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Aviation: Finance & Leasing 2023

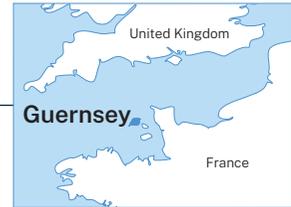
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Guernsey: Law & Practice

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Walkers



GUERNSEY



Law and Practice

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1. Aircraft and Engine Purchase and Sale

1.1 Sales Agreements

1.1.1 Taxes/Duties Payable Upon Execution of the Sales Agreement

There are no Guernsey taxes or duties payable upon executing an aircraft or engine sale agreement (including for the sale of an ownership interest in an entity) where the asset is either located physically in Guernsey or owned by a domestic party.

1.1.2 Enforceability Against Domestic Parties

Guernsey law has no formal legal requirement that a sale agreement must be translated, certified, notarised or legalised to be valid or enforceable against a domestic party; however, taking such steps is advisable to reduce the likelihood of an attempt to have the sale agreement set aside. To that end, at the least, witnessing of signatures is generally advisable.

1.2 Transfer of Ownership

1.2.1 Transferring Title

Guernsey's legislation does not set out formalities for the transfer of title to an aircraft or engine. It is customary for a bill of sale to be used, but this is not a Guernsey law requirement. Whether such a title transfer includes all installed parts (such as an AMD Accelerated Processing Unit (APU)) would depend on the terms of the contract.

If following the sale of the relevant ownership interest, the entity owning the legal title remains the same, no sale of the physical asset would occur. It should be noted that if the aircraft is registered on the Guernsey Aircraft Register (as defined in **1.2.4 Registration, Filing and/or Consent from Government Entities**), any change in particulars of the aircraft (including any change in beneficial or legal ownership) furnished to the Registrar (as defined in **1.2.4 Registration, Filing and/or Consent from Government Entities**)

at the time of first registration should be notified to the Registrar.

1.2.2 Sales Governed by English or New York Law

There is no formal legal requirement under Guernsey law that a bill of sale needs to be governed by Guernsey law for the Guernsey courts to recognise the transfer of title. There are no known specific requirements other than the general requirements for any contract to be substantively valid as a contract.

1.2.3 Enforceability Against Domestic Parties

There is no formal legal requirement under Guernsey law that the bill of sale must be translated, certified, notarised or legalised to be valid or enforceable against a domestic party; however, taking such steps will reduce the prospect of any subsequent challenge to the bill of sale.

1.2.4 Registration, Filing and/or Consent From Government Entities

There is no formal Guernsey law requirement to register or file a bill of sale with any Guernsey government entity or requirement to obtain consent from any government entity, except that a copy of the bill of sale will need to be provided to the Guernsey Aircraft Registry (the Registry) in respect of an aircraft registered or to be registered on the Guernsey Aircraft Register (the Aircraft Register).

For a new registration, registration commences by way of an initial application form completed via the Registry website. Thereafter, further information is provided to the Registry electronically and should include a copy of the bill of sale for the aircraft in favour of the registering owner.

If there is a change in ownership of a Guernsey-registered aircraft, the Registry must be notified

within 21 days, and a copy of the bill of sale for the aircraft should be provided as evidence of that change in ownership.

In each case, once all information has been provided to the Registry, the Aircraft Register can often be updated on the same day.

If a document is not provided in English, a translation of it in English must be provided unless waived by the Registrar of Aircraft (the Registrar).

No government applications or consents are required as a prerequisite to executing and delivering a bill of sale in relation to an aircraft or engine registered in Guernsey.

Assuming the bill of sale satisfies the requirements for registration as an “international interest” under the Cape Town Convention (as defined in **2.10 Cape Town Convention and Others**), such filings can be made in the International Registry (IR). See **2.10 Cape Town Convention and Others** with respect to the Cape Town Convention.

1.2.5 Taxes/Duties Payable Upon Execution of a Bill of Sale

See **1.1.1 Taxes/Duties Payable upon Execution of the Sales Agreement**. There are no Guernsey taxes or duties payable upon executing and/or delivering a bill of sale for an aircraft or engine or for consummating the sale of the ownership interest in an entity that owns an aircraft or engine, including where title to that aircraft or engine is transferred while it is:

- located in Guernsey;
- over international waters; or
- in transit to/from Guernsey.

2. Aircraft and Engine Leasing

2.1 Overview

2.1.1 Non-permissible Leases

Subject to the general legal principles of contract law, there are no types of operating/wet/finance leases or leases concerning only engines or parts that are not permissible or recognised in Guernsey, as far as is known.

2.1.2 Application of Foreign Laws

A lease involving either a domestic party or an asset situated in Guernsey can be governed by a foreign law. See 2.6.5 Domestic Courts' Approach to Foreign Laws and Judgments.

2.1.3 Restrictions Concerning Payments in US Dollars

There are no restrictions imposed on domestic lessees making rent payments to foreign lessors in US dollars.

2.1.4 Exchange Controls

There are currently no foreign exchange controls under Guernsey law.

2.1.5 Taxes/Duties Payable for Physical Execution of a Lease

No taxes/duties are payable for executing a lease physically in Guernsey or as a consequence of an original or copy of a lease being brought into Guernsey, either physically or electronically.

2.1.6 Licensing/Qualification of Lessors

There are no formal legal requirements under Guernsey law for lessors to be licensed or otherwise qualified in Guernsey to do business with a domestic lessee. However, in relation to finance leases only, a lessor who is either a Guernsey person or entity, or is conducting their financing leasing business "in or from within" Guernsey, will from 1 July 2023 likely need to obtain

a licence from the Guernsey Financial Services Commission in relation to their finance leasing activities (although an exemption is available in certain circumstances).

2.2 Lease Terms

2.2.1 Mandatory Terms for Leases Governed by English or New York Law

There are no mandatory terms that a lease (or ancillary documents thereto) is required to contain under Guernsey law other than the general requirements for any contract to be substantively valid. Assuming the lease is effective to create, within the meaning of the Cape Town Convention, "international interests" vested in the lessor with respect to the airframe and engines, IR filings can be made in respect of those interests. See 2.10 Cape Town Convention and Others with respect to the Cape Town Convention.

2.2.2 Tax and Withholding Gross-Up Provisions

Tax and other withholding gross-up provisions are permissible and enforceable in Guernsey, provided those provisions are permissible and enforceable pursuant to the governing law of the lease.

2.2.3 Parts Installed or Replaced After a Lease's Execution

A lease can cover parts installed or replaced on an aircraft or engine after its execution, and any steps to be taken would be a matter of the governing law of the lease.

2.2.4 Risk of Title Annexation

There is no known risk of title annexation specifically under Guernsey law; this will be a matter of the governing law of the lease and, potentially, the law of the place where the attachment of the engine to the airframe occurred if the two are different – conflicts of law principles would need

to be applied to the particular circumstances. It is common market practice for relevant parties to enter into contractual “recognition of rights” agreements with other interested parties when engines are installed on different airframes.

2.2.5 Recognition of the Concepts of Trust/Trustee

The concept of a trust is recognised in Guernsey; however, a trust does not have a separate legal personality, as might be the case in other jurisdictions, thus, ownership would be through the Trustee.

2.3 Lease Registration

2.3.1 Notation of Owner’s/Lessor’s Interests on Aircraft Register

The Aircraft Register is a register of registered owners and aircraft only, and the recording of details on the Aircraft Register does not determine priority between competing interests in the aircraft.

It is possible to register the aircraft in the name of:

- the owner of the aircraft; or
- the “charterer by demise” provided such a party is qualified to be the Registered Owner pursuant to the Aviation Registry (Guernsey) Law, 2013 (Aviation Registry Law), (referred to herein as a Registered Owner).

The categories of person that qualify to be Registered Owner of an aircraft are comprised of:

- the Crown in right of Her Majesty’s Government in the United Kingdom or in right of Guernsey;
- citizens of any Commonwealth country;

- nationals of any state belonging to the European Economic Area or European Free Trade Association state;
- legal persons registered in, or having their principal place of business in Brazil, Japan, the People’s Republic of China and South Africa provided only that the legal person primarily operates an aircraft leasing business;
- legal persons registered in, or having their principal place of business in the British Islands, the Commonwealth, an European Economic Area state or European Free Trade Association state, the United Arab Emirates or the United States of America;
- any natural or legal persons represented by a Resident Agent.

Full details of the requirements and eligibility for registration of aircraft on the Aircraft Register are set out in the Aviation Registry Law.

It is also possible to note the interests of other parties (such as the mortgagee) on the Aircraft Register.

2.3.2 Registration if the Owner Is Different From the Operator

The aircraft can be registered domestically in the name of a Registered Owner (see 3.1 Notation of Owner’s/Lessor’s Interests on Aircraft Register).

2.3.3 Aircraft/Engine-Specific Registers

In addition to the Aircraft Register, the Registrar maintains an Engines Register (the Engines Register). Only engines installed in the registered aircraft can be registered on the Engines Register.

2.3.4 Registration of Leases With the Domestic Aircraft Registry

There is no formal legal requirement for a lease to be registered with the Registry in relation to an

aircraft registered in Guernsey. However, experience shows that if an aircraft is to be registered in the name of its “charterer by demise”, the Registry will request a copy of the aircraft lease in support of the registration application.

Registration of a lease does not require consent from any government entity.

2.3.5 Requirements for a Lease to Be Valid and Registrable

An aircraft lease submitted to the Registry is not required to satisfy any formalities, although the Registry will ask for a lease in a language other than English to be accompanied by an English translation.

2.3.6 Taxes/Duties Payable for Registering a Lease

There are no Guernsey taxes or duties payable for registering a lease. Any fees payable to the Registry are for registration of the aircraft, not the lease.

2.3.7 Registration of Aircraft in Alternative Countries

This is not applicable in Guernsey.

2.3.8 Requirements for Documents Concerning Registration

The Registry requires certain know-your-customer documents to be certified as part of the legal and financial due diligence conducted during an application for registration of an aircraft. In addition, if any document provided is not in English, the Registry will require an English translation.

2.4 Lessor's Liabilities

2.4.1 Tax Requirements for a Foreign Lessor

There are no Guernsey income taxes, withholdings, levies, registration taxes, or other duties

or similar taxes or charges payable in connection with the leasing of an aircraft or engine to a domestic lessee, provided that the foreign lessor does not have a permanent establishment in Guernsey (leasing an aircraft to a domestic lessee does not itself create a Guernsey permanent establishment). Where foreign lessor does have a permanent establishment in Guernsey (to which the aircraft relates), then it will be subject to Guernsey income tax on the lease income at a rate of 0%.

2.4.2 Effects of Leasing on the Residence of a Foreign Lessor

A foreign lessor not already resident in Guernsey prior to its entry into a lease would not be deemed resident, domiciled, or carrying on a business in Guernsey by reason only of the execution, delivery, performance or enforcement of that lease.

2.4.3 Engine Maintenance and Operations

Aircraft or engine maintenance and operations will be governed by the contractual provisions of the lease agreement, responsibility for which will typically reside with the lessee. See **2.4.4 Damage or Loss Caused by an Asset** and **2.4.6 Priority of Third Parties' Rights**.

2.4.4 Damage or Loss Caused by an Asset

The owner of an aircraft could be subject to strict liability by virtue of Section 28 (2) of the Aviation (Bailiwick of Guernsey) Law, 2008 (Aviation Law), which provides that “where material loss or damage is caused to any person or property on land or water by, or by a person in, or an article or person falling from, an aircraft while in flight, taking off or landing, then unless the loss or damage was caused or contributed to by the negligence of the person by whom it was suffered, damages in respect of the loss or damage shall be recoverable without proof of negligence or intention or

other cause of action, as if the loss or damage had been caused by the wilful act, neglect, or default of the owner of the aircraft”.

Section 28(3) of the Aviation Law goes on to state that “Where material loss or damage is caused as aforesaid in circumstances in which (a) damages are recoverable in respect of the said loss or damage by virtue only of subsection (2), and (b) a legal liability is created in some person other than the owner to pay damages in respect of the said loss or damage, the owner shall be entitled to be indemnified by that other person against any claim in respect of the said loss or damage.”

As such, the owner can seek indemnification from the operator of the aircraft.

A passive owner will typically rely on the exemption under Section 28(4) of the Aviation Law. It states that if an owner has bona fide demised, let or hired out the aircraft for more than 14 days, and no member of the crew is employed by the owner, Section 28 shall have effect as if references to the owner are substituted with references to the person to whom the aircraft has been demised, let or hired out.

2.4.5 Attachment by Creditors

See 2.4.6 Priority of Third Parties’ Rights.

2.4.6 Priority of Third Parties’ Rights

Notwithstanding that there may be a security interest in the aircraft that has priority over other creditors pursuant to a security agreement, the following will take priority over any such security:

Statutory Liens

Under the Aviation Registry Law, preferred taxes and liens have priority over all charges over an aircraft asset. For the purposes of the Aviation

Registry Law, a preferred lien is a lien created under the Detention of Aircraft (Guernsey and Alderney) Law, 1994. Under the Detention of Aircraft (Guernsey and Alderney) Law, 1994, where default is made in the payment of airport fees incurred, in respect of an aircraft, at Guernsey Airport or Alderney Airport, the appropriate authority may, subject to the provisions of the law:

- detain, pending payment, the aircraft in respect of which the fees were incurred (whether or not the operator of the aircraft at the time when the detention begins); and
- if the fees are not paid within 56 days of the date when the detention begins, sell the aircraft, with the leave of the court, in order to satisfy the fees.

Preferred taxes refer to any taxes, fees or dues owed to the States of Guernsey in respect of that aircraft asset.

Other Liens

Guernsey does not recognise equitable liens; however, a lien over an aircraft or engine created under a contract such as a lease would generally be recognised. The possibility that a court in Guernsey would order a sale of an aircraft in connection with proceedings that consider the rights of a lien-holder with respect to that aircraft (who is the holder of a contractual or statutory lien) will turn on the particular circumstances and facts and, if applicable, terms of any relevant contracts.

2.5 Insurance and Reinsurance

2.5.1 Requirement to Engage Domestic Insurance Companies

It is not mandatory that either all or part of the insurances be placed with domestic insurance companies. Insurance is typically placed with

the international insurance markets in London and New York.

2.5.2 Mandatory Insurance Coverage Requirements

No mandatory insurance coverage requirements are imposed.

2.5.3 Placement of Insurances Outside of Jurisdiction

The question of insurance and reinsurance will depend on the requirements of the parties to the transaction and on the particular jurisdiction of the lessee in cases where that lessee is not a domestic lessee.

2.5.4 Enforceability of “Cut-Through” Clauses

Insurance documents are not usually governed by Guernsey law. There are no Guernsey statutory provisions relating to “cut-through” clauses. The Guernsey court would look to English common law principles (which are persuasive effect in the Guernsey Courts) if the contract was governed by local law or alternatively, would apply the governing law of the contract.

2.5.5 Assignment of Insurance/Reinsurance

Such arrangements are effective under Guernsey law, subject to general qualifications as to enforceability.

2.6 Lease Enforcement

2.6.1 Restrictions on Lessors’ Abilities

The Guernsey courts recognise self-help remedies and typically recognise and enforce contractual arrangements between the parties. However, it should be noted that, in most cases, the aircraft will not be located in Guernsey, and the governing law of the lease is unlikely to be governed by Guernsey law. General principles of enforceability will, therefore, determine the effectiveness of these actions under the gov-

erning law of the lease and in the jurisdiction in which the aircraft is located. Any sale of the aircraft would be subject to there being no third-party liens in place. See further 2.4.6 Priorities of Third Parties’ Rights in connection with any such third-party liens.

2.6.2 Lessor Taking Possession of the Aircraft

Enforcement will be determined by the provisions of the relevant lease agreement. If enforcement is contested, court proceedings may be required to resolve the dispute. Taking physical possession of the aircraft is permitted under Guernsey law, and self-help remedies are permitted without needing a court order. However, it is open to the relevant enforcing party to seek a court order if it considers it necessary, and in those circumstances, the Guernsey courts would recognise the self-help remedies.

2.6.3 Specific Courts for Aviation Disputes

There are no specific courts in Guernsey for aviation disputes; however, the Royal Court of Guernsey is the first instance court and has unlimited jurisdiction, so it is competent to hear aviation disputes. There have not been any reported cases of aviation disputes in Guernsey.

2.6.4 Summary Judgment or Other Relief

A lessor may be granted summary judgment and injunctive relief in Guernsey pending the final resolution of judicial proceedings to enforce an aircraft lease. A Guernsey court will issue summary judgment if the lessee has no real prospect of defending the proceedings successfully, and this can usually be sought and obtained within a few months. In respect of injunctive relief, this can also be obtained in Guernsey, and applications can be made on an urgent and ex parte basis in certain circumstances.

It is not possible to confirm exhaustively what conditions the Guernsey courts may impose on interlocutory relief; however, the courts may require security for costs or an undertaking to pay another party's damages.

2.6.5 Domestic Courts' Approach to Foreign Laws and Judgments

See 2.1.2 Application of Foreign Laws and 2.6.11 Lessees' Entitlement to Claim Immunity.

2.6.6 Domestic Courts' Recognition of Foreign Judgments/Awards

Where a creditor obtains a money judgment in foreign proceedings, the Guernsey court can recognise and enforce that judgment, either under the statute in the form of the Judgments (Reciprocal Enforcement) (Guernsey) Law 1957 or at common law. To enforce a judgment under the Judgments (Reciprocal Enforcement) (Guernsey) Law 1957, the judgment must be all of the following:

- the judgment of a Superior Court of a reciprocating country (currently England and Wales, the Isle of Man, Israel, Jersey, the Netherlands, Netherlands Antilles, Northern Ireland, the Republic of Italy, Scotland and Surinam);
- final and conclusive;
- for a sum of money other than in respect of taxes, fines or penalties;
- within the jurisdiction of the court of the reciprocating country to have granted; and
- must have brought the application for recognition within six years of the date of the judgment.

Judgments granted by courts other than in reciprocating countries must be sued as a civil debt, but ordinarily, an application for summary judgment can be made on the basis of the judg-

ment; thus, limited further examination of the matter will be required.

Guernsey will also recognise and enforce foreign arbitral awards without re-examining the case under the provisions of the Arbitration (Guernsey) Laws, 1982 and 2016. Once the Guernsey court has verified that due process has been followed, the award is final, and it would not be contrary to public policy to enforce the Award. Special provisions apply to the enforcement of New York Arbitration Awards under the Arbitration (Guernsey) Law 2016.

2.6.7 Judgments in Foreign Currencies

The Guernsey courts have jurisdiction to give judgment in the currency of the relevant obligation. See 2.6.6 Domestic Courts' Recognition of Foreign Judgments/Awards regarding foreign judgments.

2.6.8 Limitations on Lessors' Actions Following Termination

Any provision of the lease providing for the payment of additional monies consequent on the breach of any provision thereof, whether expressed by way of penalty, additional interest, liquidated damages or otherwise, may be unenforceable by the Guernsey courts or liable to be reduced if that additional payment were held to be excessive in so far as it unreasonably exceeds the maximum damages, which the lessee could have suffered as a result of such a breach. However, ordinarily, the Guernsey courts will respect the terms of the contractual documentation. After judgment, statutory judgment interest, which is currently 8%, will apply.

2.6.9 Lessor's Requirement to Pay Taxes/Fees

A lessor under an aircraft lease is not required to pay taxes in connection with the recognition

and enforcement of such a lease in Guernsey. If an aircraft registered on the Aircraft Register is to be deregistered, the aircraft account with the Registry will need to be settled, and it is possible that there would be unpaid charges payable to the Registry. The amount of these charges would depend on the specific facts and circumstances at the time. Regarding fees, it is not possible to estimate the costs of proceedings in the Guernsey courts to enforce a lease for a hypothetical case where the relevant facts are unknown.

2.6.10 Mandatory Notice Periods

The procedure for the termination of a lease is a matter to be determined by the terms agreed between the parties in that lease.

2.6.11 Lessees' Entitlement to Claim Immunity

Whether the lessee is entitled to claim any immunity from suit, execution, or other legal processes will depend on its actual identity. If the lessee is a sovereign body or another governmental organ (whether autonomous or quasi-autonomous), the lessee may be able to claim sovereign immunity, and if it is to waive that immunity, this must be clearly expressed in the documentation.

2.6.12 Enforcement of Foreign Arbitral Decisions

The 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention) was extended to Guernsey by way of ratification by the United Kingdom on 19 April 1985.

The Arbitration (Guernsey) Law, 1982 and Arbitration (Guernsey) Law, 2016 provide the regime for enforcement of domestic awards, convention, non-convention awards and interim measures.

2.6.13 Other Relevant Issues

There are no other relevant issues in Guernsey that a lessor should be aware in relation to the enforcement of its rights.

2.7 Lease Assignment/Novation

2.7.1 Recognition of the Concepts of Contractual Assignment and Novation

Guernsey law recognises the concepts of novation and contractual assignment.

2.7.2 Assignment/Novation of Leases Under Foreign Laws

Where a lessor is transferring its rights under an aircraft lease by way of assignment or otherwise, the consent of the lessee would not typically be required in respect of a Guernsey law-governed lease as long as the lessee is notified thereof.

The Guernsey courts will recognise and enforce an agreement in accordance with its terms, on the assumption that:

- the assignment and assumption or novation agreement is in a customary form and on customary market terms for an assignment and assumption or novation of an aircraft lease governed by English or New York law and is itself governed by the same law; and
- the agreement has been duly executed and delivered and, as a matter of the laws of all relevant jurisdictions, constitutes the legal, valid and binding obligations of each of the parties thereto enforceable in accordance with its terms and effective to achieve the intended novation.

There are no mandatory terms that Guernsey requires to be included in such agreements.

2.7.3 Enforceability of Lease Assignments/Novations

There is no formal legal requirement under Guernsey law that a lease assignment and assumption/novation agreement must be translated, certified, notarised or legalised to be valid and enforceable; however, doing so reduces the risk of later challenge, and translations will be required in any litigation before the Guernsey courts.

2.7.4 Filing/Registration of Lease Assignments/Novations

A copy of the lease should have been submitted to the Registry at the time of registration of the aircraft if the Registered Owner is a “charterer by demise” and any assignment and assumption or novation of the lease, which results in a change to this information, conveyed to the Registry within 21 days of the change.

There are no specific formalities, except that the Registry will ask for a document in a language other than English to be accompanied by an English translation.

There are no government applications or consents required as a pre-requisite to the execution and delivery of an aircraft and/or engine lease assignment and assumption/novation in relation to an aircraft registered domestically.

2.7.5 Taxes/Duties Payable on Assignment/Novation

There are no Guernsey taxes or duties payable upon the execution of an aircraft or engine sale agreement (including for the sale of an ownership interest in an entity) where the asset is either located physically in Guernsey or owned by a domestic party.

Guernsey does not levy any capital gains tax, so to the extent that the assignee is treated as realising a capital gain on assignment, there is no Guernsey tax on that gain. Where the assignee is resident in Guernsey or carrying on business in Guernsey through a permanent establishment (to which the aircraft relates), it will be subject to Guernsey income tax on any income arising on the assignment at the rate of 0%. We note, however, that in practice, the aircraft owning entity is not a Guernsey or domestic entity.

2.7.6 Recognition of Transfer of Ownership Interests

It is assumed that if legal title to the aircraft were to remain with the same entity, there would be no intention to novate/assign the lease. Note also that any change in the ownership particulars previously furnished to the Registrar should be notified to the Registry within 21 days of any such change (see also 1.2.1 Transferring Title and 2.7.4 Filing/Registration of Lease Assignments/Novations).

2.8 Aircraft Deregistration and Export

2.8.1 Deregistering Aircraft in This Jurisdiction

Section 16 of the Aviation Registry Law provides that where any person wishes for an aircraft to be removed from the Aircraft Register, an application must be submitted to the Registry. The application needs to state the reason for the removal and be accompanied by the consent of the Registered Owner and/or any chargee who has a charge registered against the Aircraft on the Charges Register. The application can be made by the Registered Owner or by any attorney appointed on its behalf.

Where an irrevocable deregistration and export request authorisation (IDERA) has been lodged with the Registry, the “authorised party” speci-

fied in the IDERA can procure the deregistration of the aircraft using the requisite form.

The Registrar shall honour a request for deregistration and export of the aircraft if:

- the request is properly submitted by the debtor under the registered IDERA; and
- the authorised party (ie, the creditor) certifies to the Registrar on request that all registered interests ranking in priority to that of the creditor have been discharged or that the holders of those interests have consented to the deregistration and export of the aircraft.

2.8.2 Lessee's/Operator's Consent

See 2.8.1 Deregistering Aircraft in this Jurisdiction. The Registrar does not require the consent of the operator of an aircraft (in its capacity as operator, ie, where the operator is not a Registered Owner) for deregistration of an aircraft.

2.8.3 Required Documentation

In order to deregister an aircraft, the Registry must receive a completed aircraft deregistration application together with the consent of the Registered Owner in respect of the aircraft, and all fees/invoices must be settled.

If an aircraft has a registered charge on the Charges Register, a charge discharge application form together with the chargee's consent to the deregistration and/or any relevant discharge documentation will be required by the Registrar before deregistration is permitted.

2.8.4 Duration of Deregistration Process

From the Registry's perspective, where all parties are co-operating, deregistration can typically be effected within one business day, provided all documentation is in place and submitted within business hours. The period for deregistration

where there is no co-operation from the parties cannot be estimated.

2.8.5 Aviation Authority's Assurances

See 2.8.4 Duration of Deregistration Process.

2.8.6 Costs, Fees and Taxes Relating to Deregistration

Deregistration fees are nominal: GBP250 for the deregistration of an aircraft. In addition, the aircraft account must be settled with the Registrar before the aircraft can be deregistered. See also 2.8.12 Aircraft Export Permits/Licences.

2.8.7 Deregistration Power of Attorney

There is no formal legal requirement under Guernsey law that, for a deregistration power of attorney to be enforced against a domestic party, it needs to be translated, certified, notarised, legalised or lodged in advance. It should be noted, however, that since the Cape Town Convention (defined below) came into force in Guernsey on 1 November 2015, the Registry typically receives and accepts IDERAs rather than deregistration powers of attorney.

2.8.8 Documents Required to Enforce Deregistration Power of Attorney

See 2.8.1 Deregistering Aircraft in this Jurisdiction, 2.8.3 Required Documentation and 2.8.7 Deregistration Power of Attorney.

2.8.9 Choice of Laws Governing Deregistration Power of Attorney

A deregistration power of attorney does not have to be governed by the laws of Guernsey; however, a translation will always be required if it is not in the English language.

2.8.10 Revocation of a Deregistration Power of Attorney

Under Guernsey law, a deregistration power of attorney granted to secure an obligation owed, typically to the finance parties, will be irrevocable until that obligation is discharged in accordance with its terms.

2.8.11 Owner's/Lessor's Consent

Aircraft registered on the Aircraft Register are usually located and operated outside of Guernsey. See also **2.8.1 Deregistering Aircraft in this Jurisdiction**, noting that the lessee/operator's consent is not required for deregistration where it is not the Registered Owner.

2.8.12 Aircraft Export Permits/Licences

See **2.8.1 Deregistering Aircraft in this Jurisdiction** and **2.8.3 Required Documentation**.

The Registry can issue an export certificate of airworthiness upon the applicant submitting the relevant application form. The aircraft has to be inspected before the issuance of an export certificate of airworthiness.

2.8.13 Costs, Fees and Taxes Concerning Export of Aircraft

See **2.8.6 Costs, Fees and Taxes Relating to Deregistration**. In addition, the fee payable to the Registry for an export certificate of airworthiness is GBP525. Additional fees for an airworthiness survey apply, which are calculated by reference to the maximum take-off weight of the aircraft to be deregistered.

2.8.14 Practical Issues Related to Deregistration of Aircraft

Other than the points previously discussed in **2.8 Aircraft Deregistration and Export**, there are no other known significant practical issues.

2.9 Insolvency Proceedings

2.9.1 Overview of Relevant Laws and Statutory Regimes Governing Restructurings, Reorganisations, Insolvencies and Liquidations

All formal insolvencies involving Guernsey companies are governed by the Companies (Guernsey) Law, 2008 (as amended). In January 2020, the States of Guernsey approved the Companies (Guernsey) Law, 2008 (Insolvency) (Amendment) Ordinance, 2020 and on 1 January 2023 the Ordinance came into effect. The Ordinance was drafted following a lengthy consultation with industry bodies and professionals and introduces a number of important changes and additions to the Companies (Guernsey) Law, 2008 (as amended) (see **4.2 Current Legislative Proposals**).

2.9.2 Overview of Relevant Types of Voluntary and Involuntary Restructurings, Reorganisations, Insolvencies and Receivership

The Royal Court of Guernsey has exclusive first-instance jurisdiction over insolvency matters in Guernsey. Appeals can be taken to the Guernsey Court of Appeal and, if permitted, to the Judicial Committee of the Privy Council.

Available procedures include:

- schemes of arrangement to effect an “in-court” restructuring;
- voluntary liquidation for solvent and insolvent companies;
- compulsory winding-up (including provisional liquidation);
- administration orders for companies that are insolvent or likely to become insolvent; and
- receivership orders in relation to a cell of a protected cell company.

2.9.3 Co-ordination, Recognition or Relief in Connection With Overseas Proceedings

The current position is that Section 426 of the UK Insolvency Act 1986 is extended to Guernsey (by an order of the Privy Council in 1989), meaning that the Guernsey court is mandated to provide reciprocal assistance to the courts of England and Wales, Scotland, Northern Ireland, the Isle of Man, and Jersey, and vice versa. The question of which law to apply to the assistance being sought is a question open to the Guernsey court: the law giving the courts discretion as to whether they should apply the law of the liquidator's jurisdiction or domestic law.

Insolvency office-holders from jurisdictions other than the British and Crown Dependency jurisdictions cannot use the Section 426 route because there is no reciprocity with Guernsey. To seek relief, they need to be recognised under the common law "sufficient connection" tests, and they must then bring the claims that they wish to bring against the Guernsey-based defendant.

Guernsey has not extended the scope of its insolvency regime to jurisdictions wider than the UK and the other Crown Dependencies. However, this may not matter given the reforms that recently came into effect (see **4.2 Current Legislative Proposals**), which give greater powers to foreign office-holders to seek recognition in Guernsey and to seek assets and information in the same way they would be able to do in their "home" jurisdictions.

2.9.4 Effect of Lessee's Insolvency on a Deregistration Power of Attorney

Assuming that a lessee has granted a deregistration power of attorney or IDERA to a lessor, owner or mortgagee of an aircraft, whether the liquidation of the lessee would make that power of attorney void or terminate it would depend on

the laws of the lessee's jurisdiction and other relevant laws, such as the laws that govern the power of attorney. If the lessee is incorporated in Guernsey and the power of attorney is governed by Guernsey law, an irrevocable deregistration power of attorney (when granted to secure an obligation owed, typically to the finance parties) will not be automatically revoked by the winding-up or dissolution of the lessee. In practice, however, it would not be expected that deregistration powers of attorney would be governed by Guernsey law, but rather they would have the same governing law as the other transaction documents (typically English, Irish or New York law).

2.9.5 Other Effects of a Lessee's Insolvency

Where a lessee has possession of the aircraft and is put into liquidation or administration in most cases, the lessee is not expected to be incorporated under the laws of Guernsey and, therefore, it is unlikely that the lessee would be subject to insolvency or administration proceedings in Guernsey. The local law in the lessee's jurisdiction of incorporation will govern any such proceedings.

Should the lease and the administration or insolvency proceedings be subject to Guernsey law, the following apply:

- if the lessee is placed into administration or liquidation, the lease would not be set aside automatically as a matter of Guernsey law. It may be terminated by either party if they are permitted to do so by the terms of the lease, and the liquidator may elect not to continue the terms of the lease;
- the Guernsey courts will typically recognise and enforce contractual arrangements such as lease-termination provisions (including those created under foreign laws) and self-

help remedies by which the lessor may take possession of the aircraft (subject to enforceability considerations under the governing law, the *lex situs* and other relevant laws). Note that the Aviation Registry Law permits taking possession of the aircraft without leave of the court; and

- as a matter of Guernsey law, leases do not transfer legal ownership from the lessor to the lessee; thus, the aircraft will not be deemed to form part of the lessee's property upon termination of the lease, and the right of possession reverts to the owner. Provided there is no stay of proceedings against the lessee, there ought not to be any prevention or delay in obtaining possession in the ordinary course of events.

2.9.6 Risks for a Lender if a Borrower, Guarantor or Security Provider Becomes Insolvent

The main risk for a lender if a borrower, a guarantor or an entity providing security becomes insolvent is that the lender will not be repaid in full. The lender may also incur certain costs in connection with enforcement, and there will be an inevitable delay in recovering funds (in whole or in part).

If the enforcement of security is not sufficient or if the guarantor is unable to repay the liabilities owed to the lender in full, the lender would then need to claim as an unsecured creditor for the remaining portion in the insolvency proceedings of the borrower and/or the guarantor.

2.9.7 Imposition of Moratoria in Connection With Insolvency Proceedings

In certain circumstances, a moratorium (or similar stay) may be imposed in connection with insolvency proceedings.

2.9.8 Liquidation of Domestic Lessees

A domestic lessee can be liquidated or placed in administration or receivership either through voluntary liquidation or pursuant to the Companies (Guernsey) Law 2008. An application may be made by the lessee company, any director, member or creditor, or any other interested party for the lessee to be wound up by the court and a liquidator appointed on the grounds that the company is unable to pay its debts. Under Guernsey law, the ability to pay debts is determined on a cash-flow basis (ie, the lessee is unable to pay its liabilities as they become due) and by proof of an unpaid debt (commonly evidenced by a statutory demand which has not been satisfied for 21 days).

There is no procedure available under Guernsey law to enable the Guernsey courts to appoint a receiver of assets situated in Guernsey. As a result, receivership is a contractual self-help remedy only available to secured creditors on the terms set out in the relevant charge or security document, and the appointment of a receiver must be made in accordance with the terms of the security document in order to be valid.

2.9.9 Ipso Facto Defaults

"Ipso facto" clauses are generally valid and enforceable under Guernsey law. In a contract governed by a foreign law, provided the clause was valid under the foreign governing law, Guernsey courts would be expected to give effect to the clause.

2.9.10 Impact of Domestic Lessees' Winding-Up

If the lessee is incorporated under the laws of Guernsey and enters into liquidation or administration proceedings in Guernsey, generally, one would expect that the terms of the lease would provide for the procedure for repossession of the

aircraft, remedies for loss of rent and provisions in respect of forfeit by the lessee of the security deposit and any maintenance reserves.

2.10 Cape Town Convention and Others

2.10.1 Conventions in Force

The Convention and the Protocol (together with the Cape Town Convention) have been in force in Guernsey since 1 November 2015, pursuant to the Aviation Registry (Interests in Aircraft) (Guernsey) (Ordinance), 2015 (as amended) (the Aviation Registry Ordinance).

Guernsey is not designated as an “entry point” pursuant to Article XIX of the Protocol.

Practice and procedure with respect to the interpretation and applicability of the Aviation Registry Ordinance and Aviation Registry Law (Aviation Laws) are still developing. The statements set forth herein are based on this firm’s interpretation of the Cape Town Convention and the Aviation Laws as of the date hereof, without the benefit of any precedent or established custom and practice.

2.10.2 Declarations Made Concerning Conventions

Declarations made under the Convention are in Articles 39(1), 39(4), 53 and 54(2). Declarations made under the Protocol are in Articles XXX(1), XXX(2), XXX(3).

2.10.3 Application of Article XIII of the Protocol on Matters Specific to Aircraft Equipment

Where a debtor has issued an IDERA, substantially in the form annexed to the Protocol, it may be submitted by email copy to the Registry. The Registry also now has a form of IDERA that must be completed.

2.10.4 Enforcement of Conventions

There is no known Guernsey case law enforcing the Cape Town Convention.

We understand that there is only one case where secured creditors have been assisted with the deregistration and export of aircraft from Guernsey pursuant to an IDERA granted. This appears to be the only example of IDERA deregistration/export post-implementation of the Cape Town Convention Guernsey.

The priority and effectiveness of a right or interest created by any document capable of registration within the meaning of and to the extent provided by the Cape Town Convention will, if Guernsey law applies, be determined in accordance with the Cape Town Convention.

2.10.5 Other Conventions

Guernsey is not a party to the 1948 Geneva Convention on the International Recognition of Rights in Aircraft nor to the 1933 Rome Convention on the Unification of Certain Rules relating to the Precautionary Arrest of Aircraft.

Guernsey is not a signatory to the 1999 Montreal Convention nor the 1944 Chicago Convention on International Civil Aviation.

3. Aircraft Debt Finance

3.1 Structuring

3.1.1 Restrictions on Lending and Borrowing

There are no restrictions on foreign lenders financing an aircraft locally or borrowers using the loan proceeds.

3.1.2 Effect of Exchange Controls or Government Consents

There are currently no foreign exchange controls or foreign exchange regulations under Guernsey law.

3.1.3 Granting of Security to Foreign Lenders

Typically, a Guernsey borrower would be a non-cellular company with limited liability, and there would be no restrictions on granting security to foreign lenders.

3.1.4 Downstream, Upstream and Cross-Stream Guarantees

Such guarantees are permissible under Guernsey law, provided the company granting those guarantees is permitted to do so under its memorandum and articles of incorporation. It is important to note that the directors of a Guernsey company have a fiduciary duty to act in the best interests of the company and, in doing so, must have regard for the interests of the members collectively. It is considered good practice to obtain the consent of the members where there is any question as to the corporate benefit of such guarantees.

3.1.5 Lenders' Share in Security Over Domestic SPVs

It is advisable for a lender to take share security over a domestic special-purpose vehicle (SPV) which owns the financed aircraft. To create valid security over the shares of a Guernsey company, a Guernsey law security interest agreement that complies with the Security Interests (Guernsey) Law, 1993, must be entered into in respect of the shares.

3.1.6 Negative Pledges

Negative pledge provisions are typically included in the security interest agreement over the

shares of a Guernsey company or in other financial documents.

3.1.7 Intercreditor Arrangements

There are no material restrictions or requirements imposed on intercreditor agreements under Guernsey law. Typically, intercreditor agreements are governed by English or New York law, depending on the governing law of the other transaction documents.

3.1.8 Syndicated Loans

Agency is a recognised concept under Guernsey law.

3.1.9 Debt Subordination

Subject to general qualifications as to enforceability, any method of subordination permitted by the transaction documents (usually governed by English or New York law) would be permissible and recognised under Guernsey law.

3.1.10 Transfer/Assignment of Debts Under Foreign Laws

Subject to general qualifications as to enforceability, the Guernsey courts would recognise as effective a New York law-governed or an English law-governed assignment that is effective under that law.

3.1.11 Usury/Interest Limitation Laws

Pursuant to legislation, a Guernsey court may reduce interest at a rate exceeding 10% where that rate is considered unreasonable in all the circumstances; however, that has rarely been pleaded in Guernsey and never in relation to a commercial arrangement since the legislation refers to a rate of interest, which would “expose them and their families to misery” thus suggesting that this law is only for the benefit of individuals.

3.2 Security

3.2.1 Typical Forms of Security and Recourse

Aviation finance transactions would typically be governed by English or New York law, and in most cases, the aircraft owning entity is not a Guernsey law entity. The security package tends to include a foreign-law aircraft mortgage, security assignments in respect of the lease, warranties and insurance proceeds, security over the shares in the aircraft owning entity and an IDERA.

Foreign-law mortgages compliant with the Convention and entered into after 1 November 2015 can be registered on the Charges Register in respect of a registered aircraft asset (registered aircraft and/or engine and spare parts) and, therefore, there is no need to enter into an additional Guernsey law charge. As a result, it is often the case that there is no Guernsey charge. To the extent that the aircraft owning entity is a Guernsey entity, Guernsey law security could be taken over the shares or other Guernsey situs assets of that entity by way of a Guernsey law security interest agreement.

A charge for the purposes of the Aviation Registry Law is “a prospective or actual interest in an aircraft asset (which extends to the proceeds thereof) granted by the chargor over an aircraft asset under an agreement in writing and which may be subrogated, subordinated, assigned or otherwise transferred”. In addition to a charge, a notice of intention to make an application to enter a charge of an aircraft asset in the Register, “a priority notice”, may also be entered in the Charges Register. Upon registration of the aircraft on the Aircraft Register and the charge on the Charges Register, the charge shall be deemed to have been registered at the time of registration of the priority notice.

3.2.2 Types of Security Not Available

There are no known restrictions under Guernsey law. See **3.2.1 Typical Forms of Security and Recourse**.

3.2.3 Trust/Trustee Concepts

See **2.2.5 Recognition of the Concepts of Trust/Trustee**.

3.2.4 Assignment of Rights to an Aircraft by a Borrower to a Security Trustee

Guernsey law does not restrict or prohibit any such assignment or mortgage.

3.2.5 Assignment of Rights and Benefits Without Attendant Obligations

A party may assign its rights and benefits under an agreement by way of security without entering into any arrangements to transfer its obligations under that agreement.

3.2.6 Choice of Foreign Law

A security assignment or guarantee does not have to be governed by the laws of Guernsey to be valid and enforceable in Guernsey. Subject to general qualifications as to enforceability, the courts of Guernsey would recognise as effective a New York law-governed or an English law-governed security assignment or guarantee that is effective under that law. See **3.4.3 Application of Foreign Laws**.

3.2.7 Formalities/Mandatory Terms to Create and Perfect Security Assignments

See **3.2.1 Typical Forms of Security and Recourse**. If governed by foreign law, the priority and perfection of any such security will be decided according to the relevant governing law of the collateral assigned pursuant to the security assignment. If, in the unlikely event, the assignment were to be under Guernsey law,

however, then we note the following Guernsey law formalities and requirements.

First, we note that there is no concept of equitable assignment under Guernsey law.

Second, with respect to an absolute assignment, Section 2 of the Law of Property (Miscellaneous Provisions) (Guernsey) Law, 1979, as amended, will apply to any legal assignment of a debt or other thing in action. Under that section, the basic requirements for a legal assignment to be effectual are that:

- the assignment is by writing under the hand of the assignor or any person authorised in writing by the assignor to act on his behalf; and
- express notice in writing of the assignment must be served on the debtor, trustee or other person from whom the assignor would have been entitled to claim the debt or other thing in action.

There is no formal legal requirement under Guernsey law that a security assignment must be translated, certified, notarised or legalised to be valid or enforceable.

3.2.8 Domestic Law Security Instruments

No additional domestic law security instruments will be needed. With respect to IR filings, where the security assignment creates a registrable “international interest” under the Cape Town Convention, that international interest in respect of the aircraft may be recorded on the IR established under the Cape Town Convention. No additional registrations or filings are required in relation to a security instrument in Guernsey, except as mentioned in **3.2.9 Domestic Registration of Security Assignments Governed by Foreign Laws**.

3.2.9 Domestic Registration of Security Assignments Governed by Foreign Laws

There is no requirement to file the security assignment in any register in Guernsey.

3.2.10 Transfer of Security Interests Over Aircraft/Engines

See **3.2.11 Effect of Changes in the Identity of Secured Parties**.

3.2.11 Effect of Changes in the Identity of Secured Parties

This is a question to be determined as a matter of the governing law of the security assignment. As a matter of Guernsey law, and on the understanding that the security interest would be granted to a security trustee, in so far as the security trustee does not change, the security interest should not be discharged as a result of a change to the secured parties (other than the security trustee itself).

3.2.12 “Parallel Debt” Structures

See **2.2.5 Recognition of the Concepts of Trust/Trustee** and **3.2.3 Trust/Trustee Concepts**.

3.2.13 Effect of Security Assignments on Residence of Secured Parties

A security trustee or other secured creditor not already resident in Guernsey prior to its entry into a security assignment would not be deemed resident, domiciled or carrying on business in Guernsey by reason only of the execution, delivery, performance or enforcement of such a security assignment.

3.2.14 Perfection of Domestic Law Mortgages

See **3.2.1 Typical Forms of Security and Recourse**. Typically, mortgages over aircraft are governed by English or New York law. If such a mortgage is over an aircraft registered on the Guernsey register, the mortgage can be

registered on the Charges Register in accordance with the Aviation Registry Law. Once the mortgage is registered on the Charges Register, all persons shall at all times be taken to have express notice of all facts appearing in the Charges Register; however, the registration of a mortgage shall not be evidence of its validity. As previously noted, it is possible to file a priority notice with the Registry prior to the entry of the mortgage on the Charges Register.

Assuming that the mortgage satisfies the requirements for classification as an “international interest” pursuant to the Cape Town Convention, IR filings can be made in respect of that mortgage.

3.2.15 Differences Between Security Over Aircraft and Spare Engines

There is no difference between the form of security (or perfection) taken over an aircraft and that taken over spare engines.

3.2.16 Form and Perfection of Security Over Bank Accounts

An account charge would typically be taken over a bank account located outside of Guernsey.

If, however, security is required over a Guernsey bank account, a Guernsey law security interest agreement would need to be granted by the debtor over the bank account in compliance with the Security Interests (Guernsey) Law, 1993. To perfect such a security, notice must be given to the account bank. Acknowledgement of that notice by the account bank should be obtained as a matter of best practice, but a failure to do so would not affect the perfection of the security.

3.3 Liens

3.3.1 Third-Party Liens

See 2.4.6 Priority of Third Parties’ Rights.

3.3.2 Timeframe to Discharge a Lien or Mortgage

The effective time for the discharge will depend on the terms of the discharge document.

The cancellation of the registration of the mortgage on the Charges Register will be effective from the time the Registry confirms that the entry in respect of the mortgage has been removed from the Charges Register.

3.3.3 Register of Mortgages and Charges

The Registry maintains a Charges Register. A registered charge is given statutory priority over subsequently registered charges and unregistered charges.

3.3.4 Statutory Rights of Detention or Non-consensual Preferential Liens

See 2.4.6 Priority of Third Parties’ Rights.

3.3.5 Verification of an Aircraft’s Freedom From Encumbrances

In order to verify that an aircraft is free of encumbrances, a potential purchaser of an aircraft can search the Charges Register maintained by the Registry for aircraft registered on the Aircraft Register. This can be done physically or by requesting an extract of the Charges Register for a fee.

3.4 Enforcement

3.4.1 Differences Between Enforcing Security Assignments, Loans and Guarantees

Enforcement of a security assignment, as opposed to a loan or a guarantee, will depend on the terms of each of these instruments.

3.4.2 Security Trustees’ Enforcement of Their Rights

Subject to certain limited qualifications, the courts of Guernsey should recognise as effective

a foreign law-governed security assignment that is effective under that law to create an assignment by way of security of the relevant rights and benefits under a lease agreement.

3.4.3 Application of Foreign Laws

Generally, the Guernsey courts will uphold a foreign law as the governing law of a finance or security document and the submission to a foreign jurisdiction.

3.4.4 Recognition and Enforcement of Foreign Judgments and Arbitral Awards

See 2.6.6 Domestic Courts' Recognition of Foreign Judgments/Awards with respect to foreign judgments.

See 2.6.12 Enforcement of Foreign Arbitral Decisions with respect to arbitral awards.

3.4.5 Secured Parties' Right to Take Possession of Aircraft

Enforcement will be determined by the provisions of the relevant security agreement. As per 2.6.2 Lessor Taking Possession of the Aircraft, a Guernsey court will recognise self-help remedies for enforcement of security interests over the aircraft and/or enforcement of security interests over the shares in a Guernsey company claiming title to the aircraft. The Registry will also typically deal directly with the beneficiary of an IDERA to effect deregistration. See also 2.6.3 Specific Courts for Aviation Disputes.

3.4.6 Domestic Courts Competent to Decide on Enforcement Actions

See 2.6.3 Specific Courts for Aviation Disputes.

3.4.7 Summary Judgments or Other Relief

See 2.6.4 Summary Judgment or Other Relief.

3.4.8 Judgments in Foreign Currencies

See 2.6.6 Domestic Courts' Recognition of Foreign Judgments and 2.6.7 Judgments in Foreign Currencies.

3.4.9 Taxes/Fees Payable

A secured party is not required to pay taxes or fees in connection with the enforcement of a security agreement/aircraft mortgage other than the usual costs of, eg, court enforcement procedures.

3.4.10 Other Relevant Issues

There are no other relevant issues from a Guernsey law perspective that a lender should be aware in relation to the enforcement of its rights.

4. Other Issues of Note

4.1 Issues Relevant to Domestic Purchase, Sale, Lease or Debt Finance of Aircraft

There are no other material issues and/or any material court judgments that are relevant to the purchase, sale, lease or debt finance of an aircraft registered domestically and/or involving a domestic party.

4.2 Current Legislative Proposals

No current proposals before the legislature relating to the issues discussed here would alter them or be worth noting.

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