

AVIATION FINANCE & LEASING

Spain



Aviation Finance & Leasing

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Quick reference guide enabling side-by-side comparison of local insights, including into applicable treaties, domestic legislation and restrictions on governing law; title transfer; registration of aircraft ownership and lease interests; security; enforcement; taxes and payment restrictions; insurance and reinsurance; and recent trends.

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Table of contents

OVERVIEW

Conventions

Domestic legislation

Governing law

TITLE TRANSFER

Transfer of aircraft

Transfer document requirements

REGISTRATION OF AIRCRAFT OWNERSHIP AND LEASE INTERESTS

Aircraft registry

Registrability of ownership of aircraft and lease interests

Registration of ownership interests

Title and third parties

Registration of lease interests

Certificate of registration

Deregistration and export

Powers of attorney

Cape Town Convention and IDERA

SECURITY

Security document (mortgage) form and content

Security documentary requirements and costs

Security registration requirements

Registration of security

Effect of registration of a security interest

Security structure and alteration

Security over spare engines

ENFORCEMENT MEASURES

Repossession following lease termination

Enforcement of security

Priority liens and rights

Enforcement of foreign judgments and arbitral awards

TAXES AND PAYMENT RESTRICTIONS

Taxes

Exchange control

Default interest

Customs, import and export

INSURANCE AND REINSURANCE

Captive insurance

Cut-through clauses

Reinsurance

Liability

Strict liability

Third-party liability insurance

UPDATE AND TRENDS

Key developments of the past year

Contributors

Spain



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OVERVIEW

Conventions

To which major air law treaties is your state a party?

Spain is a party to the following air law treaties (all of them in effect, among others):

- the Warsaw Convention 1929 (as subsequently amended by the Montreal and the Hague Protocols);
- the Rome Convention 1933;
- the Chicago Convention 1944;
- the Rome Convention 1952;
- the Hague Convention 1970;
- the Montreal Convention 1971;
- the Montreal Convention 1999; and
- the Cape Town Convention 2001.

Law stated - 21 February 2022

Domestic legislation

What is the principal domestic legislation applicable to aviation finance and leasing?

The main Spanish domestic provisions applicable to aviation finance and leasing are:

- the 1954 Act on Pledges over Movable Assets and Mortgage without Displacement;
- the 1960 Air Navigation Act;
- Act 28/1988 on Instalment Sales of Movable Assets;
- the Air Safety Act 21/2003; and
- Royal Decree 384/2015 on regulations for the granting of registration marks for civil aircraft.

Law stated - 21 February 2022

Governing law

Are there any restrictions on choice-of-law clauses in contracts to the transfer of interests in or creation of security over aircraft? If parties are not free to specify the applicable law, is the law of the place where the aircraft is located or where it is registered the relevant applicable law?

As a general rule, the choice of foreign law to govern an agreement will be upheld as a valid choice of law by the Spanish courts pursuant to the terms of Regulation (EC) No. 593/2008 of 17 June 2008, on the Law Applicable to Contractual Obligations (the Rome I Regulation). This regulation produces an erga omnes effect under Spanish law; that is to say, Spanish courts will apply the law designated pursuant to the Rome I Regulation even if it is from a non-EU state.

However, in accordance with the provisions of the Rome I Regulation, Spanish law follows the principle of *lex rei sitae* (ie, place of location of an asset) to determine which law is applicable to securities and guarantees created over

assets, such as mortgages and pledges. Thus, if the security relates to assets or rights located in Spain at the time of creating the assignment, Spanish material legal provisions on pledges over assets or mortgages would become applicable. Article 10.2 of the Spanish Civil Code states that mortgages over aircraft are governed by the law of the country of their registration. A non-Spanish law mortgage created over an aircraft while an aircraft is registered in the Spanish Aircraft Matriculation Registry would thus not be considered a valid mortgage by the Spanish courts.

Law stated - 21 February 2022

TITLE TRANSFER

Transfer of aircraft

How is title in an aircraft transferred?

As a general rule, for ownership over an asset to be transferred Spanish law requires the existence of a valid title (ie, a legal institution that entails a transfer of ownership, such as a purchase and sale agreement) and a certain activity that indicates such a transfer (eg, actual delivery of the asset to the buyer). In aircraft sale transactions, a bill of sale is generally accepted as a document that evidences transfer of title. The Spanish authorities recognise bills of sale as valid documents when non-Spanish-registered aircraft are transferred. However, if the aircraft is registered with the Spanish Movable Assets Registry (which is a requirement for aircraft bearing Spanish registration marks as of 2016), any such transfer of title will have to be executed as an aircraft sale and purchase agreement before a notary public for it to be registered at that registry.

Law stated - 21 February 2022

Transfer document requirements

What are the formalities for creating an enforceable transfer document for an aircraft?

Although Spanish law is based on the principle of freedom of form, in aircraft finance transactions, it is standard to use the written form. The written form is mandatory when Spanish rights in rem or where international interests under the Cape Town Convention 2001 are intended to be created. Additionally, all documents that have to be recorded at the provincial movable assets registry or at the Aircraft Matriculation Registry (essentially, bills of sale, aircraft lease agreements, acceptance certificates, novation agreements, effective time notices, termination agreements and security agreements) must be translated into Spanish by an officially admitted translator. Spanish law accepts the validity of foreign language documents, but for recordation purposes and to make documents executed in a foreign language admissible evidence before Spanish courts, translations into Spanish are required.

The signatures of the parties' representatives on the above documents will have to be legalised by a notary public. If such notarisation is not made by a Spanish notary, then the foreign notarisation will have to be legalised with the apostille of the Hague Convention 1961 (or by diplomatic means if the country in question is not a party to that convention).

Under certain circumstances, the transfers of title and the creation of Spanish securities must be executed as notarial public deeds (rather than simple legalisation of the parties' signatures), which requires some additional formalities.

All recordable documents must be submitted to the Spanish tax authorities for stamping, even if the transaction is tax exempt.

Law stated - 21 February 2022

REGISTRATION OF AIRCRAFT OWNERSHIP AND LEASE INTERESTS

Aircraft registry

Identify and describe the aircraft registry.

In Spain, there is a dual registration system. Its main features can be summarised as follows.

Aircraft Matriculation Registry

First, there is an aircraft registry: the Aircraft Matriculation Registry (RMA). The RMA falls under the jurisdiction of the Spanish State Agency for Air Safety (AESA), a body of the Ministry of Development.

The RMA is an administrative registry of aircraft, but not a registry of title or ownership of aircraft. It is operator-based. The main effect of registration is that an aircraft is provided with a Spanish registration number (beginning with the letters 'EC', followed by a hyphen and a combination of three letters more; EC-XXX) and thus becomes a Spanish aircraft.

Central Movable Assets Registry

Second, there is the Central Movable Assets Registry (RBM), under the jurisdiction of the Directorate General of Registries and Notaries, which is a body of the Ministry of Justice.

The RBM is a register of title, ownership and encumbrances over movable assets, including aircraft. The main effect of registration is that evidence is provided in respect of the status of ownership and liens over assets.

Historically, the 1960 Air Navigation Act established that only Spanish individuals or companies were allowed to register their ownership title over aircraft. Since Spain's entry into the European Economic Community in 1986, this provision began to be interpreted so as to include EU citizens. However, this has not yet been expressly stated in any legal provision relating to the RBM. Article 185 of the 1956 Commercial Registry Regulations (which is still in force pursuant to the 13th Additional Provision of Royal Decree No. 1784/1996) merely states that foreign legal entities may record their ownership title over aircraft at the Commercial Registry subject to international treaties, the principle of reciprocity and legal provisions. For these purposes, the Commercial Registry has now been replaced by the RBM.

To date, no express legal provision, reciprocity plan or international treaty has been enacted or published whereby foreign owners would be allowed to register their ownership title in aircraft at the RBM. Nevertheless, Royal Decree 384/2015, which contains the RMA Regulations, is being interpreted in practice so as to allow (and actually oblige) non-Spanish aircraft owners (including non-EU citizens) to register their ownership title in all aircraft that are to bear Spanish registration marks. While this seems to be a commonly accepted practice, some legal authors question this interpretation of the law and consider that such recordation of aircraft transactions at the RBM is not mandatory.

Provincial movable assets registries

The RMA and the RBM are registries to reflect the status of ownership, charges, liens, leases, etc, of aircraft, but do not record transactions relating to aircraft engines. However, each Spanish province (52 in total) has its own provincial movable assets registry. These registries are in charge of recording financial transactions and security interests over movable assets, typically automobiles, motorbikes, industrial machinery, etc. On some rare occasions, financiers of aircraft engines have requested title and securities over engines to be recorded at the provincial registry. This is associated with an additional layer of formalities and costs, and, in light of the entry into force of the Cape Town

Convention 2001 for Spain, it will become an even more unusual request.

Law stated - 21 February 2022

Registrability of ownership of aircraft and lease interests

Can an ownership or lease interest in, or lease agreement over, aircraft be registered with the aircraft registry? Are there limitations on who can be recorded as owner? Can an ownership interest be registered with any other registry? Can owners', operators' and lessees' interests in aircraft engines be registered?

Ownership and lease interests over Spanish-registered aircraft can and must be registered at the RBM and at the RMA. To the extent that interests in aircraft engines are intended to be recorded, the provincial movable assets registries will have to be addressed. However, the recordation of ownership interests is associated with additional formalities and costs, which are generally resisted by Spanish aircraft operators. There are no legal restrictions as to who can be recorded as owner, but adequate evidence of the parties' existence must be submitted (legalised extracts of the applicable companies or commercial registries, authorities of the signatories, etc).

Law stated - 21 February 2022

Registration of ownership interests

Summarise the process to register an ownership interest.

The following steps should be taken by the parties to record ownership interests over aircraft in Spain:

- obtaining the import licence and complying with all customs formalities, when applicable;
- filing the appropriate documents (essentially Form No. 600) to obtain the applicable tax exemptions (if any) in connection with the import of the aircraft;
- filing with the RMA of copies of the transaction documents (eg, bill of sale, purchase and sale contract, lease agreement, certificate of acceptance, certificate of insurance, etc) to obtain the provisional registration marks of the aircraft – this is usually achieved simultaneously with the closing of the transaction and the provisional registration marks are valid for 90 days, but can be extended for an additional period of 45 days; and
- filing of the complete set of transaction documents with the RBM, duly legalised by a notary public (and apostilled if the notary is not Spanish) and officially translated into Spanish.

The documents evidencing the title transfer (eg, the bill of sale) must be executed as a notarial public deed (either as an escritura pública or as a póliza notarial) . To the extent that this cannot be achieved by the closing date (often owing to the issues arising from the parties being in different time zones), it can be done within 24–48 hours of closing.

The RBM reviews the transaction documents and, if it finds them to be in order, records them. This process usually takes approximately two weeks from the filing date. If the RBM considers that there are issues that the parties have to correct, then the time frame is, of course, longer.

Upon receipt of confirmation from the RBM that it has recorded the transaction documents, they have to be submitted again to the RMA to obtain the definitive registration marks for the aircraft (not later than 90 days from receiving the provisional registration number, although this period of time can be extended upon request for another 45 days).

Law stated - 21 February 2022

Title and third parties

What is the effect of registration of an ownership interest as to proof of title and third parties?

The RMA is merely an administrative registry of aircraft, but not a registry of title or ownership of aircraft. As the RMA is not a title registry, registration at the RMA does not provide, per se, any priority rights. However, Spanish courts would accept the information and statements of the RMA as prima facie evidence.

This role is reserved for the RBM, which is a register of title, ownership and encumbrances over movable assets, including aircraft. The main effect of registration at the RBM is that evidence and priority are provided in respect of the status of ownership and liens over assets. Third parties can therefore rely on the information provided by the RBM and parties who acquire an asset from the registered owner are protected even if the owner has no or defective title, unless it can be shown that the buyer was aware of the lack of title.

Law stated - 21 February 2022

Registration of lease interests

Summarise the process to register a lease interest.

The process to register lease interests is very similar to the one for the registration of ownership interests. The main difference is that the transaction documents (lease agreement, certificate of acceptance, etc) do not need to be executed as a notarial public deed and only the parties' signatures have to be legalised by a notary public.

Law stated - 21 February 2022

Certificate of registration

What is the regime for certification of registered aviation interests in your jurisdiction?

Two situations should be distinguished.

- The certificate of registration issued by the RMA in accordance with the Chicago Convention 1944 merely confirms that an aircraft has been registered at the Spanish Civil Aircraft Register. It is issued to the operator or lessee of the aircraft and does not include any reference to other interests.
- The parties can ask the RBM and the RMA to issue certificates of any interests recorded in these registries. Such certificates will then provide information about any registered owners, mortgagees, charges, etc.

Law stated - 21 February 2022

Deregistration and export

Is an owner or mortgagee required to consent to any deregistration or export of the aircraft? Must the aviation authority give notice? Can the operator block any proposed deregistration or export by an owner or mortgagee?

As a general rule, deregistration is requested by the Spanish operator of the aircraft, because this is the only person authorised to act before the Spanish authorities (AESA, General Directorate of Civil Aviation, RMA, RBM). This is also

the case in the event of hostile repossessions because owners, mortgagees or lessors are acting on behalf of the Spanish operator using the relevant deregistration power of attorney or an irrevocable deregistration and export request authorisation (IDERA). There is no specific time limit for an application to be made but, for as long as an aircraft remains on the Spanish RMA, it may not be registered at a different registry. It can thus be inferred that the consent of the Spanish operator is required in any event, whether actively or at least passively (ie, by not actively opposing the owner's deregistration activities).

The steps to be taken depend on whether the operator cooperates with the owner or lessor in the deregistration process or not. Generally, the following must be executed and filed with the RMA and the RBM:

- the execution of a power of attorney to act on behalf of the owner or lessor during the deregistration formalities;
- the termination agreement, signed by the operator and the owner or lessor and with the representatives' signatures legalised by a notary public and apostilled (if needed);
- the Spanish translation of the termination agreement if it is executed in a language other than Spanish;
- the filing of forms with the RMA asking for deregistration of the aircraft;
- the payment of the RMA's deregistration fees;
- the filing of export documents (mainly single customs declaration or Intrastat) and securing of the relevant export permits; and
- the securing of an export certificate of airworthiness.

If the aircraft is recorded at the RBM, then an additional deregistration procedure will have to be followed there. In addition to filing the relevant termination agreement, the RBM will request an original certificate issued by the RMA stating that it has deregistered the aircraft.

Law stated - 21 February 2022

Powers of attorney

What are the principal characteristics of deregistration and export powers of attorney?

Before the Cape Town Convention 2001 entered into force for Spain in 2016, deregistration powers of attorney sometimes proved to be helpful tools when deregistering aircraft from the RMA in situations where Spanish operators were not cooperative. However, this only happened in some extreme cases, because the Spanish aviation authorities generally preferred not to accept deregistration powers of attorney and asked the parties to obtain court orders instead. One of the main reasons was the question of irrevocability: some legal authors and case law suggest that powers of attorney are capable of revocation under Spanish law (notwithstanding any provision to the contrary in any such power of attorney) if a Spanish company is the grantor of such power of attorney and either expressly revokes the power of attorney or is subject to insolvency. In practice, since the entry into force of the Cape Town Convention 2001, most Spanish airlines are reluctant to grant a deregistration power of attorney if they are also asked to provide an IDERA.

Law stated - 21 February 2022

Cape Town Convention and IDERA

If the Cape Town Convention is in effect in the jurisdiction, describe any notable features of the irrevocable deregistration and export request authorisation (IDERA) process.

In principle, the self-help remedies contemplated in the Cape Town Convention 2001 are not applicable in Spain,

because Spain made an express declaration under article 54(2) in this respect. However, when ratifying the Aircraft Protocol, Spain declared that it would apply article XIII of the Aircraft Protocol so that IDERAs are admissible. The following must be taken into account.

The Resolution of the Directorate General of Registries and Notaries dated 29 February 2016 approved an official form of IDERA in Spanish, which follows the model provided by the Aircraft Protocol. Only this form can be recorded and will be acknowledged by the Spanish authorities. No specific form has been approved for certified designee letters.

IDERAs must be filed with the RMA for recordation. The original document is required for this purpose. However, this process can be delayed because the RMA will only register an IDERA if it has obtained clearance from the RBM that all other transaction documents are acceptable. This process can take up to 12 weeks from closing. The RMA has now allowed for an electronic filing of IDERAs, which speeds up the registration process.

Since the date of entry into force of the Aviation Protocol in 2016, there has been little practical experience with the use of IDERAs. However, aircraft lessors successfully deregistered Spanish aircraft using an IDERA on at least two occasions in 2020. Although no written procedure has been established that would govern the steps to be taken, in these two cases the RMA was cooperative in shortening the time periods for such deregistration.

Law stated - 21 February 2022

SECURITY

Security document (mortgage) form and content

What is the typical form of a security document over the aircraft and what must it contain?

When setting up Spanish law mortgages over aircraft, the following must be taken into account.

Under Spanish law, securities ought to secure a specific debt of a certain amount that has to be clearly stated in the deed of execution of the security (principle of determination). It is nevertheless possible to set up a charge to secure credit or overdraft facilities, in which the exact amount owed by the debtor will only be known at the time the debt becomes due (eg, the elapsing of the agreed period, in the event of default, etc). Even the rate of interest might be a floating one. However, to comply with the principle of determination, the deed of mortgage must state at least the maximum principal amount for which the charged asset is answerable and the maximum rate of interest.

Securities must be placed on specific assets that may be clearly identified (principle of speciality). Aircraft must be identified by make, model, serial number and Spanish registration number. As a consequence of the principle of speciality, floating charges are not admitted under Spanish law.

Unless otherwise agreed between the parties, the mortgage secures, in addition to the principal amount, interest of the last two years. The mortgage includes any indemnity that may correspond to the mortgagor by virtue of the charged asset.

Law stated - 21 February 2022

Security documentary requirements and costs

What are the documentary formalities for creation of an enforceable security over an aircraft?

What are the documentary costs?

Given the formalities and costs involved in setting up a Spanish law aircraft mortgage, these are created only occasionally.

The mortgage over movable assets has to be set up in a public deed executed before a notary public, which has to

include certain essential information (parties, detailed description of the charged assets, title of the mortgagor, secured amount, valuation of the assets, etc). This document must be executed in Spanish, although there is no obstacle in attaching an English translation. The mortgage must be recorded at the Central Movable Assets Registry (RBM).

Mortgages are subject to stamp duty tax at a rate that varies between 1 per cent and 1.5 per cent on the value of the charged asset.

Further, the fees of the notary public and of the RBM should also be taken into account, as they also depend on the value of the charged asset.

Finally, when there is an international element to the transaction, often translation costs are to be paid.

Law stated - 21 February 2022

Security registration requirements

Must the security document be filed with the aviation authority or any other registry as a condition to its effective creation or perfection against the debtor and third parties? Summarise the process to register a mortgage interest.

Aircraft mortgages must be recorded at the RBM to gain the effectiveness and benefit of the advantages afforded by law. While a non-registered mortgage would still be valid among the parties, it would not be opposable as against third parties.

Once a mortgage has been recorded at the RBM, it must also be entered into the Aircraft Matriculation Registry (RMA).

The registration process is very similar to that of registering ownership interests.

Law stated - 21 February 2022

Registration of security

How is registration of a security interest certified?

Once the notarial deed of mortgage has been recorded at the RBM, the original is returned to the filing party, with a seal from the RBM that certifies that it has been properly registered. However, such stamping does not provide information about the rank or priority of the security.

Any interested party can ask the RBM and the RMA to issue certificates of any interests recorded in these registries, including mortgages. Such certificates will then provide information about any registered owners, mortgagees, charges, rank priority, etc.

Law stated - 21 February 2022

Effect of registration of a security interest

What is the effect of registration as to third parties?

Registration of a security confers a priority over non-registered third-party interests (with some exceptions provided for in law, such as employees' liens and the like). The Spanish registry system protects third parties who act in good faith based on the information provided by the RBM.

Law stated - 21 February 2022

Security structure and alteration

How is security over aircraft and leases typically structured? What are the consequences of changes to the security or its beneficiaries?

Owing to the formalities and costs involved, aircraft finance transactions are generally structured outside Spain and the creation of Spanish security interests is rare. This applies not just to rights in rem such as aircraft mortgages, but also to rights in personam such as personal guarantees although, in this latter case, Spanish law guarantees are often set up to facilitate enforcement.

In connection with these transactions, foreign trusts are often used. The concept of trust is alien to Spanish law, and Spain is not a party to the Hague Convention of 1 July 1985 on the Law Applicable to Trusts and on their Recognition. However, Spanish courts have recognised the existence and validity of trusts set up under foreign laws on a case-by-case basis. In these situations, one of the most important issues has usually been to adequately prove the contents of the applicable legal provisions of foreign law.

Usually, it is only possible to register the rights of the security trustee and not those of the beneficiaries. Changes of beneficiaries (eg, new lenders) or in the underlying loan agreements are therefore not reflected in Spain. However, where such changes affect essential terms of the Spanish operator's title (eg, change of lessor, term and rent), then the consent of the Spanish operator is needed, and the transaction should be recorded at the RBM and the RMA.

Law stated - 21 February 2022

Security over spare engines

What form does security over spare engines typically take and how does it operate?

Spare engines can be subject to a right in rem under the form of a pledge without displacement. In principle, an aircraft mortgage automatically covers the engines attached to the airframe. Thus, if the parties wish to set up a separate security over an engine, this must be expressly created as a pledge without displacement.

Law stated - 21 February 2022

ENFORCEMENT MEASURES

Repossession following lease termination

Outline the basic repossession procedures following lease termination. How may the lessee lawfully impede the owner's rights to exercise default remedies?

As a general rule, self-help is not allowed under Spanish law and is, in fact, considered to be against Spanish public order. Therefore, if the Spanish operator refuses to cooperate during the termination, deregistration or repossession process, a lessor or owner would have to seek court assistance to enforce its rights. The specific procedure to be followed will depend on the type of remedy that the lessor is seeking. Only where self-help is expressly permitted by Spanish law or under international treaties can such remedies be used. When ratifying the Cape Town Convention 2001, Spain expressly declared that all remedies contemplated under the convention would require leave of court, with the exception of irrevocable deregistration and export request authorisations (IDERAs).

Since the date of entry into force of the Aviation Protocol in 2016, there has been little practical experience with the use of IDERAs. However, aircraft lessors successfully deregistered Spanish aircraft using an IDERA on at least two occasions in 2020. Although no written procedure has been established that would govern the steps to be taken, in

these two cases, the Aircraft Matriculation Registry (RMA) was cooperative in shortening the time periods for such deregistration.

Law stated - 21 February 2022

Enforcement of security

Outline the basic measures to enforce a security interest. How may the owner lawfully impede the mortgagee's right to enforce?

In general terms, security interests can only be enforced by following the appropriate enforcement procedures in court. If no security interest is available, a lessor or owner may seek an interim measure consisting of the freezing of any of the debtor's assets, including grounding the aircraft. Leaving aside costs and expenses that may arise from the technical aspects of repossessing an aircraft (review of return conditions, payment of outstanding repairer's invoices, etc), the costs usually associated with a deregistration process are the following:

- lawyers' fees;
- fees of the RMA and the Central Movable Assets Registry;
- translation costs of any documents that are not in the Spanish language; and
- fees of a customs agency to fill in the relevant export document where the aircraft is to be exported outside Spain (single customs declaration or Instrastat, depending on whether the aircraft is sent outside or inside the European Union).

Although not mandatory in principle, lessors are often asked to pay any outstanding airport charges before the airport authorities provide full cooperation.

In practice, the difficulty most often encountered is that of timing. In situations where the lessee does not provide the cooperation needed, the administrative procedure to deregister an aircraft can take between four and 12 weeks. Otherwise, a period of one to two weeks should be allowed.

Law stated - 21 February 2022

Priority liens and rights

Which liens and rights will have priority over aircraft ownership or an aircraft security interest? If an aircraft can be taken, seized or detained, is any form of compensation available to an owner or mortgagee?

In addition to secured debts ranking ahead of unsecured debts in an insolvency of the Spanish operator, article 133 of the 1960 Air Navigation Act states that the following debts shall qualify as preferred debts over the aircraft or over the amount of all compensation paid by the insurance company:

- all taxes due over the previous and current year (we understand these are limited to taxes over the aircraft, not the air carrier itself) – Spanish air navigation charges, airport charges and Eurocontrol charges may be included in this category;
- all salaries due to the crew over the last month;
- all premiums due to insurance companies over the last two years;
- all compensations established by the 1960 Air Navigation Act as damages for injury to person or property caused by the aircraft; and

- all costs and expenses incurred in giving assistance to, or rescuing, the aircraft.

The terms of article 133 of the 1960 Air Navigation Act are far from being clear and should be read in conjunction with the declarations to article 39(1) of the Cape Town Convention 2001 made by Spain. In the absence of specific Supreme Court precedents, it is possible to argue that the described debts follow the relevant aircraft. In accordance with this argument, if any of such debts are not paid by the air carrier and the air carrier subsequently becomes insolvent, then the relevant creditors as holders of a sort of right in rem over the aircraft may require payment from the entity that takes possession of the aircraft (eg, the owner).

Furthermore, the preferential debts set out in article 133 of the 1960 Air Navigation Act must be interpreted in accordance with the order of preference set out in articles 270 to 284 (formerly, articles 89 to 93) of the Insolvency Act. These provisions establish criteria for creditors' preferences in Spain in the event of bankruptcy. In this respect, credits for pending interest amounts (including interest for delayed payment) are considered as subordinated credits, with the exception of interest amounts secured with real securities (rights in rem).

Finally, aircraft can be detained and forfeited pursuant to court or administrative proceedings in any of the circumstances set out in the 1954 Expropriation Act and any orders or regulations issued pursuant thereto, other than those set out in the 1954 Expropriation Act, the 1981 Organic Act on State of Alarm, Emergency and Siege, and in related Spanish legislation.

Law stated - 21 February 2022

Enforcement of foreign judgments and arbitral awards

How are judgments of foreign courts enforced? Is your jurisdiction party to the 1958 New York Convention?

Spain regularly recognises and enforces foreign judgments and arbitral awards.

As a member of the European Union, judgments in civil and commercial matters given in the courts of another EU member state are generally enforceable in the courts of Spain without retrial or re-examination of the merits of the case subject to the requirements and restrictions of Regulation (EU) No. 1215/2012 of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (as amended).

Judgments given in the courts of states with whom Spain has a multilateral or bilateral treaty dealing with the mutual recognition and enforcement are recognised and enforced in Spain, subject to the requirements and restrictions of such treaties. Owing to the decision of the United Kingdom to exit the European Union, judicial decisions given in the United Kingdom are treated as non-EU judgments. Some such judgments may benefit from the provisions of the Hague Convention on Choice of Court Agreements 2005 but, in general terms, these judgments do not enjoy the benefits afforded by the European regime in this respect.

Judgments given in the courts of states with whom Spain does not have a multilateral or bilateral treaty that would contemplate a regime for recognition and enforcement are, in general, also recognised and enforced in Spain, subject to the requirements and restrictions of the Spanish Civil Proceedings Act 2000 and the International Legal Cooperation Act 2015. These Spanish legal provisions and their interpretation by the Spanish Supreme Court:

- include a negative reciprocity requirement (ie, the Spanish government can decide not to grant such recognition if a certain state does not recognise Spanish judgments) but this decision requires express legislation to be passed and, so far, no country has been excluded;
- allow the rejection of the recognition and enforcement of a foreign judgment if the contacts with the court of origin to the case submitted to such a court were not sufficient and this test is normally satisfied when the

foreign court of origin is the court to which the parties to a contract have voluntarily submitted;

- allow the rejection of the recognition and enforcement of a foreign judgment contrary to forum public policy (public order) and, in that regard, damages granted by the court of origin when considered excessive from the point of view of Spanish law may be grounds for non-recognition or non-enforcement;
- allow the rejection of the recognition and enforcement of a foreign judgment contrary to the due process clause of the Spanish law and service of process in a manner not provided for in an applicable international treaty or with insufficient time to defend the claim may be grounds for non-recognition or non-enforcement; and
- allow the rejection of the recognition and enforcement of a foreign judgment if it is not contained in a solemn public document known as a writ of execution or the subject matter of the judgment is included in the matters over which Spanish courts have exclusive jurisdiction.

Spain is a state party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958, which in Spain has an erga omnes effect.

Law stated - 21 February 2022

TAXES AND PAYMENT RESTRICTIONS

Taxes

What taxes may apply to aviation-related lease payments, loan repayments and transfers of aircraft? How may tax liability be lawfully minimised?

Although the tax aspects of aircraft finance transactions must be analysed on a case-by-case basis, in general terms, lease payments, loan repayments and transfers of aircraft are tax exempt when they relate to aircraft that are chiefly operated for international commercial flights. However, despite being tax exempt, the parties are still obliged to submit certain tax filings with the Spanish tax authorities before such transactions can be recorded. Furthermore, particular attention should be paid when an aircraft is transferred while being in Spanish territory because value added tax at a rate of 21 per cent could be triggered under certain circumstances.

Law stated - 21 February 2022

Exchange control

Are there any restrictions on international payments and exchange controls in effect in your jurisdiction?

Subject to applicable sanctions dictated by the Spanish authorities, the European Union or the United Nations, there are no particular restrictions on international payments in Spain. Spanish exchange control provisions merely mandate that certain formal requirements are complied with by the payor when making payments abroad. Normally, payments are made through financial entities. As in other EU member states, prior information or authorisation requirements are in place when payment is to be made in cash or similar payment instruments.

Law stated - 21 February 2022

Default interest

Are there any limitations on the amount of default interest that can be charged on lease or loan payments?

Default interest rates are subject to the limitations imposed by the Act of 25 July 1908 on the Repression of Usury . According to this act, interest must not be notably higher than the rate of interest that is generally charged. The courts have interpreted this general provision in different ways, depending on the social and economic situation, on the type of financial product involved, on whether consumers are involved or not, etc.

Law stated - 21 February 2022

Customs, import and export

Are there any costs to bring the aircraft into the jurisdiction or take it out of the jurisdiction? Does the liability attach to the owner or mortgagee?

The customs requirements applicable to the import and export of aircraft depend, in general terms, on their origin. Where an aircraft is imported from or exported to a non-EU country, a single customs declaration must be completed and filed with the customs authorities. If the transaction is made with an EU country, then a simple Intrastat filing is enough. The responsibility of filing such documents lies with the person importing or exporting the aircraft. While this is generally the airline, in some circumstances it has to be undertaken by the lessor or owner.

Law stated - 21 February 2022

INSURANCE AND REINSURANCE

Captive insurance

Summarise any captive insurance regime in your jurisdiction as applicable to aviation.

Insurance and reinsurance activities can be carried out in Spain by Spanish entities and also by EU insurance companies, subject to the provisions of Directive 2009/138/EC (as amended) and its Spanish implementing legislation (basically, Act 20/2015).

Law stated - 21 February 2022

Cut-through clauses

Are cut-through clauses under the insurance and reinsurance documentation legally effective?

Article 78 of Act 50/1980 on Insurance Contracts states that an insured party cannot claim directly from the reinsurer any compensation or require any other duty to be performed by the reinsurer. Thus, in principle, cut-through clauses are not directly enforceable in Spain if the relevant insurance contracts are subject to Spanish law. However, article 107 of the same act expressly allows the submission to foreign laws for aircraft insurance. Therefore, the validity of the cut-through clause will depend on the choice-of-law clause in the lessee's insurance contracts. Nevertheless, some legal scholars still consider that this type of clause is not enforceable in Spain based on a literal interpretation of the said provision.

Law stated - 21 February 2022

Reinsurance

Are assignments of reinsurance (by domestic or captive insurers) legally effective? Are assignments of reinsurance typically provided on aviation leasing and finance transactions?

Assignments of insurance are typical in aviation finance and leasing transactions. In general terms, all assignments of rights must be notified to the underlying debtor (ie, the insurance company). If notice is not given, payment by the underlying debtor to the assignor instead of the assignee will cause the underlying debtor to be fully and validly released from the relevant payment obligation. To the extent that assignments of insurance are intended to act as security for the transaction, they would be considered as a pledge of assets. Pursuant to the Civil Code, pledges over assets must be executed as a notarial public deed. Failure to do so entails that, while the assignment remains valid as between the parties, it will not be opposable as against third parties and will not be considered to be an executive title for the purposes of the executive proceedings regulated by the 2000 Civil Proceedings Act.

Law stated - 21 February 2022

Liability

Can an owner, lessor or financier be liable for the operation of the aircraft or the activities of the operator?

The potential liability of an owner, lessor or financier for the operation of a Spanish registered aircraft or the activities of a Spanish operator depends on the activities actually undertaken by the owner, lessor or financier. The entering into and execution of financial transactions does not create, per se, any liability, but if it can be proven that the owner, lessor or financier has influenced or directed the activities of the aircraft or the operator, liability may arise.

Law stated - 21 February 2022

Strict liability

Does the jurisdiction adopt a regime of strict liability for owners, lessors, financiers or others with no operational interest in the aircraft?

The general liability regime in Spain is that of fault. Any strict liability regime can only be imposed if it is expressly contemplated under any applicable laws, such as those relating to the operation of aircraft. In general terms, however, such strict liability only affects the operator of the aircraft and not the owner, provided that the owner has had no intervention at all.

Law stated - 21 February 2022

Third-party liability insurance

Are there minimum requirements for the amount of third-party liability cover that must be in place?

As a member of the European Union, the general requirements of third-party liability coverage foreseen under EU law apply in Spain as well (essentially, those contemplated under Regulation (EC) No. 785/2006, as amended).

Law stated - 21 February 2022

UPDATE AND TRENDS

Key developments of the past year

What were the key cases, decisions, judgments and policy and legislative developments of the past year?

The year 2021 continued to be affected by the covid-19 pandemic, which impaired air travel and thus adversely affected Spanish operators. The merger between Iberia and Air Europa, announced in late 2019, was first renegotiated and then cancelled towards the end of 2021, largely due to the pandemic. As in other countries, the Spanish government has injected emergency funds into most Spanish airlines. As at February 2022, it is difficult to make a prognosis for the rest of the year, but there seems to be a certain consensus that short-haul flights will almost reach pre-pandemic levels in the summer of 2022. Long-haul flights, on the other hand, are still highly dependent on the sanitary controls imposed by individual countries to grant access to citizens of third countries. While such controls are gradually being lessened, they are still highly dependent on how the pandemic will evolve.

In terms of future legal policies, it can be expected that, in the next 12 months, legislation will be passed to improve the Spanish State Agency for Air Safety's position as an arbitration tribunal in disputes between airlines and passengers relating to flight cancellations and delays under Regulation 261. Additionally, Spanish insolvency legislation is presently under review and some voices advocate for an adaptation of its provisions to the terms of the Cape Town Convention 2001.

Law stated - 21 February 2022

Jurisdictions

	Austria	Benn-Ibler Rechtsanwälte GmbH
	Belgium	Kennedys Law LLP
	Brazil	Basch & Rameh Advogados Associados
	British Virgin Islands	Conyers
	Canada	YYZlaw
	Egypt	Shahid Law Firm
	Germany	Freshfields Bruckhaus Deringer
	India	Sarin & Co
	Indonesia	Nurjadin Sumono Mulyadi & Partners
	Israel	Gottlieb, Gera & Co
	Italy	Pierallini Studio Legale
	Japan	Nishimura & Asahi
	Latvia	SUCCESS410.COM Specialized Advisory Services
	Lithuania	Šulija Partners (Lithuania)
	Malta	Dingli & Dingli Law Firm
	Netherlands	Stek
	Nigeria	Streamsowers & Köhn
	Panama	Patton Moreno & Asvat
	Portugal	Cuatrecasas
	Singapore	RHTLaw Asia LLP
	Spain	Augusta Abogados
	Sweden	Vinge
	Switzerland	Meyer Legal
	Turkey	Dikici Law Office
	Ukraine	Vasil Kisil & Partners



United Kingdom - England & Wales

Clyde & Co LLP



USA

Milbank LLP