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ATTORNEY ADVERTISING. Results depend on a number of factors unique to each matter. Prior results do not guarantee a similar outcome.
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Preface

World Aircraft Repossession Index
Third Edition

Pillsbury Winthrop Shaw Pittman LLP is pleased to publish this Third Edition of the World Aircraft Repossession Index.

This Third Edition builds on the success of our Second Edition and covers 31 “new” jurisdictions. In this edition we analyze a total of 102 popular jurisdictions worldwide in which aircraft are registered and operate. Utilizing seven primary criteria and a proprietary scoring methodology, this Third Edition synthesizes expert analysis provided by reputable local counsel and select data obtained from other third-party sources to numerically score the legal environment in each jurisdiction with respect to repossessing and exporting aircraft assets.

The attorneys in Pillsbury’s global Asset Finance team are well aware of the challenges inherent in leasing and financing aircraft in jurisdictions around the globe. When doing business in any location, it is advisable to understand the local issues that may affect your investment. Prudent lessors and financiers of aircraft should know in advance what issues they might encounter in the event they need to repossess their aircraft. Analyzing jurisdictional questionnaires from local counsel is often an important part of this educational process. However, reviewing narrative responses contained in traditional jurisdictional questionnaires and comparing them across various jurisdictions can be time consuming and costly. This publication represents a refinement of this process and serves as a desk-top resource. By utilizing an objective scoring methodology we highlight key challenges within, and differences among, jurisdictions.

The foundation of the World Aircraft Repossession index is Pillsbury’s unique “check-box” jurisdictional questionnaire, the form of which can be found in the Appendix. In addition to a one-page summary for each jurisdiction, the results of our analysis are represented in a global rankings chart and a world map, indicating the comparative ranking that each jurisdiction has achieved.

The Pillsbury team has been delighted to discuss the World Aircraft Repossession Index at numerous public events and private meetings around the world including those hosted by the American Bar Association, Aviation Working Group, Euromoney, Ishka and ISTAT. The overwhelmingly positive feedback we have received is an endorsement of our methodology and the hours of work devoted to this publication by each local counsel participant and the Pillsbury team. In addition, we have found that the World Aircraft Repossession Index has proven to be a welcome addition to the tools available to industry participants, particularly leasing companies and financial institutions, for analyzing jurisdictions at every stage of a transaction.

Please read the disclaimer on page 2 before using any of the information contained in this publication.

We gratefully acknowledge and would like to thank all of the local counsel contributors in each jurisdiction, as well as each of our third-party data providers, for dedicating their time and data, free of charge, to make this publication possible. Special thanks to Ms. Crystal Siu, a highly experienced transaction manager and prized Asset Finance team member, whose contributions to this publication were essential. We are most grateful to Ms. Sarah Humpleby, formerly of Pillsbury, who served as a co-editor of the Second Edition and who made a significant contribution to this Third Edition. We would also like to give due recognition to Mr. Dominic Pearson, formerly of Pillsbury, who created the World Aircraft Repossession Index and served as the general editor of the First Edition. Many thanks to you all!

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Los Angeles, November 2018
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Mark Lessard is a partner in the New York office and global head of Pillsbury’s finance practice, primarily representing clients who are active in the Aviation, Aerospace and Transportation sectors. Mr. Lessard represents a worldwide clientele of lenders, lessors, investors, operators, underwriters, liquidity providers, manufacturers, rating agencies and trustees in connection with all forms of transportation asset-backed financings. Mr. Lessard has particular experience in cross-border transactions, having placed, financed or repossessed aviation assets in dozens of jurisdictions around the world. He has been an active member of the Legal Advisory Panel to the Aviation Working Group since 2012, at the forefront of the adoption and implementation of the Cape Town Convention on International Interests in Mobile Equipment. Mr. Lessard has been recognized with the following awards: Acritas Star (2018); Lexology and the International Law Office’s “Client Choice Award” for Asset Finance in New York (2018); Overall Debt Deal of the Year, Airline Economics (2018); Chambers USA, Aviation Finance—National (2009–Present); Chambers Global—Aviation Finance; Legal 500 US, Asset Finance and Leasing (2010, 2013-2016); International Who’s Who of Aviation Lawyers (2010-2013); and Guide to the World’s Leading Aviation Lawyers, Euromoney/Legal Media Group (2013).

Paul P. Jebely, Partner and Co-Leader, Asset Finance
Paul Jebely is the managing partner of Pillsbury’s Hong Kong office and co-leader of the firm’s Asset Finance practice. Recognized as a leading aviation lawyer, Mr. Jebely advises on billions of dollars’ worth of commercial and business aircraft finance transactions, leasing and trading transactions and enforcement and re-possession situations.

Mr. Jebely has been repeatedly recognized by Chambers, Legal 500 and Who’s Who as a “very highly rated” leading individual in aviation finance and has been singled out in Chambers as “extremely competent,” “commercially aware,” “responsive,” “courteous,” “technically skilled,” “capable,” “attentive” and “driven.” He has been quoted by the Financial Times, the Wall Street Journal, Bloomberg, the China Business Network and various industry publications on the basis of his experience in the aviation markets in Asia and Africa in particular. He was the 2015 recipient of the “Outstanding Contribution to African Aviation Development” award—the only lawyer to receive the award since its inception in 1999, and was recognized by Asian Legal Business in October 2016 among “Asia 40 Under 40” top “brightest legal minds in the region.” Mr. Jebely has earned a Band 1 ranking globally in Chambers High Net Worth for private aircraft-related legal counsel in 2018. Sources have noted that “he is one of the best lawyers [they] have ever met in [their] life, in terms of professionalism and knowledge in the field and patience explaining everything.”

Jonathan C. Goldstein, Partner, Asset Finance
Jonathan Goldstein is a Pillsbury Finance partner based in the New York office whose transactions have won several awards, including Airfinance Journal’s “Deal of the Year.” He has also been recognized by The Legal 500 US in Structured Finance and as a “Leading Lawyer and Rising Star” by Airfinance Journal and IFLR 1000. He also was a team member on Airfinance Journal 2016 Editor’s Deal of the Year for his contribution on the Labrador ABS transaction. Mr. Goldstein represents sponsors, lenders, hedge funds, commercial banks and leasing companies in connection with a broad spectrum of international financial and corporate transactions. He advises clients on public offerings and private placement of securities (equipment notes and portfolio securitizations), acquisitions, leveraged leasing, secured and unsecured lending, structured financings, syndicated credit facilities, pre-delivery payment and warehouse facilities. Mr. Goldstein’s practice also addresses simple and complex bank loans, mergers and acquisitions, leverage financings, joint ventures, sale/resale transactions and bankruptcy workouts.
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Richard J. Evans, Counsel, Asset Finance
Richard Evans is a counsel in the firm’s Finance practice and is located in the Los Angeles office. He is dual-qualified as an attorney in California and a solicitor of England & Wales and focuses on finance and leasing transactions involving commercial aircraft and private jets.

Mr. Evans’ notable commercial leasing clients include Aerogen, AerCap, Air Lease Corporation, Aviation Capital Group, BBAM, Cusco Aviation, FPG Amentum, Jackson Square Aviation (JSA), Orix Aviation, Sky Leasing and Wings Capital Partners. In addition to his private practice experience, he was interim general counsel at JSA, a consultant at a startup aircraft leasing company, and in-house counsel at Airbus Group. His broad asset finance experience and connections to high net worth individuals on the West Coast and aviation industry players worldwide make him ideally-placed to coordinate and deliver the firm’s expertise to private aviation clients in a wide range of practice areas, including: asset finance, employment, estates trusts & tax planning, executive benefits and regulatory.

Sharon Nourani, Associate, Asset Finance
Sharon Nourani is an associate in the firm’s Asset Finance practice and is located in the Hong Kong office. Qualified as a solicitor of England & Wales, Ms. Nourani has closed over one hundred aircraft financing transactions, advising clients that represent the full range of industry participants in matters concerning all classes of commercial and business aircraft. She is experienced in negotiating and executing international aircraft and engine financings, leasing and trading transactions, including pre-delivery payment financings, sale and leasebacks and secured loan transactions.

Ms. Nourani speaks regularly at client briefings and industry conferences on trends in aviation finance, most recently at the AirFinance Journal’s Africa 2018 Conference in Johannesburg.

Abigail Carter, Associate, Asset Finance
Abigail Carter is an associate based in Pillsbury’s London office, focusing on aviation finance. She is experienced in acting on a range of cross-border aircraft financings, such as leasing, secured loan transactions and sale and acquisition transactions and related novations. Recently, Ms. Carter acted for Oaktree Capital and World Star Aviation on the purchase and financing of 18 aircraft, which was awarded the Airline Economics Overall Debt Deal of the Year 2018. Prior to joining Pillsbury, she completed a six month secondment to Singapore focusing on aviation finance transactions.
About Pillsbury

Pillsbury’s global Asset Finance practice is a leader in the field of structuring, negotiating and closing transactions for transportation assets, with particular emphasis on aircraft and other aviation equipment. For more than 65 years, we have been representing some of the most active international participants in the financing of transportation assets, including major banks, leasing companies, airlines, investors, traders and manufacturers.

Since 2000, Pillsbury attorneys have assisted their clients in the financing or refinancing of more than a thousand commercial and corporate jet aircraft with an aggregate value of more than $40 billion—and in the financing or refinancing of more than 400 spare aircraft engines with an aggregate value of more than $2.5 billion. We have had important roles in all of the US, and many foreign, airline bankruptcies and restructurings and work closely with lawyers in our restructuring group on these matters. Our team also has significant experience with railroad rolling stock, locomotives, ships, containers and fleets of land-based vehicles, as well as other capital assets financed with similar techniques, such as floating drilling rigs, satellites, telecommunications and manufacturing equipment. In recent years we have successfully negotiated and documented Ex-Im Bank-supported financings for equipment valued at more than $4 billion. We have also dealt with other export credit agencies and government-supported programs, such as Japan Eximbank, ECGD, COFACE and HERMES, as well as transactions involving the latest financing structures including those involving JOLCOs and AFIC support.

Pillsbury’s Asset Finance team includes attorneys in our New York, London, Hong Kong, Tokyo, Los Angeles, San Francisco and Washington D.C. offices who are supported by leading practitioners in related fields such as taxation, aviation regulatory, restructuring, capital markets, mergers and acquisitions, international trade and licensing, corporate aviation, insurance, accident investigations and litigation. Our team has extensive experience with cross-border financings of transportation assets located and operated throughout the world and often handles large scale transactions involving multiple jurisdictions. Our offices and network of local law firms stand ready to assist our clients any place, any time. This broad-based, integrated approach allows us to offer a full range of legal services to all industry participants.

Our Asset Finance attorneys are well-known in the industry for their contributions to the state of the art, whether it is completing novel transactions, publishing articles on new financing techniques, sitting on standard-setting committees or speaking at some of the many conferences, seminars, workshops and other events organized for the asset finance community. These contributions are consistently recognized by industry observers, including the prestigious Chambers, which has named us one of the leading aviation finance firms in the world. We have also recently received awards and accolades for our legal work from Jane’s Transport Finance, AirFinance Journal, Global Trade Review and Trade Finance.
Methodology and Interpretation of Results

Creating an index of this sort poses two big challenges. Firstly, in order to allow quantitative-based scoring, the jurisdictional questionnaire must be crafted in a way that allows the questions to be efficiently and comfortably answered by local counsel in a closed-ended fashion without qualification; that is, by selecting an answer from a pre-defined set of responses (such as “Yes” or “No”). Secondly, having boxed-in those answers so as to allow for scoring, careful consideration needs then to be given to how the jurisdiction may be scored in a meaningful and useful manner. The first of these challenges has been accomplished by the creation of what we have called the “30-Minute (Check-Box) Jurisdictional Questionnaire”. The second of these challenges has been accomplished by generating a simple but effective weighted scoring mechanism. You should read this section to understand better what the results contained in the one-page summaries mean, and how to interpret them.

The Pillsbury World Aircraft Repossession Index measures the legal environment for aircraft repossessions in each country or jurisdiction using seven factors (repossession, insolvency, deregistration, export, judgments and arbitral awards, preferential liens and political stability). Each factor is assigned a weighting in accordance with its relative importance, with each factor’s score and its weighting being used to calculate the overall score for the country or jurisdiction. Each factor’s score is determined according to several sub-factors comprising either: (a) the questions asked in the jurisdictional questionnaire, or (b) certain other information about the jurisdiction collected from external sources. A summary of each of the seven factors and their component sub-factors is presented in the Table on the next page and described in detail in the commentary below.

Overall Score and Recoverability Category. The overall score for each jurisdiction is expressed near the top of the page of each one-page summary. A score of 0% represents the poorest possible score and the lowest rating in terms of asset recoverability. In contrast, a score of 100% represents the best possible score and the highest rating in terms of asset recoverability. Additionally, each jurisdiction has been assigned a broader asset recoverability rating or category as follows: those jurisdictions whose overall score was 75% or higher have been assigned a “LOWER RISK” asset recoverability rating; those jurisdictions whose overall score was 50% or higher, but less than 75%, have been assigned a “MODERATE” asset recoverability rating; and finally those jurisdictions whose overall score was less than 50% have been assigned a “HIGHER RISK” asset recoverability rating.

World Map. On page 21 we have summarized the overall scores and asset recoverability ratings of each jurisdiction in the form of a world map. The green, yellow and red colorings represent jurisdictions whose asset recoverability ratings are “LOWER”, “MODERATE” and “HIGHER” respectively, with the inner gradient of the color indicating whether the jurisdiction sits at the top, middle or bottom of the range for that category of risk.

30-Minute (Check-Box) Jurisdictional Questionnaire. For each country or jurisdiction covered in this index, a reputable local counsel completed a 30-Minute (Check-Box) Jurisdictional Questionnaire. A copy of the pro-forma jurisdictional questionnaire is provided in the Appendix on page 222. The completed questionnaires provided the majority of the information used to score the jurisdictions. However, the Political Stability factor was determined using information collected from other third-party sources.

Aircraft Registration. In the 30-Minute (Check-Box) Jurisdictional Questionnaire, we asked local counsel to answer questions relating to the registration of the aircraft on the country’s aircraft register. While this information is not scored (as it is the characteristics of deregistration of the aircraft, not registration, that is most relevant), it serves two purposes which we hope will be of use to readers.

Firstly, it is informative in respect of whose name the aircraft may be registered in that jurisdiction and whether the interests of the owner and mortgagee may also be noted, either on the aircraft register, the certificate of registration or on some other public register. It is also informative in respect of the existence of any delegation arrangements with other countries, such as 83bis delegation agreements pursuant
to Article 83bis of the Chicago Convention,¹ such that an aircraft operating andhabitually based in that country may be registered in another country.

Secondly, because delegation arrangements allow operating lessors and financiers to mitigate against the adverse effects of the local aircraft registration (and deregistration) rules by allowing an aircraft to be registered in another country, this has allowed us to blend the deregistration score of such other country with the scores of each of the remaining factors for the country in which the aircraft is habitually based. This blended score thus more accurately reflects the total aircraft repossession risk, and is presented in the one-page summary.

Repossession by Owner-Lessor or by Mortgagee? We have designed the questions in the 30-Minute (Check-Box) Jurisdictional Questionnaire in a manner that contemplates both repossession of an aircraft from a defaulting lessee under an aircraft lease, as well as repossession by a “mortgagee” from a defaulting owner-debtor. The phrase “mortgagee” when used in this publication and in the jurisdictional questionnaire means a person who has a first priority security interest in the aircraft, and includes a person in the equivalent position to a mortgagee under applicable local law, such as a “pledgee”, or a “chargee” holding an “international interest” in the airframe and aircraft engines pursuant to the Cape Town Convention.²

Factor 1: Repossession (weighting: 22.5%). This factor evaluates the owner-lessee or mortgagee’s theoretical ability to repossess the aircraft in a cost effective and timely manner. This factor comprises the following sub-factors:

Self-help remedies. Credit was given if the local jurisdiction allows the owner-lessee or mortgagee to exercise so-called self-help remedies. “Self-help” means that the laws of the local jurisdiction permit an owner-lessee or mortgagee, as applicable, to repossess the aircraft from an uncooperative lessee (or debtor) without the need to obtain a court order, provided that it does so peaceably, without using force or the threat of force.

Requirement for a deposit, bond or other security in judicial proceedings. Credit was given if the courts of the jurisdiction do not typically require the owner-lessee or mortgagee, as a condition to obtaining a judicial order for repossession of the aircraft, to deposit a bond or other guarantee with the court.

Repossession taxes and fees. Credit was given if there are no significant fees or taxes payable in order for the owner-lessee or mortgagee to obtain a judicial order for repossession

¹ The Convention on International Civil Aviation, signed at Chicago, on 7 December 1944.


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<th>SUB-FACTORS</th>
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<td>Repossession</td>
<td>(1) Self-help remedies; (2) Requirement for a deposit, bond or other security in judicial proceedings; (3) Repossession taxes and fees; (4) Speed of repossession; (5) Legal cost of repossession; (6) ASU Cape Town Discount or Qualifying OECD Status.</td>
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<tr>
<td>12.5%</td>
<td>Insolvency</td>
<td>(1) Sophistication of insolvency laws; (2) Insolvency moratorium; (3) Overreaching of the lessee’s insolvency estate.</td>
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<tr>
<td>10.0%</td>
<td>Deregistration</td>
<td>(1) Third party deregistration rights; (2) Historical precedent of refusing to deregister; (3) Convenience of deregistration.</td>
</tr>
<tr>
<td>10.0%</td>
<td>Export</td>
<td>(1) Third party export rights; (2) Export licenses and permits; (3) Export fees and taxes.</td>
</tr>
<tr>
<td>7.5%</td>
<td>Judgments and Arbitral Awards</td>
<td>(1) Enforceability of judgments; (2) Enforceability of arbitral awards.</td>
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<tr>
<td>7.5%</td>
<td>Preferential Liens</td>
<td>(1) Onerous and unusual preferential liens: non-possessoriy liens; (2) Onerous and unusual preferential liens: chattel-wide liens; (3) Onerous and unusual preferential liens: liens in favor of a lessee or debtor; (4) Government requisition and confiscation.</td>
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of the aircraft. An example of such a tax might include a stamp tax payable as a condition to admitting documents in evidence for the purposes of repossession proceedings (where self-help remedies are not available). We left it to local counsel to determine, using their professional judgement, whether they thought any such fees were significant; however, we indicated that “significant” fees or taxes would include any fees or taxes assessed on a percentage basis against the value of the aircraft or the sum secured by a mortgage, etc., but might exclude nominal fees or nominal taxes amounting to less than US$1,000 or its equivalent in the local currency of the jurisdiction.

Speed of repossession. We asked local counsel to estimate, on the balance of probabilities, how quickly a court order may be obtained for repossession of an aircraft, following commencement of judicial proceedings, given a choice of four bands: (a) less than or equal to 60 days; (b) more than 60 days but less than or equal to 180 days; (c) more than 180 days but less than or equal to one year; or (d) more than one year. Greater credit was given to the faster bands. In estimating the speed with which such order could be obtained, we asked local counsel to ignore any self-help remedies that may be available as an alternative means of repossession. We also asked local counsel to assume that:

1. the mortgagee or the owner-lessee is ultimately successful;
2. the proceedings are contested by the lessee (or an insolvency practitioner or bankruptcy trustee on its behalf), but are otherwise not contested by any competing creditor;
3. where judicial proceedings are instigated by the mortgagee, it has the cooperation of the owner-lessee;
4. there is already either an English or New York judgment or an arbitration award ordering repossession (and that local counsel should select the answer that represents the quickest of either litigating afresh on the merits or enforcing such judgment or award);
5. the lessee is insolvent at the time the proceedings are instituted; and
6. the proceedings may either be a preliminary (i.e. interim) or a final order, whichever can be obtained the quickest in the local jurisdiction.

Legal cost of repossession. We also asked local counsel to estimate, on the balance of probabilities, the legal costs of obtaining a court order for repossession of an aircraft, following commencement of judicial proceedings, given a choice of four bands: (a) less than or equal to US$50,000; (b) more than US$50,000 but less than or equal to US$250,000; (c) more than US$250,000 but less than or equal to US$1,000,000; or (d) more than US$1,000,000. Greater credit was given to the less costly bands. We asked local counsel to make an equivalent set of assumptions as they made when answering the speed of repossession question. In addition, we also indicated to local counsel that their estimate should be inclusive of all court and lawyer fees incurred by the owner-lessee or mortgagee, but should disregard any amounts that represent any potential recovery of those costs.

ASU Cape Town Discount or Qualifying OECD Status. Bonus credit was given if either or both of the following apply: (1) as of August 30, 2018, the country qualifies for the OECD’s Aircraft Sector Understanding Cape Town Discount (www.oecd.org/tad/xcred/ctc.htm); and/or (2) as of June 25, 2018 the country is an OECD “high-income” or “zero-rated” country (www.oecd.org/tad/xcred/crc-crc-current-english.pdf), with an investment grade sovereign credit rating, according to Standard & Poor’s (or where a Standard & Poor’s rating is not available, according to Moody’s, if available).

Factor 2: Insolvency (weighting: 12.5%). This factor evaluates the friendliness of the jurisdiction’s insolvency laws from a creditor’s perspective. This factor comprises the following sub-factors:

Sophistication of insolvency laws. Credit was given where local counsel was of the opinion that the jurisdiction’s insolvency laws were moderately or well developed. We asked local counsel to restrict their analysis to insolvency law as it relates to the rights of a mortgagee (as a creditor) and an owner-lessee (as a creditor/owner) and to take into account both the frequency, volume and history of case law and any applicable legal commentary on the subject, as well as the sophistication of the applicable statutes.

Insolvency moratorium. We asked local counsel to indicate, under the mandatorily applicable laws of the local jurisdiction, the period during which a moratorium may be imposed in the event of a lessee (or debtor) insolvency / bankruptcy which adversely affects the rights of the owner-lessee (or mortgagee) to repossess an aircraft on termination of the leasing of the aircraft or enforcement of the mortgage. A choice of four bands was given: (a) less than or equal to 60 days; (b) more than 60 days but less than or equal to 180 days; (c) more than 180 days but less than or equal to one year; or (d) more than one year or variable. We asked local counsel to assume that the lessee (or debtor) entity is subject to the mandatorily applicable insolvency / bankruptcy laws of the local jurisdiction. In circumstances where, under the law of the local jurisdiction, more than one answer is applicable because the moratorium period may vary depending on other factors (e.g. whether or not the Cape Town Convention applies or some other criteria are met), local counsel was
Factor 3: Deregistration (weighting: 10%). This factor evaluates the ease with which an owner-lessor or a mortgagee may deregister an aircraft registered on the country’s aircraft register. This factor comprises the following sub-factors:

Third party deregistration rights. Credit was given if the laws of the local jurisdiction and/or the local practice of the aircraft register or aviation authority will honor a unilateral request by the owner-lessor or mortgagee to deregister the aircraft from the aircraft register, without the cooperation of the lessee. Such a request could be honored either: (a) pursuant to the exercise of a deregistration power of attorney or an “irrevocable deregistration and export authorization” (“IDERA”) pursuant to the Cape Town Convention granted in favor of the owner-lessor or mortgagee; or (b) pursuant to such person’s status as an owner-lessor or mortgagee of the aircraft, even without any such power or IDERA. In answering these questions, we also asked local counsel to assume that:

1. the owner-lessor or mortgagee has repossessed the aircraft, or is seeking simultaneous repossession and deregistration of the aircraft;
2. the leasing has terminated or that the mortgage has become enforceable, as applicable;
3. where any such deregistration request is made by an owner-lessor, it is with the consent of the mortgagee (if any); and
4. “cooperation of the lessee” includes a requirement that the original of the certificate of registration be surrendered.

Historical precedent of refusing to deregister. In the event that laws of the local jurisdiction and/or the local practice of the aircraft register or aviation authority entitle an owner-lessor or mortgagee to deregister an aircraft, credit was deducted if local counsel was aware of any instances where the aircraft register or aviation authority had refused to honor a request by the owner-lessor and/or the mortgagee (as applicable) to deregister the aircraft, despite being otherwise entitled to do so. “Despite being otherwise entitled to do so” means that the owner-lessor or mortgagee, in submitting the deregistration request, has complied with the local law and the paperwork required for deregistration is otherwise in order.

Convenience of deregistration. Credit was given if, with respect to deregistration of an aircraft, the aircraft register or aviation authority does not require the application forms necessary for registration, any necessary consents, authorizations or supporting documents to be notarized and/or authenticated before it will accept and process the deregistration of an aircraft. “Authenticated” includes any requirement that a document be apostilled, consularized, legalized or translated.

Factor 4: Export (weighting: 10%). This factor evaluates the ease with which an owner-lessor or a mortgagee may export an aircraft habitually based in the country. This factor comprises the following sub-factors:

Third party export rights. Credit was given if the laws of the local jurisdiction allow an owner-lessor (with the consent of the mortgagee, if any) or a mortgagee to unilaterally export the aircraft from the country without the cooperation of the lessee (and the owner-lessor, in the case of the mortgagee). We asked local counsel to assume that:

1. the owner-lessor or mortgagee has repossessed and deregistered the aircraft, or is seeking simultaneous repossession and deregistration of the aircraft;
2. the leasing has terminated or the mortgage has become enforceable, as applicable;
3. the owner-lessor or mortgagee has an export power of attorney granted in its favor; and
4. the lessee or owner-debtor is insolvent and uncooperative at the time the owner-lessor or mortgagee is seeking to export the aircraft from the country.

Export licenses and permits. Credit was given if an owner-lessor or mortgagee may export the aircraft from the country without requiring an export license or permit. We asked local counsel to disregard any restrictions relating to the export of goods to countries subject to sanctions or with respect to classified or military equipment installed on the aircraft.

Export taxes and fees. Credit was given if there are no
significant fees or taxes payable in order for the owner-lessee or mortgagee to export the aircraft from the country. We left it to local counsel to determine, using their professional judgement, whether they thought any such fees were significant; however, we indicated that “significant” fees or taxes would include any fees or taxes assessed on a percentage basis against the value of the aircraft or the sum secured by a mortgage, etc., but might exclude nominal fees or nominal taxes amounting to less than US$1,000 or its equivalent in the local currency of the jurisdiction.

Factor 5: Judgments and Arbitral Awards (weighting: 7.5%). This factor evaluates the ease with which an owner-lessee or a mortgagee may enforce a judgment or arbitral award in the jurisdiction without having to re-litigate the case on its merits. This factor comprises the following sub-factors:

Enforceability of judgments. Credit was given if the courts of the jurisdiction will recognize and enforce either: (a) a judgment rendered by a New York state or US federal court sitting in New York; or (b) a judgment rendered by an English court, without the case being re-examined on its merits. “Enforcement” means the enforcement of money awards only (and not injunctive or any other type of non-monetary relief).

We also indicated to local counsel that “without the case being re-examined on its merits” meant that enforcement would only be subject to the satisfaction of one or more of the following threshold conditions (and would not be subject to any other additional conditions):

1. the court rendering the judgment must have had jurisdiction over the defendant and has obtained such jurisdiction in a way that is compatible with the laws of the local jurisdiction;
2. the judgment of the rendering court must have been final and conclusive and not subject to appeal;
3. the judgment must have been given on the merits of the case (and, for example, must not have been obtained by way of “judgment in default”);
4. the judgment must not have been obtained by fraud;
5. the judgment must not be incompatible with the public policy of the local jurisdiction;
6. the judgment must not contradict another judgment rendered by a court in the local jurisdiction; and/or
7. in the case of a judgment rendered by an English court, if the country is a sister EU member state, any of the conditions or exceptions permitted by the “recast” Brussels Regulation (Council Regulation (EU) 1215/2012).

Additionally, we made clear that a requirement for reciprocity of recognition/enforcement by a New York or English court (as applicable) is NOT a permitted threshold condition, unless it can be said with reasonable certainty that on a general basis (rather than on a case by case basis) such reciprocity requirement will be satisfied with respect to any such New York or English court judgment (because, for example, a reciprocal enforcement treaty exists).

Enforceability of arbitral awards. Credit was given if the country has adopted the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention) and the courts of the local jurisdiction recognize and enforce a decision of an arbitrator. We asked local counsel to assume that a court in the local jurisdiction would be entitled to refuse enforcement of the arbitral award based on one of the exceptions and carve-outs enumerated in the New York Convention.

Factor 6: Preferential Liens (weighting: 7.5%). This factor evaluates the status of any onerous or unusual non-consensual preferential liens and requisition risks which could be imposed by the laws of the local jurisdiction and which may adversely affect an owner-lessee’s or mortgagee’s rights to the aircraft. “Preferential lien” means a lien that would take priority over the owner/lessor’s ownership and/or a mortgagee’s secured creditor rights in the aircraft, and “non-consensual” means that it arises by operation of law and not by agreement between a person with rights in the aircraft and the lien-holder. This factor comprises the following sub-factors:

Onerous and unusual preferential liens—non-possessory liens. Credit was given if the laws of the local jurisdiction do not provide for any non-consensual preferential non-possessory liens over aircraft that could arise in favor of a repairer / mechanic or a landlord / hangar-keeper.

Onerous and unusual preferential liens—fleet-wide liens. Credit was given if the laws of the local jurisdiction do not provide for any “fleet-wide” non-consensual preferential liens or equivalent rights or rights of detention over aircraft that could arise in favor of third parties not requiring any form of registration. A “fleet-wide” lien means a lien that has arisen as a result of unpaid amounts attributable to a particular aircraft in an operator’s fleet, but has attached or is capable of attaching to any other aircraft in that operator’s fleet (i.e. any other aircraft operated by that operator), regardless of the fact that the owners of such aircraft may be different.

Onerous and unusual preferential liens—liens in favor of a lessee or debtor. Credit was given if the laws of the local jurisdiction do not provide for any non-consensual preferential liens or equivalent rights or rights of detention over aircraft that could arise in favor of a lessee or debtor (i.e. not a third party) not requiring any form of registration. An example
of such lien might include a non-consensual preferential lien over the aircraft arising by operation of law in favor of a lessee in circumstances where the lessee has a valid counterclaim against the owner-lessee.

Government requisition and confiscation. Credit was given if the laws of the local jurisdiction do not allow the government to requisition or confiscate an aircraft without needing to pay the owner reasonable compensation. We asked local counsel to disregard government requisition or confiscation of the aircraft in circumstances where there has been a violation of any drug-trafficking laws or other criminal offenses.

Factor 7: Political Stability (weighting: 30%). This factor evaluates, predominantly, the adherence by the jurisdiction to the rule of law, by reference to a number of rule of law indices and other approximate measures, and should be helpful in determining the ease with which the theoretical legal rights available to an owner-lessee or mortgagee may be enforced in practice. This factor comprises the following sub-factors:

OECD status. Credit was given if the country is an OECD “high-income” or “zero-rated” country according to the OECD’s “country risk” classification system (see further, www.oecd.org/tad/txcred/cre-crc-current-english.pdf).

Sovereign credit rating. Credit was given to countries with an investment grade sovereign credit rating, according to Standard & Poor’s (or where a Standard & Poor’s rating is not available, according to Moody’s, if available).

World Justice Project – Rule of Law Index (2017-2018). Greater credit was given to countries with higher scores on the following measures: “Absence of Corruption”, “Open Government”, “Regulatory Enforcement” and “Civil Justice” (see further, worldjusticeproject.org/our-work/wjp-rule-law-index).

Heritage Foundation – 2018 Index of Economic Freedom. Greater credit was given to countries with higher scores on the following measures: “Property rights” and “Government Integrity” (see further, www.heritage.org/index/).


In the event that there is no data on the country in either one or two of the rule of law indices, each such index is ignored for scoring purposes without any negative effect on that country’s aggregate score for this factor. In the rare event that there is no data on the country in all three of the indices, then the Political Stability factor is ignored in its entirety and a note is made on the one-page summary for that country (and in the Summary of Scores table beginning on page 18) indicating that no such data is available.
Summary of Scores

Summarized in the table below are the overall scores for each jurisdiction analyzed in this publication, together with a breakdown of the scores for each factor. The table has been sorted in descending order of overall score, with the highest scoring country at the top and the lowest scoring country at the bottom.

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World Map

This world map summarizes the overall scores and asset recoverability ratings for each jurisdiction. The green, yellow and red colorings represent jurisdictions whose asset recoverability ratings are “LOWER RISK,” “MODERATE,” or “HIGHER RISK” respectively with the bluer gradient of the color indicating whether the jurisdiction sits in the top, middle or bottom range of that category.
Argentina
Jurisdiction(s): Argentina

COMPLETED BY:
Argüelles & Asociados

CONTACT: AMÍLCAR EMILIO ARGÜELLES, Partner, earguelles@arguelaw.com
JORGE ALBERTO PEZZUTI, Partner, jpezzuti@arguelaw.com

Overall Score  Category
54% MODERATE

Weighting  Score:
22.5%  Repossession  39%
12.5%  Insolvency  90%
10.0%  Deregistration  80%
10.0%  Export  50%
7.5%  Judgments/Arb.  100%
7.5%  Preferential Liens  75%
30.0%  Political Stability  27%

Time & Cost Indicators

N.B. Low political stability may affect reliability of these values

- Legal Cost of Repossession ($):
  - $50,000
  - $250,000
  - $1,000,000

- Speed of Repossession (time):
  - 60 days
  - 180 days
  - 1 year

- Insolvency Moratorium Period (time):
  - 1 year/variable

Aircraft Registration

Possible principal registrants:
Owner (if not also the operator):  YES
Operator (if not also the owner):  YES

Additional interests that may be noted, either on the aircraft register, some other public register, or on the certificate of registration:
Owner:  N/A  Mortgage:  YES

Alternative Country of Registration #1:
N/A

Alternative Country of Registration #2:
N/A

More Results

For a more detailed results sheet or the full set of responses to the Jurisdictional Questionnaire, please contact: repoindex@pillsburylaw.com
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**Overall Score**

<table>
<thead>
<tr>
<th>Category</th>
<th>Weighting</th>
<th>Score</th>
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</thead>
<tbody>
<tr>
<td>Repossession</td>
<td>22.8%</td>
<td>100%</td>
</tr>
<tr>
<td>Insolvency</td>
<td>12.5%</td>
<td>100%</td>
</tr>
<tr>
<td>Deregistration</td>
<td>10.0%</td>
<td>100%</td>
</tr>
<tr>
<td>Export</td>
<td>10.0%</td>
<td>100%</td>
</tr>
<tr>
<td>Judgments/Arb.</td>
<td>7.5%</td>
<td>100%</td>
</tr>
<tr>
<td>Preferential Liens</td>
<td>7.5%</td>
<td>100%</td>
</tr>
<tr>
<td>Political Stability</td>
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<td>No data</td>
</tr>
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</table>

**Time & Cost Indicators**

- **$50,000**
  - Speed of Repossession: 60 days
- **$250,000**
  - Speed of Repossession: 180 days
- **$1,000,000**
  - Speed of Repossession: 1 year/variable
  - Insolvency Moratorium Period: 1 year/variable

**Aircraft Registration**

- Possible principal registrants:
  - Owner (if not also the operator): **YES**
  - Operator (if not also the owner): **YES**
- Additional interests that may be noted, either on the aircraft register, some other public register, or on the certificate of registration:
  - Owner: **YES**
  - Mortgage: **YES**

**Key Facts**

- **OECD high-income/zero-rated country:** NO
- **Cape Town Contracting State:** NO
- **Eligible for ASU Cape Town Discount:** YES
- **Self-help (Lessor-owners):** YES
- **Self-help (Mortgages):** YES
- **Moderately or well-developed insolvency laws:** YES
- **Absence of significant taxes or similar fees payable on export:** YES
- **Absence of fleetwide liens:** YES
- **Local court will enforce, without reexamination of case on merits:**
  - a New York court judgment: YES
  - an English court judgment: YES
  - an arbitral award: YES

**More Results**

For a more detailed results sheet or the full set of responses to the Jurisdictional Questionnaire, please contact: repoindex@pillsburylaw.com
**Australia (*)**

*Jurisdiction(s):* Commonwealth of Australia, New South Wales, Victoria, Queensland, Western Australia and Australian Capital Territory

(* Local counsel has provided additional notes for this country.

**COMPLETED BY:**

**King & Wood Mallesons**

**CONTACT:**

JOHN CANNING, Partner, john.canning@au.kwm.com

TEJASWI NIMMAGADDA, Counsel,

tejaswi.nimmagadda@hk.kwm.com

---

**Overall Score**

97%

**Category**

**LOWER**

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---

**Time & Cost Indicators**

- **Legal Cost of Repossession ($):**
  - $50,000
  - $250,000
  - $1,000,000

- **Speed of Repossession (time):**
  - 60 days
  - 180 days
  - 1 year

- **Insolvency Moratorium Period (time):**
  - 60 days
  - 180 days
  - 1 year/variable

**Key Facts**

- OECD high-income/zero-rated country:
  - YES
- Cape Town Contracting State:
  - YES
- Eligible for ASU Cape Town Discount:
  - YES
- Self-help (Lessor-owners):
  - YES
- Self-help (Mortgagors):
  - YES
- Moderately or well-developed insolvency laws:
  - YES
- Absence of significant taxes or similar fees payable on export:
  - YES
- Absence of fleetwide liens:
  - YES
- Local court will enforce, without reexamination of case on merits...
  - YES
  - a New York court judgment:
    - YES
  - an English court judgment:
    - YES
  - an arbitral award:
    - YES

1Additional information regarding third party data is available on page 221.

**Aircraft Registration**

- **Possible principal registrants:**
  - Owner (if not also the operator): YES
  - Operator (if not also the owner): NO

- **Additional interests that may be noted, either on the aircraft register, some other public register, or on the certificate of registration:**
  - Owner: N/A
  - Mortgage: NO

- **Alternative Country of Registration #1:**
  - New Zealand
  - Blended Score: 97%
  - Blended Category: LOWER

- **Alternative Country of Registration #2:**
  - United States
  - Blended Score: 97%
  - Blended Category: LOWER

---

**World Aircraft Repossession Index 25**

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**Time & Cost Indicators**

- **$50,000**
  - Speed of Repossession: 60 days
  - Insolvency Moratorium Period: 60 days
- **$250,000**
  - Speed of Repossession: 180 days
- **$1,000,000**
  - Speed of Repossession: 1 year

**Legal Cost of Repossession ($) vs. Speed of Repossession (time):**
- $50,000: 60 days
- $250,000: 180 days
- $1,000,000: 1 year

**Aircraft Registration**

- Possible principal registrants:
  - Owner (if not also the operator): NO
  - Operator (if not also the owner): YES
- Additional interests that may be noted, either on the aircraft register, some other public register, or on the certificate of registration:
  - Owner: NO
  - Mortgage: NO

**Alternative Country of Registration #1:**
- N/A

**Alternative Country of Registration #2:**
- N/A

**More Results**

For a more detailed results sheet or the full set of responses to the Jurisdictional Questionnaire, please contact: repoindex@pillsburylaw.com
**Azerbaijan**

Jurisdiction(s): Republic of Azerbaijan

**ONE-PAGE SUMMARIES**

Up to Date: January 2018

**Completed by:**

BM Morrison Partners LLC

**Contact:** DELARA ISRAFILOVA, Partner, disrafilova@bmlawaz.com
LEYLA SAFAROVA, Associate, lsafarova@bmlawaz.com

---

**Overall Score**

**Category:** HIGHER

<table>
<thead>
<tr>
<th>Weighting</th>
<th>Score</th>
<th>Category</th>
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<td>22.8%</td>
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<td>Export</td>
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<td>7.5%</td>
<td>Judgments/Arb.</td>
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<td>Preferential Liens</td>
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<td>30.0%</td>
<td>Political Stability</td>
<td>38%</td>
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---

**Time & Cost Indicators**

- **Legal Cost of Repossession ($):**
  - $50,000
  - $250,000
  - $1,000,000

- **Speed of Repossession (time):**
  - 60 days
  - 180 days
  - 1 year

- **Insolvency Moratorium Period (time):**
  - Variable

---

**Aircraft Registration**

Possible principal registrants:

- Owner (if not also the operator): **YES**
- Operator (if not also the owner): **NO**

Additional interests that may be noted, either on the aircraft register, some other public register, or on the certificate of registration:

- Owner: **N/A**
- Mortgage: **YES**

**Alternative Country of Registration #1:**

**Bermuda**

- Blended Score: 61%
- Blended Category: MOD

**Alternative Country of Registration #2:**

- Blended Score: N/A
- Blended Category: N/A

---

**Key Facts**

- OECD high-income/zero-rated country: **NO**
- Cape Town Contracting State: **NO**
- Eligible for ASU Cape Town Discount: **NO**
- Self-help (Lessor-owners): **YES**
- Self-help (Mortgagees): **NO**
- Moderately or well-developed insolvency laws: **YES**
- Absence of significant taxes or similar fees payable on export: **NO**
- Absence of fleetwide liens: **NO**
- Local court will enforce, without reexamination of case on merits:
  - a New York court judgment: **YES**
  - an English court judgment: **YES**
  - an arbitral award: **YES**

*Additional information regarding third party data is available on page 221.*

---

**More Results**

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---

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Bahrain
Jurisdiction(s): Bahrain

COMPLETED BY:
Al Salam Advocates
CONTACT: AHMED RAHMI, Partner, a.rahmy@alsalamadvocates.com
ALAA ALQASSAB, Senior Associate, a.alqassab@alsalamadvocates.com

Overall Score 48% Category HIGHER

Weighting Score:
22.8% Repossession 43%
12.5% Insolvency 80%
10.0% Deregistration 20%
10.0% Export 25%
7.5% Judgments/Arb. 33%
7.5% Preferential Liens 75%
30.0% Political Stability 54%

Time & Cost Indicators

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<th>Insolvency Moratorium Period (time)</th>
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</tr>
<tr>
<td>$1,000,000</td>
<td>1 year</td>
<td>1 year/variable</td>
<td></td>
</tr>
</tbody>
</table>

Key Facts
- OECD high-income/zero-rated country: NO
- Cape Town Contracting State: YES
- Eligible for ASU Cape Town Discount: NO
- Self-help (Lessor-owners): YES
- Self-help (Mortgages): NO
- Moderately or well-developed insolvency laws: NO
- Absence of significant taxes or similar fees payable on export: NO
- Absence of fleetwide liens: NO
- Local court will enforce, without reexamination of case on merits...
  - a New York court judgment: NO
  - an English court judgment: NO
  - an arbitral award: YES

Aircraft Registration

Possible principal registrants:

Owner (if not also the operator): YES
Operator (if not also the owner): NO

Additional interests that may be noted, either on the aircraft register, some other public register, or on the certificate of registration:

Owner: N/A
Mortgage: YES

Alternative Country of Registration #1:

N/A

Alternative Country of Registration #2:

N/A

More Results

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World Aircraft Repossession Index 28
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**Time & Cost Indicators**

*N.B. Low political stability may affect reliability of these values*

- **Legal Cost of Repossession ($)**: $50,000, 60 days, 60 days
- **Legal Cost of Repossession ($)**: $250,000, 180 days, 180 days
- **Legal Cost of Repossession ($)**: $1,000,000, 1 year, 1 year/variable

**Aircraft Registration**

- Possible principal registrants:
  - Owner (if not also the operator): **YES**
  - Operator (if not also the owner): **YES**

- Additional interests that may be noted, either on the aircraft register, some other public register, or on the certificate of registration:
  - Owner: **YES**
  - Mortgage: **YES**

**Key Facts**

- OECD high-income/zero-rated country: **NO**
- Cape Town Contracting State: **YES**
- Eligible for ASU Cape Town Discount: **NO**
- Self-help (Lessor-owners): **YES**
- Self-help (Mortgagees): **YES**
- Moderately or well-developed insolvency laws: **NO**
- Absence of significant taxes or similar fees payable on export: **YES**
- Absence of fleetwide liens: **YES**
- Local court will enforce, without reexamination of case on merits...
  - a New York court judgment: **YES**
  - an English court judgment: **YES**
  - an arbitral award: **YES**

Additional information regarding third party data is available on page 221.

**More Results**

For a more detailed results sheet or the full set of responses to the Jurisdictional Questionnaire, please contact:

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**Overall Score**

<table>
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<tr>
<th>Category</th>
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<tr>
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**Key Facts**

- OECD high-income/zero-rated country: **YES**
- Cape Town Contracting State: **NO**
- Eligible for ASU Cape Town Discount: **NO**
- Self-help (Lessor-owners): **NO**
- Self-help (Mortgagees): **YES**
- Moderately or well-developed insolvency laws: **YES**
- Absence of significant taxes or similar fees payable on export: **YES**
- Absence of fleetwide liens: **NO**

- Local court will enforce, without reexamination of case on merits...
  - a New York court judgment: **YES**
  - an English court judgment: **YES**
  - an arbitral award: **YES**

*Additional information regarding third party data is available on page 221.*

**Aircraft Registration**

<table>
<thead>
<tr>
<th>Possible principal registrants:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Owner (if not also the operator):</td>
</tr>
<tr>
<td>Operator (if not also the owner):</td>
</tr>
</tbody>
</table>

Additional interests that may be noted, either on the aircraft register, some other public register, or on the certificate of registration:

<table>
<thead>
<tr>
<th>Owner</th>
<th>Mortgage</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>NO</strong></td>
<td><strong>NO</strong></td>
</tr>
</tbody>
</table>

**Alternative Country of Registration #1:**
- **Malta**
  - Blended Score: 80%
  - Blended Category: LOWER

**Alternative Country of Registration #2:**
- **N/A**
  - Blended Score: N/A
  - Blended Category: N/A

**More Results**

For a more detailed results sheet or the full set of responses to the Jurisdictional Questionnaire, please contact:

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**Overall Score (**) Category**

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**Overall Score**: 91%

**Category**: LOWER

### Time & Cost Indicators

- **$50,000**: 60 days (Better score)
- **$250,000**: 180 days (Better score)
- **$1,000,000**: 1 year (Better score)

### Aircraft Registration

Possible principal registrants:
- Owner (if not also the operator): **YES**
- Operator (if not also the owner): **YES**

Additional interests that may be noted, either on the aircraft register, some other public register, or on the certificate of registration:
- Owner: **NO**
- Mortgage: **YES**

**Alternative Country of Registration #1**: N/A

**Alternative Country of Registration #2**: N/A

### Key Facts

1. OECD high-income/zero-rated country: **NO**
2. Cape Town Contracting State: **YES**
3. Eligible for ASU Cape Town Discount: **NO**
4. Self-help (Lessor-owners): **YES**
5. Self-help (Mortgagees): **YES**
6. Moderately or well-developed insolvency laws: **YES**
7. Absence of significant taxes or similar fees payable on export: **YES**
8. Absence of fleetwide liens: **YES**
9. Local court will enforce, without reexamination of case on merits...
   - a New York court judgment: **NO**
   - an English court judgment: **YES**
   - an arbitral award: **YES**

*Additional information regarding third party data is available on page 221.*

### More Results

For a more detailed results sheet or the full set of responses to the Jurisdictional Questionnaire, please contact: repoindex@ pillsburylaw.com
Bolivia
Jurisdiction(s): Bolivia

COMPLETED BY:
C.R. & F. Rojas Abogados S.R.L.
CONTACT: MARIA DEL CARMEN BALLIVIÁN, Partner, mario@rojas-lawfirm.com

Overall Score | Category
---|---
43% | HIGHER

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<td>Preferential Liens</td>
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<tr>
<td>10.0%</td>
<td>Political Stability</td>
</tr>
</tbody>
</table>

Time & Cost Indicators

N.B. Low political stability may affect reliability of these values

- Legal Cost of Repossession ($):
  - $50,000
  - $250,000
  - $1,000,000

- Speed of Repossession (time):
  - 60 days
  - 180 days
  - 1 year

- Insolvency Moratorium Period (time):
  - 60 days
  - 180 days
  - 1 year/variable

Aircraft Registration

Possible principal registrants:
- Owner (if not also the operator): YES
- Operator (if not also the owner): YES

Additional interests that may be noted, either on the aircraft register, some other public register, or on the certificate of registration:
- Owner: YES
- Mortgage: YES

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Key Facts

- OECD high-income/zero-rated country: NO
- Cape Town Contracting State: NO
- Eligible for ASU Cape Town Discount: NO
- Self-help (Lessor-owners): NO
- Self-help (Mortgages): NO
- Moderately or well-developed insolvency laws: YES
- Absence of significant taxes or similar fees payable on export: NO
- Absence of fleetwide liens: NO
- Local court will enforce, without reexamination of case on merits... YES
  - a New York court judgment: NO
  - an English court judgment: NO
  - an arbitral award: YES

1 Additional information regarding third party data is available on page 221.

More Results

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**Brazil (*)**

Jurisdiction(s): Brazil (Federal laws)

(*) Local counsel has provided additional notes for this country.

**ONE-PAGE SUMMARIES**

Up to Date: April 2018

**COMPLETED BY:**

Cascione, Pulino, Boulos & Santos Advogados

CONTACT: João Paulo Servera, Partner, jpservera@cascione.com.br

---

**Overall Score**

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**Weighting**

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**Time & Cost Indicators**

**N.B. Low political stability may affect reliability of these values**

<table>
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<th>Legal Cost of Repossession ($)</th>
<th>Speed of Repossession (time)</th>
<th>Insolvency Moratorium Period (time)</th>
</tr>
</thead>
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<td>180 days</td>
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</tr>
<tr>
<td>$1,000,000</td>
<td>1 year</td>
<td>1 year/variable</td>
</tr>
</tbody>
</table>

---

**Aircraft Registration**

**Possible principal registrants:**

- Owner (if not also the operator): **YES**
- Operator (if not also the owner): **YES**

**Additional interests that may be noted, either on the aircraft registries, the certificate of registration:**

- Owner: **YES**
- Mortgage: **YES**

**Alternative Country of Registration #1:**

<table>
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<tr>
<th>Alternative Country of Registration</th>
<th>Blended Score</th>
<th>Blended Category</th>
</tr>
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**Alternative Country of Registration #2:**

<table>
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**Key Facts**

- **OECD high-income/zero-rated country:** **NO**
- **Cape Town Contracting State:** **YES**
- **Eligible for ASU Cape Town Discount:** **NO**
- **Self-help (Lessor-owners):** **NO**
- **Self-help (Mortgages):** **YES**
- **Moderately or well-developed insolvency laws:** **YES**
- **Absence of significant taxes or similar fees payable on export:** **NO**
- **Absence of fleetwide liens:** **NO**
- **Local court will enforce, without reexamination of case on merits...**
  - a New York court judgment: **YES**
  - an English court judgment: **YES**
  - an arbitral award: **YES**

*Additional information regarding third party data is available on page 221.*

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**More Results**

For a more detailed results sheet or the full set of responses to the Jurisdictional Questionnaire, please contact: repoindex@pillsburylaw.com

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Of Swords and Shields: The Role and Limits of Courts in the Enforcement of the Cape Town Convention’s Substantive Repossession Remedies*

by Mark N. Lessard, Paul P. Jebely, Jeffrey Wool**

The Cape Town Convention and its Aircraft Protocol (the ‘CTC’) create a system whereby courts having jurisdiction over the territory where an object is located can be used as a ‘sword’ to obtain speedy repossession of mobile assets, but cannot be used as a ‘shield’ to delay or frustrate such repossession activity, especially on the basis of national law principles that are inconsistent with the CTC. Improper shielding actions can arise in particular from (1) a failure by courts to enforce the Convention’s substantive remedies (including the issuance of blocking or injunctive orders contrary to the Convention) or (2) the improper application of the Convention’s jurisdictional rules. This is not to say that the CTC overrides all national laws (although it does override national law on matters within its scope), or that the CTC does not contain any debtor protections (which it does; see, for example, the obligation to exercise remedies in a commercially reasonable manner as will be discussed below). Nor does this mean that a creditor should always win in any repossession case brought under the CTC. Instead, we are deploying this formulation to emphasize that the CTC creates a state responsibility (applicable through the relevant state’s judiciary) to adjudicate matters consistent with CTC jurisdictional rules and to provide creditors with the substantive remedies and protections intended by the treaty text, state declarations and party agreements.

Introduction
The Cape Town Convention on International Interests in Mobile Equipment (the ‘Convention’) and its related Aircraft Protocol (the ‘Aircraft Protocol’) signed on 16 November 2001 (together, the ‘CTC’)
form an international treaty designed to promote the cross-border financing of aircraft. The CTC mitigates jurisdictional risk around the ability to immobilize, recover and redeploy aircraft speedily in a default situation, including on insolvency, with a framework that centers on the ‘international interest’. Following contractual default, the CTC offers creditors holding an international interest two key substantive repossession remedies: non-judicial remedies (also known as ‘self-help’) and advance judicial relief pending final determination. These rights and remedies are sui generis in that they arise from the CTC and are ontologically independent of national law.

Implementation of the CTC at the executive and legislative levels has been relatively successful to date, and we are entering a period of judicial implementation of the treaty’s substantive remedies, which are now being tested in national courts. This is because the CTC system, like other private commercial law treaties, does not contain an independent dispute resolution mechanism. Instead, creditors must rely on national courts for the practical realization of the CTC benefits. This can lead to an inconsistent application of the CTC’s principles in different jurisdictions.

Because the treaty is not an all-encompassing commercial code, the relationship between its international substantive

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**Mr. Lessard and Mr. Jebely are Executive Editors of the World Aircraft Repossession Index. Their biographies can be found on Page 7. Their collaborator Mr. Wool is secretary general of the Aviation Working Group, professor of global business law, University of Washington, and an associate faculty member, University of Oxford. He is also the executive director of the Cape Town Convention Academic Project, the general editor of the Cape Town Convention Journal, and the chair of the Advisory Board to the International Registry (Aircraft Protocol).


2 For purposes of this article, ‘creditor’ refers to a chargee, conditional seller or lessor as the context requires.

3 These may be remedies of a chargee under Article 8(1)(a) or of a lessor or conditional seller under Article 10(a).

4 Article 13(1)(a)-(c) and Aircraft Protocol, Article X.

5 Since 2006, 84 countries and the European Union have signed the treaty and 73 countries and the European Union have ratified the treaty. The number of registered international interests has been increasing steadily every year, with over 30,000 international interests (including prospective international interests) registered annually since 2013. Because of the declaration system, not all ratifications are equal. The OECD keeps a list of countries that have made the qualifying declarations, and have implemented the CTC, thus entitling them to a discount on export credit financing.

6 Needless to say the establishment of an international commercial court would have gone far beyond the original intent of the treaty and have been highly impractical in every sense.
law provisions and otherwise applicable national law remains critical. Where a matter is not expressly addressed by the CTC, the treaty itself resorts to gap-filling through 'general principles,' both explicit and implicit—on which the CTC is based—before turning to domestic law. The CTC also contains jurisdictional rules, which are intended to override the private international law principles that a court seized of a matter normally would apply to determine which national courts have jurisdiction to hear CTC cases and enforce the substantive rights created by the CTC. CTC gap-filling and jurisdictional rules are essential to the core purpose of the treaty: to allow for speedy and predictable repossession of mobile assets following default.

Early cases have shown that some courts are either not sufficiently aware of the CTC and its applicability (sometimes from omissions in the pleadings submitted) or otherwise suffer from institutional bias in favor of pre-CTC national law. These instances are, in the best case, inconsistent with the core notion that the CTC takes precedence over national law and often place contracting states in violation of international law. In order to help elucidate and avoid the pitfalls of misapplication, this article examines ways in which courts may erroneously thwart CTC remedies by reference to national conflicts rules or national substantive law.

While this article focuses on CTC repossession rights, the principles herein apply more generally to court proceedings involving other substantive CTC rights, including those relating to deregistration, export or sale of aircraft equipment.

Thesis and Outline

This paper seeks to explore the proper role and limits of courts in the context of the CTC’s substantive repossession remedies. We will argue that the CTC, where supported by contracting state declarations and party intent in their contractual agreements, creates a system whereby courts having jurisdiction over the territory in which an object is located can be used as a ‘sword’ to obtain speedy possession of that object, but cannot be used as a ‘shield’ to delay that repossession activity.

While courts will be more likely to err in their application of the CTC if it has not been properly implemented under national law, the proper legislative and regulatory implementation of the CTC is beyond the scope of this paper. We instead focus on the actions that a court can take (or refuse to take) that would improperly shield a debtor from otherwise enforceable CTC remedies, effectively putting a country in violation of its international legal obligations. Such shielding actions typically arise from either (1) a failure by courts to enforce the CTC’s substantive remedies (including the issuance of blocking or injunctive orders contrary to the CTC) or (2) the improper application of the CTC’s jurisdictional rules. Examples of a failure to enforce treaty remedies might include: ignoring express treaty remedies that require time-bound and/or non-discretionary court action, or adding restrictions to these based on national law; construing the substantive elements of the treaty in an unintended narrow manner; or turning to local substantive or procedural provisions in a manner that undermines the intent of the CTC. Examples of improper application of jurisdictional rules might include: claiming jurisdiction over a dispute contrary to treaty provisions or refusing to accept jurisdiction on the basis of national conflicts-of-laws rules contrary to treaty provisions.

We will first describe our proposed sword/shield theory followed by an overview of the CTC’s judicial and non-judicial repossession remedies. Next, we will examine the key jurisdictional CTC provisions applicable to these remedies, focusing on the manner in which these are intended to override certain aspects of national law and analyzing a recent case that we believe to be inconsistent with the CTC. We will then explore the role and limits of courts in the