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Cayman Islands: Law & Practice

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Walkers



CAYMAN ISLANDS



Law and Practice

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1. Aircraft and Engine Purchase and Sale

1.1 Sales Agreements

1.1.1 Taxes/Duties Payable Upon Execution of the Sales Agreement

The Cayman Islands currently have no form of income, corporate or capital gains tax and no estate duty, inheritance tax or gift tax. Stamp duty may be payable on documents executed in, or brought to, the Cayman Islands or put before the Grand Court of the Cayman Islands (the Cayman Court).

1.1.2 Enforceability Against Domestic Parties

There is no formal legal requirement under Cayman Islands law that a sale agreement must be translated, certified, notarised or legalised to be valid or enforceable.

1.2 Transfer of Ownership

1.2.1 Transferring Title

Title is invariably transferred by way of bill of sale and there are no specific formalities under Cayman Islands law.

If, following the sale of the relevant ownership interest, the entity owning legal title remains the same, no sale of the physical asset would occur. It should be noted that if the aircraft is registered with the Civil Aviation Authority of the Cayman Islands (CAACI), any change in the particulars of the aircraft (including any change in beneficial or legal ownership) furnished to the CAACI at the time of first registration should be notified to the CAACI within 28 days of such a change, in accordance with the Air Navigation (Overseas Territory) Order 2013 (as amended) (ANOTO).

1.2.2 Sales Governed by English or New York Law

There is no formal legal requirement under Cayman Islands law that a bill of sale needs to be governed by Cayman Islands law for the Cayman Court to recognise the title transfer. In the absence of public policy restrictions, the parties are free to choose the governing law of the bill of sale.

There are no known specific requirements other than the general requirements for any contract to be substantively valid as a contract.

1.2.3 Enforceability Against Domestic Parties

There is no formal legal requirement under Cayman Islands law that a bill of sale must be translated, certified, notarised or legalised to be valid or enforceable.

1.2.4 Registration, Filing and/or Consent From Government Entities

There is no formal legal requirement under Cayman Islands law for a bill of sale to be registered, filed, or subject to any consent from any government entity, except that a copy of the bill of sale should be provided to the CAACI in respect of aircraft which are or will be registered on the Cayman Islands Aircraft Register maintained by the CAACI (the Aircraft Register).

For a new registration, all relevant application forms may be submitted via the CAACI's online registration portal for approval by the Director General of Civil Aviation. The application should include a copy of the bill of sale for the aircraft in favour of the registering owner.

If there is a change in ownership of a Cayman Islands-registered aircraft, that change must be notified to the CAACI within 28 days in accordance with the ANOTO, and a copy of the bill of

sale for the aircraft may be provided as evidence of that change in ownership. The CAACI will also require certain due diligence on the new owner and that all outstanding fees in respect of the aircraft are settled prior to updating the Aircraft Register.

No government applications or consents are a prerequisite to executing and delivering a bill of sale in relation to an aircraft or engine registered in the Cayman Islands.

Assuming the bill of sale satisfies the requirements for registration as an "international interest" under the Cape Town Convention (as defined in **2.10 Cape Town Convention and Others**), such filings can be made on the International Registry (IR).

1.2.5 Taxes/Duties Payable Upon Execution of a Bill of Sale

See **1.1.1 Taxes/Duties Payable upon Execution of the Sales Agreement**.

2. Aircraft and Engine Leasing

2.1 Overview

2.1.1 Non-permissible Leases

Subject to the general requirements for any contract to be substantively valid as a contract, there are no known types of leases that are not permissible or recognised under Cayman Islands law.

2.1.2 Application of Foreign Laws

In principle, the Cayman Court will recognise and enforce an aircraft lease governed by the laws of a jurisdiction other than the Cayman Islands, provided that:

- the choice of governing law was made in good faith by the parties and would be regarded as a valid and binding selection and upheld in the courts of that foreign jurisdiction and all other relevant jurisdictions; and
- the lease has been duly executed and delivered and, as a matter of the laws of all relevant jurisdictions, constitutes the legal, valid and binding obligations of each of the parties thereto, enforceable under its terms.

Subject to the provisos above and general qualifications, one would expect the Cayman Court to give effect to English law or New York law-governed lease in customary form and on customary market terms.

The term “enforceable” and its cognates, as used in this analysis, means that the obligations assumed by any party under any document are of a type that the Cayman Court would enforce. This does not mean that those obligations will necessarily be enforced in all circumstances in accordance with their terms.

2.1.3 Restrictions Concerning Payments in US Dollars

There are currently no foreign exchange controls or foreign exchange regulations under Cayman Islands law.

2.1.4 Exchange Controls

See 2.1.3 Restrictions Concerning Payments in US Dollars.

2.1.5 Taxes/Duties Payable for Physical Execution of a Lease

See 1.1.1 Taxes/Duties Payable upon Execution of the Sales Agreement.

2.1.6 Licensing/Qualification of Lessors

There are no formal legal requirements under Cayman Islands law for lessors to be licensed or otherwise qualified in the Cayman Islands to do business with a domestic lessee.

2.2 Lease Terms

2.2.1 Mandatory Terms for Leases Governed by English or New York Law

There are no mandatory terms that a lease (or ancillary documents thereto) is required to contain under Cayman Islands law other than the general requirements for any contract to be substantively valid.

Assuming the lease is effective to create, within the meaning of the Cape Town Convention, “international interests” vested in the lessor with respect to the airframe and engines, IR filings can be made in respect of those interests. See 2.10 Cape Town Convention and Others.

2.2.2 Tax and Withholding Gross-Up Provisions

Tax and other withholding gross-up provisions are permissible and enforceable in the Cayman Islands, provided such provisions are permissible and enforceable pursuant to the governing law of the lease. See 2.1.2 Application of Foreign Laws with respect to the enforceability of a lease governed by foreign law.

2.2.3 Parts Installed or Replaced After a Lease’s Execution

A lease can cover parts installed or replaced on an aircraft or engine after its execution, and any steps to be taken would be a matter of the governing law of the lease.

2.2.4 Risk of Title Annexation

There is no known risk of title annexation under Cayman Islands law. However, it is common

market practice for relevant parties to enter into contractual “recognition of rights” agreements with other interested parties when engines are installed on different airframes.

2.2.5 Recognition of the Concepts of Trust/Trustee

Cayman Islands law recognises trusts, although the concept of a trust under the laws of the Cayman Islands may differ from other jurisdictions; eg, a trust constituted under the laws of the Cayman Islands does not have a legal personality.

2.3 Lease Registration

2.3.1 Notation of Owner’s/Lessor’s Interests on Aircraft Register

The Aircraft Register is primarily a private-use category register, and any aircraft registered in the Cayman Islands must not be used for commercial operations unless the operator holds an Air Operator’s Certificate. The Aircraft Register is a register of registered owners and aircraft only, and the recording of details on the Aircraft Register does not determine priority between competing interests in the aircraft.

It is possible to register the aircraft in the name of:

- the owner of the aircraft; or
- the “charterer by demise”, provided such a party is qualified to be the registered owner pursuant to the ANOTO.

ANOTO specifies particular categories of “qualified person”, including:

- citizens of the UK, Commonwealth, European Economic Area state or of the Swiss Confederation; or
- bodies incorporated, or undertakings formed, in any part of the Commonwealth or in

accordance with the law of a European Economic Area state or within the Swiss Confederation and have their registered office, central administration or principal place of business in such location.

Full details of the requirements and eligibility for registration of aircraft on the Aircraft Register are set out in the ANOTO.

It is also possible to note the interests of other parties (such as the lessor or a mortgagee) on the Aircraft Register.

No legislation in the Cayman Islands expressly provides that recording a “charterer by demise” as the registered owner constitutes public notice of a lessor’s interest in the relevant aircraft. However, a person examining a certificate of registration in which the lessor’s interest is noted will have actual notice of that interest. It would be reasonable to expect the Cayman Court to consider inspection of the Aircraft Register in respect of an aircraft that records that the registered owner is a “charterer by demise” to constitute actual notice to the inspecting party of third-party interest in the relevant aircraft.

2.3.2 Registration if the Owner Is Different From the Operator

See **2.3.1 Notation of Owner’s/Lessor’s Interests on Aircraft Register**.

In order to register an aircraft on the Aircraft Register:

- an aircraft registration application must be submitted (this can be done via the CAACI’s online platform) and a deposit paid;
- financial and legal due diligence satisfactory to the CAACI must be completed, following which the CAACI will issue a notice of

- acceptance of the applicant and a reserved Cayman Islands registration mark;
- an airworthiness survey of the aircraft must be completed by a CAACI surveyor;
- supporting documentation (including various technical forms) must be completed and submitted; and
- deregistration from any existing state of registration must be completed.

2.3.3 Aircraft/Engine-Specific Registers

There is no formal legal requirement for a lease to be registered with the CAACI in relation to an aircraft registered in the Cayman Islands. However, it is usual in the case of an aircraft to be registered in the name of its “charterer by demise” for the CAACI to request a copy of the aircraft lease in support of the registration application.

There is no separate engine register maintained by the CAACI.

2.3.4 Registration of Leases With the Domestic Aircraft Registry

See 2.3.1 Notation of Owner’s/Lessor’s Interests on Aircraft Register and 2.3.3 Aircraft/Engine-Specific Registers. Leases are not subject to consent from any government entity.

2.3.5 Requirements for a Lease to Be Valid and Registrable

See 2.3.1 Notation of Owner’s/Lessor’s Interests on Aircraft Register and 2.3.3 Aircraft/Engine-Specific Registers. An aircraft lease submitted to the CAACI is not required to satisfy any formalities, although the CAACI will ask for a lease in a language other than English to be accompanied by an English translation.

2.3.6 Taxes/Duties Payable for Registering a Lease

See 2.3.1 Notation of Owner’s/Lessor’s Interests on Aircraft Register and 2.3.5 Requirements for a Lease to Be Valid and Registrable. Any fees payable to the CAACI are for registration of the aircraft, not the lease.

2.3.7 Registration of Aircraft in Alternative Countries

This is not applicable in the Cayman Islands.

2.3.8 Requirements for Documents Concerning Registration

The CAACI requires certain know-your-customer documents to be notarised as part of the legal and financial due diligence conducted during an application for registration of an aircraft.

See 2.3.5 Requirements for a Lease to Be Valid and Registrable.

2.4 Lessor’s Liabilities

2.4.1 Tax Requirements for a Foreign Lessor

See 1.1.1 Taxes/Duties Payable upon Execution of the Sales Agreement.

2.4.2 Effects of Leasing on the Residence of a Foreign Lessor

A foreign lessor that is not already resident in the Cayman Islands prior to its entry into a lease would not be deemed to be resident, domiciled or carrying on a business in the Cayman Islands by reason only of the execution, delivery, performance or enforcement of that lease.

2.4.3 Engine Maintenance and Operations

See 2.4.6 Priority of Third Parties’ Rights in relation to repairers’ liens and 2.4.4 Damage or Loss Caused by an Asset in relation to operational liability.

2.4.4 Damage or Loss Caused by an Asset

The owner of an aircraft registered with the CAACI could be subject to strict liability by virtue of Section 40(2) of the Civil Aviation Act, 1949 (as extended to the Cayman Islands by the Civil Aviation Act 1949 (Overseas Territories) Order 1969, known as the CAA 1969) which states that, in essence, there are certain circumstances:

- where material loss or damage caused to any person or property as a result of an aircraft while in flight, taking off or landing can result in damages being recoverable without “proof of negligence or intention or other cause of action, as if the loss or damage had been caused by the wilful act, neglect, or default of the owner of the aircraft”; and
- a legal liability can be created “in some person other than the owner to pay damages in respect of the said loss or damage, the owner shall be entitled to be indemnified by that other person against any claim in respect of the said loss or damage.”

As such, the owner can seek indemnification from the operator of the aircraft.

A passive owner will typically rely on the exemption under Section 76(4) of the UK Civil Aviation Act, 1982 (as extended to the Cayman Islands by the Civil Aviation Act 1982 (Overseas Territories) (No 2) Order 2001), which states that if an owner has bona fide demised, let or hired out the aircraft for more than 14 days, and no member of the crew is employed by the owner, Section 40(2) of the CAA 1969 shall have effect as if references to the owner are substituted with references to the person to whom the aircraft has been demised, let or hired out.

2.4.5 Attachment by Creditors

The lessee may have allowed certain liens to accrue against the aircraft (eg, a possessory lien arising from a third party having worked on the aircraft to improve its condition).

A lien constitutes an unassignable personal right of the lienor to detain the chattel until their claims for payment against the owner have been satisfied. Accordingly, a creditor with a lien over the aircraft may be able to detain the aircraft until the relevant outstanding debt is settled. See **2.4.6 Priority of Third Parties’ Rights**.

2.4.6 Priority of Third Parties’ Rights

There are a limited number of third party rights, which would take priority over a valid security interest created in favour of a secured party.

These are:

- the right accorded to any party by statute to detain the aircraft, for example:
 - (a) the lien granted in favour of Cayman Islands Airports Authority (CIAA) in respect of airport fees and charges pursuant to the Airports Authority Act (as amended); and
 - (b) the lien granted in favour of CAACI in respect of CAACI’s fees and charges pursuant to the Civil Aviation Authority Act (as amended); or
- certain rights arising by operation of common law, for example a possessory lien in respect of work done on the aircraft (whether before or after the creation of the mortgage) on the express or implied authority of any party lawfully entitled to possession of the aircraft. Examples of such liens are the seller’s lien, banker’s lien and repairer’s lien.

2.5 Insurance and Reinsurance

2.5.1 Requirement to Engage Domestic Insurance Companies

It is not mandatory that all or part of the insurance be placed with domestic insurance companies unless the aircraft is ordinarily based in the Cayman Islands, in which case local insurance could be used. Insurance is typically placed with the international insurance markets in London and New York.

2.5.2 Mandatory Insurance Coverage Requirements

No mandatory insurance coverage requirements are imposed.

2.5.3 Placement of Insurances Outside of Jurisdiction

The question of insurance and reinsurance will depend on the requirements of the parties to the transaction, and in particular, on the jurisdiction of the lessee.

2.5.4 Enforceability of “Cut-Through” Clauses

There are no Cayman Islands statutory provisions relating to “cut-through” clauses. The Cayman Court would look to English common-law principles (which have persuasive, if not binding, effect in the Cayman Court).

2.5.5 Assignment of Insurance/Reinsurance

Such arrangements are effective under Cayman Islands law, subject to general qualifications as to enforceability.

2.6 Lease Enforcement

2.6.1 Restrictions on Lessors’ Abilities

The Cayman Court recognises self-help remedies and typically recognises and enforces contractual arrangements between parties. However, it should be noted that in the majority of cases, the aircraft will not be located in

the Cayman Islands, and the lease is likely to be governed by English or New York law. The effectiveness of these actions will, therefore, be determined by general principles of enforceability under the governing law of the lease and in the jurisdiction in which the aircraft is located.

Any sale of the aircraft would be subject to there being no third-party liens in place. See 2.4.6 **Priority of Third Parties’ Rights** in connection with such third-party liens.

2.6.2 Lessor Taking Possession of the Aircraft

Enforcement will be determined by the provisions of the relevant lease agreement. If enforcement is contested, court proceedings may be required to resolve the dispute.

Taking physical possession of the aircraft is permitted under Cayman Islands law, and self-help remedies are permitted without the need to obtain a court order. However, it is open to the relevant enforcing party to seek a court order if it considers it necessary, and in such circumstances, the Cayman Court would recognise the self-help remedies.

2.6.3 Specific Courts for Aviation Disputes

There are no specific courts in the Cayman Islands that deal exclusively with aviation disputes, and no judicial decisions of the Cayman Court have been reported in relation to the seizure of aircraft.

2.6.4 Summary Judgment or Other Relief

Summary judgment is available. Relief is not conditional upon the lease being in a particular form, but stamp duty would be required to be paid in respect of the lease to present it in proceedings before the Cayman Court.

It is not possible to confirm what conditions the Cayman Court might impose. It is possible, however, that the courts may require security for costs or an undertaking to pay another party's damages in connection with the grant of interlocutory relief, which may likely be obtained prior to the hearing of the dispute, which is the subject of the proceedings.

2.6.5 Domestic Courts' Approach to Foreign Laws and Judgments

See 2.1.2 Application of Foreign Laws and 2.6.11 Lessees' Entitlement to Claim Immunity.

2.6.6 Domestic Courts' Recognition of Foreign Judgments/Awards

A judgment obtained in a foreign court (other than certain judgments of a superior court of any state of the Commonwealth of Australia) will be recognised and enforced in the Cayman Court without any re-examination of the merits at common law by an action commenced on the foreign judgment in the Cayman Court where the judgment:

- is final and conclusive;
- is one in respect of which the foreign court had jurisdiction over the defendant according to Cayman Islands conflict of law rules;
- is either for a liquidated sum, not in respect of penalties or taxes, or a fine or similar fiscal or revenue obligations or, in certain circumstances, for in personam non-money relief (following *Bandone Sdn Bhd v Sol Properties Inc* (2008) CILR 301); and
- was neither obtained in a manner nor is of a kind that is contrary to natural justice or the public policy of the Cayman Islands if enforced.

2.6.7 Judgments in Foreign Currencies

The Cayman Court has jurisdiction to give judgment in the currency of the relevant obligation.

See 2.6.6 Domestic Courts' Recognition of Foreign Judgments/Awards regarding foreign judgments.

2.6.8 Limitations on Lessors' Actions Following Termination

Penal rates of interest may be unenforceable under English common-law principles (those common-law principles being of persuasive, if not binding, effect in the Cayman Court).

2.6.9 Lessor's Requirement to Pay Taxes/Fees

See 1.1.1 Taxes/Duties Payable upon Execution of the Sales Agreement with respect to taxes.

If an aircraft registered on the Aircraft Registry is to be deregistered, the aircraft account with the CAACI will need to be settled, and there may also be unpaid charges payable to the CIAA. These charges would depend on the specific facts and circumstances at the time.

With respect to fees, it is not possible to estimate the costs of proceedings in the Cayman Court to enforce a lease for a hypothetical case where the relevant facts are not known.

2.6.10 Mandatory Notice Periods

The procedure for the termination of a lease is a matter to be determined by the terms agreed between the parties to that lease.

2.6.11 Lessees' Entitlement to Claim Immunity

Whether the lessee is entitled to claim any immunity from suit, execution, attachment or other

legal process will depend on its actual identity. If the lessee is a sovereign body or other government organ (whether autonomous or quasi-autonomous), the lessee may be able to claim sovereign immunity.

2.6.12 Enforcement of Foreign Arbitral Decisions

The Cayman Court will recognise and enforce an arbitral decision. The Arbitration Act (as amended) provides the regime for enforcement of domestic awards, non-convention awards and interim measures.

2.6.13 Other Relevant Issues

There are no other relevant issues in the Cayman Islands of which a lessor should be aware in relation to the enforcement of its rights.

2.7 Lease Assignment/Novation

2.7.1 Recognition of the Concepts of Contractual Assignment and Novation

Cayman Islands law recognises the concepts of novation and contractual assignment.

2.7.2 Assignment/Novation of Leases Under Foreign Laws

The consent of the continuing party (whether that is the lessee or otherwise) would typically be required.

The courts of the Cayman Islands will recognise and enforce an agreement in accordance with its terms, on the assumption that:

- the assignment and assumption or novation agreement is in a customary form and on customary market terms for an assignment and assumption or novation of an aircraft lease governed by English or New York law and is itself governed by the same law; and

- the agreement has been duly executed and delivered and, as a matter of the laws of all relevant jurisdictions, constitutes the legal, valid and binding obligations of each of the parties thereto, enforceable in accordance with its terms and effective to achieve the intended novation.

2.7.3 Enforceability of Lease Assignments/Novations

There is no formal legal requirement under Cayman Islands law that a lease assignment and assumption/novation agreement must be translated, certified, notarised or legalised to be valid and enforceable.

2.7.4 Filing/Registration of Lease Assignments/Novations

The original lease should have been submitted to the CAACI at the time of registration of the aircraft if the registered owner is a “charterer by demise”, and any assignment and assumption or novation of the lease that results in a change to this information must be conveyed to the CAACI within 28 days of the change, in accordance with the ANOTO.

There are no specific formalities except that the CAACI will ask for a document in a language other than English to be accompanied by an English translation.

No government applications or consents are a prerequisite to the execution and delivery of an aircraft and/or engine lease assignment and assumption/novation in relation to an aircraft registered domestically.

2.7.5 Taxes/Duties Payable on Assignment/Novation

See 1.1.1 Taxes/Duties Payable upon Execution of the Sales Agreement.

2.7.6 Recognition of Transfer of Ownership Interests

It is assumed that if legal title to the aircraft remained with the same entity, there would be no intention to novate/assign the lease even if the beneficial ownership of the aircraft were transferred to another party. It should be noted, however, that any change in ownership particulars previously notified to the CAACI for Cayman Islands-registered aircraft should be notified to the CAACI within 28 days of any such change (see also 1.2.1 Transferring Title and 2.7.4 Filing/Registration of Lease Assignments/Novations).

2.8 Aircraft Deregistration and Export

2.8.1 Deregistering Aircraft in This Jurisdiction

When an irrevocable deregistration and export request authorisation (IDERA) is recorded with the CAACI in respect of an aircraft registered on the Aircraft Register, Article 18(5) of the ANOTO provides that the CAACI must cancel the registration of the aircraft as soon as reasonably practicable if satisfied that a person wishes and is entitled under the laws of the Cayman Islands to procure deregistration of the aircraft in accordance with Article IX of the Protocol of the Cape Town Convention (the Protocol).

When no IDERA is recorded with the CAACI in respect of an aircraft registered on the Aircraft Register, the CAACI is expected to follow its customary approach prior to 1 November 2015; namely, that any application to deregister an aircraft should be made by the registered owner of that aircraft. It should be noted that an application to deregister the aircraft can be made in the name of the owner by a person appointed as its attorney-in-fact, pursuant to a deregistration power of attorney given by the owner. All persons who have registered vested interests in

the aircraft should provide written consent to any such deregistration to the CAACI.

These registered interests include, without limitation, those of:

- the beneficial owner of that aircraft (if other than the registered owner);
- any lessor of that aircraft (if other than the beneficial or registered owner); and
- any mortgagee if there is an entry with respect to the aircraft on the Mortgage Register maintained by the CAACI (Mortgage Register).

The CAACI does not require the consent of the operator of an aircraft (in its capacity as operator) for the deregistration of an aircraft.

2.8.2 Lessee's/Operator's Consent

See 2.8.1 Deregistering Aircraft in this Jurisdiction.

2.8.3 Required Documentation

In order to deregister an aircraft, the CAACI must receive:

- written instructions from the registered aircraft owner or his or her agent (whose authority is evidenced by a notarised power of attorney);
- evidence of settlement of the aircraft account with the CAACI, including payment of the deregistration fee;
- the Certificate of Registration with Section III signed by the owner of the aircraft (together with evidence of the signing authority of the relevant person signing). Section III should not be dated until the proposed day of deregistration, and the CAACI will not deregister the aircraft until the final instruc-

- tion is received from the owner or authorised person;
- instructions from the lessor of a “charterer by demise” registered aircraft or holder of an IDERA over the aircraft on the termination of the current lease and authorisation that the aircraft can be deregistered, accompanied by certified copies of all relevant legal documents;
 - if an aircraft has a registered mortgage on the Mortgage Register, either:
 - (a) a Mortgage Discharge Application Form; or
 - (b) a letter of authorisation from the mortgagee indicating how the mortgage should be dealt with, specifying:
 - (i) a description of the mortgage, including the reference number;
 - (ii) the proposed date of deregistration of the aircraft and new state of registry;
 - (iii) confirmation that the mortgage is not being discharged, nor will it be deregistered from the Mortgage Register prior to the aircraft being deregistered;
 - (iv) authority for the aircraft to be deregistered and have the mortgage referenced on the deregistration certificate, along with any filed IDERAs; and
 - (v) an indication of when the mortgage will be deregistered from the Mortgage Register. Notarised proof of authority of the mortgagee’s signatory will also be required; and
 - if a Certificate of Airworthiness for Export is required, a completed inspection of the aircraft by a CAACI surveyor.

2.8.4 Duration of Deregistration Process

From the CAACI’s perspective, where all parties are co-operating, deregistration can typically be effected in one day once all the documentation is in place.

The period for deregistration where there is no co-operation from the parties cannot be estimated.

2.8.5 Aviation Authority’s Assurances

See 2.8.4 Duration of Deregistration Process.

2.8.6 Costs, Fees and Taxes Relating to Deregistration

Deregistration fees are nominal (currently KYD500/USD609.76). The fee payable is prescribed by statute, and there is no known precedent for the fee being waived.

In addition, the aircraft account must be settled with the CAACI before the aircraft can be deregistered. This amount may or may not be significant, depending on how the accounts have been managed prior to deregistration.

2.8.7 Deregistration Power of Attorney

There is no formal legal requirement under Cayman Islands law that, for a deregistration power of attorney to be enforced against a domestic party, it needs to be translated, certified, notarised, legalised or lodged in advance. It should be noted, however, that since the Cape Town Convention came into force in the Cayman Islands on 1 November 2015, pursuant to the CTC Act (as defined in 2.10 Cape Town Convention and Others), the CAACI typically accepts IDERAs rather than deregistration powers of attorney.

2.8.8 Documents Required to Enforce Deregistration Power of Attorney

See 2.8.1 Deregistering Aircraft in this Jurisdiction and 2.8.3 Required Documentation.

2.8.9 Choice of Laws Governing Deregistration Power of Attorney

A deregistration power of attorney does not have to be governed by the laws of the Cayman Islands.

2.8.10 Revocation of a Deregistration Power of Attorney

Under Cayman Islands law, a deregistration power of attorney granted to secure an obligation owed, typically to the finance parties, will be irrevocable until that obligation is discharged.

2.8.11 Owner's/Lessor's Consent

Aircraft registered on the Aircraft Register are usually located and operated outside of the Cayman Islands. See also 2.8.1 Deregistering Aircraft in this Jurisdiction, noting that the lessee's consent is not required for deregistration.

2.8.12 Aircraft Export Permits/Licences

See 2.8.1 Deregistering Aircraft in this Jurisdiction and 2.8.3 Required Documentation. The issuance of an export permit/licence will also depend on the requirements of the jurisdiction to which the aircraft is being exported.

2.8.13 Costs, Fees and Taxes Concerning Export of Aircraft

See 2.8.6 Costs, Fees and Taxes Relating to Deregistration. In addition, the fees payable to the CAACI for an export certificate of airworthiness are calculated at KYD100 per 500 kg of the maximum take-off weight of the aircraft to be exported.

2.8.14 Practical Issues Related to Deregistration of Aircraft

Other than the points discussed here, there are no known other significant practical issues.

2.9 Insolvency Proceedings

2.9.1 Overview of Relevant Laws and Statutory Regimes Governing Restructurings, Reorganisations, Insolvencies and Liquidations

Part V of the Companies Act (as amended) (the Companies Act), supplemented by the Companies Winding-Up Rules, 2018 (the CWR), governs insolvency proceedings in the Cayman Islands.

The relevant insolvency provisions apply to the winding up of companies – including certain foreign companies – as well as to the winding up of exempted limited partnerships in the Cayman Islands by virtue of Section 36 of the Exempted Limited Partnership Act (as amended).

The restructuring and reorganisation of Cayman Islands companies is often achieved by implementing a scheme of arrangement pursuant to Section 86 of the Companies Act.

2.9.2 Overview of Relevant Types of Voluntary and Involuntary Restructurings, Reorganisations, Insolvencies and Receivership Voluntary Liquidation

Voluntary liquidation can be utilised to wind up a company incorporated or registered in the Cayman Islands. In order to be voluntarily liquidated, the company must cease its business activities, except where necessary, to complete the winding up. The company's directors are usually replaced by a voluntary liquidator on the commencement of a voluntary liquidation, except where the company or the voluntary liqui-

dator sanctions the continuance of the directors' powers. There are no qualification requirements for the role of voluntary liquidator, so any individual, including the company's directors, may be appointed as voluntary liquidators.

Importantly, a voluntary liquidator does not require the Cayman Court's authorisation to exercise their powers. Once the company's affairs are wound up, its creditors are paid in full, and any remaining assets are distributed to shareholders.

Official Liquidation

Official liquidation is a court-supervised insolvency process where the aim is to collect, realise and distribute the assets of the company to the company's creditors and, where there are surplus assets, to its shareholders. As officers of the court, official liquidators are required to report to the Cayman Court and the company's stakeholders on the affairs of the company and the steps taken to wind it up.

A winding-up petition may be presented to the Cayman Court at any time by the company, any of its creditors (including any contingent or prospective creditor or creditors) and any contributory. The right of creditors to present a winding-up petition is, however, subject to any contractually binding non-petition clauses, and a petitioning contributory's shares must be either:

- fully paid; or
- originally allotted to them, held by them for at least six months prior to the presentation of the petition, or inherited from the original shareholder.

The grounds for winding up a Cayman company are as follows:

- the company has passed a special resolution requiring the company to be wound up by the Cayman Court;
- the company has not commenced its business within a year from its incorporation or suspended its business for a whole year;
- the period fixed for the duration of the company by the articles of association expires, or whenever the event, if any, occurs, upon the occurrence of which it is provided by the articles of association that the company is to be wound up;
- the company is unable to pay its debts; or
- the court is of the opinion that it is just and equitable that the company should be wound up.

Provisional Liquidation

Provided there is a prima facie case for making a winding-up order, an application for provisional liquidation may be made by creditors or shareholders of the company (and, where the company is a regulated entity, the Cayman Islands Monetary Authority (CIMA)) for the appointment of provisional liquidators to preserve and protect the company's assets until the hearing of a winding-up petition in circumstances where there are concerns about:

- the misuse or dissipation of the company's assets;
- the oppression of minority shareholders; or
- mismanagement or misconduct on the part of the company's directors.

Provisional liquidation may also be used as a restructuring tool where the directors of a company consider that the company is liable to be wound up under the Companies Act. The directors may cause the company to petition for its own winding-up and apply for the appointment of provisional liquidators in order to present a

compromise or arrangement to creditors with the protection of an automatic moratorium against proceedings being brought or continued against the company.

Provisional liquidators are appointed and supervised by the Cayman Court.

Restructuring Officer Regime

A Cayman Islands incorporated company may present a petition to the Cayman Court for the appointment of a restructuring officer on the grounds that (i) the company is or is likely to become unable to pay its debts; and (ii) intends to present a compromise or arrangement to its creditors (or classes thereof) either, pursuant to the Companies Act, foreign law or by way of a consensual restructuring.

Unlike provisional liquidation, the petition seeking the appointment of a restructuring officer may be presented by the directors of a company: (i) without a shareholder resolution and/or an express power to present a petition in its articles of association; and (ii) without the need to file a winding up petition as a prerequisite.

Upon filing the petition seeking the appointment of restructuring officers, an automatic and standalone restructuring moratorium will immediately arise which will have extraterritorial effect within which a restructuring may be proposed and implemented, including by way of a Cayman Islands scheme of arrangement (see below).

Scheme of Arrangement

A scheme of arrangement is a court-approved compromise or arrangement between a company and its creditors (or any class of them) or its shareholders (or any class of them). While there is no statutory definition of the terms “compro-

mise” or “arrangement”, the Cayman Court will construe these terms broadly.

As a general rule, schemes of arrangement must involve some element of “give and take” between the company and the scheme’s creditors or shareholders.

Receivership

Receivers may be appointed over Cayman Islands companies, either by the Cayman Court or by a secured creditor, pursuant to the terms of the relevant security document.

2.9.3 Co-ordination, Recognition or Relief in Connection With Overseas Proceedings

By virtue of Section 241 of the Companies Act, the Cayman Court has jurisdiction on the application by a trustee, liquidator, or other official appointed in respect of a debtor for the purposes of a foreign bankruptcy proceeding to make orders ancillary to a foreign bankruptcy proceeding for:

- recognising the foreign representative’s right to act in the Cayman Islands on behalf, or in the name, of the foreign debtor;
- enjoining the commencement or staying the continuation of legal proceedings against a debtor;
- staying enforcement of any judgment against a debtor;
- requiring a person in possession of information relating to the business or affairs of a debtor to be examined by and produce documents to its foreign representative; and/or
- ordering the turnover to a foreign representative of any property belonging to a debtor.

CWR Order 21 governs the implementation of international protocols in relation to companies which are the subject of liquidation proceedings

in the Cayman Islands as well as parallel foreign bankruptcy proceedings. CWR Order 21 also deals with cases where a Cayman Islands company in liquidation has assets located in a foreign country, and those assets are the subject of a foreign bankruptcy proceeding or receivership.

Official liquidators appointed by the Cayman Court are required by CWR Order 21 to evaluate the appropriateness of entering into an international protocol with a foreign office-holder and seek approval, from both the Cayman Court and the relevant foreign court, in respect of any such protocol.

The Cayman Islands adopted the use of the Judicial Insolvency Network (JIN) Guidelines, on 30 July 2018, by operation of Practice Direction No 1 of 2018. This practice direction indicates that office-holders appointed by the Cayman Court, companies subject to restructuring proceedings supervised by the Cayman Court, and other interested parties involved in cross-border insolvency cases should consider, at the earliest opportunity, whether to incorporate some or all of the guidelines (with suitable modifications) either into:

- an international protocol to be approved by the Cayman Court; or
- an order of the Cayman Court adopting the guidelines.

2.9.4 Effect of Lessee's Insolvency on a Deregistration Power of Attorney

This will depend on the laws of the lessee's jurisdiction and other relevant laws, such as the laws that govern the power of attorney.

If the lessee is incorporated in the Cayman Islands and the power of attorney is governed by Cayman Islands law, an irrevocable deregistra-

tion power of attorney (when granted to secure an obligation owed, typically to the finance parties) will not be revoked by the winding-up or dissolution of the lessee. In practice, however, deregistration powers of attorney are not usually governed by Cayman Islands law but rather by the same governing law as the other transaction documents.

2.9.5 Other Effects of a Lessee's Insolvency

There is no process of administration (or equivalent) under Cayman Islands law.

In the majority of cases, the lessee is not incorporated under the laws of the Cayman Islands, and therefore, it is unlikely the lessee would be subject to insolvency proceedings in the Cayman Islands. The local law in the lessee's jurisdiction of incorporation will govern any such proceedings.

If the lessee is incorporated under the laws of the Cayman Islands and enters into provisional liquidation or official liquidation proceedings in the Cayman Islands:

- there is no power to disclaim (or set aside) the lease as an onerous contract;
- Cayman courts will typically recognise and enforce contractual arrangements such as lease-termination provisions (including those created under foreign laws) and self-help remedies by which the lessor may take possession of the aircraft (subject to enforceability considerations under the governing law, the *lex situs* and other relevant laws). Note that the CTC Act permits taking possession of the aircraft without leave of the court;
- as a matter of Cayman Islands law, leases do not operate to transfer legal ownership from the lessor to the lessee; however, in an insolvency scenario, the lease may be treated

as an asset (provided that the lease does not contain any automatic termination for insolvency provisions); and

- in a Cayman insolvency process, there may be creditors who rank in priority to the lessor. For example, a registered mortgage will have statutory priority over subsequently registered and unregistered mortgages and will rank in preference to any right, claim or interest of other creditors. Certain other rights and interests will take priority under Cayman law (eg, Cayman government liens for unpaid taxes, charges and repairers' liens, liquidation expenses). A prior-registered "international interest" registered on the IR pursuant to the Cape Town Convention will also take priority.

2.9.6 Risks for a Lender if a Borrower, Guarantor or Security Provider Becomes Insolvent

The main risk is that a lender will not be repaid in full. The lender may also incur certain costs in connection with enforcement, and there will be an inevitable delay in recovering funds (in whole or in part).

If the enforcement of security is not sufficient or the guarantor is unable to repay the liabilities owed to the lender in full, the lender would then need to claim as an unsecured creditor for the remaining portion in the insolvency proceedings of the borrower and/or the guarantor.

2.9.7 Imposition of Moratoria in Connection With Insolvency Proceedings

In certain circumstances, a moratorium (or similar stay) may be imposed in connection with insolvency proceedings. While no claim may be started or continued against a company in compulsory liquidation in the Cayman Islands without leave of the court, under the Companies Act,

a secured party may enforce its security without leave of the court or reference to the liquidator.

2.9.8 Liquidation of Domestic Lessees

Assuming that the lessee will not enter into voluntary liquidation (see 2.9.2 Overview of Relevant Types of Voluntary and Involuntary Restructurings, Reorganisations, Insolvencies and Receivership above), a creditor, contributory or the company itself may petition the Cayman Court to wind up the company on the ground that the lessee is unable to pay its debts. This is determined on a cash-flow basis (ie, the lessee is unable to pay its liabilities as they become due) and by proof of an unpaid debt (commonly evidenced by a statutory demand which has not been satisfied for 21 days).

Receivership is a contractual self-help remedy only available to secured creditors on the terms set out in the relevant security document. There are no specific statutory provisions under Cayman Islands law determining how a receiver should be appointed, and the appointment of a receiver must be made in accordance with the terms of the security document to be valid.

2.9.9 IpsO FactO Defaults

It is not possible to disclaim onerous contracts in Cayman Islands insolvency proceedings. Generally, Cayman courts would be expected to give effect to the terms of the relevant lease regarding the repossession of an aircraft.

2.9.10 Impact of Domestic Lessees' Winding-Up

If the lessee is incorporated under the laws of the Cayman Islands and enters into provisional liquidation or official liquidation proceedings in the Cayman Islands, it is generally the case that the terms of the lease (which cannot be disclaimed) would provide for the procedure for

repossession of the aircraft, remedies for loss of rent and provisions in respect of forfeit by the lessee of the security deposit and any maintenance reserves.

2.10 Cape Town Convention and Others

2.10.1 Conventions in Force

The Convention and the Protocol (together, the “Cape Town Convention”) have been in force in the Cayman Islands as of 1 November 2015, pursuant to the International Interests in Mobile Equipment (Cape Town Convention) Act, 2015 (CTC Act). The Cayman Islands are not designated as an “entry point” under Article XIX of the Protocol.

2.10.2 Declarations Made Concerning Conventions

Declarations made under the Convention are in Articles 39(1), 39(4), 53 and 54(2).

Declarations made under the Protocol are in Articles XXX(1), XXX(2), XXX(3).

2.10.3 Application of Article XIII of the Protocol on Matters Specific to Aircraft Equipment

Where a debtor has issued an IDERA, substantially in the form annexed to the Protocol, it may be submitted to the CAACI for recordation.

2.10.4 Enforcement of Conventions

There is no known recent case law in the Cayman Islands enforcing the Convention or the Protocol.

Secured creditors have recently been assisted with the deregistration and export from the Cayman Islands of three aircraft, pursuant to IDERAs granted in respect of them. This appears to be the only example of IDERA deregistration/export

post-implementation of the Cape Town Convention in the Cayman Islands.

The priority and effectiveness of a right or interest created by any document capable of registration within the meaning of and to the extent provided by the Cape Town Convention will, if Cayman Islands law applies, be determined in accordance with the Cape Town Convention.

2.10.5 Other Conventions

The Cayman Islands is not a party to the 1948 Geneva Convention on the International Recognition of Rights in Aircraft nor to the 1933 Rome Convention on the Unification of Certain Rules relating to the Precautionary Arrest of Aircraft.

The Cayman Islands is not a signatory to the 1999 Montreal Convention nor the 1944 Chicago Convention on International Civil Aviation.

3. Aircraft Debt Finance

3.1 Structuring

3.1.1 Restrictions on Lending and Borrowing

There are no restrictions on foreign lenders financing an aircraft locally or on borrowers using the loan proceeds.

3.1.2 Effect of Exchange Controls or Government Consents

There are currently no foreign exchange controls or foreign exchange regulations under Cayman Islands law.

3.1.3 Granting of Security to Foreign Lenders

Typically, a Cayman Islands borrower would be an exempted company, and there would be no restrictions on granting security to foreign lenders.

3.1.4 Downstream, Upstream and Cross-Stream Guarantees

Such guarantees are permissible under Cayman Islands law, provided that the company granting those guarantees is permitted to do so under its memorandum and articles of association. It is important to note that the directors of Cayman Islands companies have a fiduciary duty to act in the best interests of the company. It is considered good practice to obtain the consent of the shareholders where there is any question as to the corporate benefit of such guarantees.

3.1.5 Lenders' Share in Security Over Domestic SPVs

It is advisable for a lender to take share security over a domestic special-purpose vehicle which owns the financed aircraft; such security typically takes the form of a Cayman Islands law-governed equitable share mortgage or charge (as legal title to the shares remains with the shareholder). Share pledges are recognised but not typically used in aircraft finance transactions involving Cayman Islands companies.

3.1.6 Negative Pledges

Negative pledge provisions are typically included in the share security documents.

3.1.7 Intercreditor Arrangements

There are no material restrictions or requirements imposed on intercreditor agreements under Cayman Islands law. Typically, intercreditor agreements are governed by English or New York law, following the governing law of the other transaction documents.

3.1.8 Syndicated Loans

Agency is a recognised concept under Cayman Islands law.

3.1.9 Debt Subordination

Subject to general qualifications as to enforceability, any method of subordination permitted by the transaction governed by English or New York law would be permissible and recognised under Cayman Islands law.

3.1.10 Transfer/Assignment of Debts Under Foreign Laws

Subject to general qualifications as to enforceability, the courts of the Cayman Islands would recognise as effective a New York law-governed or an English law-governed assignment that is effective under that law.

3.1.11 Usury/Interest Limitation Laws

See 2.6.8 Limitations on Lessors' Actions Following Termination.

3.2 Security

3.2.1 Typical Forms of Security and Recourse

Aviation finance transactions are typically governed by English or New York law and tend to have a security package including an aircraft mortgage, security assignments in respect of the lease, warranties and insurance proceeds, security over the shares in the aircraft-owning entity and an IDERA. If the aircraft-owning entity is a Cayman Islands exempted company, recourse would be limited to the assets of the special-purpose vehicle, with no recourse to the directors or shareholders.

A mortgage granted over an aircraft registered on the Aircraft Register should be filed with the CAACI for entry on the Mortgage Register. There is no statutory format of aircraft mortgage.

3.2.2 Types of Security Not Available

There are no known restrictions under Cayman Islands law. See 3.2.1 Typical Forms of Security and Recourse.

3.2.3 Trust/Trustee Concepts

See 2.2.5 Recognition of the Concepts of Trust/Trustee.

3.2.4 Assignment of Rights to an Aircraft by a Borrower to a Security Trustee

Cayman Islands law does not restrict or prohibit any such assignment or mortgage.

3.2.5 Assignment of Rights and Benefits Without Attendant Obligations

A party may assign its rights and benefits under an agreement by way of security without entering into any arrangements to transfer its obligations under that agreement.

3.2.6 Choice of Foreign Law

A security assignment or guarantee does not have to be governed by the laws of the Cayman Islands to be valid and enforceable in the Cayman Islands. Subject to general qualifications as to enforceability (see 3.4.10 Other Relevant Issues), the courts of the Cayman Islands would recognise as effective a New York law-governed or an English law-governed security assignment or guarantee that is effective under that law.

3.2.7 Formalities/Mandatory Terms to Create and Perfect Security Assignments

For foreign law assignments, the rules of priority and perfection in that jurisdiction will apply.

Under Cayman Islands law, it would be advisable to give notice of an equitable assignment to the lessee (as the obligor in respect of the assigned rights) to fix the priority of the interest of the lessor as assignee in accordance with the principles set out in the judgment in *Dearle v Hall* (1828) 3 RUSS 1.

There is no requirement that written notice of an equitable assignment is given to the obligor,

but there are certain advantages in doing so, including:

- a later encumbrancer taking without notice of the earlier assignment and giving notice first would obtain priority;
- without written notice to the obligor, the obligor can still obtain a good discharge in respect of any payment made to the assignor before the obligor receives notice of the assignment;
- notice prevents the obligor from setting up further equities or set-offs; and
- notice will also prevent the obligor and assignor from varying the assigned agreement in a manner prejudicial to the assignee.

With respect to an absolute assignment, Section 5(1) of the Property (Miscellaneous Provisions) Act (as amended) (P(MP) Act) will apply to any legal assignment of a debt or chose in action. The basic requirements for a legal assignment to be effectual are that:

- the assignment must be absolute (ie unconditional) and not purport to be by way of a charge only;
- it must be in respect of the whole debt or chose in action;
- it must be in writing and signed under hand by the assignor; and
- express notice in writing of the assignment must be given to the person from whom the assignor would have been entitled to claim such a debt or thing in action.

There is no formal legal requirement under Cayman Islands law that a security assignment must be translated, certified, notarised or legalised to be valid or enforceable.

3.2.8 Domestic Law Security Instruments

No additional domestic law security instruments are needed. With respect to IR filings, where the security assignment creates a registrable “international interest” under the Convention, that international interest in respect of the aircraft may be recorded on the IR. No additional registrations or filings are required to be made in relation to a security instrument in the Cayman Islands, except as mentioned in **3.2.9 Domestic Registration of Security Assignments Governed by Foreign Laws**.

3.2.9 Domestic Registration of Security Assignments Governed by Foreign Laws

There is no requirement to file the security assignment on any register in the Cayman Islands, except that if a Cayman Islands company is a party to a security assignment as assignor, such company should record details of the security interest created thereunder on the company’s register of mortgages and charges (ROMC) to comply with Section 54 of the Companies Act.

3.2.10 Transfer of Security Interests Over Aircraft/Engines

See **3.2.11 Effect of Changes in the Identity of Secured Parties**.

3.2.11 Effect of Changes in the Identity of Secured Parties

This is a question to be determined as a matter of the governing law of the security assignment. As a matter of Cayman Islands law, if the security interest is granted to a security trustee and the identity of that security trustee does not change, the security interest should not be discharged because of a change to the other secured parties.

3.2.12 “Parallel Debt” Structures

See **2.2.5 Recognition of the Concepts of Trust/Trustee**.

3.2.13 Effect of Security Assignments on Residence of Secured Parties

A security trustee or other secured creditor that is not already resident in the Cayman Islands prior to its entry into a security assignment would not be deemed resident, domiciled or carrying on business in the Cayman Islands by reason only of the execution, delivery, performance or enforcement of such a security assignment.

3.2.14 Perfection of Domestic Law Mortgages

Typically, mortgages over aircraft are governed by English or New York law. If such a mortgage is over an aircraft registered with the CAACI, the mortgage will need to be registered with the CAACI in accordance with the Mortgaging of Aircraft Regulations, 2015. Once the mortgage is registered on the CAACI Mortgage Register, all persons shall at all times be taken to have express notice of all facts appearing in the register; however, the registration of a mortgage is not evidence of its validity. It is also possible to file a priority notice with the CAACI prior to entry into the mortgage.

Assuming that the mortgage satisfies the requirements for classification as an “international interest” pursuant to the Cape Town Convention, IR filings can be made in respect of that mortgage.

3.2.15 Differences Between Security Over Aircraft and Spare Engines

There is no difference between the form of security (or perfection) taken over an aircraft and that taken over spare engines. There is also no separate engine register maintained by the CAACI in the Cayman Islands.

3.2.16 Form and Perfection of Security Over Bank Accounts

An account charge would typically be taken over a bank account located outside the Cayman Islands. Security over an account held in the Cayman Islands would typically be achieved by way of an account charge. Pursuant to the P(MP) Act, to perfect such security, notice must be given to the account bank. Acknowledgement of that notice by the account bank should be obtained as a matter of best practice, but failure to do so would not affect the perfection of the security. If the account charge is granted by a Cayman Islands company, details of the security interest created by the account charge should be recorded in the company's ROMC to comply with Section 54 of the Companies Act.

3.3 Liens

3.3.1 Third-Party Liens

Cayman Islands law provides for liens in favour of the CAACI and CIAA for fees and charges owed. However, the law does not specify whether such a lien is only in respect of the aircraft that incurred such fees and charges or if it extends to any aircraft operated by the person owing such fees and charges.

The CIAA may enter, take control of and arrest and sell by public auction or private arrangement, in compliance with any rules or regulations to that effect, any aircraft over which it has a lien.

The CAACI may enter, take control of and arrest any aircraft over which it has a lien.

The possibility that a court in the Cayman Islands would order the sale of an aircraft in connection with proceedings that consider the rights of a lien-holder with respect to that aircraft (being the holder of a contractual, possessory, statutory or other lien) will turn on the particular circumstanc-

es and facts and, if applicable, the terms of any relevant contracts.

3.3.2 Timeframe to Discharge a Lien or Mortgage

The effective time for the discharge of a lien or mortgage over an aircraft will depend on the terms of the discharge document.

The cancellation of the registration of the mortgage on the Mortgage Register will be effective from the time the CAACI confirms that the entry in respect of the mortgage has been removed from the Mortgage Register.

3.3.3 Register of Mortgages and Charges

The CAACI maintains the Mortgage Register. A registered mortgage is given statutory priority over subsequently registered mortgages and unregistered mortgages.

The ROMC of a Cayman Islands company is not publicly available but companies creating security interests must record them on the company's ROMC in order to comply with Section 54 of the Companies Act.

3.3.4 Statutory Rights of Detention or Non-consensual Preferential Liens

See 3.3.1 Third-Party Liens.

3.3.5 Verification of an Aircraft's Freedom From Encumbrances

In order to verify that an aircraft is free of encumbrances, a potential purchaser of an aircraft can search the Mortgage Register maintained by the CAACI for aircraft registered on the Aircraft Register. See also 3.4 Enforcement.

3.4 Enforcement

3.4.1 Differences Between Enforcing Security Assignments, Loans and Guarantees

Enforcement of a security assignment, as opposed to a loan or guarantee, will depend on the terms of each of these instruments.

3.4.2 Security Trustees' Enforcement of Their Rights

Subject to certain limited qualifications, the courts of the Cayman Islands should recognise as effective a foreign law-governed security assignment that is effective under that law to create an assignment by way of security of the relevant rights and benefits under a lease agreement.

3.4.3 Application of Foreign Laws

See 2.1.2 Application of Foreign Laws.

3.4.4 Recognition and Enforcement of Foreign Judgments and Arbitral Awards

See 2.6.6 Domestic Courts' Recognition of Foreign Judgments/Awards with respect to foreign judgments.

See 2.6.12 Enforcement of Foreign Arbitral Decisions with respect to arbitral awards.

3.4.5 Secured Parties' Right to Take Possession of Aircraft

Enforcement will be determined by the provisions of the relevant security agreement. As per 2.6.2 Lessor Taking Possession of the Aircraft, the Cayman Court will recognise self-help remedies for enforcement of security interests over the aircraft and/or enforcement of security interests over the shares in a Cayman Islands company claiming title to the aircraft. The CAACI will also typically deal directly with the beneficiary of an IDERA to effect deregistration. See also 2.6.3 Specific Courts for Aviation Disputes.

3.4.6 Domestic Courts Competent to Decide on Enforcement Actions

See 2.6.3 Specific Courts for Aviation Disputes.

3.4.7 Summary Judgments or Other Relief

See 2.6.4 Summary Judgment or Other Relief.

3.4.8 Judgments in Foreign Currencies

See 2.6.6 Domestic Courts' Recognition of Foreign Judgments/Awards and 2.6.7 Judgments in Foreign Currencies.

3.4.9 Taxes/Fees Payable

See 1.1.1 Taxes/Duties Payable upon Execution of the Sales Agreement and 2.6.9 Lessor's Requirement to Pay Taxes/Fees.

3.4.10 Other Relevant Issues

Any document that purports to create a security interest (Security Document) is subject to general principles of enforceability, including (without limitation):

- the Cayman Court may treat a purported fixed charge over assets as a floating charge if the chargor has sufficient authority to deal with its assets in the course of its business and/or the holder of security does not exercise sufficient control over the relevant assets;
- any charge in the nature of a floating charge will not take priority in ranking over any subsequent fixed mortgage or charge or lien which is created prior to the crystallisation of the floating charge and will be subject to such preferential payments as are set out in Section 141(1) and Schedule 2 of the Companies Act;
- in the case of a winding-up of a Cayman Islands company in a jurisdiction other than the Cayman Islands, the priority of any security granted by or over the assets of that Cayman Islands company may be affected by any

- provision of the laws of that jurisdiction as to the priority of claims in a winding-up;
- to the extent that any collateral that is the subject of any security interest (Relevant Collateral) is held in the Cayman Islands or has its *lex situs* in the Cayman Islands or is otherwise governed by or constituted according to the laws of the Cayman Islands (Cayman Relevant Collateral), failure to comply with any restrictions or provisions applicable to the granting of security over any such Cayman Relevant Collateral or the transfer thereof, whether arising under Cayman Islands law generally or pursuant to specific documentation relating to that Cayman Relevant Collateral, may invalidate any purported security interest intended to be granted under the Security Document, invalidate any purported transfer of the Cayman Relevant Collateral intended to be effected pursuant to the Security Document or impede any future transfer of these upon enforcement of any security interest effectively or purportedly granted under the Security Document;
 - entry of particulars of a mortgage or charge on the ROMC of a Cayman Islands company may not of itself give that mortgage or charge priority in ranking over any mortgage, charge or lien existing prior to its creation; and

- as a matter of Cayman Islands law as to the priority of competing claims in respect of security interests, the interests of the beneficiary of any security interest created pursuant to any Security Document will, subject to certain exceptions:

- (a) whether legal or equitable, rank after any prior legal or perfected equitable interest in the Relevant Collateral; and
- (b) if merely equitable, rank after any prior equitable interest and after any later legal interest in the Relevant Collateral created in favour of a bona fide purchaser for value, each such person having no notice of the security interests created pursuant to the Security Documents.

4. Other Issues of Note

4.1 Issues Relevant to Domestic Purchase, Sale, Lease or Debt Finance of Aircraft

There are no other material issues and/or court judgments relevant to issues discussed here.

4.2 Current Legislative Proposals

No current proposals before the legislature would alter the issues discussed here.

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