

Legal Aspects of Aircraft Financing and Leasing

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TOPICS*

INTRODUCTION

- a) Overview of Legal Aspects.
- b) Theoretical Examples.
- c) Cross jurisdictional nature of aircraft financing and leasing.
- d) Based on general principles and English law practices.

AIRCRAFT FINANCING AND AIRCRAFT LEASING

- a) Importance of Financing and Leasing in the aviation world.
- b) Finance Leasing - a lease where it is intended that title pass to the lessee at the lease term.
- c) Operating Lease - a (short term) lease where the owner leases the aircraft to the lessee for rental payments with the intention the aircraft be returned at the end of the lease term.

LEGAL ASPECTS

- a) Title and Registration.
- b) Governing Law and Jurisdiction.
- c) Repossession.
- d) Enforcement.
- e) Security Issues.
- f) Insurances and Reinsurances.
- g) Tax.
- h) Liability Issues.
- i) Liens and potential claims.

* **Editor's Note:** As the full text was not made available to the Conference organisation and to the publishers in spite the several initiatives taken for this purpose, it is only possible to present the general scheme of this communication, as presented by the Author.



- j) Currency exchange risk.
- k) Government consents.
- l) Insolvency.

AIRCRAFT FINANCING

- a) What is it ?
 - Asset financing.
- b) Question:
 - If Borrower defaults, how can the Lender recover the sums lent?
- c) Answer:
 - By recovering and selling the Aircraft.
- d) Relevance of Financing Structure.

FINANCING STRUCTURES

- a) Loan-Mortgage.
- b) Simple Loan-Lease.
- c) Sophisticated Loan-Lease:
 - Cross.
 - Japanese leveraged lease.
 - German leveraged lease.
 - US pickle Dole.

LOAN-MORTGAGE FINANCE STRUCTURE

- Loan Agreement.
- Mortgage over Aircraft.
- a) Legal Aspects:
 - Aircraft title and registration.
 - Mortgage and registration.
 - Governing law and jurisdiction.
 - Enforcement.
 - Insolvency.

SIMPLE LOAN-LEASE FINANCE STRUCTURE

- Lease Agreement.
- Assignment of Lease Rentals.
- Loan Agreement.
- Assignment of Insurances/Reinsurances.
- a) Legal Aspects:
 - Repossession.
 - Aircraft title and registration.
 - Governing law and jurisdiction.
 - Enforcement.
 - Currency exchange issues.
 - Insurance/Reinsurances.



SOPHISTICATED FINANCING STRUCTURES

- a) often the financial and tax drive behind the financing will make it more complicated.
- b) e.g., tax reasons: to allow for depreciation allowances in different jurisdictions
- c) such financing structures will be additionally complicated by,
 - swaps (interests or currency).
 - guarantees and indemnities.
 - sub-leases.
 - installment sale agreements.
 - hire purchase agreements.
 - multiple jurisdictions.
 - special purpose companies, etc.
- d) Despite such added elements, the essential Legal Aspects are similar to the simple structures.

OPERATING LEASE

- a) What is it ?
 - Owner of Aircraft leases it to an operator in return for rental payments with the intention Aircraft be returned at the end of the lease term.
- b) Question?
 - If Operator defaults in its obligations under the Operating Lease, how does Owner recover the outstanding rentals and reposses the Aircraft?

LEGAL ASPECTS

- a) Recovering the outstanding Rentals:
 - Title and registration.
 - Governing Law and jurisdiction.
 - Enforcement-how to seize Aircraft in different jurisdiction.
 - Local legal opinions.

SUMMARY

- a) analysis of the Legal Aspects is part of overall finance, tax and general business risk analysis.
- b) cross-border nature of aircraft financing and leasing means legal aspects must be reviewed in all relevant jurisdictions.

