

Aviation Finance & Leasing 2014

Contributing editor:
Mark Bisset
Clyde & Co LLP

Getting the Deal Through is delighted to publish the first edition of *Aviation Finance & Leasing 2014*, a new volume in our series of annual reports, which provide international analysis in key areas of law and policy.

Following the format adopted throughout the series, the same key questions are answered by leading practitioners in each of the 25 jurisdictions featured.

Every effort has been made to ensure that matters of concern to readers are covered. However, specific legal advice should always be sought from experienced local advisers. *Getting the Deal Through* publications are updated annually in print. Please ensure you are always referring to the latest print edition or to the online version at www.GettingTheDealThrough.com.

Getting the Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. *Getting the Deal Through* would also like to extend special thanks to contributing editor Mark Bisset of Clyde & Co LLP for his assistance in devising and editing this volume.

Getting the Deal Through

London
June 2014

Global Overview	3	England & Wales	58
Mark Bisset Clyde & Co LLP		Mark Bisset Clyde & Co LLP	
Aircraft Mortgages - English Law or New York Law?	6	France	63
Thomas A Zimmer and Dominic Pearson Pillsbury Winthrop Shaw Pittman LLP		Edward Campbell Stephenson Harwood AARPI	
Argentina	8	Germany	70
María Laura Maciel and Rogelio N Maciel Maciel, Norman & Asociados		Ulrich Stepler and Katja Helen Brecke Arnecke Siebold Rechtsanwälte	
Austria	14	India	77
Christoph Wildmoser Herbst Kinsky Rechtsanwälte		Ashwin Ramanathan, Nithya Narayanan, Aayush Misra and Manish Jha AZB & Partners	
Belgium	18	Ireland	83
Giulia Mauri Verhaegen Walravens		Hilary Marren and Joe Fay McCann FitzGerald	
Brazil	24	Korea	90
Kenneth Basch Basch & Rameh		Young Kyun Cho, Young Min Kim and Robert L Gilbert Kim & Chang	
Canada	30	Malta	95
Donald G Gray and Jason MacIntyre Blake, Cassels & Graydon LLP		Malcolm Falzon, Steven Decesare and Tara Cann-Navarro Camilleri Preziosi	
Cayman Islands	37	Mexico	102
Matthew Stocker Conyers Dill & Pearman (Cayman) Limited		Javier Alegre and Carlos Campillo Alegre, Calderón y Márquez Abogados	
China	42	Netherlands	107
Liu Yi Beijing Run Ming Law Office		Berend Crans and Thijs Elseman De Brauw Blackstone Westbroek NV	
Dominican Republic	49		
Maria Esther Fernandez A de Pou and Raul E Rodríguez Pereyra Russin Vecchi & Heredia Bonetti			

Publisher
Gideon Robertson
gideon.roberton@lbresearch.com

Subscriptions
Rachel Nurse
subscriptions@gettingthedealthrough.com

Business development managers
George Ingledew
george.ingledew@lbresearch.com

Alan Lee
alan.lee@lbresearch.com

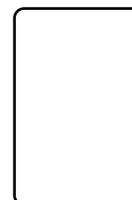
Dan White
dan.white@lbresearch.com



Published by
Law Business Research Ltd
87 Lancaster Road
London, W11 1QQ, UK
Tel: +44 20 7908 1188
Fax: +44 20 7229 6910
© Law Business Research Ltd 2014
No photocopying: copyright licences do not apply.
First published 2014
ISSN 2055-7256

The information provided in this publication is general and may not apply in a specific situation. Legal advice should always be sought before taking any legal action based on the information provided. This information is not intended to create, nor does receipt of it constitute, a lawyer-client relationship. The publishers and authors accept no responsibility for any acts or omissions contained herein. Although the information provided is accurate as of June 2014, be advised that this is a developing area.

Printed and distributed by
Encompass Print Solutions
Tel: 0844 2480 112



CONTENTS

Nigeria	114	Portugal	134	Switzerland	154
L Fubara Anga and Chinanu Osuji ÆLEX		Luís Soares de Sousa Cuatrecasas, Gonçalves Pereira		Frédéric Meyer, Raphaël Baeriswyl, Philippe Renz and Antoine Labaume Meyer Avocats	
Oman	119	Russia	142	United States	160
Mansoor Malik and Nathaniel Armstrong Al Busaidy, Mansoor Jamal & Co		Victoria Bortkevicha and Evgeniya Armstrong Clifford Chance CIS Limited		Thomas A Zimmer Pillsbury Winthrop Shaw Pittman LLP	
Panama	128	Sweden	148		
Maria de Lourdes Marengo Patton, Moreno & Asvat		Fredrik Wilkens, Emma Stuart-Beck and Malin Sund Advokatfirman Vinge			

Dominican Republic

Maria Esther Fernandez A de Pou and Raul E Rodríguez Pereyra

Russin Vecchi & Heredia Bonetti

Overview

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

The Dominican Republic is a party to the following major air law treaties:

- the Warsaw Convention for the Unification of Certain Rules Relating to International Carriage by Air, dated 12 October 1929, and the Hague Protocol modifying said convention, dated 28 September 1955; in both cases, ratified on 25 February 1972 and in force since 25 May 1972;
- the Rome Convention on Damage Caused by Foreign Aircraft to Third Parties on the Surface, dated 7 October 7 1952, to which it is one of the original signatories, but has not yet ratified;
- the Chicago Convention on International Civil Aviation, dated 7 December 1944, ratified on 25 January 1946 and in force since 4 April 1947. Protocols have been ratified regarding article 45 on 28 December 1954; articles 48(a), 49(e) and 61 on 28 December 1954; article 50(a) on 24 November 1961; article 50(a) on 2 October 2 1976; article 56 on 30 May 1972; article 83bis on 21 March 2006; article 93bis; and the Authentic Quinquelingual Text, with reservation, on 29 September 1995. All of these articles are in force with the exception of the last;
- the Geneva Convention on the International Recognition of Rights in Aircraft, dated 19 June 1948, to which it is one of the original signatories, but has not yet ratified;
- the Montreal Convention for the Unification of Certain Rules for International Carriage by Air, dated 28 May 1999, ratified on 21 September 2007;
- the Tokyo Convention on Offences and Certain Other Acts Committed on Board Aircraft, dated 14 September 1963, ratified on 3 December 1970;
- the Hague Convention for the Suppression of Unlawful Seizure of Aircraft, dated 16 December 1970, ratified on 22 June 1978;
- the Montreal Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, dated 23 November 1971, ratified on 28 November 1973, although it has not ratified its Supplementary Protocol dated 24 February 1988;
- the Montreal Convention on the Marking of Plastic Explosives for the Purpose of Detection, dated 1 March 1991, ratified on 9 March 2011;
- the Beijing Convention on the Suppression of Unlawful Acts Relating to International Civil Aviation, dated 10 September 2010, ratified on 27 November 2012. The Supplementary Protocol of the same date was ratified on 22 March 2013. Neither have entered into force.

The Dominican Republic has neither signed nor ratified:

- the Rome Convention for the Unification of Certain Rules Relating to the Precautionary Arrest of Aircraft, dated 29 May 1933; or

- the Cape Town Convention on International Interests in Mobile Equipment, dated 16 November 2001.

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

In addition to the generally applicable provisions contained in the Civil and Commercial Codes, the key domestic statute applicable to aviation-related finance, leasing and property in general is Civil Aviation Law No. 491-06, dated 22 December 2006, as amended by Law No. 67-13, dated 24 April 2013 (the Civil Aviation Law).

- 3 Are there any restrictions on choice-of-law clauses in contracts to the transfer of interests in or creation of security over aircraft? If parties are not free to specify the applicable law, is the law of the place where the aircraft is located or where it is registered the relevant applicable law?

While the choice of foreign law by the parties is not expressly prohibited, a distinction must be made between the law of perfecting the mortgage and the law of its enforcement procedure. As to the law of perfecting title or security interest over aircraft in the Dominican Republic, Dominican law must govern.

Pursuant to section 47.7(c) of Dominican Aeronautical Regulation RAD-47 (RAD-47), all documents through which title or security interest over locally registered aircraft are incorporated, transferred or modified must be executed before a Dominican notary public, be it as an authentic act declared before and drafted by the notary public or a privately drafted document executed before and certified by said notary public.

In the specific case of mortgage agreements, these can only be incorporated via authentic act, declared before and drafted by a notary public in the presence of two witnesses as per the specific standards provided for under Dominican law.

Concerning the law that will govern the procedure for its enforcement, assuming that such a choice was valid under the applicable foreign laws and not contrary to public order, Dominican courts will, in principle, uphold such a clause.

Title transfer

- 4 How is title in an aircraft transferred?

With regards to transfer, two scenarios must be taken into account:

- transfer of locally registered aircraft; and
- transfer of aircraft registered abroad.

On one hand, pursuant to articles 92 et seq of the Civil Aviation Law and section 47.7 of RAD-47, title in locally registered aircraft is transferred via notification of the corresponding transfer contract before the National Aircraft Registry (RNA), which is under the purview of the Dominican Institute for Civil Aviation (IDAC), an autonomous public entity created by the Civil Aviation Law and

responsible for the supervision and control of civil aviation in the Dominican Republic. Upon registration, IDAC proceeds to issue a registration document in favour of the new proprietor. The corresponding documentation must be registered before IDAC and the RNA within 10 days of their execution pursuant to section 47.7(g) of RAD-47.

On the other hand, while Dominican law does not regulate the transfer of aircraft registered abroad, it does require that documents executed abroad comply with minimum requirements in order to be considered valid in the Dominican Republic. In this sense, transfer or title documentation related to aircraft being imported to the Dominican Republic for the purposes of local registration need to comply with the following requirements:

- it must be valid pursuant to the laws of the jurisdiction of origin;
- it must be duly apostilled or certified by consular authorities as applicable; and
- if it is drafted in a language other than Spanish, it must be accompanied by a Spanish translation certified by a locally accredited judicial interpreter.

Additionally, to the extent that the seller of such aircraft is registered in the Dominican Republic as an air operator and the sold aircraft is registered in its corresponding operations specifications (OpSpecs), it would have to declare to IDAC that it no longer owns said aircraft and request that it be excluded from its OpSpecs. Likewise, the buyer, to the extent that it is locally registered as an air operator, will have to update its OpSpecs correspondingly before IDAC in order to operate said aircraft in the Dominican Republic.

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

As with question 4, this matter must be looked at from the standpoint of both locally registered aircraft and aircraft registered abroad. Pursuant to section 47.7(c) of RAD-47, to the extent that any such transfer document pertains to locally registered aircraft, it must be executed before a Dominican notary public, which in turn entails that said document be signed in the Dominican Republic. It may take the form of an authentic act, declared before and drafted by the acting notary public in question, or a privately drafted agreement, executed in the notary public's presence and certified as such.

Pursuant to section 47.7(p) of RAD-47, the acting notary public's signature would need to be certified by the Office of the Attorney General prior to filing before IDAC. Given that it is technically possible for a privately drafted document to be generated in a language other than Spanish even if it is locally executed and notarised, such a document would have to be accompanied by a Spanish translation certified by a locally accredited judicial interpreter, whose signature would also require certification by the Office of the Attorney General.

Schedule A, section 1 of RAD-47 requires that all locally generated transfer documents be recorded before the corresponding Civil Registrar's Office prior to registration before the RNA.

With regards to any transfer or title documentation required in order to record an aircraft registered abroad under a locally registered air operator's OpSpecs, said documentation would need to comply with the same requirements set forth for documents executed abroad (see question 4).

We note that these requirements would also apply to any and all support documentation filed with regards to any request being made before IDAC. Additionally, pursuant to section 47.11 of RAD-47, any requests made before IDAC regarding the RNA as well as any documentation filed in support of said requests, must be physically signed, in ink, by a duly authorised representative of the requesting party.

Registration of aircraft ownership and lease interests

6 Identify and describe the aircraft registry.

Pursuant to articles 85 and 92 of the Civil Aviation Law, the RNA, administered and maintained by IDAC, is a system whose purpose is to record all Dominican aircraft; that is, aircraft owned by either: Dominican individuals or corporations; foreign individuals or corporations that have established domicile in the Dominican Republic; or the Dominican State. The RNA includes:

- nationality and registration marks and adequate specifications for the purposes of identifying individual aircraft;
- titles or instruments that incorporate, transfer, recognise, modify, extinguish or in any way affect the rights over an aircraft or aircraft engine that is being used or is intended to be used in Dominican aircraft;
- judicial decisions that recognise, transfer, modify or extinguish property over aircraft or liens over aircraft, aircraft engines, etc;
- foreclosures, injunctions or any other preventative or cautionary measures that may affect aircraft;
- contracts for the use of aircraft;
- cessations in the activities of aircraft;
- disabling or loss of aircraft and any substantial modifications that aircraft may be subject to;
- documentation regarding the owners of Dominican aircraft;
- insurance policies over aircraft or aircraft engines; and
- any event or document that may alter or be linked to an aircraft's legal status.

As confirmed under RAD-47, the information contained in the RNA is in the public record, and may be requested by third parties.

7 Can an ownership or lease interest in, or lease agreement over, aircraft be registered with the aircraft registry? Are there limitations on who can be recorded as owner? Can an ownership interest be registered with any other registry? Can owners', operators' and lessees' interests in aircraft engines be registered?

As indicated above, ownership or lease interests or lease agreements over aircraft can be registered with the RNA. In this sense, the concept of 'owner' statutorily encompasses:

- Dominican individuals or corporations;
- foreign individuals or corporations that have established domicile in the Dominican Republic;
- the Dominican State; or
- persons with a legitimate interest over the corresponding aircraft, aircraft engine or individual parts (lessees, creditors, guarantors, etc).

Interests over aircraft engines are also subject to registration before the RNA. We note that, pursuant to article 1(jj) of the Civil Aviation Law, the concept of aircraft engine includes:

- engines being used in aircraft;
- engines that are intended to be used in aircraft; and
- individual parts of said engines, excluding propellers.

Aircraft registered in another state may obtain registration in the RNA upon cancellation of the prior registration.

8 Summarise the process to register an ownership interest.

The registration of ownership interests is carried out via written request addressed to the General Director of IDAC. Supporting documentation must necessarily include:

- personal identification document (ID) of the petitioner, if a national individual;

- where the petitioner is a foreign individual, he or she must have his or her residence or domicile in the Dominican Republic;
- where the petitioner is a corporation, it must submit copies of its current valid Mercantile Registry and its corporate bylaws, duly registered before the Mercantile Registry via the Chamber of Commerce for petitioner’s domicile. To the extent that the bylaws do not expressly provide for it, express corporate authorisation as contemplated under the bylaws must be provided for the representative signing the request and for the specific task being requested, also duly registered before the corresponding Chamber of Commerce;
- hold title or possess an instrument asserting its ownership of the aircraft. This must comply with all legal requirements respecting its validity (see question 5);
- a completed form IDAC 2000–24, from the Airworthiness Department;
- a Certificate of Airworthiness for the aircraft seeking to be registered;
- a Certificate of Export for the aircraft, in the event that it comes from a foreign country;
- whenever applicable, a Certificate of Deregistration of the aircraft issued by the state of last registration of the aircraft in question;
- original certificates of the aircraft insurance policies taken out by the aircraft’s owner covering the established legal amounts (50,000 Dominican pesos for injuries to passengers and crew and 300,000 Dominican pesos for injuries to third parties on the ground);
- payment of all corresponding fees which are collected administratively by IDAC;
- receipts showing payment of all applicable Dominican taxes and fees; and
- whenever the owner of the aircraft is an individual, he or she must provide a certificate indicating the absence of criminal record, issued by the national police. Corporations must provide this certification with regard to its shareholders.

While the request itself would not require notarisation or certification, supporting documentation would require it as indicated in question 5. This includes any necessary certified translations to the extent that the documents in question are drafted in a language other than Spanish.

Type of aircraft	Certificate cost (Dominican pesos)
Private aircraft, one to five passengers	100
Private aircraft, five or more passengers	150
Commercial aircraft, one to nine passengers	250
Commercial aircraft, 10–20 passengers	500
Commercial aircraft, 21–45 passengers	750
Commercial aircraft, 46 or more passengers	1000
Training aircraft	50
Aircraft for aerial works	100

In addition to IDAC’s service fees of 100 Dominican pesos and the yearly cost of the corresponding Certificate of Airworthiness pursuant to the table included above, there are costs associated to the request as a result of notarisations, certifications and apostilles that may be required as applicable.

The cost per document for each of these related services tends to be relatively small (less than US\$100). There is, however, one notable exception in the specific case of locally-generated transfer documents.

The required prior registration before the Civil Registrar’s Office entails administrative and tax costs of approximately 2 per cent of the sums involved in the corresponding document.

Unless otherwise specified, the owner of an aircraft is presumed to have title over said aircraft’s engine. As indicated in question 7, the interests of third parties over said engine may be registered separately. Registration requests before IDAC have an average processing time of 15 calendar days. The fees referenced herein are current as of the date of publication but are subject to change as is the prerogative of the corresponding authorities.

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

The effect of registration is declaratory in nature, establishing legal presumption of the registered owner’s liability with regards to statutory and regulatory obligations stemming from the operation of the aircraft in question or any damages caused by it. It also provides prima facie, not definitive, evidence of ownership. Pursuant to article 91 of the Civil Aviation Law, registration of an ownership interest in the RNA does not represent proof of title and may be challenged in the event of absence of or defective title.

10 Summarise the process to register a lease interest.

The registration of lease interests over locally-registered aircraft is carried out via written request addressed to the General Director of IDAC. Supporting documentation must include:

- a personal identification document (ID) of the petitioner, if a national individual;
- where the petitioner is a foreign individual, he or she must have his or her residence or domicile in the Dominican Republic;
- where the petitioner is a corporation, it must submit copies of its current valid Mercantile Registry and its corporate bylaws, duly registered before the Mercantile Registry via the Chamber of Commerce for petitioner’s domicile. To the extent the bylaws do not expressly provide for it, express corporate authorisation as contemplated under the bylaws must be provided for the representative signing the request and for the specific task being requested, also duly registered before the corresponding Chamber of Commerce;
- possession of an instrument asserting lease interest over the aircraft. This must comply with all legal requirements respecting its validity (see question 5);
- payment of all corresponding fees which are collected administratively by IDAC;
- receipts of having paid all applicable Dominican taxes and fees; and
- whenever the owner of the aircraft is an individual, he or she must provide a certificate indicating the absence of criminal record, issued by the national police. Corporations must provide this certification with regard to their shareholders.

While the request itself would not require notarisation or certification, supporting documentation would require it as indicated in question 5 above, including any necessary certified translations to the extent that the documents in question are drafted in a language other than Spanish.

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

Pursuant to article 86 of the Civil Aviation Law, the General Director of IDAC shall issue registration certificates in favour of eligible owners that successfully obtain registration. The registration certificate includes the following information with regard to the aircraft in question:

- nationality and registration marks;
- manufacturer and model;
- serial number;
- owner's name and domicile;
- date of issue;
- signature of the certificate's issuer; and
- any other information deemed relevant to IDAC.

Registration certificates do not include fields expressly dedicated to liens or mortgage interests over the registered aircraft. And although this information may be included in registration certificates under the label of 'relevant information', it is generally not the case. Nevertheless, this information is in the public domain and may be requested from IDAC by third parties with regard to specific aircraft. We note that registration certificates are not issued with regards to aircraft engines or spare parts, although certifications of ownership may be requested from IDAC on a case-by-case basis.

- 12** Is an owner or mortgagee required to consent to any deregistration or export of the aircraft? Must the aviation authority give notice? Can the operator block any proposed deregistration or export by an owner or mortgagee?

Pursuant to Schedule A of RAD-47, deregistration or export of registered aircraft requires either evidence of the cancellation of any registered liens; or the express, written consent of the person or entity in whose favour the lien in question was established. Applicable statutes and regulations do not expressly require IDAC to give notice of any such requests to potentially interested parties.

Pursuant to article 232 of the Civil Aviation Law, an interested party may oppose the amendment, suspension or cancellation of a registration certificate via written protest addressed to the Civil Aviation Board, an advisory entity to the executive branch which oversees IDAC's activities.

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

The corresponding party is free to provide power of attorney for the purposes of deregistration or export. Such a power of attorney is generally required to make express mention of the authorised task before which entities said task would be carried out, although local authorities reserve the right to request that these powers of attorney comply with specific guidelines on a case-by-case basis.

These powers of attorney may be revoked by one of two means:

- express revocation via written document indicating said revocation, and its extent; and
- tacit revocation, via new power of attorney indicating a different attorney-in-fact. Such a power may be granted to more than one attorney insofar as the multiple attorneys are contemplated via a single document; additional documents would only result in tacit revocation of prior powers granted.

Assuming said power of attorney contains the necessary consents (see question above) and does not condition deregistration or export in any way, the person granted proxy would be able to carry out said deregistration or export as long as he or she has the required support documentation.

The power of attorney itself would not, in principle, be affected by the grantor's insolvency per se. Any deregistration or amendment carried out via that power of attorney would still be subject to opposition by third party, however, and if insolvency were to lead to a transfer in property, that transfer in property would indeed invalidate powers of attorney granted by the prior owner.

- 14** If the Cape Town Convention is in effect in the jurisdiction, describe any notable features of the irrevocable deregistration and export request authorisation (IDERA) process.

As indicated in question 1, the Dominican Republic is not a party to the Cape Town Convention on International Interests in Mobile Equipment dated 16 November 2001.

Security

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

Pursuant to articles 93, 103 and 104 of the Civil Aviation Law, notwithstanding the fact that they are moveable property, aircraft and aircraft engines are subject to mortgage as provided under the Civil Code for real estate. As a result, the corresponding documents must be authentic acts, declared before and drafted by Dominican notary public and drafted in Spanish.

Pursuant to article 2132 of the Civil Code, the secured amount must be included in the mortgage document itself in order for it to be deemed valid for registration. While the economic terms of the deal do not have to be expressly included, it is recommendable to include reference to the corresponding loan document (eg, loan agreement executed on *n* date by the parties) in order to more readily ensure the application of relevant provisions in a potential foreclosure.

Other security interests that may be recorded over aircraft or aircraft engines in the National Aircraft Registry are privileges and seizures. Pursuant to articles 102 and 105 of the Civil Aviation Law, the following are privileged creditor rights that may directly encumber registered aircraft as a result of the corresponding certified court order:

- fees and duties on air transport;
- attorneys' fees and court costs;
- sums owed to the prior owner of registered aircraft; and
- due salaries and severance payments.

- 16** What are the documentary formalities for creation of an enforceable security over an aircraft? What are the documentary costs?

Depending on the type of security in question, different formal requirements will apply. As mentioned beforehand, mortgages over aircraft or aircraft engines can only be incorporated via authentic act declared before and drafted by a notary public in the presence of two witnesses, which in turn must be certified by the Office of the Attorney General prior to filing before IDAC.

Much like the case discussed in question 8 above, the costs involved in obtaining prior certifications and registrations for securities are generally minimal, although they can certainly add up whenever a large volume of documents is involved.

- 17** Must the security document be filed with the aviation authority or any other registry as a condition to its effective creation or perfection against the debtor and third parties? Summarise the process to register a mortgagee interest.

Assuming all documentary requirements discussed above have been met, perfection is obtained via registration before the RNA as indicated in article 104 of the Civil Aviation Law. The registration of security interests is carried out via written request addressed to the General Director of IDAC, which must include:

- a description of the aircraft or engine in question;
- nature, amount and status of the lien;
- designation of the court issuing the order, whenever applicable;
- designation of the court file to which the order corresponds, whenever applicable;
- transcription of the corresponding court order, whenever applicable;

- personal particulars (individual or corporation) of the person against whom the measure has been ordered; and
- if the requesting entity is a corporation, a duly authorised representative must make said request. If the request is made in-house, it must be printed on the corporate letterhead and be stamped with the company seal.

Supporting documentation, in turn, must necessarily include:

- the document validly incorporating the security interest in question; for example, a faithful, certified copy of the authentic act containing the mortgage agreement or a certified court order, as applicable;
- a copy of the registration certificate for the corresponding aircraft; and
- in the case of corporations, the corporate authorisation required by the corresponding bylaws for both the representative signing the request and for the specific task being requested. If these documents are foreign, they must be:
 - valid pursuant to the laws of the jurisdiction of origin;
 - duly apostilled or certified by consular authorities as applicable; and
 - to the extent that they are drafted in a language other than Spanish, accompanied by a Spanish translation certified by a locally accredited judicial interpreter.

With regard to costs, IDAC charges a 200 Dominican pesos service fee for the registration of security interests. As in the case of transfer documentation, prior registration before the corresponding Civil Registrar's Office is required, with its approximately 2 per cent ad valorem cost. Additional costs are limited to the generally minor expenses represented by required notarisations and certifications. Again, the fees referenced herein are current as of the date of publication but are subject to change as is the prerogative of the corresponding authorities.

18 How is registration of a security interest certified?

Registration of the security interest can be certified by requesting and obtaining a legal status certificate from IDAC for the aircraft or engine in question. No registration certificate is issued for the security interest in particular, and the aircraft's registration certificate does not necessarily include registered liens.

19 What is the effect of registration as to third parties?

Registration makes the security interest in question opposable to third parties, such as unsecured creditors, as of the date and time of its registration. Based on section 47.29 of RAD-47, registrations are deemed to have been made on the date and time in which the corresponding request was completed and duly filed before IDAC. Priority operates based on this date and time with regards to other registered security interests over the same aircraft.

The National Aircraft Registry's main purpose is to allow third parties to transparently obtain information on the legal status of aircraft. However, third parties should not rely on the information contained in a given aircraft's registration certificate, due to the fact that it may not include all relevant information on security interests or may be outdated. A legal status certificate from IDAC is the recommended source of information, since it should provide all current data.

20 How is security over aircraft and leases typically structured?

What are the consequences of changes to the security or its beneficiaries?

Under Dominican law, security interests are in rem rights and, as a result, pursue the asset itself, not the person that owns it. In the event

of novation, a new registration would be required given that, under Dominican law, the original loan would be deemed terminated, along with all accessory obligations, such as the security interest. Hence a new security interest would have to be incorporated and registered with regard to the new loan generated as a result of novation.

We note, however, that transfer of the loan to a new debtor is not considered to have novatory effect over said loan and hence would not strictly require a new registration. The obligation remains the same and the new lender is deemed to have rights of subrogation with regards to the original lender's prerogatives both under the loan and its accessories.

With regards to trusts, we note that Dominican law has only recently recognised and implemented the concept of the trust via the enactment of Law No. 189-11 and its corresponding regulations on 16 July 2011 and 2 March 2012, respectively. The use of a trust would effectively allow far more flexibility with regard to being able to make structural changes without the need to make new registration of security interests.

However, given the current absence of significant costs to obtain registration of mortgages over aircraft before the National Aircraft Registry, the use of a trust, while convenient, might not necessarily be cost effective.

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

Given that the definition of 'aircraft engine' provided under the Civil Aviation Law covers spare engines (eg, engines intended to be used in aircraft), these may also be the object of mortgage agreements registered before IDAC.

Unless otherwise specified, a security interest over an aircraft includes security interest over its installed engines. An effective security interest would not be created over an engine that is not installed on the aircraft in question or specifically referenced in the corresponding mortgage agreement.

Whenever an engine is encumbered as a result of being installed in an encumbered aircraft, we understand that said engine would cease to be encumbered upon being replaced by another engine or upon being expressly released from encumbrance by the corresponding parties. If that engine has been encumbered individually (eg, spare engine), then as a result of the in rem nature of the encumbrance, it would only become unencumbered when the parties expressly release it.

Enforcement measures

22 Outline the basic repossession procedures following lease termination. How may the lessee lawfully impede the owner's rights to exercise default remedies?

Following the lease's termination or in the event of a default under the lease, if the lessee does not voluntarily hand over control of the aircraft, the lessor cannot take possession of it without judicial intervention. In order to obtain possession, the lessor must procure a judgment for the delivery of the aircraft in question pursuant to the corresponding lease agreement. It must then issue a writ for specific delivery once the term established in the judgment for such delivery has expired.

23 Outline the basic measures to enforce a security interest. How may the owner lawfully impede the mortgagee's right to enforce?

Enforcement requires the mortgagee to perform the immovable asset seizure process provided for under articles 673 et seq of the Civil Procedure Code. The courts of the Dominican Republic will be involved in this execution process.

Where the mortgagee's credit is additionally guaranteed by collateral guaranties such as authentic promissory notes, drafted by and

before notary public, which are of an executive nature, then an *ex parte* proceeding is technically available via executive seizure, pursuing the collection of debt owed in respect of the debtor's assets in general, including the mortgaged aircraft. This procedure is much less tedious than an immovable asset seizure and (in principle) only one judicial officer is involved (the bailiff), without the need for court intervention.

The aircraft is the asset in respect of which the guaranteed credit will be collected – through its sale pursuant to a public auction, both in the immovable assets seizure process as well as in the executive seizure process. These processes, once executed, do not automatically authorise the mortgagee to retain the property of the seized asset (ie, the aircraft), but to recover the amount of its debt from the auction. That said, sometimes, if at the auction there are no interested parties who submit a bid for the initial price, the auction will be declared 'not awarded' and, consequently, the mortgagee may keep the property of the seized asset for the time being.

It is also useful to highlight that, at the auction of the asset given as collateral – either through executive seizure or immovable assets seizure – the awarding of the mortgaged property will be made to the highest bidder paying in cash. In principle, it is not possible to pay the bid in the auction by way of compensation.

Insolvency proceedings as currently provided for under Dominican law only suspend the enforcement of unsecured debt; all forms of secured debt are unaffected. The debtor may only impede the mortgagee's right to enforce by either: (i) paying the amounts due in their entirety; or (ii) challenging the foreclosure by evidencing technical errors or omissions in terms of due process. The debtor may also attempt to delay the foreclosure by requesting that the court modify the conditions of the public auction as a result of detected inconsistencies.

- 24** Which liens and rights will have priority over aircraft ownership or an aircraft security interest? If an aircraft can be taken, seized or detained, is any form of compensation available to an owner or mortgagee?

Liens as a result of due and unpaid taxes or unpaid salaries and severance benefits shall have priority over all other security interests.

Taxes and payment restrictions

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

Lease payments are subject to VAT, known as ITBIS in the Dominican Republic, at the current, applicable rate of 18 per cent, which is to be reduced to 16 per cent as of the year 2015. Lease payments and interest accrued are subject to annual income tax at

the current, applicable rate of 29 per cent. If these payments are made abroad, they are subject to a 10 per cent WHT which replaces applicable income tax.

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

There are no exchange controls in place in the Dominican Republic. Nevertheless, with the exception of principal payments in the context of a loan, international payments are subject to a 10 per cent WHT.

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

No.

- 28** Are there any costs to bring the aircraft into the jurisdiction or take it out of the jurisdiction? Does the liability attach to the owner or mortgagee?

Neither importing nor exporting aircraft currently have any associated costs.

Insurance and reinsurance

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

Dominican law does not currently provide for a captive insurance regime.

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

Cut-through clauses are not legally effective given reinsurers' statutory obligation (under article 148 of Insurance and Bonds Law No. 146-02, which is a public order statute) to pay their corresponding transferors the amounts they would be responsible for under a claim.

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

As implied in question 30, Dominican law recognises and regulates reinsurance contracts, which are indeed often involved in civil aviation matters in the Dominican Republic.



RUSSIN, VECCHI
& HEREDIA BONETTI

Maria Esther Fernandez A de Pou
Raul E Rodríguez Pereyra

mefernandez@rvhb.com
rrodriguez@rvhb.com

Monte Mirador Building, 3rd Floor
No. 2 El Recodo St,
Bella Vista, Santo Domingo, DN
Dominican Republic

Tel: +1 809 535 9511
Fax: +1 809 535 6649
info@rvhb.com
www.rvhb.com

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

Assuming the operator in question and the aircraft being operated by it are all appropriately registered, no.

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

Strict liability is adopted with regards to the owner or lessee, as applicable and as evidenced by the corresponding records before the

RNA. Financiers and other third parties with no operational interest in the aircraft are not presumed directly liable for any damages.

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

Yes. Air operators are required to have a general liability policy encompassing the entirety of their operations, which must remain valid for the duration of their licence and have coverage of at least one million Dominican pesos or its US dollar equivalent to respond for any damages they may be liable for.

GETTING THE DEAL THROUGH

Annual volumes published on:

- | | |
|-----------------------------------|------------------------------|
| Acquisition Finance | Labour & Employment |
| Advertising & Marketing | Licensing |
| Air Transport | Life Sciences |
| Anti-Corruption Regulation | Mediation |
| Anti-Money Laundering | Merger Control |
| Arbitration | Mergers & Acquisitions |
| Asset Recovery | Mining |
| Banking Regulation | Oil Regulation |
| Cartel Regulation | Outsourcing |
| Climate Regulation | Patents |
| Construction | Pensions & Retirement Plans |
| Copyright | Pharmaceutical Antitrust |
| Corporate Governance | Private Antitrust Litigation |
| Corporate Immigration | Private Client |
| Data Protection & Privacy | Private Equity |
| Debt Capital Markets | Product Liability |
| Dispute Resolution | Product Recall |
| Domains & Domain Names | Project Finance |
| Dominance | Public Procurement |
| e-Commerce | Real Estate |
| Electricity Regulation | Restructuring & Insolvency |
| Enforcement of Foreign Judgments | Right of Publicity |
| Environment | Securities Finance |
| Foreign Investment Review | Shipbuilding |
| Franchise | Shipping |
| Gas Regulation | Tax Controversy |
| Insurance & Reinsurance | Tax on Inbound Investment |
| Insurance Litigation | Telecoms and Media |
| Intellectual Property & Antitrust | Trade & Customs |
| Investment Treaty Arbitration | Trademarks |
| Islamic Finance & Markets | Vertical Agreements |



For more information or to purchase books, please visit:
www.gettingthedealthrough.com



Strategic Research Partner of the
 ABA Section of International Law



**THE QUEEN'S AWARDS
 FOR ENTERPRISE:
 2012**



Official Partner of the Latin American
 Corporate Counsel Association