

**International
Comparative
Legal Guides**



Practical cross-border insights into aviation finance law

**Aviation Finance & Leasing
2023**

Fourth Edition

Contributing Editor:

Philip Perrotta
K&L Gates LLP

iba 
insights in flight

ICLG.com

Expert Analysis Chapters

- 1** **New Technology Aircraft and the Environment – The Financing Challenge**
Philip Perrotta, K&L Gates LLP
- 5** **We Need to Talk About Reserves**
Peter Aldis, IBA

Q&A Chapters

- 8** **Austria**
Benn-Ibler Rechtsanwälte GmbH:
Dr. Martin R. Geiger & Mag. Irena Gogl-Hassanin
- 15** **Bermuda**
Conyers Dill & Pearman Limited: Jason Piney &
Amber Wilson
- 23** **British Virgin Islands**
Conyers Dill & Pearman: Rachael Pape &
Audrey Robertson
- 31** **Cayman Islands**
Maples Group: Sherice Arman, Shari Howell &
Nick Herrod
- 43** **Congo, D.R.**
Cabinet d'avocats Thambwe-Mwamba & Associés:
Camille Yuma Kamili & Linda Bachunge Kambaza
- 50** **Cyprus**
Montanios & Montanios LLC: Elvina Montanios &
Yiannis Papapetrou
- 60** **Finland**
Waselius & Wist: Maria Lehtimäki, Ann-Marie Eklund
& Ville-Veikko Vanttinen
- 68** **France**
HENAFF D'ESTRÉES: Yves Hénaff d'Estrées
- 74** **Ireland**
Maples and Calder (Ireland) LLP: Donna Ager,
Lynn Cramer & Karole Cuddihy
- 87** **Japan**
Mori Hamada & Matsumoto: Taro Omoto,
Makoto Sakai & Masaki Yukawa
- 94** **Kenya**
MMAN Advocates: Suzanne Muthaura,
Christopher Kiragu & Edward Kimuma
- 104** **South Africa**
Christodoulou & Mavrikis Inc.: Chris Christodoulou
- 112** **Spain**
Augusta Abogados: Sergi Giménez Binder
- 119** **Taiwan**
Lee and Li, Attorneys-at-Law: Mark Yu &
Maggie P. Chang
- 129** **Turkey/Türkiye**
Kartal Law Firm: Ali Kartal
- 136** **Ukraine**
Jurvneshservice: Dr. Anna Tsirat
- 146** **United Kingdom**
K&L Gates LLP: Philip Perrotta
- 158** **USA**
Pillsbury Winthrop Shaw Pittman LLP: Mark Lessard,
Melissa Jones-Prus, Richard Evans & Dania Slim

British Virgin Islands

Conyers Dill & Pearman



Rachael Pape



Audrey Robertson

1 General and Contractual

1.1 What are the typical structures available for financing the purchase of an aircraft?

The British Virgin Islands (BVI) offers a flexible regime for aircraft financing structures. Typically these will involve the incorporation of a special purpose vehicle (SPV) which will hold the title to the aircraft.

1.2 What are the key advantages/disadvantages and main issues arising in relation to these financing structures?

The BVI's flexible corporate regime provides the ability to establish tax neutral, flexible and low-cost vehicles to meet clients' specific structuring requirements, which can be tailored to meet the specific requirements of the proposed transaction while being internationally recognised.

There are no restrictions under BVI law on the objects of a BVI company, which can be unlimited or, in the case of a restricted purpose company, as specified in the memorandum of association of the company. The BVI Business Companies Act allows significant flexibility in how BVI companies are structured in terms of capital structure, management roles and required levels of shareholder involvement. There are also no financial assistance restrictions or guarantee limitations applicable to BVI companies, with BVI companies having clear statutory power and capacity to grant guarantees regardless of corporate benefit.

1.3 What types of leasing are possible under the laws of your jurisdiction? What are their essential characteristics?

Leasing arrangements involving BVI entities are generally governed by foreign laws, typically English or New York law. Save for public policy considerations, there are no restrictions under BVI law on the parties' freedom to choose the governing law of such arrangements.

1.4 Are there any proposals for reform in the area of aviation finance?

There are currently no notable BVI legislation proposals relating to the area of aviation finance.

1.5 Is it possible according to the laws in your jurisdiction to enter into non-binding or partially binding pre-contractual agreements (e.g. 'letters of intent') that will NOT take effect as fully enforceable agreements?

Letters of intent are possible as a matter of BVI law.

1.6 Is there a doctrine of 'good faith' in your jurisdiction that applies to all pre-contractual agreement, financing and leasing transaction documents, and the conduct of parties connected to them?

There is no general doctrine of 'good faith' as a matter of BVI law.

2 Taxation and Related Matters

2.1 Which government authority in your jurisdiction has primary responsibility for the accounting for and regulation of revenue control and taxes?

The British Virgin Islands Inland Revenue Department has primary responsibility.

2.2 What are typically the taxes in your jurisdiction that may arise in relation to a sale, a lease or a financing of an aircraft or an engine?

The BVI currently has no form of applicable income, corporate or capital gains tax and no estate duty, inheritance tax or gift tax which would apply to transactions taking place outside of the BVI.

2.3 Is the provision of a current tax-residency certificate by a payee sufficient for a lessee or a borrower potentially subject to withholding taxes in your jurisdiction on rental or interest payments to avail itself of treaty access and the mitigation of tax liability?

There are no withholding, gross-up provisions or other taxes applicable in the BVI.

2.4 Has the advent of BEPS (the Base Erosion and Profit Shifting initiative of the OECD) had any effect as regards structures in aviation finance and leasing or their interpretation?

The BVI is a member of the Inclusive Framework on BEPS and

has committed to implement the minimum standards thereunder. Currently it is not anticipated that this will have any specific effects in respect of aviation finance or leasing structures in the BVI.

2.5 What are the typical thresholds in your jurisdiction for which a permanent establishment may be triggered under the terms of any relevant double-tax treaty or similar?

The only double-tax treaty to which the BVI is party is between the BVI and the UK and applies to individuals who are residents of the BVI and/or the UK and not to corporate entities and is therefore unlikely to be relevant in the context of aircraft finance and leasing structures.

Typically, BVI companies are simply required to maintain a registered agent and registered office in the BVI. It should, however, be ascertained whether the proposed activities of any BVI legal entity would constitute a “relevant activity” under the BVI Economic Substance (Companies and Limited Partnerships) Act, 2018 such as “finance and leasing business” as if so the entity will be required to have adequate substance in the Territory to ensure that certain core income generating activities in relation to that activity are physically carried out in the BVI.

2.6 Is the authority at question 2.1 likely to establish a ‘look-through’ right or similar as regards a lender or a lessor that is a special-purpose vehicle involved for the purpose of tax treaty access?

This is not applicable.

2.7 Will the import of an aircraft into your jurisdiction and/or the sale or leasing of the aircraft give rise to any VAT, sales or use taxes or any customs import or excise duties?

Aircraft imported into the BVI are subject to BVI import duty.

2.8 Are there any documentary taxes (for example, stamp duty payable on the execution of documents)?

There are no taxes or duties payable on the execution of documents in the BVI.

3 Registration and Deregistration

3.1 Which government authority in your jurisdiction has primary responsibility for the regulation of aviation and the registration of aircraft? Is it an owner registry or an operator registry? If the aircraft register is an operator register, is it possible to record the details of an owner or lessor and any financier with an aircraft mortgage?

Air Safety Support International (ASSI), a wholly owned subsidiary of the Civil Aviation Authority of the United Kingdom, acts as the oversight regulatory body for the Overseas Territories of the United Kingdom (including the BVI) in relation to aviation matters.

Ownership interests in aircraft may be registered in the BVI and the Register of Aircraft is governed by a UK statute, the Air Navigation (Overseas Territories) Order 2013 (ANOTO). The Governor of the BVI is the relevant authority for registration

of aircraft in the BVI and is responsible for maintaining the register in a legible form – these responsibilities have been delegated to the Director of the Department of Civil Aviation, which is subject to oversight from ASSI.

3.2 What is the effect of registration of the aircraft? Does registration on your national aircraft register confer proof of ownership of the aircraft and/or engine?

Registration, and the issuance of a certificate of registration, is *prima facie* evidence of ownership and indicates that the relevant applicant is considered to be qualified for registration. The Certificate of Registration sets out the following information: (i) the registration mark; (ii) the aircraft type and serial number; (iii) the name of the registered owner (and whether such registered owner holds a charter by demise interest); and (iv) the nationality of the registered owner.

3.3 Can foreign-owned aircraft be registered on your national aircraft register and are there limits or restrictions on the age of aircraft that may be registered or operated?

The requirements for registration are set out in the ANOTO and include who is considered to be a qualified person for registration. Qualified persons include:

- (i) the Crown in right of His Majesty’s Government in the United Kingdom or in right of the government of the BVI;
- (ii) United Kingdom nationals;
- (iii) Commonwealth citizens;
- (iv) nationals of any European Economic Area (EEA) state;
- (v) bodies incorporated in any part of the Commonwealth that have their registered office or principal place of business in any place in the Commonwealth; and
- (vi) undertakings formed in accordance with the law of an EEA state and that have their registered office, central administration or principal place of business within the EEA.

3.4 Can aircraft leases be registered? If so, in what circumstances? Must the lease be in a particular form if it is to be valid and enforceable (for example, must it be in a particular language or be notarised, legalised or apostilled)?

There is no specific register or regime in the BVI for the registration of aircraft leases. There is no specific required language or formalities required in order for an aircraft lease to be valid and enforceable. It is generally recommended that lease documents be in English or accompanied by an English language translation.

3.5 How is deregistration affected and what steps can a lessor take to deregister the aircraft on termination of the lease?

There is no specific form of deregistration request and deregistration will typically involve the return to the Governor of the original certificate of registration endorsed at section (iii) on the back and signed by the owner of the aircraft, an officer of the company or an attorney. The aircraft generally cannot be deregistered until the Governor receives the original signed certificate.

4 Security

4.1 Is it possible to create a mortgage over an aircraft or engine in your jurisdiction? If so, what are the types of aircraft mortgage and engine mortgage available and what formalities are required in order to perfect it?

The registration of security over aircraft in the BVI is principally governed by the Mortgaging of Aircraft and Aircraft Engines Act, 2011.

Aircraft registered in the BVI or capable of being so registered and aircraft engines owned by or in the lawful possession of a BVI company may be made the subject of a mortgage. There is no statutory format with which the mortgage must comply. The mortgage itself need not be governed by BVI law. A certified copy of the mortgage deed must be provided to the Governor.

There are no specific documentary formalities under BVI law. The fees are on a sliding scale according to the value of the mortgage.

4.2 Can spare parts, including future parts, be subject to the aircraft mortgage or engine mortgage (as the case may be)? If not, are there any other forms of security that can be taken over spare parts?

A mortgage may cover any store of spare parts (including engines) for the aircraft but may not include a mortgage created as a floating charge or a mortgage of spare parts on their own. Parts that in the future may become attached to the aircraft can be part of a registered mortgage, provided they are sufficiently identifiable when acquired by the mortgagor and their value is given.

4.3 Is there a register of mortgages or rights over aircraft and/or engine?

Mortgages may be registered on the BVI Aircraft Mortgage Register. The application for registration of the mortgage must be in the prescribed form and must be made to the Registrar of Corporate Affairs in the BVI (the Registrar) by or on behalf of the mortgagee in question. It must be accompanied by a certified true copy of the mortgage and the prescribed fees.

The Governor will issue a notification of registration, which is generally available on the date of registration. The notification states the date and time of registration, whether it is the first or a subsequently registered mortgage with respect to the relevant aircraft and the principal details of the mortgage. The notification also acknowledges receipt of the relevant registration fee.

4.4 What other forms of security can be taken over an aircraft and/or engine and can these other forms be registered?

In addition to mortgages over aircraft and engines, the following other forms of security may be taken:

- (i) security assignments in respect of leases and/or insurance contracts;
- (ii) equitable mortgages or charges over the shares of the owner/borrower entity; and
- (iii) fixed or floating charges over the assets of a BVI owner/borrower.

Where security is taken over the assets of a BVI company, details of the charge should be included on the entity's private

register of charges pursuant to section 162 of the BVI Business Companies Act. Although not necessary to ensure the enforceability of the security, it is also recommended to publicly register details of the charge with the BVI Registrar pursuant to section 163 of the BVI Business Companies Act in order to protect the priority of the charge as on registration a charge will have priority in the BVI over a subsequently registered charge and unregistered charges, provided that a registered floating charge is postponed to a subsequently registered fixed charge unless the floating charge contains a negative pledge provision.

Where security is to be taken over the shares of a BVI company, this would typically be governed by BVI law. As a matter of good practice, an annotation would be placed on the company's register of members, which may be publicly filed with the BVI Registrar. This will put third parties on notice of the security interest.

4.5 What claims and rights would take priority in your jurisdiction over a registered mortgage?

A mortgage entered on the BVI Aircraft Mortgage Register has priority over any subsequent mortgage or charge on that aircraft or aircraft engine. It is also possible for the priority of a mortgage to be fixed by filing a priority notice with the Registrar, pursuant to which the priority of a yet to be executed mortgage may be fixed for a 14-day period. When entered in the BVI Aircraft Mortgage Register within the 14-day period, that mortgage shall be deemed to have priority from the time the priority notice was registered.

4.6 What other forms of security can be granted over an aircraft and/or engine lease?

Please see the response to question 4.4 above.

5 Enforcement and Repossession

5.1 What are the circumstances in which a mortgagee or owner can take possession of the aircraft and/or sell the aircraft? What requirements must the mortgagee or owner comply with?

Subject to any enforceability considerations under the governing law of the mortgage, the *lex situs* and any other relevant laws, the BVI courts will typically recognise and enforce contractual arrangements such as lease termination provisions created under foreign laws.

5.2 What is the procedure for repossession of the aircraft?

The BVI courts will generally recognise self-help remedies by which the counterparties may take possession of the aircraft, for example, by dealing directly to effect a deregistration of the aircraft pursuant to a registration power of attorney or Irrevocable De-Registration and Export Request Authorisation (IDERA).

5.3 Will local courts recognise a choice of foreign law in an aircraft mortgage? Are there any mandatory local rules that apply, despite a choice of foreign law?

The choice of a foreign law as the governing law of an aircraft mortgage would be recognised and given effect to in any action

brought before a court of competent jurisdiction in the BVI, except for those laws: (i) which such court considers to be procedural in nature; (ii) which are revenue or penal laws; or (iii) the application of which would be inconsistent with public policy, as such term is interpreted under BVI law.

5.4 Will local courts recognise and enforce a foreign court judgment in favour of a mortgagee or lessor? Are any interim relief measures available?

A final and conclusive judgment in the superior courts of the United Kingdom, Australia, Bahamas, Barbados, Belize, Bermuda, Grenada, Guyana, Jamaica, Nigeria, St. Lucia, St. Vincent and/or Trinidad and Tobago under which a sum of money is payable (not being in respect of multiple damages, or a fine, penalty, tax or other charge of similar nature) would, on registration in accordance with the provisions of The Reciprocal Enforcement of Judgments Act (or, where applicable, the Foreign Judgments (Reciprocal Enforcement) Act), be enforceable in the High Court of the BVI without the necessity of any retrial of the issues which are the subject of such judgment or any re-examination of the underlying claims.

A final and conclusive judgment *in personam* obtained from a foreign court other than as noted above under which a sum of money is payable (other than a sum of money payable in respect of multiple damages, taxes or other charges of a like nature or in respect of a fine or other penalty) would be recognised by the BVI Courts as a valid judgment, and the BVI Courts would give a judgment based thereon provided that (a) such courts had proper jurisdiction over the parties subject to such judgment, (b) such courts did not contravene the rules of natural justice of the BVI, (c) such judgment was not obtained by fraud, (d) the enforcement of the judgment would not be contrary to the public policy of the BVI, (e) no new admissible evidence relevant to the action is submitted prior to the rendering of the judgment by the BVI Courts, and (f) there is due compliance with the correct procedures under the laws of the BVI.

5.5 Are powers of attorney from a local airline in favour of a lessor or mortgagee likely to be effective to allow the lessor or mortgagee to deregister the aircraft? Can such powers be irrevocable, be governed by a foreign law and/or do they need to be in any particular form for local recognition?

Under BVI law a deregistration power of attorney may be granted to secure obligations owed to a finance party and will be irrevocable until the secured obligation is discharged (and will survive the insolvency of the grantor). The power of attorney must be executed as a deed and may be granted to multiple attorneys on a joint and/or several basis. Pursuant to the Mortgaging of Aircraft and Aircraft Engines Regulations, 2012 (the Regulations), an IDERA may be entered into, which should be substantially in the form set out in form 6 of Schedule 1 to the Regulations.

It is possible to submit the power of attorney to the Governor and obtain an acknowledgment from the Governor in respect of it.

A power of attorney need not be governed by BVI law and will frequently have the same governing law as the other transaction documents.

5.6 If recovery of the aircraft is contested by the lessee and a court judgment is obtained in favour of the lessor, how long is it likely to take to gain possession of the aircraft?

To date this has not been tested in the BVI.

5.7 To what extent is there a risk from the perspective of an owner or financier that a lessee of aircraft or other aviation assets in your jurisdiction may acquire an economic interest in the aircraft merely by payment of rent and thereby potentially frustrate any rights to possession or legal ownership or security?

The mere payment of rent by a lessee is unlikely to be sufficient to frustrate legal rights of possession or ownership but this position has not been tested in the BVI.

5.8 Are there any restrictions on the ability of the lessor to export the aircraft from your jurisdiction on termination of the leasing?

There are no specific restrictions in the BVI in this regard.

5.9 Are exchange controls prevailing in your jurisdiction as regards payments in foreign currency? Will any consents be required for the remittance of the sale proceeds abroad?

There is no exchange control legislation under BVI law and accordingly there are no exchange control regulations imposed under BVI law and sale proceeds may be remitted abroad without the necessity of obtaining any consent of any government or authority of the BVI.

5.10 If the lease is governed by English law and a judgment is obtained by the lessor in the English courts, can that judgment be automatically enforced in your jurisdiction or will the case have to be re-examined on its merits?

A final and conclusive judgment in the superior courts of the United Kingdom, under which a sum of money is payable (not being in respect of multiple damages, or a fine, penalty, tax or other charge of similar nature) would, on registration in accordance with the provisions of The Reciprocal Enforcement of Judgments Act (or, where applicable, the Foreign Judgments (Reciprocal Enforcement) Act), be enforceable in the High Court of the BVI without the necessity of any retrial of the issues which are the subject of such judgment or any re-examination of the underlying claims.

5.11 What is the applicable procedure for repossession of an aircraft under other forms of security interests?

The procedure for repossessing an aircraft will depend on the *lex situs* of the aircraft and the governing law and terms of the relevant security documents.

6 Conventions

6.1 Has your jurisdiction ratified any of the following: (a) The Chicago Convention of 1944 on International Civil Aviation (the Chicago Convention); (b) The 1948 Convention on the International Recognition of Rights in Aircraft (the Geneva Convention); (c) The 1933 Convention for the Unification of Certain Rules Relating to the Precautionary Arrest of Aircraft (the 1933 Rome Convention); and (d) The Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment (the Cape Town Convention) and the Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment?

The BVI is not a signatory (or a party by extension from the United Kingdom) to the Chicago Convention, the Geneva Convention, the 1933 Rome Convention or the Cape Town Convention.

In relation to the Cape Town Convention, however, the United Kingdom is obliged to ensure that its overseas territories (including the BVI) comply with certain provisions, which are reflected in the Air Navigation (Overseas Territories) Order 2013.

6.2 Has ratification of the Cape Town Convention caused any conflicts or issues with local laws?

The BVI is not party to the Cape Town Convention.

6.3 What is the legal position regarding non-consensual rights and interests under Article 39 of the Cape Town Convention?

This is not applicable.

6.4 Has your jurisdiction adopted the remedies on insolvency provided under Article XI of the Protocol to the Cape Town Convention?

This is not applicable.

6.5 What is the procedure to file an irrevocable deregistration and export request authorisation under the Cape Town Convention (IDERA)?

This is not applicable.

7 Liability for Damage and Environmental

7.1 Can the owner be strictly liable – liable without a requirement to prove fault or negligence – for any damage or loss caused by the aircraft assuming the owner is an innocent owner with no operational control of the aircraft?

The owner of an aircraft is subject to strict liability by virtue of section 40(2) of the UK Civil Aviation Act 1949, which is extended to the BVI. However, section 76(4) of the UK Civil Aviation Act 1982 (which is also extended to the BVI) provides that loss or damage caused by an aircraft in flight or by a person in, or an article, animal or person falling from, an aircraft is

transferred to the person to whom the owner has demised, let or hired out the aircraft, provided that the demise, let or hire is for more than 14 days and no crew member is employed by the owner.

7.2 Does the EU Emissions Trading System (EU ETS), or ICAO's Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA), apply to aircraft and aircraft operators in your jurisdiction? Will charges levied according to the EU ETS, or its equivalent, give rise to any *in rem* rights in relevant aircraft that are part of the fleet of the operator concerned and, if so, will such rights rank in priority ahead of any mortgage interests properly registered in the relevant aircraft and/or engine?

While the United Kingdom introduced the UK Emissions Trading Scheme to replace the EU Emissions Trading System and is a contracting state to CORSIA, these regimes and participations have not however been extended to the BVI to date.

7.3 What liabilities (actual or potential) could an owner, lessor or financier of an aircraft incur in your jurisdiction because of a failure to comply with local environmental law and/or regulations on the part of an operator of aircraft leased or financed by it?

It is rare for aircraft to be physically located or operated in the BVI. Typically, therefore, liabilities would be incurred in the jurisdiction in which the aircraft is located.

8 Insolvency and Searches

8.1 Are there any public registers in your jurisdiction where a search can be carried out to determine whether an order or resolution for any bankruptcy, bankruptcy protection or similar insolvency proceedings has been registered in relation to an operator or lessee?

Searches may be conducted of: (i) the public records in respect of BVI registered legal entities with the BVI Registrar; and (ii) of the Civil Index, the High Court's Judicial Enforcement Management System and the E-Filing Index of matters filed using the Eastern Caribbean Supreme Court E-Litigation Portal maintained at the Registry of the High Court in the BVI which would provide details of any steps taken in the BVI for the appointment of a receiver, administrator or liquidator to, or for the winding-up, dissolution, reconstruction or reorganisation of the entity.

It should however be noted that (i) failure to file notice of appointment of a receiver does not invalidate the receivership but only gives rise to penalties on the part of the receiver, and (ii) in the case of the appointment of a liquidator, notice of the appointment of a liquidator may be filed up to 14 days after the actual appointment.

8.2 In the event that an operator or lessee were to become insolvent either on a balance sheet basis (assets less than liabilities) or is unable to pay debts as they fall due, would an operator or lessee be required to file for insolvency protection?

As a technical matter, a BVI company will be deemed to be "insolvent" under BVI law if it does not meet the cash flow test or the balance sheet test. There are also some "fast track" ways for a creditor to prove cash flow insolvency, for example:

(i) the BVI company fails to comply with a formal statutory demand which has not been set aside; or (ii) execution or other process issued on a court judgment is returned wholly or partly unsatisfied.

Once a BVI company is proved to be “insolvent” on one or more of the bases above then (among others) a creditor could in theory apply to the BVI Court to put the company into liquidation. The BVI Court has the discretion as to whether or not to accede to that application.

The fundamental question directors of an operator or lessee should consider, both when financial difficulties first become apparent and on an ongoing basis until the financial difficulties are resolved, is whether there are reasonable prospects that the company will avoid insolvent liquidation. If the answer is that there are no such reasonable prospects, the directors should take appropriate steps to appoint an insolvency practitioner to act as liquidator of the company as soon as reasonably practicable. Directors can be personally liable if they fail to take appropriate steps to commence formal liquidation where there is no reasonable prospect of the company avoiding insolvent liquidation.

8.3 Do the available forms of insolvency protection in your jurisdiction involve the appointment of either an officer of the court or a specifically court-appointed official to take control of the operator or lessee (an ‘Insolvency Official’) while in insolvency protection?

Yes, either the Official Receiver or an eligible insolvency practitioner may be appointed as liquidator. A liquidator may be appointed:

- (i) by the shareholders of the company by way of a resolution passed by a majority of 75% (or such higher threshold as specified by the company’s constitutional documents);
- (ii) by the court on the application of the company, a creditor, a member or the supervisor of a creditors’ arrangement in respect of the company; or
- (iii) by the Commission or the Attorney General where: (a) the company is insolvent; (b) the court is of the opinion that it is just and equitable that a liquidator should be appointed; or (c) the court is of the opinion that it is in the public interest for a liquidator to be appointed.

8.4 Does the commencement of insolvency protection involving the appointment of an Insolvency Official in your jurisdiction have the effect of prohibiting the owner from taking the following actions to enforce the lease after commencement of such protection: (a) applying any security deposit held by the owner against any unpaid amounts due under the lease; (b) accepting payment of rent or other lease payments from the lessee, a guarantor or a shareholder; (c) giving notice of default under the lease; (d) obtaining a judgment or arbitral award for unpaid lease payments; (e) giving notice to terminate the leasing of the aircraft and/or engine; or (f) exercising rights to repossess the aircraft and/or engine?

On the commencement of the liquidation the liquidator will have custody and control of the assets of the company. Unless the court otherwise orders, no person may commence or proceed with any action or proceeding against the company or in relation to its assets or exercise or enforce (or continue to exercise or enforce) any right or remedy over or against assets of

the company. The rights of a secured creditor to take possession of and realise or otherwise deal with the assets of the company over which the creditor has a security interest are, however, unaffected by the commencement of the liquidation.

8.5 Can the commencement of insolvency proceedings have retrospective effect in relation to any such actions taken before commencement? If so, for what period can there be a look back?

Under the BVI Insolvency Act, 2003, transactions may be set-aside where they constitute “insolvency transactions” that are entered into during the “vulnerability period”. An “insolvency transaction” is a transaction entered into at a time when the relevant company is insolvent or the transaction causes the relevant company to become insolvent.

The “vulnerability period” generally commences six months prior to the onset of insolvency (normally the date of an application to appoint a liquidator) and ends on the appointment of the liquidator. For connected persons, the period is two years prior to the onset of insolvency. For extortionate credit transactions, the period is five years.

The BVI Insolvency Act, 2003 sets out four specific types of transactions that are voidable – preferences, undervalue transactions, certain floating charges and extortionate credit transactions.

8.6 Is there, either under law or as a matter of practice in your jurisdiction, a period of time within which the Insolvency Official will either ‘adopt’ the lease and pay rent and other lease payments as an expense of the insolvency or ‘reject’ the lease and permit the owner to enforce such rights as it may have under the lease? (a) If the lease is ‘adopted’, will the Insolvency Official also pay any unpaid lease payments due as at commencement of the insolvency protection? (b) If not or if the lease is ‘rejected’, would the owner’s claim for any outstanding sums rank equally with other ordinary unsecured creditors of the lessee?

There are no specific provisions of BVI law in this regard.

8.7 Are there certain types of preferred creditors whose claims will rank above claims of the owner?

The claims of preferential creditors under BVI law and the costs and expenses of the liquidation itself will have priority over the claims of any unsecured creditors of the company.

8.8 If the aircraft is in the possession of a person other than the operator or lessee at the commencement of insolvency protection of the operator or lessee, for example, an independent maintenance facility, will such person be entitled, under the laws of your jurisdiction, to assert a lien arising under law or contract over the aircraft in respect of amounts then due and unpaid to such person by the operator or lessee?

The ability to assert a lien in respect of due and unpaid amounts will be governed by the governing law of the transaction documents.

9 Detention and Confiscation

9.1 Other than insolvency laws (see section 8), are there any laws that may have the effect of defeating the owner's right in the aircraft – for example, government requisition? Do the laws of your jurisdiction provide for any compensation in such circumstances?

There are no specific provisions of BVI law in this regard.

9.2 Are there any rights in relation to third parties to detain or sell the aircraft pursuant to illegal activities, tax or any other laws if the operator or lessee fails to pay when due? If so, can the aircraft be forfeited and sold without the owner being made aware?

There are no specific provisions of BVI law in this regard.



Rachael Pape has a broad corporate and finance practice with particular expertise in corporate finance and reorganisations, capital markets, derivatives and securitisations, mergers and acquisitions and investment funds, along with providing cross-border regulatory guidance. She has most recently been recognised as a 2023 'Rising Star' in both *The Legal 500* and *IFLR1000*.

Conyers Dill & Pearman
Commerce House, Wickhams Cay 1
PO Box 3140, Road Town
Tortola VG1110
British Virgin Islands

Tel: +1 284 852 1114
Email: rachael.pape@conyers.com
URL: www.conyers.com



Audrey Robertson's practice covers general corporate and commercial matters with particular focus on public offerings and joint ventures. She has extensive experience in a wide variety of international asset finance and corporate transactions. Audrey has particular expertise in financings involving aircraft, including aircraft acquisitions and dispositions, sale and leasebacks and pre-delivery payment and warehouse facilities. Audrey advises leading financial institutions, leasing companies, development agencies and companies.

Audrey is recognised in a number of international legal directories, including *Chambers Global*, *The Legal 500*, *Who's Who Legal*, *Legal Media Group Expert Guides – Aviation* and *Women in Business Law* for her corporate and commercial and aviation law expertise.

Conyers Dill & Pearman
Commerce House, Wickhams Cay 1
PO Box 3140, Road Town
Tortola VG1110
British Virgin Islands

Tel: +1 284 852 1111
Email: audrey.robertson@conyers.com
URL: www.conyers.com

Conyers' globally recognised team of lawyers is one of the most experienced in offshore aviation and air finance transactions. Our broad client base includes lenders, leasing companies, international credit agencies, export credit agencies and airline operators. Conyers' team brings significant experience advising on all aspects of:

- Aircraft registration and aircraft mortgage registration.
- Cross-border financings.
- Structured and debt financings.
- Islamic finance, involving financing, acquisition and leasing of aircraft, including Shari'a-compliant aircraft sales and leaseback arrangements, as well as the issuance of aircraft-backed sukuk certificates.
- Private placements.
- Sales and sale-leasebacks.
- Securitisations.
- Aircraft purchases (including portfolio acquisitions).
- Pre-delivery payments.

- Warehouse facilities.
- Bond issuances.
- Notes offerings.

Conyers is a leading international law firm with a broad client base including FTSE 100 and Fortune 500 companies, international finance houses and asset managers. The firm advises on Bermuda, British Virgin Islands and Cayman Islands laws, from offices in those jurisdictions and in the key financial centres of Hong Kong, London and Singapore.

www.conyers.com

CONYERS

ICLG.com

Current titles in the ICLG series

Alternative Investment Funds
Anti-Money Laundering
Aviation Finance & Leasing
Aviation Law
Business Crime
Cartels & Leniency
Class & Group Actions
Competition Litigation
Construction & Engineering Law
Consumer Protection
Copyright
Corporate Governance
Corporate Immigration
Corporate Investigations
Corporate Tax
Cybersecurity
Data Protection
Derivatives
Designs
Digital Business
Digital Health
Drug & Medical Device Litigation
Employment & Labour Law
Enforcement of Foreign Judgments
Environment & Climate Change Law
Environmental, Social & Governance Law
Family Law
Fintech
Foreign Direct Investment Regimes
Franchise
Gambling
Insurance & Reinsurance
International Arbitration
Investor-State Arbitration
Lending & Secured Finance
Litigation & Dispute Resolution
Merger Control
Mergers & Acquisitions
Mining Law
Oil & Gas Regulation
Patents
Pharmaceutical Advertising
Private Client
Private Equity
Product Liability
Project Finance
Public Investment Funds
Public Procurement
Real Estate
Renewable Energy
Restructuring & Insolvency
Sanctions
Securitisation
Shipping Law
Technology Sourcing
Telecoms, Media & Internet
Trade Marks
Vertical Agreements and Dominant Firms