



The Legal 500 Country Comparative Guides

Malta: Aviation Finance & Leasing

This country-specific Q&A provides an overview of aviation finance & leasing laws and regulations applicable in Malta.

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1. What international aviation conventions has your jurisdiction signed and/or ratified?

Malta deposited a notification of adherence to the 1944 Chicago Convention on International Civil Aviation on the 5th January 1965, and acceded to the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention) on the 22 June 2000.

It also acceded to the Convention on International Interests in Mobile Equipment and to the Protocol to the Convention on International Interests in Mobile Equipment in Matters Specific to Aircraft Equipment, on the 16 November 2001.

Malta has not signed or ratified the 1948 Convention on International Recognition of Rights in Aircraft (the Geneva Convention) and the 1933 Convention for the Unification of Certain Rules Relating to the Precautionary Arrest of Aircraft (the 1933 Rome Convention).

2. If your jurisdiction has signed and ratified the Cape Town Convention: a. Which qualifying declarations (opt-in and opt-out) has your jurisdiction made under the Cape Town Convention? b. Does the Cape Town Convention take priority over conflicting national law?

Malta has declared, pursuant to subarticle 2 of Article 54 of the Cape Town Convention, that all remedies available to the creditor under the Cape Town Convention or the Aircraft Protocol which are not expressed under the provision thereof to require application to the Court, may be exercised without leave of the Court or other Court action, thereby permitting self-help/ non-judicial remedies.

Malta has also made a declaration pursuant to subarticle 1 of Article XXX of the Aircraft Protocol, in order to apply Article XIII of the Aircraft Protocol (De-Registration and Export Request Authorisation).

Given that Malta is a Member State of the European Union it did not make any declarations in terms of Article VIII (Choice of Law) of the Aircraft Protocol – it is however considered to have equivalent status in terms of the Rome I Regulation on the law applicable to contractual obligations (EC Regulation 593/2008) (the “Rome I Regulation”). Furthermore, as a Member State of the European Union Malta has neither made a declaration in terms of Article XI (Remedies on Insolvency) of the Aircraft Protocol, though national law reflects the terms of Alternative A, with the “waiting period” being a period of 30 calendar days commencing on the date of the occurrence of the insolvency-related event.

Article 46 of the Aircraft Registration Act (Chapter 503 of the laws of Malta) gives the force of law in Malta to the Cape Town Convention and the Aircraft Protocol.

This Article also ensures that the Cape Town Convention and the Aircraft Protocol prevail over any other law in case of conflict.

3. Will a court uphold the choice of a foreign governing law in respect of the following contracts and if so, please also state any conditions or formality requirements to this recognition a. Lease and b. Security document (for example, mortgage)?

a. Lease

The choice of the laws of Malta to govern a lease agreement would be recognised and given effect to as a valid choice of law in any action in the courts of Malta in accordance with the provisions of the Rome I Regulation. The Rome I Regulation applies to contracts concluded after 17 December 2009. It should be noted, however, that:

(a) in terms of the said Rome I Regulation there are certain instances where other laws may prevail irrespective of the choice of governing law (including in the case of overriding mandatory provisions or the public policy of the forum). In particular (i) where all other elements relevant to the situation at the time of the choice are located in a country other than the country whose law has been chosen, the choice of the parties does not prejudice the application of provisions of the law of that other country which cannot be derogated from by agreement; and (ii) where all other elements relevant to the situation at the time of choice are located in one or more Member States of the European Communities, the parties' choice of applicable law other than that of a Member State shall not prejudice the application of provisions of Community law, where appropriate as implemented in the Member State of the forum, which cannot be derogated from by agreement;

(b) in certain instances the Rome I Regulation also imposes limits on the autonomy of the will of the parties to select the applicable law in contract.

b. Security document (for example, mortgage)

A choice of governing law to govern a security document would be recognized and given effect to as a valid choice of law in any action in the courts of Malta in the same way as a lease agreement would - hence our replies to the previous question apply here too.

4. Please confirm whether it is (i) customary and (ii) necessary to also take a local law mortgage and if so, why?

It is customary for creditors of aircraft registered in Malta to take a Maltese law mortgage over the aircraft.

This ensures that details of the mortgage are registered on the Maltese aircraft register (i.e.

where the aircraft is registered) and allows the creditor to benefit from rights of priority.

From a Maltese law perspective, a foreign mortgage is recognized as a mortgage with the status and with all the rights and powers specified in the Aircraft Registration Act only if, inter alia, such mortgage has been validly recorded in the registry of aircraft or other register of the country under whose laws the aircraft is documented. Though Maltese law would still recognise an international interest as arising from a foreign law mortgage, it is relatively easy to have a local law mortgage registered in Malta, and it is therefore customary for this route to be adopted in order to ensure that the creditor benefits to the fullest extent from the provisions of Maltese law.

5. Are foreign judgments recognized and enforceable by courts of your jurisdiction and if so, please also state any conditions or formality requirements to this recognition (for example, do you require a local court order confirming such recognition)?

A judgement awarded by a competent court outside Malta would be recognised as a valid judgement and enforceable in the courts of Malta without re-examination of the merits of any matters treated in that judgement, subject to the following:

(a) in the case of judgements falling within the scope of the EC Regulation 44/2001 on Jurisdiction and the Recognition and Enforcement of Judgements in Civil and Commercial Matters (the “European Judgements Regulation”), the recognition and enforcement would be subject to the provisions contained in the European Judgements Regulation. Regulation 1215/2012 on Jurisdiction and the Recognition and Enforcement of Judgements in Civil and Commercial Matters (the “Recast European Judgements Regulation”) then applies to judgements arising out of proceedings instituted on or after 10 January 2015 in terms of Article 66(1) of the said Recast European Judgements Regulation;

(b) in the case of judgements falling within the scope of the Convention on Jurisdiction and the Recognition and Enforcement of Judgements in Civil and Commercial Matters signed in Lugano on the 30th October 2007 between the European Community, the Kingdom of Denmark, the Republic of Iceland, the Kingdom of Norway and the Swiss Federation (the “Lugano Convention”), the recognition and enforcement of judgements delivered in Member states of the Lugano Convention, other than judgements which fall within the European Judgements Regulation, would be subject to the provisions contained in the Lugano Convention;

(c) in the case of judgements falling within the scope of the Convention on Choice of Court Agreements, concluded on 30 June 2005 under the auspices of the Hague Conference on Private International Law (the “Hague Convention”) the recognition and enforcement in a Contracting State of judgements delivered by a court of another Contracting State designated in an exclusive choice of court agreement which is regulated by the Hague Convention would be subject to the provisions contained in the same Convention. The Hague Convention entered into force on 1 October 2015 for the Member States of the European Union

(excluding Denmark), including Malta; and

(d) in the case of judgements not falling within the scope of the European Judgements Regulation, the Recast European Judgements Regulation, the Hague Convention or the Lugano Convention, the recognition and enforcement would be subject to the applicable law of Malta imposing judgement registration or confirmation in Malta, provided that the judgement (i) does not contain dispositions contrary to public policy and (ii) cannot be set aside on any of the grounds for re-trial as contemplated in the law of Malta on civil procedure.

6. Is your aircraft registry an owner-registry (registering ownership interests) or an operator-registry (registering interests as operator)? Please also state any conditions, procedural steps or formality requirements for such registration and explain how this is evidenced (for example, the issuance of a Certificate of Registration)

The Maltese National Aircraft Register is an operator-registry.

In order to register an aircraft a designated application form has to be completed, which application form is to be signed by the registrant and lodged with the Civil Aviation Directorate.

Where an applicant is a body corporate which is seeking to register an aircraft to be operated privately in its own name then the following documents are required: (a) a recent original certificate of good standing issued by the competent authority or company, referable to the body corporate; and (b) a certified true copy of the valid Memorandum and Articles of Association of the body corporate, being duly certified as a true copy by a lawyer or notary public.

During the registration process the registrant/applicant would be required to submit technical and legal documentation so as to substantiate the information entered in the application form. The technical documentation will vary depending on the type of aircraft to be registered. As regards to the legal documentation, this would usually include, but is not restricted to the following:

- A certified true copy of the bill of sale or other proof of ownership of the aircraft. If such a document is originating from outside the EU, it should be also notarised and apostilled;
- A certified true copy of the lease or operating agreement if the aircraft is leased;
- A de-registration certificate or formal notification by the Civil Aviation Authority if the aircraft was previously registered in another State;
- A statement on registered mortgages or similar encumbrances as the case may be;
- Power of attorney, company resolution or evidence of authority for signatory/ies of application form.

Since each case is treated on a case by case basis, documentation relative to the particular case in question may be requested for submission by the Civil Aviation Directorate officials, as necessary, for the satisfactory completion and registration of the aircraft on the national register.

Also, it is important to note that a certificate of insurance is also required in line with Regulation (EC) No 785/2004.

Once an aircraft is registered a certificate of registration is issued by the Civil Aviation Directorate. The registration may also be evidenced by a transcript of register which may be issued by the Civil Aviation Directorate upon request.

- 7. Is there a security document register in your jurisdiction where a mortgagee's interests will be recorded? If so, please also state any conditions, procedural steps or formality requirements for such registration and explain how this is evidenced (for example, the issuance of a certificate or official stamp on the security document)**

Though there is no "security document register" in Malta, all registerable security interests pertaining to an aircraft will be registered in the National Aircraft Register itself.

In order for a mortgage to be registered, the mortgagor would need to execute a mortgage on a statutory form in favour of the mortgagee and the mortgagor would request the Director of Civil Aviation to register the mortgage in the Aircraft Register. On the production of a mortgage for registration in the form prescribed, the Director General shall record it in the said register.

Mortgages are recorded by the Director General in the order of time in which they are produced to him for that purpose.

- 8. What is the effect of registration of: a. Ownership interest (for example, proof of title to third parties of ownership) b. Lease (for example, perfects the status of the Lessor under the Lease) c. Security document (for example, secures priority over later registered security). If there are any interests that could rank prior to the security document please state these**

Though the details of ownership need to be listed on the aircraft register, this registration does not give proof of title (particularly since the register is an operators' register and not an owners' register).

A lease does not need to be registered in order for this to be perfected. Furthermore the details of leases are to be noted on the aircraft register only "if required to do so under the applicable law or if requested to do so by the registrant or by any other person who

demonstrates an interest in such information”.

Nevertheless when an operator registers an aircraft, copies of leases would still need to be presented to the Director General in order for a registrant to be able to prove that the said registrant has a temporary title to the aircraft and can therefore validly operate the aircraft.

In terms of Maltese law mortgages registered in respect of the same aircraft are given priority according to the date and time at which each mortgage is recorded in the aircraft register.

In terms of ranking, a creditor enjoying a possessory lien shall not be constrained to release the aircraft until the sums due to him are unconditionally discharged or otherwise secured to his satisfaction. Furthermore, Article 42(1) of the Aircraft Registration establishes the following super-priority privileges, which take effect by operation of law and which do not need to be registered:

(a) judicial costs incurred in respect of the sale of the aircraft and the distribution of the proceeds thereof pursuant to the enforcement of any mortgage or other executive title;

(b) fees and other charges due to the Director General arising under applicable law of Malta in respect of the aircraft;

(c) wages due to crew in respect of their employment on the aircraft;

(d) any debt due to the holder of a possessory lien for the repair, preservation of the aircraft to the extent of the service performed on and value added to the aircraft;

(e) the expenses incurred for the repair, preservation of the aircraft to the extent of the service performed on and value added to the aircraft; and

(f) wages and expenses for salvage in respect of the aircraft.

The special privileges listed in Article 42(1) rank in the order in which they have been laid out above.

Debts secured by a mortgage (registered in the National Aircraft Register), charges registered in the International Registry, and debts secured by a foreign mortgage, rank after debts secured by possessory liens and after the debts mentioned in Article 42(1).

Furthermore, should there be insufficient funds to settle these claims, international interests rank prior to mortgages registered in the National Aircraft Register (unless such mortgages would have been registered prior to the implementation of the said Cape Town Convention). Ranking between same interests is determined in accordance with the date and time at which

one would have registered his claim.

Article 42(2) also establishes other privileges which need to be registered in the international registry to take effect - these privileges rank after all mortgages and charges in the international registry which would have been registered prior to the date of registration of the said special privileges. These special privileges consist of the following:

(a) Taxes, duties and, or levies due to the Government of Malta in respect of the aircraft; and

(b) Wages and expenses for assistance or recovery in respect of the aircraft.

9. What types of lease are recognized in your jurisdiction (for example, translation, notarization, apostille, legalization etc.)?

Since the national aircraft register is an operators' register, there isn't an obligation for leases to be registered on the aircraft register. However, in order for an operator to register an aircraft, the Civil Aviation Directorate will require copies of a bill of sale showing how the aircraft's owner would have acquired title to the aircraft, as well as copies of leases through which the operator would be deriving his title to the aircraft.

The leases which are provided to the Civil Aviation Directorate for this purpose will need to be certified true copies of the original agreement/s. These are to be in the English language, and any such agreement is to specifically show the date when the said agreement was entered into. If this agreement would have derived from outside the European Union, or if non-EU parties would be signatories to any such lease agreement, legalized and apostilled copies of such agreement would need to be provided to the Civil Aviation Directorate.

10. What formalities are required to perfect Lessor's rights under a lease in your jurisdiction?

A lease agreement takes effect under the laws of Malta once this is validly executed by the Parties to it. Though there are no registration requirements in terms of Maltese law, a lease agreement may need to be disclosed to the Civil Aviation Directorate in accordance with our replies above, whilst the registrant or any person showing an interest may also request that the details of any lessor or lessee rights are also noted on the aircraft register.

A lease may also be registered on the international registry as an international interest.

11. Are the ownership rights relating to engines recognized as separate and distinct from the ownership of the rest of the aircraft in your jurisdiction? Please highlight any separate registration, filing or additional formalities that are required to be completed to perfect Lessor's interest in the engines

The Aircraft Registration Act specifically states that where an engine has been attached to an airframe which is not also owned by the airframe owner, each of the owners shall retain the ownership of their thing and the engine shall not acceded to the airframe. Furthermore, any security over the aircraft shall not extend to any engine attached to the airframe when such engine does not belong to the owner of the airframe who has granted the security, notwithstanding that the engines may be specifically referred to in the instrument of mortgage, the National Aircraft Register, or elsewhere.

Whilst there are no separate registration/ filing/ additional formalities that are required to be completed to perfect a Lessor's interest in the engines, there are a number of possibilities for registration at the lessor's option, as follows:

- The details of the owner of an engine can be listed on the National Aircraft Register with the consent of the owner of the engine/s; and
- Any lessor/ lessee rights to an engine can be noted on the National Aircraft Register if requested to do so by the registrant or by any person demonstrating an interest.

12. What form does security over aircraft generally take in your jurisdiction?

The form of security would typically include the following:

- (i) Mortgage over the aircraft;
- (ii) Irrevocable De-registration and Export Request Authorisation;
- (iii) De-registration Power of Attorney;
- (iv) If applicable, registration of international interests.

13. Are there any particular terms or characteristics that such a security document must take (for instance, a cap on the secured liabilities)?

The IDERAs should be included on a specific form as provided by the Civil Aviation Directorate. The IDERA is issued by the registrant and the owner of the aircraft and both the IDERA and DPOA are to be issued in duplicate and on the letterhead of the entity issuing same.

As regards to the mortgage this should also be included on a statutory form provided by the Civil Aviation Directorate. The mortgage is executed by the owner of the aircraft.

14. Are there any perfection requirements for such security document? If so, please state any conditions, procedural steps, formality requirements or documentation

(for example, corporates, list of directors etc.) required to effect this

The original IDERAs, DPOAs and mortgage need to be filed in original. Also, supporting documentation should be provided showing that the person signing is duly authorized to sign on behalf of the company.

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

The Civil Aviation (Insurance Requirements for Air Carriers and Aircraft Operators) Order (S.L. 499.41) specifically states that no aircraft shall be flown in Malta without having insurance cover which meets the requirements of Regulation (EC) No 785/2004 or as specified in the subsidiary legislation.

16. Are cut-through clauses under the insurance and reinsurance documentation legally effective in your jurisdiction?

Yes, cut-through clauses under the insurance and reinsurance documentation are legally effective in our jurisdiction. Under Maltese law, as stipulated in our Civil Code, it shall also be lawful for a person to stipulate for the benefit of a third party, when such stipulation constitutes the mode or condition of a stipulation made by him for his own benefit, or of a donation or grant made by him to others; and the person who has made any such stipulation may not revoke it, if the third party has signified his intention to avail himself thereof.

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

Regulation (EC) No. 785/2004 sets out the minimum requirements for the amount of third-party liability cover that must be in place in our jurisdiction. The Civil Aviation (Insurance Requirements for Air Carriers and Aircraft Operators) Order (S.L. 499.41) stipulates that Aircraft, including gliders, with a maximum take-off mass of less than 500kg, and microlights which are used for non-commercial purposes, or are used for local flight instruction which does not entail the crossing of international borders, shall, in respect of liability for third parties, have a minimum insurance cover per accident of 0.75 million SDR. Furthermore, S.L. 499.41 further stipulates that for the purposes of paragraph 1 of article 6 of the Regulation (EC) No. 785/2004, the minimum insurance cover required for non-commercial operation of aircraft with a maximum takeoff mass of less than 2700kg shall be 100,000 SDR per passenger.

18. Can a mortgagee (or equivalent security interest holder) or lessor following an event of default under a mortgage (or equivalent security document) or lease, respectively, take possession of the aircraft without judicial intervention in your jurisdiction? Please also state any conditions, procedural steps, formality

requirements or documentation (for example, original, legalized, translated Lease/Mortgage, corporates etc.) required to effect this

In terms of the Aircraft Registration Act, the mortgagee shall, in the event of default of any term or condition of a registered mortgage or of any document or agreement referred to therein, and upon giving notice in writing to the debtor (a) be entitled to take possession of the aircraft or share therein in respect of which he is registered; but except so far as may be necessary for making a secured aircraft or share available as a security for the secured debt, the mortgagee shall not, by reason of the mortgage, be deemed to be the owner of the aircraft or share, nor shall the mortgagor be deemed to have ceased to be the owner thereof; (b) have power absolutely to sell the aircraft or share in respect of which he is registered; but where there are more persons than one registered as mortgagees of the same aircraft or share, a subsequent mortgagee shall not, except under the order of a court of competent jurisdiction, sell the aircraft or share without the concurrence of every prior mortgagee; and if the proceeds of sale, after discharging the secured debt, show a surplus in his hands, the mortgagee shall hold under trust or deposit the same for the benefit of other creditors and of the mortgagor debtor; (c) have power to apply for any extensions, pay fees, receive certificates, and generally do all such things in the name of the owner or registrant as may be required in order to maintain the status and validity of the registration of the aircraft; (d) have the power to lease the aircraft so as to generate income therefrom; (e) have the power to receive any payment of the price, lease payments, and any other income which may be generated from the management of the aircraft.

The powers referred to above may be exercised by the mortgagee without the need of the leave of any court and to the extent that any mortgagee seeks the support of the court due to any hindrance of any person to the exercise of his rights, the court shall render full support to the mortgagee as expeditiously as possible.

The mortgagee may alternatively apply to the court for an order authorising or directing any of the acts referred to above and may apply to the court for the judicial sale of the aircraft or engine.

As regards to the lessor under a lease agreement, the lease itself is not a registerable security under Maltese law, but can be registered as a security interest in the international registry, if applicable, in terms of the Cape Town Convention to which Malta is a party thereof. In which case the lessor may: (a) terminate the agreement and take possession or control of any aircraft object to which the agreement relates; or (b) apply for a court order authorising or directing either of these acts.

In order to provide a notice for an event of default such a requirement shall be considered to have been satisfied if the mortgagee or holder of any security interest gives the notice to the debtor by means of an electronic communication in accordance with the Electronic Commerce Act, or in such other manner as agreed between the parties, or if such notice is served at the registered office of the debtor, if the registered address of the owner is in

Malta, or on a curator appointed by the court to represent the debtor and the aircraft, and in the case of an international registrant, on the resident agent.

19. **How can a mortgagee (or equivalent security interest holder), lessor under a lease or designee/beneficiary of an IDERA deregister the aircraft? Please also state any conditions, procedural steps, formality requirements or documentation (for example, original, legalized, translated Lease/Mortgage/IDERA etc.) required to effect this**

The holder of an IDERA which is registered in the Malta Aircraft Register will have the power to request the Civil Aviation Directorate to de-register the aircraft. The holder of the IDERA should provide evidence that any higher ranking security holder such as any mortgagee or international interest holder have provided their consent. Once such consent is provided then a formal request is sent to the Civil Aviation Directorate who will proceed and de-register the aircraft.

20. **Can the government or the lessee lawfully prevent the repossession or deregistration and if so, in what circumstances**

The Civil Aviation Directorate can prevent the deregistration of the aircraft due to safety laws.

21. **If judicial intervention is required, please describe the process? Please also state any procedural steps, length of time to complete and advise as to documentation required**

An application would need to be filed in court in order to provide the necessary assistance.

22. **How is legal title transferred under the laws of your jurisdiction? Please also state any conditions, procedural steps, formality requirements or documentation (for example, corporates etc.) required to effect this**

A legal title transfer under our laws is done when a bill of sale, indicating the details of the seller and the buyer, the details of the aircraft and engines and the consideration are executed. If the aircraft is also registered in the Malta Aircraft Register, then such a title transfer is also registered in the Malta Aircraft Register as well as in the international registry.

23. **Are there any restrictions on the sale of an aircraft following enforcement (for example, the requirement to obtain a court order or conduct a public auction or other action in order to sell the aircraft upon enforcement)**

Once the mortgagee has taken possession of the aircraft, it is possible for the mortgagee to sell the aircraft through a private sale approved by the court or else request a public auction.

24. Would lease rentals be subject to tax (for example, withholding or income tax)? Please also state if there are any conditions for such tax to be imposed and any steps usually taken to mitigate this

The Lessee is not entitled or required under any applicable law in force in Malta to make any deduction or withholding on account of any tax or otherwise from any payment which it may make under the lease, and no Maltese income tax is payable by the Lessor in respect of any payments under the Lease, in either case as long as :

- the Lessor is not tax resident in Malta and does not have a permanent establishment in Malta through which the Lease payments are derived, and
- the Aircraft is used for the international transport of passengers or goods.

Any income from such use is deemed to arise outside Malta for Maltese tax purposes.

25. Would a sale of an aircraft in your jurisdiction incur sales tax? Please also provide details of amount or calculation and any steps usually taken to mitigate this

If the place of supply of the aircraft transfer for VAT purposes is Malta, then Maltese VAT at the rate of 18% would need to be charged and accounted for by the seller unless the aircraft is (a) being exported out of the European Union or (b) being delivered by a Maltese VAT registered taxable person to another taxable person registered as such within another Member State in the European Union and where the buyer will be flying the aircraft to such Member State immediately upon taking delivery of it.

26. Are there any restrictions on the import or export of aircraft in your jurisdiction and would such importation or exportation incur any liability as to customs or taxes? Please also state if any consents or approvals are required and the procedural steps taken to obtain these, and any procedural steps or formality requirements to mitigate any taxes

An aircraft may be imported into Malta from outside the European Union in which case VAT is payable unless a VAT deferment is obtained to the extent that the aircraft is to be used for commercial purposes by the person importing it. Customs officers will nonetheless need to inspect and value the aircraft on its arrival in Malta before the VAT deferment can be issued.

An export only takes place when the aircraft leaves the European Union and there should be no export duties due. The applicable rules in Malta would be those applicable in all EU jurisdictions in terms of the EU Customs Code, the EU Customs Implementing Provisions, and the EU Common Customs Tariff. A Single Administrative Form needs to be completed at the time when the aircraft is being exported.

27. Are there any foreign exchange restrictions on transfers of funds

Exchange control limitations have been abolished in Malta (There are two exceptions to this rule relating to (i) exceptional circumstances, namely a sudden crisis in Malta's balance of payments or serious difficulties for the stability of the financial system; and (ii) powers under the National Interest (Enabling Powers) Act (Cap. 365 of the Laws of Malta) and Maltese persons may enter into foreign currency transactions without limitation. The only requirement in this regard is that statistical data relating to certain foreign currency transactions is submitted by Maltese credit institutions on the appropriate forms to the Central Bank of Malta in terms of the External Transactions Act, 1972 (Chap. 233 of the Laws of Malta). Failure to so notify the Central Bank of Malta will not impinge on the ability of the non-Maltese counterparty to claim payment and will have no impact on the validity of the underlying transaction.

In the event however that for any reason a party needs to prove / claim in a Maltese liquidation, the solvent party's claim must be expressed in Euros.

28. How successful have foreign creditors and lessors been in enforcing their security and lessor rights over and successfully repossessing aircraft in a timely manner?

We have been involved in situations whereby the IDERA was used in order to change the registration of aircraft in the Malta Aircraft Register.

29. What government led reforms affecting creditor and lessor rights are currently underway in the aviation sector in your jurisdiction?

Amendments to the Aircraft Registration Act are currently being prepared in order to implement in our law the Aviation Working Group guidelines on the registration, revocation and enforcement of the Irrevocable De-registration and Export Request Authorisation.

30. Please describe any interesting legal development in your jurisdiction (for instance, decided court cases or arbitral awards) which affect creditor and lessor rights?

There were court cases in Malta which examined the interplay between Brussels Regulations on jurisdiction and the recognition and enforcement of judgements in civil and commercial matters and the Cape Town Convention.

1. The aircraft was operating in Italy (Catania airport).
2. In virtue of Italian law, Catania airport had a special privileged claim over the aircraft.
3. In virtue of Italian law, the OWNER of the aircraft is jointly and severally liable with the operator of the aircraft in the aforementioned claim.
4. The Italian Court granted a precautionary warrant of arrest over the aircraft, but the aircraft left before it was arrested.
5. Catania airport obtained a precautionary warrant of arrest over the aircraft in Malta - and the aircraft was released after sufficient funds were deposited in Court to secure the claim of Catania airport.

6. A demand was then made by the owner who posted security to release the security on the basis that the arrest was irregular.
7. The Maltese Court judgments therefore focused on whether the precautionary arrest of aircraft in Malta had been carried out properly under the provisions of Maltese law – since this would have entitled the funds deposited in Court to be released. The Court’s focus, at this stage, was therefore only whether Catania airport had, prima facie, a case against the aircraft owner.
8. The Court referred to Article 31 of the Brussels Regulation 44/2001 but no detail was discussed as the judgments focus mainly on Maltese procedural law.

We are however limiting this discussion to the Cape Town issues which arise from the said judgments.

The main argument made in the cases (regarding Cape Town) was that the precautionary arrest of the aircraft in Malta frustrated the owner from re-possessing the aircraft, as entitled to do so in virtue of the Cape Town Convention (i.e. upon there being an event of default) as reflected in Maltese law. The Court, however, rejected this argument and appears to have relied on Article 31 of the Brussels Regulation 44/2001. The Court went on to state that prima facie the Catania airport did have a claim against the owners, and therefore the security granted in its favour should not be released.

It was also argued that the owners had an international interest registered over the aircraft, and that its rights were therefore being prejudiced. However the Court dismissed this argument, stating that any claims, registered interests and international interests which the owner has against the operator will still be considered in a ranking of creditors application, and in any case noted that this arrest would not have any hindering effect on the repossession which could still take place.

The implication of the above is that even if re-possession had been completed in Malta, in favour of the owners, the aircraft could still have been arrested in Malta by Catania airport, on the basis of the Brussels Regulation, and against the owners of the aircraft (given that under Italian law the owners were jointly and severally liable for the airport dues).

The main issue, from our academic perspective, therefore seems to be about how the Cape Town Convention operates when the Brussels Regulation 44/2001 applies in cases when there is an overlap between the two, if there is an overlap at all. We verified the EU ratification and note that when the EU signed the Cape Town Convention, the EU clearly made a declaration to the following effect, which gives precedence to the Brussels Regulation over the Cape Town Convention in matters similar to the above:

Pursuant to Article 55 of the Cape Town Convention, where the debtor is domiciled in the territory of a Member State of the Community, the Member States bound by Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters will apply Articles 13 and 43 of the

Cape Town Convention for interim relief only in accordance with Article 31 of Regulation No 44/2001 as interpreted by the Court of Justice of the European Communities in the context of Article 24 of the Brussels Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters.

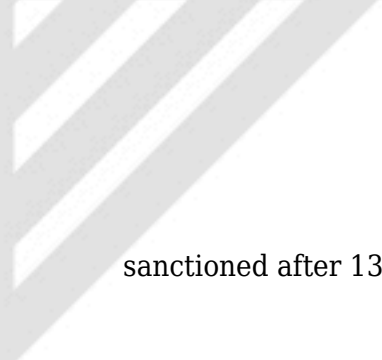
31. Please discuss any relevant governmental regulations implemented in your country to help alleviate the financial and other difficulties faced by airlines in your jurisdiction caused by CoVid 19 and whether that will impact rights of lessors (who lease aircraft to the airlines) and lenders (who finance such aircraft which are mortgaged in favour of the lenders)? Are such governmental regulations expected to be in place until the difficulties faced by airlines caused by the CoVid 19 subside or are they more long term?

The government did not introduce any particular regulations to help alleviate the financial and other difficulties faced by airlines which would impact the rights of lessors. As regards to lenders on the 13 April, 2020, the 'Moratorium on Credit Facilities in Exceptional Circumstances Regulations' (L.N. 142 of 2020) (the "Moratorium Regulations") were issued under the Public Health Act (Cap. 465 of the laws of Malta), together with Directive No. 18 (the "CBM Directive") issued by the Central Bank of Malta in terms of the Central Bank of Malta Act (Cap. 204 of the laws of Malta). In terms of the Moratorium Regulations and the CBM Directive, credit institutions licensed under the Banking Act, together with any branch, agency or office in Malta of a bank not incorporated in Malta, and financial institutions licensed under the Financial Institutions Act, must grant a moratorium (defined as 'a deferral of payments') on capital and interest on 'credit facilities' for a period of six (6) months (which may be extended by further notice) from the date of approval of the application by the respective credit or financial institution. This moratorium must be granted on application made by a borrower (any natural or legal person) at any time until 30 June 2020 (which period may be extended) who meets the following criteria:

(a) not be in a forbearance arrangement, or, if in forbearance, has met all terms and conditions agreed upon with the respective credit or financial institution; (b) not have been in arrears with the repayment of the credit facility as at 1 March 2020; and (c) provides sufficient evidence, acceptable to their respective credit and financial institution, that proves "that their income has been or will be material affected by the COVID-19 outbreak in such a way that adhering to the credit repayment commitment of both capital and/or interest in part or in full is temporarily materially impaired."

For the purpose of the Moratorium Regulations and the CBM Directive, a 'credit facility' means the lending of a sum of money by way of an advance, overdraft, or loan or any other line of credit including discounting of bills of exchange and promissory notes, guarantees, indemnities, acceptances and bills of exchange endorsed pur aval.

The said moratorium does not apply to: (i) credit facilities advanced to other credit and financial institutions and (ii) facilities made under credit cards; and (iii) new credit facilities



sanctioned after 13 April 2020