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Egypt: Law and Practice

Sherif El Hosseny, Malak El Amiry, Farida Degheidy and Nayera Thabet
Matouk Bassiouny & Hennawy



EGYPT



Law and Practice

Contributed by:
Sherif El Hosseny, Malak El Amiry, Farida Degheidy and Nayera Thabet
Matouk Bassiouny & Hennawy

Contents

1. Aircraft and Engine Purchase and Sale p.4
1.1 Sales Agreements p.4
1.2 Taxes/Duties Payable Upon Execution of a Bill of Sale p.4

2. Aircraft and Engine Leasing p.5
2.1 Overview p.5
2.2 Lease Terms p.6
2.3 Lease Registration p.6
2.4 Lessor's Liabilities p.8
2.5 Insurance and Reinsurance p.9
2.6 Lease Enforcement p.9
2.7 Lease Assignment/Novation p.11
2.8 Aircraft Deregistration and Export p.12
2.9 Insolvency Proceedings p.13
2.10 Cape Town Convention and Others p.16

3. Aircraft Debt Finance p.16
3.1 Structuring p.16
3.2 Security p.17
3.3 Liens p.18
3.4 Enforcement p.19

4. Other Issues of Note p.20
4.1 Issues Relevant to Domestic Purchase, Sale, Lease or Debt Finance of Aircraft p.20
4.2 Current Legislative Proposals p.20

Matouk Bassiouny & Hennawy was founded in 2005 and is a leading full-service business law firm in Egypt and the MENA region, with offices in Algeria, Sudan and the UAE, and a New York satellite office for international dispute resolution. The firm also has country desks for Libya and South Korea. With over 230 lawyers trained in common and civil law, it provides services in English, Arabic, French and Korean.

Authors



Sherif El Hosseny is a partner at Matouk Bassiouny & Hennawy and heads the firm's aviation sector. He brings more than 26 years' experience working in aviation (mainly aircraft financing, leasing and repossessions), banking and finance and project finance, general corporate and acquisitions, and real estate and hospitality. Sherif has advised leading Egyptian and multinational banks and financial institutions in connection with various high-value syndicated facilities and loans, project finance, settlements of debts and debt restructures. He has been involved in representing major multinational aircraft and engine leasing companies, financial institutions, and export credit agencies in connection with various cross-border transactions related to the leasing and financing of aircraft.



Malak El Amiry is an associate at Matouk Bassiouny & Hennawy, where she plays an integral role in the finance and projects department and serves as a core member of the firm's aviation sector team. She has extensive experience advising on complex aviation matters, including aircraft registration and deregistration, repossession, leasing structures, and aircraft financing. Her work supports major clients across the aviation industry, including operators, lessors and financiers.



Farida Degheidy is an associate at Matouk Bassiouny & Hennawy, a member of the finance and projects department, and a core member of the aviation sector team. She regularly works on matters related to aircraft registration, deregistration, repossession, leasing, and aircraft financing. She also represents clients in corporate transactions, incorporations, corporate advisory, and legal opinions.



Nayera Thabet is an associate at Matouk Bassiouny & Hennawy and a member of the finance and projects department. She has experience across multiple jurisdictions, including Egypt, the UAE and Armenia, with a focus on corporate structuring, contract negotiation and regulatory compliance. Her background includes advising on and cross-border transactions, as well as handling licensing and corporate governance matters for clients in the aviation, fintech and industrial sectors.

Matouk Bassiouny & Hennawy

12 Mohamed Ali Genah Street
Garden City
Cairo
Egypt

Tel: +202 2796 2042
Fax: +202 2795 4221
Email: info@matoukbassiouny.com
Web: www.matoukbassiouny.com

1. Aircraft and Engine Purchase and Sale

1.1 Sales Agreements

1.1.1 Taxes/Duties Payable Upon Execution of the Sales Agreement

The mere execution of an aircraft/sale agreement in Egypt does not entail the payment of taxes.

1.1.2 Enforceability Against Domestic Parties

Whether a sale agreement needs to be certified, notarised or legalised to be enforceable depends on the asset subject to sale. Such an agreement is also subject to the governing law and dispute resolution mechanism. Under an aircraft sale agreement regarding an Egyptian registered aircraft, the bill of sale is required to be:

- filed with the Egyptian Civil Aviation Authority (ECAA); or
- deposited with the ECAA after having been notarised and legalised up to the level of the Egyptian embassy/consulate in the country of issuance, to reflect the new owner.

As to engines, such requirement does not exist unless the agreement will be presented to an Egyptian court. It is advisable, however, for the bill of sale pertaining to an engine that is installed on an Egyptian registered aircraft/aircraft maintained or operated in Egypt to be notarised and legalised up to the level of the Egyptian embassy/consulate in the country of issuance and kept on file (i) until the Cape Town Convention is fully implemented to allow for engine registration and (ii) in the event there is a dispute adjudicated in Egypt that involves said engine. Moreover, if the agreement is subject to a foreign law and adjudicated outside Egypt then it is not required to be translated. Please see **1.2.1 Transferring Title** and **2.1.1 Non-Permissible Leases**.

Egyptian law allows documents in the English language to be filed as is, without translation into Arabic. This aviation industry-specific law is considered unique. In courts, English documents will need to be translated.

1.2 Taxes/Duties Payable Upon Execution of a Bill of Sale

1.2.1 Transferring Title

The transfer of title to an aircraft registered in Egypt must be done through (i) the filing of the sale agreement or the bill of sale with the ECAA, or (ii) depositing the sale agreement or the bill of sale with the ECAA after having it notarised and legalised up to the level of the Egyptian embassy/consulate in the country of issuance.

As to an engine, in the absence of a regime specifically governing engines as opposed to aircraft, the transfer of title of an engine would follow the conventional procedures prescribed under Egyptian law. There are no perfection procedures prescribed for the sale of an engine. Please see **2.1.1 Non-Permissible Leases**. The same applies to auxiliary power units and other installed parts.

The sale of the ownership interest in an entity owning an aircraft or engine does not have an impact on that aircraft or engine. However, if the owner of an aircraft is changed, that transfer of title must be reflected in the ECAA relevant registries. As to engines, please see **2.1.1 Non-Permissible Leases**.

1.2.2 Sales Governed by English or New York Law

The transfer of title to an aircraft or engine physically delivered in Egypt would be recognised if the bill of sale is governed by English or New York law, assuming it is valid under the governing law, so long as the foreign legal provision being relied upon does not contravene Egyptian public order or public morality.

For a sale to take place in Egypt, minimum substantive requirements include the transfer of title to the buyer for a consideration and that the description of the sold item is clearly identified.

The above applies to aircraft bills of sale that are registered in Egypt in addition to either the said bill of sale needing to be filed for a filing fee or a notarised and legalised certified true copy needing to be deposited with the ECAA.

1.2.3 Enforceability Against Domestic Parties

Please see **1.2.2 Sales Governed by English or New York Law**, **2.3.4 Registration of Leases With the Domestic Aircraft Registry** and **2.3.5 Requirements for a Lease to Be Valid and Registrable**.

1.2.4 Registration, Filing and/or Consent From Government Entities

A flat fee of EGP35,000 shall be due on the filing of any document, including the bill of sale. The bill of sale shall be filed against the aforementioned filing fee, or a notarised and legalised certified true copy should be deposited with the ECAA, which does not require the payment of any fees.

An application should be submitted to the ECAA. The document will be reviewed by the ECAA prior to filing. There is no specific timeframe for this and the process differs depending on whether the aircraft is new or used. Generally, there are no government consents required. However, please see **2.6.13 Other Relevant Issues**.

1.2.5 Taxes/Duties Payable Upon Execution of a Bill of Sale

If the seller does not have a permanent establishment and the sale is not considered as part of its commercial activities, then no taxes should arise as a result of the sale. Otherwise, if the seller is based in Egypt, there could be tax implications.

The ECAA filing fees are EGP35,000 per document.

2. Aircraft and Engine Leasing

2.1 Overview

2.1.1 Non-Permissible Leases

There are no specific restrictions on types of operating/wet/finance leases or leases concerning only engines or parts. To date, any transactions involving engines or spare parts that are treated separately from an aircraft are not filed with the ECAA. The Egyptian Registry held by the ECAA is aircraft-based and the ECAA acts as the competent notarial office for all transactions relating to aircraft.

2.1.2 Application of Foreign Laws

A lease involving either a domestic party or an asset situated in Egypt may be governed by a foreign law provided that such law does not contravene or violate Egyptian public order.

2.1.3 Restrictions Concerning Payments in US Dollars

No material restrictions are imposed on domestic lessees making rent payments in US dollars.

In practice, and due to a shortage of foreign currency, payment in foreign currency or the transfer thereof by domestic lessees may prove to be somewhat difficult and time consuming.

2.1.4 Exchange Controls

There are no exchange controls that could prevent rent payments under a lease or repatriation of proceeds. However, Egyptian banks require evidence for such payment, such as a contractual arrangement or an invoice.

2.1.5 Taxes/Duties Payable for Physical Execution of a Lease

To file a lease, there is a governmental registration flat fee of EGP35,000 per document, although certain government operators are exempt from these fees. Physical presence is required through valid powers of attorney to file the lease before the ECAA.

2.1.6 Licensing/Qualification of Lessors

A lessor does not have to be licensed or qualified to do business in Egypt with a domestic lessee.

2.2 Lease Terms

2.2.1 Mandatory Terms for Leases Governed by English or New York Law

Certain mandatory terms are required to be in a lease, such as the following:

- the term of the lease;
- rental value;
- aircraft registration marks and manufacturer's serial number;
- type of aircraft;
- the number of engines and their manufacturer's serial number;
- date of manufacture and name and address of manufacturer;
- subleasing;
- insurance;
- applicable law and jurisdiction clauses.

There are also certain mandatory provisions that are not commonly seen in English or New York law leases, such as that the subleasing provisions must include the name of the sublessee and the duration of such sublease.

2.2.2 Tax and Withholding Gross-Up Provisions

Tax and other withholding gross-up provisions are permissible and enforceable. However, grossed-up payments may be considered as taxable income by the Egyptian Tax Authority.

2.2.3 Parts Installed or Replaced After a Lease's Execution

A lease can cover parts that are installed or replaced on an aircraft or engine after its execution.

For an aircraft lease that is filed with the ECAA, any significant changes must be reflected in an addendum/amendment/annex that is to be filed with the ECAA for perfection purposes.

For an engine, please see **2.1.1 Non-Permissible Leases**.

2.2.4 Risk of Title Annexation

There is a risk of title annexation of aircraft engines installed on an airframe since the Egyptian Register is aircraft-based.

To mitigate such risk, an agreement could be entered into between the relevant parties recognising the right, title and interest of the owner/lessor of an engine. Accordingly, such agreement may grant some protection by confirming that the engine is not part of the aircraft. Such an agreement could also include a bill of sale evidencing engine title, both of which shall be notarised and legalised as original/certified true copies of the same up to the level of the Egyptian embassy/consulate at the country of issuance.

2.2.5 Recognition of the Concepts of Trust/Trustee

The concept of trust is not recognised in Egypt. Accordingly, an owner trustee is treated as prima facie owner pursuant to the bill of sale.

2.3 Lease Registration

2.3.1 Notation of Owner's/Lessor's Interests on Aircraft Register

The interests of the owner or a lessor of an aircraft are noted in the Aircraft Register held by the ECAA. All documents related to aircraft are registered with the ECAA.

To ensure the priority, validity and enforceability of the obligations of the Egyptian lessee under a relevant document – such as a lease, a conventional deregistration power of attorney (DPOA), a security assignment and an irrevocable de-registration and export request authorisation (IDERA) – that document must be notarised, filed, registered and recorded with the ECAA.

2.3.2 Registration If the Owner Is Different From the Operator

The certificate of registration of an aircraft specifies the name of the aircraft owner as the owner and the Egyptian lessee/operator as the holder/possessor of the aircraft.

2.3.3 Aircraft/Engine-Specific Registers

There is a specific register for leases concerning aircraft only: see **2.3.4 Registration of Leases With the Domestic Aircraft Registry**. There is no engine register. To date, any transactions relating to engines or spare parts, which are treated separately from an aircraft, have not been filed with the ECAA due to legislative restrictions.

It is envisaged that the relevant Egyptian laws may be amended to accommodate transactions, such as sale, lease or mortgages over engines, to be filed with the ECAA.

2.3.4 Registration of Leases With the Domestic Aircraft Registry

Aircraft lease agreements must be registered with the ECAA. The ECAA reviews the leases in question before filing, to provide its verbal sign-off. The respective aircraft is inspected by the ECAA for compliance with applicable Egyptian laws and regulations. Moreover, the filing process involves the physical presence of the relevant ECAA officers in order to validate the lease filing process, along with the representatives of the signatory parties acting under notarised and legalised powers of attorney.

Registration Formalities

In general, any document to be submitted to an Egyptian authority or court of law for purposes of filing, registering or enforcing same, must be translated into Arabic. Such translation may be done by the translation department of the Ministry of Justice or by the translation department in the Ministry of Foreign Affairs. In particular, any documents that will be submitted for notarisation, filing, registration or enforcement before the ECAA must be in either English or Arabic; if they are in any other language, then they must be translated into English or Arabic.

A lease agreement need not be in a specific form. However, in a sub-leasing structure, the head lease must expressly permit for the sub-leasing and must have a term not less than the sub-lease agreement.

In general, where documents are required to be notarised for use, if notarised by a notary outside Egypt, the document then needs to be legalised up to the level of the Egyptian consulate/embassy in the relevant country, which shall be followed by the authentication thereof by an Egyptian Foreign Ministry office in Cairo. This does not apply to leases since they must be filed with the ECAA.

Egypt has not ratified the Hague Convention of 1961 Abolishing the Requirement of Legalisation for Public Documents.

Egyptian law and regulations further provide an alternative to the above. Parties to a certain transaction could, by virtue of powers of attorney, appoint attorneys to represent them before the ECAA. Said powers of attorney will require notarisation and legalisation up to the level of the Egyptian consulate in the country of issuance to be followed by authentication by an Egyptian Foreign Ministry office in Cairo.

Prerequisites to Execution/Delivery of a Lease

As a matter of practice, the operator/lessee submits the following:

- an application reserving the registration marks of an aircraft for a fee of EGP10,000; and
- an application for the registration of the aircraft in the Aircraft Register for a fee of EGP25,000.

It is understood that the above fees are subject to change.

The lessee or the owner representative may submit the applications for the registration of the relevant lease and any accompanying documents. Government fees depend on what the requirements are, as they may vary.

As a prerequisite to filing any aircraft lease agreement (but not an engine lease agreement), the lessee or the owner must provide a notarised and legalised certi-

fied true copy (or original) bill of sale of the aircraft up to the level of the Egyptian consulate/embassy in the country of issuance or have the bill of sale filed with the ECAA.

2.3.5 Requirements for a Lease to Be Valid and Registrable

See **2.3.4 Registration of Leases With the Domestic Aircraft Registry**. In practice, the ECAA sometimes requests an Arabic translation, even of English documents, for guidance.

2.3.6 Taxes/Duties Payable for Registering a Lease

See **2.1.5 Taxes/Duties Payable for Physical Execution of a Lease**.

2.3.7 Registration of Aircraft in Alternative Countries

Aircraft that are habitually based in Egypt are typically registered. Anything to the contrary is dealt with on a case-by-case basis and subject to the approval of the Ministry of Civil Aviation.

2.3.8 Requirements for Documents Concerning Registration

See **2.3.4 Registration of Leases With the Domestic Aircraft Registry** and **2.3.5 Requirements for a Lease to Be Valid and Registrable**.

The ECAA reviews any document before having it filed with the ECAA.

For any document to be admissible, it must be either (i) filed with the ECAA or (ii) deposited with the ECAA after having been notarised and legalised up to the level of the Egyptian embassy/consulate in the country of issuance. However, the mere depositing of a document does not grant perfection, rights, priority or ranking of a document. Therefore, it is recommended to file documents with the ECAA.

2.4 Lessor's Liabilities

2.4.1 Tax Requirements for a Foreign Lessor

A foreign lessor will not be required to pay income or capital gains or other taxes upon leasing an aircraft or engine to a domestic lessee. The Egyptian lessee, however, is required by law to withhold certain amounts as a withholding tax, which shall be subject to Egyptian tax law and/or any applicable double taxation treaty.

2.4.2 Effects of Leasing on the Residence of a Foreign Lessor

A foreign lessor should not be deemed to be resident, domiciled, carrying on business or subject to any taxes as a result of its being a party to, or its enforcement of, a lease.

2.4.3 Engine Maintenance and Operations

There are no liabilities in respect of aircraft or engine maintenance and operations that are imposed on a foreign lessor under a lease. However, if the Egyptian lessee does not make the necessary amounts due to the maintenance provider, for example, the said maintenance provider may impose and exercise a maintenance lien. In a repossession and deregistration event, the foreign lessor may be put in a situation whereby it has to make such payments to enable it to repossess and deregister the aircraft.

2.4.4 Damage or Loss Caused by an Asset

A foreign aircraft or engine owner or lessor under a lease, or a financier financing the asset on lease, shall not be liable under the doctrine of strict liability because of damage or a loss caused by the asset.

2.4.5 Attachment by Creditors

Creditors of a domestic lessee could attach an aircraft leased to that lessee but owned by a different entity. The owner in this case would need to provide evidence to court of its ownership of the aircraft. A bill of sale that is notarised and legalised up to the level of the Egyptian embassy/consulate in the country of issuance would be sufficient proof to exclude such aircraft from being part of the lessee's assets.

2.4.6 Priority of Third Parties' Rights

Under Egyptian law, the rights of a lessor will rank equally with other creditors of the same ranking but will have priority in all respects over the claims of all unsecured creditors of the lessee if the lease agreement is registered with the ECAA, except for certain sovereign and preferred debts. What constitutes sovereign or preferred debts includes the amounts due to the public treasury (eg, judicial expenses), which are followed by taxes, other rights (such as secured

debts), maintenance liens and employees' rights for the past six months, in that order.

2.5 Insurance and Reinsurance

2.5.1 Requirement to Engage Domestic Insurance Companies

It is mandatory under Egyptian law that all insurances over property be placed with domestic insurance companies.

2.5.2 Mandatory Insurance Coverage Requirements

There is no minimum requirement for insurance. However, industry norms are followed.

2.5.3 Placement of Insurance Outside of Jurisdiction

Reinsurances can be placed outside Egypt with foreign reinsurers.

2.5.4 Enforceability of "Cut-Through" Clauses

Cut-through clauses are enforceable.

2.5.5 Assignment of Insurance/Reinsurance

Assignments of insurances and reinsurances are permitted under Egyptian law. It is also advisable to perfect said assignments as per Egyptian laws and regulations for the benefit of the beneficiaries thereunder.

2.6 Lease Enforcement

2.6.1 Restrictions on Lessors' Abilities

There are no restrictions on a lessor's ability to terminate an aircraft lease. Such terms are subject to the terms of the lease itself, so if the lease restricts such termination, then such restrictions shall be complied with.

There are no restrictions on the lessor re-exporting the aircraft. However, an export certificate of airworthiness needs to be obtained from the ECAA.

There are no restrictions on the lessor selling the aircraft following termination, but it is important to note that the aircraft in this case shall be deregistered from the Egyptian Register as a lease termination is considered a reason for deregistration under Egyptian law.

The aircraft does not need to be physically located in Egypt at the time of any of the above actions taking place.

2.6.2 Lessor Taking Possession of the Aircraft

Self-help remedies are not valid.

A lessor can use the filed DPOA to repossess, deregister and export an aircraft. A lessor can use a Cape Town Convention IDERA to repossess, deregister and export an aircraft.

If a DPOA or IDERA is not used or its use was unsuccessful, then a court order will be needed – especially if the lessee is contesting the repossession of the aircraft.

2.6.3 Specific Courts for Aviation Disputes

There are no specific courts that are competent to decide on aviation disputes. Nevertheless, if there is a dispute with a government authority or body, it shall be adjudicated before the State Council.

2.6.4 Summary Judgment or Other Relief

A lessor can obtain a summary judgment or other injunctive relief. However, in practice, injunctions are rarely issued and are often challenged by the other party. There are no special requirements or conditions. If such a court order is rendered, it is usually for a short period of time.

2.6.5 Domestic Courts' Approach to Foreign Laws and Judgments

Domestic courts would uphold:

- foreign law as the governing law of an aircraft lease;
- the submission to a foreign jurisdiction; and
- a waiver of immunity by the parties of such a lease, provided that if the party issuing the waiver of immunity is a government authority or body, consent for such waiver of immunity shall be provided.

2.6.6 Domestic Courts' Recognition of Foreign Judgments/Awards

Enforcing Foreign Judgments in Egypt

To enforce a foreign judgment a party must obtain an exequatur. To apply for an exequatur the normal pro-

cedures for initiating a lawsuit must be satisfied and the following conditions must be met.

- Reciprocity – The country in which the judgment was obtained (the "foreign court") enforces judgments obtained in the courts of Egypt. If such reciprocal treatment is not offered by the foreign court, the Egyptian courts will re-examine the merits of the case in the same manner as that adopted by the foreign court.
- Competence of the foreign court rendering the judgment – The courts of Egypt are not exclusively competent to hear the dispute that constituted the object of the foreign judgment and the foreign court is shown to have been competent to hear the dispute in accordance with the laws applicable to it.
- Due process – The parties to the dispute were duly notified and properly represented in the proceedings (ie, not in contravention of the rules of natural justice). Thus, Egyptian courts will not recognise an English default judgment and a full trial must have been conducted.
- Final judgment – The judgment of the foreign court is final, non-appealable and conclusive in accordance with the relevant law.
- Conflict – The judgment of the foreign court does not conflict with a prior Egyptian judgment on the same subject matter and is not contrary to public order.

The authors of this guide are not aware of any treaty between Egypt and the United Kingdom, the United States or Ireland or of an Egyptian court decision which was enforced by the courts of the United Kingdom, the United States or Ireland which in either such case would satisfy the criteria set forth in the first point in the list above. In practice, reciprocity is very difficult to prove and, consequently, the enforceability of a foreign judgment issued by jurisdictions that do not have treaties with Egypt, is doubtful.

The New York Convention

Egypt is a signatory to the New York Convention of 1958 on the Recognition and Enforcement of Foreign Arbitral Awards. Moreover, pursuant to the Egyptian Arbitration Law, international arbitration awards are enforceable and therefore any arbitral awards rendered would be enforced subject to paragraph 5 (d) of the Egyptian Arbitration Law. The following documents must accompany the application for enforcement:

- the original award or a signed copy;
- a copy of the arbitral agreement;
- an Arabic translation of the award, authenticated by the competent authority if the award was not issued in Arabic;
- a copy of the minutes evidencing the deposit of the award with the competent court (usually the Cairo High Court of Appeals); and
- a copy of the notification of the award to the party against whom the award has been made.

However, Egyptian law provides for an annulment procedure of arbitral awards in specific exceptional cases.

2.6.7 Judgments in Foreign Currencies

Egyptian courts may, at their discretion, render judgments for a monetary amount in a currency other than Egyptian pounds if they consider it to be the currency that most fairly expresses the plaintiff's loss.

2.6.8 Limitations on Lessors' Actions Following Termination

There are no limitations on the lessor to recover default interest. However, under Egyptian law, the interest due requiring the payment of default interest cannot exceed 7%, as such transaction is considered to be a commercial one. Any agreement to the contrary may be deemed void.

2.6.9 Lessor's Requirement to Pay Taxes/Fees

A lessor under an aircraft lease is not required to pay taxes for the enforcement of a lease. However, there are other associated fees that could be incurred such as legal fees, experts' fees or related deregistration fees. This is in addition to other minimal court charges that are assessed depending on the claim.

2.6.10 Mandatory Notice Periods

There are no mandatory notice periods; accordingly, such notice periods are subject to the lease agreement.

2.6.11 Lessees' Entitlement to Claim Immunity

Lessees are not entitled to sovereign immunity. However, adding clauses that waive immunity is common practice.

Assuming that the lessee is not a governmental authority, and pursuant to the provisions of the Civil Code and the Commercial Code, the lessee would not be entitled to any right of immunity on the grounds of sovereign immunity.

2.6.12 Enforcement of Foreign Arbitral Decisions

Please see **2.6.6 Domestic Courts' Recognition of Foreign Judgments/Awards**.

2.6.13 Other Relevant Issues

For enforcement, arbitration is recommended as the dispute resolution mechanism. As to foreign courts, it is advisable only to use courts in jurisdictions where there is a judicial co-operation treaty with Egypt that satisfies the reciprocity requirement for enforcement of foreign judgments.

Arbitration If the Lessee Is Owned by the Egyptian Government or an Organ Thereof

Pursuant to a Prime Ministerial Decree, it is not permissible for (i) any Egyptian administrative bodies, including ministries, public bodies, government agencies and their affiliated bodies, or (ii) companies affiliated with the state or to which the state contributes in any way, to take the following measures without first presenting the matter to the Commission whose consent has become required in practice (the High Commission for International Arbitration and Disputes):

- entering into contracts with foreign investors or signing any contracts that include a mandate to resort to international arbitration, or making any modification in these contracts, or taking any action that involves terminating those contracts; or
- taking any remedy or procedure in relation to arbitration.

2.7 Lease Assignment/Novation

2.7.1 Recognition of the Concepts of Contractual Assignment and Novation

Egypt recognises the concepts of both contractual assignment and novation.

2.7.2 Assignment/Novation of Leases Under Foreign Laws

Both English and New York law assignments and novations would be held valid. It is recommended that perfection of such rights under Egyptian law is to be taken into consideration.

2.7.3 Enforceability of Lease Assignments/Novations

There is no need for an aircraft and/or engine lease assignment and novation to be translated unless presented to an Egyptian court. It is recommended that perfection of such rights under Egyptian law is to be taken into consideration and reflected in such documents. Please see **2.3.4 Registration of Leases With the Domestic Aircraft Registry**.

An engine lease novation or assignment cannot be filed, as previously explained.

2.7.4 Filing/Registration of Lease Assignments/Novations

An aircraft lease assignment and novation shall be registered or filed with the ECAA. The formalities for such action follow the same formalities reflected in the discussion at **2.3.4 Registration of Leases With the Domestic Aircraft Registry**. There are no governmental consents, but an application to file the same must be filed with the ECAA. The ECAA must review said documents before filing.

Engines' related documents do not get filed with the ECAA, so there is no obligation to file them anywhere. Nevertheless, it is envisaged that the relevant Egyptian laws may be amended to accommodate transactions such as filing of sales, leases or mortgages over engines with the ECAA upon the full implementation of the Cape Town Convention.

2.7.5 Taxes/Duties Payable on Assignment/Novation

Please see **2.1.5 Taxes/Duties Payable for Physical Execution of a Lease** and **2.3.6 Taxes/Duties Payable for Registering a Lease** as the same process applies.

2.7.6 Recognition of Transfer of Ownership Interests

There is no impact on the filing process before the ECAA if the ownership interest of an entity owning an aircraft is transferred with the legal title to the asset remaining with that entity.

If the aircraft ownership is transferred to another owner, then the ECAA will require evidence of transfer of title through a notarised and legalised bill of sale up to the level of the Egyptian consulate/embassy in the country of issuance or filing of the bill of sale with the ECAA. It will also be obligatory to file a lease amendment or novation to reflect such change. Accordingly, the aircraft registration certificate will need to be changed.

2.8 Aircraft Deregistration and Export

2.8.1 Deregistering Aircraft in This Jurisdiction

A beneficiary such as a security trustee or owner can deregister an aircraft under a DPOA or IDERA if such DPOA or IDERA is registered with the ECAA. An application is submitted to the ECAA with a copy of the filed DPOA or is presented to the ECAA along with a copy of the notice of default and the grounding notice as evidence for lease termination. The ECAA reviews same and contacts all relevant parties prior to the issuance of a deregistration certificate.

In the event of a mutually consented termination, an early termination agreement needs to be filed with the ECAA. The process identified in **2.1.5 Taxes/Duties Payable for Physical Execution of a Lease** and **2.3.6 Taxes/Duties Payable for Registering a Lease** must be followed.

2.8.2 Lessee's/Operator's Consent

An aircraft owner, mortgagee or lessor may apply for the deregistration of the aircraft without the lessee's consent.

In practice, prior to taking any deregistration action, the ECAA informs the lessee about the deregistration request and invites comments from the lessee or operator. Customarily, the ECAA contacts Egyptian state-owned companies and authorities in the aviation industry to verify if the lessee has any outstanding dues. If the lessee is a solvent and solid one with no outstanding debts and has various aircraft in its fleet, the process is simple and deregistration may follow promptly. If not, then the ECAA may require the payment of all outstanding dues to state-owned companies, without which deregistration may not be granted, and the process may be extended.

2.8.3 Required Documentation

An original copy of the filed DPOA or IDERA is presented to the ECAA along with a copy of the notice of default and the grounding notice as evidence for lease termination. Any additional documentation evidencing the lessee or operator default should also be submitted.

In addition, the ECAA will require evidence from the aircraft owner, mortgagee or lessor in the form of a duly executed power of attorney authorising their representative to act on their behalf.

2.8.4 Duration of Deregistration Process

If the lessee does not challenge the deregistration or if the reasons for deregistration are clear and free from doubts, deregistration may be effected within three weeks. Recently, the deregistration process became lengthier. Otherwise, the ECAA may request submission of a final judgment, settlement or evidence of default (such as default notices or grounding notices) to deregister the aircraft. It should be noted that, as a practical matter, deregistration usually exceeds the three-week period and submission of settlements/judgments/evidence of default may be required.

2.8.5 Aviation Authority's Assurances

It is highly unlikely that the ECAA would provide advance assurances to an aircraft owner, mortgagee or lessor as to the prompt deregistration of the aircraft. However, such assurances have been granted on rare occasions as per the Minister of Civil Aviation's approval to certain governmentally owned operators to conclude export credit agency-backed financing.

2.8.6 Costs, Fees and Taxes Relating to Deregistration

The government costs associated with deregistration are minimal.

2.8.7 Deregistration Power of Attorney
A DPOA must be filed with the ECAA to protect the rights of the beneficiary thereof.

The formalities are the same as for leases, assignments and novations, as set out in **2.1.5 Taxes/Duties Payable for Physical Execution of a Lease** and **2.3.6 Taxes/Duties Payable for Registering a Lease**.

A DPOA does not need to be translated.

2.8.8 Documents Required to Enforce Deregistration Power of Attorney
Please see **2.8.3 Required Documentation**.

2.8.9 Choice of Laws Governing Deregistration Power of Attorney
A DPOA does not have to be governed by Egyptian laws.

2.8.10 Revocation of a Deregistration Power of Attorney
If the DPOA was irrevocable, it would be enforceable against the lessee. In principle, the irrevocable power of attorney is not subject to revocation solely by the lessee. However, in the case of a dispute, the lessee may seek a court judgment revoking the same, but such a ruling is difficult to obtain.

2.8.11 Owner's/Lessor's Consent
An aircraft owner, mortgagee or lessor may export the aircraft without the lessee's consent through a DPOA or IDERA that includes a proxy and authorisation to export the aircraft.

Self-remedy measures are not permissible.

There are no additional actions that can be done by the lessor, owner or mortgagor at the time of lease negotiations to ensure that the aircraft is exported promptly except for the obtaining of a DPOA and IDERA (please see **2.10 Cape Town Convention and Others**).

Enforcement of a mortgage must comply with Egyptian law, which obliges the enforcer to sell the aircraft through a public auction administered through the court.

The aircraft does not need to be located in Egypt at the time of deregistration.

2.8.12 Aircraft Export Permits/Licences
Aircraft export permits/licences are issued. An export permit/licence request/application has a limited validity period. If the aircraft is not exported within such period, a new permit must be obtained. It is also important to note that if there are any outstanding charges against the aircraft to Egyptian state-owned companies in the aviation industry, the aircraft may not be issued an export licence.

An export permit/licence cannot be granted in advance.

2.8.13 Costs, Fees and Taxes Concerning Export of Aircraft
The costs with respect to the export of an aircraft are minimal. The fees of agents on the ground may need to be considered.

2.8.14 Practical Issues Related to Deregistration of Aircraft
Deregistration of aircraft is not a smooth process, especially if the lessee is not co-operative. Moreover, if the solvency status of the lessee is in question, further hurdles may be put in place since deregistration may be stopped or at least delayed for state creditors to collect their outstanding debt as a prerequisite to deregistration. A recent hurdle experienced was that the ECAA does not allow for the grounding of an aircraft despite the ECAA honouring the filed IDERA or DPOA. So, the aircraft would continue in operation up until the deregistration is imminent.

2.9 Insolvency Proceedings
2.9.1 Overview of Relevant Laws and Statutory Regimes Governing Restructurings, Reorganisations, Insolvencies and Liquidations
The bankruptcy regime has been largely consistent since 1999, following the arrival of the Commercial Code. It recognises bankruptcies, insolvencies and liquidations.

In 2018, however, the bankruptcy regime introduced a new section on restructuring and reorganisation. This section provides for restructuring through put-

ting in place a plan to reorganise a trader's financial and administrative business, the means to recover from a state of financial and administrative distress, a scheme to pay off its debts, and the proposed sources of funding. This can be done in several ways, including the re-evaluation of assets and debt restructuring involving state debt, capital increase, increased internal cash flow, and reduction of external cash flow.

2.9.2 Overview of Relevant Types of Voluntary and Involuntary Restructurings, Reorganisations, Insolvencies and Receivership

The term "trader" is defined in the Commercial Code as "whoever exercises by way of profession in its name or for its account a commercial activity". Such definition also includes all companies formed under the companies' laws regardless of the purpose of their establishment.

A trader shall be considered in a state of bankruptcy, as declared through a court order, if it stops paying its commercial debts following distress in its financial condition (ie, becomes unable to pay). The law does not specify what could be deemed as instability of a company leading to financial distress. Therefore, the court reviews all the circumstances surrounding the debtor prior to issuing its judgment, taking into consideration the debtor's future resources, the debtor's responsibility in causing such distress, and the creditors' interests.

The rules of bankruptcy are that the debt must be current, undisputable and due. Also, there should be evidence that the debtor is unable to pay such debt due to its distressed financial position.

The law further stipulates that a company is considered in a state of bankruptcy if it stops paying its debts due to its financial distress. There is a specific time-period with respect to establishing whether a company should file for bankruptcy, which shall be within 15 days from the date it stopped paying its debts as a result of disruption in its financial position.

The trader is declared bankrupt at its own request, the request of one of its creditors or that of the Public Prosecutor.

Where a company's loss reaches 50% of its issued capital, an extraordinary general assembly of the company shall convene to look into the dissolution or continuation of the company.

A lessee may be liquidated by:

- its dissolution;
- the lapse of its term under its by-laws; and
- the completion of its company objective.

The liquidator is either appointed by the company's shareholders or by virtue of a court order.

2.9.3 Co-Ordination, Recognition or Relief in Connection With Overseas Proceedings

The co-ordination, recognition or relief in connection with oversees proceedings is done on a case-by-case basis.

There are certain arrangements or treaties on a bilateral, regional or international level whereby the relevant Egyptian authorities, such as the Ministry of Justice, the Public Prosecutor and the Central Bank of Egypt co-ordinate with their foreign counterparts.

As to enforcement of court judgments and arbitral awards, please see **2.6.6 Domestic Courts' Recognition of Foreign Judgments/Awards**.

2.9.4 Effect of Lessee's Insolvency on a Deregistration Power of Attorney

In general, the courts will recognise a DPOA provided that it is duly registered and notarised.

There is a suspect period to be determined by the court, but, in any event, it may not be traced back to more than two years from the date the bankruptcy judgment is issued. In that regard, the law provides that any transaction conducted during the suspect period under a bankruptcy scenario may be nullified if it is evidenced that it was conducted against the interests of the creditors and that the other party was aware of the financial status of the bankrupt entity acting in bad faith.

Under a liquidation scenario, it is presumed that the appointed liquidator should adhere to all obligations

assumed before the liquidation process up until liquidation is concluded.

2.9.5 Other Effects of a Lessee's Insolvency

If the lease calls for termination of the contract in the event of bankruptcy, then such a provision would be respected by Egyptian courts, and the bankruptcy trustee would be bound thereby. However, if the contract is silent on termination for bankruptcy, then, pursuant to Egyptian law, the bankruptcy judgment does not require the termination of a binding contract to which the bankrupt is a party, unless such contract is based on personal considerations. The law further provides that if the bankruptcy trustee does not perform or does not continue the performance of the contract, the other party to the contract may request the termination of the contract, and that any decision taken by the bankruptcy trustee with regards to the contract must first be presented to the bankruptcy judge for their approval.

The lessor may be delayed or prevented from repossessing the aircraft.

The aircraft may be deemed part of the lessee's property. In this case, the aircraft owner would be entitled by law to repossess the aircraft without the need to have a mortgage thereon if the lessor can prove ownership thereof. Accordingly, the aircraft owner would need to provide evidence to the court and bankruptcy trustee evidencing its ownership of the aircraft. A bill of sale that is notarised and legalised up to the level of the Egyptian embassy/consulate in the country of issuance may be sufficient evidence for the judge to exclude it from the bankruptcy process. The lessor would also need to request the court/bankruptcy trustee to set aside the aircraft from any proceedings and allow its repossession. The bankruptcy law further stipulates that the bankruptcy trustee, after consulting the bankruptcy controller and obtaining a permission from the bankruptcy judge, may return the aircraft to its owner. If such repossession has been rejected, the party (owner) requesting it may bring a dispute before the court.

The bankruptcy trustee may impose the rights of any other creditors in priority to the lessor.

2.9.6 Risks for a Lender if a Borrower, Guarantor or Security Provider Becomes Insolvent

If the security provided is not perfected, then the security is at risk as other secured or unsecured creditors may also be able to claim.

2.9.7 Imposition of Moratoria in Connection With Insolvency Proceedings

There is a moratorium imposed in connection with bankruptcy proceedings, which excludes certain matters such as criminal claims. Under Egyptian law, there is no fixed moratorium period. However, said moratorium commences on the date on which the bankruptcy judgment is rendered and continues until the decision to conclude the bankruptcy is rendered.

2.9.8 Liquidation of Domestic Lessees

An Egyptian company may be voluntarily or involuntarily liquidated or made bankrupt.

2.9.9 Ipso Facto Defaults

A provision in an agreement creating a default for specific reasons – such as insolvency or reorganisation and restructuring – and thereby permitting the lessor to terminate the leasing of the asset, is permissible.

2.9.10 Impact of Domestic Lessees' Winding-Up

If the lessee is wound up by a court or administration proceeding, there is a suspect period as stipulated in **2.9.4 Effect of Lessee's Insolvency on a Deregistration Power of Attorney**. In that regard, the law provides that any transaction conducted during the suspect period under a bankruptcy scenario may be nullified if it is evidenced that it is conducted against the interests of the creditors and that the other party was aware of the financial status of the bankrupt entity. Accordingly, for the lease rentals, the lease security deposit and maintenance reserves may be ordered by the court to the liquidator or bankruptcy control if such payments would be deemed void by the bankruptcy judge if said judge is of the view that such transactions were made to the detriment of third parties.

As to the aircraft, please see **2.9.5 Other Effects of a Lessee's Insolvency** (second and third paragraphs).

2.10 Cape Town Convention and Others

2.10.1 Conventions in Force

Egypt ratified the Cape Town Convention and the Aircraft Protocol, and both came into force on 1 April 2015. However, neither instrument has yet been fully implemented by Egyptian authorities. Accordingly, the ECAA is not yet involved in the registration of international interests, and this process is left to the lessor and lessee.

2.10.2 Declarations Made Concerning Conventions

Originally, Egypt made declarations only under Articles 39 (1)(a), 40 and 54 (2) of the Cape Town Convention with no declarations relevant to the Aircraft Protocol.

Egypt has made further declarations whereby Egypt has notified UNIDROIT on 7 November 2019 of subsequent declarations under Articles 39 (1)(a), 53 and 54 (2) of the Cape Town Convention and Articles XIX, XXX(1), XXX(2) and XXX(3) of the Aircraft Protocol. These subsequent declarations came into effect on 1 June 2020.

2.10.3 Application of Article XIII of the Protocol on Matters Specific to Aircraft Equipment

Egypt has made the relevant declaration to apply IDERA.

Historically, the ECAA began approving the registration of IDERA provided the inclusion of the following qualification:

"We acknowledge that the provisions in the Cape Town Convention and the Protocol to the Convention on International Interest in Mobile Equipment on Matters specific to Aircraft Equipment relating to recognition of Irrevocable Deregistration and Export Request Authorisations have not yet entered into effect in the Arab Republic of Egypt. The Egyptian Civil Aviation Authority shall recognise this instrument once the relevant provisions are effective in the Arab Republic of Egypt."

Currently, the ECAA approves filing the IDERA without the above qualification, and there is precedence evidencing the deregistration, repossession and export of an aircraft using IDERA.

2.10.4 Enforcement of Conventions

There was no court precedent in relation to parties enforcing the Convention or the Protocol until 2022. It is unclear yet how Egypt will enforce them or when.

In 2022, various cases were filed before the State Council regarding repossession of foreign registered aircraft. While all matters were settled out of court, it was apparent that such courts have no experience or knowledge of the Cape Town Convention and Protocol.

2.10.5 Other Conventions

Egypt is a party to the 1948 Geneva Convention on the International Recognition of Rights in Aircraft. Egypt is a party to the 1933 Rome Convention on the Unification of Certain Rules relating to the Precautionary Arrest of Aircraft.

3. Aircraft Debt Finance

3.1 Structuring

3.1.1 Restrictions on Lending and Borrowing

There are no restrictions on foreign lenders financing an aircraft locally or on borrowers using the loan proceeds.

3.1.2 Effect of Exchange Controls or Government Consents

Please see **2.1.4 Exchange Controls**.

3.1.3 Granting of Security to Foreign Lenders

Borrowers are permitted to grant security to foreign lenders. There may be some restrictions regarding real estate security provided to foreign lenders.

3.1.4 Downstream, Upstream and Cross-Stream Guarantees

Guarantees are acceptable forms of collateral. This includes clauses governing the explicit waiver of certain rights by the guarantors and dispute resolution mechanisms.

There is no legal regime that governs the perfection of guarantees. Guarantees are not registered with the ECAA or perfected in any manner as Egyptian law is silent on that.

3.1.5 Lenders' Share in Security Over Domestic SPVs

Special purpose vehicles are incorporated in foreign jurisdictions. It is common for lenders to have share security over such vehicles. A share pledge is recognised and can be perfected, and the method of perfection depends on the type of entity in question.

3.1.6 Negative Pledges

A negative pledge is recognised.

3.1.7 Intercreditor Arrangements

There are no restrictions or requirements imposed on intercreditor arrangements.

3.1.8 Syndicated Loans

The concept of agency and the role of an agent under a syndicated loan is recognisable.

3.1.9 Debt Subordination

Debt subordinations are permissible and recognised. However, there is no legal regime that governs same except for the priority ranking of secured assets, which also depends on the type of security and whether such security can be perfected.

3.1.10 Transfer/Assignment of Debts Under Foreign Laws

The transfer or assignment of all or part of an outstanding debt under an English or New York law-governed loan is permissible and recognised. Perfection of such transfer or assignment may be required for Egyptian law purposes.

3.1.11 Usury/Interest Limitation Laws

There are certain interest limitations.

- Interest cannot exceed 7% if such transaction is considered a commercial transaction – any agreement to the contrary may be deemed void.
- Under an aircraft mortgage, the interest due on the loan secured by a mortgage cannot exceed 12% – any agreement to the contrary may be deemed void.
- Under banking transactions such as loans, the interest is calculated as per market norms.

3.2 Security

3.2.1 Typical Forms of Security and Recourse

Mortgages, account pledges, share pledges, assignments of rights, assignments of insurances and reinsurances, guarantees, bank cheques, IDERA, DPOA and letters of credit are the typical forms of security in an aviation finance transaction.

3.2.2 Types of Security Not Available

There are no specific types of security that cannot be taken over an aircraft so long as they do not contravene Egyptian public order.

3.2.3 Trust/Trustee Concepts

The concept of the trust is not recognised in Egypt. The role of a security trustee acting on behalf of the lenders as a security agent in a transaction is, however, recognisable.

3.2.4 Assignment of Rights to an Aircraft by a Borrower to a Security Trustee

A borrower can assign to a security trustee, pursuant to a security assignment/assignment of insurances or under an aircraft lease or mortgage, its rights in the aircraft.

3.2.5 Assignment of Rights and Benefits Without Attendant Obligations

It is possible to assign the rights and benefits only without also assigning the attendant obligations of the lessor under an aircraft lease.

3.2.6 Choice of Foreign Law

A security assignment or a guarantee can be governed by English or New York law.

3.2.7 Formalities/Mandatory Terms to Create and Perfect Security Assignments

If there are any assignments of rights, the registration of such assignments must be registered for them to be valid vis-à-vis third parties. As per Egyptian law, for an assignment of rights to be effective against third parties, the assignment must have an "established date", which can take place either before an Egyptian notary (the ECAA for aircraft-related transactions) or through service of a formal notice through a court bailiff. Failure to do so may risk losing the priority of the assignment.

3.2.8 Domestic Law Security Instruments

If an English or New York law-governed security assignment were to be taken in respect of an aircraft registered domestically, other security instruments available to a financier include mortgages, share pledges, mortgages over other assets, guarantees, DPOA, IDERA, or account pledges. For filing fees, please see **2.1.5 Taxes/Duties Payable for Physical Execution of a Lease** and **2.3.6 Taxes/Duties Payable for Registering a Lease**.

To date, there are no Cape Town filings made through the ECAA.

3.2.9 Domestic Registration of Security Assignments Governed by Foreign Laws

An English or New York law-governed security assignment or a domestic law security instrument may be registered domestically.

3.2.10 Transfer of Security Interests Over Aircraft/Engines

The transfer of security interests over an aircraft and/or engines is recognised. However, a transfer of security over an engine would not be registrable with the ECAA.

3.2.11 Effect of Changes in the Identity of Secured Parties

If the identity of the secured parties under a security assignment changes after its execution, then such changes may need to be reflected in the underlying security documents. If the security trustee or agent changes, such change shall be reflected and filed, if such security was filed.

3.2.12 "Parallel Debt" Structures

A parallel debt concept has not been tested. Accordingly, it is not possible to say how an Egyptian court or tax authorities would respond to it.

3.2.13 Effect of Security Assignments on Residence of Secured Parties

A secured party under a security assignment will not be deemed to be resident, domiciled, or carrying on business as result of enforcing such assignment.

3.2.14 Perfection of Domestic Law Mortgages

A domestic law mortgage over an aircraft is perfected through filing it with the ECAA. Enforcement thereon shall follow Egyptian law.

To perfect a mortgage over an engine under Egyptian law, the engine must be in the possession of either a trustee or a creditor. Since the possession by the creditor cannot be perceived and is impractical, the engine mortgage agreement would include a trustee, having the trustee as a party thereto. Usually, the trustee is an affiliate to the lessee to simplify the possession process.

3.2.15 Differences Between Security Over Aircraft and Spare Engines

There are various differences between the perfection process taken over an aircraft when compared to engines.

To date, the regime governing security over engines is not under the auspices of the ECAA (unlike aircraft), and so security over engines is treated differently – eg, a mortgage over an engine requires the appointment of a trustee or the engine being kept with the creditor. The charges to perfect a mortgage over an engine are minimal.

For an aircraft mortgage to be filed with the ECAA involves a charge of EGP135,000.

A mortgage over an engine may be registered with the Egyptian Collateral Registry. While this has not been tested, it is possible to perfect such a security outside the ECAA jurisdiction.

3.2.16 Form and Perfection of Security Over Bank Accounts

Security over bank accounts is recognisable. For perfection, the bank account pledge over an account held locally is filed with the Egyptian Collateral Registry.

3.3 Liens

3.3.1 Third-Party Liens

A third party can register a lien over an aircraft or engine. Nevertheless, this must be done through a court order. In practice, such third party detains the

aircraft or engine without a court order as leverage for payment or settlement of the outstanding dues.

A lien should cover only the work done on the asset in question.

A fleet lien may not be exercised. However, recently the actions conducted by Egyptian state creditors in preventing aircraft deregistration could be interpreted as a fleet lien.

3.3.2 Timeframe to Discharge a Lien or Mortgage

There is no mandatory timeframe to discharge a lien or mortgage. Nevertheless, an Egyptian registered aircraft mortgage needs to be renewed every ten years.

3.3.3 Register of Mortgages and Charges

There is no specific mortgage register. Mortgages are reflected in what is called the "Aircraft Register" and the mortgage is filed in what is called the "Documents Register".

Registration of a mortgage gives a priority and will ensure continuous perfection. A registered mortgage affords the mortgagee preference over all subsequent registered secured debts, regardless of the dates on which such debts were created, as well as all unsecured debts.

3.3.4 Statutory Rights of Detention or Non-Consensual Preferential Liens

Statutory rights of detention or non-consensual preferential liens arise over an aircraft but not on a fleet-wide basis. However, recently the actions conducted by Egyptian state creditors in preventing aircraft deregistration could be interpreted as a fleet lien.

3.3.5 Verification of an Aircraft's Freedom From Encumbrances

A potential purchaser of an aircraft will not be able to verify that an aircraft is free of encumbrances as the Aircraft Register is not publicly accessible. The only method of verification is through an application by the owner, lessor, lessee or mortgagee.

3.4 Enforcement

3.4.1 Differences Between Enforcing Security Assignments, Loans and Guarantees

There are certain relevant differences in enforcing a security as opposed to a loan or a guarantee.

The security assignment can be perfected through filing with the ECAA while neither loans nor guarantees are perfected with any.

The priority under a security assignment can be maintained while under a guarantee or loan there are no priorities since they are not filed anywhere unless the loan is secured with collateral over certain assets that are perfected.

If enforcement is pursued under a loan or a guarantee, it will only require the payment of certain amounts that have to be rendered after obtaining a court order or an arbitral award, while under a security assignment, the debtor should be paying the necessary amounts to the assignee (unless the assignor revokes its instructions and the debtor abides by such new instructions).

3.4.2 Security Trustees' Enforcement of Their Rights

If, under a security assignment, security is granted to a security trustee by a lessor in respect of its rights under an aircraft lease, the security trustee can enforce its rights under the security assignment pursuant only to a notice and acknowledgement, executed by that lessor and the relevant lessee respectively, provided that the assignment is perfected pursuant to the relevant Egyptian laws through having an established date.

3.4.3 Application of Foreign Laws

See **2.1.2 Application of Foreign Laws**, **2.6.5 Domestic Courts' Approach to Foreign Laws and Judgments**, **2.7.2 Assignment/Novation of Leases Under Foreign Laws** and **3.2.6 Choice of Foreign Law**.

3.4.4 Recognition and Enforcement of Foreign Judgments and Arbitral Awards

See **2.6.6 Domestic Courts' Recognition of Foreign Judgments/Awards**.

3.4.5 Secured Parties' Right to Take Possession of Aircraft

See **2.6.2 Lessor Taking Possession of the Aircraft**, **2.8.2 Lessee's/Operator's Consent** and **2.8.11 Owner's/Lessor's Consent**.

3.4.6 Domestic Courts Competent to Decide on Enforcement Actions

See **2.6.3 Specific Courts for Aviation Disputes**.

3.4.7 Summary Judgments or Other Relief

See **2.6.4 Summary Judgment or Other Relief**. There are no bonds, security or cash deposits that would be required.

3.4.8 Judgments in Foreign Currencies

See **2.6.7 Judgments in Foreign Currencies**.

3.4.9 Taxes/Fees Payable

See **2.6.9 Lessor's Requirement to Pay Taxes/Fees**.

3.4.10 Other Relevant Issues

The judicial process needs to be more dynamic to accommodate and cope with the fast changes in the industry to encourage more lenders and lessors to invest in Egypt.

4. Other Issues of Note

4.1 Issues Relevant to Domestic Purchase, Sale, Lease or Debt Finance of Aircraft

There are no relevant material issues or material court judgments relevant to the sale, lease or finance of aircraft or engines not already covered in this chapter of the guide.

4.2 Current Legislative Proposals

Egypt is expected to witness new developments to accommodate the Egyptian ratification of the Cape Town Convention and the Aircraft Protocol, along with their relevant declarations.

The Cape Town Convention and Aircraft Protocol are under serious tests in Egypt that may shape their future enforceability.

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