

Aviation Finance & Leasing

Contributing editor
Mark Bisset



2018

GETTING THE
DEAL THROUGH

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Aviation Finance & Leasing 2018

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Mark Bisset
Clyde & Co LLP

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Preface

Aviation Finance & Leasing 2018

Fifth edition

Getting the Deal Through is delighted to publish the fifth edition of *Aviation Finance & Leasing*, which is available in print, as an e-book and online at www.gettingthedealthrough.com.

Getting the Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique **Getting the Deal Through** format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes new chapters on British Virgin Islands, Greece, Hong Kong and Slovenia.

Getting the Deal Through titles are published annually in print. Please ensure you are referring to the latest edition or to the online version at www.gettingthedealthrough.com.

Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Getting the Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editor, Mark Bisset of Clyde & Co LLP, for his continued assistance with this volume.

GETTING THE
DEAL THROUGH 

London
May 2018

Slovenia

Andrej Kirm and Sana Koudila

Kirm Perpar Law Firm Ltd

Overview

1 Conventions

To which major air law treaties is your state a party? Is your state a party to the New York Convention of 1958?

Slovenia is a party to the following air law treaties:

- Convention for the Unification of Certain Rules Relating to International Carriage by Air – Warsaw Convention (1929) (entered into force in Slovenia on 15 April 1994);
- Chicago Convention on International Civil Aviation (1944). Slovenia deposited its statement on 13 May 1992 and has been a member since June 1992;
- Constitution Act of the European Civil Aviation Conference – ECAC (1968) (entered into force in Slovenia on 14 November 1992);
- Multilateral Agreement Relating to Route Charges (1981), which was ratified in 1995;
- EUROCONTROL International Convention relating to Cooperation for the Safety of Air Navigation (1960), which was ratified in 1995;
- Convention on the International Recognition of Rights in Aircraft – Geneva Convention (1948) (entered into force in Slovenia on 8 July 1997);
- Convention for the Unification of Certain Rules for International Carriage by Air – Montreal Convention (1999) (entered into force in Slovenia on 4 November 2003);
- Convention on Offences and Certain Other Acts Committed on Board Aircraft – Tokyo Convention (1963) (entered into force in Slovenia on 14 November 1992);
- Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (Montreal, 1971) (entered into force in Slovenia on 22 May 1992);
- Convention for the Suppression of Unlawful Seizure of Aircraft (Hague, 1970) (entered into force in Slovenia on 22 May 1992); and
- Convention on the Marking of Plastic Explosives for the Purpose of Detection – MEX Convention (1991) (entered into force in Slovenia on 4 August 2000).

Slovenia is not a party to the Rome Convention (1933) or the Cape Town Convention (2001).

Slovenia is a party to the New York Convention of 1958, whereby on the basis of reciprocity, it applies the Convention only to the recognition and enforcement of those arbitration awards issued in the territory of any other contracting state.

2 Domestic legislation

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

The principal domestic legislation applicable to aviation finance and leasing is the Obligations and Real Rights in Air Navigation Act (ZOSRL) and the Aviation Act (ZLet).

3 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?

The parties to a transaction are free to choose any governing law, whereby they can also choose that the chosen law is applicable only to a specific part of the contract. If the parties decide not to agree on a governing law the conflict-of-laws provision shall assign the governing law. Since Slovenia is a member of the EU, the provisions of Regulation (EC) No. 593/2008 (Rome I Regulation) apply. Furthermore, in some exceptional cases where the aforementioned regulation is not applicable, conflict-of-law provisions are governed by ZOSRL.

Conflict-of-law rules regarding rights in rem, such as the ownership right and mortgage, are generally of cogent nature and cannot therefore be amended by choice-of-law clauses in contract. In this respect ZOSRL determines that for the rights in or on an aircraft owned by a natural or legal person, the law of the country in which the aircraft is registered must be applied.

Title transfer

4 Transfer of aircraft

How is title in an aircraft transferred?

The legal title in an aircraft shall be transferred on the basis of a legal transaction, such as a sales contract, with the entry in the Aircraft Register of the Republic of Slovenia (the Register). It should also be noted that for third parties the aforementioned rights shall have effect from the moment of entry into the Register.

5 Transfer document requirements

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

In order for the transfer document to be enforceable the legal transaction must be concluded in writing, otherwise it has no legal effect. The written form is not required in case of the acquisition of rights on the aircraft through inheritance or public auction and in case of the transfer of ownership to an insurance company on the basis of the provisions of the insurance law.

Registration of aircraft ownership and lease interests

6 Aircraft registry

Identify and describe the aircraft registry.

The respective aircraft registry in Slovenia is the Aircraft Registry of the Republic of Slovenia (the Register). The Register is managed by the Republic of Slovenia Civil Aviation Agency (CAA), which also manages the addition to the Register. Permanent entries are kept in the Register, whereas temporary entries are made in the addition to the Register.

The Register consists of the general ledger and a collection of documents. The general ledger is public and consists of insets, which contain the certificate of registry, the ownership certificate and the load sheet.

Each aircraft is entered into its own inset. The CAA shall enter into the general ledger all necessary information on the aircraft, the owner and the method of acquisition of the aircraft, the user (operator) of the aircraft, if it is not the owner, and the mortgages associated with this aircraft, as well as other rights on the aircraft and all changes relating to the content of the Register.

There is no specific engine register. In Slovenia the aircraft engine shall be entered in the Register in the certificate of registry of the aircraft as a part of the aircraft.

The collection of documents is managed for each aircraft separately and is kept as a business secret.

On the basis of Article 83-bis only an agreement with Italy has explicitly been concluded, namely the Agreement between the Civil Aviation Agency (Slovenia) and the State Civil Aviation Company of the Republic of Italy.

7 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?

Ownership or lease interest in, or lease agreement over, aircraft must be registered with the aircraft registry. The ownership of an aircraft is obtained by the entry in the Register.

According to ZOSRL, aircraft and aircraft in production of Slovenian nationality may be owned by a domestic person, whereas they can be owned by foreign persons only in accordance with the law, the EU's direct binding act or a national treaty. Furthermore, it should be noted that the aircraft itself can be registered in Slovenia only if certain conditions are met. One of those conditions is also that the owner of the aircraft is, in the case of a natural person, a citizen of Slovenia, and in the case of a legal person, has its registered seat in Slovenia. A foreign aircraft may be registered in the Register at the request of an aircraft operator who is a citizen of Slovenia if certain conditions are met, *inter alia*, that the lease agreement is concluded for a period not less than half a year and that the owner has given his or her consent for the registration of the aircraft in the Register.

The ownership of an aircraft is not registered with any other register.

The Register does not permit the registration of the owner's, operator's and lessee's interest in aircraft engines.

8 Registration of ownership interests

Summarise the process to register an ownership interest.

The process to register an ownership interest in an aircraft begins when the application for registration is properly filed with the CAA and the administrative fee is paid. The application must be accompanied by the required documentation. If the application is not complete, the CAA shall invite the applicant in writing to complete the application. If the applicant does not complete the application within a specified deadline, the application shall be rejected. The CAA should then, within 15 days after the receipt of the completed application for aircraft registration, issue a decision on the entry and a certificate of entry in the Register, or refuse the entry.

The amount of the registration fee depends on the maximum take-off mass (MTOM) of the aircraft. For an aircraft up to 2,750 kg MTOM the fee is €120, and for an aircraft over 2,750 MTOM the fee is €184.

To register the ownership of the aircraft in Slovenia the following documentation is required:

- an application for the registration of the aircraft in the prescribed form (available online);
- proof of purchase of the aircraft (invoice, sale agreement);
- customs declaration if the aircraft is imported from a non-EU country;
- export certificate of airworthiness of the aircraft (new or used) if the aircraft is imported (optional);
- companies register extract or equivalent, proving that the owner is registered in Slovenia if the applicant is a legal entity, or certificate of citizenship of Slovenia or personal document if the owner is a natural person;

- original certificate proving that the aircraft has been deleted from the foreign aircraft register, or a certificate of non-registration in a register in the case of a new aircraft;
- (final) declaratory decision of the locally competent district court on the ownership or change of ownership of the aircraft;
- handover record on the takeover of the aircraft signed by both parties (optional); and
- in cases where the applicant is an operator or another person the application must be accompanied by a notarised proxy of the owner.

According to the definition of an aircraft from ZOSRL for the purposes of the provisions on rights in rem, the ownership of an aircraft automatically represents the ownership of the engine in the aircraft. However, the title to an engine is not automatically vested in the owner of a host aircraft. It also may not be registered separately.

9 Title and third parties

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

The registration of an ownership interest in an aircraft in the Register shall have effect for third parties from the moment of entry into the Register.

Third parties can rely on the accuracy of the public registration of the ownership interest as recorded on the CAA's certificate on the data entered in the Register in relation to an individual aircraft.

The information on the rights entered in the Register enjoys the same trust as the information entered into the land register, namely on the basis of the principles of trust in the register and of good faith. According to those principles the information entered in the register enjoys public trust. The principle of trust protects the confidence of bona fide persons that the entries in the register are correct and that the register is complete, meaning that anything that is not entered does not apply to bona fide third parties. If, therefore, the ownership interest is entered into the register, even if the owner has no or defective title, the ownership is effective against third parties, based on the entry in the register.

10 Registration of lease interests

Summarise the process to register a lease interest.

The process to register a lease interest is essentially the same as the process to register an ownership interest, as described in question 8. The registration process begins with the submission of the application for registration to the CAA. An administrative fee must also be paid. The administrative fees are the same as in the case of the registration of ownership, namely €120 for aircraft of up to 2,750 kg MTOM and €184 for aircraft of more than 2,750 kg MTOM.

The application for registration must be accompanied by the same documentation as stated under question 8. In addition, the following documentation must also be attached to the application:

- the aircraft lease agreement, with a minimum six-month term of validity;
- the (final) declaratory decision of the locally competent district court on the operator of the aircraft;
- the companies register extract or equivalent, proving that the lessee is registered in Slovenia, if the applicant is a legal entity or certificate of citizenship of Slovenia if the lessee is a natural person;
- an extract from the relevant register or equivalent, proving that the owner is duly registered in the respective country; and
- the notarised owner's permission to register the aircraft in the register.

11 Certificate of registration

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

The certificates of registration of an aircraft in the Register are being issued by the CAA.

The registration certificate contains information about the registered aircraft (ie, its registration mark, type, serial number and the date of entry), information on the owner of the aircraft (ie, his or her name and address), information on the eventual operator (lessee) of the

aircraft and also information on other eventual rights on the aircraft, such as liens.

A separate engine certificate of registration does not exist.

12 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?

If the application for deregistration of an aircraft is filed by the operator (lessee) of the aircraft, the owner of the aircraft must give his or her consent to such deregistration. Deregistration of an aircraft is also allowed on the basis of the application of the owner.

If a mortgage of an aircraft is entered into the Register, such an aircraft may be deregistered only with the consent of the mortgagee.

If the owner of an aircraft transfers ownership by a legal transaction to another person, the lease of the aircraft does not cease if the lease term has not expired and if such a right is entered in the Register, provided that it is not otherwise determined by acts of the EU that are directly binding.

The operator may block a proposed deregistration or export if he or she is entitled to do so under a contract.

13 Powers of attorney

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

In principle, the parties freely agree on the characteristics of the powers of attorney, whereby regarding the deregistration and export process the power of attorney must be in accordance with the provisions of the General Administrative Procedure Act. Furthermore, the CAA requires the deregistration and export powers of attorney to be notarised. The powers of attorney may be revoked. There are also no restrictions on granting authorisation to more than one attorney. There is no obligation for registration.

A deregistration power of attorney enables an owner or mortgagee to freely deregister and export the aircraft; however, additional conditions for deregistration must be met.

In order to deregister an aircraft from the Register, the owner or the lessee (with the owner's permission) must file the respective application for deregistration to the CAA and pay the administrative fee: €104 for aircraft up to 2,750 kg MTOM or €160 for aircraft over 2,750 kg MTOM.

For deregistration of an aircraft the following documentation is required:

- an application for the deregistration of the aircraft in the prescribed form;
- if the aircraft is sold abroad, proof of the sale (a copy of the invoice or sales contract); and
- a statement by the seller or buyer that the registration marks and marks of nationality have been deleted from the aircraft.

The owner must also return to the CAA the original of the Certificate of Airworthiness and the Registration certificate.

The power of attorney of the grantor ceases on the initiation of bankruptcy proceedings.

14 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.

This is not applicable, since Slovenia is not a party to the Cape Town Convention.

Security

15 Security document (mortgage) form and content

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

The mortgage on an aircraft is established on the basis of a legal transaction or a court decision. A legal transaction, which must be

concluded in writing, can already be a loan agreement, if it contains a clause on the pledge of the aircraft, but the most common is that a special mortgage agreement is concluded between the mortgager and the mortgagee.

The mortgage agreement shall contain the details on the parties, namely the mortgager and the mortgagee, the details of the claim for which the security is given (amount, maturity and other eventual conditions), the identification details and description of the aircraft subject to the mortgage, security interest and its legal basis, and the consent of the mortgager that he or she agrees with the establishment of the mortgage on the aircraft and with the repayment of the insured claim by its maturity from the pledged aircraft.

The language of the security document depends on the clients. However, the CAA requests that all documents required for registration in the Register must be in Slovenian. Therefore, if the security document is not in Slovenian, it must be submitted to the CAA in a certified translation into Slovenian.

16 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 law provides that the legal transaction regarding the mortgage must be concluded in writing, otherwise it has no legal effect. Furthermore, the CAA requests that the application for registering the mortgage must be accompanied by a copy of the notarial record on the establishment of the mortgage and the (final) decision of the competent court on the entry in the load sheet.

The documentary costs depend on the amount of the claim secured by the mortgage.

17 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.

The mortgage on an aircraft is obtained on the basis of a legal transaction with the entry into the Register. For third parties the mortgage shall have effect from the moment of entry into the Register.

In order to enter the mortgage into the Register the applicant must submit to the CAA the relevant application for the entry into the load sheet of the Register and pay an administrative fee of €144.

18 Registration of security

How is registration of a security interest certified?

Information on the mortgages is entered in the load sheet. The mortgages and the order of entries of the mortgages are evident from the extract from the load sheet issued by the CAA.

19 Effect of registration of a security interest

What is the effect of registration as to third parties?

The security interest (mortgage) shall have effect from the moment of registration in the Register. The legal effect of the entry in the Register in relation to third parties depends on the order of entry. The moment when the proposal for entry has arrived at CAA determines the order of entry in the Register. Registration therefore confers priority over subsequent security interests and third parties can rely on the accuracy of the public registration of the security interest.

20 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?

Information on the rights entered in the aircraft register enjoys the same trust as the information entered into the land register, namely on the basis of the principles of trust in the register and of good faith. According to these principles, the information entered in the Register enjoys public trust (see also question 9).

According to ZOSRL, the security – mortgage – over an aircraft is a right in rem. Given the fact that the principle of trust protects the confidence of bona fide persons that the entries in the land (aircraft) register are correct and that the register is complete, every change to the security or its beneficiaries must be entered into the Register in order to take effect. Furthermore, the mortgage on an aircraft does not cease on a change of owner of the aircraft.

Any change in the mortgage must be communicated immediately by the previous and new owner to the CAA and all documents proving the new ownership must be provided.

21 Security over spare engines

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

According to the respective legislation, the Register does not enable an autonomous entry of the aircraft engine in the Register. The engine is entered in the Register in the certificate of registry as part of the aircraft. Therefore, it is not possible to create a legally effective independent security interest over an aircraft engine. The security interest can only be entered in respect of an aircraft.

Enforcement measures

22 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?

Repossession is achieved in practice by sending a written notice to the lessee to return the aircraft to the lessor's possession. If the lessee refuses to return the aircraft, judicial intervention will be required. In practice, however, it is quite common that lease agreements determine the unilateral right of the lessor to take possession of the subject of the lease in case of contract violation without judicial intervention.

The exercise of such a right could be legally disputed by the lessee. The lessee could seek judicial protection to protect him or her from interference in his or her possession of the subject of the lease. If this were to happen, the lessor would have to file a separate lawsuit that aims to protect ownership (the lessor will have to claim that he or she is entitled to possession of the aircraft on the basis of ownership or other similar right). Both proceedings shall run in parallel. The rule is that the decision in the proceeding commenced by the lessor's lawsuit (based on the protection of ownership) shall prevail over the decision in the proceeding commenced by the lessee's lawsuit (based on the protection of possession).

Each party (lessor or lessee) may, prior to or during the court proceeding, seek from the court an interim injunction to temporarily decide on the rights and duties of parties with regard to the possession of the subject of the lease.

23 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 repayment of a mortgage on an aircraft is usually made on the basis of a judicial sale of the aircraft. ZOSRL also allows the creditor to repay his or her claim in the event of non-payment of the claim by exploiting the aircraft, if such an option is stipulated in the contract.

In the case of an insolvency the creditor gains the position of a creditor with a right to separate satisfaction. This right enables the creditor to claim in the insolvency proceedings that his or her claim is secured by a right of separation, which is the right for the payment of his or her claim from certain assets of the insolvent debtor before the payment of claims of other creditors from these assets. The basic rule that applies in the bankruptcy proceeding for the right of separation and claims secured by them is that the initiation of a bankruptcy proceeding does not affect them. Therefore, the initiation of a bankruptcy proceeding does not affect the existence of a claim and the right of separation.

24 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?

A privilege on an aircraft has priority over a mortgage, whereby the law does not require the registration of the privilege in the Register for the occurrence of the privilege and the legal effects arising for third parties. The following receivables are secured by a privilege:

- court costs that are necessary for the common interest of all creditors in enforcement or insurance procedures for the purpose of safekeeping of the aircraft or for a forced sale;
- claims relating to a specific prize for the search of an aircraft or its rescue;
- claims relating to extraordinary expenses necessary for the maintenance of the aircraft; and
- costs to be paid to the service provider at the airport in connection with the services provided and the use of infrastructure as determined by the provisions of ZLet.

The aviation regulations do not determine the possibility of seizure of aircrafts. ZLet only provides that an official of the CAA is entitled to seal the aircraft or device if he or she finds irregularities that could endanger the safety of air traffic.

Taxes and payment restrictions

25 Taxes

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

In principle, transactions involving aircraft (the sale or transfer of title thereto, or the lease thereof) are subject to corporate income tax in Slovenia (i) when the seller or the lessor is subject to corporate income tax in Slovenia and (ii) in the case of payments such as interest from a Slovenian entity (eg, lessee) making interest payments to a finance company established abroad (ie, to a tax non-resident of Slovenia) (withholding tax).

The scenario described under (i) above, when the seller or the lessor is subject to corporate income tax in Slovenia, would be the case, if, for example, the entity has its registered office or place of effective management in Slovenia (ie, the entity is a tax resident in Slovenia) or is subject to corporate income tax in Slovenia as a non-resident (ie, through a permanent establishment in Slovenia).

The scenario described under (ii) above, the case of withholding tax on payments from a Slovenian entity, would, generally speaking, not apply to principal payments made on the purchase or lease of an aircraft from a Slovenian tax resident or permanent establishment of a non-resident in Slovenia to a foreign entity (seller or lessor). However, withholding tax would, generally speaking, apply to interest payments made to a bank or finance company not established in Slovenia. In Slovenia, the general withholding tax rate is 15 per cent; however, Slovenia has concluded several treaties on the avoidance of double taxation (DTTs) which can reduce the withholding tax rate to 5 per cent or even 0 per cent in some cases.

The transfer of the right to dispose of an aircraft as the owner effected in Slovenia (either on the ground or in Slovenian airspace) would, in principle, be subject to value added tax (VAT) in Slovenia. That said, Slovenia has transposed the relevant provisions of the European VAT Directive (Directive 2006/112/EC, as amended) into its domestic legislation. Under these provisions, the supply, modification, repair, maintenance, chartering and hiring of aircraft used by airlines for flights on international air routes for consideration is exempt from VAT in Slovenia (ie, zero-rated).

26 Exchange control

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

There are no restrictions on international payments and exchange controls in effect in Slovenia.

27 Default interest

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

The parties may freely agree on the amount of default interest that can be charged on lease or loan payments.

However, if the agreed default interest rate is more than 50 per cent higher than the prescribed default interest rate (currently 8 per cent), such interest is considered usurious and the agreement is null. The aforementioned shall not apply to a commercial contract.

28 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?

Generally speaking, the costs of bringing the aircraft into Slovenia or taking it out of Slovenia would depend on the importation status of the aircraft (ie, EU or non-EU), the status of the entity responsible for the aircraft (ie, an entity domiciled in the EU customs territory or not domiciled in the EU customs territory), and the aircraft registration (ie, the aircraft is registered within the EU customs territory or not). Depending on these factors, temporary admission procedures may apply in lieu of full importation.

That said, the import of aircraft into the EU for commercial purposes by an airline operating international routes will often not attract import duties. As already mentioned above, import VAT would most likely not be applicable in such cases. For more details, see question 25.

Insurance and reinsurance**29 Captive insurance**

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

In Slovenia it is compulsory for the owner of the aircraft to be insured against liability for damage caused to third parties, passengers, luggage and cargo. The stated insurance shall be concluded before the aircraft starts to be used in traffic and must be renewed as long as the aircraft is in use. The insurance must be concluded in accordance with the provisions of the Compulsory Motor Third-Party Liability Insurance Act and the Regulation (EC) No. 785/2004 on insurance requirements for air carriers and aircraft operators. The obligation for such insurance applies also to an air carrier and an operator of a foreign aircraft entering the airspace of Slovenia.

There are no requirements that such insurance must be placed in Slovenia. It may also be concluded with several insurance companies.

30 Cut-through clauses

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

Cut-through clauses are legally effective; however, they are used only in exceptional cases.

31 Reinsurance

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

The insured person may transfer his or her rights from the (re)insurance against the occurrence of the damage only to a person, which can be the insured person, namely a person with a justified material interest that the insurance case should not occur.

We have no information whether assignments of reinsurance are typically provided on aviation leasing and finance transactions.

32 Liability

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

According to ZOSRL, the liability of the air carrier for damage in case of death or personal injury of a passenger during the period of air transport shall be governed by the EU legislation on air carrier liability. In this respect Regulation (EC) No. 785/2004 applies. Given the wording of article 4(2) of the Regulation, the owner, lessor or financier is liable for the operation of the aircraft if they have operational control over the aircraft.

Furthermore, ZOSRL determines the liability for damages caused on the ground by an aircraft in flight, whereby the owner or the lessor of an aircraft shall be liable for the damage caused on the ground due to death, damage to health or injury to other persons, as well as damage to things caused directly by the aircraft in flight or persons or cargo or other things that have fallen or were thrown from such an aircraft. The contractual and actual air carrier shall be jointly and severally liable for such damage.

ZOSRL also determines that if there are two or more air carriers involved in the transport the first carrier and the consecutive carrier on whose route the damage occurred are jointly and severally liable for the damage caused by death, damage to health or injury of the passenger and for damage caused by delay.

33 Strict liability

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

See question 32.

Et kirm
perpar

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

The minimum insurance sum for a particular loss event is determined by Regulation (EC) No. 785/2004.

The minimum insurance cover per accident for each and every aircraft in respect of liability for third parties shall be:

Category	MTOM (kg)	Minimum insurance (million SDRs*)
1	<500	0,75
2	<1,000	1,5
3	<2,700	3
4	<6,000	7
5	<12,000	18
6	<25,000	80
7	<50,000	150
8	<200,000	300
9	<500,000	500
10	≥500,000	700

*SDR: Special Drawing Right as defined by the International Monetary Fund

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