Virgin Islands, Canada (except Quebec), Cayman Islands, India, Israel, Jamaica, Malaysia, New Zealand, Nigeria, Pakistan, Singapore and Sri Lanka.

#### Judgments from other countries/not falling under one of the regimes above: the common law regime

Under common law, there is no process for the direct execution of a foreign judgment. However, a qualifying foreign judgment creates an obligation which can be enforced as a debt in a fresh English action. In the example of a mortgagee in possession of a foreign judgment, the mortgagee would commence an English action based on the judgment debt by serving proceedings on the mortgagor. The fact that the mortgagor is not within the English jurisdiction will not necessarily preclude a claim being served on it, with leave of the court, outside the jurisdiction. The mortgagee would then generally be able to obtain summary judgment in its favour in the English proceedings on the basis that the mortgagor has no defence to the claim.

### **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)**

Registration can be made either in the name of the Owner or the Operator provided they are qualified under the Air Navigation Order. The application form (Form CA1) must be completed and sent (together with the requisite fee) to

the Civil Aviation Authority ("CAA"). The CAA will require evidence that the aircraft is insured in accordance with certain minimum insurance requirements which are contained in form CA1 and can also be found on the CAA website.

**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)**

Yes. The Mortgaging of Aircraft Order 1972 (the 1972 Order), which came into effect on 1 October 1972, provided for the creation of an Aircraft Mortgages Register to be kept by the CAA. Any mortgage of an aircraft registered in the UK Register of Civil Aircraft may be registered in the Aircraft Mortgages Register. The 1972 Order makes no limitation on a person or company who may be a mortgagee. A registrable mortgage may cover any store of spare parts (including engines). However, a mortgage created as a floating charge is not registrable. Nor is a mortgage covering spare parts alone. There is no separate mortgage register maintained in respect of aircraft spare parts or engines. A mortgage over a non-UK registered aircraft cannot be registered in the Aircraft Mortgages Register. The particulars required for registration are set out in the application form (CA1577).

Also, where the mortgagor is an English company, the mortgage will need to be registered at Companies House.

**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) The registration of title to the aircraft constitutes prima facie evidence of ownership of the aircraft. However, such evidence is not conclusive.

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

under the Lease) Registration of the lease in a public register is not possible.

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 principal effects of registration on the Aircraft Mortgages Register are:

- a. a registered mortgage will, ipso facto, have priority over subsequent registered mortgages and unregistered mortgages, except for pre-October 1972 mortgages registered before 31 December 1972, and subject to the priority rules under the Cape Town Convention for registrable interests, unless the mortgage was registered on the Aircraft Mortgages Register prior to 1 November 2015. A registered mortgage will not, ipso facto, have priority over possessory liens or statutory rights of detention;
- b. all persons are deemed to have express notice of all facts appearing in the Register (though the registration of a mortgage does not constitute evidence of its validity);
- c. registered mortgages are not affected by the terms of the Bills of Sale Acts 1878 and 1882; and
- d. the CAA will indemnify any person suffering loss by reason of any error or omission in the Register or of any inaccuracy in a copy of an entry in the Register supplied by the Registry.

**9. What types of lease are recognized in your jurisdiction?**

Both finance leases and operating leases are recognized.

**10. What formalities are required to perfect Lessor's rights under a lease in your jurisdiction (for example, translation, notarization, apostille, legalization etc.)?**

Outside of the usual rules of contract (consideration, offer and acceptance and intent to create legal relations), there are no additional formalities necessary to perfect rights under the lease.

**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**

The engines will usually be sold together with the airframe. Title to the engines will transfer in the same way as title to an airframe, which requires the parties' agreement that title is transferred. (See further details in the response to Question 21).

A transfer is typically effected by way of a bill of sale.

It is possible for title to an engine to be held separately. Title to an engine is not registrable in the UK, but may be registrable with the International Registry if the relevant requirements are met.

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

Mortgages

Mortgages of aircraft may be either legal or equitable mortgages. Under a legal mortgage, a mortgagor conditionally transfers its ownership of the aircraft to the mortgagee as a security for a debt. The mortgagor retains possession of the aircraft and a right to recover title to the aircraft free of encumbrances when the mortgage is discharged.

An equitable mortgage arises where there is a specifically enforceable agreement to create a legal mortgage. The equitable mortgage creates a charge over the aircraft but does not convey any legal interest to the mortgagee. There is no actual transfer of ownership. The transfer of the equitable title to the aircraft to the mortgagee is subject to the mortgagor's equity of redemption, as in the case of legal mortgages.

Charges

Charges have similar characteristics to an equitable mortgage, as the creditor obtains equitable proprietary interests in the aircraft, but does not obtain either legal or beneficial title to it. Given that a charge does not transfer ownership, it does not give the charge the right to enforce its security interest without a court order. Therefore, legal mortgages are more commonly used.

Lien

A lien entitles a party to hold on to the aircraft in its possession pending payment of a debt owed. A lien does not confer on the lien holder an automatic right to sell the assets, unless the right to sell is granted under a contract. In exceptional cases, a lien holder can obtain a court order for sale of the aircraft. It can be created by any of the following:

- a. Equity;
- b. Operation of law (legal or common law lien);
- c. Contract (contractual lien); or
- d. Statute (statutory lien or right of detention).

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

Providing the mortgagor can transfer (or can direct a third party to transfer) its ownership to the mortgagee and provided that the mortgage constitutes a transfer of ownership (and not merely an agreement to transfer), no further formality is necessary. The mortgage can be created by an oral agreement between the parties though, in the case of aircraft, it will invariably be in writing since it will not otherwise be registrable in the Aircraft Mortgages Register. Mortgages usually contain an express power of sale upon default by the mortgagor. Even if there is no express power, there is an implied power of sale in the case of a legal mortgage, as well as a statutory power of sale when the mortgage is by way of deed.

**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**

See response to question 6 above.

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

Not applicable.

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

### in your jurisdiction?

Under English law, there is no specific provision which would limit or prohibit a contractual obligation on the re-insurer to pay any proceeds under the re-insurances directly to the original insured party, instead of to the re-insured party. However, in most cases, the original insured party will not be a party to the insurance policy, in which case the cut-through clause should expressly provide that it is intended for the benefit of the original insured party and that it may be enforced by the original insured party directly against the re-insurer. If not excluded under the re-insurances, the Third Party Rights Act 1999 may assist. In addition to the governing law of the re-insurances, the law of the jurisdiction of each of the re-insurer and of the primary insurer, including its insolvency laws, may impact on the effectiveness of any cut-through clause.

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

Air carriers and aircraft operators must take out insurance which meets minimum levels of cover in respect of liability for passengers, baggage, cargo and third parties. The precise level depends on the Maximum Take-Off Mass (MTOM) of the aircraft and on the number of passengers carried. Aircraft operators' insurance must cover passengers, baggage, third party cover, cargo and war risk.

### 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

On the occurrence of an event of default under a mortgage or a lease, the mortgagee or lessor can take possession of the aircraft without judicial intervention and subsequently sell the aircraft, provided that this has been specified in the mortgage or lease document or otherwise agreed in writing. Once there has been an event of default, the mortgagee will notify the mortgagor (in accordance with the terms of the mortgage) that there

has been an event of default under the loan and that it intends to enforce its security.

In addition to the English law self-help remedy, remedies are available to a mortgagee or a lessor without judicial intervention under the Cape Town Convention, provided the parties to a transaction have agreed in the transaction documents that they are available.

These remedies include:

- a. taking possession of an aircraft without obtaining a court order;
- b. deregistering and exporting the aircraft by exercising its rights under an irrevocable deregistration and export request authorization (see further details in Question 18);
- c. selling or granting a lease of an aircraft object;
- d. collecting or receiving any income or profits in connection with the management or use of that aircraft object; and
- e. obtaining interim relief pending final determination of any claim.

The Cape Town Convention also allows a mortgagee or lessor, in an insolvency scenario, to take possession of the aircraft if the mortgagor or lessee defaults and fails to perform its obligations under the mortgage or the lease for more than 60 days.

Where the debtor / lessee has entered into insolvency proceedings the ability of creditor to enforce and repossess the aircraft would be subject to restrictions imposed in the context of such insolvency proceedings.

### 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 person in whose favour the IDERA has been issued (being the authorized party) can request the deregistration of the aircraft by completing and submitting to the CAA a "Deregistration Request Form".

Deregistration will normally be effected within three working days, although the process may be expedited (for an additional fee) if the CAA's same-day service is

requested. However, deregistration may be delayed if an export certificate of airworthiness is required, as the aircraft must remain registered for the export certificate of airworthiness to be issued.

Deregistration of a Cape Town Aircraft pursuant to the request of the authorised party under an IDERA does not require the consent of any mortgagee registered on the Aircraft Mortgages Register or the consent of the registered owner or other party noted on the UK Register of Civil Aircraft. The consent of the mortgagee is only required (or the mortgage must be discharged) where, at the time of the IDERA deregistration request, a registered mortgage is currently entered on the Aircraft Mortgages Register that was created prior to 1 November 2015.

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

The circumstances of Government interference would be rare if the mortgagee otherwise had a valid claim:

- a. The Secretary of State for the Department for Transport and the CAA may detain, or prevent, the flight of aircraft in certain limited circumstances.
- b. The Secretary of State may also provide for the requisition of aircraft in the event of hostilities (actual or imminent), severe international tension or great national emergency. Subordinate legislation would be required and compensation would be payable. On nationalisation, compensation would almost certainly be payable.

In practice, the Executive will not interfere (and has not interfered) with the valid title of the mortgagee or with aspects of registration and deregistration of aircraft on the UK Register of Civil Aircraft or the export of civil aircraft

## 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

Court proceedings for repossession of an aircraft will commence with the issuance of a claim form. The court will consider the mortgage terms and give full effect to the ordinary meaning of its provisions, including the ability to take possession of the aircraft.

The mortgagee or lessor can apply for interim relief if there is a real risk that either: (a) the aircraft will be taken out of the UK; or (b) the mortgagor or the lessee will deal with the aircraft in a way that would prejudice the mortgagee's or the lessor's position.

Interim relief can be applied for and granted at any stage of the claim, including before proceedings have commenced. If a pre-action injunction is granted, the mortgagee must issue proceedings as soon as possible. Interim relief can include:

- a. An injunction relating to the aircraft.
- b. An order for detention of the aircraft, preventing it from leaving the jurisdiction.
- c. A freezing injunction restraining the mortgagor from disposing of the aircraft.

Where a court judgment has been obtained, a mortgagee or a lessor can issue a claim for enforcement of the judgment if the money owed is still outstanding. This is done automatically by issuing a writ or warrant of control without the case being re-examined on its merits. A writ or warrant of control can often be issued administratively by the court office, following production of documents and payment of a fee. This enables an officer of the court to seize and sell the aircraft.

Possession can be obtained within a few days from the issuance of a warrant of control by the court office in favour of the mortgagee or the lessor, depending on where the aircraft is located and/or when the aircraft is due to arrive to the UK.

## 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

Under English law, transfer of title to aviation assets requires each party's agreement that title is transferred. Delivery is not a prerequisite to title transfer but does usually accompany title transfer (by virtue of physical delivery or constructive delivery which would be the case where the aircraft is subject to a lease and where a novation / assignment and assumption of the lease would usually take place at the same time as transfer of title to the aviation asset).

A transfer is typically effected by way of an aircraft bill of sale. The bill of sale records the title transfer for registration purposes, but does not reveal the entire terms of the commercial transaction. The transfer will be



completed by registration of the new owner's details by submitting an application form to the CAA, Aircraft Registration Section. The application must be submitted (with the requisite fee) with either: (a) evidence of insurance in accordance with the minimum insurance requirements; or (b) a declaration that the aircraft will not fly until evidence of insurance has been supplied to the CAA.

There are no other consents required for the registration of an aircraft on the Register of Civil Aircraft maintained by the CAA. On registration, the CAA issues a certificate of registration. The completed Form CA1 can be e-mailed or faxed to the CAA. There is no need to send any additional hardcopy version of the form.

Notarisation, apostillation, legalisation or stamping of the bill of sale is not required to effect transfer of aircraft title under English law.

### **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)**

#### Private sale

The mortgagee may effect a private sale of the aircraft on the occurrence of an event of default under the mortgage, provided such a remedy has been stipulated for in the mortgage.

#### Pre-judgment court sale

The sale of the aircraft may be effected by court order prior to judgment having been given if the court is satisfied that a quick sale of the aircraft is desirable. The order for sale will be on such terms as the court may specify. Such a process should be considered when it appears likely that proceedings for the payment of the mortgagor's debt will not come to trial for a considerable period of time.

#### Sale after judgment

On judgment having been given in favour of the mortgagee for the debt and the mortgagee still not having received payment, the mortgagee may proceed to have the judgment enforced against the mortgagor. The process is by way of a claim – obtaining a writ of control which is an administrative process that does not involve a court hearing. This will empower an enforcement agent to seize and sell such of the mortgagor's goods and

chattels as are necessary to satisfy the judgment debt and costs of execution.

### **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**

Generally, we would not expect UK withholding tax to be imposed on lease rental payments. Relevant to this context, the UK imposes withholding tax on certain annual payments and payments of interest. Typical lease rental payments, whether paid under a finance lease or an operating lease, should not fall into either category.

A non-UK lessor will not be subject to UK corporation tax merely as a result of entering into a lease with a UK lessee (i.e. the source of the lease rental payments being the UK). However, if the facts were such that the non-UK lessor is 'centrally managed and controlled' in the UK, the non-UK lessor would become a UK tax resident company (subject to any override under an applicable double tax treaty), and would be liable for UK corporation tax on its worldwide profits, in the same way as a UK company, including on the receipt of the lease rental payments.

If a non-UK lessor (that is not tax resident in the UK) negotiates or enters into the lease through a UK permanent establishment (e.g. an office or a dependent agent) it could become subject to UK corporation tax on the profits attributable to such a permanent establishment (i.e., all of the profits attributable to the relevant lease).

There is a residual risk that, even if not subject to UK corporation tax as described above, a non-UK lessor could, nonetheless, be regarded as trading in the UK for UK income tax purposes. Where this is a concern on the facts, this risk can be mitigated by the non-UK lessor being tax resident in a jurisdiction which has a double tax treaty with the UK containing a typical 'business profits' article and following the protocols necessary to be outside the scope of UK corporation tax.

Finally, lease rentals would be within the scope of UK value added tax (VAT) if there is a UK lessee. However, provided the non-UK lessor is not established or deemed to be established through another person in the UK, any VAT would be the liability of the UK lessee, rather than the non-UK lessor. In any event, provided the aircraft is a 'qualifying aircraft' (as described in the answer to question 25 below), no UK VAT should be chargeable.

**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**

UK VAT could apply to the sale of an aircraft if the aircraft is already in the UK and not exported as part of the sale, or is imported into the UK or moved from the rest of the UK to Northern Ireland. However, generally the rate of VAT that applies to the sale (or importation) of an aircraft is 0%, provided that the aircraft is a 'qualifying aircraft'. If an aircraft is not a 'qualifying aircraft', the rate of VAT is 20%. Generally, this is charged by reference to the exclusive of VAT sale price of the aircraft.

Broadly, a 'qualifying aircraft' for UK VAT purposes is an aircraft that is used by an airline business (transporting passengers or cargo or both) whose international route operations (i.e. routes that are not between airports in the UK or Isle of Man) exceed its UK domestic route operations. This test may be determined by reference to value of turnover or some other appropriate measure. Additionally, aircraft that are used by a state institution, are of a weight of not less than 8,000kg and are neither designed or adapted for use for recreation or pleasure are also 'qualifying aircraft' for these purposes.

**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**

The UK exempts all powered aircraft from customs duty, with additional duties for certain aircrafts exported out of Russia or Belarus after 1 June 2022 at a rate of 35%. UK VAT may apply (as described in answer to question 25 above) on such an importation, but noting that the importation of 'qualifying aircraft' should not trigger any VAT cost. If aircraft brought into Northern Ireland from the rest of the UK or imported into Northern Ireland are 'at risk' of onward movement into the EU, EU customs duty (if applicable under EU customs rules as a basic matter) may be payable. The requirements vary by reference to the particular circumstances, but a person importing an aircraft may be required to obtain authorization from HM Revenue & Customs before obtaining the relevant exemption from customs duty.

UK trade sanctions and other trade restrictions may prohibit or require a licence for certain imports from certain locations.

The export of aircraft from the UK (other than certain temporary removals), regardless of whether they are 'qualifying aircraft' or not, is subject to UK VAT at a rate of 0% provided the supplier retains sufficient evidence of export from the UK.

The export of aircraft may in certain circumstances be controlled under the Export Control Order 2008, so a licence may be required from the Export Control Organisation. UK trade sanctions also restrict the export or use of aircraft in certain locations, such as Russia (although a licence may be available for certain flights).

There are also import and export controls that apply to aircraft containing halon systems (typically used in fire protection systems). Licensing requirements and prohibitions can apply depending on whether halon has a critical use or not. UK import and export controls may apply to aircraft entering and leaving the UK (excluding Northern Ireland) and EU import and export controls may apply to aircraft entering and leaving Northern Ireland.

Please note that the Northern Ireland Protocol is the subject of considerable controversy and the impact and export arrangements put in place pursuant to it may be subject to change in the future. However, with the signing of the post-Brexit legal agreement between the European Union and the United Kingdom which was announced on 27 February 2023 (the "Windsor Framework") the risk of amendment or rejection of the Northern Ireland Protocol appears to have been reduced.

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

There are no generally applicable exchange controls or restrictions on international transfers of funds, but there may be restrictions in certain circumstances where the UK's financial sanctions regimes apply (subject in certain cases to obtaining a licence from the Office of Financial Sanctions Implementation).

**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?**

We are not aware of any recent developments in relation to foreign creditors and lessors enforcing security or

leases in the UK.

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

The International Accounting Standards Board ("IASB") published a new International Financial Reporting Standard ("IFRS 16") in January 2016. This will take effect from 2019 and will primarily affect aircraft lessees. It eliminates the current dual accounting model for aircraft lessees (which distinguishes between on-balance-sheet finance leases and off-balance-sheet operating leases) and instead introduces a single, on-balance-sheet accounting model similar to current finance lease accounting.

## 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 effect from 1 November 2015, the Alternative A insolvency regime applies in the UK, which essentially permits creditors to exercise self-help remedies pursuant to the Cape Town Convention Regulations. Under the Alternative A insolvency regime, in an insolvency scenario, the insolvency administrator or the debtor must either:

- a. return the aircraft (or aircraft object, as defined in the Cape Town Convention) to the creditor by the end of a waiting period; or
- b. cure all defaults and agree to perform any relevant obligations.

The waiting period adopted by the UK is 60 days. To obtain possession at the end of the waiting period, a creditor does not need the court's permission. Once possession has been obtained, the creditor can deregister and export the aircraft.

The trade agreement between the UK and EU relating to Brexit came into force on 31 December 2020. A summary of some of its impact on the aviation industry is set out below:

- a. The rights to fly to and from each other's territory between the UK and EU are preserved to ensure majority of the traffic involving UK and EU destinations for majority of airlines on both sides. The traffic rights also come with no limits as to capacity, frequency, aircraft or

other pre-liberalisation features of bilateral agreements or price regulation.

- b. UK airlines no longer enjoy traffic rights inside the EU, whether within one member state or between different member states, and EU airlines no longer enjoy domestic UK traffic rights. However, this does not impact most airlines in practice as airlines which took advantage of these rights previously have established subsidiaries to preserve them.
- c. There are no longer fifth freedom rights for passenger traffic, so airlines from either the UK or EU cannot continue services to third country. Cargo fifth freedoms are permitted if agreed bilaterally between the UK and the individual EU member states.
- d. Ownership and control restrictions are mainly as expected. In order to gain traffic rights between the UK and EU, airlines from each side must, among others, be owned and effectively controlled by nationals of their own side and have principal of business in their own territory. However, the ownership and control test is relaxed to allow UK airlines to still be considered as UK airlines if they are owned and effectively controlled by nationals of the EU.
- e. The UK-EU trade agreement permits wet leasing by UK airlines from UK or EU operators, but wet leasing by EU airlines must be from EU operators. Other wet leasing arrangements are permitted in exceptional circumstances involving seasonal capacity or operational difficulties for a strictly necessary duration.
- f. The UK-EU trade agreement includes a section on aviation safety and emphasizes the aim of close cooperation between the UK and EU. This is based on mutual recognition of licences, with each party accepting findings of compliance and certificates issued by the other's competent authorities. Both sides agree to keep each other informed of proposed changes to safety laws and standards and provide assistance to the other on threats to security of civil aviation and to conform with ICAO standards.

## 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?**

Unlike certain other jurisdictions the UK Government is not currently offering support targeted specifically at the airlines sector. We have set out below a few examples of support that is being offered more widely.

#### COVID-19 Corporate Financing Facility

In March 2020, HM Treasury ("HMT") announced that the Bank of England would operate on behalf of HMT, a new COVID-19 Corporate Financing Facility ("CCFF"), which provides liquidity funding to businesses by purchasing commercial paper of up to one-year maturity. The CCFF would be available to UK-incorporated companies provided they: (a) make a material contribution to economic activity in the UK; and (b) can demonstrate they were in sound financial health prior to the onset of the COVID-19 crisis. Those that are eligible will be required to complete an application form and submit this together with the required supporting documentation. British Airways, EasyJet, Wizz Air and Ryanair were among the companies that benefitted from this facility. The facility was closed to new borrowings from March 2021.

#### Coronavirus Large Business Interruption Loan Scheme

Coronavirus Large Business Interruption Loan Scheme ("CLBILS") supported viable businesses that satisfy the following conditions (among others):

- a. UK-based business with an annual turnover exceeding £45 million in the 12 months preceding the application;
- b. generate more than 50% of their turnover from trading activity;
- c. can self-certify that the business has been adversely impacted by COVID-19;
- d. has not received a facility under the CCFF scheme; and
- e. operates within an eligible sector.

CLBILS was provided by the British Business Bank through participating approved lenders. The Borrower will remain responsible to repay 100% of the amount owed under the facility, but the scheme provides the lender with a government backed guarantee for 80% of the outstanding facility amount (including interest and fees), subject to a lender portfolio cap. CLBILS was closed to new applications from 31 March 2021.

In addition, the UK has extended its waiver of the 80/20 usage rule (for reallocation of slots on a grandfathered basis) until October 2021.

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