

AIRCRAFT REGISTRATION ACT

Introduction

The aim of the Aircraft Registration Act is to create a single legal framework for the registration of aircraft and mortgages and the enforcement of security whilst also transposing the provisions of the 'Cape Town Convention on International Interests in Mobile Equipment' and the 'Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment'.

The Act came into force on the 1st October 2010.

By implementing the Cape Town Convention, the Act grants added protection to security interest holders in aircraft in the event of default.

Authority

The Authority responsible is Transport Malta that has in turn delegated its powers and functions to the Director General of Civil Aviation.

The National Aircraft Register

The Act provides for a unified National Aircraft Register in an electronic form in which the following information is recorded:

- the physical details of the aircraft¹;
- the physical details of the engines attached to the aircraft and any replacement engines² owned by the registrant;
- the name and address of the registrant and in what capacity he has registered the aircraft;
- the details of any mortgages registered and all transactions relative thereto;
- the details of any irrevocable de-registration and export request authorisation, or any other power of attorney³ (irrevocable or otherwise and whether in a separate document or as part of an agreement between the

¹ Aircraft are defined as meaning any machine that can derive support in the atmosphere from the reaction of the air other than the reaction of the air against the earth's surface excluding aircraft used in military, customs or Police services of any State.

² Designated for use on the aircraft.

³ Mortgagees may now register any power of attorney granted to them as security for the de-registration and export of an aircraft thereby giving them more extensive powers in respect of the cancellation of the register of an aircraft.

parties) granted to an owner or to a lessor of an aircraft or granted by way of security to the mortgagee, or to a third party for the benefit of any such person, granting powers relating to the exercise of rights relating to the aircraft, or to the closure of the register on behalf of the registrant⁴.

The aim of the Act is to facilitate searches.

No separate engine register has been created.

Who may register an aircraft under Maltese Law?

Only 'Qualified Persons' may register aircraft in the National Aircraft Register.

In the case of Commercial Aircraft⁵

Qualified Persons are:

- (a) the Government of Malta;
- (b) a citizen/resident of Malta;
- (c) a citizen/resident of the EU/ EEA/ Switzerland provided such citizen has a place of residence or business there;
- (d) an undertaking formed and existing in accordance with the laws of Malta/ EU/ EEA/ Switzerland having its registered office, central administration and principal place of business in any such jurisdiction provided not less than 50% of such undertaking is owned and effectively controlled by the Government of Malta, or by any Member State of the European Union, or by persons referred to in paragraphs (b) and (c), whether directly or indirectly through one or more intermediate undertakings⁶.

In the case of a Trust acting as registrant, the Authority shall determine the eligibility or otherwise by examining the nationality of the beneficiaries. Any information provided to the Authority is confidential and will not be made available to third parties without the prior written consent of the trustee.

⁴ In the event that a mandate or power of attorney is granted for a stated period of time after which it shall lapse, such date shall also be recorded in the register and the registration of the mandate shall have no effect after such date.

⁵ Meaning aircraft utilized for 'air services', that is, for the carrying of passengers, cargo and/or mail for remuneration and/or hire as defined in Article 2(4) of Regulation (EC) No. 1008/2008 of the European Parliament and of the Council of 24 September, 2008. All such operators need to have an Air Operator Certificate (AOC) and an Operating Licence that is issued by the Civil Aviation Directorate at the Authority for Transport in Malta (in accordance with Annex 3 to Regulation (EC) 3922/1991 as amended (EU-OPS 1).

⁶ In virtue of Article 2(4) of Regulation (EC) No. 1008/2008 of the European Parliament and of the Council of 24 September, 2008.

*In the case of Private Aircraft*⁷

The Act provides for the '*international registrant*' of private aircraft who may be:

- a foreign undertaking in an approved jurisdiction⁸ that satisfies the following requirements:
 - (i) it enjoys legal capacity to own/ operate an aircraft;
 - (ii) it complies with the requirements of the Act and any applicable regulations/guidelines;
 - (iii) it appoints a local Resident Agent.
- a citizen of Malta/ EU/ EEA/ Switzerland not having a place of business there;
- a Maltese undertaking with less than 50% of ownership or effective control in Malta provided the shareholders and directors are citizens of an approved jurisdiction;
- a trustee provided the beneficiaries are citizens of an approved jurisdiction.

In such cases, the director or trustee, as the case may be, shall be the designated Resident Agent.

In the case of fractional ownership, at least 50% of the owners of the shares in the aircraft must be Qualified Persons and, in the case of ownership of an aircraft by a Trust, at least 50% of the beneficiaries must be Qualified Persons.

Eligibility to register an aircraft

If the registrant is a Qualified Person who falls under any one or more of the following categories, he may register an aircraft in the National Aircraft Register:

- (a) an owner who operates his aircraft; or
- (b) an owner of an aircraft under construction or temporarily not being operated or managed; or
- (c) an operator of an aircraft under a temporary title; or
- (d) a buyer of an aircraft under a conditional sale or title reservation or similar agreement who is authorised to operate the aircraft.

Aircraft under construction, fractional ownership and aircraft owned by trustees

It is possible to register aircraft still under construction if the registrant can provide a description that contains:

⁷ Not involved in 'air services', that is, not utilized in connection with the carrying of passengers, cargo and/or mail for remuneration and/or hire.

⁸ Any member State of the OECD (there is a proposal to include all States with whom Malta has diplomatic relations).

- the aircraft's MSN⁹;
- the name of the manufacturer; and
- its model designation.

Unless otherwise expressly agreed with the buyer, the manufacturer will be deemed to be the owner and, as such, shall be entitled to register it accordingly.

It is also possible to register aircraft that are temporarily not being operated or managed.

The Act also provides for the possibility of fractional ownership¹⁰ of an aircraft and for the possibility of an aircraft being owned by trustees.

Accordingly, if requested by the person holding a registrable interest, the Register may contain the following additional information:

- (i) the ownership rights in an aircraft or an engine whether held by a trustee, co-owner, fractional owner or under a title reservation agreement;
- (ii) any lessor rights when the lessor is a person different from the owner¹¹;
- (iii) any lessee rights;
- (iv) the details of the resident agent (where the registrant is an international registrant);
- (v) information on any international interest registered in the International Registry in Dublin and the debtor thereof;
- (vi) details of the engines (and replacement engines)¹².

Where the application for registration of an aircraft is based on its operation and where such operation is being carried out by more than one person, then all the operators must be Qualified Persons. In the case of private aircraft, the Minister may establish different conditions for the eligibility to register an aircraft when operated by more than one person.

Application for registration

An application for the registration of an aircraft shall be made in writing on the prescribed form.

⁹ Manufacturer's serial number.

¹⁰ It is becoming increasingly common for title in an aircraft to be split amongst co-owners in fractions or percentages. Each fractional interest may be financed by a different financier that takes security over the particular fractional interest that it has financed. Each fractional ownership interest may be registered in the National Aircraft Register and in the relative certificates.

¹¹ The lessor may also appear as lessee.

¹² When the engines do not belong to the registrant, the owner has to grant his consent.

Once the aircraft is registered, the following particulars will be included in the Register:

- the number of the certificate of registration;
- the nationality marks and the registration marks assigned to it;
- the name of the constructor and its designation;
- the serial number; and
- the manufacturer, serial numbers and physical details of the engines attached to the aircraft and any replacement engines.

The Certificate of Registration (that is not transferable) shall be issued to the registrant.

A certificate of registration issued for an aircraft still under construction shall expressly state that it is not permitted to operate until such time as it complies with the provisions of the applicable law.

On-going duties of the registrant

Any registrant of an aircraft is duty-bound to inform the Authority immediately of any of the following events:

- any change in the particulars furnished to the Director General upon application;
- the destruction of the aircraft or its *permanent* withdrawal from use;
- in the case of an aircraft registered by an operator under a temporary title, the termination of such temporary title;
- in the case of an aircraft registered by a buyer under a conditional sale or title reservation or similar agreement, any event which brings into force the reversion of title to the seller or the possession, control or operation of the aircraft to a person other than the registrant; and
- where an aircraft is subject to a registered mortgage or other security interest, any event amounting to an enforcement thereof which has the effect of transferring the title or the possession, control, or operation of the aircraft to a person other than the registrant.

Cancellation of registration

The Director General may cancel any registration of an aircraft in the following circumstances:

- (a) if the aircraft is registered outside Malta and such registration does not cease, by operation of law, upon the aircraft being registered in Malta;

- (b) if a person who is not a Qualified Person holds an interest above the applicable threshold by way of ownership or share therein¹³;
- (c) if the operator (being the registrant) is no longer a Qualified Person¹⁴;
- (d) if, in the opinion of the Director General, the aircraft could more suitably be registered elsewhere;
- (e) if, in the opinion of the Minister, it would not be in the public interest for the aircraft to be or to continue to be registered in Malta;
- (f) if the registrant has made a written request for cancellation of registration and closure of register;
- (g) if it appears that any applicable requirements of Law relating to the safety of the operation or the airworthiness of that aircraft, are not being faithfully or cannot be complied with; or
- (h) if the aircraft is not compliant with any applicable statutory aircraft registration conditions in respect of aircraft noise or exhaust gas emissions.

It is important to note that the Director General cannot cancel the registration of an aircraft which is the subject of an undischarged mortgage or any security interest for any of the above reasons unless all mortgagees of that aircraft have consented to the cancellation¹⁵.

In the case referred to in (e) above, the Minister may order that an aircraft registration be cancelled even without the consent of any mortgagee provided that the following procedure shall apply prior to the cancellation taking place:

- the Director General shall give all registrants and any mortgagees at least 15 working days' notice of any intent to close the register. The Director General shall specify in the notice the reason for the proposed closure and the expiry date for the issue to be addressed, failing which closure will be effected;

¹³ Where a registered mortgagee or a holder of a security interest takes such action as is considered necessary to protect his rights, including temporarily vesting the aircraft in his own name or that of a special purpose vehicle for himself for the purpose of protecting his interests, the Director General shall not cancel the registration of the aircraft on the basis that such person is not qualified to register such aircraft until such time as such rights are enforced.

¹⁴ Provided that if an unqualified person has been permitted to operate a registered aircraft together with qualified persons under specified conditions, the operation by such person under such conditions shall be disregarded for the purpose of this provision. Provided further that where a registered mortgagee or a holder of a security interest takes such action as is considered necessary to protect his rights, including temporarily taking over the operation of the aircraft directly (if competent) or through a competent person, the Director General shall not cancel the registration of the aircraft until such time as the aircraft has been transferred to a third party which is not a Qualified Person.

¹⁵ The Director General may, without prejudice to rights of the mortgagee, communicate independently with the mortgagee or holder of any security interest to take all action as is necessary, including extending the validity of the registration beyond the stated deadline, for the orderly closure of the registry and enforcement of the mortgage or other security interest as well as to ensure the safe operation of the aircraft.

- the registrant and any mortgagee may appeal to the Administrative Review Tribunal within 15 working days of receiving the relevant notice of the closure either:
 - (i) on the grounds that it is not justified; or
 - (ii) on the grounds that effective action has been taken to remedy the complaint and the Director General has failed to withdraw the order to cancel.

Pending the determination of an appeal, the Director General shall *not* proceed to close the register.

Resident agent

The international registrant of a private aircraft is required to appoint a Resident Agent (and to ensure that he has such an agent at all times) prior to registration. The Resident Agent is to be resident in Malta and someone who is competent and of good repute.

Functions of registered agent

The functions of the registered agent are to:

- act as the channel of communication between the international registrant and the Director General/ other Maltese government departments/ Authorities;
- sign and file with the Director General/ other Maltese government departments/ Authorities all declarations and forms required in terms of Law;
- act as the judicial representative of the international registrant for judicial proceedings in Malta. Accordingly, any notice shall be deemed to have been duly received by and notified to the international registrant¹⁶ if it is sent to the resident agent's last registered address.

Powers of registered agent¹⁷

The resident agent shall have the power, on behalf of the international registrant (unless, otherwise, restricted by the international registrant), to sign and file applications, declarations, notices, returns and any other document required in terms of Law and to do all other matters as may be deemed conducive or ancillary for the registration of an aircraft under the Act or for the maintenance of such

¹⁶ The resident agent shall not be held personally liable for non-compliance by the international registrant with any law, unless the resident agent has personally accepted to assume such liability in writing or has willfully or recklessly made a false declaration.

¹⁷ The resident agent may resign or be removed from office by the international registrant upon the parties giving at least 15 days' notice to each other *and* to the Director General *and* to any registered mortgagee/s. In the event that the international registrant fails to appoint a substitute Resident Agent, the mortgagee may appoint one himself.

registration and to do all other things as may be considered conducive or ancillary to the cancellation of the registration of an aircraft under the Act.

Upon the registration of an aircraft by an international registrant in the National Aircraft Registry, such international registrant shall be deemed to have submitted to the jurisdiction of the Maltese courts for any action in connection with the aircraft.

Mortgages

The Act provides for 2 types of mortgages:

- domestic mortgages registered under the Act; and
- international mortgages registered in Dublin and governed by the Cape Town Convention and the Aircraft Protocol.

A registered aircraft or a share therein may be made a security for any debt/obligation by means of an instrument creating a mortgage executed by the mortgagor in favour of the mortgagee in the presence of, and attested by, a witness or witnesses.

A mortgage may be executed and registered in favour of a security trustee¹⁸ appointed or acting under a trust for the benefit of persons to whom a debt or other obligation is due. The security trustee may exercise all the rights in relation to that mortgage as are accorded to mortgagees¹⁹.

A mortgage may also be drawn up to secure the performance of a future obligation due by the debtor to the creditor.

Generally, it is not necessary to indicate the monetary value of the indebtedness in the mortgage. In the event that the mortgage is intended to secure a future obligation, a maximum sum for which the mortgage is granted must be expressly stated and such sum shall be reflected in the Register²⁰.

Recording of domestic mortgages and priority

Mortgages are recorded in the order of time in which they are registered. Each mortgage shall state the day and hour when it was registered.

¹⁸ A security trustee is a trustee to whom security is granted or in favour of whom property is settled under trust for the benefit of any creditor or creditors, present or future, or in favour of a class or classes of creditors.

¹⁹ Any such security trust shall be governed by the provisions of article 2095E of the Civil Code when the proper law is the law of Malta.

²⁰ A mortgage to secure a future obligation may only be granted in favour of a credit institution in an approved jurisdiction or such other organisation as may be permitted by means of a Notice issued by the Minister.



If there is more than one mortgage registered in respect of the same aircraft or share, the mortgagees shall rank, one over the other, according to the date and the time at which each mortgage is recorded in the National Aircraft Register.

Where the mortgage instrument provides that it is prohibited to create further mortgages without the prior written consent of the mortgagee, this condition will be recorded in the National Aircraft Register. No further mortgages shall be recorded unless the consent in writing of the holder of a prior mortgagee is produced.

When the mortgage instrument provides that it is prohibited to effect the transfer of the aircraft mortgaged or charged, or of a share therein, without the previous written consent of the mortgagee, a note thereof shall be entered in the National Aircraft Register. Thereafter, no transfer may take place unless the consent in writing of such mortgagee is produced, saving where the transfer is made pursuant to a court order in a sale by auction of such an aircraft or pursuant to any other court order.

At any time prior to the registration of a mortgage any creditor having a separate privilege or charge on any part, appurtenance or accessory of an aircraft may register such privilege or charge in the Register by means of an instrument executed by the owner in the presence of a witness in the form prescribed.

A seller reserving ownership rights on an aircraft or on any part, appurtenance or accessory of such aircraft or enjoying the benefit of any conditions affecting title thereto may register his interest in the Register at any time prior to the registration of a mortgage.

When an international mortgage is registered in the International Registry in Dublin it is enforceable whether or not it is registered in the National Aircraft Register.

Transfer, amendment of mortgages

A registered mortgage over an aircraft or share may be transferred to any person by an instrument of transfer executed by the transferor in the presence of, and attested by, a witness or witnesses.

A registered mortgage may also be amended for any reason. Accordingly, upon production of the instrument of mortgage containing the amendment, together with the written consent of the mortgagee whose mortgage is to be amended, the Director General shall make a note in the National Aircraft Register to the effect

that the mortgage has been amended. Such mortgage, as amended, shall continue to have the same priority as it had before the amendment was noted.

It should be noted, however, that where there is more than one mortgage entered for the same aircraft, an amendment shall not be noted unless the consent in writing of all the other mortgagees, whose interests may be prejudiced by the amendment, is produced. The consent to such an amendment is done by means of a declaration executed by the creditor in the presence of, and attested by, a witness or witnesses.

Discharging of a mortgage

Where a registered mortgage is discharged, the Director General shall, on the production of the mortgage deed, with a receipt for the secured money endorsed thereon, duly signed and attested, make an entry in the National Aircraft Register to the effect that the mortgage has been discharged.

Special status of Maltese Mortgages on aircraft

The Act endeavours to provide creditors with reliable and readily enforceable rights in aircraft.

Accordingly, the Act provides for the following safeguards to creditors:

- aircraft²¹ form separate and distinct assets from the estate of their owners for the security of actions and claims to which they are subject: as a result, in case of bankruptcy or insolvency of the owner, all actions and claims to which the aircraft may be subject, shall have preference, on the said aircraft, over all other debts of the owner;
- all registered mortgages, any special privileges and all actions and claims to which an aircraft may be subject shall not be affected by the bankruptcy and/or insolvency of the mortgagor or owner, happening after the date on which the mortgage/special privilege was created²² and such mortgages, privileges, actions or claims shall have preference, on the said aircraft, over all other debts, claims or interests of any other creditor of the bankrupt or of

²¹ The definition of 'aircraft' is wider here: it includes (i) all data, manuals and technical records, (ii) the airframe, all equipment, machinery and other appurtenances as accessories belonging to the aircraft, which are on board or which have been temporarily removed therefrom, and (iii) any engines owned by the owner of the aircraft whether attached to the aircraft or not, as well as any replacement engines which are designated for use on the aircraft and owned by the owner of the aircraft but temporarily not attached to the aircraft.

²² Notwithstanding the fact that the owner at the commencement of the bankruptcy and, or insolvency had the aircraft in his possession, or was the reputed owner thereof.

any curator, liquidator, receiver or trustee, acting on behalf of any other creditors;

- all owners, lessors, lessees, creditors, mortgagees, holders of security interests and any other persons having an interest in or in relation to an aircraft may enter into an inter-creditor agreement²³ which shall govern the relevant relationship and shall be binding and effective in accordance with its terms;
- any proceeds from the judicial sale of an aircraft instituted by any registered mortgagee or creditor enjoying a special privilege shall not be interrupted or in any way hindered by any curator in bankruptcy and/or insolvency, or any liquidator, receiver or trustee of the owner for any cause other than a cause that could be set up by the owner of an aircraft²⁴;
- a registered mortgage shall attach to the aircraft or share therein in respect of which it is registered until it is discharged;
- where an aircraft has been sold pursuant to an order or with the approval of a competent court within whose jurisdiction the aircraft was at the time of the sale, the interest of the mortgagees as well as that of any other creditor in the aircraft shall pass on to the proceeds of the sale of the aircraft;
- any hypothec or privilege (whether general or over particular movables) to which an aircraft may be subject under the provisions of the Civil Code shall not continue to attach to it when the aircraft is transferred to third parties;
- a mortgage shall attach to any proceeds from any insurance policy: this provision shall not apply in relation to an indemnity payable under a liability policy;

²³ In virtue of which a creditor (or a class of creditors) subordinates, postpones, waives or otherwise modifies his existing or future rights of payment, enforcement, ranking and other similar existing or future rights in favour of another person (or class of persons). Such arrangements may be made by agreement (including trust instrument) with or by unilateral declaration to any person, including another creditor, whether determined or yet to be determined at the time of the entry of such agreement or the making of such declaration. In order to have effect with regards to third parties such arrangement has to be registered in the National Aircraft Registry.

²⁴ The provisions of the preceding subarticle shall apply *mutat is mutandis* to proceedings for the termination of any agreement or the taking of possession or control of an aircraft by the holder of a security interest instituted against a conditional buyer or lessee.

- a mortgage is indivisible notwithstanding the divisibility of the underlying debt or other obligation that it may secure;
- a mortgage shall not extend to any engine attached to the airframe unless it is owned by the airframe owner.

Enforcement of mortgages

A registered mortgage that secures a debt that is certain, liquid and due or, in the case of a future obligation, where a maximum sum secured is expressly stated, constitutes an executive title in terms of Maltese Law.

For the purpose of:

- determining the amount certain, liquid and due; or
- the actual sum due by the mortgagor when the mortgage secures a future debt within an expressly stated maximum,

the creditor is required to specify the sum due at the time of enforcement by means of a sworn affidavit notified or served on the debtor²⁵. This shall be without prejudice to the right of the debtor to pay such sum in settlement of the amount due to the secured creditor, or the right of any interested party to contest such amount according to law, even after payment of the sum claimed, but no person shall have the right to hinder the exercise of the rights of the secured creditor in any manner.

The mortgagee shall, in the event of default of the mortgagor, and upon giving notice²⁶ in writing to the debtor:

- (a) be entitled to take possession of the aircraft or share therein in respect of which the mortgage is registered²⁷;
- (b) have power *absolutely* to sell the aircraft or share in respect of which the mortgage is registered. Where there are more persons than one registered as mortgagees of the same aircraft or share, a subsequent mortgagee shall not,

²⁵ Service of any judicial proceedings to enforce a mortgage shall be carried out in accordance with the procedure described in article 187(4), (5) and (6) of the Code of Organisation and Civil Procedure. In the case of an international registrant, service on the debtor shall be carried out by serving a copy of the proceedings on the resident agent.

²⁶ The requirement to give notice in writing to the debtor shall be considered to have been satisfied if the mortgagee or holder of any security interest gives the notice to the debtor by means of an electronic communication in accordance with the Electronic Commerce Act, or in such other manner as agreed between the parties, or if such notice is served at the registered office of the debtor, if the registered address of the owner is in Malta, or on a curator appointed by the court to represent the debtor and the aircraft, and in the case of an international registrant, on the resident agent.

²⁷ However, the mortgagee shall not be deemed to be the owner of the aircraft or share, nor shall the mortgagor be deemed to have ceased to be the owner thereof.

except after authorization from a court of competent jurisdiction, sell the aircraft or share without the concurrence of every prior mortgagee. If the proceeds of sale, after discharging the secured debt, leave a surplus, the mortgagee shall hold such proceeds under trust or deposit for the benefit of other creditors and/or of the mortgagor debtor;

- (c) have power to apply for any extensions, pay fees, receive certificates and, generally, do all such things in the name of the owner or registrant as may be required in order to maintain the status and validity of the registration of the aircraft;
- (d) have the power to lease the aircraft so as to generate income therefrom; and
- (e) have the power to receive any payment of the price, lease payments, and any other income which may be generated from the management of the aircraft.

The mortgagee may exercise the above-mentioned rights without the need of any Court authorization. In the event that any mortgagee seeks the support of the Court due to any hindrance from any person, the Court shall render full support to the mortgagee as expeditiously as possible.

The debtor and the person in possession of the aircraft shall be obliged to co-operate fully with the mortgagee enforcing his rights including, but not limited to, by surrendering and submitting all data, manuals, technical records, parts, accessories and appurtenances belonging to the aircraft.

The creditor selling the aircraft to enforce his mortgage shall be bound to act in a commercially reasonable manner and shall be bound by fiduciary duties towards the debtor and other creditors to:

- (a) pay from the proceeds any creditor who ranks prior to his rights as he may determine or as may be determined by the court in case of disagreement; and
- (b) provide information to any creditor whose rights rank after his own rights and to the debtor for the conditions of sale, the expenses incurred, the prior rights settled and any other deductions from the price received.

Recognition of foreign mortgages

Foreign mortgages are recognised as mortgages with identical status as domestic mortgages notwithstanding the fact that they are not entered on a registered aircraft if:

- they have been validly recorded in the registry of aircraft or other register of the country under whose laws the aircraft is documented;

- such registry is a public registry;
- such mortgages appear upon a search of such registry; and
- such mortgages are granted a preferential and generally equivalent status as a mortgage under the Act under the laws of the country where the mortgage is registered.

Special privileges on aircraft

Top-ranking privileges

The special privileges listed below operate by operation of the Law.

The following debts are secured by a special privilege upon the aircraft as well as any proceeds from any insurance policy (with the exclusion of an indemnity payable under a liability policy):

- judicial costs incurred in respect of the sale of the aircraft and the distribution of the proceeds thereof following the enforcement of any mortgage or other executive title;
- fees and other charges due to the Authority arising under applicable law in respect of an aircraft;
- wages due to crew in respect of their employment on the aircraft;
- any debt due to the holder of a possessory lien for the repair/preservation of the aircraft to the extent of the service performed on and value added to the aircraft;
- the expenses incurred for the repair/preservation of the aircraft to the extent of the service performed on and value added to the aircraft; and
- wages and expenses for salvage in respect of the aircraft.

The debts specified above shall rank in the order therein set out and in preference to all other claims including Maltese mortgages and charges registered in the International Registry.

The person in possession of the aircraft enjoying a possessory lien shall not be constrained to release the aircraft until the sums due to him are unconditionally discharged or, otherwise, secured to his satisfaction and, in any such case, the lien holder shall rank first on such security as may be granted.

Other registrable privileges

The Act also provides for certain *registrable* special privileges that, if registered in the International Registry, rank after the top-priority privileges listed above. Similarly, these special privileges also attach to the proceeds from any insurance policy (other than from a liability policy):

- (a) taxes, duties and/or levies due to the Government of Malta in respect of the aircraft; and
- (b) wages and expenses for assistance or recovery in respect of the aircraft.

The debts referred to above shall constitute a special privilege only if the claim is created by the owner of the aircraft or by a person authorised by him. In default, when such a claim is created by an operator of the aircraft, it shall not affect the aircraft or the owner thereof, and shall only operate in relation to the said debtor and upon the termination of his temporary title and reversion of the aircraft to the owner, the aircraft shall revert unencumbered to the owner²⁸.

Possessory Lien

An aircraft repairer, manufacturer or other creditor into whose care and authority an aircraft has been placed for the execution of works shall have a possessory lien on the aircraft as security for the works done to the extent of the service performed on and value added to the aircraft.

A possessory lien shall entitle the creditor to retain possession of the aircraft on which he has worked until he is paid the debts due to him.

A possessory lien shall be extinguished by the voluntary release of the aircraft from the custody of the creditor.

A possessory lien shall not be extinguished if the aircraft is released pursuant to a court order or following a judicial sale of the aircraft. In the latter case, the creditor shall enjoy top priority over the proceeds of the sale of the aircraft.

The creditor shall be obliged to release the aircraft if he is paid the sum claimed or adequate security is deposited in Court. The creditor shall enjoy the same top priority over such sum or security.

The creditor who is entitled to a possessory lien shall, on being notified with a judicial letter served upon him by any person interested in the aircraft, be obliged to declare the amount of his claim by judicial act to be filed within a period of 2 days from the date of notification to him of the aforesaid judicial letter failing which he shall be obliged to release the aircraft forthwith.

²⁸ This also applies to a lessor in relation to a lessee, and a sub-lessor to a lessee in the same manner, subject to such modifications as are required due to the context.

Ranking - summary

- top priority special privileges (subject to possessory lien holder's right not to release aircraft until his debt is secured);
- international mortgages registered prior to the date of registration of the registrable special privilege;
- registrable special privileges;
- international mortgages registered in the International Registry;
- domestic mortgages registered under the Act; and
- hypothecary and privileged claims.

The Cape Town Convention (CTC)

Malta acceded to the CTC on the 1st October 2010²⁹.

As a result of Malta's accession to the CTC, interests in airframes and engines granted to a creditor under a security agreement or that are, otherwise, vested in the conditional seller or lessor of an aircraft, may be registered in the International Registry in Dublin.

The general rule is that, with the exception of special privileges, international interests registered in the International Register rank prior to national security interests irrespective of whether they are registered in the National Aircraft Register or not. The creditor may, nonetheless, opt to have his international security interest registered in the National Aircraft Register all the same.

Once an international interest has been registered in the International Register, it is possible for the creditor to file a prohibitory notice in the National Aircraft Register thereby prohibiting the registration of further security interests in the national register without his express consent.

Upon the insolvency of the debtor³⁰, the insolvency administrator is required to:

- give the creditor possession of the aircraft within 30 days; or
- cure all defaults and agree to perform all future obligations under the relevant agreement.

With the ratification of the CTC, Malta aims to facilitate the process of acquiring and financing aircraft. Some of the CTC's other objectives include:

²⁹ Malta is the third EU country after Ireland and Luxembourg to ratify the CTC.

³⁰ When Malta is the primary insolvency jurisdiction.



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- the establishment of an electronic International Registry that is fully accessible online, one of the purposes of which is to give notice to third parties of such international interests;
- providing creditors with a number of remedies for the enforcement of their rights or interests over aircraft, including options which render as expeditious as possible interim relief even without the need of judicial intervention; and
- ensuring that the particular requirements of the aircraft finance sector are met on a general level by *inter alia* providing financiers and creditors with greater confidence when granting credit within the aviation sector.

Fiscal incentives – foreign source rule

The Maltese tax regime offers a number of interesting tax efficient structures to aircraft lessees, lessors and operators set up in Malta making Malta a truly competitive jurisdiction and certainly at a par with its competitors.

Income from the ownership, leasing or operation of an aircraft or aircraft engine engaged in the international transport of passengers or goods is not subject to Maltese tax as it is deemed to arise outside Malta regardless of:

- **whether the aircraft or engine is registered in Malta; or**
- **whether the aircraft has called at or is operated from a Maltese airport.**

lessees operating aircraft in international transport of passengers or goods set up in Malta

- Income is not taxable in Malta unless remitted;
- lessees making lease/royalty payments to non-residents do not suffer any withholding taxes;
- interest payments made by Maltese lessees to non-resident financial lessors, likewise, are not subject to any withholding taxes.

Option to pay Malta tax

There is the option to be taxed in Malta. In this case, the imputation system of taxation of dividends in Malta ensures that tax paid by a company upon a distribution of profits is credited in full to the shareholder upon a distribution of dividends.

Thus, if a Maltese lessor or operator set up in Malta distributes dividends to its non-resident shareholder, the company will initially pay tax at the standard corporate tax rate of 35%. However, upon a distribution of dividends to the non-resident

shareholder, the non-resident shareholder may claim a 6/7ths refund of the Malta tax meaning that the overall tax liability will be 5%.

In addition, it should be noted that Malta could end up having *exclusive* jurisdiction to tax such income in the event that Malta is the country of effective management of the company in view of Article 8 of the OECD Model Convention that provides that profits from the operation of aircraft in international traffic are taxable only in the State in which the place of effective management of the enterprise is located.

aircraft finance leasing

Since the finance lessor is not regarded as the owner of the aircraft (but simply as providing financing to the lessee for the acquisition of the aircraft), the finance lessor is only chargeable to tax on the annual finance charge (that is, the difference between the lease payments less the capital element divided by the number of years of the lease). Where the lessee exercises the option to purchase the aircraft on termination of the finance lease, the purchase price received by the finance lessor is deemed to be of a capital nature and, consequently, not chargeable to tax.

The finance lessee may claim:

- capital allowances on aircraft; and
- deductions for the finance charge, maintenance, repairs and insurance

accelerated depreciation

As from the year of assessment 2010, the minimum period to claim wear and tear deductions for depreciation of aircraft, engines and interiors has been shortened to:

Capital allowance	Depreciation period
Aircraft frame, engine and overhaul	6 years
Aircraft interiors and other parts	4 years

fringe benefit rules

The private use of an aircraft by:

- a non-resident individual
- who is an employee or an officer of a company whose business *includes* the ownership, leasing or operation of aircraft engaged in the international transport of goods or passengers

is not taxable in Malta as it is not deemed to constitute a benefit from employment or office.

Investment tax credits

Malta already offers a wide range of aviation-related services including aircraft and engine maintenance, repair and overhaul, software development and aircraft management. In fact, well-established aircraft maintenance organizations have set up in Malta.

Businesses set up in Malta carrying out the repair, overhaul or maintenance of aircraft, engines or equipment incorporated or used in such aircraft are entitled to receive investments tax credits.

Investment tax credits are credited against the tax payable by the undertaking in Malta. Any unutilized tax credits may be carried forward against tax due in subsequent years.

Tax credits are calculated as a percentage of the expenditure or of the wage costs for jobs created directly by the project in the following manner:

Size of undertaking	% of qualifying expenditure/wage costs
Small	50%
Medium	40%
Large	30%

VAT

The intra-community acquisition, importation or supply of aircraft destined for use by an airline operator for reward chiefly for international transport of passengers or goods is an exempt with credit supply.

Finally, there are no import duties in respect of civil aircraft and no stamp duty is payable upon the purchase of an aircraft.