

Aviation Finance & Leasing

In 27 jurisdictions worldwide

Contributing editor
Mark Bisset



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GETTING THE
DEAL THROUGH 

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DEAL THROUGH 

Aviation Finance & Leasing 2015

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Oman

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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 Sultanate of Oman has been a party to a number of major international air law treaties and conventions, demonstrating its commitment to the smooth operation of the civil aviation industry in Oman. The Civil Aviation Law issued by Royal Decree No. 93/2004, as amended from time to time (the Aviation Law) sets the primary legislation governing civil aviation in Oman. It provides that the provisions of the 1944 Convention on International Civil Aviation (the Chicago Convention), alongside the provisions of the 1999 Convention for the Unification of Certain Rules for International Carriage by Air (the Montreal Convention) and the relevant international conventions and agreements to which Oman is a signatory, each constitute an integral part of the Aviation Law with the former prevailing in the event of conflict with the latter. Oman is also a signatory to the 1958 United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention), the 2001 Cape Town Convention on International Interests in Mobile Equipment (the Cape Town Convention), the 2001 Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment (the Protocol) and the 1948 Convention on the International Recognition of Rights in Aircraft (the Geneva Convention).

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

The Aviation Law, the Executive Regulations of the Civil Aviation Law (Ministerial Decision 44/T12007) (the Executive Regulations) and the notices and decisions issued pursuant to the Aviation Law and Executive Regulations set the primary legislation governing civil aviation in Oman. Further to reorganisation undertaken in 2008 and 2012 and following issue of Royal Decree No. 33/2012, functions, allocations and assets of the previous aviation authorities (that is, the Directorate General of Civil Aviation and Meteorology (the DGCAM) and the Directorate General of Safety and Aviation Services (DGSAS)) were transferred to the Public Authority for Civil Aviation (the Aviation Authority) whose constitution was brought into force by Royal Decree No. 43/2013.

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?

Omani law generally does not impose any limitation or restriction in relation to choice of jurisdiction or choice of governing law clauses in contracts. In the context of civil aviation specifically, Civil Aviation Regulation 49 on the Regulation of Aircraft Titles and Security Documents (CAR 49) provides that the validity of any instrument eligible for recording under CAR 49 (which includes, among other things, a bill of sale, contract of conditional sale, assignment of interest, mortgage, assignment of mortgage, lease and other instruments affecting interests in aircraft, each referred to as a 'conveyance') is governed by the laws of the state in which the instrument was delivered, regardless of the location or place of delivery of the property affected by the instrument. CAR 49 further provides that if the place where an instrument is intended to be delivered is stated in the instrument, it is presumed that the instrument was delivered at that

place. Therefore, it should be permissible for a contract in respect of the transfer of an interest in, or creation of security over, an aircraft to be governed by non-Omani law and this should not affect its validity or enforceability in Oman. This position has been further reinforced by the recent Civil Transactions Law of Oman, enacted pursuant to Royal Decree No. 29/2013, which for the first time expressly provides the Omani courts with authority to give recognition to foreign governing law clauses and the jurisdiction in which an agreement has been executed. The foregoing is subject to the caveats that the Omani courts would need to be satisfied that the application of the particular foreign law would not violate any applicable Omani law or public policy (failing which the court will proceed by applying Omani law instead) and, in practice, there may be practical difficulties in attempting to enforce foreign law in the courts of Oman.

Title transfer

4 How is title in an aircraft transferred?

CAR 49 regulates the registration of the transfer of aircraft registered in the Aircraft Register in Oman (which, in the language of that regulation, is a type of conveyance to which that regulation applies). To be eligible for recording under CAR 49, a conveyance must:

- be in a form prescribed by, or acceptable to, the Aviation Authority for that kind of conveyance;
- describe the aircraft to which it relates by make, model, manufacturer's serial number, Oman registration marks and other details that make identification possible;
- be an original document, duplicate of an original document, or if the original or duplicate is not available, a certified copy of the original;
- affect an aircraft registered under the Aviation Law; and
- be accompanied by the recording fee.

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

The Aviation Law prohibits a disposal of any aircraft registered in the Aircraft Register in Oman, whether by sale, mortgage, lease or otherwise except with the approval of the Aviation Authority. The disposal between the contracting parties shall become valid only after it has been entered in the Aircraft Register in Oman. The following documents are normally required to be submitted to the Aviation Authority to register a change in registered ownership:

- the certificate of aircraft registration issued to the previous owner, along with a request for cancellation of the same;
- a new application for aircraft registration in the form prescribed by the Aviation Authority, along with the power of attorney or board resolution evidencing the authority of each signatory to the application;
- a bill of sale or other evidence of a conveyance from the seller of the aircraft or other evidence of ownership;
- a bank draft towards payment of the prescribed registration fee;
- proof of the nationality of the purchaser in whose name the aircraft is to be registered;
- if the aircraft is leased an authenticated or notarised copy of the lease agreement; and
- any other documents as may be required by the Aviation Authority.

The application for aircraft registration should contain the type of registration sought (permanent or temporary), the location of the aircraft in order

to be examined by the inspectors of the Aviation Authority, the condition of the aircraft as to whether it was brought to Oman, dismantled or through shipment and whether the aircraft is registered in a foreign country or not.

Currently no specific form of bill of sale or lease has been developed or prescribed by the Aviation Authority, so the form and content of such documents is entirely a matter of contractual negotiation between the parties.

Registration of aircraft ownership and lease interests

6 Identify and describe the aircraft registry.

The Aviation Authority maintains the National Civil Aircraft Registry (the Aircraft Register) which records for an aircraft, among other things, its registration number and registry page number, nationality and registration marks, manufacturer, number of engines, serial number, airworthiness certificate details, owner or operator details, ownership documentation and details on the transactions concluded in respect of the aircraft including the date of their occurrence. The Aviation Authority also records in the Aircraft Register data relevant to the mortgage of an aircraft. For an aircraft to be eligible for registration in the Aircraft Register, it must meet the technical specifications and standards prescribed in Civil Aviation Regulation 47 (CAR 47), namely: it must be owned by a citizen of Oman or by an individual citizen of a foreign country who has lawfully been admitted for permanent residence in Oman, or owned by a corporation (other than a corporation which is a citizen of Oman) lawfully organised and doing business under the laws of Oman so long as the aircraft is based and primarily used in Oman; and it must not be registered under the laws of any foreign country.

In addition, Civil Aviation Notice 1-03 (CAN 1-03), which is complementary to CAR 47, provides that each of the following aircraft shall be eligible for registration in the Sultanate of Oman:

- aircraft owned fully or partially by an Omani national or by an Oman company or firm;
- aircraft owned fully or partially by a non-Omani national who is a resident of Oman and has a place of business in Oman; and
- aircraft chartered by, or leased to an Omani national, to an Omani company or to an Omani airline or operator.

The term 'Omani citizen' has been defined for the purposes of CAR 47 to mean each of the following:

- an individual who is a citizen of Oman;
- a partnership of which each member is a citizen of Oman; and
- a corporation or association created or organised under the laws of Oman of which the president and two-thirds or more of the board of directors and other managing officers are citizens of Oman and in whom at least 75 per cent of the voting interest is owned or controlled.

In light of the above, an aircraft may be registered in the Aircraft Register in the name of an owner or lessee of the aircraft. If, however, the owner or lessee is not an Omani citizen, in order to be eligible for registration in Oman, such an owner or lessee must be lawfully organised and doing business in Oman and the aircraft must be based in and primarily used in Oman.

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?

CAR 47 regulates registration in the Aircraft Register of ownership interests in aircraft, and CAR 49 regulates the registration of certain conveyances affecting an interest in any aircraft registered in the Aircraft Register (including aircraft leases and related assignments). CAR 49 also provides that conveyances which are recordable under that regulation include those used as evidence of ownership under CAR 47.11, thereby providing two routes for registration of an ownership interest in an aircraft in the Aircraft Register.

CAR 47 defines an 'owner' of an aircraft as including a buyer in possession, a bailee in possession, or a lessee in possession of an aircraft under a contract and the assignee of that person. CAR 47.11(b) also appears to allow a repossessor of an aircraft (under a security agreement and applicable local law) to apply for aircraft registration. It follows that the lessor or new owner of an aircraft would need to be in possession or repossession of an aircraft in order to be able to apply for a certificate of aircraft registration

in its own name. At the same time, CAR 47.5(f) states that the Aviation Authority may issue a certificate of aircraft registration to the person 'who appears' to have sole control of the aircraft on the basis of the evidence of ownership submitted. In light of the provisions regarding possession noted above, it is not clear whether the Aviation Authority would issue a certificate of aircraft registration in the name of a lessor or a new owner without the aircraft having been actually delivered to that lessor or new owner.

In addition to regulating the registration of conveyances in respect of whole aircraft, CAR 49 expressly provides for registration of conveyances in respect of certain engines, propellers and other appliances maintained for installation or use in an aircraft, provided the qualifying threshold criteria are satisfied.

8 Summarise the process to register an ownership interest.

Please see questions 4-7. Additional documentation to that listed in question 7 may be required to be submitted to the Aviation Authority under CAR 47 depending on a number of factors, in particular the identity of the applicant and an aircraft's registration history.

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

CAR 47 draws a distinction between legal ownership and registered ownership of an aircraft, and states that registration on the Aircraft Register does not constitute evidence of ownership in any proceedings. This is repeated in CAN 1-03. According to CAR 47.5, the registered owner of an aircraft is the person to whom an aircraft is registered, and the legal owner is the person who can otherwise prove his title to the aircraft and thereby have his rights protected under the Geneva Convention. CAR 47.5(f) elucidates further that the Aviation Authority neither issues any certificate of ownership nor endorses any information with respect to ownership on a certificate of aircraft registration, and that certificates of aircraft registration are issued to the person 'who appears' to have sole control of the aircraft on the basis of the evidence of ownership submitted under CAR 47.11. Similarly, CAR 49.17(c) provides that the recordation of a conveyance does not constitute a decision of the Aviation Authority that the instrument effecting the conveyance in fact affects title to, or an interest in, the aircraft or other property that it covers. Neither the Aviation Law nor the Executive Regulations expressly provide that entries made in the Aircraft Register constitute public notice of such entries to third parties. The Aviation Law is silent in terms of what reliance, if any, may be placed by any party on the information recorded in the Aircraft Register.

Practically speaking, the purpose and intent of the Aircraft Register (as for similar registers in other jurisdictions) is to reflect the rights of ownership and the interest of lessees, lessors and other third parties in particular aircraft. If an interest in an aircraft was not registered as required under the Aviation Law, it is unlikely that any such interest would be legally recognised in Oman. The Aviation Authority does not, as a matter of practice, permit the public to examine or carry out searches of the Register with respect to an aircraft except with the written consent of the registered owner or operator of the aircraft. In view of that practice, the Omani courts may be sympathetic to arguments by third parties that they have no notice of rights or interests recorded in the Aircraft Register. As to whether any such third party's interest might supersede a registered interest in the case of a dispute between them in the Omani courts remains uncertain. In the case of a party seeking to register an aircraft interest in the Aircraft Register, such an applicant will be made aware of pre-existing registrations. In any case, pending judicial consideration by the Omani courts, the precise legal effect of registration of an interest in an aircraft on the Aircraft Register remains to be determined.

10 Summarise the process to register a lease interest.

In order for an aircraft lease to be effective and enforceable in Oman, the lessee of the aircraft needs to register the aircraft on the Aircraft Register and obtain a certificate of registration. Article 35(3) of the Aviation Law provides that an aircraft leased for the purpose of purchase or leased for a period of more than one year must be registered in accordance with the rules and terms prescribed in the Executive Regulations. Article 27(2) of the Executive Regulations provides that the Aviation Authority shall issue the certificate of registration in accordance with the conditions and rules specified in CAR 47. Under CAR 47, a lessee in possession of an aircraft may have the aircraft registered in its own name and may, for that purpose, submit the lease contract as evidence of its interest in the aircraft. However, under CAR 49, the lease contract may also be registered as a conveyance

for security purposes. The same lease contract may therefore be registered separately under both CAR 47 and CAR 49 as, on the one hand, evidence of an ownership interest in an aircraft and, on the other hand, a conveyance affecting title to or interest in an aircraft or for security purposes (recording the lessor's interest in the aircraft as an encumbrance). This is possible as CAR 49 provides that conveyances which are recordable under that regulation include those used as evidence of ownership under CAR 47.

CAR 49 and the other regulations issued pursuant to the Aviation Law do not currently prescribe any particular form that an aircraft lease needs to be in for it to be eligible for registration. However, CAR 49 does state that for a conveyance to be eligible for recording under it, the conveyance must meet certain criteria. (See question 4, which sets out the relevant criteria.) CAN 1-06 specifies a fee of 400 Omani rials for registration of an aircraft lease on the Aircraft Register, which may be revised by the Aviation Authority from time to time.

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

Pursuant to article 35 of the Aviation Law, the Aviation Authority issues registration certificates after completion of the prescribed legal procedure for registration. As noted in question 9, CAR 47 clarifies that the Aviation Authority neither issues any certificate of ownership nor endorses any information with respect to ownership on a certificate of aircraft registration, and that certificates of aircraft registration are issued to the person 'who appears' to have sole control of the aircraft on the basis of the evidence of ownership submitted under CAR 47.

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?

CAR 47.47 provides that the holder of a certificate of aircraft registration who wishes to cancel the certificate for the purposes of export of the aircraft must submit to the Aviation Authority:

- a written application for cancellation of the certificate, describing the aircraft by make, model, and serial number, stating the Omani identification marks and the country to which the aircraft will be exported; and
- evidence satisfactory to the Aviation Authority that each holder of a recorded right has been satisfied or has consented to the transfer.

CAR 47.47 further provides that the Aviation Authority shall notify the country to which the aircraft is to be exported of the cancellation by ordinary mail, or by airmail at the owner's request. Article 3.8 of CAN 1-03, which is complementary to CAR 47, provides that an aircraft shall be deregistered on receipt of written notification from the registered owner of the aircraft, surrendering the certificate of registration for cancellation and advising that:

- the aircraft has been destroyed, lost or permanently withdrawn from use;
- the registered owner intends to register the aircraft in another country and requests the Aviation Authority to notify the deregistration to the civil aviation authorities of that country where he has applied for registration; or
- the registered owner has sold the aircraft or has terminated the lease and the aircraft has been returned to the lessor.

Article 3.8 of CAN 1-03 also provides for a number of other circumstances under which an aircraft shall be deregistered by the Aviation Authority. In view of Oman having become a party to the Cape Town Convention and the Protocol, deregistration of an aircraft registered in Oman should now also be possible in accordance with the provisions of the Cape Town Convention and the Protocol, but subject to any rights which may have priority as a matter of Omani law and declared as such by Oman in relation to the Cape Town Convention and the Protocol. To our knowledge no aircraft has ever been deregistered in Oman so it is not possible to say what practical difficulties might be encountered by a holder of a certificate of aircraft registration when trying to effect such a deregistration in Oman.

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

Pursuant to CAR 49.13(d), the Aviation Authority registers powers of attorney which authorise one person, on behalf of another person, to sign

documents to be lodged with the Aviation Authority. In the event that an expiration date is not stated in the power of attorney, CAR 49.13(d)(2)(ii) provides that the power of attorney will cease to be valid after a period of three years from the date of its signature, unless the grantor certifies in writing that the power of attorney is still in effect. In each case, a registered power of attorney will be subject to revocation by its grantor.

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.

Notwithstanding that the Cape Town Convention is in effect in Oman, to our knowledge no aircraft has ever been deregistered and exported from Oman in accordance with the IDERA process so it is not possible to advise as to what the notable features might be when trying to effect that process in Oman.

Security

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

Security over aircraft in Oman typically takes the form of a commercial mortgage pursuant to article 67 of the Oman Commercial Law (Royal Decree No. 55/1990) (the OCL). Article 58 of the Aviation Law provides that an aircraft may be officially mortgaged and that the mortgage may cover the entire aircraft or its 'major portion' (undefined). The official mortgage of the aircraft must be made through an official deed signed in the presence of the Aviation Authority. Article 60 of the Aviation Law requires a mortgage over an aircraft to be recorded in the Aircraft Register. For a mortgagee or other security holder in respect of aircraft registered in Oman, the name, address and commercial registration number (if any) would be entered on the Aircraft Register.

The application form for registration of a mortgage on the Register is available from the Aviation Authority (the Mortgage Registration Form) and the mortgagee is required to populate the form by completing, among other things, the date of the mortgage, a description of the mortgaged aircraft (including its type, nationality, registration marks and aircraft serial number), any aircraft parts also subject to the mortgage, the sum secured by the mortgage, and the name, address and, where applicable, the company registration number of the mortgagor. The completed form must be submitted to the Aviation Authority together with the relevant fee (see question 16) and a certified copy of the mortgage. The Aviation Authority confirms the entry of a mortgage on the Aircraft Register by returning a photocopy of the relevant entry to the registered owner and all parties named in the Mortgage Registration Form.

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

Our past experience with the Aviation Authority's office has been that they are generally willing to accept documents in English without the need for any Arabic translation. We are not aware of any reason why this practice might have altered. Notarisation and legalisation are also not necessary (except in the case of aircraft leases); however, the documents must be either in original form, signed by both parties on each page, or if a copy is being submitted then it must be certified by the person submitting it or by its legal counsel to be a true copy of the original. CAN 1-06 specifies a fee of 400 Omani rials for registration of an aircraft mortgage on the Aircraft Register, and 30 Omani rials for registration of a security document; these amounts are however subject to revisions by the Aviation Authority from time to time.

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.

As noted above, CAR 49.17(c) provides that the recordation of a conveyance does not constitute a decision of the Aviation Authority that the instrument effecting the conveyance in fact affects title to, or an interest in, the aircraft or other property that it covers. Neither the Aviation Law nor the Executive Regulations expressly provide that entries made in the Register constitute public notice of such entries to third parties. The Aviation Law is silent in terms of what reliance, if any, may be placed on the information recorded in the Register. The process and cost to register a mortgage interest in an

aircraft in Oman is also summarised above. The mortgage would not need to be recorded or filed at any other public office or registry in Oman.

18 How is registration of a security interest certified?

As noted in question 15, the Aviation Authority confirms the entry of a mortgage on the Register by returning a photocopy of the relevant entry to the registered owner and all parties named in the Mortgage Registration Form.

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

As noted above, as Omani courts are yet to consider and rule upon the effect of Aircraft Register registration, it is not possible to advise with certainty on what the Omani courts will deem the precise effect of such registrations to be as a matter of Omani law. Notwithstanding such, it is advisable to make all registrations required or permitted to be made under Omani law.

20 How is security over aircraft and leases typically structured? What are the consequences of changes to the security or its beneficiaries?

Security over aircraft and aircraft leases is typically structured using a security trustee to hold the security on behalf of the finance parties. The security typically takes the form of a commercial mortgage over the relevant aircraft (inclusive of any inventory retained in Oman) or aircraft lease, or an assignment by way of security over a lessee's rights in an aircraft lease. Mortgage creation and registration has already been considered above. With regard to assignments, although there appear to be no formalities prescribed under the Aviation Law or Executive Regulations for the creation and perfection of an assignment of an aircraft lease, such an assignment must be registered as a conveyance pursuant to the provisions of CAR 49. As noted above, CAR 49 allows for the registration of certain conveyances affecting title to, or any interest in, any aircraft registered in Oman, and such conveyances include an aircraft lease as well as any assignments of the rights and benefits in an aircraft lease.

Regarding the security trust structure, although there is no specific law of trusts in Oman, the concept of trust is recognised under various laws of Oman. For example, the banking law of Oman, issued under Royal Decree No. 114/2000 (the Banking Law), allows Omani licensed banks to act as trustees for and on behalf of their clients and in project finance transactions undertaken in Oman. Omani banks have been appointed as security trustees for the purposes of holding security interests on behalf of foreign and local lenders. Shariah law also recognises and provides for the establishment and regulation of trusts. Provided that the rights, responsibilities and obligations of a trustee are well documented, and the terms and conditions of any trust deed are not contrary to Omani law, public policy and or custom then the same should be enforceable as a matter of Omani law.

Turning to the issue of security amendments, if a security in respect of an aircraft or aircraft lease is registered as a conveyance under CAR 49 then, pursuant to CAR 49.17(d)(4), any subsequent amendment of, or supplement to, such a conveyance must meet the requirement for the recording of the original conveyance and must describe the original conveyance in sufficient detail to identify it, including its date of Aviation Authority recording and the recorded conveyance number. Such an amendment would be effected by lodging the form relating to changes in particulars on the Register of Aircraft Mortgages (Changes in Mortgage Particulars Form) with the Aviation Authority, along with payment of the specified fee (CAN 1-06 specifies a fee of 30 Omani rials for registration of a change in particulars on the Aircraft Register which is subject to revision by the Aviation Authority from time to time). Provided the prescribed procedure is followed, the security should remain enforceable as amended.

Additionally, if the identity of the secured parties (on behalf of whom a security trustee is holding a security interest under a security) were to change, such a change should not by itself jeopardise or discharge the security. However, if the identity of the security trustee were to change then (even though this is not clarified by Omani law) there is a possibility that the security may not be enforceable before an Omani court by a new security trustee unless such new security trustee has been registered on the Aircraft Register. In such circumstances, it would be advisable to amend the security by registering a replacement of the former security trustee with the new security trustee on the Aircraft Register.

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

The current Mortgage Registration Form, as noted above, provides for the recording on the Register of, among other things, any aircraft parts also subject to the mortgage being lodged for registration. Provided that the spare engines are described in sufficient detail in the mortgage as clearly being subject to the mortgage (by describing such in the mortgage as included in the inventory for the aircraft) no separate registration should be required in respect of such spare engines. Notwithstanding that, as also already noted above, in addition to regulating the registration of conveyances in respect of whole aircraft, CAR 49 specifically contemplates, and is stated as being applicable to, the registration of conveyances in respect of engines, propellers and other appliances maintained for installation or use in an aircraft which satisfy the specified criteria in CAR 49. With respect to aircraft engines, the specified criteria in CAR 49.1(a)(2) for CAR 49 to apply is any specifically identified aircraft engine of 750 or more rated takeoff horsepower, or the equivalent horsepower.

Where a Mortgage Registration Form is lodged to effect the registration of a mortgage over the whole or major portion of an aircraft, subject to the following sentence, it would be a commercial decision whether or not to make separate registrations on the Register in respect of spare engines which satisfy the relevant criteria or to simply rely on describing these in sufficient detail in the Mortgage Registration Form itself. Notwithstanding CAR 49, the prevailing practice is that the Aviation Authority currently does not register any aircraft engines, propellers or spare parts separately from aircraft, and so it follows that it is also not possible to separately register mortgages against engines, propellers or other spare parts. Security over aircraft spares is sometimes also lodged separately with the Oman Ministry of Commerce and Industry as a commercial mortgage, with the mortgagor subject to an obligation to register amendments to the mortgage as and when any addition are made to the inventory of spare parts.

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?

Unless the interest of the lessor in the aircraft is registered as an international interest under the Cape Town Convention and the Protocol (thereby enabling the lessor to exercise its rights under that Convention and Protocol without the need for initiating judicial proceedings in Oman), the lessor would, in case the lessee is not voluntarily willing to surrender the aircraft, need to undertake judicial proceedings in Oman to take physical possession of the aircraft.

Where the lessor wishes to export the aircraft from Oman, unless the lessor is able to procure the export of the aircraft from Oman in accordance with the provisions of the Cape Town Convention and the Protocol, to export the aircraft from Oman upon termination of the lease, an application would need to be made to the Aviation Authority to cancel the registration of the aircraft. In accordance with CAR 47, an application for cancellation of registration is made by the holder of the certificate of aircraft registration (which, in the case of a leased aircraft, would be the Omani lessee) submitting to the Aviation Authority:

- a written application for cancellation of the certificate, describing the aircraft by make, model, and serial number, stating the Omani identification marks and the country to which the aircraft will be exported; and
- evidence satisfactory to the Aviation Authority that each holder of a recorded right has been satisfied or has consented to the transfer.

Following the submission of the application, the Aviation Authority notifies the country (to which the aircraft is to be exported) of the cancellation. The owner is responsible for arranging and paying for the transmission of this notice by means other than ordinary mail or airmail.

CAN 1-03 provides that an aircraft shall be deregistered on receipt by the Aviation Authority of written notification from the registered owner (which, in the case of a leased aircraft, would be the Omani lessee), surrendering the certificate of registration for cancellation and advising the Aviation Authority that:

- the aircraft has been destroyed, lost or permanently withdrawn from use;

- the registered owner intends to register the aircraft in another country and requests the Aviation Authority to notify the deregistration to the civil aviation authorities of that country where he has applied for registration; or
- the registered owner has sold the aircraft or has terminated the lease and the aircraft is returned to the lessor.

For legal or judicial restraints that might hinder or delay the return of the aircraft in case of a default under the lease, see question 23.

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

In the case of a commercial mortgage over moveable property, enforcement upon the occurrence of an event of default by the mortgagor can be made by the mortgagee for the sale of all or part of the assets covered by the commercial mortgage. Enforcement will need to occur through the filing of proceedings with the Omani courts and a judgment being obtained. The sale of the assets will be by way of public auction, and the mortgagee cannot take direct possession of the secured assets. Although security documents may contain self-help remedies, there is a risk of such provisions being held to be void by the Omani courts, and any agreement which attempts to circumvent the enforcement mechanism through the Omani court could be void in light of provisions contained in the OCL that bar such remedies.

Furthermore, article 633 of the OCL provides that contracts which are binding on both sides, to which a bankrupt may be a party, shall not be abrogated on the adjudication of bankruptcy, unless based on personal considerations. According to article 633, if a receiver or trustee in bankruptcy does not implement the contract, the other party thereto may apply for its abrogation and then participate in the bankruptcy for the compensation due on the abrogation. While article 633 does not clarify what may be regarded as 'personal considerations', it does imply that valid and binding contracts entered into by a bankrupt party (prior to its bankruptcy) do not become ineffective by the mere fact of bankruptcy of that party.

In the event that security is to be enforced through the Omani courts, the cost of the proceedings would include the filing fees, which would be the equivalent of 2 per cent of the value of the asset of which possession is required to be taken, with a maximum cap of 3,000 Omani rials. Legal counsel fees would be chargeable on the basis of the time spent or such other arrangements as may be agreed by the mortgagee with the legal counsel. The court may also appoint other experts it considers necessary for assisting it in taking possession of the aircraft, conducting any investigations, examinations of the aircraft and for the storage of the aircraft until such time that the relevant orders have been issued.

It may also be noted that under the Commercial Companies Law of Oman (Royal Decree No. 4/1974) the liquidator of a company enjoys general powers to take actions and measures to preserve the interests of the company. Under the bankruptcy provisions of the OCL, which also apply to companies, the receiver or trustee in bankruptcy enjoys powers to take actions for furthering the interests of the creditors of the bankrupt as a group. It is possible that in the exercise of such powers, the liquidator or receiver or trustee in bankruptcy of the owner may seek to deny the rights of the mortgagee in favour of the creditors of the owner as a group, in which case the mortgagee would need to initiate legal proceedings in Oman against any such action of the liquidator or receiver or trustee in bankruptcy by which it may be aggrieved. In this regard, article 634 of the OCL allows a person to recover from the bankrupt party specific items to which he is able to prove his ownership. The receiver or trustee in bankruptcy is, however, not permitted by article 634 to hand over the item sought to be recovered without the permission of the court supervising the bankruptcy. In case the receiver or trustee in bankruptcy refuses to hand over the item whose recovery is sought, the dispute may be referred to court.

If, however, the interests of the mortgagee are registered as international interests under the Convention and the Protocol, the mortgagee should be able to assert its remedies on insolvency as provided for under the Protocol in order to obtain possession of the aircraft, subject to rights having priority as a matter of Omani law and declared as such by Oman in relation to the Convention and the Protocol.

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 and rights with priority over aircraft

Under article 9 of the Aviation Law, the following rights shall have a lien over an aircraft and any such claims shall be settled or paid from the price of the aircraft according to the order listed hereunder, with priority over other debts even if they are preferred debts or secured by mortgage, with the exception of judicial disbursements:

- debts due to the Aviation Authority and other government departments;
- costs of aircraft rescue and any extraordinary costs of preserving it;
- compensations payable for injury that the aircraft causes to others on the ground, whether the injury was caused by the aircraft itself or by a person or an object falling from it, unless the aircraft owner or operator has covered such injuries by insurance for the benefit of the injured parties that covers the value of the due compensation in that case, or 20 per cent of the value of the aircraft when new or the lower of the two values; and
- debts incurred on the last flight that the aircraft had made or almost made before it was forcibly sold, as a result of the cost of repairs or maintenance, or arrival or departure or supply with fuel or oils or with the needs of its passengers or crew of food or consumer goods.

While article 9 of the Aviation Law states that the rights referred to therein shall be recoverable from the price of the aircraft, it does not expressly provide the holders of those rights to sell the aircraft directly. The holders of such rights would therefore need to initiate legal proceedings before Omani courts for an enforcement of their rights.

Confiscation

Under article 134 of the Aviation Law, the courts of Oman may order the seizure of an aircraft involved in any of the following offences (which may result in the owner or mortgagee being deprived of its title to the aircraft):

- displaying incorrect nationality or registration marks, or not displaying either of these marks; or
- transportation by the aircraft owner or operator of weapons, war ammunitions, explosives, firecrackers or other materials of war or nuclear materials or nuclear isotopes, or X-rays, or poisonous gases, or bacterial substances or other hazardous goods with the purpose of smuggling or committing a crime that affects the security of Oman.

Other than the above, neither the Aviation Law nor the Executive Regulations provide for any circumstances in which an owner or mortgagee may be deprived of its title to an aircraft.

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?

Income tax

The tax rates applicable to all companies incorporated in Oman (save for petroleum exploration companies), including branches of foreign entities and permanent enterprises, is currently 12 per cent on taxable income in excess of 30,000 Omani rials per tax year.

Article 35 of the Income Tax Law, issued by Royal Decree No. 28/2009 (the Tax Law), defines income, whether in cash or in kind, to include, among other things, remuneration for lease, utilisation of property, machinery or other fixed or moveable assets. A lessor would need to obtain specialist tax advice on whether or not the income to be derived by it under any particular aircraft lease would be subject to income tax.

Subject to limited exceptions, foreign corporate entities are taxed in Oman only if they have a permanent establishment or are deemed to have a permanent establishment in Oman within the meaning of article 2 of the Tax Law. If a foreign corporate entity has no branch office or other legal presence in Oman which may fall within the definition of a permanent establishment under the Tax Law, it should not be liable to corporation tax in Oman. The mere fact that a lessor is registered as such in the Aircraft Register would not, in and of itself, result in that lessor becoming liable to pay any corporation tax in Oman.

It is noteworthy that the tax authorities in Oman have usually interpreted the term 'permanent establishment' broadly. Contracts that require limited visits to Oman have resulted in a permanent establishment for a foreign entity, notwithstanding that the foreign entity is not registered in Oman and that such limited visits may not constitute a presence of a permanent nature. Also, if a foreign entity sends people to Oman to carry out activities from which income is derived for that foreign entity then this has also been regarded by the Oman tax authorities as being evidence of a permanent establishment having been created by the foreign entity (article 2 of the Tax Law refers expressly to consultancy or other services being undertaken in Oman through workers under the control of a foreign entity as included within the meaning of a 'permanent establishment' where such services are provided for a period of 90 days or more in any year). Therefore foreign entities will need to exercise a degree of caution in relation to any 'wet' aircraft lease entered into with an Omani nexus. Wherever possible, if a foreign company intends to provide services from outside Oman, it should do so on an arm's-length basis.

Withholding tax

Article 52 of the Tax Law provides for payment of withholding tax only on royalties, remuneration for conducting research and development, remuneration for using or the right to use computer programs and consideration for management services. Withholding tax is payable at the rate of 10 per cent. The Tax Department to date has not held interest on principal amounts or repayment of principal amounts to overseas lenders as being subject to withholding tax, however, payment of rent under a lease may be subject to the 10 per cent withholding tax if the lessor is a foreign entity without a permanent establishment in Oman. The obligation to pay withholding tax would fall on the debtor entity responsible for making the relevant payment that is to be taxed. As is common across most jurisdictions, gross up provisions are typically deployed where withholding tax might apply.

Transfers

There are currently no provisions under Omani law covering stamp duty, sales tax, VAT or other similar taxes so no such tax would be applicable on the transfer of an aircraft in Oman.

International tax treaties and tax relief

The Tax Law is to be read in conjunction with the tax treaties entered into between Oman with other countries. There are a number of tax and investment protection treaties in force in the Sultanate of Oman although some of these are limited in scope. Oman has entered into agreements for the avoidance of double taxation and the prevention of avoiding income tax with a number of countries including Algeria, Belarus, Belgium, Brunei, Canada, China, Egypt, France, India, Iran, Italy, Japan, Korea, Lebanon, Mauritius, Moldova, Morocco, Pakistan, Russia, the Seychelles, Singapore, South Africa, Sudan, Syria, Thailand, Tunisia, Turkey, the United Kingdom, Vietnam and Yemen.

It is noteworthy that many of the foreign airlines carrying on business through permanent establishments in Oman are exempted from income tax in Oman by virtue of such double taxation agreements. By way of example, article 8.1 (Shipping and Air Transport) of the double tax agreement entered into by Oman separately with each of Singapore, the United Kingdom and Canada provides that 'profits of an enterprise of a Contracting State from the operation of ships or aircraft in international traffic shall be taxable only in that Contracting State'.

In addition, even where double taxation agreements are not in place with a particular country, some foreign airlines which earn income through establishment in Oman are exempted from tax in Oman by virtue of reciprocal tax exemptions granted in the foreign airline's native country. Such exemptions are currently in place with a number of countries including India, Iran, Jordan, Kuwait, the Netherlands, Singapore, Sri Lanka, Sweden, Switzerland and Tanzania.

Import duty

On 9 November 2000, Oman became a fully fledged member of the World Trade Organization (WTO), and as part of the agreements signed to effect its membership Oman committed to limit or abolish a number of import duties. In accordance with the WTO agreements, import duty on aircraft and parts was initially reduced to 5 per cent and was later further reduced to its current level of zero per cent.

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

Under the Banking Law, the Central Bank of Oman is responsible for issuing exchange control regulations as and when necessary. Currently there are no exchange controls in force in Oman (save for certain restrictions on the foreign currency holdings of commercial banks), and judgment monies, sale proceeds and insurance proceeds, once obtained, should all be freely remittable abroad from Oman.

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

Default interest provisions should be dealt with as a matter of contract, and such provisions are commonly inserted in loan agreements put in place by Omani banks. The OCL also recognises default interest provisions. As a more general point, the usual remedy before the Omani courts is damages for loss, and it is possible that a default interest provision may be vulnerable to the argument that such a provision is not compensating for any actual loss suffered and is in the nature of a pure penalty. In our experience, however, default interest provisions are generally enforceable.

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?

Bringing in

Pursuant to article 15 of the Aviation Law, subject to limited exceptions, aircraft operating in Oman shall be subject to the following conditions:

- they shall hold a valid registration certificate pursuant to the provisions of Annex VII to the Chicago Convention;
- their airworthiness certificate and noise level authorisation certificate shall be valid and issued or approved by the state where the aircraft are registered, in accordance with the prescribed international Standards and Recommended Practices;
- they shall display the their nationality and registration marks in accordance with the relevant international rules and regulations;
- they shall be fitted with the prescribed equipment and appurtenances;
- members of the piloting team shall possess valid permits issued by the Civil Aviation Authority in the country where the aircraft is registered; and
- they shall be insured under a policy covering its crew, passengers and third parties on the land surface, in accordance with the relevant rules.

Please also see question 6 (which outlines costs associated with registration and operation of an aircraft in Oman) and question 25 (which outlines the current position with respect to import duty on the importation of aircraft and parts into Oman). There will also be other incidental costs payable by the applicant in complying with the requirements of article 15 of the Aviation Law (for example, obtaining various permits and ensuring adequate insurance).

Taking out

Unless the aircraft is being exported out of Oman in accordance with the provisions of the Cape Town Convention and the Protocol, an application will need to be made to the Aviation Authority to cancel the registration of the aircraft (see question 12 above for further details on the deregistration process). There is no fee prescribed for deregistration of an aircraft from the Aircraft Register. An export certificate of airworthiness from the Aviation Authority would also be required in order to export the aircraft out of Oman. Pursuant to article 6.3(b)((3) of CAN 1-06, the fee payable by the applicant for the issuance by the Aviation Authority of an export certificate of airworthiness is six (Omani rials per 100kg of maximum permissible ramp weight of the relevant aircraft. No other taxes or fees have been specified under the Aviation Law or the Executive Regulations in respect of the export or repossession of aircraft.

Insurance and reinsurance

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

Article 57 of the Insurance Companies Law of Oman (Royal Decree No. 12/1979, as amended) (the Insurance Law) prohibits the government, public companies, companies in which the government is a shareholder, and natural and juristic persons registered on the Commercial Register maintained at the Ministry of Commerce and Industry from entering

into insurance contracts (except for life insurance contracts) with foreign insurance companies which are not licensed to conduct insurance business in Oman. Article 51 of the Insurance Law allows foreign insurance companies operating in the Sultanate of Oman, through an agency, branch office or subsidiary unit, to engage in insurance related activities in Oman subject to the conditions, provisions and requirements set out in Ministerial Decision 5/80, as amended. It follows that if the party responsible for insuring an aircraft is registered on the Commercial Register at the Ministry of Commerce and Industry it would not be open to that entity to meet its insurance obligations by placing its insurance with a foreign insurer unless that foreign insurer has a branch or subsidiary registered in Oman that satisfies the requirement of article 51 of the Insurance Law.

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

Commercial practice in Oman in terms of policy wording conforms to industry practices internationally. Arrangements such as cut-through clauses are widely used.

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

Reinsurance is generally regulated by the issuance of Ministerial Decisions of the Capital Market Authority, issued pursuant to the Insurance Law. Invariably, national insurance companies will reinsure the risk assumed by them under insurance policies with overseas reinsurance companies. In such circumstances, lenders have typically entered into assignment of insurance proceeds under the reinsurance policies directly with the reinsurers and provided for such assignments to be governed by English Law or such other foreign law as is found to be acceptable to the lenders.

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

Article 51 of the Aviation Law provides that the lessor of an aircraft shall undertake to handover the aircraft in a good and airworthy condition to the lessee, and shall also maintain and conduct the necessary technical inspections, unless agreed otherwise. Furthermore, article 52 of the Aviation Law states that, subject to the rights of the lessor to refer to whoever is responsible for the damage, the lessor shall be responsible for damage resulting from defects in the aircraft, unless such damage is caused by hidden manufacturing defects or is a result of force majeure events.

In relation to leasing of aircraft capacity, pursuant to article 57 of the Aviation Law the lessor is also responsible to the lessee for any defect in the aircraft that requires payment of compensation due to any damage that may be caused as a consequence thereof (other than damage caused by hidden manufacturing defects, by an error by the pilot-in-command or by crew members).

Under article 112 of the Aviation Law, the owner or the lessee in whose name the aircraft is registered may be liable to pay compensation to any person suffering injury on the ground due to an aircraft while in flight or by a person or object falling from it, unless they can prove that the aircraft operator is a different person, in which case they are required to take all necessary measures to have the aircraft operator joined in the lawsuit as a party. Note that for the purpose of liability which may arise under Article 112, an aircraft is considered to be in flight from the moment its engines start lifting it from the ground until the moment it has completely landed.

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

Please see question 32.

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

No.



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