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Aviation: Financing & Leasing 2025

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Ireland: Law & Practice

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IRELAND



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

No Irish stamp duty or other tax arises on the execution of an aircraft or engine sale agreement. Section 113 of the Stamp Duties Consolidation Act exempts instruments for the sale, transfer or other disposition of any aircraft (or any share or interest therein). That exemption does not extend to a transfer of shares in an Irish company that owns the aircraft which is ordinarily chargeable to stamp duty.

1.1.2 Enforceability Against Domestic Parties

An aircraft or engine sale agreement need not be translated, certified, notarised or legalised to bind an Irish company.

1.2 Transfer of Ownership

1.2.1 Transferring Title

Under Irish law, title customarily passes by bill of sale, which also covers installed parts unless expressly excluded. Economic ownership can also be transferred by selling the shares of an owning company or the beneficial interest in a trust that holds title to an aircraft.

1.2.2 Sales Governed by English or New York Law

A bill of sale governed by English or New York law will be recognised in Ireland provided the transfer complies with the law of the place where the aircraft is situated at the time of transfer (the *lex situs*). Recognition of foreign-law contracts generally is addressed in 2.1.2 Application of Foreign Laws.

1.2.3 Enforceability Against Domestic Parties

A bill of sale need not be translated, certified, notarised or legalised to be enforceable against an Irish company.

1.2.4 Registration, Filing and/or Consent From Government Entities

Irish law imposes no registration, filing or consent requirements for a bill of sale.

This applies equally to aircraft which are registered in the name of their operator on the register maintained by the Irish Aviation Authority (IAA) which is not a title register.

If an aircraft is registered on the IAA register in its owner's name (which is likely in cases where the aircraft is operated by a non-Irish airline subject to an Article 83-bis arrangement), the registered owner needs to hold a valid Radio License issued by the Commission for Communications Regulation.

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

No Irish stamp duty or other tax is payable on executing or delivering a bill of sale for an aircraft or engine. Section 113 of the Stamp Duties Consolidation Act exempts such instruments regardless of the asset's location at closing.

Irish VAT can arise on the sale of an aircraft which is physically located in Ireland at the time of sale. However, where the aircraft is used outside of the EU, or by a transport undertaking operating for reward chiefly on international routes, the applicable VAT rate is 0%.

2. Aircraft and Engine Leasing

2.1 Overview

2.1.1 Non-Permissible Leases

There are no restrictions under Irish law preventing recognition of any type of operating, wet, finance, engine or parts lease between commercial parties (ie, non-consumers).

2.1.2 Application of Foreign Laws

Aircraft leases involving Irish assets or parties may be (and typically will be) governed by foreign law.

Council Regulation (EC) No 593/2008 of 17 June 2008 on the law applicable to contractual obligations ("Rome I") has force of law in Ireland. The incorporation of the laws of a foreign jurisdiction as the governing law of contractual obligations expressed to be governed thereby is, in respect of contractual obligations which are within the scope of Rome I, valid in accordance with Article 3 (1) of Rome I. Subject to,

and in accordance with, Rome I, the laws of the relevant foreign jurisdiction will, upon proof of the relevant provisions of the relevant laws, be applied by the Irish courts if a claim comes under their jurisdiction.

2.1.3 Restrictions Concerning Payments in US Dollars

No restrictions exist on Irish companies making rent payments to foreign lessors in US dollars.

2.1.4 Exchange Controls

Exchange Control consent has been abolished under Irish law since 1993. However, it is possible that financial restrictions could arise from:

- EU Regulations having direct effect in Ireland, or by orders made by the Minister for Finance under the Financial Transfers Act 1992, the Criminal Justice (Terrorist Offences) Acts 2005 and 2015 or the European Communities Acts 1972 to 2012. Currently, these include restrictions on financial transfers involving residents of certain countries, individuals and entities arising from the implementation in Ireland of United Nations and EU sanctions;
- any directions or orders made under the Criminal Justice (Money Laundering and Terrorist Financing) Acts 2010 to 2021; or
- any exchange control restrictions of any member of the International Monetary Fund.

2.1.5 Taxes/Duties Payable for Physical Execution of a Lease

No Irish taxes or duties are chargeable for executing a lease or bringing a copy into Ireland.

2.1.6 Licensing/Qualification of Lessors

No Irish government licence or qualification is required for a lessor to do business with a non-consumer Irish lessee.

2.2 Lease Terms

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

Irish law does not impose any particular mandatory terms to be included in a lease which is governed by English or New York law that would not typically

already be included for such a lease to be valid as a matter of English or New York law.

2.2.2 Tax and Withholding Gross-Up Provisions

Tax and withholding gross-up provisions are permissible and enforceable under Irish law.

2.2.3 Parts Installed or Replaced After a Lease's Execution

A lease can cover parts installed or replaced after execution if the lessor acquires title to those parts.

2.2.4 Risk of Title Annexation

There is no formal mechanism under Irish law where title to an aircraft engine vests in an airframe owned by a third party upon installation. However, as a practical matter, care needs to be taken by the engine owner to ensure that its title to such engine is recognised and respected by the third-party owner of the airframe (and any party who holds a security interest in the airframe).

2.2.5 Recognition of the Concepts of Trust/Trustee

Irish law recognises trusts and owner trustees. Express trusts are commonly used to hold aircraft.

2.3 Lease Registration

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

The IAA has no legal obligation to note any interest other than that of the registered owner. The IAA may note the lessor's interest as legal owner of an aircraft on its file. However, such notation does not confer any additional rights because the IAA register is not a title register.

2.3.2 Registration If the Owner Is Different From the Operator

It is possible for aircraft to be listed on the Irish aircraft register in the name of the Irish incorporated operator of the aircraft or an Irish incorporated owner of the aircraft.

Typically, commercial aircraft which are included on the Irish aircraft register and which are operated by an Irish airline will be registered in the name of that airline as "registered owner" (even though the airline may not hold title to the aircraft). Commercial aircraft that are

in-service with a foreign airline pursuant to an Article 83-bis arrangement will generally be registered in the name of their Irish incorporated legal owner.

2.3.3 Aircraft/Engine-Specific Registers

Leases for aircraft or engines cannot be registered on the IAA's register.

2.3.4 Registration of Leases With the Domestic Aircraft Registry

Not applicable.

2.3.5 Requirements for a Lease to Be Valid and Registrable

Not applicable.

2.3.6 Taxes/Duties Payable for Registering a Lease

Not applicable.

2.3.7 Registration of Aircraft in Alternative Countries

Irish airlines typically register aircraft in Ireland. Some Irish airlines have non-Irish incorporated airlines within their corporate group who register aircraft in Malta, Poland or the UK (such as Ryanair, Aer Lingus and Emerald Airlines), and these aircraft may operate from Ireland from time to time.

2.3.8 Requirements for Documents Concerning Registration

Aircraft registration with the IAA requires submission of AWS Form 1 and supporting documents.

2.4 Lessor's Liabilities

2.4.1 Tax Requirements for a Foreign Lessor

A non-Irish lessor is not generally subject to Irish income, capital gains or other taxes when leasing to an Irish lessee, provided it has no Irish permanent establishment in Ireland.

There is no requirement to withhold Irish tax from lease rental payments by an Irish lessee.

Irish withholding tax may arise on payments of Irish source yearly interest, but exemptions, treaty relief or relief under a double-taxation agreement are often available. In any event, the obligation to withhold tax is an obligation of the payor, not the recipient.

2.4.2 Effects of Leasing on the Residence of a Foreign Lessor

A non-Irish lessor is not deemed resident, domiciled, or to be carrying on business in Ireland, nor subject to Irish tax, solely by being party to or enforcing a lease with an Irish lessee.

2.4.3 Engine Maintenance and Operations

A lessor who is not operating the aircraft or engines is unlikely to be liable for any aircraft or engine maintenance or operations. There is no prohibition under Irish law which would prejudice the customary provisions of an aircraft lease by which the risks associated with the operation of the relevant equipment are assumed by the lessee operator.

Furthermore, the Convention for the Unification of Certain Rules for International Carriage by Air (known as the Montreal Convention) has force of law in Ireland. This convention establishes an airline's liability for aircraft operations. This position is further supported by Section 21 of the Air Navigation and Transport Act 1936 which provides that, where an aircraft has been "bona fide demised, let or hired out for a period exceeding fourteen days to any other person by the owner" and no member of the crew of such aircraft is in the employment of such owner, the strict liability regime for material damage or loss caused to any persons or property on land or water "by, or by any person in, or any article or person falling from, an aircraft while in flight, taking off or landing" shifts to the lessee.

2.4.4 Damage or Loss Caused by an Asset

The liability position for financiers is the same as for owners and lessors (see 2.4.3 Engine Maintenance and Operations).

2.4.5 Attachment by Creditors

Irish courts would generally recognise an owner's title if a creditor of a lessee seeks to attach a leased aircraft. Certain liens may attach for unpaid lessee debts (such as unpaid Eurocontrol or airport charges – see 3.3.1 Third-Party Liens).

2.4.6 Priority of Third Parties' Rights

Certain creditors of a lessee may be entitled to assert a lien against an aircraft either on a statutory or com-

mon-law basis. Such liens generally occur as a consequence of debts incurred by the lessee in the lessee's operation of the aircraft (such as unpaid Eurocontrol or airport charges) – see **3.3.1 Third-Party Liens**.

2.5 Insurance and Reinsurance

2.5.1 Requirement to Engage Domestic Insurance Companies

Irish law does not require aircraft insurance to be placed with Irish insurers.

2.5.2 Mandatory Insurance Coverage Requirements

Section 25 of the Air Navigation and Transport Act 1936 requires the owners of aircraft to be insured for third-party liabilities. In addition, EU Regulation (EC) No 785/2004 specifies insurance requirements for air carriers and aircraft operators.

2.5.3 Placement of Insurance Outside of Jurisdiction

There are no restrictions on placing reinsurance under Irish law.

2.5.4 Enforceability of “Cut-Through” Clauses

The Irish courts have not been asked to rule on the question of whether “cut-through” clauses in insurance or reinsurance contracts are enforceable under Irish law.

However, under Irish law, parties cannot make a claim for breach of a contract to which they are not a party and contractual privity is required. Therefore, cut-through clauses in contracts of reinsurance would not necessarily be enforceable as a matter of Irish law.

2.5.5 Assignment of Insurance/Reinsurance

There are no general restrictions under Irish law applicable to the assignment of contractual rights arising under contracts for insurance or reinsurance.

2.6 Lease Enforcement

2.6.1 Restrictions on Lessors' Abilities

Under Irish law, and subject to such actions being taken in accordance with the provisions of the underlying lease agreement, there are no restrictions on a lessor's ability to (i) terminate an aircraft lease, (ii) re-export an

aircraft, or (iii) sell an aircraft following a termination, where the relevant lessee is not in examinership.

Where the relevant aircraft is located in Ireland at the relevant time, an application could be made to the Irish courts for an injunction to facilitate such actions. However, the lessor will also have recourse to the usual self-help remedies to achieve those outcomes.

2.6.2 Lessor Taking Possession of the Aircraft

Under Irish law, a lessor may take physical possession of an aircraft without the lessee's consent provided that it is entitled to do so under the terms of the relevant lease. While a court order is not required where the repossession is taking place on foot of a duly registered IDERA, there may be a practical benefit in a lessor having a court order when seeking to re-possess an aircraft on a non-consensual basis.

2.6.3 Specific Courts for Aviation Disputes

While there are no dedicated aviation courts in Ireland, most aviation disputes will qualify for admission to the Irish Commercial Court. This is a specialist division of the Irish High Court which uses active case management to facilitate the speedy resolution of disputes where the amount of the claim exceeds EUR1,000,000.

2.6.4 Summary Judgment or Other Relief

It is possible to obtain urgent interim injunctive relief from the Irish High Court on an ex parte basis to facilitate the enforcement of a lessor's rights under a lease. This requires the applicant to provide undertakings to the court to be liable for the losses which other parties affected by such injunction may suffer if the court subsequently finds, following a full hearing of the issues, that the injunction should not have been granted. It may also be necessary to provide security for the losses arising from such an undertaking. In Ireland, a summary judgment is only granted in pursuing a debt and, of itself, will not result in possession of the aircraft by the lessor.

2.6.5 Domestic Courts' Approach to Foreign Laws and Judgments

Please see **2.1.2 Application of Foreign Laws** regarding the recognition of foreign law as the governing law of an aircraft lease by the Irish courts.

The submission to a foreign jurisdiction will generally be recognised by the Irish courts. Aircraft leases will most commonly contain a non-exclusive asymmetric jurisdiction clause submitting to the jurisdiction of either the English courts or the New York courts. Each of these will be recognised by the Irish courts as a matter of common law. Where the lease contains a submission to the courts of another EU member state, this will be enforceable in Ireland by virtue of EU Council Regulation (EC) No 1215/2012 of 12 December 2012 (recast) (the “Brussels Recast Regulation”).

2.6.6 Domestic Courts’ Recognition of Foreign Judgments/Awards

As referred to in **2.6.5 Domestic Courts’ Approach to Foreign Laws and Judgments**, aircraft leases will most commonly contain a non-exclusive asymmetric jurisdiction clause submitting to the jurisdiction of either (i) the English courts, or (ii) the New York courts.

For (i), the Convention of 2 July 2019 on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters (the “2019 Hague Convention”) has force of law in Ireland, and will enable a judgment obtained in an English court on foot of such a jurisdiction clause to be recognised in Ireland without re-trial or examination of the merits of the case (subject to certain exceptions).

For (ii), a judgment obtained in a New York court on foot of such a jurisdiction clause will be recognised in Ireland without re-trial or examination of the merits of the case on a common-law basis, subject to certain public policy exceptions (such as the Irish courts being satisfied that the New York court was a court of competent jurisdiction, the judgment not having been obtained by fraud, the judgment and its enforcement in Ireland not being contrary to natural or constitutional justice under Irish law or Irish public policy, etc).

Arbitration awards will be enforceable in Ireland without re-trial or examination of the merits of the award by virtue of the Irish Arbitration Act 2010 (the “2010 Act”) which gives force of law in Ireland to both of (i) the Geneva Protocol of 1923 and Geneva Convention of 1927 (the “Geneva Protocol/Convention”) and (ii) the New York Convention of 1958 (the “New York Convention”). The UNCITRAL Model Law on International

Commercial Arbitration 1985 (the “Model Law”) also applies in Ireland by virtue of the 2010 Act. In order to be enforceable in Ireland, and subject to the provisions of the 2010 Act, an arbitral award must (i) come within the scope of the Geneva Protocol/Convention or the New York Convention (each, a “Convention”) and subject to the terms of the relevant Convention, or (ii) be made in accordance with the Model Law, subject to the Model Law (and, in particular, Article 36 thereof).

2.6.7 Judgments in Foreign Currencies

Any judgment of the Irish courts for moneys due under an aircraft lease may be expressed in a currency other than euro, but the court order will be issued in euro by reference to the official rate of exchange prevailing at, or shortly before, the date of the judgment.

2.6.8 Limitations on Lessors’ Actions Following Termination

Provisions in a lease imposing additional obligations following a lessee default may be unenforceable under Irish law if they are subsequently adjudicated to be penal in nature. The Irish High Court has recently upheld the position under Irish law that default interest will only be enforceable where the default rate chosen is based on a genuine pre-estimate of the losses of the party who is not in default.

2.6.9 Lessor’s Requirement to Pay Taxes/Fees

There are no particular fees payable by a lessor to an Irish governmental entity solely as a result of the enforcement of its rights under a lease. However, the lessor may have to discharge unpaid liabilities to airport operators, maintenance providers, or other operational liabilities when attempting to take possession of an aircraft. The lessor will also become liable for the continuing airworthiness of the aircraft and its insurance, etc, from the time that it assumes possession.

2.6.10 Mandatory Notice Periods

Termination of the leasing of an aircraft by a lessor will be dictated by the provisions of the lease itself. There are no mandatory notice periods imposed by Irish law when taking these steps.

2.6.11 Lessees' Entitlement to Claim Immunity

There is no generally applicable Irish regime which would give lessees immunity from suit.

2.6.12 Enforcement of Foreign Arbitral Decisions

Please see 2.6.6 Domestic Courts' Recognition of Foreign Judgments/Awards.

2.6.13 Other Relevant Issues

Other issues may arise depending on the particular fact pattern giving rise to the enforcement, but the responses above give a high-level overview of the key issues when enforcing rights under a lease in Ireland.

2.7 Lease Assignment/Novation

2.7.1 Recognition of the Concepts of Contractual Assignment and Novation

Under Irish law, only contractual rights can be assigned. To transfer both the rights and obligations under a contract, the contract must be novated whereby it will take effect as a new contract between the transferee and the contractual counterparty.

2.7.2 Assignment/Novation of Leases Under Foreign Laws

Irish law recognises a foreign law-governed assignment or novation of rights and obligations under a lease, where such assignment is valid as a matter of such foreign law.

2.7.3 Enforceability of Lease Assignments/Novations

There is no requirement under Irish law for a lease assignment and assumption agreement or a lease novation agreement to be translated, certified, notarised or legalised to be enforceable against an Irish incorporated party to the lease.

2.7.4 Filing/Registration of Lease Assignments/Novations

There is no mechanism under Irish law for a lease to be filed and, therefore, it is not necessary for a lease assignment and assumption agreement or a lease novation agreement to be filed in Ireland.

2.7.5 Taxes/Duties Payable on Assignment/Novation

As referred to in 2.7.1 Recognition of the Concepts of Contractual Assignment and Novation, a novation is required to transfer the rights under a lease under Irish law. Since this takes effect as a new lease, no stamp duty (or any other Irish taxes) would be payable. An assignment or assumption agreement governed by non-Irish law in respect of a non-Irish law lease is not an instrument executed in Ireland or relating to property situated in Ireland, and is not therefore liable to Irish stamp duty (or any other Irish taxes).

2.7.6 Recognition of Transfer of Ownership Interests

Under Irish law, it is possible to transfer either (i) the shares in an Irish incorporated company which holds title to an aircraft, or (ii) the beneficial interest in an Irish law trust which holds legal title to an aircraft.

2.8 Aircraft Deregistration and Export

2.8.1 Deregistering Aircraft in This Jurisdiction

An aircraft which is registered with the IAA can be deregistered by: the "registered owner" of such aircraft, an Authorised Party named in a duly registered IDERA or, by the mortgagee of an aircraft where the aircraft is not subject to the Cape Town Convention (the "CTC") and the mortgage has been filed with the IAA.

The IAA can also deregister an aircraft from its register where the IAA deems that the aircraft does not or no longer satisfies the requirements for registration, or the IAA determines that it would be inexpedient in the public interest that the aircraft remain registered in Ireland.

2.8.2 Lessee's/Operator's Consent

Please refer to 2.8.1 Deregistering Aircraft in This Jurisdiction.

2.8.3 Required Documentation

To de-register an aircraft, the IAA requires the following:

- a formal request in writing with a complete description of the aircraft, including its registration marks, make, model and serial number;

- proof that the aircraft's nameplate/fireproof plate has been removed;
 - proof that the registration marks have been removed from the aircraft;
 - proof that the aircraft's Irish Mode S code has been negated (if applicable);
 - proof that the aircraft's Irish ELT code has been negated (if applicable);
 - if the aircraft is on an Irish AOC, it must be removed from the AOC prior to deregistration;
 - all fees outstanding must be paid in full for the aircraft; and
 - if the aircraft has an IDERA lodged against it, the IDERA must be removed first.
- ### 2.8.4 Duration of Deregistration Process

Subject to providing all the required documentation and evidence, deregistration can be completed within a number of days.

2.8.5 Aviation Authority's Assurances

The IAA will not commit to a particular timeframe to deregister an aircraft.

2.8.6 Costs, Fees and Taxes Relating to Deregistration

There are fees chargeable by the IAA for the issuance of an export certificate of airworthiness which are calculated by reference to the maximum total weight authorised for that aircraft.

2.8.7 Deregistration Power of Attorney

A deregistration power of attorney does not have the statutory basis afforded to an IDERA by Ireland's ratification of the CTC, and will not be registered by the IAA in the same manner as an IAA would register an IDERA. As such, it is more typical for an IDERA to be granted instead of a deregistration power of attorney for Irish registered aircraft.

There are no particular formalities required under Irish law for a deregistration power of attorney to be valid other than those which apply to contractual rights generally. Under Irish law, further protection is available where a power of attorney is expressed to be irrevocable and is granted to secure (i) a proprietary interest of the donee of the power (such as the donee's rights as owner of an aircraft), or (ii) the performance of

an obligation owed to the donee (such as obligations of a lessee to the donee lessor), and such powers of attorney will not be revoked without the consent of the donee or by the winding-up or disposition of the grantor of the power of attorney.

2.8.8 Documents Required to Enforce Deregistration Power of Attorney

Please see 2.8.3 Required Documentation.

2.8.9 Choice of Laws Governing Deregistration Power of Attorney

It is not necessary for a deregistration power of attorney to be governed by Irish law. However, we would suggest that it should be where it is granted by an Irish company in respect of an Irish registered aircraft.

2.8.10 Revocation of a Deregistration Power of Attorney

See 2.8.7 Deregistration Power of Attorney.

2.8.11 Owner's/Lessor's Consent

Please see 2.8.1 Deregistering Aircraft in This Jurisdiction with respect to who can deregister and export an aircraft on a non-consensual basis.

An owner, mortgagee or lessor of an aircraft who is not the "registered owner" with the IAA will require the registered owner to grant an IDERA in its favour and register this IDERA with the IAA.

An aircraft does not need to be located in Ireland to be deregistered from the Irish register and exported.

2.8.12 Aircraft Export Permits/Licences

Generally, no export licence is required except for aircraft which are military or constitute a dual-use item listed in Annex 1 of EU Council Regulation (EC) No 428/2009 of 5 May 2009.

2.8.13 Costs, Fees and Taxes Concerning Export of Aircraft

There are fees chargeable by the IAA for the issuance of an export certificate of airworthiness. These are calculated by reference to the maximum total weight authorised for that aircraft.

2.8.14 Practical Issues Related to Deregistration of Aircraft

Other than those highlighted in other sections of 2.8 Aircraft Deregistration and Export, no further issues arise.

2.9 Insolvency Proceedings

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

Irish company law is primarily contained within the Irish Companies Act 2014 (as amended, “the Act”), including the various statutory regimes for restructurings, re-organisations, insolvency and winding-up of Irish companies.

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

The relevant types of voluntary and involuntary insolvency, restructuring and receivership processes under Irish law are (i) solvent liquidation, (ii) insolvent liquidation, (iii) receivership, (iv) examinership, and (v) schemes of arrangement.

Solvent Liquidation

A solvent liquidation, known as a Members’ Voluntary Liquidation (MVL), is a procedure to wind up a company that is able to pay its debts in full within a period of up to 12 months. The process is initiated by the company’s members, who pass a special resolution to wind the company up and appoint a liquidator. A statutory declaration of solvency made by the directors must be filed, confirming the company’s ability to discharge all debts within the specified period. The liquidator’s role is to realise the company’s assets, settle all liabilities, and distribute any surplus to the members. An MVL is a non-contentious process used for the cessation of a company’s business. It is distinguished by the absence of creditor involvement, provided the company remains solvent throughout.

Insolvent Liquidation

Insolvent liquidation occurs when a company is unable to pay its debts as they fall due and can take the form of either a Creditors’ Voluntary Liquidation (CVL) or a compulsory (court-ordered) liquidation. In a CVL, the directors convene meetings of members

and creditors and the creditors appoint the liquidator. In a compulsory liquidation, a creditor, member, or the company itself may petition the court for a winding-up order, typically on the grounds of insolvency. The liquidator’s primary duty is to realise the company’s assets and distribute the proceeds in accordance with statutory priorities. Any surplus is returned to members. The process is overseen by the court in compulsory cases and by creditors in a CVL, and it is designed to ensure an orderly dissolution and equitable treatment of creditors when rescue is not possible.

Receivership

Receivership involves the appointment of a receiver (typically by a secured creditor) over specific assets or the entire undertaking of a company to realise secured assets. The receiver’s principal duty is to the appointing secured creditor, with the objective of realising the secured assets and applying the proceeds to discharge the secured debt. Receivership does not necessarily result in the liquidation of the company, and the company may continue to exist and trade in respect of assets not subject to the receivership. The process is governed by the terms of the security document and the Act, and the receiver has wide powers to manage, sell, or otherwise deal with the charged assets.

Examinership/SCARP

Examinership is an Irish rescue process designed to facilitate the survival of companies in financial difficulty as going concerns. It is a court-supervised procedure initiated by the company, its directors, creditors, or shareholders holding at least 10% of voting share capital, where the company is or is likely to be unable to pay its debts. It is loosely based on the US Chapter 11 process.

An examiner is tasked with formulating proposals for a scheme of arrangement to secure the company’s survival within 100 days of appointment. During the period of court protection, a broad moratorium applies, preventing creditors from enforcing claims or terminating contracts solely due to the examinership. The examiner may repudiate onerous contracts and, in certain cases, sell assets subject to security. Approval of the examiner’s proposals requires the support of at least one class of impaired creditors and court confir-

mation, with the court ensuring fairness and absence of unfair prejudice. If the process fails, the company may enter liquidation, with the examiner's costs and certified liabilities enjoying priority. Examinership is particularly suited to companies who are insolvent but have a reasonable prospect of survival with new investment.

A similar process, known as the Small Company Administrative Rescue Process (SCARP), was introduced by the Companies (Rescue Process for Small and Micro Companies) Act 2021 for small and micro companies. The main differences from examinership are the absence of automatic court protection and the eligibility restriction to small and micro companies. Because of this limited eligibility, it is unlikely to be relevant for airlines.

Schemes of Arrangement

A scheme of arrangement under Part 9 of the Act is a court-sanctioned compromise or arrangement between a company and its creditors (or any class of them) regarding the company's debts or obligations. This is not an insolvency process and does not require the company to be insolvent or unable to pay its debts. The process is initiated by the company, and approval requires a majority in number representing at least 75% in value of each class of creditors present and voting at the relevant meeting, followed by court sanction. Once sanctioned, and the order filed with the Irish registrar of companies, the scheme binds all affected creditors, including dissenters. While there is no automatic moratorium on creditor actions during the process, the court may grant a stay on proceedings if necessary. Schemes of arrangement are typically used for complex restructurings, including debt rescheduling or write-downs.

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

Ireland is subject to Regulation (EU) 2015/848 on insolvency proceedings (recast) (the "Recast Insolvency Regulation"), which provides for cooperation among all EU member states (other than Denmark) in respect of insolvency proceedings (including, for Ireland, examinership and compulsory liquidation).

The Recast Insolvency Regulation requires that "main" insolvency proceedings in respect of a debtor be opened only in the jurisdiction in which its "Centre of Main Interests" (COMI) is located. A court which is requested to open main insolvency proceedings must determine that the debtor's COMI is in fact located in the member state before the court will have jurisdiction under the Recast Insolvency Regulation. "Secondary" insolvency proceedings may be opened in other member states in which assets of the debtor are located, but the effect of secondary proceedings is limited in scope to the assets situated within the territory of that member state. Where main and secondary proceedings have been opened, Article 41 of the Recast Insolvency Regulation requires that the insolvency practitioners appointed in the various proceedings co-operate as to, inter alia, the realisation or use of the debtor's assets and affairs, to the extent that such co-operation is not incompatible with the rules applicable to each proceeding.

Insolvency proceedings opened in any EU member state are automatically recognised in all other EU member states (other than Denmark) by virtue of the Recast Insolvency Regulation – no official action is required in the other member state to perfect recognition. Recognition may be refused only where the effects of recognition would be manifestly contrary to the other member state's public policy. Notwithstanding the opening of main insolvency proceedings, certain matters such as creditors' set-off rights, immovable property contracts or employment contracts will remain governed by local law. Certain judgments handed down in insolvency proceedings in other EU member states may be recognised in Ireland in accordance with Section 1422 of the Act.

Ireland has not adopted the UNCITRAL Model Law on Cross-Border Insolvency. However, in a number of recent cases, the Irish Courts have confirmed that they retain an inherent jurisdiction to recognise foreign (ie, non-EU) insolvency proceedings, applying common-law rules and principles of private international law where (i) there is some degree of equivalence with the form of the corresponding Irish process; and (ii) recognition is sought for a legitimate purpose.

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

Liquidation of a company which has granted an IDERA should not void or terminate such IDERA.

As referred to in **2.8.7 Deregistration Power of Attorney**, a deregistration power of attorney which is stated to be irrevocable and is granted by an Irish incorporated company by way of security will not be terminated by the winding up or dissolution of the grantor.

2.9.5 Other Effects of a Lessee's Insolvency

If a lessee becomes the subject of insolvency or bankruptcy proceedings while in possession of a leased aircraft, the Irish courts will recognise the lessor's title to the aircraft. Ireland's ratification of Alternative A of the CTC should enable the lessor to achieve a repossession of an aircraft within 60 days (or a cure of the lessee's defaults thereunder) but, to date, we are not aware of this ever having been pleaded before the Irish courts in any insolvency proceedings involving an Irish airline.

Subject to the above, a lessor's claim for amounts owing to the lessor would be an unsecured claim treated *pari passu* with the other unsecured and unsubordinated debts of the lessee.

An examiner or liquidator appointed to an Irish incorporated lessee which is subject to insolvency proceedings could seek to have a lease transaction set aside as an unfair preference or improper transfer, or could seek to disclaim or repudiate an aircraft lease agreement – discussed further in **2.9.6 Risks for a Lender if a Borrower, Guarantor or Security Provider Becomes Insolvent**.

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

Insolvency of an Irish incorporated company will have several negative implications for the creditors of that company, including the contingent creditors of that company who have received security or a guarantee from the insolvent entity. As well as the risk of that company being unable to pay its debts to that creditor, or the risk of unpaid amounts being written down in an insolvency process, insolvency creates legal risks which can result in the setting aside of a guarantee or

the granting of security by such company by any of the following.

Unfair Preference

Section 604 of the Act provides, *inter alia*, that any act relating to property carried out by or against a company that is unable to pay its debts as they become due to any creditor (or any person on trust for any creditor) to give such creditor a preference over the other creditors may be deemed to be invalid as an unfair preference if it takes place within six months prior to the company being wound up on an insolvent basis. There is a rebuttable presumption that an intention to prefer exists if the relevant act is in favour of a "connected person" and takes place within two years of a company being wound up on an insolvent basis. The court may extend these timeframes where it deems it just and equitable to do so.

Improper Transfers

A court can set aside any disposal of assets by an Irish company where, during the liquidation or receivership of such company, it can be shown that the effect of such disposal was to perpetrate fraud on the company, its creditors or its members (whether or not the relevant company was insolvent at the time of the disposal, whether or not there is any evidence of actual fraudulent intent in making it, and irrespective of how much time elapses between the date of the disposal and the date of the relevant insolvency proceeding).

Repudiation of Onerous Contracts

Where an Irish company enters examinership, the examiner may repudiate any contract to which the company is a party where, in the opinion of the examiner, the contract is likely to be to the detriment of that company or any interested party (subject only to the rights of parties acquiring an interest in good faith and for value). Such power does not apply in respect of contracts entered into by the company prior to the company's entry into examinership.

Furthermore, as a part of a scheme of arrangement formulated by an examiner for the survival of a company in examinership, the company (but not the examiner) may, subject to the approval of the court, repudiate any contract under which some element of performance (other than payment) remains to be rendered

both by the company and the other contracting party or parties. Any person who suffers loss or damage because of such repudiation stands as an unsecured creditor for the amount of such loss or damage.

Guarantees in Examinership or a Rescue Process

In addition, there are particular rules regarding the enforcement of guarantees in an examinership, and there are certain steps which a beneficiary of a guarantee will have to strictly observe in order to maintain its rights to enforce the obligations of the guarantors under the guarantees (which will protect the beneficiary of a guarantee's right to pursue the guarantor even if the underlying debt is crammed down in the examiner's proposals). A notice containing an offer by the beneficiary of a guarantee to transfer its rights to vote on the examiner's proposals to the guarantors must be served on the guarantors within certain time limits prescribed in Section 549 of the Act. Failure to do so will prevent enforcement of the guarantee. Similar but separate provisions apply in relation to guarantees in the context of a company in SCARP.

Disclaimer of Onerous Property

Section 615 of the Act allows a liquidator, with leave of the court, at any time within 12 months after the commencement of the liquidation (or such extended period as may be allowed by the Court), to disclaim any property of the company being wound up which consists of, among other things, unprofitable contracts.

2.9.7 Imposition of Moratoria in Connection With Insolvency Proceedings

Where an Irish company enters examinership, it is subject to a moratorium on enforcement while the company is in examinership. However, please note that Ireland's adoption of Alternative A modifies this in respect of aircraft assets and requires that possession of the aircraft (or cure of the relevant defaults) must be achieved within 60 days.

2.9.8 Liquidation of Domestic Lessees

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

2.9.9 Ipso Facto Defaults

Where an event of default has occurred under a lease agreement, Irish law does not also require the lessee to be in default of its performance obligations under the lease for the lessor to enforce its rights under the lease agreement.

2.9.10 Impact of Domestic Lessees' Winding-Up

A well-drafted lease agreement should prevent a claim for clawback of amounts paid as lease rentals, lease security deposit or maintenance reserves by a liquidator of an Irish incorporated lessee arising simply from the insolvency of the lessee. Any such claim would need to demonstrate that the circumstances in the lease agreement giving rise to a claim for the return of the amounts had been met.

2.10 Cape Town Convention and Others

2.10.1 Conventions in Force

The CTC entered into force in Ireland on 1 March 2006. AEP codes are not required for Irish registered aircraft.

2.10.2 Declarations Made Concerning Conventions

Ireland has made the following declarations under the Convention and the Protocol:

- Article 39 of the Convention – preserving the priority afforded to non-consensual rights and interests regardless of registration and preserving the rights of public service providers to arrest or detain aircraft for the payment of amounts owing for such services in accordance with national law;
 - Article 54 (2) of the Convention – permitting a creditor's ability to exercise self-help remedies available under the CTC without a court order;
 - Article XXX(1) of the Protocol – declaring that Articles VIII (Choice of Law), XII (Insolvency Assistance), XIII (Deregistration and Export Request Authorisation) and X(3) (Modification of Provisions regarding Relief Pending Final Determination); and
 - Article XI of the Protocol – pursuant to the International Interests in Mobile Equipment (Cape Town Convention) (Aircraft Protocol) Order 2017, Ireland adopted Alternative A, as set out in Article XI of the Protocol and specified a "waiting period" of 60 days.
- ### 2.10.3 Application of Article XIII of the Protocol on Matters Specific to Aircraft Equipment

Article XIII applies in Ireland. An IDERA can be submitted to the IAA in the form specified on its website and signed by the “registered owner” of the relevant aircraft.

2.10.4 Enforcement of Conventions

The Irish courts have significant experience of parties seeking orders relevant to the operation of the International Registry (IR) which is administered in Ireland.

Otherwise, there is little experience of the Irish courts ruling on rights established by the Convention or the Protocol. Parties have sought to make arguments before the Irish courts relating to the Convention and the Protocol in proceedings relating to the examiner-ship of Norwegian Air Shuttle and the solvent scheme of arrangement of Nordic Aviation Capital DAC. However, both sets of proceedings were decided on other grounds, and the Irish courts did not need to make orders enforcing the rights of the parties pursuant to the Convention or the Protocol.

2.10.5 Other Conventions

Ireland is a signatory to the 1948 Geneva Convention, but has not yet ratified it. Ireland is not a signatory to the 1933 Rome Convention.

3. Aircraft Debt Finance

3.1 Structuring

3.1.1 Restrictions on Lending and Borrowing

There are no Irish restrictions on commercial loans by foreign lenders to Irish borrowers.

3.1.2 Effect of Exchange Controls or Government Consents

Please see 2.1.4 Exchange Controls for exchange controls applicable in Ireland.

3.1.3 Granting of Security to Foreign Lenders

An Irish company may grant security directly to foreign lenders.

3.1.4 Downstream, Upstream and Cross-Stream Guarantees

Generally, Irish incorporated companies can give guarantees where it can be demonstrated that there

is a corporate benefit to the Irish guarantor in doing so. This corporate benefit will be easier to demonstrate where an Irish incorporated guarantor is giving a guarantee in favour of its subsidiary but, depending on the specific factual matrix, it is possible that an Irish incorporated guarantor will have a corporate benefit in giving a guarantee in respect of the obligations of its parent or sister companies.

3.1.5 Lenders' Share in Security Over Domestic SPVs

Shares of an Irish SPV are generally secured by an equitable charge where the chargor remains the registered shareholder but is typically required to deliver its original share certificates, together with signed but undated share transfer forms (with the name of the transferee left blank for use on enforcement), to the chargee.

3.1.6 Negative Pledges

Negative pledges are recognised under Irish law as a contractual restriction on the relevant company from creating additional security in respect of its assets.

3.1.7 Intercreditor Arrangements

Irish law imposes no special restrictions on intercreditor agreements.

3.1.8 Syndicated Loans

The concept of agency and the role of an agent (such as a facility agent) are recognised under Irish law.

3.1.9 Debt Subordination

Contractual subordination of debts is permissible and recognised under Irish law.

3.1.10 Transfer/Assignment of Debts Under Foreign Laws

Under Irish law, debts can be transferred through either assignment or novation. Typically, Loan Market Association standard documentation is used to effect a novation or assignment of outstanding debt (and any security granted in connection with such debt).

3.1.11 Usury/Interest Limitation Laws

Irish interest limitation laws do not apply to commercial lending.

3.2 Security

3.2.1 Typical Forms of Security and Recourse

Secured aviation-finance transactions involving Irish incorporated parties follow international norms in relation to their security packages, the nature of which will be commercially negotiated.

Some or all of the following can be expected:

- a mortgage in respect of the aircraft, its engines, parts and aircraft documents;
- a security assignment of the lessor's rights under the aircraft lease agreement and any other potentially revenue-generating ancillary documents, such as policies of insurance, reinsurance or manufacturer's warranty documents;
- a charge in respect of the shares of the aircraft-owning special purpose vehicle;
- an assignment and charge in respect of the bank account(s) into which lease payments are made; and
- a security assignment in respect of the aircraft owner's rights in any applicable maintenance contracts.

3.2.2 Types of Security Not Available

There are no restrictions under Irish law on taking security over aircraft or related collateral such as engines, warranties or insurance.

3.2.3 Trust/Trustee Concepts

Security trustees or agents may validly hold security for a lender syndicate and are routinely used in lending structures involving Irish incorporated borrowers.

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

An Irish incorporated borrower can assign its rights to an aircraft under an aircraft lease to a security trustee by way of a security assignment.

3.2.5 Assignment of Rights and Benefits Without Attendant Obligations

See paragraph 2.7.1 Recognition of the Concepts of Contractual Assignment and Novation.

3.2.6 Choice of Foreign Law

There is no requirement for a security assignment or a guarantee to be governed by Irish law for it to be enforceable. Typically, a security assignment of contractual rights, or a guarantee in respect of contractual obligations, would preferably each be governed by the same governing law as the underlying contract. See 2.1.2 Application of Foreign Laws regarding the recognition of foreign law governed documents under Irish law.

3.2.7 Formalities/Mandatory Terms to Create and Perfect Security Assignments

Under Irish law, to be a valid and effective legal assignment, a security assignment must be an absolute assignment, it must be in writing executed by the assignor, and express notice in writing must be given to the third party from whom the assignor would be entitled to claim the right that is assigned. There is no timeframe within which this notice must be served. It is not necessary to require the counterparty to acknowledge the notice, but it may be desirable to obtain such acknowledgement where the notice requires the counterparty to take or refrain from taking certain actions in respect of the secured assets.

Failure to serve such notice creates an equitable assignment only which will be enforceable as between the assignor and the assignee only but will not permit the assignee to enforce the obligations of the third-party contractual counterparty directly.

There is no requirement for a security assignment to be translated, certified, notarised or legalised to be enforceable against an Irish incorporated company. However, a security assignment granted by an Irish incorporated company (or a non-Irish incorporated company which is registered in Ireland as a relevant external company, an "External Company") will generally require a security filing to be made with the Irish Companies Registration Office (CRO) and a notification to the Irish Revenue Commissioners ("the Revenue") pursuant to Section 1001 of the Taxes Consolidation Act 1997 (TCA).

3.2.8 Domestic Law Security Instruments

If a financier is receiving an English- or New York law-governed security package in respect of an Irish reg-

istered aircraft, it would be advisable to also receive an IDERA, signed by the registered owner in the form which can be registered by the IAA, where the registered owner of such aircraft is an obligor under the financing. An Irish law-governed security assignment may be advisable if the financier wants an Irish law-governed intangible asset to form part of its security package.

There is no requirement to enter into an Irish law security instrument to make filings with the IR in respect of an Irish registered aircraft.

Where an Irish incorporated company (or an External Company) creates a charge by way of security over any of its assets, this will generally require a security filing to be made with the CRO and a notification to the Revenue pursuant to Section 1001 of the TCA. The filing fees for filings with the CRO are nominal, and there is no filing fee to make a Section 1001 notification with the Revenue.

3.2.9 Domestic Registration of Security Assignments Governed by Foreign Laws

The requirement to make security filings with the CRO and/or notifications to the Revenue discussed in 3.2.7 Formalities/Mandatory Terms to Create and Perfect Security Assignments and 3.2.8 Domestic Law Security Instruments apply irrespective of the governing law of the security document.

3.2.10 Transfer of Security Interests Over Aircraft/Engines

Under Irish law, it is possible to transfer Irish law-governed security interests created over an aircraft and/or engines by way of an outright assignment or by way of novation. Generally, an assignment will be more favourable than a novation because a novation takes effect as the creation of a new security interest which will require consideration of all of the factors applicable to new security, including the risk of such security being considered an unfair preference until the hardening periods discussed in paragraph 2.9.6 Risks for a Lender if a Borrower, Guarantor or Security Provider Becomes Insolvent have elapsed.

3.2.11 Effect of Changes in the Identity of Secured Parties

Security held through a security agent or trustee is not affected by changes in the secured creditor group. Where security is held directly, transfers must comply with the principles in 3.2.10 Transfer of Security Interests Over Aircraft/Engines.

3.2.12 “Parallel Debt” Structures

Parallel debt structures are not generally used in Irish domestic lending.

3.2.13 Effect of Security Assignments on Residence of Secured Parties

While the specific details of each individual case will be of critical importance when assessing the regulatory requirements imposed by Irish law on financiers under Irish law, if a secured party has no other activity in Ireland other than entering into a security assignment as assignee it will not be deemed to be resident in Ireland.

3.2.14 Perfection of Domestic Law Mortgages

Under Irish law, an Irish law-governed mortgage in respect of an aircraft or engine should be perfected as follows:

- where the mortgagor is an Irish incorporated company (or an External Company), a security filing must be made with the CRO, along with a notification to the Revenue pursuant to Section 1001 of the TCA;
- where the aircraft is one to which the CTC applies and the mortgage creates a valid “international interest” for the purposes of the CTC, filings should be made to register the mortgage on the IR;
- where the aircraft is registered with the IAA in the name of the mortgagor, and is an aircraft to which the CTC applies, an IDERA should be obtained from the mortgagor and filed with the IAA; and
- where the aircraft is registered with the IAA in the name of the mortgagor but is not an aircraft to which the CTC applies, the parties may consider making an application to the IAA’s register of mortgages in respect of the aircraft and obtaining a deregistration power of attorney in respect of the Aircraft.

3.2.15 Differences Between Security Over Aircraft and Spare Engines

There is no substantive difference between the form of Irish law security which would be taken in respect of a standalone engine when compared to an aircraft. However, given that standalone engines are not “registered” with any aviation authority, it is not possible to obtain an IDERA in respect of a standalone engine.

3.2.16 Form and Perfection of Security Over Bank Accounts

A security assignment and charge of an account-holder's rights in a bank account is the form of security which is typically used to take security over a bank account. Generally, this security is created as a floating charge to allow the account-holder to deal with the monies held in the account pending an enforcement event. However, it is also theoretically possible for monies in a bank account to be subject to a fixed charge whereby the lender controls these funds during the security period.

Under Irish law, an Irish law-governed account assignment and charge in respect of a bank account held in Ireland should be perfected in the following manner:

- like any other security assignment of contractual rights, notice of the security assignment should be served on the account bank. Most banks operating in Ireland will require this notice to be served in a particular form which has been pre-approved by the bank; and
- while charges created by an Irish incorporated company (or an External Company) in respect of bank accounts fall within an exception to the general requirement to make a filing with the CRO, generally such an assignment will require a notification to be made to the Revenue.

3.3 Liens

3.3.1 Third-Party Liens

Irish law recognises certain categories of both statutory and common-law liens which can attach to aircraft.

The Air Navigation and Transport Acts 1936 to 2022 allow certain persons to detain and sell an aircraft for unpaid airport charges, unpaid air navigation charges (including unpaid Eurocontrol charges), unpaid taxes

or criminal activity. Unpaid airport charges or unpaid Eurocontrol charges may attach to an aircraft on a fleet-wide basis, meaning that an aircraft can be detained for charges incurred by another aircraft in the operator's fleet. That said, we are not aware of any aircraft having been detained in Ireland for unpaid Eurocontrol charges.

Common-law possessory liens may arise from unpaid maintenance charges if the aircraft has been improved and remains in the maintenance provider's lawful possession. Other common-law liens, such as salvage, seller's, or contractual liens, may also be recognised – but only on an aircraft-specific basis, not a fleet-wide basis.

3.3.2 Timeframe to Discharge a Lien or Mortgage

Liens or mortgages granted in respect of an aircraft will be discharged by the entry into the appropriate release document following satisfaction of the obligations which such lien or mortgage secures. A notification filing in respect of such satisfaction should be filed with the CRO where the lien or mortgage has been filed as a “registered charge”. However, this filing is by way of a notification only, and does not itself effect a release of the underlying security.

3.3.3 Register of Mortgages and Charges

Where a mortgage is granted in respect of an Irish registered aircraft and the underlying aircraft is one to which the CTC applies, it is not possible to also register the mortgage with the IAA and, instead, a registration should be made with the IR and an IDERA filed with the IAA. Mortgages granted in respect of Irish registered aircraft to which the CTC does not apply may be registered with the IAA.

Separately, mortgages created by an Irish incorporated company (or an External Company) in respect of an aircraft will constitute a charge in respect of that company's assets and, therefore, this will generally require a security filing to be made with the CRO. Depending on the terms of the mortgage, it may also be advisable to notify the Revenue of the creation of the mortgage pursuant to Section 1001 of the TCA.

3.3.4 Statutory Rights of Detention or Non-Consensual Preferential Liens

See 3.3.1 Third-Party Liens.

3.3.5 Verification of an Aircraft's Freedom From Encumbrances

A purchaser can search the Irish CRO for charges registered against an Irish incorporated seller. If the aircraft is IAA-registered and the seller is the "registered owner", the IAA can search its register to disclose any IDERA or, for non-Cape Town aircraft, any mortgage. For aircraft subject to the CTC, a search of the IR should be conducted for any international interests filed against the aircraft or its engines.

3.4 Enforcement

3.4.1 Differences Between Enforcing Security Assignments, Loans and Guarantees

A security assignment will generally give a creditor additional rights to enforce in respect of the property secured by such assignment, such as the appointment of a receiver or similar officer to assume control of the secured property on behalf of the creditor. Debt-recovery proceedings will be required to enforce unsecured debts, such as those created under a loan or a guarantee.

3.4.2 Security Trustees' Enforcement of Their Rights

If a security assignment is properly granted to a security trustee as a legal assignment of the lessor's rights under an aircraft lease (please see 3.2.7 Formalities/Mandatory Terms to Create and Perfect Security Assignments) and an enforcement event occurs, the trustee should be able to enforce the lessor's rights under the lease.

3.4.3 Application of Foreign Laws

See 2.1.2 Application of Foreign Laws regarding Irish courts' recognition of foreign governing law.

See 2.6.5 Domestic Courts' Approach to Foreign Laws and Judgments regarding the recognition by the Irish courts of the submission to the jurisdiction of a non-Irish court in a non-exclusive asymmetric jurisdiction clause (as typically seen in finance and security documents).

3.4.4 Recognition and Enforcement of Foreign Judgments and Arbitral Awards

See 2.6.6 Domestic Courts' Recognition of Foreign Judgments/Awards regarding the recognition and enforcement of foreign judgments and arbitral awards by the Irish courts.

3.4.5 Secured Parties' Right to Take Possession of Aircraft

There is no restriction under Irish law on a secured party taking physical possession of an aircraft on foot of a security agreement or aircraft mortgage without the consent of the lessee or the operator (subject to the provisions of the underlying security agreement or aircraft mortgage).

3.4.6 Domestic Courts Competent to Decide on Enforcement Actions

As referred to in 2.6.3 Specific Courts for Aviation Disputes, enforcement actions under a security agreement or aircraft mortgage are likely to be admitted to the Irish Commercial Court.

3.4.7 Summary Judgments or Other Relief

Urgent interim injunctive relief can be obtained from the Irish High Court on an ex parte basis to enforce a secured party's rights. The applicant must undertake to be liable for losses suffered by affected parties if the injunction is later found to have been wrongly granted, and may need to provide security for such losses. In Ireland, summary judgment is only available for debt recovery, and does not itself provide possession of the aircraft.

3.4.8 Judgments in Foreign Currencies

Any judgment of the Irish courts for monies due may be expressed in currency other than EUR, but the court order will be issued in EUR by reference to the official rate of exchange prevailing at or shortly before the date of such judgment.

3.4.9 Taxes/Fees Payable

The disposal of any secured assets on the exercise of security may result in any person entitled to the secured assets by way of security, or to the benefit of the security or any person appointed to enforce or give effect to the security, becoming liable for tax in relation to any capital gain made on that disposal.

3.4.10 Other Relevant Issues

Other issues may arise depending on the facts, but the above responses provide a high-level overview of key considerations for lenders enforcing rights under a security document.

4. Other Issues of Note

4.1 Issues Relevant to Domestic Purchase, Sale, Lease or Debt Finance of Aircraft “No Russia” and “No Belarus” Clauses

Since 1 January 2025, Article 12g of Council Regulation (EU) No 833/2014 requires EU counterparties (including Irish companies) contracting with non-EU or non-partner country counterparties for the sale, supply, transfer or export of certain objects (including aircraft and parts) to:

- contractually prohibit the re-export to Russia or re-export for use in Russia of those objects;
- ensure that the contract includes “adequate remedies” in the event of a breach of the No Russia clause by the Non-Partner Counterparty; and
- in the event of a breach of the No Russia clause, notify the competent authority as soon as they become aware of the breach. The obligation under Article 12g is on the EU counterparty (ie, the aircraft leasing company) to ensure that the relevant contract (such as an aircraft sale agreement or leasing agreement) complies with this requirement, irrespective of whether its third-country counterparty ever actually exports or re-exports anything to Russia.

Article 8g of Council Regulation (EC) No 765/2006 imposes a similar requirement regarding Belarus.

The inclusion of these direct requirements for contracts involving the sale or leasing of aircraft assets is a material issue facing participants in the aviation finance market, but this is only one feature in a rapidly evolving landscape of global sanctions relevant to aviation finance.

2019 Hague Convention

With English law commonly governing aircraft lease and finance agreements, the entry into force (on 1 July 2025) of the 2019 Hague Convention in the UK reduces uncertainty about enforcing UK judgments in Ireland post Brexit.

For proceedings brought after 1 July 2025, a UK judgment within the 2019 Hague Convention’s scope, based on a non-exclusive jurisdiction clause (including asymmetric clauses), will be recognised and enforced in Ireland without retrial or examination of the merits, provided that Article 7 does not apply and that certain procedures are followed.

The Convention of 30 June 2005 on Choice of Court Agreements (the 2005 Hague Convention) continues to protect judgments based on exclusive jurisdiction clauses in UK courts, which are recognised and enforced in Ireland on the same basis, subject to Article 9 and compliance with certain procedures.

4.2 Current Legislative Proposals

We are not aware of any current proposals before the Irish legislature which would affect the conclusions above. However, the EU’s introduction of CRD VI will impact non-EU lenders in aviation finance.

Ireland must transpose CRD VI by 10 January 2026, which must take effect from 11 January 2026. While mainly about capital requirements, CRD VI will also require non-EU banks to establish a regulated third-country branch to conduct certain core banking activities (including lending) in the EU. This will significantly affect non-EU banks lending on aviation assets, as most borrowers are based in Ireland.

There are limited exceptions (eg, inter-bank, intra-group, reverse solicitation, and pre-11 July 2026 contracts). It will be important for any non-EU bank carrying on core banking activities in the EU to consider at an early stage what steps should be taken, particularly if they intend to apply for regulatory authorisation for a branch located (or to be established in) an EU member state.

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