

Law and Practice

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1. AIRCRAFT AND ENGINE PURCHASE AND SALE

1.1 Sales Agreements

1.1.1 Taxes/Duties Payable upon Execution of the Sales Agreement

The sale of aircraft that are registered in Panama and engage in international transport is exempted from payment of income tax.

1.1.2 Enforceability against Domestic Parties

In the case of sale of aircraft registered in Panama, a bill of sale that evidences the transfer would need to be recorded with the Public Registry Office of Panama (where the registration of titles, liens and leases on aircraft takes place, making that document/information effective vis-à-vis third parties). In order to register the bill of sale with the Public Registry Office of Panama, if executed in a language other than Spanish, the bill of sale must be translated into Spanish by an authorised translator in Panama and protocolised (transcribed) into a Notarial Deed by a Panamanian Notary Public.

1.2 Transfer of Ownership

1.2.1 Transferring Title

Transferring property to and in an aircraft constitutes an act of “transferring title” to that aircraft. A transfer of ownership on an entity that owns aircraft is considered to be a transfer of ownership on that entity, which continues to be the owner of the aircraft.

1.2.2 Sales Governed by English or New York Law

A transfer of title to an aircraft or engine physically delivered in Panama will be recognised if the bill of sale is governed by either English or New York law, provided that there are no provisions contrary to the laws of Panama, public order or moral principles of Panama.

The bill of sale must comply with certain formalities that allow for the recordation of that bill of sale with the Public Registry Office of Panama, in order to become effective vis-à-vis third parties.

In order for a bill of sale to be recognised in Panama, the signatures to that bill of sale must be authenticated by a Notary Public from the place of execution. If executed and notarised outside of Panama, the Notary Public’s signature must further be legalised either by a Panamanian Consul or by the Apostille (pursuant to the 1961 Hague Convention Abolishing the Requirement of Legalization for Foreign Public Documents). The notarised/legalised bill of sale would then need to be translated into Spanish, if executed in a foreign language, and in order to become effective vis-à-vis third parties, it must further be protocolised (transcribed) into a Notarial Deed by a Panamanian Notary Public and recorded with the Public Registry Office of Panama.

1.2.3 Enforceability against Domestic Parties

Bills of sale for the transfer of Panamanian registered aircraft must have the signatures thereto authenticated by a Notary Public from the place of execution. If executed and notarised outside of Panama, the Notary Public’s signature must further be legalised either by a Panamanian Consul or by the Apostille (pursuant to the 1961 Hague Convention Abolishing the Requirement of Legalization for Foreign Public Documents).

Furthermore, bills of sale must be translated into Spanish if executed in a foreign language, and in order to become effective vis-à-vis third parties must further be protocolised (transcribed) into a Notarial Deed by a Panamanian Notary Public and recorded with the Public Registry Office of Panama.

1.2.4 Registration, Filing and/or Consent from Government Entities

Bills of sale for the transfer of Panamanian-registered aircraft must be recorded with the Public Registry Office of Panama in order to become effective vis-à-vis third parties.

Furthermore, the recorded bill of sale must be filed with the Civil Aviation Authority in Panama in order to obtain a registration certificate on the aircraft in the name of the new owner.

Bills of sale need to be translated into Spanish if executed in a foreign language and further protocolised (transcribed) into a Notarial Deed by a Panamanian Notary Public in order to be filed for recordation with the Public Registry Office of Panama. Completing the translation, protocolisation and recordation process could take between two to four weeks.

There are no government applications or consents required as a pre-requisite to the execution and delivery of a bill of sale to transfer ownership on a Panamanian-registered aircraft.

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

The sale of shares in a company that does not generate income in Panama is exempted from payment of income tax.

The sale of aircraft that are registered in Panama and engage in international transport is exempted from payment of income tax.

2. AIRCRAFT AND ENGINE LEASING

2.1 Overview

2.1.1 Non-permissible Leases

Panamanian laws do not prohibit leases concerning only engines or parts.

2.1.2 Application of Foreign Laws

The current view is that a lease agreement relating to an aircraft may be governed by foreign law, provided that there are no provisions contrary to the laws of Panama, public order or moral principles of Panama.

This lease agreement must comply with certain formalities that allow for the recordation of that bill of sale with the Public Registry Office of Panama, in order to become effective vis-à-vis third parties.

2.1.3 Restrictions Concerning Payments in US Dollars

The US dollar is a lawful currency of the Republic of Panama and is used in commercial transactions in Panama. Therefore, there are no restrictions on domestic lessees making rent payments to foreign lessors in US dollars.

2.1.4 Exchange Controls

There are no exchange controls currently in place in Panama which could prevent rent payments under a lease or any repatriation of realisation proceeds.

2.1.5 Taxes/Duties Payable for the Physical Execution of a Lease

If any document, including a lease agreement, is to be used in evidence in the courts of Panama, stamp taxes at a rate of USD0.10 for each USD100.00 of face value must be adhered thereto. In the case of documents recorded with the Public Registry Office of Panama, the amounts

paid in notarial paper for their protocolisation and in registration duties would be deducted from the applicable stamp tax.

2.1.6 Licensing/Qualification of Lessors

A lessor does not have to be licensed or otherwise qualified in Panama to do business with a domestic lessee.

2.2 Lease Terms

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

Panama's laws do not require specific terms to be included in a lease agreement governed by English or New York law. However, the Public Registry Office of Panama will calculate registration fees based on the lease term and rent payable under the lease agreement. Therefore, this information should be included in the lease agreement or an ancillary document, filed for recordation.

2.2.2 Tax and Withholding Gross-Up Provisions

Tax and other withholding gross-up provisions are permissible and enforceable in Panama.

2.2.3 Parts Installed or Replaced After a Lease's Execution

Leases may cover parts that are installed or replaced on an aircraft or engine after its execution, if so provided for in the agreement.

2.2.4 Risk of Title Annexation

Panamanian laws would consider title annexation if removing any part without replacement would affect the principal asset to which it is attached.

2.2.5 Recognition of the Concepts of Trust/Trustee

Panama recognises the concept of a trust and the role of an owner trustee under a lease.

2.3 Lease Registration

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

It is necessary to register at the Public Registry Office of Panama and file with the Civil Aviation Authority the entire chain of ownership/lease of a Panamanian registered aircraft, that evidences the lease structure from the owner to the lessee. Therefore, for any title of property document and lease, sub-lease agreements would be recorded and filed in Panama.

2.3.2 Registration if the Owner Is Different from the Operator

It is necessary to register at the Public Registry Office of Panama and file with the Civil Aviation Authority the entire chain of ownership/lease of a Panamanian registered aircraft, that evidences the lease structure from the owner to the operator (in case the owner is not the same person as the operator).

2.3.3 Aircraft/Engine-Specific Registers

Leases are recorded with the Public Registry Office of Panama in order to become effective vis-à-vis third parties, and filed with the Civil Aviation Authority in order to obtain the applicable navigation and operative authorisations.

2.3.4 Registration of Leases with the Domestic Aircraft Registry

Leases must be recorded with the Public Registry Office of Panama in order to become effective vis-à-vis third parties, and filed with the Civil Aviation Authority in order to obtain the applicable navigation and operative authorisations.

If the above is not complied with, the aircraft will not be allowed to operate under the Panamanian registry.

Leases need to be translated into Spanish if executed in a foreign language and further pro-

ocolised (transcribed) into a Notarial Deed by a Panamanian Notary Public in order to be filed for recordation with the Public Registry Office of Panama.

Completing the translation, protocolisation and recordation process could take between two to four weeks.

There are no government applications or consents required as a pre-requisite to the execution and delivery of a lease regarding a Panamanian registered aircraft.

2.3.5 Requirements for a Lease to Be Valid and Registrable

Leases on Panamanian registered aircraft must have the signatures thereto authenticated by a Notary Public from the place of execution. If executed and notarised outside of Panama, the Notary Public's signature must further be legalised either by a Panamanian Consul or by the Apostille (pursuant to the 1961 Hague Convention Abolishing the Requirement of Legalization for Foreign Public Documents).

Furthermore, leases must be translated into Spanish if executed in a foreign language, and in order to become effective vis-à-vis third parties must further be protocolised (transcribed) into a Notarial Deed by a Panamanian Notary Public and recorded with the Public Registry Office of Panama.

2.3.6 Taxes/Duties Payable for Registering a Lease

The Public Registry Office of Panama charges registration fees based on the rent and lease period of a lease agreement. Also, the Notary Public charges a notarial fee for the protocolisation of a lease agreement, including stamp taxes on each notarial page.

2.3.7 Registration of Aircraft in Alternative Countries

As far as is known, the two most popular alternative countries where the aircraft based in Panama are typically registered are the United States of America ("N" registered mark) and Colombia ("HK" registered mark).

2.3.8 Requirements for Documents Concerning Registration

Any document filed with a judicial or administrative authority in Panama must be in its original form or a certified copy. In addition, this document must be notarised (by a Notary Public) and/or legalised (by a Panamanian Consul or by the Apostille – pursuant to the 1961 Hague Convention Abolishing the Requirement of Legalization of Public Foreign Documents). Furthermore, if executed in a language other than Spanish, the document must be translated.

In the case of a document filed with the Public Registry Office of Panama, in addition to the foregoing, that document would need to be protocolised (transcribed) into a Notarial Deed by a Panamanian Notary Public.

2.4 Lessor's Liabilities

2.4.1 Tax Requirements for a Foreign Lessor

Rental payments for the lease of a Panamanian registered aircraft between a foreign lessor and a local lessee/operator are subject to income tax, by way of withholding by the lessee, unless a double taxation or similar treaty applies and benefits the lessor.

If the lessee were to withhold and remit withholding tax but failed to do so, in theory the lessor and the lessee would be severally liable for the payment of the amounts due as withholding tax and the authorities may, in theory, have the power to pursue the lessor, although in practice they would first pursue the local lessee.

2.4.2 Effects of Leasing on the Residence of a Foreign Lessor

A foreign lessor would not be deemed to be resident, domiciled, carrying on business or subject to taxation in Panama, solely by reason of being a party to the lease or enforcing that lease.

2.4.3 Engine Maintenance and Operations

The person responsible for the maintenance, etc, of a Panamanian-registered aircraft would be the operator of the aircraft, unless otherwise agreed in a lease agreement.

2.4.4 Damage or Loss Caused by an Asset

A foreign owner, lessor or financier of an aircraft should not be considered responsible for loss or damage caused by the aircraft unless there was gross negligence or wilful misconduct on the part of the foreign owner, lessor or financier, which could be related to that loss or damage, or unless otherwise provided for in an agreement with the operator of the aircraft.

2.4.5 Attachment by Creditors

Creditors of a domestic lessee could attempt to attach an aircraft leased to it but owned by a different entity. However, any such attempt would not progress unless the aircraft were covered by security in favour of that creditor for the obligations of the domestic lessee.

2.4.6 Priority of Third Parties' Rights

An operator that is not the owner of the aircraft does not have the right to impose or create a third party's lien on the aircraft.

However, mechanical liens (if the aircraft is at a repair shop and the repairs have not been paid for) could be enforced.

2.5 Insurance and Reinsurance

2.5.1 Requirement to Engage Domestic Insurance Companies

Panama's laws require insurances related to aircraft registered in Panama to be placed with domestic insurance companies, if any such insurance is available.

2.5.2 Mandatory Insurance Coverage Requirements

Panama law requires air carriers to contract insurance for risk of damage to third parties on the ground, to the crew, to users and in general to anyone who could suffer damages as a result of the carrier's operations.

2.5.3 Placement of Insurances outside of Jurisdiction

As far as is known, there is no restriction in the case of reinsurance coverage for domestic insurance companies.

2.5.4 Enforceability of "Cut-Through" Clauses

The current opinion is that cut-through clauses in the insurance/reinsurance documents should be enforceable.

2.5.5 Assignment of Insurance/Reinsurance

Assignments of insurances/reinsurances are not prohibited under Panama's laws.

2.6 Lease Enforcement

2.6.1 Restrictions on Lessors' Abilities

There are no restrictions imposed by law on a lessor's ability to:

- terminate an aircraft lease;
- re-export the aircraft; and/or
- sell the aircraft following that termination, assuming this is authorised by the Panamanian authorities.

Under Panama's laws, the aircraft does not need to be physically in Panama in order for the lessor to exercise any of the above actions.

2.6.2 Lessor Taking Possession of the Aircraft

A court order that authorises a lessor to take physical possession of the aircraft should be obtained if the lessee's consent is not granted.

2.6.3 Specific Courts for Aviation Disputes

There are no aviation-specific courts in Panama. Aviation matters should be heard by a civil circuit court.

2.6.4 Summary Judgment or Other Relief

A lessor may commence executory and/or summary proceedings in Panama and may also ask for the attachment of the aircraft in order to gain immediate possession of it.

In order to attach or seize the aircraft, the lessor may be required to post a bond or guarantee which may be equivalent to 30% to 40% of the amounts claimed.

Typical executory proceedings may take between four to 18 months, depending on the defences posed by the counterparty.

2.6.5 Domestic Courts' Approach to Foreign Laws and Judgments

In general terms, the courts would uphold a foreign law as a valid choice of governing law of an aircraft lease. However, the courts will not enforce provisions that may be deemed to be contrary to the laws of Panama, public order or moral principles of Panama, the submission to a foreign jurisdiction, subject to the terms of the lease, and a waiver of immunity by the parties of that lease, subject to the laws applicable to that party.

2.6.6 Domestic Courts' Recognition of Foreign Judgments/Awards

Final judgments rendered by a foreign court would be recognised and enforced by the courts in the Republic of Panama without re-examination of the merits of the case, subject to the issuance of a writ of exequatur by the Supreme Court of Panama. The Supreme Court of Panama is authorised to issue a writ of exequatur in respect of a final judgment rendered in a foreign jurisdiction only if:

- the judgment arises out of an in personam action;
- the party against whom the judgment was rendered (or its agent) was personally served in the action;
- the obligation in respect of which the judgment was obtained is lawful in Panama;
- the judgment is properly authenticated by diplomatic or consular officers of the Republic of Panama or pursuant to the 1961 Hague Convention Abolishing the Requirement of Legalization for Public Documents and translated into Spanish by a Panamanian Official Translator; and
- judgments of Panamanian courts are reciprocally recognised in the foreign court (which the Panamanian Supreme Court will presume to be the case, unless proved otherwise).

The Supreme Court of Panama should also recognise a foreign arbitration award, provided that:

- the parties subject to the arbitration proceedings were not subject to some incapacity under the laws governing the applicable arbitration clause or under the laws of the place where the arbitration was held;
- the party against whom enforcement is being sought was duly notified of the appointment of arbiters or of the arbitration proceedings and had the opportunity to defend itself in the arbitration proceedings;

- the foreign arbitral award referred to a matter which was within the scope of the arbitration clause and did not include decisions which exceeded the scope of the arbitration clause;
- the constitution of the foreign arbitration tribunal and the procedure followed comply with what the parties agreed upon in the arbitration clause or, in the absence of any provision to that effect in an arbitration clause, with the laws of the place where the arbitration was held;
- the award is final on the parties or it has not been annulled or suspended by a court of the country where or pursuant to the laws of which the award was rendered;
- the subject matter is capable of settlement by arbitration under the laws of Panama; and
- the recognition and enforcement of the award would not be contrary to the public policy of Panama.

2.6.7 Judgments in Foreign Currencies

A lessor under an aircraft lease can obtain a judgment in a foreign currency.

2.6.8 Limitations on Lessors' Actions Following Termination

There is no interest limitation law in Panama that would restrict the recovery of default interest payments in accordance with the lease.

2.6.9 Lessor's Requirement to Pay Taxes/Fees

Stamp taxes at the rate of USD0.10 for each USD100.00 of face value would be payable on a lease presented in evidence to a Panamanian court or administrative authority. The obligation to pay this stamp tax will not arise by the mere execution and delivery of the lease. In practice, stamp taxes will have to be paid and adhered to the lease by the party who is using it as evidence. In any event, such stamp taxes are not due with respect to the lease unless and until the lease is to be used in evidence as indicated

above. However, the amounts paid in notarial paper and recordation duties (for the recordation of the lease at the Public Registry Office of Panama) would be deducted from the applicable stamp tax.

2.6.10 Mandatory Notice Periods

Notice periods for the termination of a lease should be exercised as provided for in the lease agreement.

2.6.11 Lessees' Entitlement to Claim Immunity

Sovereign or other immunity from suit is not available in Panama.

2.6.12 Enforcement of Foreign Arbitral Decisions

Panama ratified the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention) and should therefore recognise and enforce an arbitral decision, provided that:

- the parties subject to the arbitration proceedings were not subject to some incapacity under the laws governing the applicable arbitration clause or under the laws of the place where the arbitration was held;
- the party against whom enforcement is being sought was duly notified of the appointment of arbiters or of the arbitration proceedings and had the opportunity to defend itself in the arbitration proceedings;
- the foreign arbitral award referred to a matter which was within the scope of the arbitration clause and did not include decisions which exceeded the scope of the arbitration clause;
- the constitution of the foreign arbitration tribunal and the procedure followed comply with what the parties agreed upon in the arbitration clause or, in the absence of any provision to that effect in an arbitration

clause, with the laws of the place where the arbitration was held;

- the award is final on the parties or it has not been annulled or suspended by a court of the country where or pursuant to the laws of which the award was rendered;
- the subject matter is capable of settlement by arbitration under the laws of Panama; and
- the recognition and enforcement of the award would not be contrary to the public policy of Panama.

2.6.13 Other Relevant Issues

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

2.7 Lease Assignment/Novation

2.7.1 Recognition of the Concepts of Contractual Assignment and Novation

In general, Panama does recognise the concepts of contractual assignment and novation.

2.7.2 Assignment/Novation of Leases under Foreign Laws

A lease assignment or novation relating to the transfer of an aircraft may be governed by New York or English law, provided that there are no provisions contrary to the laws of Panama, public order or moral principles of Panama.

There are no specific terms required by Panama's laws to be included in the assignment/novation agreement. However, the assignment/novation agreement must be recorded with the Public Registry Office of Panama. For these purposes, the Public Registry Office of Panama will calculate registration fees based on the lease term and rent payable if the terms have been modified under the assignment/novation agreement. Therefore, this information should be included in the assignment/novation agreement or an ancillary document, filed for recordation.

2.7.3 Enforceability of Lease Assignments/Novations

An assignment/novation of a lease agreement relating to an aircraft should have the signatures thereto authenticated by a Notary Public from the place of execution. If executed and notarised outside of Panama, the Notary Public's signature must further be legalised either by a Panamanian Consul or by the Apostille (pursuant to the 1961 Hague Convention Abolishing the Requirement of Legalization for Foreign Public Documents).

Furthermore, the document must be translated into Spanish if executed in a foreign language, and in order to become effective vis-à-vis third parties, must further be protocolised (transcribed) into a Notarial Deed by a Panamanian Notary Public and recorded with the Public Registry Office of Panama.

2.7.4 Filing/Registration of Lease Assignments/Novations

An assignment/novation of lease agreement must be recorded with the Public Registry Office of Panama in order to become effective vis-à-vis third parties, and filed with the Civil Aviation Authority in order to obtain the applicable navigation and operative authorisations.

If this is not complied with, the aircraft will not be allowed to operate under the Panamanian registry.

The assignment/novation of lease agreement needs to be translated into Spanish if executed in a foreign language and further protocolised (transcribed) into Notarial Deed by a Panamanian Notary Public in order to be filed for recordation with the Public Registry Office of Panama.

Completing the translation, protocolisation and recordation process could take between two to four weeks.

There are no government applications or consents required as a pre-requisite to the execution and delivery of an assignment/novation of lease regarding a Panamanian registered aircraft.

2.7.5 Taxes/Duties Payable on Assignment/Novation

The mere execution of an assignment/novation of a lease agreement relating to a Panamanian-registered aircraft in commercial transportation should not give rise to taxes/duties.

2.7.6 Recognition of Transfer of Ownership Interests

Panama would recognise the transfer of ownership interest of the entity (or the beneficial interest in the trust) owning an aircraft.

2.8 Aircraft Deregistration and Export

2.8.1 Deregistering Aircraft in this Jurisdiction

The owner and the operator of an aircraft (or an authorised person empowered by the owner and operator for those purposes) are entitled to request the deregistration of such aircraft.

If the deregistration is requested by the owner, the Civil Aviation Authority will request written evidence from the operator of the aircraft to the effect that the lease has been terminated or that it does not have objections to the cancellation of the registry.

2.8.2 Lessee's/Operator's Consent

Panamanian regulations provide that the owner and the operator of an aircraft are entitled to request the deregistration of that aircraft.

If the deregistration is requested without the operator's consent, a court order authorising the taking of physical possession of the aircraft should be obtained.

2.8.3 Required Documentation

The owner would need to provide evidence that it is the owner of the aircraft. In theory, the registration certificate of the aircraft in favour of the owner or a certificate of ownership issued by the Public Registry Office of Panama (where the title would have been recorded) should suffice for purposes of evidencing the ownership of the aircraft.

The owner would also need to obtain an airworthiness certificate of export of the aircraft by the Civil Aviation Authority.

2.8.4 Duration of Deregistration Process

The deregistration process of an aircraft may take between two to six weeks.

2.8.5 Aviation Authority's Assurances

There is no known instance in which Panamanian authorities have provided advance assurances as to the prompt deregistration of an aircraft.

2.8.6 Costs, Fees and Taxes Relating to Deregistration

The government duties to de-register an aircraft with the Civil Aviation Authority are USD100.00. In addition, an airworthiness certificate of export of the aircraft will be issued by the Civil Aviation Authority at the cost of USD1,000.00.

2.8.7 Deregistration Power of Attorney

The current view is that a deregistration power of attorney should be recognised.

The signatures to the deregistration power of attorney would have to be authenticated by a Notary Public from the place of execution. If executed and notarised outside of Panama, the Notary Public's signature must further be legalised either by a Panamanian Consul or by the Apostille (pursuant to the 1961 Hague Convention Abolishing the Requirement of Legalization for Foreign Public Documents).

It is suggested that the deregistration power of attorney be recorded with the Public Registry Office of Panama. For such purposes, it would be necessary to translate the deregistration power of attorney into Spanish, if executed in a foreign language, and protocolise (transcribe) it into a Notarial Deed.

2.8.8 Documents Required to Enforce Deregistration Power of Attorney

In the process of enforcing a deregistration power of attorney, the court could ask for additional supporting documentation of the claim.

2.8.9 Choice of Laws Governing Deregistration Power of Attorney

A deregistration power of attorney does not need to be governed by the laws of Panama.

2.8.10 Revocation of a Deregistration Power of Attorney

If a deregistration power of attorney is expressed to be irrevocable, the grantor would not be able to revoke it anyway.

2.8.11 Owner's/Lessor's Consent

Panama's regulations state that owners of aircraft are entitled to request the deregistration of their aircraft. The regulations do not mention that the lessee or operator of the aircraft will have to consent to such deregistration. In practice, however, the Civil Aviation Authority will request written evidence on the part of the operator to the effect that the lease has been terminated or that it does not have objections to the cancellation of the registry.

A court order that authorises the owner of an aircraft to take physical possession and deregister the aircraft should be obtained if the operator's consent is not granted.

2.8.12 Aircraft Export Permits/Licences

Panama does not require an export licence in the case of deregistration and removal of aircraft from Panama.

2.8.13 Costs, Fees and Taxes Concerning Export of Aircraft

Panama does not charge taxes, etc, in respect of the export of an aircraft.

2.8.14 Practical Issues Related to Deregistration of Aircraft

In addition to what has already been stated, there are no other apparent relevant issues that an aircraft owner or mortgagee or lessor should be aware of in respect of the deregistration of aircraft.

2.9 Insolvency Proceedings

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

The Law No 12 of 19 May 2016, which became effective on 2 January 2017 (the "Insolvency Law") applies to "insolvency proceedings" (*proceso concursal de insolvencia*) initiated against natural or legal persons engaged in commercial activities in Panama and that have their commercial domicile, branch, agency or establishment in the Republic of Panama, regardless of whether or not such person is registered or not in the Panamanian Public Registry (the "debtor").

There are certain categories of persons or activities excluded from the application of the Insolvency Law. Those excluded entities or activities are:

- public entities;
- companies wholly owned by the government;

- persons that provide public services during the intervention initiated by the sector-specific regulator; and
- entities regulated by the bank, insurance and securities regulators; which are already subject to each regulator's specific reorganisation proceedings.

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

The Insolvency Law regulates two insolvency proceedings: reorganisation and liquidation.

Reorganisation

Reorganisation proceedings may be initiated if one of the following scenarios is applicable to the debtor:

- the debtor has ceased payment of its obligations: defaults in one or more past due obligations that are in an executive title (*título ejecutivo*);
- the debtor is in imminent insolvency: the debtor can't make payment of its general obligations when they are due, when liabilities exceed the assets in the financial statements of a company; or
- the debtor has a foreseeable lack of liquidity: the debtor can foresee that it will be impossible to pay its future obligations when they become due or the debtor experiences financial difficulties that may cause an imminent insolvency.

Liquidation

The proceedings may be initiated if the one of the following scenarios is applicable to the debtor:

- the debtor has ceased payment of its obligations that are in an executive title;
- creditors have initiated three or more executory proceedings against the debtor, in which

- the latter has failed to provide sufficient assets to cover the debt;
- the debtor has abandoned his business or has closed his commercial establishment without nominating an agent with sufficient powers to satisfy its obligations as they become due; or
- for any other reason provided by law.

The liquidation proceedings can be initiated by:

- the debtor itself or its representative;
- a creditor based on a well-founded request *solicitud fundada*; or
- the foreign representative, pursuant to certain provisions established in the Insolvency Law.

In general terms, a debtor can be placed into liquidation either voluntarily or involuntarily. Usually, liquidation proceedings in Panama are designed to provide an orderly sale of the debtor's assets for the purpose of paying its creditors.

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

The Insolvency Law recognises and permits the recognition of foreign insolvency proceedings if:

- a foreign court or a foreign representative requests assistance in an insolvency proceeding carried out in Panama;
- assistance is sought in a foreign state in connection with an insolvency proceeding;
- there are two insolvency proceedings related to the same debtor, one abroad and one in the Republic of Panama; or
- foreign creditors or other interested persons in a foreign state have an interest in requesting the commencement of, or participating in insolvency proceedings in the Republic of Panama.

The provisions for recognition of foreign insolvency proceedings are based on the UNCITRAL Model Law on Cross-Border Insolvency.

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

The liquidation of a lessee/operator of an aircraft should not void or terminate a deregistration power of attorney.

2.9.5 Other Effects of a Lessee's Insolvency

In the case of operating leases, during the reorganisation proceeding the law allows the debtor to renegotiate the agreement with the lessor. If the parties do not reach an agreement, the debtor may file a petition before the judge to terminate the lease agreement. Any lessor's claims against the debtor will be heard by the judge and the credits arising from the agreement will be deemed as a credit against the estate.

Based on the insolvency law, during the reorganisation proceeding, no restitution proceeding shall be initiated against the debtor, provided that the cause is a default in the payment of any rent or prices or any other services. If a default is caused after a reorganisation proceeding has been initiated, the creditor can commence a proceeding to repossess the aircraft.

The aircraft will not be deemed part of the lessee's property if the lessee is not the registered owner.

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

The main risks for a lender if a borrower, a guarantor or an entity providing security becomes insolvent would be that the credit is not recognised by the Credit Assembly and that the collateral is insufficient to cover the amounts due to the lender.

2.9.7 Imposition of Moratoria in Connection with Insolvency Proceedings

Panama's insolvency laws provide for a stay period while the reorganisation proceeding is in progress.

2.9.8 Liquidation of Domestic Lessees

In Panama, based on the insolvency law, a domestic lessee can be in a reorganisation proceeding or liquidation proceeding by a court order.

2.9.9 Ipso Facto Defaults

Panama's insolvency law does not allow the unilateral termination of an agreement due to a reorganisation process of the debtor.

2.9.10 Impact of Domestic Lessees' Winding-Up

If a domestic lessee is wound up (liquidated), the insolvency law provides that the lease agreement can be terminated. The aircraft would be returned to its legitimate owner by judicial order. If there are amounts due for lease rentals, these would become part of the mass of creditors. The lease security deposit and maintenance reserves would have to be dealt with as provided for in the lease agreement.

2.10 Cape Town Convention and Others

2.10.1 Conventions in Force

Panama has ratified the Cape Town Convention on International Interests in Mobile Equipment (the "Convention") and the related Protocol on Matters Specific to Aircraft Equipment (the "Protocol").

2.10.2 Declarations Made Concerning Conventions

The text of the Declarations made by the Republic of Panama at the time of depositing the instrument of ratification in respect of the Cape Town Convention is as follows.

Pursuant to Article 56(1) of the Convention and Article XXXII of the Protocol and in accordance with its internal legal system, the Republic of Panama makes the following declarations in respect of Articles 13, 39, 50, 53 and 54 of the Convention and Article XXX of the Protocol.

- In respect of Article 13(1)(a), (b) and (c) of the Convention, the words “speedy relief” shall be taken to mean seven (7) working days and, in respect of Article 13(1)(d), the same words shall be taken to mean twenty (20) working days.
- In respect of Article 39 of the Convention, the following non-consensual rights and interests shall prevail over an international interest registered in accordance with the Convention:
 - (a) any sums due from or capable of being demanded from the debtor by way of salaries, pensions and other social security benefits and employment allowances owed in respect of employees of that debtor;
 - (b) any sums due from or capable of being levied from the debtor by way of fiscal and parafiscal contributions owed in respect of employees of that debtor;
 - (c) any sums due from or capable of being levied from the debtor, by way of taxes, duties or contributions payable to the Panamanian State or to the decentralised bodies that collect such revenue, in accordance with Panama’s internal laws;
 - (d) the right of the Republic of Panama to arrest, attach or confiscate mobile equipment and aircraft equipment in the event of breach of the customs or criminal laws of the Republic of Panama.
- The Convention and the Protocol in Relation to Rights and Interests

The Republic of Panama declares that the rights or interests covered by this declaration shall prevail over an international interest registered before the date of the deposit of its instrument

of ratification in respect of the Convention and the Protocol.

Likewise, it declares that none of the provisions of the Convention shall affect the right of the Panamanian State, a State entity, an intergovernmental organisation or a provider of public services to arrest or detain an object under the laws of the Republic of Panama for payment of amounts owed to such entity, organisation or provider directly relating to those services in respect of that object.

Finally, the Panamanian State states that these declarations do not pose an unacceptable risk to the holders of registered rights.

- As to Article 50 of the Convention, the Convention and the Protocol shall not apply to any transaction which is an internal transaction in relation to the Republic of Panama with regard to all those types of objects falling within the sphere of application of the Convention or the Protocol.
- As to Article 53 of the Convention, in accordance with the internal laws of the Republic of Panama, the relevant courts are as follows:
 - (a) ordinary courts;
 - (b) administrative courts;
 - (c) the civil aviation authority;
 - (d) those advisory bodies exercising supervisory functions in respect of financial institutions and insurance companies (*superintendencias*);
 - (e) arbitral tribunals, subject to the powers vested in them by the internal laws of the Republic of Panama.
- Pursuant to Article 54(2) of the Convention, any remedies available to the creditor under any provision of the Convention and the Protocol which are not there expressed to require application to the court may be exercised without leave of the court.

- As to Article XXX(1) of the Protocol, it will apply Articles VIII, XII and XIII of the Protocol.
- As to Article XXX(2) of the Protocol, it will apply Article X of the Protocol.
- As to Article XXX(3) of the Protocol:
 - (a) it will apply the entirety of Alternative A of Article XI of the Protocol to all types of insolvency proceeding, as defined in the Convention; and
 - (b) the waiting period under Article XI shall not exceed 60 days.

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

Article XIII of the Protocol does apply in Panama. In order to submit an IDERA with the Civil Aviation Authority, a copy of the IDERA, authenticated by a Notary Public from the place of execution, together with a translation into Spanish by an official translator in Panama, have to be filed to the Civil Aviation Authority.

2.10.4 Enforcement of Conventions

There is no known precedent in which Panama's courts have had to enforce the Convention or the Protocol.

2.10.5 Other Conventions

Panama is a party to the 1948 Geneva Convention on the International Recognition of Rights in Aircraft.

However, Panama is not a party to the 1933 Rome Convention on the Unification of Certain Rules relating to the Precautionary Arrest of Aircraft.

3. AIRCRAFT DEBT FINANCE

3.1 Structuring

3.1.1 Restrictions on Lending and Borrowing

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

3.1.2 Effect of Exchange Controls or Government Consents

There are no exchange controls currently in place in Panama.

3.1.3 Granting of Security to Foreign Lenders

Borrowers are permitted to grant security to foreign lenders.

3.1.4 Downstream, Upstream and Cross-Stream Guarantees

Downstream, upstream and/or cross-stream guarantees are permitted under Panama's laws. These guarantees are not filed or recorded with any authority in Panama. However, it is suggested that the signature of the guarantor be authenticated by a Notary Public at the place of execution, and if done outside of Panama, to have that Notary Public's signature further legalised by a Panamanian Consul or with the Apostille (pursuant to the 1961 Hague Convention Abolishing the Requirement of Legalization for Public Documents).

3.1.5 Lenders' Share in Security over Domestic SPVs

Having done the necessary corporate and other due diligence on the company, a lender may take share security over a domestic special-purpose vehicle which owns the financed aircraft. Pledges of shares are recognised and regulated in Panama.

3.1.6 Negative Pledges

Panama's laws do not prohibit negative pledges.

3.1.7 Intercreditor Arrangements

There are no known material restrictions or requirements imposed on intercreditor arrangements.

3.1.8 Syndicated Loans

Panama recognises the concept of agency and the role of an agent under a syndicated loan.

3.1.9 Debt Subordination

An intercreditor agreement between lenders that have *pari passu* debts, by which a lender agrees to subordinate its debt, should be permissible and recognised.

3.1.10 Transfer/Assignment of Debts under Foreign Laws

A transfer or assignment of all or part of an outstanding debt between lenders under an English or New York law-governed loan would be permissible and recognised in Panama.

3.1.11 Usury/Interest Limitation Laws

There are no usury or interest limitation laws in Panama.

3.2 Security

3.2.1 Typical Forms of Security and Recourse

Typically, a loan financing an aircraft registered in Panama could be secured by an aircraft mortgage, a shares pledge on the aircraft-owning company or holding parent, guarantees by a parent or affiliates, among others.

3.2.2 Types of Security Not Available

There are no known types of security which cannot be taken over an aircraft or related collateral.

3.2.3 Trust/Trustee Concepts

The concept of a trust and the role of a security trustee is recognised in Panama.

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

A borrower who is the owner of the aircraft can grant a mortgage over the aircraft in favour of a security trustee and assign its rights under an aircraft lease.

3.2.5 Assignment of Rights and Benefits without Attendant Obligations

It is possible to assign the rights and benefits only, without also assigning the attendant obligations, of the lessor under an aircraft lease.

3.2.6 Choice of Foreign Law

A security assignment or guarantee can be governed by English or New York law, provided that there are no provisions contrary to the laws of Panama, public order or the moral principles of Panama.

3.2.7 Formalities/Mandatory Terms to Create and Perfect Security Assignments

If filed before Panamanian courts for enforcement, the signatures to the security assignment should be authenticated by a Notary Public at the place of execution, and if done outside of Panama, must have the Notary Public's signature further legalised by a Panamanian Consul or with the Apostille (pursuant to the 1961 Hague Convention Abolishing the Requirement of Legalization for Public Documents). In addition, the security assignment would have to be accompanied by a Spanish translation done by an authorised translator in Panama.

If the signatures are not authenticated, it would be necessary to initiate a process of recognition of signatures before the court.

3.2.8 Domestic Law Security Instruments

A financier should, in addition to a security assignment governed by English or New York law, also take a Panamanian mortgage over the aircraft as security. This Panamanian mortgage would need to be recorded with the Public Registry Office of Panama.

The registration costs of an aircraft mortgage with the Public Registry Office of Panama are:

- a fixed fee of USD100.00; and
- in addition to a fixed fee, USD2.50 for every USD1,000.00 or fraction thereof of the amounts secured by the mortgage, up to a maximum of USD51,250.00.

3.2.9 Domestic Registration of Security Assignments Governed by Foreign Laws

Only a local law security instrument can be registered domestically.

3.2.10 Transfer of Security Interests over Aircraft/Engines

The transfer of security interest over an aircraft and/or engines would be recognised.

3.2.11 Effect of Changes in the Identity of Secured Parties

If security is held by a security agent whose role does not change, the security interest would not be jeopardised if the identities of the secured parties were to change.

However, if the role of the security agent should change, the security document would have to be updated to reflect this.

3.2.12 “Parallel Debt” Structures

Parallel debt structured can be used domestically and should be recognised.

3.2.13 Effect of Security Assignments on Residence of Secured Parties

A secured party under a security assignment would not be deemed to be resident, domiciled, carrying on business or subject to taxes solely for the reason of being a party to or enforcing a security assignment.

3.2.14 Perfection of Domestic Law Mortgages

In order to be perfected, mortgages need to be recorded with the Public Registry Office of Panama. For such purposes, the signatures to the mortgage need to be authenticated by a Notary Public from the place of execution. If done outside of Panama, the Notary Public’s signature would further have to be legalised either by a Panamanian Consul or by the Apostille.

The mortgage would also need to be translated into Spanish if executed in a foreign language and protocolised (transcribed) into a Notarial Deed by a Panamanian Notary Public, for further filing with the Public Registry Office of Panama for recordation.

3.2.15 Differences between Security over Aircraft and Spare Engines

A mortgage over an aircraft and a mortgage over spare engines would be governed by the same law (Law No 129 of 31 December 2013, regarding mortgages on movable assets).

3.2.16 Form and Perfection of Security over Bank Accounts

Pledges over bank accounts are perfected by the bank account acting as depository, designated by the pledgee and pledgor, to hold custody on behalf of the pledgee.

3.3 Liens

3.3.1 Third-Party Liens

Only third-party liens arising from repairers' costs could be enforceable on an aircraft operated by a lessee.

The lien should only cover the amounts due for the repairers' works done to that asset, up to the value of the assets.

A fleet lien that is not granted by the owner(s) of the aircraft would not be recognised.

Judicial remedies are available to a third party enforcing a repairer's work lien.

3.3.2 Timeframe to Discharge a Lien or Mortgage

Because mortgages are recorded at the Public Registry Office of Panama, the discharge of any such mortgage must also be recorded at the Public Registry Office of Panama in order to become effective. The registration process of a discharge could take between one to two weeks.

3.3.3 Register of Mortgages and Charges

Mortgages on aircraft are recorded with the Public Registry Office of Panama. The recordation of an aircraft mortgage with the Public Registry Office of Panama would give effects vis-à-vis third parties.

3.3.4 Statutory Rights of Detention or Non-consensual Preferential Liens

If a lessee/operator is not the owner of an aircraft, statutory rights of detention or non-consensual preferential liens over an aircraft and/or on a "fleet-wide" basis should not apply.

3.3.5 Verification of an Aircraft's Freedom from Encumbrances

A potential purchaser of an aircraft could search on the records of the Public Registry Office of

Panama to verify whether any mortgages have been recorded.

3.4 Enforcement

3.4.1 Differences between Enforcing Security Assignments, Loans and Guarantees

There are no differences in the enforcement procedure of a security assignment as opposed to a loan or a guarantee.

3.4.2 Security Trustees' Enforcement of their Rights

The security trustee should be able to enforce its rights under a security assignment pursuant to a notice and acknowledgement executed by the lessor and the lessee.

3.4.3 Application of Foreign Laws

In general terms, Panama's courts would uphold a foreign law as a valid choice of governing law of a finance or security document. However, the courts will not enforce provisions that may be deemed to be contrary to the laws of Panama, public order or moral principles of Panama, and the submission to a foreign jurisdiction, subject to the terms of the finance or security document.

3.4.4 Recognition and Enforcement of Foreign Judgments and Arbitral Awards

Final judgments rendered by a foreign court would be recognised and enforced by the courts in the Republic of Panama without re-examination of the merits of the case, subject to the issuance of a writ of exequatur by the Supreme Court of Panama. The Supreme Court of Panama is authorised to issue a writ of exequatur in respect of a final judgment rendered in a foreign jurisdiction only if:

- the judgment arises out of an in personam action;

- the party against whom the judgment was rendered (or its agent) was personally served in the action;
- the obligation in respect of which the judgment was obtained is lawful in Panama;
- the judgment is properly authenticated by diplomatic or consular officers of the Republic of Panama or pursuant to the 1961 Hague Convention Abolishing the Requirement of Legalization for Public Documents and translated into Spanish by a Panamanian Official Translator; and
- judgments of Panamanian courts are reciprocally recognised in the foreign court (which the Panamanian Supreme Court will presume to be the case, unless proved otherwise).

The Supreme Court of Panama should also recognise a foreign arbitration award, provided that:

- the parties subject to the arbitration proceedings were not subject to some incapacity under the laws governing the applicable arbitration clause or under the laws of the place where the arbitration was held;
- the party against whom enforcement is being sought was duly notified of the appointment of arbiters or of the arbitration proceedings and had the opportunity to defend itself in the arbitration proceedings;
- the foreign arbitral award referred to a matter which was within the scope of the arbitration clause and did not include decisions which exceeded the scope of the arbitration clause;
- the constitution of the foreign arbitration tribunal and the procedure followed comply with what the parties agreed upon in the arbitration clause or, in the absence of any provision to that effect in an arbitration clause, with the laws of the place where the arbitration was held;
- the award is final on the parties or it has not been annulled or suspended by a court of

- the country where or pursuant to the laws of which the award was rendered;
- the subject-matter is capable of settlement by arbitration under the laws of Panama; and
- the recognition and enforcement of the award would not be contrary to the public policy of Panama.

3.4.5 Secured Parties' Right to Take Possession of Aircraft

A court order that authorises the secured party to take physical possession of the aircraft should be obtained, if the lessee/operator's consent is not granted.

3.4.6 Domestic Courts Competent to Decide on Enforcement Actions

There are no aviation-specific courts in Panama. Aviation matters should be heard by a civil circuit court.

3.4.7 Summary Judgments or Other Relief

A secured party may commence executory and/or summary proceedings in Panama and may also ask for the attachment of the aircraft in order to gain immediate possession of it.

In order to attach or seize the aircraft, the secured party may be required to post a bond or guarantee which may be equivalent to 30% to 40% of the amounts claimed.

3.4.8 Judgments in Foreign Currencies

A secured party under a security agreement/aircraft mortgage can obtain judgment in a foreign currency.

3.4.9 Taxes/Fees Payable

Stamp taxes at the rate of USD0.10 for each USD100.00 of face value would be payable on the security agreement/aircraft mortgage presented in evidence to a Panamanian court or administrative authority. The obligation to pay stamp tax will not arise by the mere execution

and delivery of the security agreement/aircraft mortgage. In practice, stamp taxes will have to be paid and adhered to the security agreement/aircraft mortgage by the party who is using it as evidence. In any event, any such stamp taxes are not due with respect to the security agreement/aircraft mortgage unless and until the security agreement/aircraft mortgage is to be used in evidence as indicated above. However, in respect to the aircraft mortgage, the amounts paid in notarial paper and recordation duties (for the recordation of the aircraft mortgage at the Public Registry Office of Panama) would be deducted from the applicable stamp tax.

3.4.10 Other Relevant Issues

In addition to what has already been stated, there are no other apparent relevant issues of which a lender should be aware in relation to the enforcement of its rights.

4. OTHER ISSUES OF NOTE

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

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

4.2 Current Legislative Proposals

There are no known proposals before the legislative relating to the foregoing items that may alter them or be worth noting.

Arias, Fábrega & Fábrega (ARIFA) is one of the few law firms in Panama with expertise in aviation law, benefiting aviation clients beyond ARIFA's full-service, multidisciplinary approach. The firm's banking, capital markets, M&A, litigation, antitrust and regulatory practice groups bring together their extensive understanding of the dynamics, major challenges and opportunities facing the aviation industry. The firm also advises industry providers competing in the

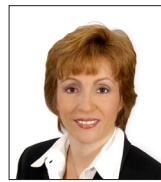
field of public procurement and public-private partnerships, understanding the requirements of the aviation contracting authorities and the various stages of the awarding process. ARIFA has been involved in diverse transactions derived from the expansion of the Tocumen International Airport. An aviation group partner served as Deputy General Director (2009–10) and Director of Air Transportation of the Civil Aviation Authority of Panama (1992–94, 1999).

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