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CHAMBERS GLOBAL PRACTICE GUIDES

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# Aviation: Finance & Leasing 2023

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**India: Law & Practice**

Nitin Sarin, Ritesh Aggarwal  
and Vinamra Longani  
Sarin & Co



# INDIA



## Law and Practice

### Contributed by:

Nitin Sarin, Ritesh Aggarwal and Vinamra Longani  
**Sarin & Co**

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**Sarin & Co** is one of the oldest firms in India. Originally established in 1932 in Lahore (now in Pakistan), the firm has been in existence for over 90 years. Traditionally a firm of litigators, Sarin & Co branched out into the field of aviation with the joining of Mr Nitin Sarin in 2008. Since then, the aviation team (consisting of six lawyers) and a head of operations have represented some of the largest banks and aircraft leasing companies, handled transactions worth

billions of dollars, and also carried out some of the most complex aircraft leasing and financing transactions including aircraft repossessions in the country. In 2022, the firm was offered a position on the Legal Advisory Panel of the Aviation Working Group. The firm primarily advises foreign aircraft lessors, banks and financial institutions. It also represents select foreign airlines in India.

## Authors



**Nitin Sarin** is the managing partner of Sarin & Co and a front-running aviation professional in India. He is a qualified advocate in India and a solicitor in England & Wales. Mr

Sarin has a deep passion for aviation and is the co-founder of the Leiden–Sarin International Air Law Moot Court Competition and the Sarin-McGill Annual Student Essay Competition on Aircraft Finance and Leasing. He is also a guest lecturer at the IIASL, Leiden University, as well as a qualified IATA trainer. Nitin has consistently been recognised for his hands-on approach and ability to create strong professional relationships with his clients. He is also extremely academically inclined and keeps himself involved with a multitude of academic activities in the field of aviation.



**Ritesh Aggarwal** is a qualified advocate in India and a senior associate at Sarin & Co. He specialises in regulatory matters and often liaises with the Directorate General of Civil

Aviation (DGCA) and Ministry of Civil Aviation (MoCA). Mr Aggarwal is a specialist in providing Sarin & Co's foreign clients with prompt regulatory assistance as and when required. A graduate of the Rajiv Gandhi National Law University, Mr Aggarwal is also a litigator who appears in contentious matters in various courts of law around India. Apart from aviation, he also specialises in land acquisition, labour and industrial disputes, as well as company matters and other civil procedure matters.

Contributed by: Nitin Sarin, Ritesh Aggarwal and Vinamra Longani, **Sarin & Co**



**Vinamra Longani** is the head of operations at Sarin & Co. He provides commercial and market-oriented information for the firm's clients and acts as a liaison for them with regulatory bodies, government agencies, and other key stakeholders. At the firm, Vinamra spearheads the development, communication and implementation of effective growth and communication strategies and processes. His expertise in aviation also makes him a regular commentator on the aviation industry. His deep knowledge and aviation sector experience are attributable to a decade spent at Virgin Atlantic Airways in multi-faceted roles. Before his tryst with aviation began, he worked with the multinational conglomerate General Electric. He is also an acclaimed author.

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## Sarin & Co

Chandigarh office:  
48, Sector 4  
Chandigarh – 160001  
India

New Delhi office:  
52/96, 2nd Floor  
CR Park  
New Delhi – 110019  
India

Tel: +91 98142 52145  
Email: [consult@sarinlaw.com](mailto:consult@sarinlaw.com)  
Web: [www.sarinlaw.com](http://www.sarinlaw.com)



## 1. Aircraft and Engine Purchase and Sale

### 1.1 Sales Agreements

#### 1.1.1 Taxes/Duties Payable Upon Execution of the Sales Agreement

A sales agreement, if executed while the asset is in India, runs the risk of being levied with several taxes in India, such as goods and services tax and stamp duty. Where an original document (executed outside of India) is not stamped with the requisite stamp duty, it must be affixed with the requisite stamp duty within three months after it has been received in India. Certain states also impose stamp duty on copies of sales agreements.

#### 1.1.2 Enforceability Against Domestic Parties

The enforceability of a sales agreement will not be affected by the language it is written in. However, should a sales agreement need to be submitted to a court or a government entity, it is recommended that it is translated into English and notarised. Furthermore, if a document is not properly stamped, courts in India have the power to detain the document and refuse to admit it into evidence unless and until it is properly stamped.

### 1.2 Transfer of Ownership

#### 1.2.1 Transferring Title

Under Indian law, if there is an offer by one party which is accepted by another for consideration, such an act or series of acts shall constitute “transferring title”, and this holds for all installed parts, including an auxiliary power unit (APU).

Under the general applicability of Indian law, the sale of an ownership interest in an entity that owns an aircraft or engine shall be recognised as a sale of that entity only.

#### 1.2.2 Sales Governed by English or New York Law

There is no prohibition on bills of sale in relation to aircraft or engines being governed by any foreign law in India.

A bill of sale should ideally note that a valid contract has been entered into, ie, that there has been an offer by the seller, acceptance by the purchaser, and the seller has received consideration.

#### 1.2.3 Enforceability Against Domestic Parties

If a bill of sale is executed in any language other than English, it is recommended that a translated copy be provided for its proper enforcement. Further, notarisation is also recommended.

#### 1.2.4 Registration, Filing and/or Consent From Government Entities

Generally, a bill of sale is not required to be registered or filed or subject to any consent from any government entity. At the time of registration of an aircraft, the registration authority may require a notarised copy of the bill of sale.

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

Execution of a bill of sale or the consummation of the sale of the ownership interest may be taxed in India while an aircraft is located in India. Most such transactions are undertaken when the aircraft is flying over international waters or flying over or parked on the territory of another country.

## 2. Aircraft and Engine Leasing

### 2.1 Overview

#### 2.1.1 Non-permissible Leases

If validly executed, operating/wet/finance leases or leases concerning only engines or parts are permissible and will be recognised under the law of India. Wet and finance leases require specific approval of the regulatory authorities in advance of execution.

#### 2.1.2 Application of Foreign Laws

It is fairly common for a foreign law-governed lease to be recognised in India. A court shall apply such law as long as the parties' rights deriving from such a lease are not opposed to public policy and are not in breach of Indian law.

#### 2.1.3 Restrictions Concerning Payments in US Dollars

India is an exchange-controlled country; therefore, any remittance of foreign exchange (including US dollars) requires the approval of the Reserve Bank of India (RBI) or any authority it prescribes. Most of these approvals have been delegated by the RBI to its commercial banks – known as authorised dealer (or AD) banks, making it easier for a domestic lessee to make rent payments to foreign operating lessors in foreign exchange. Specific approval is required from the RBI in case of remittance of payments under finance leases.

#### 2.1.4 Exchange Controls

Repatriation of foreign exchange as rent payments requires the indirect approval of the RBI. In relation to operating leases, the power to approve is delegated to authorised dealer (AD) banks – however, the remittance of payments for finance leases requires the specific approval of the RBI. Similarly, in cases where a lease is enforced by a foreign lessor (operating or

finance), it also would require the RBI's approval before the repatriation of any realised proceeds.

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

Execution of a lease agreement physically in India would typically attract the levy of stamp duty. Even for lease agreements executed overseas, the stamp duty on them must be paid within three months of such a document's entry into India.

#### 2.1.6 Licensing/Qualification of Lessors

A lessor does not need to be licensed or otherwise qualified in India to do business with a domestic lessee. However, a foreign lessor based in a prohibited or sanctioned country would not be permitted to do business in India.

## 2.2 Lease Terms

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

No mandatory terms are required to be in a lease; the lease itself must be a valid and binding contract between two parties competent to contract.

### 2.2.2 Tax and Withholding Gross-Up Provisions

Tax and "grossing up" clauses are permissible and may be enforced by the courts provided they form part of the binding contract entered into between the parties.

### 2.2.3 Parts Installed or Replaced After a Lease's Execution

A lease agreement can cover parts installed or replaced on an aircraft or engine after its execution, provided the agreement contemplates such inclusion/coverage. For parts not covered under the lease, the parties may enter a simple side letter or short lease amendment agreement.

## 2.2.4 Risk of Title Annexation

India will recognise the separate (and distinct) rights of both the owner(s) of the airframe as well as the owner(s) of each engine. As such, with India being a common law jurisdiction, title annexation does not apply.

## 2.2.5 Recognition of the Concepts of Trust/ Trustee

Indian law recognises the concept of a trust and the role of an owner trustee.

## 2.3 Lease Registration

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

The Directorate General of Civil Aviation (DGCA) is the authority responsible for maintaining the aircraft register in India and records the details of the owner, lessor, operator and mortgagee (if applicable). The effect of such notation on the aircraft register shall amount to notice to all third parties regarding the existence of such an interest in that aircraft.

### 2.3.2 Registration if the Owner Is Different From the Operator

Registration is possible even if the owner differs from the operator. An aircraft, once registered, is issued a certificate of registration by the DGCA, which contains various details such as name, address and nationality of the owner, lessor, operator and mortgagee (if applicable) of the aircraft.

### 2.3.3 Aircraft/Engine-Specific Registers

At the time of registration of an aircraft taken on lease, the applicant is required to submit a copy of the lease agreement to the DGCA. DGCA requirements state that any lease amendments or novations must also be filed with the DGCA. There is no engine-specific register nor any

requirement to submit a lease in relation to an aircraft engine to any authority in India.

### 2.3.4 Registration of Leases With the Domestic Aircraft Registry

An aircraft taken on lease by an Indian operator from a foreign lessor cannot be registered in India unless the applicant has submitted a copy of the lease to the DGCA. Leases are not subject to any consent from any government entity.

A copy of the lease agreement, the electronic CA-28 aircraft registration form, and other documents shall be filed for registering aircraft with the DGCA. This process may take anywhere from two to four weeks.

Before a lessee may import an aircraft into India, it must seek the consent of the DGCA. The DGCA first grants “in principle” approval for the import of the aircraft, subject to satisfaction regarding the safety of the aircraft intended to be imported, and then accords its final approval. While no consent is required as a pre-requisite to the execution of a lease, the “no objection” of the DGCA is required before the import of an aircraft on lease will be permitted.

### 2.3.5 Requirements for a Lease to Be Valid and Registrable

There is no specific form in which a lease must be registered on the aircraft registry. A lease needs to be translated into English, where it is executed in a different language. Further, a notarised copy of the lease would suffice to be valid and registrable on the aircraft registry.

### 2.3.6 Taxes/Duties Payable for Registering a Lease

There is a fee for registration of an aircraft on the Indian aircraft registry based on the aircraft's

weight. Apart from this fee, no other taxes or duties are payable for registering a lease.

### 2.3.7 Registration of Aircraft in Alternative Countries

Aircraft habitually based in India must be registered in the country. There are very few circumstances in which a foreign-registered aircraft is permitted to operate habitually in India, the most common being in relation to a wet lease (when a foreign-registered aircraft is permitted to operate in India). Wet leases are also only permitted in the country in exceptional circumstances.

### 2.3.8 Requirements for Documents Concerning Registration

Copies of these documents must be uploaded on the DGCA's online platform, e-GCA, along with the completed CA-28 aircraft registration form (notarisation of the documents is recommended):

- customs clearance certificate/bill of entry of the aircraft;
- certificate of deregistration from the previous registering authority;
- evidence to the effect that the aircraft has been purchased or is wholly owned by the applicant;
- in case of aircraft purchased from a previous owner, then an affidavit to that effect;
- where aircraft is taken on a dry lease, then a copy of the lease agreement is to be annexed;
- where a company or corporation owns the aircraft, then a document of registration of the company and the names, addresses and nationalities of the directors;
- a copy of the import licence issued by the Directorate General of Foreign Trade or permission for the import of aircraft issued by the Ministry of Civil Aviation/DGCA;

- in cases where the aircraft has been mortgaged/hypothecated, the owner/operator shall submit their consent for this and the papers to this effect; and
- letters from the owner, lessor, operator and mortgagee (if applicable) confirming the names and nationality of their directors; and requesting for or consenting to (as the case may be) aircraft registration.

## 2.4 Lessor's Liabilities

### 2.4.1 Tax Requirements for a Foreign Lessor

A foreign lessor may be required to pay income or other taxes upon leasing an aircraft or engine to an Indian lessee depending upon the domicile of the foreign lessor as well as the provisions of the specific double taxation avoidance treaty with the country of domicile of the foreign lessor and India. Ordinarily, where a lessee is required to withhold tax but does not do so, the onus would remain with the lessee, and the responsibility would not shift to the foreign lessor.

### 2.4.2 Effects of Leasing on the Residence of a Foreign Lessor

A foreign lessor would ordinarily not be deemed to be resident, domiciled in or carrying out any business in India by virtue of being a party to a lease or because of enforcement of a lease. However, it is always prudent to have a tax expert study the relevant double tax avoidance treaty between the country of domicile of the foreign lessor and India.

### 2.4.3 Engine Maintenance and Operations

Unless the direct involvement and consequent negligence of the foreign lessor are proven in respect of aircraft or engine maintenance and operations, no liabilities would be imposed on the foreign lessor as a result of their being a party to such a lease.



## 2.4.4 Damage or Loss Caused by an Asset

A lessee under a dry lease remains primarily liable for loss or damage caused by the aircraft to third parties, injuries to the person or property of third parties or passengers, and is responsible for breach of environmental laws—albeit, in the event of a claim, both the lessor and the lessee would generally get sued. Needless to add, both the lessor and the lessee will be liable for negligence in relation to the aircraft arising as a result of their own acts and omissions.

The Indian law on vicarious liability confines the liability of the master only to the torts committed by their servants and agents where these were within the scope of the servant's/agent's authority. As the relationship between the lessor and lessee is on a principal-to-principal basis, there will be no vicarious liability either. However, there are four exceptions to the above rule:

- where the lessor retains control over the lessee, and interferes with and/or makes himself a party to the tortious act;
- where the act contracted to be done is wrongful or illegal;
- where a legal or statutory duty is imposed on the lessor; and
- where the act contracted to be done is, by its nature, likely to cause danger to others – in such a case, there is a duty on the part of the lessor to take all reasonable precautions against such a risk.

## 2.4.5 Attachment by Creditors

Creditors of a domestic lessee may exercise a lien over the aircraft. However, such creditors do not have the right to sell the leased aircraft.

## 2.4.6 Priority of Third Parties' Rights

The following third-party rights would take priority over a lessor's rights under an aircraft or engine lease:

- the Airports Authority of India can exercise a lien on the aircraft for any unpaid dues such as landing and parking charges – this also includes the private airport operators exercising under the powers vested to the Airports Authority of India;
- an unpaid bailee can exercise a mechanics lien;
- similarly, statutory dues such as taxes, workmen's wages, etc, form the first charge on the asset;
- the government or its agencies can confiscate, detain or requisition aircraft (whether foreign-owned or otherwise) under certain circumstances, such as if the central government declares an emergency or if the aircraft is involved in criminal activity.

## 2.5 Insurance and Reinsurance

### 2.5.1 Requirement to Engage Domestic Insurance Companies

Indian registered aircraft may be insured by an Indian insurer, who in turn would seek reinsurance on the international insurance market – provided, however, that there is a 4% reinsurance retention, ie, obligatory cession, which is mandatorily required to be reinsured with the General Insurance Company of India.

### 2.5.2 Mandatory Insurance Coverage Requirements

The operator must have insurance coverage for liability towards the hull, crew, passengers and third parties. Insurance is also mandatory for baggage, etc, as may be required under the Carriage by Air Act, 1972.

### 2.5.3 Placement of Insurances Outside of Jurisdiction

A 4% reinsurance retention is mandatorily required with the General Insurance Company of India.

### 2.5.4 Enforceability of “Cut-Through” Clauses

“Cut-through” clauses are enforceable in India.

### 2.5.5 Assignment of Insurance/Reinsurance

Assignments of insurances and reinsurances are routinely carried out in aircraft transactions in India.

## 2.6 Lease Enforcement

### 2.6.1 Restrictions on Lessors’ Abilities

A foreign lessor may terminate an aircraft lease should the lessee be in default of their obligations under the lease. As long as the foreign lessor is acting within the terms of the lease, there are no restrictions on their ability to terminate. A foreign lessor would be required to obtain permission from the customs authorities to re-export the aircraft from India. The sale of the aircraft following such termination is permissible.

### 2.6.2 Lessor Taking Possession of the Aircraft

There is no procedure for exercising self-help remedies under local laws in India. Peaceful repossession of the aircraft can, of course, be obtained without judicial intervention. Legally, the lessor may terminate the agreement and take possession or control of the aircraft. In cases where there is no cooperation, the lessor has the option to approach the court.

### 2.6.3 Specific Courts for Aviation Disputes

There are no specific courts that are explicitly competent to decide aviation disputes. The value, facts and circumstances of the aviation dispute would determine the forum.

### 2.6.4 Summary Judgment or Other Relief

The Code of Civil Procedure, 1908 (CPC) provides for summary procedures under Order XXX-VII. Summary procedures may only be effective in cases where a foreign lessor seeks to recover unpaid rent and other monies under the lease and not to enforce the lease. The courts of law are ready to intervene upon proper proceedings being filed.

Interim measures such as the grounding of the aircraft can be obtained fairly quickly and usually within a week or two of the initiation of the legal action. Where there is an arbitration clause, the court and the arbitral tribunal have the power to pass an interim protection order.

In India, as elsewhere, the grant of an injunction under the CPC is a discretionary remedy. It may be granted unconditionally or upon the court’s imposed terms. In exercising its jurisdiction, the court will not enter upon a pre-trial assessment of the lessor’s claim. If the court is satisfied that the lessor has a prima facie case against the lessee and that, in the absence of an injunction, “irreparable injury” or loss, which cannot be compensated in the form of damages, is likely to be caused to the lessor, it will grant the injunction. Before granting an injunction, the court will direct that notice of it be given to the lessee, except in cases where it appears that the object of granting the injunction would be defeated by such delay as would result from this.

### 2.6.5 Domestic Courts’ Approach to Foreign Laws and Judgments

India would recognise a lease governed by foreign law and will enforce its terms and sustain claims arising under it as long as the rights are not in breach of Indian law or public policy. Submission to a foreign jurisdiction would also be recognised.

## 2.6.6 Domestic Courts' Recognition of Foreign Judgments/Awards Reciprocating Territories

Only in certain cases can a foreign decree be executed in India directly as if it had been passed by a court in India. Section 44A CPC provides, inter alia, that where a foreign judgment has been rendered by a superior court in any country or territory outside India, which the government has by a notification declared to be a reciprocating territory, it may be enforced in India by proceedings in execution as if the relevant court of India had rendered the judgment.

### Conditions for Enforceability of Foreign Judgments

Courts in India may refuse execution if the decree falls within any of the following exceptions specified in Section 13 of the CPC, which inter alia provides that a foreign judgment shall be conclusive of any matter directly adjudicated upon, except where:

- a court of competent jurisdiction has not pronounced it;
- it has not been given on the merits of the case;
- it appears on the face of the proceedings to be founded on an incorrect view of international law or a refusal to recognise the law of India in cases where such law is applicable;
- the proceedings in which the judgment was obtained were opposed to natural justice;
- it has been obtained by fraud; and
- it sustains a claim founded on a breach of any law in force in India.

Section 44A, however, only refers to decrees or judgments under which a sum of money is payable. Essentially, it must be a money decree to fall within the purview of Section 44A.

## Enforcement of Judgments from Non-reciprocating Territories

In the absence of any reciprocal arrangement or treaty, a suit will have to be filed to enforce any such judgment or order obtained. The United Kingdom and Northern Ireland have been declared as reciprocating territories for the purpose of Section 44A. Curiously, there is no such arrangement with the USA.

In a suit on a foreign judgment, the Indian court cannot go into the merits of the original claim or question its correctness or propriety. Through precedent, the courts have held that the word "judgment" in the expression "foreign judgment" has been assigned the same meaning given to it in English law and refers to the decree or order of a foreign court. A foreign judgment must be final and conclusive in the court in which it is passed to be considered a valid cause of action.

In order to establish that a final and conclusive judgment has been pronounced, it must be shown that, in the court in which it has been pronounced, it conclusively, finally and forever established the existence of the right of which it is sought to be made conclusive evidence in this country (ie, in India) to make it *res judicata* (ie, a thing conclusively decided between parties).

## 2.6.7 Judgments in Foreign Currencies

Indian courts would render a judgment in a foreign currency upon request and satisfaction of sufficient cause.

## 2.6.8 Limitations on Lessors' Actions Following Termination

As long as the court does not form the opinion that the default interest or the penalty imposed on the lessee is excessive or uncalled for, there are no limitations on a lessor's ability to recover default interest or to charge additional rent fol-

lowing the termination of the lease for default. If a court concludes that the default interest or penalty on the lessee is not sustainable, it may levy a rate of interest on its own accord which would ordinarily be the prevailing market rate of interest.

### 2.6.9 Lessor's Requirement to Pay Taxes/ Fees

A lessor under an aircraft lease seeking enforcement of such a lease would not be required to pay any taxes or fees. The lessor may, however, have to pay any unpaid taxes, which were the lessee's responsibility to export the aircraft from the country.

### 2.6.10 Mandatory Notice Periods

If the lease terms provide a notice period, then such a notice period must be adhered to unless specifically waived by the lessee.

### 2.6.11 Lessees' Entitlement to Claim Immunity

In India, the doctrine of sovereign immunity does not apply to statutory corporations or bodies incorporated under the (Indian) Companies Act, 2013 or to any government-owned entities. This doctrine applies only to exercising certain sovereign functions the state performs.

### 2.6.12 Enforcement of Foreign Arbitral Decisions

India has ratified the Geneva Convention and New York Convention on Recognition and Enforcement of Foreign Arbitral Awards. Any foreign award under the New York Convention can be enforced in India in accordance with the provisions of Part II of the (Indian) Arbitration and Conciliation Act 1996. Where the concerned court in India is satisfied that such a foreign award is enforceable under the Act, the award is deemed to be a decree of that court

and enforceable as such. The courts will not revisit the issues involved in the arbitration or sit as a court of appeal.

### 2.6.13 Other Relevant Issues

In general, it is prudent to factor in a significant amount of time to properly enforce one's rights in India, mainly due to the country's complex bureaucracy. In case of any contest by the lessee, enforcement may be delayed.

## 2.7 Lease Assignment/Novation

### 2.7.1 Recognition of the Concepts of Contractual Assignment and Novation

India recognises the concept of both a contractual assignment and novation.

### 2.7.2 Assignment/Novation of Leases Under Foreign Laws

As long as the New York or English law-governed assignment and assumption agreement or novation agreement is a valid contract under Indian law, the courts in India will uphold the validity of such an agreement. The consent of the lessee will also be required for such an agreement to be valid and enforceable. As long as the agreement itself is not opposed to public policy, there are no mandatory terms that such an agreement must contain to be valid under Indian law.

### 2.7.3 Enforceability of Lease Assignments/ Novations

The aircraft and/or engine lease assignment and assumption/novation agreement should be translated in the event that it is not in English and then notarised.

### 2.7.4 Filing/Registration of Lease Assignments/Novations

The DGCA recently mandated that all aircraft lease assignment and novation agreements must be filed with the regulator. As such, there

is no requirement for an engine lease assignment and novation agreement to be filed with the DGCA, but it is recommended. Such agreements are not subject to any consent from any government entity.

The procedure for filing an aircraft or engine lease assignment and assumption/novation agreement is fairly simple; a notarised copy of the agreement may be filed under a covering letter with a request that it be placed on the aircraft file. A change in the ownership of an aircraft needs to be recorded in the aircraft register and on the certificate of registration of the aircraft; the rules and regulations also state that it is illegal for any person to fly or assist in flying such an aircraft until the name of the new owner is endorsed on the certificate of registration. Permission must specifically be sought from the DGCA to continue flying the aircraft until such activity is carried out.

No consent is required in advance; however, it is usual practice to apply to the DGCA seeking permission to continue flying the aircraft in case of a change of ownership.

### 2.7.5 Taxes/Duties Payable on Assignment/Novation

No taxes or duties are payable in respect of such an assignment and assumption/novation agreement. As is usual practice with lease agreements, the original assignment and assumption/novation agreement, if brought into India, must be “stamped” within three months of it first being received in the country. Certain states also require copies of agreements to be “stamped”.

### 2.7.6 Recognition of Transfer of Ownership Interests

In cases where the ownership interest of an entity owning an aircraft is transferred with legal title

to the asset remaining with that entity, a change on the certificate of registration of the aircraft would not be required, and, therefore, the aircraft may continue flying unhindered.

## 2.8 Aircraft Deregistration and Export

### 2.8.1 Deregistering Aircraft in This Jurisdiction

An aircraft in India may be deregistered on the application of the lessee/operator, the owner, the lessor, the IDERA holder or its certified designee.

#### *DGCA Suo Moto*

The DGCA may also suo moto cancel the registration of an aircraft:

- if it no longer satisfies the ownership test;
- if the registration has been obtained by furnishing false information;
- if the aircraft could more suitably be registered in some other country;
- if the lease in respect of the aircraft has been terminated in accordance with the terms of the lease agreement;
- if the certificate of airworthiness in respect of the aircraft has expired for a period of five years or more;
- if the aircraft has been destroyed or permanently withdrawn from use; or
- if it is inexpedient in terms of the public interest that the aircraft should remain registered in India.

#### *Lessee/Operator or Foreign Lessor/Owner*

The lessee/operator or foreign lessor/owner may apply to the DGCA for the deregistration of an aircraft where the lease in respect of the aircraft has expired or has been terminated in accordance with the terms of the lease. The applicant would have to approach the DGCA with a written application requesting deregistration and the reason for such a request. The consent of all the

parties named on the certificate of registration should also be enclosed.

### *IDERA Holder*

An IDERA holder or their authorised signatory or certified designee is required to lodge an IDERA with the DGCA as per the extant guidelines.

An IDERA holder may also apply to the DGCA for the deregistration of the aircraft in light of the Cape Town Convention and Aircraft Protocol.

The IDERA holder would have to approach the DGCA with an application as prescribed under the Aeronautical Information Circular (AIC) 12 of 2018 issued by the DGCA.

### **2.8.2 Lessee's/Operator's Consent**

The consent of the lessee or operator is required in all situations except when an IDERA holder or its certified designee applies to the DGCA for deregistration, annexing the original or notarised IDERA.

### **2.8.3 Required Documentation**

In cases where deregistration is sought under an IDERA, the IDERA holder or its certified designee must submit an application form as per AIC 12 of 2018, annexing the original or notarised copy of the IDERA. The IDERA holder or its certified designee must also provide evidence that all international interests ranking in priority to that of the IDERA holder in relation to the aircraft have been discharged or, alternatively, provide the consent of the entity named as the priority interest holder in the aircraft as per the International Registry.

Alternatively, when deregistration is not sought under the IDERA route, the owner, mortgagee or lessor must apply to the DGCA annexing the original "no objection" letters from each of the

entities named on the aircraft's certificate of registration. The DGCA always has the power to request any additional documentation that it may deem fit during the scrutiny of an application for deregistration.

### **2.8.4 Duration of Deregistration Process**

Deregistration under the IDERA route as per AIC 12 of 2018 and Rule 30(7) of the Aircraft Rules, 1937 shall be carried out within five working days from the date of receipt of application from the IDERA holder or its certified designee. However, in recent experiences, the DGCA took closer to 28 days to deregister certain aircraft. Further, in the circumstances pertaining to insolvency, the DGCA has also refused to process applications made under the IDERA route in light of a moratorium declared by the National Company Law Tribunal (NCLT) upon the admission of an insolvency application. As of the date of publication of this guide, the aircraft is yet to be deregistered, and the matter is now sub-judice. Deregistration under any other method may take anywhere from one to four weeks, assuming the DGCA does not request any additional documents, which may be sought on a case-to-case basis.

### **2.8.5 Aviation Authority's Assurances**

There is no concept of the DGCA providing advance assurances to an aircraft owner, mortgagee or lessor regarding the prompt deregistration of an aircraft.

### **2.8.6 Costs, Fees and Taxes Relating to Deregistration**

There are no fees or taxes chargeable in respect of the deregistration of an aircraft. Costs are also minimal.

## 2.8.7 Deregistration Power of Attorney

A deregistration power of attorney should satisfy the general principles of powers of attorney – ie, it should not confer any power that the issuer itself does not possess. Further, a power of attorney must be executed on Indian stamp paper and attested by a notary public. Also, it is recommended that it be executed in English or any language the grantor can fluently understand. Advance recordation of the deregistration power of attorney with the DGCA is not required but is recommended.

## 2.8.8 Documents Required to Enforce Deregistration Power of Attorney

The person exercising powers under the deregistration power of attorney would need to demonstrate that he or she is duly authorised by the attorney (in the case of a corporate entity) to sign and act on behalf of such an attorney. A board resolution or officers certificate issued by the attorney would usually suffice.

## 2.8.9 Choice of Laws Governing Deregistration Power of Attorney

It is recommended that deregistration powers of attorney be governed by Indian law.

## 2.8.10 Revocation of a Deregistration Power of Attorney

Usually, if a deregistration power of attorney is stated to be irrevocable, the grantor would not be able to revoke it. However, in practice, the grantor could always dispute a power of attorney on the grounds of fraud, coercion or misrepresentation.

## 2.8.11 Owner's/Lessor's Consent

Under India's regulations, an IDERA holder or its certified designee can deregister and export an aircraft from India without the lessee's consent. If the mortgagee of an aircraft is the IDERA holder

or the certified designee, it may also export the aircraft without the owner's or lessor's consent. The asset need not be located in India at the time of deregistration.

## 2.8.12 Aircraft Export Permits/Licences

Permissions that are required for the export of an aircraft from India include:

- permission from the DGCA under AIC 12 of 2018 (after the IDERA holder pays government dues accrued against the aircraft for three months prior to the date of application for deregistration); and
- permission from the customs and tax authorities as well as from the Reserve Bank of India.

These permissions cannot be issued in advance, and the time required to grant each license may range from two to three weeks.

## 2.8.13 Costs, Fees and Taxes Concerning Export of Aircraft

There are no taxes payable in respect of the export of an aircraft from India; costs and fees may vary on a case-to-case basis.

## 2.8.14 Practical Issues Related to Deregistration of Aircraft

The DGCA usually requests proof of de-activation of the Mode S code from the aircraft. Also, all original documentation (request letters, etc) should be notarised, and adequate proof should be included to demonstrate that the signatory of original documents submitted to the DGCA is duly authorised to do so by their company/ employer. In another recent matter, the DGCA refused to deregister aircraft within five working days from the date of receipt of the application from the IDERA holder and requested various documentation instead. Adequate responses

had to be filed and paperwork provided to overcome the objections raised by the DGCA.

## 2.9 Insolvency Proceedings

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

The present statutory regime for the reorganisation and insolvency resolution of a corporate entity is governed by the Insolvency and Bankruptcy Code, 2016 (the “Code”), some of the provisions of which came into force in November 2016. The Code brings the insolvency laws in India under a single umbrella with an objective to, inter alia, maximise the valuation of the corporate debtor’s assets by corporate restructuring or liquidation in a time-bound manner.

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

The Corporate Insolvency Resolution Process (CIRP) can be initiated on the occurrence of default of a minimum of INR10 million by a financial or operative creditor or at the instance of the corporate entity itself. The corporate entity can initiate the voluntary liquidation process where no default has been committed.

Companies incorporated in India can also be wound up by order of the NCLT under the provisions of the Companies Act, 2013 on an application being filed by the company, or if the company has acted against the interests of the sovereignty and integrity of India, the security of the State, etc; or under circumstances where the affairs of the company have been conducted in a fraudulent manner, etc; or if the company has made a default in filing with the Registrar its financial statements or annual returns for the

immediately preceding five consecutive financial years; or if the tribunal is of the opinion that it is just and equitable that the company should be wound up.

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

There is no clear framework for cross-border cooperation in the instance of overseas insolvency proceedings under any statute in India. The provisions under the Code dealing with cross-border insolvency are based on the scheme of entering into separate bilateral agreements with the government of foreign countries and issuance of letters of request (LOR) by the competent tribunal.

However, in the CIRP of Jet Airways India Limited (“Jet Airways”), which commenced in India in June 2019, it was brought to the attention of the tribunal in India that a competent court in the Netherlands had already initiated insolvency proceedings against Jet Airways wherein a Boeing 777-300ER aircraft had also been seized by a creditor at Amsterdam’s Schiphol airport. The tribunal ordered the resolution professional appointed in India to consider the prospect of coordinating with the Dutch trustee, and consequently, a “cross-border insolvency protocol” was executed between both parties to promote cooperation and coordination among the two authorities in different jurisdictions on the matter.

There has been judicial activism and reports from the committee constituted by the government to make provisions under the Indian statute in line with the UNCITRAL Model Law on Cross-Border Insolvency.



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

An order admitting an insolvency application filed by the Lessee would result in the deregistration power of attorney and IDERA no longer being effective. While in the past, the process from initiation of such proceedings until actual passing of such an order has taken several months or even years, in a recent voluntary insolvency application filed by an airline in India, the application was admitted by the NCLT on the eighth day from the date of filing; therefore, lessors, owners and mortgagees of aircraft must be prudent and act swiftly on initiation of such insolvency proceedings but prior to the application being admitted and the moratorium being applied.

## 2.9.5 Other Effects of a Lessee's Insolvency

If a liquidator is appointed or if a similar process is initiated, it is not necessarily the case that the lease will be set aside, although it is always in the power of such an authority to do so. Once the period of moratorium is over, there is no reason why a lessor would be prevented or delayed from repossessing the aircraft on termination of the lease. The aircraft owner and its rights (under an operating lease) will be recognised, and the aircraft will not be deemed part of the lessee's property. Government dues, taxes, wages, etc, will always take precedence over the lessor's rights in terms of recovery of monies.

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

In an operating lease, the owner of the aircraft will always be recognised as the title holder. The main risk for a lender in the insolvency of the borrower, guarantor or entity providing security is the inability to recover its debt.

## 2.9.7 Imposition of Moratoria in Connection With Insolvency Proceedings

Under the Code, the tribunal may pass an order commencing a corporate insolvency resolution process – this triggers a moratorium of 180 days, extendable by a maximum further period of 90 days (or any further time the tribunal may deem fit, not exceeding 330 days in total).

## 2.9.8 Liquidation of Domestic Lessees

If the debt owed by a debtor is above INR100,000 (increased to INR10 million in March 2020, due to the COVID-19 crisis), then the Code proposes two independent processes:

- an insolvency resolution process; and
- liquidation.

A creditor or the corporate debtor itself must apply to the NCLT to initiate the CIRP of the debtor company. Once a corporate debtor is admitted into the CIRP, its board of directors is suspended, and its management is placed under an independent “interim resolution professional”. Simultaneously, a moratorium takes effect, which prohibits:

- the continuation or initiation of any legal proceedings against the corporate debtor;
- the transfer of its assets;
- the enforcement of any security interest;
- the recovery of any property from it by an owner or lessor; and
- the suspension or termination of the supply of essential goods and services to it.

The moratorium lasts for the duration of the CIRP period – ie, 180 days extendable by another 90 days (or any further time the tribunal may deem fit, not exceeding 330 days in total). The interim resolution professional will then invite and verify claims made by the corporate debtor's creditors,

classify them, and form a committee of creditors comprised of all the financial creditors of the corporate debtor, who shall, in turn, appoint an independent professional to function as the “resolution professional”. Any resolution plan for the revival of the company needs to be approved by financial creditors holding 66% of the voting share.

If no plan is approved by the committee within the timeframe available, it may opt for liquidation. The NCLT is then required to order the liquidation of the corporate debtor. If an order of liquidation is passed, a liquidator will be appointed to sell the assets of the corporate debtor and distribute the assets among the creditors.

### 2.9.9 *Ipsa Facto* Defaults

*Ipsa facto* defaults are regular inclusions in lease transactions relating to aircraft in India and would be recognised to repossess an aircraft during lessee insolvency proceedings. Defaults under the Code that arose during the COVID-19 pandemic have been excluded from the period from 25 March 2020 to 24 March 2021.

### 2.9.10 Impact of Domestic Lessees’ Winding-Up

In cases where a domestic lessee is wound up, an aircraft on an operating lease may be taken back by its owner, and the lease agreement would no longer subsist. All rights flowing from the lease – namely, rent, security deposit and maintenance reserves – would also end.

## 2.10 Cape Town Convention and Others

### 2.10.1 Conventions in Force

The Convention on International Interests in Mobile Equipment, Cape Town 2001 (CTC) and the Protocol on Matters Specific to Aircraft Equipment (Aircraft Protocol) (together with the “Cape Town Convention”) are in force in India.

However, several implementation issues have been dealt with over the years by the MoCA, which has been holding frequent consultations with the Aviation Working Group. Various amendments have been made to India’s subordinate legislation – ie, the Aircraft Rules, 1937, Civil Aviation Requirements (CARs) and AICs which enshrine the tenets of the Cape Town Convention.

Several conflicts remain between local municipal law and the Cape Town Convention – in such a scenario, local law shall prevail over international obligations. To remedy this issue, the government introduced a draft of the Protection and Enforcement of Interests in Aircraft Objects Bill, 2022 on 13 April 2022 and invited comments and suggestions from the general public. The Government further notified another draft on the 20th of July 2022 and has received all public comments as of the date of drafting this document.

### 2.10.2 Declarations Made Concerning Conventions The Convention

India has made extensive declarations under the Convention, as listed below.

#### *Specific Declaration under Article 39(1)(a)*

“The following categories of non-consensual right or interest have priority under its laws over an interest in an aircraft object equivalent to that of the holder of a registered international interest and shall have priority over a registered international interest, whether in or outside insolvency proceedings, namely:

- liens in favour of airline employees for unpaid wages arising since the time of a declared default by that airline under a contract to finance or lease an aircraft object;

- liens or other rights of an authority of India relating to taxes or other unpaid charges arising from or related to the use of that aircraft object and owed by the owner or operator of that aircraft object, arising since the time of default by that owner or operator under a contract to finance or lease that aircraft object; and
- liens in favour of repairers of an aircraft object in their possession to the extent of service or services performed on and value added to that aircraft object.”

### *General Declaration under Article 39(1)(b)*

“Nothing in the Convention shall affect its right or that of any entity thereof, or any intergovernmental organisation in which India is a member, or other private provider of public services in India, to arrest or detain an aircraft object under its laws for payment of amounts owed to the Government of India, any such entity, organisation or provider directly relating to the service or services provided by it in respect of that object or another aircraft object.”

### *Declaration under Article 40*

“The following categories of non-consensual right or interest shall be registrable under the Convention as regards any category of aircraft object as if the right or interest were an international interest and shall be regulated accordingly, namely:

- liens in favour of airline employees for unpaid wages arising prior to the time of a declared default by that airline under a contract to finance or lease an aircraft object;
- liens or other rights of an authority of India relating to taxes or other unpaid charges arising from or related to the use of an aircraft object and owed by the owner or operator of that aircraft object, arising prior to the time

of a declared default by that owner or operator under a contract to finance or lease that aircraft object; and

- rights of a person obtaining a court order permitting attachment of an aircraft object in partial or full satisfaction of a legal judgment.”

### *General Declaration under Article 52*

“The Convention shall apply to all its territorial units.”

### *Declaration under Article 53*

“All the High Courts within their respective territorial jurisdiction are the relevant courts for the purposes of Article 1 and Chapter XII of the Convention.”

### *Mandatory Declaration under Article 54(2)*

“Any and all remedies available to the creditor under the Convention which are not expressed under the relevant provision thereof to require an application to the court may be exercised without court action and without leave of the court.”

### **The Protocol**

India has made extensive declarations under the Protocol, as follows.

### *Declaration under Article XXX (1) in Respect of Article VIII*

India will apply Article VIII.

### *Declaration under Article XXX (2) in Respect of Article X Providing for the Application of the Entirety of Article X*

India will apply Article X of the Protocol in its entirety, and the number of working days to be used for the purposes of the time limit laid down in Article X(2) of the Protocol shall be that equal to no more than:

- ten working days in respect of the remedies specified in Article 13(1)(a), (b) and (c) of the Convention (respectively, preservation of aircraft objects and their value; possession, control or custody of aircraft objects; and immobilisation of aircraft objects); and
- 30 working days in respect of the remedies specified in Article 13(1)(d) and (e) of the Convention (respectively, lease or management of aircraft objects and the income thereof; and sale and application of proceeds from aircraft objects).

#### *General Declaration under Article XXX (3) in Respect of Article XI Providing for the Application of Alternative A in its entirety to all Types of Insolvency Proceeding*

India will apply Article XI, Alternative A, of the Protocol in its entirety to all types of insolvency proceedings, and the waiting period for the purposes of Article XI(3) of that Alternative shall be two calendar months.

#### *Declaration under Article XXX (1) in Respect of Article XII*

India will apply Article XII.

#### *Declaration under Article XXX (1) in Respect of Article XIII*

India will apply Article XIII.

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

Article XIII of the Protocol does apply domestically. For the DGCA to record an IDERA in relation to an aircraft, an IDERA holder or their authorised signatory or certified designee of the authorised signatory shall submit an application as per Appendix B of CAR Section 2, Airworthiness Series F Part I Issue II. Along with the

application, the applicant must submit an original IDERA or two notarised copies thereof.

### 2.10.4 Enforcement of Conventions

Indian courts have had limited opportunities to deal with issues pertaining to the enforcement of the Convention and Protocol. By way of recent judgments, especially the *AWAS 39423 Ireland Ltd and Others v DGCA and Another* case, the Delhi High Court, on 19 March 2015, inter alia recognised the mandatory nature of Rule 30(7) of the Aircraft Rules, 1937 and upheld the duty cast upon the DGCA to deregister an aircraft on the basis of an IDERA. All the case law to date deals extensively with India's international obligations under the Convention/Protocol and with deregistration; however, no court has directly dealt with the issue of the physical export of an aircraft from India under the Convention and Protocol.

As of the publication date, multiple applications pending before various Courts were filed by lessors impacted by the insolvency proceedings initiated by an Indian airline.

### 2.10.5 Other Conventions

India has neither ratified the 1948 Geneva Convention on the International Recognition of Rights in Aircraft nor 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 very strict regulations and restrictions on loans from foreign lenders, especially in foreign exchange. The RBI is the relevant regulator; before any borrowings can be made, the prior approval of the RBI is required.

### 3.1.2 Effect of Exchange Controls or Government Consents

India is an exchange-controlled country. The relevant enactment is the Foreign Exchange Management Act of 1999, and the rules and regulations made thereunder, which are administered by the RBI. Any financing or repatriation of realisation of proceeds under a loan, guarantee or security document would require the approval of the RBI.

### 3.1.3 Granting of Security to Foreign Lenders

Guarantees, especially for foreign exchange-denominated transactions, are regulated by the RBI's Foreign Exchange Management (Guarantees) Regulation, 2000 and other regulations. The borrower would require prior approval from the RBI to grant security to foreign lenders.

### 3.1.4 Downstream, Upstream and Cross-Stream Guarantees

Prior approval of the RBI would be required in case of any guarantee involving the guarantee of debt owed to a foreign entity by an Indian entity.

### 3.1.5 Lenders' Share in Security Over Domestic SPVs

In practice, there is never a domestic special-purpose vehicle involved which never owns the finance aircraft.

### 3.1.6 Negative Pledges

A negative pledge is recognised.

### 3.1.7 Intercreditor Arrangements

The question of whether material restriction/requirement is imposed on inter-creditor arrangements is dependent on a case-to-case basis.

### 3.1.8 Syndicated Loans

The concept of agency and the role of an agent under a syndicated loan is recognised.

### 3.1.9 Debt Subordination

The usual practice permitted is the issuance of bonds as subordinated debt instruments. There are extensive RBI guidelines on what forms of subordination are permissible and restrictions on the percentage of debt that may be subordinated.

### 3.1.10 Transfer/Assignment of Debts Under Foreign Laws

The transfer of outstanding debt is permissible and recognised, subject to RBI approval, which may be required on a case-to-case basis.

### 3.1.11 Usury/Interest Limitation Laws

There are no usury or interest limitation laws. However, courts in India always have the power to fix interest rates if an opinion is formed that the applied interest is harsh or excessive.

## 3.2 Security

### 3.2.1 Typical Forms of Security and Recourse

Typical forms of security granted in aviation finance transactions in India could include taking over the security of the immovable property by way of a mortgage or movable property/bank accounts, etc, by way of a deed of hypothecation.

### 3.2.2 Types of Security Not Available

A security agreement, if executed properly – and if it satisfies the test of being a valid contract between two parties competent to contract – would be upheld as being valid in relation to the aircraft, engines, warranties or insurance.

### 3.2.3 Trust/Trustee Concepts

Indian Law recognises the concept of trust, and the relevant national legislation is the Indian Trusts Act, 1882. India is not a party to the Hague Convention on Trusts, 1986.

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

Pursuant to a security assignment or mortgage, the borrower may assign their rights to the aircraft under an aircraft lease to a security trustee.

### 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 as long as such assignment is valid under the governing law.

### 3.2.6 Choice of Foreign Law

A security assignment or a guarantee may be governed by English or New York law and does not need to be governed by Indian law to be fully enforceable.

### 3.2.7 Formalities/Mandatory Terms to Create and Perfect Security Assignments

No particular form of security assignment is required in India, nor does it need to be registered in India. However, it is recommended that the security assignment should preferably be filed and recorded with the DGCA. The DGCA will endorse on the Certificate of Registration the name of the mortgagee and/or details of the hypothecation. The English language security assignment document will suffice and shall be accepted by the DGCA.

It is advisable to notarise the security assignments; where they are executed abroad, they should preferably be authenticated by an Indian consular or other diplomatic officer. In recent

experience, it has been observed that most government departments, including the DGCA, accept notarised copies of documents, making the requirement for consularisation more or less redundant.

With the aircraft being a movable asset, there is no mandatory requirement to register any mortgages, liens, encumbrances, etc, on it in India. However, the aircraft mortgage can be registered with the Sub-Registrar of Assurances under the Indian Registration Act, 1908 within four months of its execution. The registration with the Sub-Registrar of Assurances (of movables) constitutes persuasive value against a claim by a bona fide purchaser without notice. Registration with the Registrar of Companies is also possible; however, it is not compulsory if the mortgagor of the aircraft is not an Indian entity having its registered place of business in India.

### 3.2.8 Domestic Law Security Instruments

Domestic law security instruments are not required. Where the aircraft's owner is a foreign entity/citizen, local law filings are not required.

### 3.2.9 Domestic Registration of Security Assignments Governed by Foreign Laws

Charges in relation to aircraft owned by Indian entities only are required to be registered with the Registrar of Companies as per the provisions of the (Indian) Companies Act, 2013, and rules made thereunder.

### 3.2.10 Transfer of Security Interests Over Aircraft/Engines

Transfer of security interests over an aircraft and/or engines is recognised in India.

### 3.2.11 Effect of Changes in the Identity of Secured Parties

In case the identity of the secured parties under a security assignment changes, the document evidencing this may be filed with the DGCA on its creation.

### 3.2.12 “Parallel Debt” Structures

This is not applicable under Indian law.

### 3.2.13 Effect of Security Assignments on Residence of Secured Parties

Usually, a secured party under a security assignment would not be deemed a resident, domiciled, carrying on business or subject to any taxes in India.

### 3.2.14 Perfection of Domestic Law Mortgages

A domestic law mortgage over an aircraft or engine is not required in India.

### 3.2.15 Differences Between Security Over Aircraft and Spare Engines

Both aircraft and spare engines are moveable objects, so there is no difference between the forms of security required.

### 3.2.16 Form and Perfection of Security Over Bank Accounts

A bank account can be charged by way of hypothecation. The deed of hypothecation would need to be filed with the bank maintaining the account, which is to be charged for it to be perfected.

## 3.3 Liens

### 3.3.1 Third-Party Liens

The question of whether a third party could take or register a lien over an aircraft or engine would depend on who is trying to discharge the lien. Where the lessee seeks to discharge this lien, it would be liable to pay the total outstanding

amount payable to that third-party contractor/repairer. However, if a lessor or secured party seeks to discharge a lien, then in all probability, it would have to bear only the value of the work actually done on that particular aircraft asset. In case of deregistration and export by filing an IDERA under AIC 12 of 2018, the IDERA holder must bear the cost of all charges accrued three months prior to the date of submission of the IDERA, owed to the central government, or any entity thereof, or any inter-governmental organisation in which India is a member, or other private provider of public services in India.

A fleet lien is not recognised under the new Cape Town Convention and Aircraft Protocol regulations.

Third parties, which are government entities, have the right to arrest, detain, attach or sell an aircraft for payment of amounts owed. However, under the new regime in India, these dues are limited to three months prior to the date of application by the IDERA holder.

### 3.3.2 Timeframe to Discharge a Lien or Mortgage

A lien can be discharged immediately on payment of the monies owed to the party exercising the lien.

### 3.3.3 Register of Mortgages and Charges

There is a register of charges maintained by the Registrar of Companies. However, only Indian owners of aircraft assets are required to register a charge against such aircraft with the Registrar. The interests of the aircraft mortgagee or security trustee shall be noted on the aircraft's certificate of registration as well as on the aircraft register maintained by the DGCA. Such registration shall result in notice to all third parties regarding the interest of the security trustee or mortgagee in

the aircraft. Further, the DGCA shall also always require the consent of the mortgagee/security trustee named on the certificate of registration/aircraft register for any amendment of the entries in relation to the aircraft.

### 3.3.4 Statutory Rights of Detention or Non-consensual Preferential Liens

Fleet-wise detention of aircraft taken on an operating lease, especially after the termination of the operating lease, would not be recognised.

### 3.3.5 Verification of an Aircraft's Freedom From Encumbrances

A potential purchaser of an aircraft must check the aircraft register maintained by the DGCA as well as the International Registry maintained under the Cape Town Convention and Aircraft Protocol.

## 3.4 Enforcement

### 3.4.1 Differences Between Enforcing Security Assignments, Loans and Guarantees

In the practical sense, there should be no difference in enforcing a security assignment as opposed to a loan or guarantee.

### 3.4.2 Security Trustees' Enforcement of Their Rights

A security trustee may enforce its rights under a security assignment pursuant to only a notice and acknowledgement executed by the lessor and the relevant lessee.

### 3.4.3 Application of Foreign Laws

Domestic courts in India will uphold foreign law as the governing law as well as submission to a foreign jurisdiction subject to this not being opposed to Indian public policy.

### 3.4.4 Recognition and Enforcement of Foreign Judgments and Arbitral Awards

Enforcement of foreign judgments and arbitral awards have already been dealt with in the preceding sections (see 2.6.6 Domestic Courts' Recognition of Foreign Judgments/Awards).

### 3.4.5 Secured Parties' Right to Take Possession of Aircraft

There is no remedy for self-help in India. Peaceful repossession of the aircraft can be obtained without judicial intervention. In cases where there is no cooperation, the secured party has the option to apply to a court.

### 3.4.6 Domestic Courts Competent to Decide on Enforcement Actions

The court in which enforcement action under a security agreement/aircraft mortgage is decided would depend on the jurisdiction in India where the dispute arises and the nature and value of the claim.

### 3.4.7 Summary Judgments or Other Relief

Summary judgment may only be effective in cases where a secured party seeks to recover debt and other monies under the security agreement. There are no conditions that need to be complied with, apart from the fact that court fees will need to be paid on the amount claimed by the defaulting defendant.

### 3.4.8 Judgments in Foreign Currencies

On the request of a secured party, courts in India would pass judgment in a foreign currency.

### 3.4.9 Taxes/Fees Payable

There are no major taxes or fees that a secured party would be required to bear in connection with enforcing a security agreement/aircraft mortgage.



### 3.4.10 Other Relevant Issues

From a practical standpoint, since the courts in India are overburdened with work, lenders have preferred to have security documents governed by English law, and any enforcement takes place in England. The UK is a reciprocating territory, and money decrees passed in the UK may be enforced in India much more easily than decrees from non-reciprocating territories.

## 4. Other Issues of Note

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

This is not applicable under Indian law.

### 4.2 Current Legislative Proposals

The MoCA had (vide gazette notification dated 13th April 2022) published a draft of the Protection and Enforcement of Interests in Aircraft Objects Bill, 2022 for public comments. The Bill aims to implement the provisions of the Cape Town Convention and Aircraft Protocol which were adopted by India in 2008. It is a long-awaited piece of proposed legislation to ensure compliance with the treaty obligations and to avail the full benefits of proper accession to the treaty.

Having taken into account comments received, the MoCA has, vide a subsequent gazette notification dated 20th July 2022, published an amended draft of the Bill for further public comments. The Bill must follow the procedure prescribed to be placed before both houses of Parliament before it can be enacted into law. This act, if passed, is likely to have a huge impact on the processes involved in aviation financing and should streamline the process of repossession of aircraft.

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