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Aircraft Repossession and Enforcement

Practical Aspects

Edited by
Ravi Nath and Berend Crans



Wolters Kluwer
Law & Business

KLUWER LAW INTERNATIONAL
and
International Bar Association



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**Berend Crans
Ravi Nath**



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International Bar Association

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The International Bar Association (IBA), established in 1947, is the world's leading organization of international legal practitioners, bar associations and law societies. The IBA influences the development of international law reform and shapes the future of the legal profession throughout the world. It has a membership of 30,000 individual lawyers and more than 195 bar associations and law societies spanning all continents. It has considerable expertise in providing assistance to the global legal community.

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The International Bar Association Aviation Law Committee is concerned with several major areas of law. Aircraft transactions and financing are always a major interest. The committee also follows developments of international law

with respect to airlines in both economic and tort areas, and also focuses on competition issues related to aviation.

The committee provides an opportunity not only to contribute to the development of aviation law but also to make useful contacts with aviation attorneys from all over the world. This is particularly important in an international industry such as aviation, where attorneys are required to deal with aviation attorneys in other countries on a regular basis.

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Preface

The purpose of this book is to provide aircraft and engine lessors, financiers, operators and their respective legal advisors with a practical guide on a range of issues which could arise in connection with the repossession of aircraft or the enforcement of security interests in aircraft. It was quite a challenge to prepare a questionnaire fulfilling the ambition to cover the entire range of issues, i.e., from how to create security rights to how to enforce them, from repossession through 'self-help' actions to repossession through judicial interference, from precautionary arrests to non-consensual liens and from insolvency scenarios to deregistration. When drafting the questionnaire, we drifted into a number of related areas in our quest for completeness to such an extent that we had to restrain ourselves and cut back on the number of questions. This implied that difficult decisions had to be taken. We hope we took the right ones!

We believe that this book provides a practical manual for lessors, financiers and operators, allowing them to assess procedures and legal risks and requirements in 32 jurisdictions and enabling them to understand the peculiarities of other legal systems, different interpretations of laws, treaties and conventions and the implications thereof for the transaction or situation they are dealing with.

Editing 32 contributions from authors from as many jurisdictions was not an easy task as, sometimes, questions were interpreted differently and some authors were more elaborate in their responses than others. We have tried to be consistent while, at the same time, respectful of each author's approach and style. Again we hope we took the right decisions.

We wish to thank all authors for putting so much time in responding to the questions and in describing the way things work in their jurisdiction in a practical and concise, yet comprehensive, manner. We hope this book meets our own expectations but, above all, those of our readers.

Ravi Nath
Berend Crans

Editors

Berend Crans is a partner/shareholder of De Brauw Blackstone Westbroek N.V. in Amsterdam, The Netherlands. He heads De Brauw's finance practice and is a member of the firm's managing committee. He specialises in asset and project finance.

Mr. Crans has particular experience in aviation law. Initially, the emphasis of his practice was on aviation liability and regulatory issues. Subsequently he moved more and more to the transaction side of aviation.

Mr. Crans has been involved, mainly as lessor or lender counsel, in many aircraft finance transactions, including JLLs, GLLs, JOLs, ECA supported transactions, acquisitions of aircraft lease portfolios and lease portfolio securitizations. In addition, Mr. Crans represented lessors and lenders in airline insolvencies.

He is the former chair of the Aviation Law Committee of the International Bar Association and is a member of the Editorial Board of Air & Space Law. He also heads De Brauw's aviation industry group. In the Who's Who Legal 2008 (Aviation Law) He was among the 13 Most Highly Regarded Individuals and is considered "among the very best for finance". His expertise in finance and aviation is further recognised by Chambers and Legal 500.

Mr. Crans is admitted to the Dutch Bar and a member of the American Bar Association and the International Bar Association. He publishes regularly on asset and structured finance issues, as well as aircraft finance and aviation law and is a frequent guest speaker on these topics at conferences. He is a guest lecturer on aircraft finance at the LLM Programme of the Air & Space Law Institute (Leyden University) and on structured finance at the University of Amsterdam.

Ravi Nath, currently Chairs the Aviation Committee, of the International Bar Association and is the group leader for Aviation, structured finance & Banking practice of *RNClegal / Rajinder Narain & Co.* He has 25 years experience in Aircraft finance, structured leasing and banking. He advises on tax, enforcement

and regulatory issues. He wrote the India Chapters in the two books on (a) Aircraft Finance and (b) Aircraft Liens and Detention Rights both published by Sweet & Maxwell. He usually represents Lessors, Lenders and Banks. The Legal 500 stated that: "Ravi Nath's esteemed reputation as an aviation expert puts clear blue water between Rajinder Narain & Co. and its rivals . . . " He is regularly featured in Who's Who of Aviation Lawyers.

Mr. Nath served on the Legal Advisory Panel of the Aviation Working Group with respect to Cape Town Convention and is a member of the International Registry's Advisory Board.

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Mr. Nath acknowledges the excellent work done over several months by the Aviation law team at *RNClegal* / Rajinder Narain & Co. and particularly Rajesh Roshan, Ajay Kumar, Meenakshi Pundir and Abhishek Bhalla, who were invaluable at all stages right from the preparation of the questionnaire, checking the responses, editing, researching and extensive emailing.

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Questionnaire (including main parts of the questionnaire and definitions)

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Chapter I	Repossessions of Aircraft: Self-Help
Chapter II	Court Proceedings for Repossessions
Chapter III	Arbitration and Other Non-Court Proceedings
Chapter IV	Money claims and Miscellaneous
Chapter V	Bankruptcy
Chapter VI	Non Consensual Liens and Rights & Security Interests Generally
Chapter VII	Deregistration Powers of Attorney, Export Permit & General Issues

DEFINITIONS

In this questionnaire, where the context permits, the expressions:

- i. Aircraft or equipment refer to, and are intended to cover, other Aircraft objects such as engines, spare parts, records and log books.*
- ii. Grantor means the grantor of a Security Interest.*
- iii. Lease means an agreement between a Lessor and a Lessee with respect to the use and possession of an Aircraft.*
- iv. Lessee refers to a person having a right of possession and use in respect of an Aircraft pursuant to a Lease with a Lessor.*
- v. Lessor refers to the owner of an Aircraft which is leased to a Lessee.*

- vi. *Security Document means any agreement, deed or other document pursuant whereto a Security Interest is vested.*
- vii. *Security Interest means a security right or interest in tangible or intangible assets, including mortgages and other rights in rem on Aircraft.*
- viii. *Security Interest Holders refers all persons holding a Security Interest in an Aircraft.*
- ix. *Security Trustee a person holding one or more Security Interests for certain secured parties, i.e., lenders or other creditors of the Grantor of such Security Interests.*
- x. *Repossession includes deregistration and export of the Aircraft.*

Chapter I Repossessions of Aircraft: Self help

1. Is 'self-help' permitted in your Jurisdiction? If yes, please detail the steps required, and also comment on the practical aspects of taking possession with or without the help of Police or other Agencies, where required.
2. Prior to initiating a 'self-help' process, are any notices, intimations, or permissions required? For instance, clearances from customs or airport authorities or other regulatory agencies to take possession, and then fly the equipment out of Jurisdiction?
3. Are there any significant time and costs involved in the above?
4. Are there any risks to Lessors or Security Interest Holders, the crew or others, attendant on a 'self-help'? If yes, how can they be mitigated?
5. Is the procedure for 'self-help' different where the right is exercised by another claimant such as a Security Interest Holder?
6. Can the Lessee (or the Grantor) or any other agency, stop or delay of a 'self-help' remedy, and if so, in what circumstances.
7. Is written or other evidence of termination of the Lease or exercise of remedies by a Security Interest Holder required for repossession? If so, is there a usual format?
8. Can foreign crew be permitted to fly the Aircraft out of your Jurisdiction? Are any special permissions required?
9. If a foreign crew is already in command of the Aircraft, what 'self-help' steps are necessary to fly the equipment out of Jurisdiction?
10. Can the Lessor opt for the Aircraft to remain on the Register in your Jurisdiction when the Lease is terminated? If so, for how long and are there any special conditions or (tax) implications?
11. Can steps be taken as 'self-help' for recovery of rent and other outstandings? Are there any significant fees or other expenses? Can the Lessor retain any asset of Lessee which may be on board when the Aircraft is repossessed in and exported from your Jurisdiction? Is there any legal or other risk in doing this?