

International Comparative Legal Guides

Aviation Finance & Leasing

A practical cross-border resource to inform legal minds

Seventh Edition

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Claire McDermott

1 General and Contractual

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

Ireland is not restrictive in terms of structures available for financing the purchase of an aircraft. Typically, an entity will purchase the aircraft and lease to an operator, and will enjoy a favourable legal, tax and aviation environment. Financing options include Commercial Bank Financing, Finance Leasing, Japanese Operating Leases, Sale and Leasebacks, Asset Backed Securitisation Structures (ABSs), European Credit Agency (ECA) and US Export Import Bank of America (EXIM) financings, as well as Islamic financing structures. All these transactions often involve special purpose vehicles (SPVs), which retain sole ownership of the aircraft and lease them to operators through operating or finance leases.

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

For financiers, utilising SPVs in a financing arrangement presents several advantages, primarily in establishing a bankruptcy-remote framework by confining the SPV's activities to holding title to the specified aircraft and leasing them. The SPV typically pledges security over the aircraft and essential contracts, with its shares usually serving as collateral for creditors. On the borrower's side, off-balance sheet financing keeps the debt off the financial statements – particularly advantageous for substantial financing exposure. Limited recourse transactions further shield the borrower from creditor enforcement beyond accessing aircraft-related revenue streams, except in specific circumstances like fraud.

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

There are no specific structural requirements for an aircraft lease under Irish law. In general, aircraft lease agreements entered into by Irish companies will be governed by the laws of England and Wales, which is standard across the industry.

Most commonly in aircraft financing structures we would expect to see Finance Leases, Operating Leases or Japanese Operating Leases.

There are occasions where Ireland may be used as the jurisdiction for the registration of an aircraft on lease; this can also see the utilisation of a simple lease-in/lease-out (LILO) structure for the purposes of securing the Irish registration.

The typical characteristics include that the lessor will retain the ownership of the aircraft during the full term of the lease and that the airline operator will return the aircraft to the lessor at the end of the term.

Operating Leases generally offer flexibility with shorter terms and lower upfront costs for airline operators. The lessor will regain possession of the aircraft at the end of the term. Finance Leases will often require an upfront investment from the operator.

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

Currently, there are no specific proposals for reform in the area of aviation finance in Ireland. However, there are broader international initiatives that could impact the industry. One key area is the OECD's Base Erosion and Profit Shifting (BEPS) initiative, which aims to align profits with economic activity and could affect the structure and location of aviation leasing and finance companies.

The Irish government is reviewing tax legislation related to the deductibility of financing costs above a certain threshold.

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?

Under Irish law, letters of intent do not give rise to legal relations. By definition, letters of intent only provide for a future commitment or an agreement to agree at some point in the future. It is crucial to clarify in clear and concise language that the parties are not entering into a contract or forming a legal relationship as a result of the document, even if they want to set out heads of terms or anything similar in a non-binding letter of intent or term sheet. This is sometimes accomplished by adding a clause indicating that the document's terms are subject to certain additional acts, such as board approvals, aircraft inspections, payments, or the like.

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?

Irish law does not impose a general implied or reciprocal duty of good faith or fair dealing. Although partnership and insurance contracts are among the arrangements for which there is an obligation of good faith under Irish law, Irish courts have determined that Irish contract law does not contain a universal principle of good faith and fair dealing.

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?

Office of the Revenue Commissioners (the "Revenue").

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?

Corporation tax

If a company is incorporated in Ireland, it is subject to corporate tax. Different provisions apply if the company is under or above a certain threshold. There are also separate provisions for "active" and "passive" trading companies. Aircraft lessors can potentially reduce taxable profits through structuring and tax deductions, including writing off aircraft costs and qualifying interest under "Section 110" plans.

Customs duty

While there are no customs duty for aircraft in free circulation in the European Union (EU), there may be applicable custom duties for aircraft released from duty, suspended operations or imported from outside of the EU. Consideration will also need to be given to US Custom taxes or tariffs.

Withholding taxes

There are exemptions for dividends and interest payments, which may be beneficial to the lessors if applicable.

Value-Added Tax (VAT)

If the aircraft is in Ireland at the time of sale, a standard VAT rate applies and leasing services to non-Irish lessees are also outside the scope of Irish VAT.

Stamp duty

Depending on the specific nature of the transaction, stamp duty may apply.

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?

Yes. A tax-residency certificate (TRC) is an official document issued by the tax authorities in the payee's country. Such document can certify their tax residency for a specific period. The provision of a current TRC by a payee is generally sufficient for

a lessee or borrower potentially subject to withholding taxes on rental or interest payments to avail themselves of treaty access and mitigate 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?

BEPS has become increasingly relevant to aircraft leasing structures in Ireland, introducing the "principal purpose test" into Ireland's DTAs. The test theoretically allows for the denial of treaty benefits, if it is reasonable to conclude that obtaining the benefit was one of the principal purposes of any arrangement or transaction. BEPS came into force in Ireland in 2019, and its impact on treaty access relief for lessors will be fact dependent. It is now common for financiers and lessors to insist that SPVs and other entities involved in the finance and leasing transactions have proper substance in Ireland to ensure tax domicile and reduce BEPS associated risks.

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?

A company will be regarded as Irish tax resident if it is managed and controlled in Ireland, irrespective of its place of incorporation. Subject to any relevant double-tax treaty, a non-resident company can have a permanent establishment in Ireland if it has a registered place of business in Ireland through which it carries on business or has an agent that has authority to do business on behalf of the company in Ireland.

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?

BEPS and European directives in relation to anti-tax avoidance are leading to a rise in questions about the tax treaty entitlement of SPVs, as concerns arise about the vehicle not being the beneficial owner of income or engaging in treaty abuse. Despite this, Ireland's tax authorities have not aggressively questioned SPVs' treaty eligibility; as mentioned above, financiers and lessors are actively managing these risks by requiring substance, management and control of such entities to be demonstrated.

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?

The VAT treatment of the sale of an aircraft will depend on the location of the aircraft at the time of sale and the intended use.

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

Yes, in Ireland, stamp duty is a tax charged on certain written documents, referred to as "instruments". An instrument is liable to stamp duty if it is listed in Schedule 1 of the Stamp

Duties Consolidation Act 1999 (SDCA) and meets one or more of the following conditions: it is executed (signed, sealed, or both) in Ireland; or it relates to Irish property, or something done or to be done in Ireland.

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 Irish Aviation Authority (IAA) is the primary government authority responsible for the regulation of aviation and the registration of aircraft.

On 14 November 2025, the IAA launched its phased implementation of My Safety Regulation System (MySRS), a digital platform for aircraft registration and IDERA filings. The primary focus of MySRS was to replace the paper-based systems for aircraft registration, airworthiness, personnel licensing and security registration.

The Irish Aircraft Register is an operator registry, meaning it records the details of the aircraft operator rather than the owner. It is possible to record the details of an owner or lessor and any financier with an aircraft mortgage on the register.

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?

The registration of an aircraft with the IAA serves as a registry of nationality rather than title. This means that the registration does not confer proof of ownership of the aircraft or engine. Instead, it establishes the aircraft's nationality and allows it to operate under Irish regulations.

The registration process involves recording the details of the aircraft operator, and while it is possible to note the existence of a lien or charge on the register, the registration itself does not provide legal proof of ownership. Ownership details, including those of lessors and financiers, can be recorded, but the primary purpose of the registry is to ensure compliance with aviation regulations and standards.

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?

Yes, foreign-owned aircraft can be registered on the Irish Aircraft Register. IAA allows aircraft owned by non-Irish citizens to be registered if they meet one of the following conditions: they are mainly owned by an EU individual or business; or they are leased or chartered by demise to an Irish or EU individual or company.

Regarding age restrictions, the IAA does not impose specific age limits for aircraft registration. However, in order to adhere to the necessary safety and operational requirements, commercial aircraft must meet specific criteria related to maximum take-off weight, passenger capacity, and ongoing compliance with minimum safety standards.

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)?

Yes, aircraft leases can be registered in Ireland. There should be an established link to Ireland. The aircraft must have a connection to Ireland. This can be through ownership by an Irish citizen, an EU citizen with a place of residence or business in Ireland, or a company registered in Ireland or the EU with at least two-thirds of its directors being Irish or EU citizens. Notarisation, legalisation, apostille are not specifically required under Irish law for the lease to be valid and enforceable. However, depending on the jurisdiction, the operating language of the documents, and the parties involved, these steps might be necessary.

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

Deregistration of an aircraft involves several steps. The steps that the lessor can take are as follows:

Deregistration process

The registered owner must submit a formal request in writing to the IAA. This request should include details such as the aircraft's description, registration marks, make, model, and serial number.

The lessor must provide proof that the aircraft's nameplate/fireproof plate and registration marks have been removed. Additionally, any Irish Mode S code and ELT code must be negated if applicable.

All outstanding fees related to the aircraft must be paid in full.

If the aircraft is on an Irish Air Operator Certificate (AOC), it must be removed from the AOC prior to deregistration.

Steps for lessors

An Irrevocable Deregistration and Export Request Authorisation (IDERA) can be lodged with the IAA. This allows the lessor to deregister the aircraft without the lessee's cooperation.

Confirm that all legal requirements are met, including the removal of any liens or charges noted on the aircraft register.

If the aircraft is to be exported, an Export Certificate of Airworthiness may be required. The lessor should submit the necessary forms and fees to the IAA at least 20 working days before the intended export date.

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?

Yes, it is possible to create a mortgage over an aircraft or engine in Ireland.

Airframe, engine, or the combination of the two together as an aircraft, can have a legal or equitable mortgage over them. Generally, the operating document for the mortgage should include details of the parties, the asset (manufacturer, manufacturer serial number, model), and should specify charging

provisions. Ordinarily, we would see representations and warranties from the mortgagor, event of default provisions in favour of the mortgagee, notice provisions, governing law, and jurisdiction. If the mortgagor is an Irish company, the mortgage can be registered with Companies Registration Office (CRO) by filing form C1 within 21 days of the complete execution of the mortgage document.

For international interests, registration under the Cape Town Convention (the "Convention") may be required. Irish law does not require notarisation, legalisation, stamping, or translation for the creation of an enforceable security over an aircraft.

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?

Yes, in Ireland, spare parts, including future parts, can be subject to an aircraft mortgage or engine mortgage. These can also be included in the aircraft or airframe or engine mortgage itself.

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

Yes, in Ireland, there is a register for mortgages or rights over aircraft and engines. The IAA maintains this register. The MySRS platform provides users with the ability to order official excerpts of the Irish Aircraft Register from the IAA in respect of specific aircraft. To register a mortgage or charge, the interest holder must complete and submit IAA Form G17 along with the relevant fee.

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

A fixed charge, floating charge, assignment of lease rentals, bank account charges and share charges could be considered as security over an aircraft. All these securities can be registered as a security interest on the mortgagor entity with the CRO using form C1, provided the mortgagor is Irish.

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

Priority is given when the registering body is either CRO or under the Convention. IAA does not grant priority notices. A registered mortgage or charge would be given priority over any non-registered mortgages.

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

Please refer to question 4.4.

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?

In the event of default under the mortgage, the mortgagee has the right to assume possession of the aircraft, or designate a receiver for this purpose, and subsequently sell the aircraft. This action is permissible if stipulated in the mortgage document or agreed upon in writing. According to Irish law, security enforcement can occur without judicial intervention. Should the mortgagor fail to cooperate, the mortgagee may opt to pursue a court order to obtain possession of the aircraft. This will ensure a clear title upon resale.

5.2 What is the procedure for repossession of the aircraft?

The procedure for repossession of an aircraft involves several steps, particularly when a lessee defaults on the lease agreement.

Repossession procedure

- The lessor must notify the lessee of the default and the intention to repossess the aircraft.
- The lessor must strictly follow the procedures outlined in the lease agreement for repossession.
- If an IDERA has been lodged with the IAA, the lessor can use it to deregister and export the aircraft without the lessee's cooperation.
- Self-help remedies are available, allowing the lessor to repossess the aircraft without a court order, provided the lease agreement permits it.
- Convention provides additional remedies, such as obtaining a court order to ground the aircraft if necessary.

Court involvement

- While not necessary, a court order can be obtained to enforce repossession if the lessee is uncooperative.
- If the lessee is insolvent, the lessor may face a 60-day waiting period before taking possession of the aircraft, as defined by the Convention.

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?

In most cases, Irish courts respect and validate explicit choice of law clauses, following relevant EU Regulations for intra-EU disputes or common law principles for disputes outside the EU. If the application of Irish law isn't unfairly impacted, Irish courts honour governing law clauses designating a foreign jurisdiction. However, Irish courts might decline to acknowledge choice of law clauses due to public policy concerns or if mandatory Irish law aspects are involved.

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?

Ireland is a part of several conventions which allows for foreign judgment to be accepted in local Irish courts.

Recast Brussels Regulation

The Recast Brussels Regulation applies to jurisdiction clauses in EU Member States and Denmark. If a company submits to the jurisdiction of a specific court under this regulation, Irish courts will uphold this submission. Judgments made by the relevant jurisdiction under the Brussels Recast are automatically recognised and enforced by Irish courts.

Hague Convention on Choice of Court Agreements

The Hague Convention mandates that exclusive jurisdiction courts hear cases, preventing other contracting states from hearing parallel proceedings. For judgments under the Hague Convention, an application for enforcement must be made to the Master of the High Court in Ireland. For this, the exclusive jurisdiction clause must be incorporated in the agreements.

Lugano Convention

Similar to the Hague Convention, judgments from Lugano Convention countries require an application for enforcement to the Master of the High Court. It extends the rules of the Brussels Regulation to certain European Free Trade Association (EFTA) countries, including Denmark, Iceland, Norway, and Switzerland.

Once recognised, the foreign judgment carries the same weight as an Irish court decision.

Common law principles

Irish common law governs the recognition and enforcement of foreign judgments not covered by the above regulations. New proceedings may be initiated in Ireland for such cases. Irish courts can refuse recognition and enforcement under various circumstances, including jurisdictional issues, fraud, public policy concerns, or inconsistency with Irish court judgments.

Interim relief measures

Urgent injunctions can be sought to prevent aircraft from leaving the jurisdiction. Applicants may be required to provide an undertaking or security for potential damages when seeking such injunctions.

In cases not covered by these regulations, new proceedings may be initiated in Ireland. Irish courts can refuse recognition and enforcement under various circumstances, including jurisdictional issues, fraud, public policy concerns, or inconsistency with Irish court judgments. Injunctions can be sought urgently to prevent aircraft from leaving the jurisdiction, and applicants may be required to provide an undertaking or security for potential damages.

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?

While the IAA does not recognise deregistration power of attorneys (DPOAs), it does acknowledge the existence of an IDERA under the Convention. The IAA approves deregistration requests from IDERA beneficiaries if properly issued and lodged.

The IDERA has largely supplanted DPOAs for Irish-registered aircraft. If a DPOA is issued, it is not mandated to adhere to Irish laws or undergo translation, certification, notarisation, legalisation, or prior lodging to be valid. An irrevocable DPOA granted to secure obligations cannot be revoked until those obligations are fulfilled.

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?

Before taking further action, the lessor is required to serve the judgment. Following the court order, possession can typically be acquired within a short timeframe, depending on the aircraft's location. If the judgment or order remains unfulfilled, the lessor can file an affidavit confirming non-compliance, potentially leading to the issuance of an execution order based on the affidavit.

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?

The risk that a lessee might acquire an economic interest in an aircraft simply by paying rent is generally low. Lease agreements generally ensure that ownership remains with the lessor, and the lessee's payments are for the use of the aircraft, not for acquiring ownership and in finance leases, ownership is retained until purchase conditions are met.

Ireland's ratification of the Cape Town Convention also provides strong protections for aircraft owners and financiers, prioritising their rights based on the registration of international interests. Additionally, the Irish legal system, based on common law principles, supports the enforcement of contractual rights and security interests, providing further protection to owners and financiers. The combination of robust lease agreements, international conventions, and a supportive legal framework helps mitigate the risk of lessees acquiring economic interests in aircraft merely by paying rent.

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

There are specific procedures but no significant restrictions on a lessor's ability to export an aircraft after the lease ends. The lessor must formally request deregistration from the IAA in writing. This request should include detailed information about the aircraft, such as its registration marks, make, model, and serial number. Once deregistration is completed, the lessor can proceed with exporting the aircraft.

The request must adhere to the below specific criteria:

- It must be signed by the relevant individual(s) or a current director/company secretary if the owner is a company.
- Evidence must be provided confirming the removal of the aircraft's nameplate/fireproof plate, Irish registration marks, Mode S code and emergency locator transmitter code.
- If the aircraft holds an Irish air operator certificate (AOC), it must be removed before deregistration.
- All outstanding fees for the aircraft must be settled.
- If an IDERA is lodged against the aircraft, it must be removed beforehand.

Additionally, the foreign state of export and, if applicable, the export certificate of airworthiness must be specified. Form AWS.D.F.104A, along with the prescribed fee, must be submitted to the IAA at least 20 working days before the scheduled export date.

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?

There are no foreign exchange controls currently in place. This means there are no restrictions on payments in foreign currency or on the remittance of sale proceeds abroad. Since 1 January 1993, Ireland has not imposed any foreign exchange controls. However, the Financial Transfers Act 1992 gives the Minister for Finance the power to introduce restrictions, if necessary, but this is not commonly exercised.

Lessors may need to take the US customs and tariffs into consideration during the export of any asset and remittance of the sale proceeds abroad.

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 answer to question 5.4 above for our discussion on foreign judgments.

If the lease is governed by English law and a judgment is obtained by the lessor in the English courts, the enforcement process in Ireland depends on several factors. Since Brexit, the Brussels I Regulation no longer applies to new proceedings commenced after 31 December 2020. Instead, enforcement of English court judgments in Ireland can rely on the Hague Convention on Choice of Court Agreements or existing common law rules.

Under the Hague Convention, if the parties have agreed to an exclusive jurisdiction clause, the judgment can be enforced without re-examination on its merits. If the Hague Convention does not apply, the judgment must be recognised under common law rules, which require the judgment to be for a definite sum of money, final and conclusive, and awarded by a court of competent jurisdiction.

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

An aircraft can be repossessed under alternative security measures, which can involve court proceedings or the Convention remedies. In Ireland, an aircraft can be detained for unpaid charges, including EUROCONTROL charges, and the IAA can detain and sell it for these charges. The creditor is not required to apply to the High Court for leave to exercise any remedy under the Convention, such as standard default remedies under security agreements, unless expressly required.

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?

Ireland has ratified the following conventions, (which may have been amended or updated from time to time):

- Ratified on 20 September 1935 and 12 October 1959, the 1929 Warsaw Convention for the Unification of Certain Rules Relating to International Carriage by Air was revised by the Hague Protocol on 28 September 1955.
- Ratified 31 October 1946, the Chicago Convention on International Civil Aviation, 1944.
- Ratified on 3 June 1960, the 1956 Geneva Agreements on the Joint Financing of Certain Air Navigation Services in Greenland/Iceland.
- The Rome Protocol of 1962 Concerning a Change to the Convention on International Civil Aviation approved on 14 February 1963.
- On 15 June 1971, the New York Protocol was ratified. It related to an amendment to the Convention on International Civil Aviation.
- The Vienna Protocol of 1971 Concerning a Modification to the Convention on International Civil Aviation was approved on 11 July 1972.
- On 14 November 1975, the Tokyo Convention of 1963 on Offenses and Certain Other Acts Committed on Board Aircraft was approved.
- The 1970 Hague Convention on the Prohibition of Unlawful Seizure of Aircraft was approved on 24 November 1975.
- The Montreal Convention of 1999, which was approved on 29 April 2004, unifies several rules for air transportation internationally.
- The International Interests in Mobile Equipment Convention of 2001, ratified on 29 July 2005.
- The 2001 Protocol to the Convention on International Interests in Mobile Equipment on Matters Particular to Aircraft Equipment was approved on 23 August 2005.

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

On 1 March 2006, the Cape Town Convention came into effect in Ireland and the Convention and Protocol have full effect under Irish law through the International Interests in Mobile Equipment (Cape Town Convention) Act 2005. The Commercial Division of the Irish High Court has authority to handle any potential disputes or conflicts.

Pursuant to the Convention, Aviareto Limited, an Irish registered company, was established as "Registrar". Under Article 44(1) of the Convention, the courts where the Registrar is established are to have exclusive jurisdiction for cases involving reliefs sought against the Registrar. Numerous cases have therefore proceeded before the Irish courts where the applicant has sought orders against the Registrar.

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

In Ireland, NCRI can include statutory liens, rights of detention, and other claims arising by operation of law rather than

by agreement between parties. These rights can take precedence over registered interests if recognised by the contracting state. Ireland has made declarations under Article 39 specifying which NCRI will have priority, such as unpaid taxes or maintenance liens. These rights are enforceable even if not registered in the International Registry, providing protection for certain statutory and possessory claims. While there can be conflicts between NCRI and consensual interests, the policy behind Article 39 aims to balance the protection of consensual interests with the need to recognise certain statutory and possessory rights that arise by law.

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

Yes, Ireland has adopted the remedies on insolvency provided under Article XI of the Protocol to the Convention. Specifically, Ireland has chosen Alternative A of Article XI.

Alternative A provisions

Under Alternative A, upon the occurrence of an insolvency-related event, the insolvency practitioner or debtor must either give up possession of the aircraft object to the creditor or cure all defaults (other than those constituted by the opening of insolvency proceedings) and agree to perform all future obligations under the relevant transaction documents within a specified waiting period. In Ireland, this waiting period is 60 days.

This provision provides that creditors have a clear and predictable right to repossess the aircraft after the waiting period, aligning Ireland's insolvency regime with international standards and enhancing its attractiveness for aircraft financing and leasing.

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

To file an IDERA, the registered owner of the aircraft must prepare and duly execute the IDERA document, authorising the named party (usually the lessor or financier) to deregister and export the aircraft. The executed IDERA must then be submitted to the IAA, along with any required supporting documentation. The IAA will review the submission and, if everything is in order, will register the IDERA. Once registered, the authorised party named in the IDERA will have the exclusive right to deregister and export the aircraft.

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?

Yes, an owner can be strictly liable for any damage or loss caused by the aircraft, even if they are an innocent owner with no operational control. This is stipulated in Section 21(1) of the Air Navigation and Transport Act 1936, which states that aircraft owners are liable, without proof of negligence or intention, for any material damage caused to property or

persons other than those in the aircraft. However, owners can be indemnified against the risks under Section 21 by a third party, as provided for in Section 21(1)(b).

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?

EU Emissions Trading System (EU ETS)

Yes, the EU Emissions Trading System (EU ETS) applies to aircraft and aircraft operators in Ireland. The EU ETS has included aviation activities since 2012, requiring aircraft operators to monitor, report and verify their CO₂ emissions and to surrender allowances against those emissions. The system applies to flights within and between countries in the European Economic Area (EEA), as well as flights departing to Switzerland and the United Kingdom.

ICAO's Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA)

CORSIA also applies to aircraft operators in Ireland. It is a global market-based measure to offset CO₂ emissions from international aviation, aiming to stabilise emissions at 2020 levels. Aircraft operators are required to monitor, report, and verify their CO₂ emissions from international flights and to offset any growth in emissions above 2020 levels.

***In rem* rights and priority**

Charges levied according to the EU ETS or CORSIA do not give rise to *in rem* rights in the relevant aircraft. These charges are considered financial obligations rather than property rights. Therefore, they do not create any liens or encumbrances on the aircraft that would affect the priority of mortgage interests.

Properly registered mortgage interests in aircraft and engines take priority over other claims, except for certain statutory liens and possessory rights that may have precedence under specific circumstances. However, EU ETS and CORSIA charges do not fall into these categories and thus do not affect the priority of registered mortgage interests.

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?

An owner, lessor, or financier of an aircraft could potentially incur liabilities due to non-compliance with local environmental laws and regulations by the operator.

Environmental Liability Directive (ELD) 2008, which implements the ELD, makes operators primarily liable for preventing and remedying environmental damage. However, if the operator fails to comply, the owner, lessor, or financier could be held responsible for remediation costs. The ELD is based on the polluter-pays principle, meaning that those responsible for causing environmental damage must bear the costs of remediation. This principle can extend to owners, lessors, or financiers if they are deemed to have control over the operator's

activities. Environmental authorities may impose statutory liens on the aircraft for unpaid fines or remediation costs, which could affect the owner's or financier's interests.

Mitigation measures

- Conduct thorough due diligence on the operator's compliance with environmental laws and regulations before entering into lease or financing agreements.
- Include indemnity clauses in lease or financing agreements to protect against liabilities arising from the operator's non-compliance.
- Obtain environmental liability insurance to cover potential risks associated with non-compliance.

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?

A petition must be submitted in the Irish High Court (in the event of examinership, the Irish High Court, or in respect of small companies, the Irish Circuit Court) if a corporation is to be placed into an examinership or forced into an obligatory liquidation. It is easy to check if a petition has been filed by conducting a search on the Courts Service website. The only way for a firm to be forced into compulsory liquidation is by an Irish High Court decision.

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?

When determining whether a business is insolvent, Irish courts most frequently use the test of whether the business cannot pay its debts as they fall due.

When a business becomes insolvent, it is not required by law to put itself into liquidation straight away. If a company reaches the "zone of insolvency", which is defined as the point at which the directors reasonably believe the company will not be able to pay its debts, their responsibilities as directors change to include considering the interests of creditors in their decision-making and carefully evaluating whether to start a liquidation process.

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?

Examinership entails the High Court appointing an insolvency practitioner, sometimes temporarily while the petition is being heard. Once chosen by the court, an examiner holds their position until the examinership is over.

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?

In Ireland, if an aircraft lessee is in examinership, a statutory moratorium applies to the lessee's creditors. This moratorium prevents creditors from taking any steps to realise security affecting the company's property without the examiner's consent. Creditors cannot enforce their claims through court proceedings or security enforcement. Proceedings cannot be brought to wind up a protected company and appoint a liquidator. An examiner may dispose of assets subject to fixed or floating charges with the High Court's permission, if it is likely to facilitate the survival of the company as a going concern.

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?

Insolvency proceedings can challenge antecedent transactions under various statutory provisions. Unfair preference can be set aside if the debtor company intended to benefit one creditor over others. This can occur within six months and two years if the beneficiary is a "connected person". If the company's assets were improperly transferred, the High Court can order assets to be returned if it is just and equitable.

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?

Insolvency proceedings can challenge antecedent transactions under various statutory provisions. Unfair preference can be set aside if the debtor company intended to benefit one creditor over others. This can occur within six months and two years if the beneficiary is a "connected person". If the company's assets were improperly transferred, the High Court can order assets to be returned if it is just and equitable.

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

An Irish company's liquidator can apply to the Irish High Court within 12 months of winding up to disclaim an onerous contract imposing future obligations that could be detrimental to its creditors. In an examinership, the company can repudiate certain contracts with performance other than

payment. These contracts may also be affirmed in an examinership, although this has rarely occurred in practice.

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?

Irish law allows certain liens and rights of detention for unpaid debts or charges, which can arise at law, in equity, or under contract or statute. Common law allows third-party liens similar to other jurisdictions, such as a seller's liens and possessory liens. To exercise a lien, the aircraft must remain in the possession of the party who carried out the repairs and improved the aircraft with the owner's knowledge and authorisation.

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?

The IAA can issue directives for aircraft usage or control in emergencies. The Revenue can seize and auction aircraft for outstanding taxes. The Criminal Assets Bureau can confiscate assets suspected of criminal activities under Section 5 of the Criminal Assets Bureau Act 1996. The Irish High Court can issue disposal orders concerning properties deemed proceeds of crime under Section 4 of the Proceeds of Crime Act 1996.

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?

Irish legislation acknowledges specific liens and detention rights for outstanding payments or debts, arising from legal, equitable, contractual, or statutory obligations. Processionary liens allow repairing parties to retain possession until the debt is settled, provided the aircraft was improved with the owner's knowledge and consent. Contractual liens can be established based on agreements, enabling the detention and eventual sale of aircraft.

Under Section 40 of the Air Navigation and Transport (Amendment) Act 1998, Irish airport authorities can detain and auction aircraft with outstanding airport charges, including those of the same defaulting operator.

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 Corporate Sustainability Reporting Directive (CSRD) was transposed into Irish law on 5 July 2024, with regulations coming into effect on 6 July 2024. It imposes mandatory reporting requirements on certain companies and requires disclosures to be made in relation to such companies' impact on the environment and certain governance factors. In December 2025, the European Parliament approved the updated sustainability rules that are part of the Omnibus 1 simplification package. This has resulted in a significant decrease in companies who are within the scope of CSRD. The revised CSRD thresholds require that large companies with more than 1,000 employees and over €450 million euros in net annual turnover must comply with their reporting obligations during the course of 2026.



Claire McDermott is a Partner in the firm's Aviation and Asset Finance team, as well as its Employment team. Claire has worked in the firm for over 15 years and has significant experience within the aviation industry including all aspects of aircraft leasing and financing, acting for lessors, lessees, banks and other financial institutions including export credit agencies. On the employment side, Claire handles both contentious and non-contentious employment matters for employers.

Claire advises companies across the aviation industry in relation to the purchase, finance and leasing of aircraft and engines. She advises on multi-jurisdictional transactions with an Irish element, in particular in relation to the establishment of Irish leasing platforms with a focus on Irish registered security and the Cape Town Convention.

Claire is also a member of the Employment team, and completed the Law Society Diploma in Employment Law in 2015. She advises companies and employers on both contentious and non-contentious employment law matters.

Before joining the firm as a trainee in 2010, Claire worked in the legal department of Coca-Cola's Irish concentrate business. During 2018, Claire undertook a secondment with ORIX Aviation in Dublin to gain a deeper understanding of the priorities for lessors in the aircraft leasing industry.

Claire received the Highly Commended recognition in the Airline Economics 40 Under 40 Class of 2023. Claire also became an Advisory Board Member of The Hague Court of Arbitration for Aviation in January 2025.

Her recent work includes:

- Advising Aergo Capital on its acquisition of Seraph Aviation Management Limited.
- Preparing and negotiating a management agreement for a new Gulf Stream G650.
- Advising Atlantic Aviation Group on its acquisition of Lufthansa Technik Shannon.
- Acting for a regional lessor and its financiers on a new revolving warehouse finance facility of US\$ 400 million.

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Flynn O'Driscoll LLP was established over 20 years ago and is now one of Ireland's leading corporate law firms. With offices in Dublin, Galway and Shannon, the firm operates across the full range of commercial legal services. We are trusted legal advisers to a broad client base including public sector bodies, multinational companies, and owner-managed businesses operating in Ireland and internationally.

Flynn O'Driscoll is a full-service commercial law firm offering expertise across a range of legal services including Aviation & Asset Finance, Banking & Finance, Corporate & Commercial, Data Privacy & Intellectual Property, Employment, Litigation & Dispute Resolution, Media & Entertainment, Restructuring and Insolvency and Real Estate.

Since its founding in 2002, Flynn O'Driscoll has grown from Patrick G. Flynn Solicitors into a leading full-service law firm. Each merger reflects our commitment to expanding our service offerings for our diverse client base. The firm has consistently expanded its practice through strategic

mergers, including Cunningham McCormack in 2010 to build out its litigation and property offering, Trade Secrets in 2014 to incorporate its IP and Data Privacy expertise, Fanning & Kelly in 2019 to enhance its Media & Entertainment capabilities, and the 2020 merger of the commercial litigation practice of O'Callaghan Legal. The latest merger with Vincent & Beatty is the next step in Flynn O'Driscoll's ambitious growth strategy.

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- Aircraft/Engine Technology