



The
**LEGAL
500**

**COUNTRY
COMPARATIVE
GUIDES 2022**

The Legal 500 Country Comparative Guides

Cyprus

AVIATION FINANCE & LEASING

Contributor

Phoebus, Christos Clerides &
Associates LLC



Christos Clerides

Co-Founder and Partner | c.clerides@clerideslegal.com

This country-specific Q&A provides an overview of aviation finance & leasing laws and regulations applicable in Cyprus.

For a full list of jurisdictional Q&As visit legal500.com/guides

CYPRUS

AVIATION FINANCE & LEASING



1. What international aviation conventions has your jurisdiction signed and/or ratified?

Cyprus has so far, signed bilateral Air Services Agreements (BASAs) with fifty-one (51) countries and has initialled such agreements with twenty-two (22) countries, with the purpose of regulating the framework of scheduled flights to and from Cyprus.

After Cyprus' accession to the EU on 01/05/2004 and the consequent liberalization of services within the Union, the status of bilateral agreements with member countries, became inactive. Therefore, 22 out of 51 existing BASAs signed with member countries have become inactive while the rest concerning bilateral agreements with third countries, continue to exist.

According to Regulation (EC) 847/2004 all existing agreements with third countries should be amended or replaced to comply with the Acquis Communautaire on air transport. For this purpose, they must include the Standard Clauses set by the EU, especially on the recognition of the term "Community air carrier" from the third country concerned. The amendment of a bilateral air service agreement between a member state and a third country gives the right to a community air carrier to perform the service that stems from the provisions of this bilateral aviation agreement, provided that there are available commercial rights. Additionally, the European Commission may amend the existing bilateral agreements of member states with a specific third country in order to avoid amendment through bilateral negotiations. The result of this procedure is known as a Horizontal Agreement.

The key treaties on international air carriage that Cyprus has embodied are set out below:

- a. The Convention for the Unification of certain rules relating to international carriage by air, commonly known as the Warsaw Convention 1929, was ratified by the 1953 Decree on Air Carriage.
- b. Law No. 66/1970 ratifies the Hague Protocol 1955 and the Guadalajara Convention 1961, which amend and supplement the Warsaw Convention.
- c. Law No. 173/1988 implements the Protocol of Guatemala 1971 and Protocols of Montreal 1975, amending the Warsaw Convention.
- d. Law No. 213/1988 applies the Convention on International Civil Aviation signed in Chicago in 1944 and its Thirteen Protocols of 1947-1984.
- e. The Convention for the Unification of certain rules for international carriage by air, known as the Montreal Convention 1999 has become a part of the Cyprus legal order through Law No. 2(III)/2002.
- f. Law No. 30/1972 implements the Convention for the Suppression of Unlawful Seizure of Aircraft (Hague Convention 1970).
- g. Law No. 31/1972 embodies the Convention on Offences and Certain other acts committed on board aircraft (Tokyo Convention 1963).
- h. The Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (Montreal Convention 1973) was ratified by Law No. 37/1973.
- i. Law No. 15/1990 ratifies the EUROCONTROL Convention on Aviation Security 1960 and later, Law No. 22(III)/2000 adopts the Brussels Convention 1997 amending the EUROCONTROL Convention.
- j. Law No. 33(III)/2001 adopts the 1988 Protocol relating to suppression of unlawful acts against the safety of civil aviation.
- k. Law No. 10(III)/2018 ratifies the Convention on the suppression of unlawful acts relating to international civil aviation.

For the full list of the Conventions please visit the site of the Ministry of Communications and Works, Civil Aviation Department. The Greek version provides a full list. (www.mcw.gov.cy)

2. If your jurisdiction has signed and ratified the Cape Town Convention: a. Which qualifying declarations (opt-in and opt-out) has your jurisdiction made under the Cape Town Convention? b. Does the Cape Town Convention take priority over conflicting national law?

a. Which qualifying declarations (opt-in and opt-out) has your jurisdiction made under the Cape Town Convention?

Cyprus has not ratified the Cape Town Convention. Nevertheless, Cyprus is a Member of the European Union since 1.5.2004. The European Union has acceded to the Convention on 28 April 2009 only as far as it has competency over subjects of the Convention, protocol. The Member States of the EC have transferred their competence to the Community as regards matters which affect Council Regulation (EC) No. 49/2001 in jurisdiction and the recognition and enforcement of judgments, Council Reg. (EC) No. 1346/2000 on insolvency proceedings and Reg. (EC) N. 593/2008 on the Law applicable to contractual obligations (Rome 1).

b. Does the Cape Town Convention take priority over conflicting national law?

Had it done so International Conventions enacted into Law have superior force of law under the Constitution. See Article 169(3) of the Constitution. To the extent that the matter is in the field of insolvency, recognition of judgments and choice of law as above the Convention is applicable.

3. Will a court uphold the choice of a foreign governing law in respect of the following contracts and if so, please also state any conditions or formality requirements to this recognition a. Lease and b. Security document (for example, mortgage)?

The Courts in Cyprus will uphold a choice of law and jurisdiction clause in aviation leases and security documents as in all other agreement. **See Hampton Advisory Group S.A. v. Bost AD and others Civ. Appeal 13/2009, 27.3.2012**

4. Please confirm whether it is (i) customary and (ii) necessary to also take a

local law mortgage and if so, why?

It is customary but not necessary to also take a local law mortgage. The Cyprus Procedures are more simple than in other jurisdictions and repossession easier especially where the plane operates to and from Cyprus. Further if defendants and assets are in Cyprus it is best to obtain a Cyprus security and pay the appropriate stamp duty.

5. Are foreign judgments recognized and enforceable by courts of your jurisdiction and if so, please also state any conditions or formality requirements to this recognition (for example, do you require a local court order confirming such recognition)?

Where there is a bilateral treaty the matter is governed by the provisions of the bilateral treaty e.g. between Cyprus and Greece. There are also multilateral conventions between member States and other countries.

Cyprus has signed a number of Bilateral Agreements that cover Legal/ Judicial Cooperation, including matters relating to the recognition and enforcement of judgments.

Czech Republic Rat. Law 68/82

Hungary, Rat. Law 7/83

Bulgaria, Rat. Law 18/84

Greece, Rat. Law 55/84

Syria, Rat. Law 160/86

Russian Federation, Rat. Law 172/86

Serbia, Slovenia, Rat. Law 179/86

Egypt, Rat. Law, 32(III)/96

China, Rat. Law, 19(III)/95

Poland, Rat. Law 10(III)/97

Additionally, Cyprus has acceded to the Convention on the Recognition of Foreign Judgments in Civil and Commercial Matters and Supplemental Protocol signed in The Hague in 1971 (Ratifying Law No. 11/1976) However this Convention has only entered into force between Portugal and the Kingdom of The Netherlands, countries that have acceded to the Convention.

Also, Cyprus has acceded to the Convention on the Recognition and Enforcement of Foreign

Arbitral Awards signed in New York on 10.06.1958.

The contracting states can be found on website http://www.uncitral.org/uncitral/en/uncitral_texts/arbitration/NYConvention.html

For the simplification of procedures for enforcement and execution of foreign judgments in Cyprus, Law No. 121(1)/2000 was passed for the Recognition, Enforcement and Execution of Foreign Judgments. The Minister of Justice and Public Order has been assigned as the competent authority. The law covers any decision of a foreign Court that is a Court decision or arbitral body or body of another state that the Republic is connected with an Agreement for the subject of mutual recognition and enforcement of court and arbitral decisions, and which the said decision is enforced in the state in which it was issued. On becoming a member of the European Union, Cyprus is bound by the provisions of EC Regulation 44/2001 on Jurisdiction and the Enforcement of Judgments of Civil and Commercial Matters

6. Is your aircraft registry an owner-register (registering ownership interests) or an operator-register (registering interests as operator)? Please also state any conditions, procedural steps or formality requirements for such registration and explain how this is evidenced (for example, the issuance of a Certificate of Registration)

The Cyprus Aircraft Register is mainly but not exclusively an owner-register as defined by the law. The provisions for the registration of an aircraft can be found in the Civil Aviation Law of 2002 (213(1)/2002) as amended by laws to date the latest 108(1)/2019. The law incorporates all the EU Law directives and regulations in the field as described in the preamble of the law. Particulars are given therein.

Chapter 3 of the Law provides for the registration of aircraft Sections 9-15. The Cyprus Register is under the supervision of the Minister of Communication and Works and the Registration Authority is the Cyprus Aircraft Register. In the Register other than the registration, transfer or deletion of aircrafts all charges in rem and any changes are recorded and relevant certificates are issued.

Section 11 provides for the registration, Section 13 for the deletion and section 15 for the acquisition of Cyprus

nationality of registered aircraft. The basic requirements and conditions for Cyprus registration include:

- a. that the aircraft is not registered in a foreign register
- b. relevant environmental and airworthiness certificates
- c. the owner or purchaser or lessee under a financial lease which must be of (at least of 6 months duration) or other similar beneficial owner has more than 50% and (a) is a physical person of Cypriot nationality or an EU national or of a state belonging to the European Common Aviation Area irrespective of domicile or residence in Cyprus or (b) is a legal person registered under the laws of the Republic of Cyprus or the Laws of any Member State of the European Union or a state belonging to the European Common Aviation Area and has its registered office or main establishment in Cyprus or in any other member state of the European Union or a member of the European Common Aviation Area and in which more than 50% of its capital or assets belongs to nationals of the above and it's representatives or persons personally liable are by majority Cypriot nationals or nationals of any of the above. In case where the aircraft has its usual seat and area of operation abroad and its owner or charterer has no place of residence or its seat of operations in the Republic of Cyprus the Minister has power to reject the application for registration and or order its striking out, if he deems that in the circumstances the aircraft should have been registered in another state. The Minister retains the discretion to allow registration by way of exemption to the Cyprus Register where the conditions above are not in general fully met. Aircraft registered in foreign registers can be transferred subject to the fulfilment to the above conditions to the Cyprus Register.

As of 31/12/2019 a total of 118 aircraft were registered in Cyprus including two airbus A319 and seven Fokker 218. The rest relate to light aircraft 60, 15 helicopters and 31 Ultralight Aircraft.

According to Regulation (EC) No. 1008/2008, the air operator is required to obtain an operating licence and an air operator certificate (AOC). The licensing of air carriers falls under the responsibility of the Air Transport Licensing Authority (ATLA). An air carrier is licensed after securing an AOC from the DPA, which in fact certifies that the air carrier has the professional capacity and

organisation to ensure the safe operation of aircraft for the aviation activities mentioned in it. The conditions and procedure for issuing, suspending and withdrawing an AOC are defined in the JCAA Regulations, which are in force in the Republic.

Once the AOC has been issued, the applicant must also acquire an operating licence, which allows the air carrier to provide air transport services as specified in it. Article 113 of the Civil Aviation Law provides that the operating licence is issued, suspended and revoked in accordance with the provisions of Regulation (EEC) No. 2407/92.

7. Is there a security document register in your jurisdiction where a mortgagee's interests will be recorded? If so, please also state any conditions, procedural steps or formality requirements for such registration and explain how this is evidenced (for example, the issuance of a certificate or official stamp on the security document)

All charges in rem on an aircraft have to be registered in the Cyprus, Aircraft Register and the relevant certificate is issued upon payment of the relevant fees. The relevant documentation has to be filed with the Cyprus Aircraft Register and fees are paid for purposes of registration.

8. What is the effect of registration of: a. Ownership interest (for example, proof of title to third parties of ownership) b. Lease (for example, perfects the status of the Lessor under the Lease) c. Security document (for example, secures priority over later registered security). If there are any interests that could rank prior to the security document please state these

The law does not provide specifically what the effect of registration is. Nevertheless, under general principles of law applicable for example in relation to immovable property under Cap 224 registration usually constitutes prima facie evidence of the truth of the matters stated in the certificate of registration and of the Register. In case of dispute the appropriate District Court will decide on issues of ownership, the status of the lessor under the lease and the security documents. The registration of charges and the issue of the relevant certificate does not under the law accord any priority in line with the date of registration and this will be determined under the

general principles of common law and equity applicable in Cyprus.

9. What types of lease are recognized in your jurisdiction (for example, translation, notarization, apostille, legalization etc.)?

All types of aircraft leases are recognized under Cyprus Law. This includes the main types of leasing i.e. Wet-Leasing (short term leasing) and Dry-Leasing (for longer term leases) or combination of both.

Aircraft leases are usually drawn up in the English language or in Greek. There are no legal prerequisites specifically for aircraft leases as to translation, notarization, apostille, legalization etc. Nevertheless the P.I.O. (Public Information Office) provides translation services of documents in English or Greek. For registration purposes documents will need to be translated into at least English or Greek. The Cyprus Courts accept documents in English in evidence. Stamp duties may be applicable for Cyprus contracts and the usual terms relating to leases under the Contract Law Cap 149 or the Sales of Goods Law are applicable. It is customary for the lease to be signed by the parties involved i.e. the lessor and the lessee and the usual terms are incorporated therein relating to the term, the rental, taxes, delivery, operations, maintenance, insurances, limitation liability, risk, terminations, representations, title, redelivery, events of defaults, assignment, notices, governing law and jurisdiction. Usually leases are witnessed by two witnesses and it is preferable that all signatures be certified by a Certifying Officer whose signature is apostilled. It is also preferable for the documentation to be in English with official Greek translations.

10. What formalities are required to perfect Lessor's rights under a lease in your jurisdiction?

There are no other formalities required to perfect a lessors' rights but as seen above in the Cyprus Register, under Section 11, it is possible to register an aircraft with the Cyprus flag on behalf of the lessee provided the above conditions are met relating to registration.

11. Are the ownership rights relating to engines recognized as separate and distinct from the ownership of the rest of the aircraft in your jurisdiction? Please

highlight any separate registration, filing or additional formalities that are required to be completed to perfect Lessor's interest in the engines

Ownership rights relating to engines can be recognized as distinct of the ownership of the rest of the aircraft depending on the terms agreed between the parties involved. There are no requirements for separate registration filing or additional formalities to perfect lessors' interest in the engine. No specific provision is made in the law for that matter and the usual contractual provisions relating to contracts and or sale of goods and or provision of services are applicable in the circumstances.

12. What form does security over aircraft generally take in your jurisdiction?

There is no specific legislation in Cyprus relating to the mortgaging of aircraft. Therefore, the general provisions of equity and common law are applicable under section 29(1)(c) of the Courts of Justice Law 14/60. A legal mortgage can be effected by transferring the title to the mortgagee subject to a right of redemption. Also, a legal mortgage of shares in the company is effected under the relevant provisions of the contract Law Cap. 149, section 138. A pledge of shares must be in writing, duly signed in the presence of at least of two capable witnesses. In addition, the pledgee (Pawnee) has to send to the company notice of the pledge with copy thereof duly certified and the company must enter the pledge in the Register of members and deliver to the pledgee (Pawnee) relevant certificate.

If the mortgagor has only an equitable interest or for any reason the mortgage is not created under the formalities for the legal mortgage an equitable mortgage arises. In addition, it is possible to create a floating charge on the assets of the company which includes the aircraft with the possibility of appointment of receiver and manager, under Section 32 of the Courts of Justice Law 14/60 and general principles of equity. The receiver and manager may be appointed under a Court order or pursuant to the terms of the debenture.

Security may also be obtained by way of assignment under the usual applicable provisions of common law and equity. The rights of the mortgagor in possession are regulated by the general principles of equity as well as the rights or interest of the mortgagee relating to the right to possession. The proceedings for possession any restrictions and rights for possession are all enforced in actions in the appropriate District Court having jurisdiction.

A most effective way of having almost absolute security is to bind the shares of the Company on which the aircraft is registered/in possession with a trust instrument coupled with blank instruments of transfer in favour of the lessor/creditor.

13. Are there any particular terms or characteristics that such a security document must take (for instance, a cap on the secured liabilities)?

There are no particular terms or characteristics that security documents must take. Where companies are involved seals of the companies must be placed on the documents. Care needs to be taken in view of a foreign law clause as to formalities under the applicable law.

14. Are there any perfection requirements for such security document? If so, please state any conditions, procedural steps, formality requirements or documentation (for example, corporates, list of directors etc.) required to effect this

It is customary for security documents to be signed by the parties involved with witnesses and their signatures duly certified by Cyprus Certifying Officer or in any other way that certification may take place abroad.

There are special provisions for pledges of shares as explained above and to the extent specific performance is intended, under the Contract Law Cap 149, Section 76 for a contract to be amenable to specific pursuant is has to be written and signed at the end thereof by the party to be charged with.

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

The Ministry proceeded to issue direction AIC, C13/2005, 7 April as to the insurance requirements for air carriers and their operations pursuant to regulation (EC) No. 785/2004 of the European Parliament and of the Council relating to the minimum insurance requirements flying within, into, out of or over the territory of a member state. Passenger liabilities, third parties' liabilities minimums are laid down.

In accordance with the "Insurance in Cyprus 2018". Directory and statistical information of the Insurance Association of Cyprus, total marine aviation and transport gross premiums written in 2018 amounted to

14 million euros registering an increase of 12% compared to 2017.

As stated in the 2009 directory hull and aviation are almost totally taken in international markets except cargo which is written mostly with local companies. Aviation hull insurance and aviation liability insurance is brokered in Cyprus with the London Insurance market and Lloyds of London syndicates. There is no local captive insurance regime in the circumstances.

16. Are cut-through clauses under the insurance and reinsurance documentation legally effective in your jurisdiction?

The answer is yes but the matter will be regulated by the Law applicable to the relevant insurance and or reinsurance policies which are taken abroad as above described.

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

The minimum requirements for the amount of third-party liability cover as above stated are regulated by the relevant directive of the Department of Civil Aviation, supra, pursuant to regulation (EC) No. 785/2004. It varies in accordance with the MTOM (Maximum Take Off Mass) as stated in the certificate of airworthiness of the aircraft. The minimum insurance is 0,75 million SDRs (Special Drawing Rights) as defined by the IMF and extends to 700 million SDRs in an increasing scale depending on the MTOM.

18. Can a mortgagee (or equivalent security interest holder) or lessor following an event of default under a mortgage (or equivalent security document) or lease, respectively, take possession of the aircraft without judicial intervention in your jurisdiction? Please also state any conditions, procedural steps, formality requirements or documentation (for example, original, legalized, translated Lease/Mortgage, corporates etc.) required to effect this

A mortgagee or equivalent security interest holder or lessor following an event of default under a mortgage (or equivalent security document) or lease respectively can take repossession of the aircraft e.g. through the

appointment out of Court of a receiver and manager, or transfer of the shares under blank instrument of transfers, or under the terms of the lease/mortgage.

The conditions and procedural steps and formality requirements and relevant documentation will depend on the wording of the relevant security document. There is also a possibility of obtaining interim injunctions in case of a dispute arising and in clear cases it is possible that the Court will order delivery and possession at an interim stage pursuant to the provisions of Section 32 of Law 14/60, Courts of Justice Law and the relevant jurisprudence under it. Basically, the plaintiff has to show a good cause of action, a visible chance of success, irreparable loss or damage or difficulty in satisfying final judgment and that in the scales of justice favour that the order should be granted on an interim basis. **See Odysseos v. Pieris (1982) 1 CLR 557.** Further through redemption of company shares under a pledge, possession may be obtained although this may involve litigation if not complied with blank instruments of transfer.

19. How can a mortgagee (or equivalent security interest holder), lessor under a lease or designee/beneficiary of an IDERA deregister the aircraft? Please also state any conditions, procedural steps, formality requirements or documentation (for example, original, legalized, translated Lease/Mortgage/IDERA etc.) required to effect this

It is possible for a mortgagee or equivalent security interest holder or Lessor under the lease or designee / beneficiary of an IDERA (Irrevocable Deregistration and Export Request Authorization) to deregister the aircraft. As seen above the registration from the Cyprus aircraft register is possible under section 13 (3) of the basic Civil Aviation Law of 2002 (213(1)/2002).

The party concerned can apply for the striking out/deletion of the registration on grounds that the aircraft will be registered in a foreign registry or in all cases where the aircraft has lost its Cyprus nationality e.g. the majority ownership falls into foreign hands. Under Section 13.4 the striking out/deletion is automatic in such a case (loss of nationality ownership) or upon the application of the interested party in case of need to transfer registration to a foreign registry.

20. Can the government or the lessee

lawfully prevent the repossession or deregistration and if so, in what circumstances

The Government or the lessee may not prevent the repossession or the deregistration in case the conditions specified in Section 13 for the Law are not fulfilled. In case of dispute the matter will inevitably be referred to the Court. To the extent that a Ministerial decision is negative it may be that the Administrative Court would have jurisdiction but in case of dispute arising as a result of the terms and conditions of the relevant agreements the matter will be brought before the civil Court at first instance and then upon appeal. It is worth nothing that under section 14 of the Aviation Law on grounds of public interest the Minister may exceptionally prohibit the registration or transfer of the aircraft to the Cyprus Aviation Register or **to order its deletion from it**. The lessee may object to repossession invoking the terms of the agreement and obtain an interim injunction to this effect. The matter will then have to be resolved by the Competent Court. But in cases of a receiver and manager or transfer of shares under a pledge/trust to the lessor creditor repossession will be obtained easily.

21. If judicial intervention is required, please describe the process? Please also state any procedural steps, length of time to complete and advise as to documentation required

The process for judicial intervention involves the filing of an administrative recourse if the matter involves a challenge of an administrative act or omission on behalf of the authorities and the case will be resolved before the administrative court at first instance and thereafter on appeal. In case the matter involves a civil dispute, it will be resolved by simple civil action before the competent District Court of Cyprus. At first instance in both cases the matter is decided by a single judge and upon appeal by three Appeal Judges. The length of time to complete is a long one. As things are today it may take anything from four to eight years to complete litigation at all levels. Nevertheless, justice reforms in process now expected to come into force within the current year 2020 will inevitably halve the period. All relevant documentation has to be put before the Court including the agreements, correspondence and witnesses' statements, photograph etc. Interim relief is possible with catalytic effect. In such a case interim prohibitive or mandatory injunctions may be issued on an ex parte basis upon filing of the proceedings.

22. How is legal title transferred under the laws of your jurisdiction? Please also state any conditions, procedural steps, formality requirements or documentation (for example, corporates etc.) required to effect this

Title is transferred, contractually, by the usual sale agreements and or assignment between the parties involved. In the alternative it may be that the transfer will be effected by the transfer of shares in the legal entity or assignment of interest or substitution of parties in a joint venture. The matter is governed by the ordinary principles applicable in common law and equity but all changes to any registered particulars with the Cyprus Aircraft Register have to be notified to the Register. In order to maintain Cyprus Registration, the provisions of Section 11 of Law 213(1)/2002 have to be complied with relating to majority ownership and representation. Under section 12 (4) all changes have to be reported without any delay. No particular requirements, conditions, formalities or procedure steps for the transfer of ownership and title are required other than the usual ones relating to the passing of ownership and title specified in Cap. 149 (contract Law) and the Sale of Goods Law 1994 (10) (1)/1994.

23. Are there any restrictions on the sale of an aircraft following enforcement (for example, the requirement to obtain a court order or conduct a public auction or other action in order to sell the aircraft upon enforcement)

The only restrictions for the sale of an aircraft relate to the need to comply with the provision of Section 11 of the Aviation Law 213(1)/2002 to maintain the Cyprus flag. The Civil procedure Rules and the Civil Procedure Law Cap 9, provide for the enforcement procedures following a judgment or order of a Court. Public auction is provided thereunder or by consent private sale may take place in order to achieve the best possible price.

24. Would lease rentals be subject to tax (for example, withholding or income tax)? Please also state if there are any conditions for such tax to be imposed and any steps usually taken to mitigate this

Lease rentals are subject to tax either corporation or personal tax. The basic corporation tax is 12,5%. Usually legal and physical persons with their ordinary residence

in Cyprus are subject to taxation. It is advisable to incorporate in order to minimize taxation as personal tax is much higher reaching up to 35% on net income of €60,000 and above. For companies that are resident outside Cyprus but have aircraft business in Cyprus, Section 18 of the ITL, makes provision for exemption from taxation in certain cases and under certain conditions.

Special provision is available for the setting up of International Trusts where the settlor beneficiaries reside abroad at the time or one year before the setting up of international trust under the international Trusts Law 1992. Ownership is with the Cyprus Trustee who can be a corporation and the beneficial owners may reside abroad. If the income is deemed to be outside Cyprus it will not be taxable in Cyprus but at source. A number of bilateral tax treaties minimize double taxation.

25. Would a sale of an aircraft in your jurisdiction incur sales tax? Please also provide details of amount or calculation and any steps usually taken to mitigate this

Relating to sales Tax there is no sales tax specifically in Cyprus, but a sale of an aircraft may attract revenue taxation depending on whether the sale can be deemed to be income from a trading activity and or profit. It may be better to deal with shares to minimize taxation. The leasing of a private aircraft is considered as a supply of services and is taxable with 19% VAT. Nevertheless where the lessor is a company incorporated in Cyprus and registered with the VAT authorities the profits of the lessor are subject to a favorable regime. The new Cyprus aircraft leasing scheme provides for reduced Vat depending on the aircraft type (Piston, turbo, Jet) and the percentage of use within EU which is fixed depending on the type of aircraft. As a result, a percentage of a 19% VAT is chargeable down to 20% only of the 19% normal rate. The relevant table is the following

AIRCRAFT TYPE: PISTON

WEIGHT ON TAKE OFF	Percentage of the use within EU	Effective Tax Rate
Light: 1kg - 3 000kg	100%	100% of the consideration x 19%
Small: 3 001kg - 5 700kg	80%	80% of the consideration x 19%
Medium: 5 701kg - 15 000kg	60%	60% of the consideration x 19%
Large: over 15 001kg	40%	40% of the consideration x 19%

AIRCRAFT TYPE: TURBO

WEIGHT ON TAKE OFF	Percentage of the use within EU	Effective Tax Rate
Light: 1kg - 3 000kg	55%	55% of the consideration x 19%
Small: 3 001kg - 5 700kg	45%	45% of the consideration x 19%
Medium: 5 701kg - 15 000kg	35%	35% of the consideration x 19%
Large: over 15 001kg	25%	25% of the consideration x 19%

AIRCRAFT TYPE: JET

WEIGHT ON TAKE OFF	Percentage of the use within EU	Effective Tax Rate
Light: 1kg - 3 000kg	50%	50% of the consideration x 19%
Small: 3 001kg - 5 700kg	40%	40% of the consideration x 19%
Medium: 5 701kg - 15 000kg	30%	30% of the consideration x 19%
Large: over 15 001kg	20%	20% of the consideration x 19%

It is specified that for the benefits of the tax, region to be applicable the profits from the lease agreement should be at least 5% of the aircrafts original value and the lessee must have primary place of residence/establishment in Cyprus and meet some other requirements i.e. not to claim input VAT meaning that the aircraft should be used for leisure and initial instalment the lessee should pay, should be less than 40% of the value of the aircraft. Further information can be obtained from the Cyprus VAT authorities. The scheme was introduced in 2015.

26. Are there any restrictions on the import or export of aircraft in your jurisdiction and would such importation or exportation incur any liability as to customs or taxes? Please also state if any consents or approvals are required and the procedural steps taken to obtain these, and any procedural steps or formality requirements to mitigate any taxes

There are no restrictions on imports/exports. Depending on the country origin from which the import of the aircraft will be effected there may be or not customs, import taxes, VAT. Cyprus is a member of the EU since 1st of May 2004. The customs regime applicable within the EU is applicable. No import duties or customs are imposed. From other countries the matter is governed by the EU Common Tariff GATT Regime. The appropriate authorities for import and exports is the Customs and Excise Department , a Department of the Ministry of Finance, www.mof.gov.cy. Generally, from third countries import duties are imposed for up to 2000 kg net weight 7.7% and for over 15.000 kg net weight 2.7% plus VAT.

27. Are there any foreign exchange restrictions on transfers of funds

Transfer of funds within the European Union are exempt from any restrictions, the EU Regime been applicable. For other countries Central Bank has relaxed foreign exchange restrictions substantially since accession to the European see www.centralbank.cy.

28. How successful have foreign creditors and lessors been in enforcing their security and lessor rights over and successfully repossessing aircraft in a timely manner?

Generally, the Cyprus legal system and applicable law provide sufficient guarantees and procedures for ensuring that creditors and lessors can enforce their security and successfully repossess an aircraft in a timely fashion. The most effective way to ensure this is to have a floating charge in the form of a debenture under which a receiver and manager over the assets of the company including the aircraft in such a case can be appointed by a simple letter. He will have rights to immediate possession and it will be difficult to stop the receiver and manager from taking possession. In all cases the use of interim injunctions provides a sufficient security procedure wise for ensuring timely repossession. The share pledge system also provides sufficient security as well as the instrument of Trust relating to shares or other assets.

29. What government led reforms affecting creditor and lessor rights are currently underway in the aviation sector in your jurisdiction?

The overhaul of the administration of justice system will expedite litigation. It may be that the aviation legislation may have to deal with a specific manner leasing and financing and charging of aircrafts in a more particular and effective way.

30. Please describe any interesting legal development in your jurisdiction (for instance, decided court cases or arbitral awards) which affect creditor and lessor rights?

In a recent case the Supreme Court of Cyprus decided that for the appointment of the Receiver and Manager under a floating charge to be valid the conditions of the

charge have to be strictly followed otherwise the appointment can be challenged. See **Diglis and others v. Total Fit Ltd Civil Appeal No. E135/2015 12.9.17.**

31. Please discuss any relevant governmental regulations implemented in your country to help alleviate the financial and other difficulties faced by airlines in your jurisdiction caused by CoVid 19 and whether that will impact rights of lessors (who lease aircraft to the airlines) and lenders (who finance such aircraft which are mortgaged in favour of the lenders)? Are such governmental regulations expected to be in place until the difficulties faced by airlines caused by the CoVid 19 subside or are they more long term?

In response to the Covid 19 pandemic the Cyprus Government took early lockdown steps since mid-march 2020 which have been gradually lifted starting 1st of May 2020 Airports had to be closed and flights restricted. Categories of countries from which and to which flights have been possible have been created with category A allowing such flights, category B with restrictions and Category C only with Quarantine. In the circumstances the Aviation industry and travelling in general have been severely affected as a result but the restrictions have been gradually eased and the situation is improving. The legislative Regime is mainly to be found in the relevant orders of the Ministry of Health adopted from time to time on the basis of an expert committee opinion, advising the President and the Council of Ministers. The measures have been entirely successful minimizing the number of deaths to under 20 and reported incidents to around 1.000 only. The daily reported rate in July is one to three. Orders of the Ministry of Health have been issued under Cap. 260, see [pio.gov.cy\(covid-19\)](http://pio.gov.cy(covid-19)) and of the Ministry of Communications and Works under the Aviation Law 2002-2019 e.g. Flight restrictions orders of the Minister 20.3.2020, 2.4.20, 15.4.20, 11.5.20, 25.5.20.

Contributors

Christos Clerides
Co-Founder and Partner

c.clerides@clerideslegal.com

