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Aviation Financing & Leasing

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Law and Practice

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Conyers is at the forefront of the offshore air finance industry, representing many of the world's leading aircraft leasing companies and lenders on the cross-border aspects of their transactions. The firm advises on the laws of Bermuda, the British Virgin Islands and the Cayman Islands, and has well-established international relationships as leading offshore counsel in Russian aviation transactions. It has also been active in transactions involving emerging

markets, such as Azerbaijan and South Africa. The aviation team has worked on the industry's largest securitisations, sale-leasebacks, pre-delivery payment and warehouse facilities, debt financings and private placements. The broad client base includes lenders, leasing companies, international credit agencies and export credit agencies, as well as airline operators.

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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

There are no taxes or duties payable as a consequence of the execution of an aircraft or engine sale agreement (including for the sale of an ownership interest in an entity) where the asset is either located physically in the British Virgin Islands ("BVI") or owned by a domestic party.

1.1.2 Enforceability Against Domestic Parties

It is not necessary for a sale agreement to be translated, certified, notarised or legalised in order to be enforceable against a domestic party.

1.2 Transfer of Ownership

1.2.1 Transferring Title

There is no BVI legislation that constitutes transferring title to an aircraft or engine. Title is transferred by a bill of sale, which can extend to include all installed parts, like an APU.

The sale of the ownership interest in an entity that owns an aircraft or engine is effectively recognised as the sale of such aircraft or engine itself.

1.2.2 Sales Governed by English or New York Law

The transfer of title to an aircraft or engine physically delivered in the BVI would be recognised if the bill of sale is governed by either English or New York law.

There are no minimum substantive requirements that must be satisfied in order for such bill of sale to be recognised in the BVI.

1.2.3 Enforceability Against Domestic Parties

A bill of sale does not need to be translated, certified, notarised or legalised in order to be enforceable against a domestic party.

1.2.4 Registration, Filing and/or Consent from, Government Entities

A bill of sale does not need to be registered or filed, and does not require consent from any government entity.

Furthermore, no government applications or consents are required as a prerequisite to the execution and delivery of a

bill of sale in relation to an aircraft or engine registered in the BVI.

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

There are no taxes or duties payable for executing and/or delivering a bill of sale, or for consummating the sale of the ownership interest in an entity that owns an aircraft or engine, including where title to such aircraft or engine is transferred while it is (a) located in the BVI, (b) over international waters or (c) in transit to/from the BVI.

2. Aircraft and Engine Leasing

2.1 Overview

2.1.1 Non-Permissible Leases

No types of operating/wet/finance leases or leases concerning only engines or parts are not permissible or recognised.

2.1.2 Application of Foreign Laws

A lease involving either a domestic party or an asset situated in the BVI may be governed by a foreign law.

2.1.3 Restrictions Concerning Payments in US Dollars

There are no restrictions imposed on domestic lessees making rent payments to foreign lessors in US dollars.

2.1.4 Exchange Controls

There are no exchange controls that could prevent rent payments under a lease or any repatriation of realisation proceeds (if such lease is enforced by a foreign lessor).

2.1.5 Taxes/Duties Payable for Physical Execution of a Lease

There are no taxes/duties payable for executing a lease physically in the BVI, by or to a domestic party, or as a consequence of an original or copy of a lease being brought into the BVI, either physically or electronically.

2.1.6 Licensing/Qualification of Lessors

A lessor does not have to be licensed or otherwise qualified in the BVI to do business with a domestic lessee. However, if the lessor is doing business in the BVI, it must be licensed under the Business, Professions and Trade Licences Act.

2.2 Lease Terms

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

There are no mandatory terms required to be in a lease (or ancillary documents thereto) governed by either English or New York law that would not typically already be included.

2.2.2 Tax and Withholding Gross-up Provisions

There are no tax or other withholding gross-up provisions in the BVI.

2.2.3 Parts Installed or Replaced After a Lease's Execution

A lease covers parts that are installed or replaced on an aircraft or engine after its execution, and steps should be taken to ensure that such parts are captured under the lease by appropriate wording, such as "and any replacement parts".

2.2.4 Risk of Title Annexation

There is no risk of title annexation in respect of aircraft engines installed on an airframe.

2.2.5 Recognition of the Concepts of Trust/Trustee

The concept of a trust and the role of an owner trustee under a lease is recognised.

2.3 Lease Registration

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

The interests of the owner (legal or beneficial), subject to the qualifications in the Air Navigation (Overseas) Territories Order to register an aircraft in the BVI, must be noted on the aircraft register. The notation is prima facie evidence of title.

2.3.2 Registration if Owner is Different from Operator

An aircraft must be registered domestically in the name of the aircraft operator who has a beneficial interest, and in the name of the owner if the owner is not also the operator. The effect of such notation is to put the public on notice of the ownership, and is prima facie evidence of ownership.

2.3.3 Aircraft/Engine-specific Registers

There is no specific register for leases concerning aircraft or engines.

2.3.4 Registration of Leases with Domestic Aircraft Registry

A lease (and a lessor's interest therein) need not be registered or filed in the domestic aircraft registry. Leases are not subject to any consent from any government entity.

As such, there are no formalities required for registration, nor are any government applications or consents required.

2.3.5 Requirements for a Lease to be Valid and Registrable

A lease does not need to be in a specific form or to be translated, served, certified, notarised or legalised in order to be valid and registrable in the aircraft (or other) registry.

2.3.6 Taxes/Duties Payable for Registering a Lease

There are no taxes/duties payable for registering a lease.

2.3.7 Registration of Aircraft in Alternative Countries

The alternative countries in which aircraft habitually based in the BVI are typically registered are the USA and Puerto Rico.

2.3.8 Requirements for Documents Concerning Registration

The aircraft register/aviation authority in the BVI does not require any document to be, in original form, translated, notarised and/or authenticated before it will accept and process the registration of an aircraft.

2.4 Lessor's Liabilities

2.4.1 Tax Requirements for a Foreign Lessor

A foreign lessor will not be required to pay any income, capital gains or other taxes upon leasing an aircraft or engine to a domestic lessee, including where the lessee was to have withheld and remitted withholding tax but failed to in the BVI.

2.4.2 Effects of Leasing on the Residence of a Foreign Lessor

A foreign lessor will not be deemed to be resident, domiciled, carrying on business or subject to any taxes as a result of its being a party to – or its enforcement of – the lease.

2.4.3 Engine Maintenance and Operations

Liabilities in respect of aircraft or engine maintenance and operations imposed on a foreign lessor under a lease as a result of its being a party to such lease would not be imposed as a matter of BVI law but would depend on the terms of the lease.

2.4.4 Damage or Loss Caused by an Asset

With respect to an owner, section 76(4) of the UK Civil Aviation Act, 1982 is extended to the BVI to the effect that loss or damage caused by an aircraft in flight or by a person in, or an article, animal or person falling from, such an aircraft is transferred to the person to whom the owner has demised, let or hired out the aircraft if the demise, let or hire is for a period of more than 14 days and no crew member is employed by the owner.

In general terms, a lessor or financier would not otherwise be liable solely by operation of BVI law.

The owner of the aircraft would be subject to strict liability by virtue of section 40(2) of the UK Civil Aviation Act, 1949, extended to the BVI.

2.4.5 Attachment by Creditors

Creditors of a domestic lessee may register security over any lease interest.

2.4.6 Priority of Third Parties' Rights

The following aircraft liens that exist under BVI law will take priority over a lessor's rights under an aircraft or engine lease:

- possessory lien – a common law lien that requires the lienholder to have continuous possession of an aircraft on which it has bestowed labour authorised by the owner that has improved the aircraft in some way; and
- contractual lien (including pledge) – a lien created by contract; for example, the owner of an aircraft may pledge it to a creditor as security for a debt, or a lien may arise as a result of a person expending labour on an aircraft that improves its value in some way in accordance with a contractual agreement (such as frequently occurs in respect of aircraft repairs).

2.5 Insurance and Reinsurance

2.5.1 Requirement to Engage Domestic Insurance Companies

It is not mandatory for either all or part of the insurances to be placed with domestic insurance companies.

2.5.2 Mandatory Insurance Coverage Requirements

No mandatory insurance coverage requirements are imposed.

2.5.3 Placement of Insurances Outside of Jurisdiction

Reinsurances may be placed outside of the BVI, up to 100% coverage.

2.5.4 Enforceability of 'Cut-through' Clauses

There are no BVI statutory provisions in relation to such clauses. The position under BVI law will reflect English common law principles (which are of persuasive, if not binding, effect before the courts of the BVI).

2.5.5 Assignment of Insurance/Reinsurance

Assignments of insurances/reinsurances are permitted.

2.6 Lease Enforcement

2.6.1 Restrictions on Lessors' Abilities

There are no restrictions on a lessor's ability to terminate an aircraft lease, re-export the aircraft and/or sell the aircraft following such termination. The aircraft does not need to be physically located in the BVI at the time of any such action(s).

2.6.2 Lessor Taking Possession of Aircraft

A lessor may take physical possession of the aircraft without the lessee's consent to enforce such lease. A court order is not required.

2.6.3 Specific Courts for Aviation Disputes

There are no specific courts that are competent to decide aviation disputes. There have been no examples of cases historically where specific courts have adjudicated on such matters.

2.6.4 Summary Judgment or Other Relief

A lessor may obtain a summary judgment, equitable or other injunctive relief pending the final resolution of judicial proceedings to enforce an aircraft lease, depending on the facts. The estimated period would depend on the facts and the availability of the commercial court judge in the BVI.

2.6.5 Domestic Courts' Approach to Foreign Laws and Judgments

Domestic courts will uphold the following:

- a foreign law as the governing law of an aircraft lease;
- the submission to a foreign jurisdiction; and
- a waiver of immunity by the parties of such lease.

2.6.6 Domestic Courts' Recognition of Foreign Judgments/Awards

Domestic courts will recognise and enforce a final monetary judgment of a foreign court or an arbitral award without re-examination of the matter.

2.6.7 Judgments in Foreign Currencies

A lessor under an aircraft lease can obtain a judgment in a foreign currency.

2.6.8 Limitations on Lessors' Actions Following Termination

There are no limitations (subject to the terms of the lease) on a lessor's ability to recover default interest (or the compounding thereof) or to charge additional rent following termination of the lease for default, including where the lessee fails to return the aircraft.

2.6.9 Lessor's Requirement to Pay Taxes/Fees

A lessor under an aircraft lease is not required to pay taxes or fees in a significant (ie, non-nominal) amount in connection with the enforcement of such lease in the BVI.

2.6.10 Mandatory Notice Periods

There are no mandatory notice periods if a lessor terminates an aircraft lease (regardless of its terms) that relates to an aircraft that is operated domestically or is leased by a domestic operator.

2.6.11 Lessees' Entitlement to Claim Immunity

A lessee is not entitled to claim sovereign or other immunity from suit.

2.6.12 Enforcement of Foreign Arbitral Decisions

The BVI is a party to the New York Convention, by Order-in-Council from the United Kingdom. As such, the domestic courts will recognise and enforce an arbitral decision.

2.6.13 Other Relevant Issues

There are no other relevant issues that a lessor should be aware of 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

In general, the BVI recognises the concepts of contractual assignment and novation.

2.7.2 Assignment/Novation of Leases Under Foreign Laws

If a lessor transferring its rights under an aircraft lease is assigning or novating its rights under such lease to a new lessor pursuant to a New York or English law-governed assignment and assumption agreement or novation agreement (or deed), the agreement (or deed) will be held valid by a domestic court. The lessee's consent is not required by BVI law, and there are no mandatory terms that the BVI requires to be included in such agreement/deed.

2.7.3 Enforceability of Lease Assignments/Novations

There is no requirement for an aircraft and/or engine lease assignment and assumption/novation to be translated, certified, notarised or legalised in order to be enforceable against a domestic party.

2.7.4 Filing/Registration of Lease Assignments/Novations

An aircraft and/or engine lease assignment and assumption/novation can be registered or filed in the domestic aircraft registry. There are no consequences for failing to do so. Government consent is not required.

2.7.5 Taxes/Duties Payable on Assignment/Novation

There are no taxes/duties payable in respect of such assignment and assumption/novation agreement, or as a consequence of an original or copy of it being brought into the BVI, either physically or electronically.

2.7.6 Recognition of Transfer of Ownership Interests

Where the ownership interest of the entity (or the beneficial owner interest in the trust) owning an aircraft is transferred (with the legal title to the asset remaining with that entity), the BVI would not regard it as a transfer of ownership of the aircraft.

2.8 Aircraft Deregistration and Export

2.8.1 Deregistering Aircraft in this Jurisdiction

A mortgagor or owner can deregister an aircraft in the BVI.

When the mortgagor has issued an irrevocable deregistration and export request authorisation, substantially in the form set out in Form 6 of Schedule 1 to the mortgage registered, and has submitted such authorisation to the Registrar for recording in the register, it shall be so recorded.

An Authorised Party or its certified designee shall be the sole person entitled to exercise the remedies specified below, and may do so only in accordance with the authorisation and applicable safety laws and regulations; such authorisation may not be revoked by the mortgagor without the written consent of the Authorised Party.

The Registrar shall remove an authorisation from the register on the written request of the Authorised Party.

The remedies available to an Authorised Party in whose favour an authorisation has been issued are:

- to procure the deregistration of the relevant aircraft without requiring the return of the original Certificate of Registration issued in relation to the aircraft; and
- to procure the export and physical transfer of the aircraft from the BVI.

2.8.2 Lessee's/Operator's Consent

An aircraft owner, mortgagee or lessor may apply for the deregistration of the aircraft without the lessee's or operator's consent.

2.8.3 Required Documentation

The mortgagee will have to provide an irrevocable deregistration and export request authorisation, while the owner must supply a request to the Governor and a return of the original certificate of deregistration, endorsed by the bank and signed by the owner or an officer of the Company, or by the relevant attorney in fact.

2.8.4 Duration of Deregistration Process

The deregistration process is untested in the BVI, although the legislation specifies that the registrar shall expeditiously co-operate with a mortgagee.

2.8.5 Aviation Authority's Assurances

There is no provision in the legislation for the aviation authority to provide advance assurances to an aircraft owner, mortgagee or lessor regarding the prompt deregistration of the aircraft.

2.8.6 Costs, Fees and Taxes Relating to Deregistration

No significant costs/fees/taxes are chargeable in respect of the deregistration of an aircraft.

2.8.7 Deregistration Power of Attorney

A deregistration power of attorney will be recognised. No formalities are required for its validity, and it does not need

to be translated, certified, notarised, legalised or lodged in advance in order to be enforceable against a domestic party.

2.8.8 Documents Required to Enforce Deregistration Power of Attorney

No additional documents are required to enforce deregistration power of attorney.

2.8.9 Choice of Laws Governing Deregistration Power of Attorney

A deregistration power of attorney does not need to be governed by the laws of the BVI.

2.8.10 Revocation of Deregistration Power of Attorney

If a deregistration power of attorney is expressed to be irrevocable, the grantor is able to revoke it anyway, in practice.

2.8.11 Owner's/Lessor's Consent

An aircraft owner, mortgagee or lessor can export the aircraft without the lessee's consent. A mortgagee can export and dispose of the aircraft without the owner's or lessor's consent. Steps taken by an owner, mortgagee or lessor at the time of negotiating the lease or mortgage (as applicable) may include provisions in the relevant documents to increase the likelihood that it will be able to export the aircraft without the lessee's consent. The asset need not be located in the BVI at the time of deregistration and/or export.

2.8.12 Aircraft Export Permits/Licences

No aircraft export permits/licences are issued in the BVI. However, the Governor will not issue a deregistration certificate until he receives the original signed certificate of registration.

2.8.13 Costs, Fees and Taxes Concerning Export of Aircraft

There are no significant costs/fees/taxes that are charged in respect of the export of an aircraft.

2.8.14 Practical Issues Related to Deregistration of Aircraft

There are no significant practical issues that an aircraft owner, mortgagee or lessor should be aware of in respect of the deregistration of aircraft in the BVI.

2.9 Insolvency Proceedings

2.9.1 Effect of Lessee's Insolvency on Deregistration Power of Attorney

Where a lessee has granted a deregistration power of attorney or an irrevocable deregistration and export request authorisation ("IDERA") to a lessor, owner or mortgagee of an aircraft, any liquidation of the lessee makes such power of attorney void. It would terminate at the point of liquidation.

2.9.2 Other Effects of Lessee's Insolvency

Where a lessee has possession of the aircraft and is put into liquidation, the lease will terminate and any outstanding

obligations will become payable. The lessor will not be prevented or delayed from repossessing the aircraft on termination of the lease if that is provided for in the lease. The aircraft is not deemed to be part of the lessee's property. Claims for wages, salary and social security are preferred claims.

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

If a borrower, a guarantor or an entity providing security becomes insolvent, the main risks for a lender are that, if it is unsecured, it will rank below the secured creditor who enforces security outside the liquidation.

2.9.4 Imposition of Moratoria in Connection with Insolvency Proceedings

No moratorium (or similar stay) is imposed in connection with insolvency proceedings.

2.9.5 Liquidation of Domestic Lessees

A domestic lessee can be liquidated or placed in receivership.

2.9.6 Ipso Facto Defaults

Ipsa facto defaults and performance defaults are recognised as grounds to repossess an aircraft during a lessee insolvency proceeding.

2.9.7 Impact of Domestic Lessees' Winding-up

Generally speaking, the aircraft would be mortgaged and, as such, the enforcement of the security against the aircraft would be outside of the liquidation – ie, it would rank in priority to unsecured creditors.

If a domestic lessee is liquidated and the aircraft is not secured, the liquidator would dispose of the aircraft, and the other sums due to the lessor would be paid pro rata with the other unsecured creditors.

2.10 Cape Town Convention and Others

2.10.1 Conventions in Force

The Convention on International Interests in Mobile Equipment and the related Protocol on Matters specific to Aircraft Equipment is not in force in the BVI.

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, nor on borrowers using the loan proceeds.

3.1.2 Effect of Exchange Controls or Government Consents

There are no exchange controls or government consents that would be material to any financing or repatriation of realisation proceeds under a loan, guarantee or security document.

3.1.3 Granting of Security to Foreign Lenders

Borrowers are permitted to grant security to foreign lenders.

3.1.4 Downstream, Upstream and Cross-stream Guarantees

Downstream, upstream and/or cross-stream guarantees are permitted in favour of lenders. There are no consideration or corporate benefit or registration requirements. However, directors must act in the best interests of the Company and, if there is any doubt as to whether the guarantee is in the Company's best interest, it can be whitewashed by resolution of the members.

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 ("SPV") that owns the financed aircraft. A charge over the shares of a domestic SPV is recognised.

3.1.6 Negative Pledges

A negative pledge is recognised.

3.1.7 Intercreditor Arrangements

There are no material restrictions or requirements imposed on intercreditor arrangements.

3.1.8 Syndicated Loans

The concept of agency and the role of an agent (such as the facility agent) under a syndicated loan is recognised.

3.1.9 Debt Subordination

Debt subordination is permissible and recognised.

3.1.10 Transfer/Assignment of Debts Under Foreign Laws

The transfer or assignment of all or part of an outstanding debt under an English or New York law-governed loan is permissible and recognised.

3.1.11 Usury/Interest-limitation Laws

There are no usury or interest limitation laws.

3.2 Security

3.2.1 Typical Forms of Security and Recourse

The typical forms of security and recourse granted in an aviation finance transaction domestically are a mortgage over the aircraft engine and lease payments and a charge over the shares of the SPV.

3.2.2 Types of Security Not Available

All types of security cannot be taken over an aircraft or related collateral, such as engines, warranties or insurances.

3.2.3 Trust/Trustee Concepts

The concept of a trust and the role of a security trustee are recognised.

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

A borrower can assign its rights to the aircraft or under an aircraft lease (including in relation to insurances) to a security trustee, pursuant to a security assignment or a mortgage.

3.2.5 Assignment of Rights and Benefits Without Attendant Obligations

It is not possible to assign the rights and benefits without also assigning the attendant obligations of the lessor under an aircraft lease.

3.2.6 Choice of Foreign Law

A security assignment or a guarantee may be governed by English or New York law. It does not have to be governed by BVI law in order to be fully enforceable.

3.2.7 Formalities/Mandatory Terms to Create and Perfect Security Assignments

There is no concept of perfection in the BVI. Security is registered to ensure priority. A security assignment does not need to be translated, certified, notarised or legalised in order to be enforceable against a domestic party.

3.2.8 Domestic-law Security Instruments

If an English or New York law-governed security assignment is taken in respect of an aircraft registered domestically, there is no additional domestic law security instrument that a financier should take. The BVI is not a party to the Cape Town Convention. The fee to file BVI security filings is USD200.

3.2.9 Domestic Registration of Security Assignments Governed by Foreign Laws

An English or New York law-governed security assignment or a BVI law security instrument may be registered in the BVI.

3.2.10 Transfer of Security Interests Over Aircraft/Engines

The transfer of security interests over an aircraft and/or engines is recognised.

3.2.11 Effect of Changes in the Identity of Secured Parties

If the identity of the secured parties under a security assignment changes after its execution, the security interests are not jeopardised but a variation of the charge should be filed.

3.2.12 'Parallel Debt' Structures

Parallel debt structures may be used domestically so that the security trustee has an independent right to the secured debt.

3.2.13 Effect of Security Assignments on Residence of Secured Parties

A secured party under a security assignment would not be deemed to be resident, domiciled, carrying on business or subject to any taxes as a result of its being a party to – or its enforcement of – such security assignment.

3.2.14 Perfection of Domestic-law Mortgages

There is no concept of perfection in the BVI. The security is registered to ensure priority over subsequently registered or unregistered charges.

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.

3.2.16 Form and Perfection of Security Over Bank Accounts

An account charge would typically be used to take security over a bank account (such as a lease receivables account). As there is no concept of perfection in the BVI, it would be registered in order to ensure priority.

3.3 Liens

3.3.1 Third-party Liens

It is believed that the following aircraft liens exist under BVI law:

- possessory lien – a common law lien that requires the lienholder to have continuous possession of an aircraft on which it has bestowed labour authorised by the owner that has improved the aircraft in some way; and
- contractual lien (including pledge) – a lien created by contract; for example, the owner of an aircraft may pledge it to a creditor as security for a debt, or a lien may arise as a result of a person expending labour on an aircraft that improves its value in some way in accordance with a contractual agreement (such as frequently occurs in respect of aircraft repairs).

3.3.2 Timeframe to Discharge a Lien or Mortgage

There is no guidance on the timeframe in which to discharge a lien or mortgage in the BVI, as this has not been tested in the BVI.

3.3.3 Register of Mortgages and Charges

The Mortgaging of Aircraft and Aircraft Engines Act 2011 and the Mortgaging of Aircraft and Aircraft Engines Regulations create a framework for registration in the British Vir-

gin Islands of security over aircraft and, separately, aircraft engines.

Aircraft that are registered in the BVI or that are capable of being so registered, and aircraft engines owned by or in the lawful possession of a British Virgin Islands entity, may be made the subject of a mortgage for the purposes of registration. The application for registration of the mortgage must be in the prescribed form, and must be made to the Registrar by or on behalf of the mortgagee in question. It must be accompanied by a certified true copy of the mortgage and the prescribed fees. A mortgage entered on the register has priority over any other mortgage or charge on that aircraft or aircraft engine. It is also possible for the priority of a mortgage to be fixed by filing a priority notice with the Registrar, pursuant to which the priority of a yet-to-be-executed mortgage can be fixed for a 14-day period. When entered in the register within the 14-day period, that mortgage shall be deemed to have priority from the time the priority notice was registered.

3.3.4 Statutory Rights of Detention or Non-consensual Preferential Liens

Statutory rights of detention or non-consensual preferential liens can arise over an aircraft and/or on a “fleet-wide” basis.

3.3.5 Verification of an Aircraft’s Freedom from Encumbrances

To verify that an aircraft is free of encumbrances, a potential purchaser can search the aircraft mortgage register and the register of charges maintained by the Registrar of Corporate Affairs if the owner/lessor is a domestic SPV.

3.4 Enforcement

3.4.1 Differences Between Enforcing Security Assignments, Loans and Guarantees

There are no relevant differences in enforcing a security assignment as opposed to a loan or a guarantee.

3.4.2 Security Trustees’ Enforcement of their Rights

If a security assignment states that security is granted to a security trustee by a lessor in respect of its rights under

an aircraft lease, the security trustee may enforce its rights under the security assignment pursuant only to a notice and acknowledgement executed by that lessor and the relevant lessee respectively in connection with such security assignment.

3.4.3 Application of Foreign Laws

The BVI courts will uphold a foreign law as the governing law of a finance or security document, and the submission to a foreign jurisdiction.

3.4.4 Recognition and Enforcement of Foreign Judgments and Arbitral Awards

The domestic courts will recognise and enforce a final monetary judgment of a foreign court or an arbitral award without re-examination of the matter.

3.4.5 Secured Parties’ Right to Take Possession of Aircraft

A secured party may take physical possession of the aircraft to enforce a security agreement/aircraft mortgage without the lessee’s or operator’s consent.

3.4.6 Domestic Courts Competent to Decide on Enforcement Actions

The domestic courts are competent to decide enforcement actions under a security agreement/aircraft mortgage.

3.4.7 Summary Judgments or Other Relief

A secured party may obtain a summary judgment, equitable or other injunctive relief pending the final resolution of judicial proceedings to enforce a security agreement/aircraft mortgage if there is an immediate threat of the aircraft being disposed of, but each case will turn on its own facts. An injunction is usually only made if the applicant makes an undertaking to make good any damages caused by the imposition of the injunction. In some circumstances, the court will require the applicant to provide certification of the undertaking – ie, money paid into court, or a banker’s letter or monies held on a solicitor’s account.

3.4.8 Judgments in Foreign Currencies

A secured party under a security agreement/aircraft mortgage may obtain a judgment in a foreign currency.

3.4.9 Taxes/Fees Payable

A secured party is not required to pay taxes or fees in a non-nominal amount in connection with the enforcement of a security agreement/aircraft mortgage.

3.4.10 Other Relevant Issues

There are no other relevant issues that a lender should be aware of in relation to the enforcement of its rights.

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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 any material court judgments that are relevant to the purchase, sale, lease or debt finance of an aircraft registered domestically and/or involving a domestic party.

4.2 Current Legislative Proposals

There are no current noteworthy proposals before the legislative relating to the foregoing items.