

Aviation Finance & Leasing

in USA

Downloaded on 25 June 2019

Table of contents

OVERVIEW

Conventions

Domestic legislation

Governing law

TITLE TRANSFER

Transfer of aircraft

Transfer document requirements

REGISTRATION OF AIRCRAFT OWNERSHIP AND LEASE INTERESTS

Aircraft registry

Registrability of ownership of aircraft and lease interests

Registration of ownership interests

Title and third parties

Registration of lease interests

Certificate of registration

Deregistration and export

Powers of attorney

Cape Town Convention and IDERA

SECURITY

Security document (mortgage) form and content

Security documentary requirements and costs

Security registration requirements

Registration of security

Effect of registration of a security interest

Security structure and alteration

Security over spare engines

ENFORCEMENT MEASURES

Repossession following lease termination

Enforcement of security

Priority liens and rights

Enforcement of foreign judgments and arbitral awards

TAXES AND PAYMENT RESTRICTIONS

Taxes

Exchange control

Default interest

Customs, import and export

INSURANCE AND REINSURANCE

Captive insurance

Cut-through clauses

Reinsurance

Liability

Strict liability

Third-party liability insurance

UPDATE AND TRENDS

Recent developments

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OVERVIEW**Conventions****To which major air law treaties is your state a party?**

The United States is a party to the following major air law treaties:

- Convention for the Unification of Certain Rules Relating to International Carriage by Air, signed at Warsaw on 12 October 1929 and entered into force on 13 February 1933 (the Warsaw Convention), which governs liability for the international carriage of persons, baggage or goods by aircraft for reward;
- Convention on International Civil Aviation, signed at Chicago on 7 December 1944 and entered into force on 4 April 1947 (the Chicago Convention), which governs all aspects of international air transportation, including aircraft airworthiness, registration and certification;
- Convention on the International Recognition of Rights in Aircraft, signed at Geneva on 19 June 1948 and entered into force on 17 September 1953 (the Geneva Convention), which provides for the general recognition of rights in aircraft, the creation of central registries in each member state, an international preference or priority order with respect to certain claims, and the establishment of international conditions with respect to the execution of judgments and the sale of aircraft;
- Convention for the Unification of Certain Rules for International Carriage by Air, signed at Montreal on 28 May 1999 and entered into force on 4 November 2003 (the Montreal Convention), which unifies and replaces the system of liability derived from the Warsaw Convention;
- Convention on International Interests in Mobile Equipment, signed at Cape Town on 16 November 2001 and entered into force on 1 March 2006 (the Cape Town Convention), which attempts to facilitate the extension of mobile equipment credit and to reduce its cost through a general framework and specific protocols that provide for its regulation; and
- UNIDROIT Convention on International Lease Financing of 1988, signed at Ottawa on 28 May 1988 and entered into force on 1 May 1995, which attempts to remove legal impediments to the international leasing of equipment by standardising contract forms.

The US is not a party to the Convention for the Unification of Certain Rules relating to the Precautionary Attachment of Aircraft, signed at Rome on 29 May 1933 and entered into force on 12 January 1937 (the Rome Convention).

Domestic legislation**What is the principal domestic legislation applicable to aviation finance and leasing?**

A party to an aviation finance and leasing transaction must be familiar with both federal and state laws. The following federal laws apply to aviation finance and leasing:

- Federal Aviation Act of 1958, which created the Federal Aviation Agency (FAA) and established the system for registering aircraft and recording conveyances, leases and security interests;
- Title 49 of the United States Code (USC) (the Transportation Code), which regulates all aspects of transportation within the US, including air commerce and safety, airport development and noise, aircraft financing and leasing and public airports, among others;
- Title 11 of the USC (the Bankruptcy Code), which governs all bankruptcies within the US and provides a special insolvency regime to govern a secured party's interests in aircraft and related collateral that is subject to a security interest granted by, leased to or conditionally sold to an airline certified to operate aircraft capable of carrying 10 or more individuals or 6,000 pounds or more of cargo;

- Title 14 of the Code of Federal Regulations (CFR), which contains the aeronautics and space regulations promulgated by the FAA. Specifically, Parts 47, 48 and 49 set forth the aircraft registration requirements as well as the requirements for the filing, indexing and recording systems established by the Federal Aviation Act of 1958 and the Transportation Code; and
- Title 49 of the CFR, which contains the transportation regulations issued by the Department of Transportation and the Department of Homeland Security.

The following state laws apply to aviation finance and leasing:

- article 9 of the Uniform Commercial Code (UCC), which governs the rights and remedies of parties to secured and unsecured commercial transactions, including transactions involving aircraft, helicopters and engines. Article 9 has been adopted in all 50 states; and article 2A of the UCC, which governs the leases of goods, including aircraft and aircraft-related collateral. Article 2A has been adopted in all states except Louisiana.

Notably, the UCC (and other state laws) will not apply if pre-empted by federal statutes or regulations, or international treaty. For example, the requirements for perfecting security interests under the Federal Aviation Act of 1958 pre-empt the requirements under the UCC. However, if an aircraft is subject to the Cape Town Convention, the requirements under the Cape Town Convention will govern.

Governing law

Are there any restrictions on choice-of-law clauses in contracts to the transfer of interests in or creation of security over aircraft? If parties are not free to specify the applicable law, is the law of the place where the aircraft is located or where it is registered the relevant applicable law?

There are few restrictions on choice-of-law clauses in the US. Generally, if the relevant transaction is governed by the UCC, the parties to a contract may choose to apply any US state's law so long as the transaction bears a 'reasonable relation' to the chosen jurisdiction. However, choice-of-law rules vary from state to state, so parties should familiarise themselves with a state's specific laws prior to including a choice-of-law provision in their contract. New York law is commonly used in choice-of-law provisions because parties to a contract valued at US\$250,000 or greater are permitted by statute to select New York as the governing law and enforcement forum regardless of whether the contract bears a reasonable relation to the state.

Similarly, for internationally registered aircraft subject to the jurisdiction of the Cape Town Convention, parties may choose the law that governs their agreement regardless of whether the parties or transaction bears any reasonable relation to the chosen jurisdiction.

TITLE TRANSFER

Transfer of aircraft

How is title in an aircraft transferred?

Title can be transferred through a bill (or contract) of sale or by physical delivery of the aircraft. Although it is not mandatory that sellers prove evidence of title in the form of 'back-to-birth' records, purchasers often expect to see these records to trace ownership of the aircraft back to the original equipment manufacturer. Title can only pass when goods are existing and identifiable at the time title is transferred.

For US-registered aircraft, parties must complete the FAA's Form AC 8050-2, Aircraft Bill of Sale, and file it for recording with the FAA. Because the FAA's form may not contain all the terms desired by both parties, it is best practice to also

complete a private warranty bill of sale and file it for recording with the recording office in the appropriate jurisdiction.

For aircraft and engines registered in jurisdictions subject to the Cape Town Convention, an interest transferred pursuant to a contract of sale must be registered with the International Registry to have priority over unregistered or subsequently registered interests.

Transfer document requirements

What are the formalities for creating an enforceable transfer document for an aircraft?

The formal requirements for transfer documents conveying an interest in an aircraft are found in the Federal Aviation Regulations, codified at 14 CFR Part 49. To create an enforceable transfer document for an aircraft, the document must:

- be in a form prescribed by or acceptable to the FAA (ie, Form AC 8050-2);
- describe the aircraft by make and model, manufacturer's serial number and FAA registration number, or other detail that makes identification possible;
- be an original document, or a duplicate original document, or if neither the original nor a duplicate original of a document is available, a certified true copy of an original document; and
- include the applicable filing fee.

The formal requirements for a private warranty bill of sale are governed by the applicable state law. Notably, a written agreement may not be necessary for the transaction to be enforceable between the contracting parties, as title can sometimes be transferred by physical delivery of the aircraft or related collateral alone. However, a contract for the purchase or sale of an aircraft must generally be signed by a party against whom enforcement is sought.

REGISTRATION OF AIRCRAFT OWNERSHIP AND LEASE INTERESTS

Aircraft registry

Identify and describe the aircraft registry.

The FAA maintains an online public database of all US-registered aircraft called the FAA Aircraft Registry. An aircraft may be registered only in the name of an owner. An aircraft is eligible for US registration if it is not already registered in another country and it is owned by:

- an individual who is a US citizen or resident alien;
- a partnership, each of whose partners is an individual who is a US citizen;
- a corporation or association (including LLCs, business trusts and statutory trusts);
- a US government unit or subdivision; or
- a non-US citizen corporation organised and doing business under the laws of the US or one of the states as long as the aircraft is based and primarily used in the US (60 per cent of all flight hours must be from flights starting and ending within the US).

If an owner is eligible at the time of registration, but subsequently loses eligibility, the FAA will suspend or revoke the aircraft's Certificate of Aircraft Registration. See question 11 for more information on Certificates of Aircraft Registration. Pursuant to article 18 of the Chicago Convention, an aircraft cannot be validly registered in more than one country, but its registration may be changed from one country to another.

Registrability of ownership of aircraft and lease interests

Can an ownership or lease interest in, or lease agreement over, aircraft be registered with the aircraft registry? Are there limitations on who can be recorded as owner? Can an ownership interest be registered with any other registry? Can owners', operators' and lessees' interests in aircraft engines be registered?

All ownership interests in aircraft must be registered in the FAA Aircraft Registry. A lessee's interest under a true lease, where the lessor is considered the aircraft owner for tax and accounting purposes, cannot be registered with the FAA. If, however, the lease is a disguised sale or security agreement, the lessee may be an 'owner', in which case registration of the interest would be required.

See question 6 for a list of eligible 'owners'.

Registration of ownership interests

Summarise the process to register an ownership interest.

To register an aircraft with the FAA, an owner must submit the following to the FAA's Aircraft Registration Branch:

- a complete Aircraft Registration Application (Form AC 8050-1);
- evidence of ownership; and
- the US\$5 registration fee made payable to the Federal Aviation Administration.

The Aircraft Registration Application must include the typed or printed name of each signatory with their signature in the signature block. Each signatory also must indicate their title as appropriate to their position to sign for the applicant (ie, individual owner, co-owner, partner, managing member or corporate officer). Other Application requirements include identification of the aircraft by the registration number and the N-Number, a description of the aircraft, the applicant's name (including trade name) and physical and mailing addresses, and a certification that the applicant qualifies as an 'owner'.

If the aircraft has not been previously registered in the US or any foreign country, or the aircraft was most recently registered with the FAA and was purchased from the last registered owner, evidence of ownership can be submitted in the form of a bill of sale, using Form AC 8050-2, or an equivalent conveyancing instrument. If the aircraft was most recently registered with the FAA, but was not purchased from the last registered owner, an owner must provide evidence of ownership, such as the chain of title from the last owner registered with the FAA.

If the aircraft was previously registered in a foreign country or is newly imported, the applicant must submit the following as evidence of ownership:

- evidence that the foreign registration has ended;
- a bill of sale (Form AC 8050-2) signed by the foreign seller; or
- other evidence satisfactory to the FAA that the applicant owns the aircraft.

Title and third parties

What is the effect of registration of an ownership interest as to proof of title and third parties?

The FAA does not issue 'title' to an aircraft. Therefore, while the registration of an aircraft and the issuance of a

Certificate of Registration by the FAA is prima facie evidence of ownership, it is not conclusive evidence of title in a proceeding in which ownership of an aircraft is at issue. Even though evidence of ownership is required to be recorded with the FAA, the Certificate of Registration does not constitute conclusive proof of ownership or title by itself. Typically, an original bill of sale from the manufacturer's seller to the current owner or back-to-birth records documenting the full chain of title is the best evidence of ownership for an FAA-registered aircraft.

Registration of lease interests

Summarise the process to register a lease interest.

There is no process to register a lease interest with the FAA. However, a lease involving an aircraft or engine registered with the FAA can be filed for recording with the FAA Aircraft Registry to be valid against third parties without notice. See questions 15 to 21 for more information about recording security interests.

Certificate of registration

What is the regime for certification of registered aviation interests in your jurisdiction?

Upon completion of the registration process, the FAA will issue a Certificate of Registration containing the N-number of the aircraft, the manufacturer's serial number, the manufacturer's designation of the aircraft by model number, the name and address of the party to whom the Certificate is issued, the date of issuance, and the Certificate's expiration date. This Certificate must be carried in the aircraft at all times during operation of the aircraft and serves as conclusive evidence of the nationality of the aircraft.

A Certificate of Registration expires three years after the last day of the month in which it was issued, unless the registration is renewed during the six months preceding its expiration date. The Aircraft Registry issues three automated notices advising owners of the renewal requirements. The first and second notices are mailed to the owner approximately 180 and 60 days, respectively, prior to the expiration of the Certificate. The third notice is issued approximately 30 days after the expiration of the Certificate and advises the owner that the aircraft's registration has expired.

The Certificate of Registration does not state the interest in the aircraft of an owner, operator or any mortgagee. There is no separate certificate of registration for engines.

Deregistration and export

Is an owner or mortgagee required to consent to any deregistration or export of the aircraft? Must the aviation authority give notice? Can the operator block any proposed deregistration or export by an owner or mortgagee?

Any requests for the deregistration or export of an aircraft must be made to the FAA by the holder of an aircraft's Certificate of Registration (which is typically the aircraft's last registered owner, the last owner of record, or the foreign purchaser with evidence of ownership) or by the holder of an Irrevocable De-Registration and Export Request Authorisation (IDERA). These requests must be in writing and include: a description of the aircraft, the reason for its export, the country it is being exported to, the signature of the requester, a consent to export from all outstanding security instruments and unexpired leases with six months or more of their term remaining, and a resolution of outstanding interests. When the deregistration process is complete, the FAA's Aircraft Registration Branch will send a notice of deregistration to the country where the aircraft is being exported.

Powers of attorney

What are the principal characteristics of deregistration and export powers of attorney?

The US allows an owner of an aircraft to issue a deregistration and export power of attorney in the form of an IDERA, pursuant to the Cape Town Convention. An IDERA designates its holder as the only person allowed to request cancellation of an aircraft's registration for export to another country.

Cape Town Convention and IDERA

If the Cape Town Convention is in effect in the jurisdiction, describe any notable features of the irrevocable deregistration and export request authorisation (IDERA) process.

An IDERA must be signed by the holder of an aircraft's Certificate of Registration. The IDERA does not need to be countersigned by the FAA, but must be filed with the FAA Aircraft Registry. The IDERA must also be linked to a security agreement on file for recording with the FAA.

SECURITY

Security document (mortgage) form and content

What is the typical form of a security document over the aircraft and what must it contain?

The typical form of a security document over an aircraft is typically called a security agreement, mortgage or trust indenture. Although there is no specified form, these agreements must be signed (or authenticated) by the parties to the agreement, contain a description of the collateral and make clear that a security interest is intended. Typically, the agreements create an interest in the airframe or engine. The agreements do not need to state a maximum secured amount, nor do the economic terms of the deal need to be recorded.

Notably, a creditor only becomes a secured party when the security interest 'attaches'. Pursuant to article 9 of the UCC, a security interest generally does not attach unless the grantor receives value for the security interest, the grantor has rights in the collateral (or the power to transfer the collateral to a secured party), and the grantor signs the security agreement.

Security documentary requirements and costs

What are the documentary formalities for creation of an enforceable security over an aircraft?
What are the documentary costs?

The documentary formalities required for the creation of an enforceable security interest in an aircraft or engine will depend on the applicable state law. The most common formality is notarisation of the security agreement by a notary public registered in the appropriate state, which usually costs up to US\$20. Under New York law, no documentary formalities are required other than the parties' duly authorised signatures.

Security registration requirements

Must the security document be filed with the aviation authority or any other registry as a condition to its effective creation or perfection against the debtor and third parties? Summarise the process to register a mortgagee interest.

To protect a party's security interest against third parties, the secured party must record the security agreement with the FAA and, if the aircraft is subject to the jurisdiction of the Cape Town Convention, register an international interest with the International Registry.

For FAA-registered aircraft, a security agreement is effective against the parties to the agreement once the agreement has been fully executed. However, an agreement concerning a security interest against an FAA-registered aircraft must be registered with the FAA to be valid against third parties without notice. This process is called 'perfecting' the security interest. To complete the perfection process, the grantee must submit a signed original of the security agreement to the FAA Aircraft Registry, evidence of the authorisation of the signing party, and the US\$5 filing fee, and then mail a signed original agreement to the FAA's Aircraft Registration Branch. The FAA requires that each security agreement contain the names of the parties, words granting a security interest in the collateral and an identification of the collateral by manufacturer name, model designation, serial number and N-Number. The recording fee is US\$5, payable by cheque or money order. No recording fee is charged for recording a bill of sale that accompanies an application for aircraft registration. Once the FAA has recorded the security agreement, the secured party will receive a Conveyance Recordation Notice, Form AC 8058-41, which describes the aircraft (or other collateral), lists the parties and date of the security agreement, and includes the FAA recording number and date of recordation. An agreement is deemed filed for recordation on the date it is received by the FAA Aircraft Registry.

For aircraft subject to the Cape Town Convention, the FAA recognises the International Registry as an additional place for the filing of security interests in certain airframes, engines and helicopters. The International Registry establishes the priorities between competing interests in eligible collateral. To be valid against third parties without notice, debtors must grant an IDERA to a secured party. Registered interests are found in the International Registry's searchable database.

For aircraft registered in jurisdictions outside the US that are not otherwise subject to the Cape Town Convention, US courts will recognise security interests created under the laws of the country of registry, so long as the country of registry has a central filing system and the security agreement is duly executed and recorded pursuant to said filing system.

For all other situations, perfection can be accomplished by filing a UCC-1 financing statement along with the filing fee and the fee charged by the service company performing the filing, which is typically between US\$80 and US\$150. UCC-1 financing statements are valid for five years from the date of recordation, but may be continued for further five-year periods. A secured party does not need to file a UCC-1 financing statement to perfect a security interest if the property is subject to pre-emption by federal laws or international treaties. However, secured parties often file UCC-1 financing statements to protect their interests against third parties regardless of where the subject collateral is registered. In either case, if the debtor is organised in the US, the secured party will file the UCC-1 financing statement in the same jurisdiction, even if the security agreement has already been registered with the FAA. If the debtor is organised in a jurisdiction outside the US, the secured party will file the UCC-1 in the District of Columbia.

Registration of security

How is registration of a security interest certified?

As discussed in question 17, the registration, or recordation, of the security agreement with the FAA acts as notice to third parties and perfects a security interest. Following the recordation process, a secured party will receive a

Conveyance Recordation Notice, Form AC 8058-41. No other certifications are issued.

Effect of registration of a security interest

What is the effect of registration as to third parties?

After a security interest has been perfected, it becomes effective against a third party, which allows a secured party to gain priority over third-party interests in the collateral. Failure to perfect a security interest can result in a loss of priority or give rise to an inability to enforce the secured party's rights in the collateral against third parties. Conflicting perfected security interests rank according to priority in time of filing, with certain exceptions including for purchase money security interests.

Security structure and alteration

How is security over aircraft and leases typically structured? What are the consequences of changes to the security or its beneficiaries?

Pursuant to article 9 of the UCC, security over an aircraft is created by the grant of a security interest against the aircraft and security over an aircraft lease is created by the grant of a collateral assignment of the lease or a security interest in the lease. A security interest may be granted to a trustee or agent on behalf of a group of beneficiaries, but the trustee or agent would be the secured party, not the beneficiaries.

If a security interest is granted to a lender to secure a loan and the lender transfers the loan to a new lender, the security agreement under which the security interest was granted would have to be assigned to the new lender. The grantor of the security interest must receive notice of the assignment. There are no filing or registration requirements for an assignment to be effective as among the grantor, the original lender and the new lender. However, the assignment would need to be perfected to have priority over third parties.

Security over spare engines

What form does security over spare engines typically take and how does it operate?

The form of security over spare engines is typically the same as that of an aircraft, which is discussed in questions 15 to 20. When a spare engine is not installed, an aircraft security agreement covering that engine or other uninstalled engines may be used. Engines are typically treated separately from the airframe, so an aircraft security agreement covering both an airframe and its installed engines should separately identify the engines by manufacturer, model and serial number. Subject to the terms of the aircraft security agreement, the engine should remain encumbered by the aircraft security agreement if it is removed from the airframe. An engine encumbered by a security agreement that is installed on another airframe will continue to be encumbered under the UCC, but the state laws of the jurisdiction where the engine was located at the time of its installation may indicate otherwise.

ENFORCEMENT MEASURES

Repossession following lease termination

Outline the basic repossession procedures following lease termination. How may the lessee lawfully impede the owner's rights to exercise default remedies?

In the event of lease termination owing to scheduled expiry or early termination due to lessee default, the lessor has the right to take possession of the aircraft, either through repossession or by court order. A lessor may repossess a leased aircraft, or render the aircraft unusable, in the event that a lessor needs to reacquire possession of the aircraft or enforce any of its rights under the lease agreement. Events triggering repossession typically include the expiry of the lease term or a default by the lessee. After the aircraft has been seized, the lessor may retain, sell, lease or otherwise dispose of the aircraft and apply the proceeds towards satisfying the debt. However, this type of self-help repossession is only permitted if the lessor, or its agent, can do so without breaching the peace. What constitutes a 'breach of the peace' is dependent on the applicable state law. Generally, if a lessor physically opposes the repossession in any way, the lessor must cease all repossession efforts and seek recourse through judicial intervention.

In the case of lessee default, the lessor may terminate the lease and collect damages from the lessee in an amount sufficient to compensate the lessor for the loss of its bargain. 'Liquidated damages' clauses specifying the amount, or a formula for calculation, of the lessor's damage claim are common in aircraft leases and are generally enforceable if they are determined to be reasonable in light of the harm anticipated when the lease is signed. If the liquidated damage claim is unenforceable or fails in its essential purpose, there are alternative statutory damage formulas available under article 2A of the UCC. Unlike a secured lender, a lessor has no obligation to dispose of the aircraft following default.

For the purposes of UCC default remedies, a purported lease is considered as a secured loan if the original term of the lease, including mandatory renewals, equals or exceeds the anticipated economic life of the aircraft or the lessee has a purchase option for nominal consideration, in which case the default remedies are described in question 23. There are court decisions applying these criteria in bankruptcy proceedings as well.

If an aircraft lessee or borrower files for bankruptcy in the US, all enforcement action by the lessor or secured lender will be automatically stayed under the Bankruptcy Code unless it receives relief from the bankruptcy court. Payments made to the lessor or lender during the 90 days preceding the commencement of the bankruptcy proceeding may be recoverable as preferences. The debtor is allowed to decide whether to accept or reject the lease contract. In the case of rejection, the aircraft is returned to the lessor and its damage claim is unsecured, and in the case of acceptance, the debtor must cure monetary defaults and the lessor has an administrative (superpriority) claim for any other deficiency.

Enforcement of security

Outline the basic measures to enforce a security interest. How may the owner lawfully impede the mortgagee's right to enforce?

The basic measures to enforce a security interest are similar to those outlined in question 22 with respect to repossession following lease termination. When a debtor is in default, the secured party may take possession of the collateral or foreclose the debtor's rights to the collateral. Under the UCC, a secured party may repossess an aircraft if it can do so without breaching the peace. If repossession cannot be completed without breaching the peace, the secured party can seek a court order to repossess the collateral or pursue a foreclosure action pursuant to state law in a state or federal court where the aircraft is located.

In the event of a default, the secured lender may accelerate the maturity of the loan and take possession of the aircraft, but may not acquire ownership of the aircraft unless the borrower consents. To utilise the collateral to satisfy the debt, the secured lender must dispose of the aircraft (such as by sale or lease) in a 'commercially reasonable' manner, after which the lender may recover any deficiency from the borrower, unless the loan is 'non-recourse', and must refund to the borrower or any junior lien creditor any resulting surplus. All liens that are junior to the lien upon which repossession or foreclosure is made are discharged upon sale.

If a debtor is insolvent and a bankruptcy action is commenced, any enforcement efforts by the secured party must cease pursuant to the automatic stay under the Bankruptcy Code. The lender will have a secured (priority) claim not exceeding the value of the aircraft and an unsecured claim for any deficiency. One exception exists with respect to

aircraft subject to section 1110 of the Bankruptcy Code, which gives special protection to financiers in circumstances in which an air carrier becomes a debtor under Chapter 11 of the Bankruptcy Code.

Priority liens and rights

Which liens and rights will have priority over aircraft ownership or an aircraft security interest? If an aircraft can be taken, seized or detained, is any form of compensation available to an owner or mortgagee?

Generally, liens have priority in collateral in the order that they are filed with the appropriate records office. However, exceptions typically exist under US state law that gives certain types of liens and rights priority over previously recorded interests. The following liens and rights will likely have priority over aircraft ownership or aircraft security interests:

- federal tax liens;
- possessory mechanics and warehouse liens;
- non-possessory mechanics liens (although these may be subordinate to any perfected security interest and may need to be recorded with the FAA Aircraft Registry);
- certain purchase money security interests;
- buyers purchasing goods in the ordinary course from persons in the business of selling those types of goods; and
- airport and air navigation charges.

The US Customs and Border Protection (CBP) may seize goods and property, including aircraft, for suspected violations of customs laws or other laws enforced by the CBP, such as the prohibition on the transportation of illegal drugs on aircraft. Some exceptions exist for airlines involved in common carriage. The US government also has the power to seize all or any part of the airline transportation system, subject to compensatory taking laws pursuant to the US Constitution, for use during times of war.

Enforcement of foreign judgments and arbitral awards

How are judgments of foreign courts enforced? Is your jurisdiction party to the 1958 New York Convention?

Before a US court can enforce a foreign judgment, it must 'recognise' the judgment to give it the same authority as a judgment issued by a US court. Recognition and enforcement procedures are governed by state law.

Once a foreign judgment has been recognised, it is called a 'domesticated judgment'. Most US states require the person or entity seeking to enforce a foreign judgment to commence a new action in the appropriate US court to obtain jurisdiction over the defendant or subject property. The judgment holder must then prove that the foreign judgment is valid and authentic, which usually requires a certified copy of the judgment by the court that issued it. Once a judgment has been domesticated, the judgment holder may begin collection. There are many collection procedures available to judgment holders - all of which are dependent on independent state laws.

Notably, there are no international treaties or conventions that govern the reciprocal recognition and enforcement of judgments, but most states have adopted the Uniform Foreign Money Judgments Recognition Act, which provides a framework for courts to recognise that a foreign judgment granting or denying the recovery of money will be recognised only if it is final, conclusive and enforceable where originally rendered. The US is, however, a party to the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention), which

provides common legislative standards for the recognition of arbitration agreements and the recognition and enforcement of foreign arbitral awards.

TAXES AND PAYMENT RESTRICTIONS

Taxes

What taxes may apply to aviation-related lease payments, loan repayments and transfers of aircraft? How may tax liability be lawfully minimised?

Taxation of transactions in the US requires close consideration in structuring based on the particular circumstance. Both the US federal government and the states and other political jurisdictions impose tax regimes, using various criteria in determining whether an equipment lessor or lender is subject to taxation. There are also a number of tax regulations and treaties specifically applicable to aircraft and transactional business transactions. All relevant tax aspects should be taken into account in structuring transactions. The major taxes that may apply to aviation-related lease payments, loan repayments and transfers of aircraft include the following.

Income taxes

The US federal government and many US states impose taxes based on taxable income, under which loan rental and loan interest payments would be includable in the taxable income of a lessor or lender that is a taxpayer. For example, under federal tax law, as a general matter, the interest payable to an equipment lender subject to taxation would be includable in its taxable income, while a business borrower is allowed to deduct its interest payments and enjoys the tax benefits of ownership of the equipment, such as depreciation and any applicable tax credits. In the case of an equipment lease, the rental payments are generally taxable income to the lessor and deductible by a business lessee, while the lessor enjoys the tax benefits of ownership. However, the tax authorities regard certain purported leases as 'capital leases' under which the lessee is regarded as the aircraft owner for federal tax purposes. Also, a foreign corporate lessor engaged in the leasing business in the US that does not have a permanent establishment in the US will be subject to a federal gross transportation income tax at 4 per cent on one-half of its rental income for the period when the aircraft is operated between a place within the US and a place outside the US. All or part of a lessor's leasing income may be exempt from federal income tax pursuant to international treaty or an exemption.

Withholding taxes

Interest and lease rental payments by US lessees and borrowers to foreign recipients are generally subject to a 30 per cent withholding tax, although payments to many foreign jurisdictions are exempt or payable at a lower rate based on tax treaties.

Sales and use taxes

Many US states impose taxes on sales of personal property in the state and on personal property located in the jurisdiction, based on the sale price or property value. The rates and the application of these taxes to aircraft vary widely from jurisdiction to jurisdiction. The US does not have a value added tax or a goods and service tax.

Exchange control

Are there any restrictions on international payments and exchange controls in effect in your jurisdiction?

The US does not have restrictions on international payments and exchange controls in effect other than certain bank reporting requirements and restrictions promulgated by the US Department of the Treasury's Office of Foreign Assets Control on dealing with designated foreign countries and regimes, terrorists, international narcotics traffickers, those

engaged in activities related to the proliferation of weapons of mass destruction and other threats to the national security, foreign policy or economy of the US.

Default interest

Are there any limitations on the amount of default interest that can be charged on lease or loan payments?

The limitations on the amount of default interest that can be charged on a lease or loan payment is determined by the applicable US state law. Typically, usury limits may not restrict the amount of interest that may be paid following a default on a loan or lease payment unless the payment is for borrowed money. For example, under New York usury law, the maximum amount of interest that may be charged on borrowed money is 16 per cent, subject to certain exemptions.

Customs, import and export

Are there any costs to bring the aircraft into the jurisdiction or take it out of the jurisdiction? Does the liability attach to the owner or mortgagee?

When an aircraft is sold to a buyer in a different country, an export and an import must occur. In the US, Title 19 of the CFR sets forth the rules and regulations regarding customs duties promulgated by the CBP, the Department of Homeland Security and the Department of the Treasury.

INSURANCE AND REINSURANCE

Captive insurance

Summarise any captive insurance regime in your jurisdiction as applicable to aviation.

There are no captive insurance regimes applicable to commercial aircraft and insurance cover in the US. Instead, aviation insurance is typically placed through commercial aviation markets.

Cut-through clauses

Are cut-through clauses under the insurance and reinsurance documentation legally effective?

A cut-through clause is a contract provision found in a primary insurance policy that allows a party not in privity with the reinsurer to seek payment directly from the reinsurer in the event that a triggering event enumerated in the primary policy, such as insolvency, occurs. A cut-through endorsement creates similar rights in a separate agreement between the reinsurer and the insured that is integrated into the reinsurance agreement. The legal efficacy of these provisions depends upon the applicable state law. Despite some courts holding that cut-through provisions produce unfair preferences in insolvency proceedings and unfair discrimination among insureds, these provisions are legally effective in most states.

Reinsurance

Are assignments of reinsurance (by domestic or captive insurers) legally effective? Are assignments of reinsurance typically provided on aviation leasing and finance transactions?

Assignments of reinsurance policies are legally effective, but are not typically provided on aviation leasing and finance transactions in the US because of the lack of uniformity in state laws on obtaining priority over competing assignments. Because of these priority issues, lessors typically avoid assignments of reinsurance. Instead, lessors will include contract provisions creating cut-through endorsements and naming them as additional insureds and loss payees under the reinsurance policy.

Liability

Can an owner, lessor or financier be liable for the operation of the aircraft or the activities of the operator?

Pursuant to 49 USC section 44112(b), an owner, lessor or financier (or other secured party) is liable for personal injury, death or property loss or damage only when (i) a civil aircraft engine or propeller is in the actual possession or operational control of the owner, lessor or financier, and (ii) the personal injury, death or property loss or damage occurs because of the aircraft, engine or propeller, or the flight of, or an object falling from, the aircraft, engine or propeller. The majority of US courts have interpreted this provision broadly so as to pre-empt causes of action seeking to impose liability under state laws. A Florida court, however, narrowly construed this provision to pre-empt only those state law claims for personal injury, death or property loss or damage caused to people or property physically on the ground or in the water. Under this minority view, an owner, lessor or financier not in actual possession or control of the aircraft would be subject to state law liability for injuries, death or damage caused to people or property in the air. However, US federal legislation passed in 2018 changed the language to the regulation to close such an exception.

Strict liability

Does the jurisdiction adopt a regime of strict liability for owners, lessors, financiers or others with no operational interest in the aircraft?

Whether owners, lessors, financiers or others with no operational interests in the subject aircraft are strictly liable depends upon the laws of the state where the accident occurs, where the defendant is located or where the legal proceeding is held.

Third-party liability insurance

Are there minimum requirements for the amount of third-party liability cover that must be in place?

Pursuant to the minimum cover requirements of the US Department of Transportation, codified in 14 CFR section 205.5, the minimum requirement that US and foreign direct air carriers must maintain in third-party aircraft accident liability cover for bodily injury to or death of persons other than passengers and for damage to property is US\$300,000 for any one person in any one occurrence and a total of US\$20 million per involved aircraft for each occurrence. An exception exists for aircraft of not more than 60 seats or 18,000 pounds maximum payload capacity, in which case, carriers need only maintain cover of US\$2,000,000 per involved aircraft for each occurrence.

When an air carrier provides air transportation for passengers, additional cover is required for bodily injury to or death of passengers with minimum limits of US\$300,000 for any one passenger and a total of US\$300,000 times 75 per cent of the number of passenger seats installed in the aircraft per involved aircraft for each occurrence.

UPDATE AND TRENDS

Recent developments

Are there any emerging trends or hot topics in aviation finance and leasing in your jurisdiction?

No updates at this time.