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South Africa

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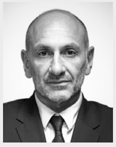


Chris Christodoulou

1 General and Contractual

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

Aircraft purchases are typically financed by means of lender secured syndicated loans from commercial banks and other financiers.

Lease-to-purchase structures, which include finance and operating leases for commercial airlines, are common. South Africa has not seen too many vendor finance deals, although the US EXIM Bank has been known to partake in syndicated aircraft loans arranged by local commercial banks.

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

Advantages of such structures are that they are customary in aviation financing and allow for mortgages to be registered; however, a local mortgage may only be registered over the airframe and not over engines or spare parts.

Other disadvantages are high interest rates, currency fluctuations and exchange control restrictions, together with the large deposit and pre-payment requirements of lessors and aircraft financiers, which may have a negative impact, particularly for commercial operators who earn local currency and are required to make lease repayments in foreign currency.

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

Finance and Operating leases are the norm, with the lessor purchasing the aircraft with loan financing from banks through a special purpose vehicle and leasing it to an operator with security registered over the aircraft in the form of a local mortgage with the South African Civil Aviation Authority (SACAA) and typically with an international mortgage on the International Registry. The lessee has the option to purchase the aircraft at the end of the lease term.

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

A proposed amendment to the legislation has been tabled. Such amendment will lead to the necessary reforms for the full implementation of the Cape Town Convention in respect of the self-help provisions of the Convention which allow a mortgagee or lessor to repossess an aircraft without judicial intervention. Such provisions are viewed as being contrary to the Constitution in certain quarters.

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

It is possible under the freedom of contract doctrine for parties to enter non-binding letters of intent or memorandum of understanding, which are unenforceable, if it is specifically stated that they are not binding and enforceable.

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

South Africa does not prescribe to the doctrine of 'good faith' *per se*, despite the common practice of including provisions in a contract that the parties shall act in good faith towards each other. Such clause may influence a court in a dispute, particularly considering policy consideration and the development of the concept through the Constitution.

2 Taxation and Related Matters

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

The South African Revenue Service (SARS) is the only body that has such responsibility.

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

Taxes on sale: No taxes or duties are payable on the sale of an aircraft located in South Africa between an SA resident and non-SA resident. Between SA residents, value-added tax (VAT) is payable, and Capital Gains Tax (CGT) may apply. VAT is also payable on the permanent import of an aircraft. VAT is widely expected to be increased to 15.5% on 1 May 2025.

Taxes on lease: No taxes are payable on the execution or filing of a lease, although lease rentals are subject to VAT if the lessor and lessee are South African residents. If the lessor is a foreign resident, it may have to register as a vendor for local VAT purposes; however, it would be entitled to apply for certain exemptions.

Taxes on financing: Depending on the nature of the lease, withholding taxes may apply to interest payments from South African residents to foreign lessors on a finance lease.

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

Depending on the nature of the lease, withholding taxes may apply to interest payments from South African residents to foreign lessors on a finance lease; however, tax residents may avail themselves of treaty access and the mitigation of tax liability.

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

SARS regards double tax treaties as one of the most important areas of BEPS and has developed model treaty provisions and recommendations regarding the design of domestic rules to prevent the granting of treaty benefits in inappropriate circumstances, in line with its view that tax treaties are not intended to be used to generate double non-taxation.

Aircraft lessors should take heed and restructure operations to safeguard legitimate treaty entitlement.

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

Typically, when an entity spends less than 183 days in any 12-month period commencing or ending in a taxable year in South Africa, that entity cannot be said to have created a permanent establishment in this country.

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

Look-through clauses are recognised under South African law.

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

If the aircraft is physically located in South Africa or being exported abroad by a South African resident, or the sale is between two non-residents, no taxes or duties are payable.

If the sale is between South African residents, VAT will be payable.

Import VAT is payable on the permanent importation of an aircraft.

Aircraft imported for the purposes of a lease will attract VAT on the value of the aircraft based according to the 'blue book' value. If the lessor is a non-resident and the lessee a South African resident, this may result in the lessor having to register for VAT purposes.

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

There are no documentary taxes or costs, nor is stamp duty applicable to aircraft trades.

3 Registration and Deregistration

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

The SACAA has the primary responsibility for the regulation of aviation and the registration of aircraft.

The South African registry is not an owner (title) registry and is rather an aircraft/operator register. There is no separate engine register.

The details of an owner or lessor and any financier with an aircraft mortgage can only be recorded on the SACAA Mortgage Register; however, the mortgage will be endorsed on the back of the Certificate of Registration.

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

Registration of an aircraft and the issuing of a certificate of registration under the Civil Aviation Regulations does not confer or imply ownership and simply designates the name of the operator and not beneficial title. As the SACAA maintains an operator's register, it is not possible to register the owner's interest, and thus third parties would not be able to ascertain the identity of the true legal or beneficial owner of an aircraft on the South African Register.

In terms of Section 8 of the Civil Aviation Act of 2009, the registered owner of an aircraft is deemed to be the owner for purposes of liability for damages caused by the aircraft in certain circumstances.

Registration of ownership is obtained by filing the necessary form (CAR47A-2) with the SACAA.

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

Foreign-owned aircraft can be registered on the SACAA national aircraft register, subject to the lessee being a local resident of the Republic of South Africa, or its principal place of business being in South Africa.

There are no limits or restrictions on the age of the aircraft that may be registered or operated.

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

Aircraft leases cannot be registered with the SACAA; however, they are accepted for filing with the SACAA who will issue a letter of acknowledgment of receipt. The filing does not, however, confer any rights to the lessor.

For use in South Africa, the lease would be required to be translated if it is not in English, and notarised and apostilled in line with the terms of the Hague Convention if it is to be used in court proceedings.

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

Deregistration of aircraft from the aircraft registry is affected by the SACAA on submission of the required form by both the registered owner and the mortgagee. A lessor who holds a deregistration power of attorney with the irrevocable deregistration export authorisation (IDERA) may apply for deregistration and export of the aircraft.

4 Security

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

It is possible to create a mortgage over an aircraft and its engines to be registered with the SACAA; however, a separate mortgage over an engine can only be registered on the International Registry (save by means of a special notarial bond which is registered by the Registrar of Deeds).

Registration of an aircraft mortgage is on application to the SACAA with the filing of the prescribed form (MAR 2.1) and payment of the prescribed fee. The prescribed form identifies the mortgagor and mortgagee, the cause of indebtedness, and the amount secured. The application is accompanied by the instrument giving rise to the debt or finance transaction, together with a company resolution authorising the registration. Where the prescribed form is executed locally by an agent or attorney, a power of attorney is required. Where the power of attorney is obtained from a foreign entity, the power of attorney must be accompanied by a signing authority and will have to be notarised and apostilled and filed with the SACAA. Full particulars and signature in respect of each director or office bearer of the mortgagor and the mortgagee must be stated on the prescribed form.

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

Spare parts and future parts cannot be subject to the SACAA aircraft mortgage or a separate engine mortgage; however, a mortgage over an engine and parts can be registered by means of a special notarial bond that is registered by the Registrar of Deeds. Alternatively, they may be registered on the International Registry.

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

The SACAA maintains a Mortgage Register for aircraft and its engines together but not for engines separately.

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

Please see the response to question 4.2.

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

Registration of a mortgage on the SA register by the SACAA confers priority to the mortgagee, and the rights conferred will not be affected by the insolvency of the mortgagor.

Priority is given in the order of registration, determined by the date and time at which each mortgage is recorded in the Mortgage Register in the case of more than one registered mortgage.

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

Please see the response to question 4.2. As previously stated, a special notarial bond can be taken over engines and/or a general notarial bond can be registered over spare parts.

5 Enforcement and Repossession

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

It is not possible to take possession of the aircraft without judicial intervention, even though South Africa is a party to the Cape Town Convention. To obtain a court order, the documents relied upon will have to be translated, notarised and apostilled if not executed in South Africa. It is also worth noting that the courts will first determine whether they have the necessary jurisdiction to hear the application.

In terms of the common law, a creditor may seize an aircraft for debts owing to the creditor by the debtor by means of formal proceedings in the High Court of South Africa. The High Court has discretion to order the release of the aircraft against the provision of security for the creditors' claim, together with costs and interest. An aircraft can be detained under the Criminal Procedure Act if the aircraft is used in the commission of a crime. The tax authorities can also detain an aircraft when there has been a breach of customs import rules or for non-payment of VAT.

Notwithstanding the self-help provisions contained in the Cape Town Convention, the creditor will, in the normal course, have to approach the court for an order to seize and detain the aircraft. Urgent and *ex parte* (without notice) orders are available to the creditor in regard to the formal proceedings referred to above.

Where a debtor is a *peregrinus* (foreigner) to a local court, assets belonging to the debtor within the jurisdiction of the local court may be attached by an *incola* in order to find or confirm jurisdiction and to secure the creditor's claim.

5.2 What is the procedure for repossession of the aircraft?

Repossession of an aircraft requires judicial intervention in the form of an application to the High Court of South Africa which has jurisdiction to issue an interim attachment order. The application can be brought on an urgent basis and *ex parte* (without notice to the other party/ies), and on the return date (usually six weeks later) – and dependent upon opposition by an interested party – the attachment order will be made final. After the order is made final, the aircraft can be deregistered and exported under the IDERA. The application must be supported by the underlying documents such as the finance or lease agreement and proof of indebtedness.

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

South African courts generally uphold agreements which have adopted a foreign governing law and there are no formalities required to have the foreign law recognised, so long as the agreement is enforceable under the laws by which it is expressed to be governed. That said, the courts will refuse to uphold a choice of law provision in an agreement if the provision is contrary to public policy or contrary to natural justice, or the law was chosen to deliberately avoid a provision of South African law that would have applied.

A mortgage subject to a foreign governing law would – as in the case of a lease, for example – be upheld by a South African court without any formalities, save for the mortgage having to be valid and enforceable under its governing law and providing it does not contravene the criteria set out above.

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

A foreign judgment merely creates a cause of action for a local court to confirm recognition. Such recognition is subject to certain requirements being met, i.e.: that the court granting the judgment had the jurisdiction to pronounce on the matter under principles recognised by South African law; and that the judgment was final and conclusive, not contrary to public policy, not obtained by fraudulent means and did not involve enforcement of a revenue law.

An *ex parte* application for an interim interdictory order can be obtained from the courts to preserve the aircraft or prevent a lessee from removing the aircraft from the jurisdiction.

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

Please see the response to question 4.1.

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

Once a judgment is granted by a competent court, the order is immediately enforceable; however, the order needs to be executed by a duly-appointed Sheriff of the Court and practical arrangements will have to be made with the Sheriff.

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

Payment of rent does not *per se* grant the lessee a legal right to an economic interest in the aircraft, although it can be sufficient to claim possession until a court rules on the matter. In this way, it can prevent the owner or financier from taking possession without a court order, despite the Cape Town Convention self-help provisions being part of the law.

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

The lessor can export the aircraft from the jurisdiction on termination of the lease with the consent of the lessee or by means of an IDERA, subject, of course, to any claim by any authority for charges, duties or taxes and fees that may prevent the export of the aircraft until the claim is settled.

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

Numerous foreign exchange controls on the transfer of funds abroad are imposed by the South African Reserve Bank, particularly on South African residents or entities, in relation to the payment of the purchase price where prior approval of the Exchange Control Department is required. Foreign owners can remit the sale proceeds freely, dependent on certain conditions.

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

Please see the response to question 5.4.

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

As with the procedure for repossession under a mortgage, the same procedure applies for repossessions under other forms of security interests.

6 Conventions

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

South Africa is a signatory of all the Conventions mentioned, save for the 1933 Rome Convention.

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

The self-help provisions of the Convention which allow a mortgagee or lessor to repossess an aircraft without judicial intervention are viewed as being contrary to the Constitution in certain quarters.

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

South Africa declared that all categories of non-consensual rights, or interests that have (and will in the future have) priority over an interest in an object equivalent to that of a holder of a registered International Interest, have priority over a registered International Interest.

The non-consensual rights that have been declared are as follows:

- Rights of a person obtaining a court order permitting attachment of an aircraft object in partial or full satisfaction of a legal judgment.
- Liens or other rights of a state entity relating to taxes or other unpaid charges, which were declared to be registrable under the Cape Town Convention as regards any category of object as if the right or interest were international interests (and regulated accordingly).

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

Article XI of the Protocol to the Cape Town Convention, Alternative A, applies in its entirety to all forms of insolvency proceedings – the waiting period for the purpose of Article XI (3) is 30 days.

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

Filing of an IDERA under the Cape Town Convention with the SACAA requires submission to the SACAA, together with the deregistration power of attorney and the deed of mortgage.

7 Liability for Damage and Environmental

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

Section 8 of the Civil Aviation Act 2009 provides that where material damage or loss is caused by: (a) an aircraft in flight, taking off or landing; (b) any person in any such aircraft; or (c) any article falling from any such aircraft, to any person or property on land or water, damages may be recovered from the registered owner of the aircraft in respect of such damage or loss, without proof of negligence or intention or other cause of action as though such damage or loss had been caused by his or her wilful act, neglect or default, save where the damage or loss was caused by or contributed to by the negligence or wilful act of the person by whom it was suffered. It should be noted that the section in this case refers to the registered owner of the aircraft and not the beneficial owner.

A registered owner or operator of an aircraft must have insurance as prescribed for any damage or loss that is caused by an aircraft to any person or property on land or water. (Section 8(5).)

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

The EU Emissions Trading System (EU ETS) does not apply; however, some airline carriers may be drawn into the net when flying into a EU Member State.

The EU ETS charges referred to above may give rise to *in rem* rights but will not rank ahead of any secured mortgage interest.

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

The response to question 7.1 above applies to a failure to comply with local environmental laws.

8 Insolvency and Searches

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

The Companies and Intellectual Property Commission (CIPC) records the status of a company, and the Master of the High Court operates a web portal of all registered insolvencies.

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

The Companies Act of 2008 prohibits reckless trading and deals with the illegality of companies trading fraudulently in that a company must not trade under insolvent circumstances.

If the CIPC has reasonable grounds to believe that a company is unable to pay its debts as they become due and payable in the normal course of business, it may issue a notice to the company to show cause as to why the company should be permitted to continue carrying on its business, or to trade, as the case may be, and on failure to do so may issue a compliance notice to the company requiring it to cease carrying on its business or trading.

A creditor (or his agent) who has a liquidated claim against a debtor who has committed an act of insolvency, or is insolvent, may petition the court for the sequestration of the estate of the debtor.

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

The Master of the Court appoints the liquidator based on creditor support to take control of the operator or lessee in insolvency proceedings.

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

Save for the scenario under point (d), there are no prohibitions. In respect of obtaining a judgment or arbitral award, this will not be possible as all civil proceedings, including judgments, by or against the company are suspended from the time the winding-up order is made until the appointment of a liquidator or liquidators by the Master. Attachments or executions effected after the commencement of liquidation shall be void.

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

Once the court grants a winding-up order, the commencement of the winding-up is backdated to the time that the application for winding-up was presented to the court.

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

Once a company is placed in liquidation, it ceases to trade, unless continued trading is in the best interests of all creditors. The liquidator must, within a period of three months of appointment, make an election on whether to cancel or continue with the lease, and if no determination is made within such period, the lease is deemed to be terminated.

Any rentals that become due between the date of liquidation and the date of cancellation of the lease will be treated as preferent claims and paid out of the administration costs. Any other claims that the lessor has because of the breach of the lease will be treated as a concurrent claim.

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

Secured creditors holding security in the form of a mortgage rank first and are paid from the proceeds of the sale of the secured asset. Preferent Creditors rank next and include employees' salaries up to a prescribed amount and the revenue service. Concurrent Creditors follow and are paid from any proceeds of unencumbered assets that remain after Preferent Creditors have been paid in full.

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

A *bona fide* possessor of the aircraft may assert a lien over the aircraft and is regarded as a secured creditor on insolvency of the debtor.

9 Detention and Confiscation

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

State expropriation in the aviation sector, although possible, is rare and South Africa law does not permit arbitrary deprivation of property – these provisions require an application supported by information supplied under oath and the exercise of discretion by a Judge.

Compensation for expropriation will normally be payable by the State.

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

The National Prosecuting Authority may seize an aircraft under the Prevention of Organised Crime Act 121 of 199, which provides that property obtained by means of criminal activities may be forfeited to the State. Assets can only be seized once a court order has been obtained.

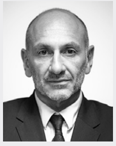
10 Aircraft/Engine Technology

10.1 With the global commitment of IATA to zero-emissions by 2050, are there any particular developments regarding the associated new aircraft and engine technology which might be foreseeable as regards aviation finance in your jurisdiction, e.g. as regards taking security (battery powertrain equipment) or enforcement (different airport infrastructure environments)?

The South African government – through the Department of Transport – is participating in ICAO's Assistance, Capacity-building, and Training for Sustainable Aviation Fuels (ACT-SAF) programme, which provides opportunities for states to fully develop their potential in SAF development and deployment.

Whilst the emphasis is on greener, more fuel-efficient aircraft and alternative energy sources, some 17 African countries have signed up for the voluntary phase of the CORSIA emissions monitoring and reporting, and in cooperation with IATA, some South African airlines have launched carbon offset programmes that offer customers the opportunity to offset the CO_2 emissions related to their flights. Some airlines have also implemented the IATA Environment Assessment environmental management system.

Banks and other financiers are also beginning to focus on airlines that have committed to transition to net-zero emissions and, although not yet impacting borrowers directly, it is expected that in the future there will be some restrictions for airline borrowers that have not started that journey.



Chris Christodoulou is a dual-qualified Solicitor in England & Wales and a South African Attorney, specialising in aviation and commercial law. He has advised local and international aviation clients including owners and operators, maintenance organisations, lessors and lessees, investment companies and third-party suppliers in all aspects of aviation law and has rendered legal opinions in numerous aircraft acquisition transactions for foreign counsel.

Chris previously served as a Non-Executive Director of a commercial airline and was a member of the South African Civil Aviation Authority Appeal Committee.

Chris has been listed as one of the world's leading aviation lawyers by *Who's Who* Legal consistently since 2016 and is a contributor of the South African Chapters of the following publications:

- *ICLG – Aviation Finance & Leasing 2025 South Africa Chapter.*
- *ICLG – Aviation Law 2025 South Africa Chapter.*
- *Lexology: Drone Regulation South Africa 2020.*
- *The Legal 500 Country Comparative Guides – Aviation Finance & Leasing* (2020) *South Africa Chapter.*
- *The Aviation Law Review 2014–2016.*
- *The Statute of Limitations in International Commercial Claims South African Chapter (Thomson Reuters, 2016).*
- *International Commercial Debt Collection (Ed. David Franklin South African Chapter (Thomson Carswell, 2007)).*

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Christodoulou & Mavrikis Inc. is a corporate and commercial law firm established in Johannesburg in 1991, with expertise in aviation law and with solid commercial law, litigation and dispute resolution capabilities.

The firm provides a full range of aviation law services including liability and contentious issues, drafting, and negotiating aviation-related agreements and other commercial aspects of aviation, including aircraft acquisitions and sales, aviation financing, repossessions, acquisitions and aircraft registrations, and more recently airline insolvencies.

Recent aviation matters include: securing the release of an aircraft attached by judicial means; providing various legal opinion letters on behalf of a US-financed sale and lease transaction and on the local nationality requirements for an aircraft operating licence; advising on certain aspects of a large-scale helicopter acquisition by a sovereign; advising on the VAT implications of a private jet sale and numerous employee-related disputes; advising the liquidators of a insolvent commercial airline; advising clients on the implications of moving the registration of a South African (ZS) registered aircraft to the San Marino (T7) Register; initiating a claim against a major engine manufacturer; and the set up of a commercial all-cargo airline in South Africa.

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