

**International
Comparative
Legal Guides**



Aviation Finance & Leasing

2024

Fifth Edition

Contributing Editor:
Philip Perrotta
K&L Gates LLP

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1 General and Contractual

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

Spain is not a jurisdiction where a significant number of aircraft finance transactions are set up. Mostly, these financing structures are devised and organised in accordance with the laws of foreign jurisdictions, such as New York or England. However, on a limited number of occasions, Spanish airlines have managed to finance their aircraft through domestic structures, such as the “Spanish Operating Lease”, or “SOL”. This structure has, however, not been used in recent times.

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

In general terms, the main advantages of finance structures are related to tax aspects and to legal certainty. From a tax perspective, when the SOL structure was launched it offered a number of tax benefits that made it attractive for qualifying airlines. However, the Spanish tax leasing scheme (intended for the shipping industry) came under the scrutiny of the European Commission, which considered that the tax advantages offered to investors under that scheme should be considered as illegal State Aid. The Commission’s decision was partly reviewed by a ruling of the European Court of Justice in 2023, but the doubts cast on the scheme have now made it unattractive. Additionally, aircraft investors feel comfortable with the certainty offered by foreign legal systems and prefer to use those instead of Spanish law.

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

As in most other jurisdictions, an essential distinction in Spain can be made for operating leases and for finance leases. Their characteristics are in line with those laid out in other legal systems. In general terms, larger commercial aircraft are generally financed through long-term operating leases or sale and lease back structures, while smaller commercial aircraft and private planes are often acquired through finance leases with Spanish banks.

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

Not at this moment in time.

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?

Spanish law allows these types of agreements. In a fashion similar to other jurisdictions, the binding effect and enforceability of such documents mostly depends on their wording and the intent of the parties.

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?

The good faith principle is embedded in Spanish law, much like in other jurisdictions with a Roman law tradition. In addition, Spanish Courts are increasingly applying the Unidroit Principles of International Commercial Contracts and similar international sources when analysing international contracts. This is of particular relevance to commercial transactions. Spanish law does not protect the abusive exercise of rights or arbitrary decisions or determination by one of the parties. For example, a determination, designation, calculation or certificate made unilaterally by one party as to any matter provided for in a contract, might, in certain circumstances, be held by a Spanish court not to be final, conclusive and binding if it can be shown to have an unreasonable or arbitrary basis or not to have been reached in good faith, and this notwithstanding the provisions of the relevant documents. Spanish courts may also refuse to uphold the termination of a contract based on an unreasonable, inequitable or bad faith interpretation of one of the default events (concerning, for example, the scope of the event or the occurrence of the event itself or the materiality of such breach).

2 Taxation and Related Matters

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

The main authority is the “Agencia Tributaria” (<https://sede.agenciatributaria.gob.es/>) a state agency that pertains to the

Ministry of Finance. However, most regional governments also have their own tax agencies, which are in charge of regional taxes and of certain nation-wide taxes which have been totally or partially delegated to the regions.

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?

In a typical transaction, aspects of Value-Added Tax (“VAT”) and Stamp Duty Tax must be considered. In some situations, questions of Corporate Income Tax may also come into play.

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?

In addition to these kinds of certificates, owners, financiers and lessors should also verify that their payees qualify for the VAT exemptions afforded to international airlines. This is usually achieved with a certificate issued by the Spanish aviation authority.

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?

As indicated above, Spain is not a jurisdiction in which many aviation finance transactions take place. It is therefore difficult to estimate whether BEPS has had an impact on these structures. However, in 2022, Spain adopted internal procedures to ratify the multilateral instrument, and its effects are expected to begin having effect in the next few years. It is expected that this will have an impact on the affairs of multinational companies generally.

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?

In Spain, the idea of permanent establishment is not necessarily linked to economic thresholds but rather to factual circumstances. Of course, very small establishments are more likely not to attract the attention of the tax authorities; however, this should not be used as an argument *per se*.

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?

There are precedents in this direction.

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?

Although the tax aspects of aircraft trading transactions must be analysed on a case-by-case basis, in general, terms lease payments, loan repayments and transfers of aircraft are usually 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 as VAT at a rate of 21% could be triggered under certain circumstances.

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

Please see the answer to question 2.7.

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?

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 (*Registro de Matricula de Aeronaves*, “RMA”), (<https://www.seguridadaerea.gob.es/es/ambitos/aeronaves/registro-de-matriculas-de-aeronaves-civiles/registro-de-matriculas>). The RMA falls under the jurisdiction of AESA (<https://www.seguridadaerea.gob.es>), a body of the Ministry of Development. The RMA is an administrative registry of aircraft, 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, e.g., EC-XXX) and thus becomes a Spanish aircraft.
- **Central Movable Assets Registry**
Second, there is the Central Movable Assets Registry (*Registro de Bienes Muebles*, “RBM”), under the jurisdiction of the Directorate General of Registries and Notaries, 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.

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. But for a few exceptions, most transactions involving Spanish-registered aircraft must be recorded at both the RMA and the RBM.

As indicated above, the RBM is a registry of title and, hence, mortgages and charges over aircraft must be recorded there. In accordance with the provisions of Regulation (EC) 593/2008, of 17 June 2008, on the Law Applicable to Contractual Obligations (the Rome I Regulation), Spanish law follows the principle of *lex rei sitae* (i.e., 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, where 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. Thus, a non-Spanish law mortgage created over an aircraft while such aircraft is registered in the RMA would not be considered a valid mortgage by the Spanish courts.

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?

Please see the answer to question 3.1.

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?

The RMA is an operator-based registry. Hence, only aircraft operated by Spanish carriers have access to it. Thus, the domestic or foreign ownership is, in principle, irrelevant. As regards aircraft age, access to registries is not restricted by this reason, provided that the aircraft has obtained all required permits and consents from the aviation authority.

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

Aircraft leases must be recorded at the RMA and RBM, as described, in order for an aircraft to obtain a Spanish registration mark. The relevant documents must be set up in writing and, if they are not in Spanish, an official translation must be submitted. The parties' signatures on some documents must be legalised by a notary public and, when such legalisation is made outside Spain, the apostille or other authentication system must be used.

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

As a general rule, deregistration is requested by the Spanish operator of the aircraft, as this is the only person authorised to act before the Spanish authorities (AESA, DGAC, 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 IDERA. There is no specific time period for such 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 (i.e., by not actively opposing the owner's deregistration activities). Nevertheless, since Spain's accession to the Cape Town Convention, a number of repossessions have taken place using IDERAs without the operator's cooperation.

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

- Execution of a power of attorney to act on behalf of the owner/lessor during the deregistration formalities.

- Termination Agreement, signed by the operator and the owner/lessor and with the representatives' signatures legalised by a Notary Public and apostilled (if needed).
- Spanish translation of the Termination Agreement if executed in a language other than Spanish.
- Filing of forms with the RMA, asking for deregistration of the aircraft.
- Payment of the RMA's deregistration fees.
- Filing of export documents (mainly DUA or Intrastat) and securing of the relevant export permits.
- 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.

4 Security

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

It is possible to create mortgages over aircraft and engines in Spain. When setting up Spanish law mortgages over such assets, the following must be taken into account:

- Under Spanish law, securities ought to secure a specific debt of a certain amount which has to be clearly stated in the deed of execution of the security (principle of determination). Nevertheless, it is possible to set up a charge in order to secure credit or overdraft facilities, in which the exact amount owed by the debtor will only be known at the time where the debt becomes due (e.g., elapsing of agreed period, event of default, etc.). Even the rate of interest might be a floating one. However, in order to comply with the principle of determination, the deed of mortgage must state at least (i) the maximum principal amount for which the charged asset is answerable, and (ii) the maximum rate of interest.
- Securities must be placed on specific assets which 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 which may correspond to the mortgagor by virtue of the charged asset.

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, although this type of mortgage presents certain drafting and enforcement challenges.

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

Aircraft and engine mortgages must be recorded at the RBM.

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

As far as engines are concerned, an asset pledge agreement (“*contrato de prenda*”) can also be considered.

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

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.

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

Please see the answers to previous questions.

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?

Essentially, a default under the security documents must have occurred. As regards the specific steps to be taken, these will depend on each specific case and assets.

5.2 What is the procedure for repossession of the aircraft?

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

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?

See the answer to question 3.1.

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?

While foreign judgments are generally recognised and enforced in Spain, the specific circumstances should be analysed. Sometimes the remedies awarded by foreign courts can conflict with Spanish “*ordre public*”. Since Spain is party to many

multilateral and bilateral treaties on this subject, the relevant provisions of the respective treaty should be considered.

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?

Before the 2001 Cape Town Convention 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 2001 Cape Town Convention, most Spanish airlines are very reluctant to grant a deregistration power of attorney if they are also asked to provide an IDERA.

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?

No general answer can be given, as much of this is circumstantial (e.g., whether the lessee is in bankruptcy or not, whether it is a local or foreign judgment, etc.). In general terms though, a period of six to 12 months should be accounted for.

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?

Provided that the transaction documents are properly drafted, the risk should be regarded as low.

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

To the extent that an IDERA can be used, the restrictions should only be those specifically provided for under the Cape Town Convention.

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?

Not at this point in time. However, certain reporting obligations must be respected. These are primarily conducted through the general banking system.

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?

As a general rule, no re-examination of the merits take place, unless a public order exception is raised. Any judgment for a definite sum given by the English Courts, in respect of the Transaction Documents which contain an express forum selection clause against a Spanish lessee, could be recognised and enforced in Spain subject to the requirements and restrictions of the Spanish 2000 Civil Proceedings Act, the 2015 International Legal Cooperation and, if applicable, the 2005 Hague Convention on Choice of Court Agreements.

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

Court assistance is required to enforce any kind of security.

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?

Yes, save for the 1948 Geneva Convention.

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

There is not sufficient practical experience to determine this yet. At an administrative level, the aviation authorities have been generally cooperative in implementing Cape Town Convention remedies. To our knowledge, though, such remedies have not been brought to the attention of the Spanish courts yet.

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

Non-consensual rights or interests included in those categories covered by Spain's declaration at the time of accession to the Aviation Protocol have priority over an interest registered against an Airframe and Engines under Spanish law, whether inside or outside insolvency proceedings and irrespective of whether they were registered before or after the date of such accession.

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

No, Spain has not adopted the remedies on insolvency provided under Article XI of the Protocol to the Cape Town Convention.

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

The IDERA is filed electronically with the RMA.

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?

Spanish law is in line with other EU countries as per European environmental protection directives and regulations.

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?

Yes, Spanish law is in line with other EU countries.

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?

Spanish law is in line with other EU countries as per European environmental protection directives and regulations.

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?

Although it does not provide 100% certainty, the Public Insolvency Register (“*Registro Público Concursal*” – “RPC” (<https://www.publicidadconcursal.es>)) is consulted as a matter of routine.

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?

Yes, provided that the requirements of the Insolvency Act are met.

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?

Yes, the available forms of insolvency in Spain involve the appointment of an officer of the court or a specifically court-appointed official.

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 general terms, owners or lessors will retain their contractual rights. However, under certain circumstances, the insolvency court may suspend or not allow for such rights to be exercised.

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?

There is a so-called "suspicion period" of two years, during which actions taken before the opening of the insolvency proceedings can be voided.

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?

Where a contractual party terminates a contract with the insolvent debtor, such debtor and the insolvency receiver may challenge the termination if they consider that it is in the interest of the remaining creditors to keep such contract in place. A decision is taken by the insolvency judge, subject to payment of all amounts outstanding after the insolvency was declared.

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

Yes, the Insolvency Act established a ranking of creditors (preferred, ordinary, subordinate), which needs to be respected. When airlines are concerned, this ranking is affected by certain provisions of the Air Navigation Act.

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?

Spanish law awards mechanics and similar liens to creditors under certain circumstances. Given the international nature of air transport, these types of rights must frequently be analysed in the light of applicable conflicts of laws rules. The main liens and detention rights to be considered are the following:

- Maintenance providers have a right of retention over those pieces of equipment which are in their possession until payment in full for the works undertaken. The nature of this right is sometimes disputed, but certain regional codes clearly state that it is a right *in rem*.
- Expenses which are necessary for the rescue and maintenance of an aircraft have priority over a registered mortgage over the aircraft under certain circumstances.
- Salary debts towards employees have priority over debts owed to creditors secured by registered mortgages and pledges. Under the Air Navigation Act, the preferential credits on an aircraft would be: (i) tax credits owed to states; (ii) last month's wages owed to the crew; (iii) credits of insurers for the last two years; (iv) payments owed as compensation for damages; and (v) rescue costs.
- In insolvency situations, holders of privileged credits over an aircraft have a separation right of the aircraft from the "assets of the insolvency's estate" (*masa activa del concurso*) of the relevant debtor.

9 Detention and Confiscation

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

Although not expressly contemplated in legal provisions, in practice, the airport authority AENA exercises a *de facto* detention right when airport charges and similar items have not been paid in full. Under applicable law, AENA is entitled to request a seizure of assets to collect payments arising from "public services" (e.g., use of airport runways, aviation meteorological services, etc.) if such payments have been resolved upon within a "forced recovery procedure" (*procedimiento de apremio*) initiated by AENA. If the debtor does not pay when requested to do so, its assets will be seized through the Spanish tax authorities. Spanish law establishes an order of precedence to seize assets (i.e., firstly cash and bank accounts, then marketable securities and instruments, etc.).

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?

Assets used in connection with criminal activities can certainly be detained, sold and even destroyed within the framework of criminal proceedings. However, normally owners will be made aware of the existence of the claims in question.

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)?

As a member of ICAO, the Spanish Government closely follows the guidelines and recommendations issued by this body. Further, all Spanish airlines which are members to IATA also abide by the directives on environmental matters. No specific legislation has been passed on these points yet, and any potential security over new items of equipment must be considered in the light of existing legislation. Nevertheless, this legislation has proven to be flexible enough in the past to cater for new technological developments, and to provide adequate collateral to financing parties.



Sergi Giménez Binder is a partner at Augusta Abogados and boasts a career of more than 30 years in the field of international business law. His professional career has always been closely linked to international law, due to his recurring work with multinational companies with business dealings in Spain and *vice versa*. In particular, Sergi has spent the last 20 years advising both national and international companies linked to the aviation industry, working on transactions of all kinds. In addition to airlines, his clients include the owners of aircraft and engines, lessors and financial companies. He is widely recognised as one of Spain's leading experts in the field.

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Augusta Abogados is a professional law firm specialised in commercial law, tax, restructuring of companies, labour law, air and space law and procedural law, amongst others, with the aim of creating innovative projects, and the ability to attract high-quality professionals. It currently brings together a set of partners with strong international backgrounds, all of whom are renowned for their remarkable reputation and broad experience. The partners at Augusta Abogados have gathered a high-performing, close-knit team of professionals which covers the main areas of corporate law. Its aviation law department is highly recognised by the leading international directories.

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The logo for Augusta Abogados, featuring the word "AUGUSTA" in a large, white, serif font above the word "ABOGADOS" in a smaller, white, sans-serif font, both centered on a dark grey rectangular background.

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