

# Legal 500

## Country Comparative Guides 2025

**Malta**

**Aviation Finance & Leasing**

**Contributor**

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

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# Malta: Aviation Finance & Leasing

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

The 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention); The Convention on International Interests in Mobile Equipment and The Protocol to the Convention on Matters Specific to Aircraft Equipment (the Cape Town Convention); The 1985 Convention on the Law Applicable to Trusts and on their Recognition (Hague Convention); The 2007 Convention on Jurisdiction and the Recognition and Enforcement of Judgements in Civil and Commercial (the Lugano Convention); the 2005 Convention on Choice of Court Agreements (the Hague Choice of Court Convention); the 2019 Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters (the Hague Judgments Convention); The Chicago Convention of 1944 on International Civil Aviation (the Chicago 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?

a. Which qualifying declarations (opt-in and opt-out) has your jurisdiction made under the Cape Town Convention:

### I. Article 39

(1) Pursuant to Article 39 I(a) of the Convention, it is declared that the following categories of non-consensual right or interest:

1. 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;
2. Fees and other charges due to the Director General arising under applicable law of Malta in respect of the aircraft;
3. Wages due to crew in respect of their employment on the aircraft;
4. 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;

5. 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
6. Wages and expenses for salvage in respect of the aircraft,

have priority under the laws of Malta over an interest in an object equivalent to that of the holder of certain registered international interests and shall have priority over such registered international interests whether in or outside insolvency.

(2) Pursuant to Article 39 (4) of the Convention, it is declared that all categories of non-consensual rights or interests which under Maltese law constitute a special privilege on an aircraft shall have priority over an international interest registered prior to the date of its deposit of its instrument of accession.

### II. Article 40

Pursuant to Article 40 of the Convention, it is declared that the following categories of non-consensual right or interest;

1. taxes, duties and/or levies due to the Government of Malta in respect of the aircraft; and
2. wages and expenses for assistance or recovery in respect of the aircraft,

shall be registrable under the Convention as regards aircraft objects as if the right or interest were an international interest and shall be regulated accordingly.

### III. Article 53

Pursuant to Article 53 of the Convention, it is declared that the First Hall of the Civil Court is the relevant court for the purposes of Article 1 and Chapter XII of the Convention.

### IV. Article 54

Pursuant to Article 54 (2) of the Convention, it is declared that all remedies available to the creditor under the Convention or 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.

b. Does the Cape Town Convention take priority over conflicting national law?

The Cape Town Convention and Aircraft Protocol was acceded to by Malta and came into effect on the 1st February, 2011. The National Implementing Legislation, proposed by AWG / Unidroit, is part of Maltese law and will prevail over the domestic provisions in case of absence of a rule or conflict.

The consolidated text of the Convention and Protocol have been reproduced in the First Schedule of the Aircraft Registration Act (Chapter 503 of the laws of Malta), and have the force of law in Malta in relation to matters to which they apply and shall prevail over any other law, in a 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 a foreign country to govern the lease or security 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 Regulation 593/2008/EC of the European Parliament and of the Council on the law applicable to contractual obligations (Rome I) of 17 June 2008 ("Rome I Regulation"). The Rome I Regulation applies to contracts concluded after 17 December 2009. It should be noted, however, that:

1. in terms of the said 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;

2. 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}

See above reply.

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

Where the transaction involves a financier, it is general practice that a mortgage be granted by the Lessor as the owner/mortgagor and registered in favour of the financier as the mortgagee. The mortgage takes effect from the date of its registration by the registry, and it secures debt obligations with preference over other creditors in case of the owner's bankruptcy. Generally, collateral to the mortgage there is also a security agreement which is collateral to the Maltese mortgage. Such agreement need not be governed by Maltese law and customarily (depending on the nationality of the parties involved) either an English law mortgage or a NY law security agreement.

### **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, subject to the following:

1. 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 215/2012 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;
2. 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 states bound by the Lugano Convention, other than judgements which fall within the European Judgements Regulation or the Recast European Judgements Regulation, would be subject to the provisions contained in the Lugano Convention;
  3. in the case of judgements not falling within the scope of the European Judgements Regulation, the Recast European Judgements Regulation or the Lugano Convention, the recognition and enforcement would be subject to the procedure established in internal law, namely the Code of Organization and Civil Procedure (Chapter 12 of the Laws of Malta), which requires recognition proceedings to be initiated before the First Hall of the Civil Court of Malta. An application for registration of a foreign judgment can be objected to on a number of grounds, including (i) that it contains dispositions contrary to public policy and (ii) that any of the grounds for re-trial subsist as contemplated in the law of Malta on civil procedure;
  4. in the case of judgements not falling within the scope of the Recast European Judgements Regulation or the Lugano Convention, which would otherwise be enforceable in accordance with internal law, however which do fall 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 Choice of Court Convention") having been delivered by

the courts of a Contracting State pursuant to an exclusive choice of court agreement, the judgment creditor may alternatively opt to enforce the judgment in Malta in accordance with the procedure laid down in that convention. The Hague Choice of Court Convention entered into force on 1 October 2015 for the Member States of the European Union (excluding Denmark); and

5. in the case of judgements not falling within the scope of the Recast European Judgements Regulation or the Lugano Convention, which would otherwise be enforceable in accordance with internal law, however which do fall within the scope of the Hague Convention of 2 July 2019 on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters (the "Hague Judgments Convention"), having been delivered by the courts of a Contracting State, the judgment creditor may alternatively opt to enforce the judgment in Malta in accordance with the procedure laid down in that convention. The

Hague Judgments Convention entered into force on 1 September 2023 for the Member States of the European Union (excluding Denmark).

**6. Is your aircraft registry an owner-register (registering ownership interests) or an operator-register (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 National Aircraft Registry of Malta the aircraft register in Malta is an operator's register. However, an owner can register an aircraft in Malta in the event that the aircraft is not being temporarily operated or else the owner and the operator are the same entity.

It shall be lawful to register any aircraft (even if it is under construction upon it becoming uniquely identifiable).

**Basic Requirements**

Prior to registration, it is a basic requirement that the airline/operator is eligible to register an aircraft in Malta. These persons/bodies are:

- (a) the Government of Malta; (b) a citizen of Malta or a

citizen of a Member State of the European Union or of an EEA State, or Switzerland having a place of residence or business in Malta, the European Union, the European Economic Area or Switzerland, including a person sharing in the ownership of such aircraft by virtue of the community of acquests subsisting between such person and a citizen as described above in whose name the aircraft is registered; (c) an undertaking formed and existing in accordance with the laws of Malta, of a Member State of the European Union, of an EEA State or of Switzerland and having its registered office, central administration and principal place of business within Malta, or the European Union, or the European Economic Area or Switzerland whereof not less than fifty per cent of the undertaking is owned and effectively controlled by the Government of Malta, or by any Member State of the European Union, or by persons referred to in (b), whether directly or indirectly through one or more intermediate undertakings; (d) a natural person who is a citizen of, or an undertaking established in, an approved jurisdiction, other than those mentioned in (b) or (c) above, shall be qualified to register an aircraft in construction or one which is not used to provide air services if it:

1. enjoys, to the satisfaction of the Director General responsible for civil aviation in Malta, legal capacity to own or operate an aircraft in terms of the law under which it has been established or registered;
2. complies with the requirements established under the Aircraft Registration Act, 2010 ("ARA"), any regulations or guidelines issued pursuant thereto;
3. satisfies the Director General that it can and will ensure due observance of the laws of Malta relating to civil aviation; and
4. appoints a resident agent in Malta for the duration of the registration in accordance with the requirements of the ARA.

Under the ARA, a qualified person may apply to register an aircraft in the following capacities-

(a) an owner of the aircraft who operates the said aircraft; or (b) an owner of an aircraft under construction or temporarily not being operated or managed; or (c) an operator of an aircraft under a temporary title (by virtue of a lease agreement) which satisfies the conditions which may be prescribed; or (d) a buyer of an aircraft under a conditional sale or title reservation or similar agreement which satisfies the conditions which may be prescribed and who is authorised to operate the aircraft.

Where the applicant for registration of an aircraft is a person enjoying a temporary title (by virtue of a lease

agreement), whether or not an unqualified person holds any interest therein by way of ownership, the aircraft may be registered in the name of that person upon the Director General being satisfied that the aircraft may otherwise be properly registered, and the aircraft may remain registered for the duration of the temporary title.

### Documents Required

To register an Aircraft in Malta, the operator/airline will have to furnish the Director General responsible for civil aviation with an application, along with the following documents:

1. De-registration certificate in the event the aircraft was previously registered in another state;
2. documents pertaining to the owning entity of the aircraft, such as: a. the certificate of registration, b. memorandum and articles of association, c. extract or certificate of good-standing;
3. an application form signed by the operator;
4. constitutional documents on the operator;
5. radio license;
6. insurance certificate;
7. photo of registration marks and fire proof plates;
8. lease agreement;
9. proof of ownership – such as a bill of sale (and also a Power of Attorney); and
10. statement of no mortgages.

Notwithstanding, the Civil Aviation Directorate reserves the right to request further documentation from operator/airlines and therefore it is always suggested to first file the application form and then request a list of the documents required to register the aircraft.

The Civil Aviation Directorate requests that documents signed in the EU are notarised, while those executed outside of the EU are notarised and apostilled. However, the Civil Aviation Directorate can also waive these requirements.

**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)**

Yes, Malta's national aircraft register accepts the registration of mortgages over the aircraft registered in Malta and records the date, time and details of mortgagee in the transcript of the relevant aircraft. The process of registration is as follows:

1. the parties i.e. the mortgagor and mortgagee will agree on a mortgage recital which is to be inserted in an A3 statutory mortgage form, considering the details in the recital are limited, the mortgage is a many a time supported by a collateral NY security agreement or English mortgage;
2. the statutory mortgage form will be executed by a local representative of the mortgagor on the basis of a power of attorney issued in favour of the local attorneys. Such power of attorney would generally need to be notarized for identity and authority and apostilled, a scan will suffice;
3. the execution of the local attorney as explained in section 2 above will also be witnessed;
4. the statutory mortgage form is submitted to the Civil Aviation Directorate for pre-clearance and pre-positioning via scan (the scans will also need to be uploaded onto the online Centrik platform prior to closing) and will with the original mortgage form to follow;
5. the Civil Aviation Directorate will register, endorse and records the mortgage (the Civil Aviation Directorate will only proceed with the registration and recordation of the mortgage on the strict written instructions from the mortgagees local leading counsel); and
6. upon registration the Civil Aviation Directorate will record the time, date and details of the mortgage in the registry of the aircraft and update the transcript of the aircraft to reflect same.

**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**

a. Ownership interest (for example, proof of title to third parties of ownership)

Considering the Malta Aircraft Registry is an operators registry, the details of the owner are only annotated in the certificate of registration. However, please note that in order for a Lessor to have any remedies it needs to either have an IDERA issued in its favour and/or the lease is registered as an international interest.

b. Lease (for example, perfects the status of the Lessor under the Lease)

The Civil Aviation Directorate requests the submission of the lease agreement as a document to evidence the status of the applicant/registrant as a lessee/ operator in terms of the relevant aircraft, without which the Civil Aviation Directorate will not accept the registration of the aircraft.

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

The Malta National Aircraft Register is a substantive register in relation to the recognition and priority of mortgages, however, any debt secured by a mortgage registered in the National Aircraft Register or a charge in the International Registry or secured by a foreign mortgage recognised under the Act shall rank after the debts secured by possessory liens and, special privileges on aircraft (as specified below) and in preference to other hypothecary and privileged claims.

Being a civil law jurisdiction, in Malta, liens are referred to as special privileges. In terms of Maltese law the debts hereunder specified are secured by a special privilege upon the aircraft, as well as any proceeds from any indemnity arising from any mishaps as well as any insurance proceeds, provided that this shall not apply in relation to an indemnity payable under a liability policy:

- 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 debts mentioned below shall, on registration in the International Registry, rank after the debts referred to above (special privileges) but after all debts secured by mortgages and charges in the International Registry registered prior to the date of the registration of the relevant privilege.

The debts mentioned in the following paragraph are secured by a special privilege upon the aircraft, as well as any proceeds from any indemnity arising from any mishaps as well as any insurance proceeds, other than from a liability policy, if registered in the International Registry after the effective date:

(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?

No particular form is required and formalities are necessary only if it is the basis of the registration.

The Civil Aviation Directorate insists that the lease agreement would need to comply with the following:

- a) Such an agreement must be in English. If it is in any other language, then it must be accompanied by a certified translation
- b) The date as to when the agreement was made and the duration of the agreement.
- c) The agreement must be a Certified True Copy. If the agreement is from outside Europe it should be legalised and apostilled.
- d) The signatures on the agreement must be authenticated according to the list of signatories. This also applies to the initials on each page of the document.
- e) Reference must only be made to the Maltese registration marks and not to the previous registration marks of the aircraft.
- f) The agreement/s shall have clear delineation of responsibilities of the parties involved pursuant to the applicable laws and regulations.
- g) The agreement/s shall contain clear suspension/termination clauses.

Furthermore, if the lease is to be registered as an international interest it is important that it complies with the requirements under the Cape Town Convention in order to constitute an international interest.

## 10. What formalities are required to perfect Lessor's rights under a lease in your jurisdiction (for example, translation, notarization, apostille, legalization etc.)?

The register in Malta is an operator's register and it relates to the registration of aircraft. However, the lease of an aircraft would also need to be filed at the register in Malta to establish the link between the owner and the operator. There can be more than one lease if there are sub-leases.

A dry lease can be the basis of a registration of the aircraft in the Malta Register. In that case the owner can register his interests as a matter of record. Likewise, when there is a sub-lease, the owner may record its interests and the lessor can record its interests qua lessor. In terms of security, the national authority will not provide the lessor any particular rights unless, the lessor registers in its favour an IDERA and/or DPOA, each of which must be issued by the registered operator in favour of the lessor.

## 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

In terms of Maltese law the term "aircraft" includes airframe and aircraft engines and the definition of airframe includes all installed, incorporated or attached accessories, parts and equipment (other than aircraft engines), and all data, manuals and records relating thereto.

This said, the Director General is to note the following matters in the National Aircraft Register, if requested to do so by the registrant or by any person who, with the consent of the registrant, demonstrates an interest in such information being entered in the National Aircraft Register:

1. the ownership rights in the aircraft or an engine;

2. the lessor rights relating to the aircraft or an engine when the lessor is a person different from the owner, although the same person may appear on the register as lessee;
3. the lessee rights in relation to the aircraft or an engine and all matters relating thereto;
4. the details of the resident agent where the registrant is an international registrant;
5. information on any international interest registered in the International Registry and the debtor thereof.

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

In terms of the Lessor, the IDERA and DPOA would generally be registered in favour of the Lessor. Such must be submitted in original, duplicate and on the letter head of the operator as each are executed by the operator as the aircraft registrant.

A mortgage may also be registered in favour of a financier/mortgagee and granted by the Lessor.

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

The IDERA is a statutory document and the details that may be altered are only the details of the aircraft, grantor and grantee. A DPOA has somewhat more flexibility as it is not a statutory document, this said there is a standard agreed form and one cannot stray much from it.

As is the case with an IDERA the mortgage is a statutory form where details of the transaction and the obligations which are being secured may be inserted in the form, however, with respect to the governing terms and conditions of the arrangement between the mortgagor and mortgagee collateral to the mortgage is generally a English/NY law security document which contains much more detail. For the purposes of validity and enforceability of the mortgage the collateral/referenced documents need not be governed by Maltese law.

## 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

Each of the IDERA and DPOA must be submitted to the Civil Aviation Directorate in original wet ink, in duplicate and on the letter head of the operator. Evidence of the authority to execute the IDERA and DPOA must also be provided. In terms of the Mortgage form, such is generally executed by local attorneys appointed by means of notarised (for identity and authority) power of attorney issued in favour of the attorneys and witnessed by the legal representatives of the mortgagee. When executed in Malta it is submitted undated to the Civil Aviation Directorate for the purposes of pre-clearance/positioning and is dated upon receipt of explicit instructions to proceed with its registration. Where the mortgage form is executed outside of Malta, the signature of the mortgagor must be notarized for identity and authority and apostilled. Whilst the mortgage form will be dated (due to the notarization) the mortgage will only be valid upon the date of registration.

We can sign original security documents (Mortgage, IDERA and De-Registration Power of Attorney) on behalf of the mortgagor or operator respectively as long as we are granted a power of attorney to do so on behalf of the said persons. The POA appointing members of our team as signatories would need to be in English, apostilled (consularised) and duly notarized.

Considering the execution of registerable security documents qualifies a relevant activity, certain due diligence obligations will come in to force and will therefore need to be satisfied in order for us to be able to sign the relevant registerable security documents.

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

Under Maltese law, there are no provisions specifically applicable to captives in the aviation sector. However, Malta's insurance legislation offers a robust framework for establishing and operating captive (affiliated) insurance undertakings, which can be utilised by groups of companies in aviation.

A captive insurance undertaking in Malta may be owned by a group of financial undertakings (such as credit institutions, insurance undertakings, or investment firms) or by non-financial undertakings (such as companies operating in the aviation sector). In practice, this means a captive can be set up by related companies – whether financial or non-financial – to insure risks arising within that group.



A captive is an insurance company licensed by the Malta Financial Services Authority and created by a group to insure risks within that same group, typically under common ownership or control. While there is no aviation-specific captive regime, aviation groups can establish a captive in Malta to cover risks related to their operations. This structure enables the group to retain underwriting profits, tailor coverage to its needs, and potentially achieve cost efficiencies compared to commercial insurance.

For example, an aviation group may set up a Maltese captive insurer to issue policies to its members, insuring against physical damage to the fleet. If an aircraft is damaged, the captive insurer pays out for repairs or replacement.

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

Cut through clauses are often encountered under insurance documentation. However, the enforceability of such clauses (irrespective of whether the contract is governed by Maltese law or otherwise) against Maltese insurers is untested and we are not aware of jurisprudence from the Maltese courts on this matter. Nonetheless, our assessment is that since a cut-through clause typically operates upon the insolvency of a Maltese insurer, this would likely be unenforceable as such a clause would frustrate the hierarchy of creditor's claims under Maltese insolvency law.

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

Any Malta registered aircraft shall have an insurance cover in place that meets the requirements of the Regulation (EC) No 785/2004 of the European Parliament and of the Council of 21 April, 2004 of insurance requirements for air carriers and aircraft operators set out in the Civil Aviation (Insurance Requirements for Air Carriers and Aircraft Operators) Regulations (Subsidiary Legislation 499.41) (the "SL").

With respect to third-party liability cover, the minimum insurance cover per accident that would need to be in place will vary and is dependent on the respective aircraft's minimum take off mass. For example, an aircraft under 500 kg maximum take off mass shall require a minimum insurance cover of 0.75 SOR (Special Drawing Right), while an aircraft of a maximum take off

mass of over 200,000 kg but less than 500,000 kg shall require a minimum insurance cover of 300 SDR.

The SL also allows the Director to take such steps as are necessary to detain the aircraft to ensure compliance with this requirement.

#### **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**

A lessor or mortgagee may take possession of the aircraft following an event of default under the lease agreement or mortgage (as applicable). If the lease agreement and/or mortgage qualify as an international interest and are registered in the international registry, the Cape Town Convention would apply. The Cape Town Convention has introduced self-help remedies to Maltese law, which remedies can be availed of by a lessor or mortgagee without the need of judicial recourse.

Under Article 12 of Schedule 1 of the Aircraft Registration Act, upon an event of default, the creditor may, take possession or control of an aircraft. If the operator refuses to surrender possession of the aircraft to the owner, the owner may apply to the Court to obtain possession of the aircraft through the authorities. An event of default can be constituted by virtue of an agreement in writing made between the debtor and the creditor or where the creditor is substantially deprived of what he is entitled to expect under an agreement with the debtor (Article 17 Schedule 1 to the Aircraft Registration Act).

#### **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 registry in Malta is an operator's register and

therefore it is the operator who deregister the aircraft. However, if a request for de-registration is made by an authorised person or his delegate, pursuant to an IDERA which has been registered in the Malta Aircraft Register and/or in the International Register, the Malta Aircraft Register must act upon such request.

The Malta Aircraft Register must honour such request, unless it is not able to do so due to any applicable safety laws and regulations, provided that: (i) the request is properly submitted by the authorised party under a recorded IDERA, and (ii) the authorised party certifies, if required, that all registered interests ranking in priority to that of the creditor, in whose favour the authorization has been issued, have been discharged or that the holders of such interests have consented to the de-registration and export.

The Malta Aircraft Register is obliged to proceed with the deregistration of the Aircraft expeditiously, and, in any case, no later than five working days following receipt of the request without (a) the consent or approval of the Applicant or any other person or entity, (b) any court or administrative or other order or decision of any kind, (c) any need for the Registry Authority to investigate external facts, or (d) imposing any additional requirements and regardless of whether the Authorised Party or its Certified Designee is in possession of the Aircraft or Related Engine and notwithstanding that a Related Engine is not installed on the Aircraft.

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

Under Maltese law, when an event of default occurs under an aircraft lease agreement, the lessee or the government are not generally entitled or empowered to litigate simply to prevent repossession of the aircraft. The lessor's rights to terminate the lease and repossess the aircraft are strongly protected, especially under Malta's implementation of the Cape Town Convention and the Aircraft Registration Act.

Nonetheless, a lessee may try to use other mechanisms provided by law in order to try and prevent the said repossession, however it is also our view that a Court of law should not apply any of these procedures, and in no way should this hinder the speedy repossession provisions contemplated in the Aircraft Registration Act. Please refer to our replies under Question 30.

## **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**

Though a creditor (including a lessor for these purposes) may apply for a Court order to repossess an aircraft, this is not mandatory. Judicial intervention is simply an additional option provided under Maltese law.

A creditor is also entitled to apply to the Court to inter alia repossess an aircraft as relief pending a final determination of a claim, provided the debtor would have at anytime so agreed. In this case, the creditor may obtain speedy relief from the Court, which under the Aircraft Registration Act must be granted within 10 working days from the date the application for such relief is filed.

Under Article 12 of the First Schedule to the Aircraft Registration Act, following an event of default under a security agreement and/or a title reservation agreement and/or a leasing agreement, a chargee (which includes a lessor or a secured party) is entitled to (without the need to apply to a court) inter alia:

1. take possession or control of any aircraft object, or
2. sell an aircraft object.

This is therefore one of the very few instances in Maltese law where self-help remedies are expressly permitted. A chargee (which includes a lessor or a secured party) may nevertheless still apply for a Court order to authorize these actions, in which case evidence of an event of default under the respective agreement would need to be shown.

The law requires that, before exercising these rights, the creditor must provide ten or more working days prior written notice of the proposed sale or lease.

Any documents that are submitted as evidence, such as copies of the respective agreement, an IDERA, DPOA or mortgage would need to be submitted in English, whereas the official court application would be submitted in Maltese and prepared by the assisting local legal counsel. Originals required will relate to the proceedings themselves and will also be drafted and submitted by the respective local legal counsel.

## **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**

Malta is not a party to the Convention on the International Recognition of Rights in Aircraft 1948. Therefore, the sale and purchase of an aircraft are governed exclusively by Maltese law provisions on the sale of movables. Under Maltese law, airframes are considered as movables and their sale is therefore not subject to any special formalities. Typically, a sale and purchase of an aircraft is recorded in a bill of sale entered into between the seller and the buyer. The bill of sale is generally made in writing, as it must be submitted to the Registrar as proof of title of ownership when applying for aircraft registration.

The Registrar may also require evidence of the authority of the person executing the bill of sale. In such cases, the Registrar can request that the bill of sale be notarised and apostilled to certify the identity and authority of the signatory. This would be required particularly where the bill of sale is executed outside of the EU.

**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)**

There are no particular restrictions on the ability of the Lessor to sell the Aircraft in Malta following an enforcement and successful repossession.

**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**

Maltese withholding tax at the rate of 35% is normally payable on any lease payments to a non resident Lessor.

However, no Maltese tax (withholding or otherwise) is payable on the lease payments as long as:

1. the lessor of the aircraft is not tax resident in Malta; and
2. the lessor 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.

**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 for Maltese VAT purposes is Malta, the sale of an aircraft would normally be a taxable supply with Maltese VAT being chargeable on the supply at the rate of 18%.

However, if the aircraft is to be used by an airline operator for reward chiefly for the international transport of passengers and/or goods, the supply of the Aircraft is an exempt with credit supply for Maltese VAT purposes.

**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**

**(a) Import of aircraft**

No Maltese VAT or customs duties would be payable on the importation of the aircraft into Malta if the aircraft is to be used by the lessee for reward chiefly for the international transport of passengers and/or goods, subject to the production of a number of documents to the Maltese customs authorities and an inspection by Customs officers on board the aircraft.

**(b) Export of aircraft**

An export only takes place when the aircraft leaves the European Union. In such case, a Single Administrative Form needs to be completed (the "Export Form"). This Export Form can only be completed at the time when the Aircraft is being exported, and cannot be completed in advance.

A customs official will need to inspect the Aircraft when it is being exported, and an appointment would need to be coordinated with the customs department.

When the aircraft is exported from Malta to outside of the EU, 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.

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

No, exchange control limitations have been abolished in Malta upon its accession into the European Union in 2004 (with the exceptions of rules 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 counter party to claim payment and will have no impact on the validity of the underlying transaction.

## 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?

In practice, most aircraft subject to enforcement would not be physically located in Malta, so there is limited experience in this regard. However, from our experience, we have handled several cases where an IDERA was successfully enforced in Malta to effect a change in registration of the aircraft from the operator to the lessor or a third party. The process of enforcement of an IDERA has proven to be highly efficient, largely due to the aircraft registry's timely cooperation.

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

To our knowledge, there are no government led reforms underway in Malta that would directly affect creditor and lessor rights in the aviation sector.

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

Maltese courts have reaffirmed the strength of the

Irrevocable Deregistration and Export Request Authorisation as provided below.

Air X Charter Limited and Air X Aircraft Finance I Limited vs. (1) Firm Mamo TCV Advocates as Deputy Curators acting on behalf of Avmax Aircraft Leasing Inc (Canada) (8 November 2021)

In this case, the Maltese Courts rejected the issuance of a warrant of prohibitory injunction to withhold a company from enforcing their rights under an IDERA. The Court understood and stressed that issuing a warrant of prohibitory injunction in the applicant companies' favour would inhibit the proper adoption of the Cape Town Convention and any principles under the Aircraft Registration Act (Chapter 503 of the Laws of Malta).

Please find a link to a summary of the judgment for your reference: <https://ganado.com/insights/publications/can-the-rights-arising-from-a-registered-idera-be-restricted-by-a-warrant-of-prohibitory-injunction/>.

Hi Fly Limited versus (1) Flypop Limited of London, (2) UMB Bank, National Association of the United States of America and (3) the Authority for Transport in Malta (24 May 2023)

A decree was issued by the First Hall Civil Court, whereby the Court once again prohibited the issuance of a warrant of prohibitory injunction to prevent a holder of an IDERA or a certified designee from enforcing its rights thereunder. The Court quoted the above Airx X judgement, stating it was in complete agreement with the Court's conclusions in that case. The Court therefore re-confirmed that a warrant of prohibitory injunction may not be issued to prevent a holder of an IDERA or a certified designee from enforcing its rights thereunder and proceed to de-register the Aircraft in line with Malta's obligations under the Cape Town Convention and Aircraft Protocol, as doing so would prejudice the proper adoption and implementation of the Cape Town Convention and Aircraft Protocol here in Malta.

Please find a link to a summary of the decree for your reference: <https://ganado.com/insights/publications/can-the-rights-arising-from-a-registered-idera-be-restricted-by-a-warrant-of-prohibitory-injunction/>

For the sake of good order, Malta does not follow the concept of precedent with regards to judgements.

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?

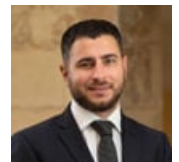
No aviation specific COVID-19 relief measures for airlines were implemented in Malta and therefore there was no impact on aircraft lessors or creditors.

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