



**COUNTRY
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The Legal 500 Country Comparative Guides

Isle Of Man

AVIATION FINANCE & LEASING

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

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ISLE OF MAN

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

With certain exceptions, the UK is responsible for the Isle of Man's international relationships. To apply to the Isle of Man, a treaty must be signed and ratified by the UK, then extended to the Isle of Man.

The Isle of Man has signed and ratified the Chicago Convention of 1944 on International Civil Aviation and the 2001 Cape Town Convention on International Interests in Mobile Equipment and the associated Protocol on Matters Specific to Aircraft Equipment.

The Aviation (Cape Town Convention) (No.2) Order 2016 (the "**Order**") applies to the Isle of Man, with modifications, the UK's International Interests in Aircraft Equipment (Cape Town Convention) Regulations 2015 (SI 2015 No.912) (the "**Regulations**"). The Regulations implement the Convention on International Interests in Mobile Equipment (the "**Convention**") and Protocol on Matters Specific to Aircraft Equipment (the "**Aircraft Protocol**"). The Regulations are subject to, and to be applied in accordance with, the provisions of the Convention, the Aircraft Protocol and the Protocol Regulations.

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

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

Following on from our answer above, we understand that the UK has opted for adopting the Convention to the fullest extent. However, for the UK, as a Member State of

the EU when the UK made the Regulations and ratified the treaty, certain options fell within the competence of the EU. As the Isle of Man is outside of the EU in relation to civil aviation matters, those constraints were not binding on the Isle of Man.

The Isle of Man differs from the UK in respect of Article X (which allows a Contracting State to make declarations to modify provisions regarding relief pending final determination); Article XII (which allows a Contracting State to make a declaration requiring courts of the Contracting State to cooperate to the maximum extent possible with foreign courts and foreign insolvency administrators in carrying out the provisions in Article XI); and Article XXI (which provides for the courts of a Contracting State to have jurisdiction where the aircraft object is a helicopter or an airframe pertaining to an aircraft, for which that State is the State of registry).

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

Under the English *lex situs* rule (which is followed in the Isle of Man), an aircraft security interest would only be effectively created if it is validly created under the laws of the jurisdiction where the asset was located at the time of creation. By contrast, under the Convention, an international interest over an aircraft is created once the Convention's validity conditions are satisfied and constitutes an autonomous class of interest recognized among the Contracting States, regardless of whether it has been validly created pursuant to national law. This contrasts with the English *lex situs* rule.

However, it should be noted that this will only apply where international interests are validly created under the Convention. If the Convention does not apply to a transaction, the validity of a security interest (which is not an international interest) will continue to be determined in accordance with English *lex situs* rule.

In addition, the Regulations also confirm that international interests are recognised as a matter of Isle of Man law and have effect when the conditions of the Convention are met, with no further requirements to

determine whether the lex situs rule has been satisfied.

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

a. Lease The governing law of any agreement would be determined by an Isle of Man court on the basis of common law principles of conflicts of law; where the parties have expressly chosen the law of a particular jurisdiction to govern a contract, this would generally be determined to be the “proper law” of the contract. However, there are certain limits on the freedom of the parties to choose the governing law (for example, the choice must be bona fide and legal and not contrary to public policy).

To the extent that the lease document is a qualifying security agreement under the Convention, article VIII (choice of Law) of the Protocol has been extended to the Isle of Man: the parties to a qualifying security agreement may agree on the law which is to govern their contractual rights and obligations, wholly or in part. In accordance with the declaration of the Isle of Man under Article XXXI of the Protocol, the law chosen by the parties to govern the mortgage in whole or in part will be upheld as a valid choice of law with respect to the contractual rights and obligations of the parties under the mortgage in any action in the courts of the Isle of Man.

Please also note our comments on the lex situs rule in the response to question 2(b) above.

b. Security document (for example, mortgage) Our answer to question 3a. applies to any security document in the same manner as it does to a lease.

4. Please confirm whether it is (i) customary and (ii) necessary to also take a local law mortgage and if so, why?

A mortgage does not need to be governed by Isle of Man law in order to be effective under Isle of Man law and/or to be registered in Isle of Man Aircraft Mortgage Register (the “IoM Mortgage Register”).

5. Are foreign judgments recognized and

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

Under the Judgments (Reciprocal Enforcement) (Isle of Man) Act 1968, there are provisions for the enforcement in the Isle of Man of money judgments which are final and conclusive (which are not in respect of taxes, a fine or a penalty) given in the superior courts of the UK, Guernsey, Jersey, Suriname, Israel, Italy or the Netherlands, each of which afford reciprocal treatment to judgments given in the Isle of Man, for facilitating the enforcement in such countries of judgments given in the Isle of Man.

If the judgment does not qualify under the above reciprocal enforcement provisions, under Isle of Man common law, a foreign judgment in personam given by the court of a foreign country with jurisdiction to give that judgment may be recognised and enforced by an action for the amount due under it provided that the judgment: (i) is for a debt or definite sum of money (not being a sum payable in respect of taxes or other charges of a like nature or in respect of a fine or other penalty); (ii) is final and conclusive; (iii) was not obtained by fraud; (iv) is not one whose enforcement would be contrary to public policy in the Isle of Man; and (v) was not obtained in proceedings which were opposed to natural justice in the Isle of Man.

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

Neither definition fits precisely. The Isle of Man Aircraft Register (“**IoM Aircraft Register**”) is not a register of legal title, but a person who is either the legal owner or ‘charterer by demise’ (dry lessee) has the standing to register the aircraft in its name. An aircraft is not registered in the name of an operator (unless that operator is also a dry lessee).

In order for an aircraft to be registered and operated, there are suites of documents and information that need to be provided and approved in respect of the registered owner, the aircraft’s airworthiness and airworthiness management, the operator, radio licensing, airspace

approvals, crew license validations and other matters.

The following information would appear on the public register if a search was made against an Isle of Man registered aircraft: date registered; register number; core number; registration mark; airframe manufacturer; aircraft type (model); sub-classification; manufacturer's serial number; mode s number; registered owner name and address; whether registered owner is registered as a 'charter by demise'; previous international registration; previous Isle of Man registration; and date of last change of registration mark. A certificate of registration is issued in favour of the owner.

Generally, the registered owner – which may be the legal owner or a dry lessee – of an Isle of Man registered aircraft must be incorporated in a Commonwealth or European Economic Area jurisdiction and Switzerland. The Aircraft registered in the Isle of Man are also only for private and corporate use, not commercial air transport or aerial work.

However, there is a specific exemption for 'parked' (off-lease or repossessed) airliners (Qualified Ownership Exemption 17/2018) which allows owners incorporated in the USA, Hong Kong (Special Administration Region), Japan and China to be registered owners of the aircraft.

An aircraft can be leased from a non-qualifying legal owner to a qualifying lessee and be registered in the name of the lessee on the IOM Aircraft Register. The Isle of Man Aircraft Registry (the "**Registry**") has discretion to decline such a registration, but we have never witnessed this discretion be exercised.

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

Yes. The Mortgaging of Aircraft Order 1972 of Parliament (as amended by S1 1981/611 and) (the "**1972 Order**") as applied to the Isle of Man. The 1972 Order makes no limitation on a person or company who may be a mortgagee. A registrable mortgage may cover any store of spare parts (including engines). However, a mortgage created as a floating charge is not registrable. Nor is a mortgage covering spare parts alone. There is no separate mortgage register maintained in respect of

aircraft spare parts or engines. A mortgage over a non-IOM registered aircraft cannot be registered in the IOM Mortgage Register. The particulars required for registration are set out in the Registry's application form (Form 26).

If the mortgagor is an Isle of Man company, the mortgage should also be registered at the Isle of Man Companies Registry.

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

a. Ownership interest (for example, proof of title to third parties of ownership) The registration does not constitute title or an interest in the aircraft and has limited evidential value.

b. Lease (for example, perfects the status of the Lessor under the Lease) Registration of the lease in a public register is not possible.

c. Security document (for example, secures priority over later registered security). If there are any interests that could rank prior to the security document please state these Mortgages registered on the IoM Mortgage Register after 1 January 2018 are subordinate to those registered on the International Registry (the "International Registry"). The Convention requires that a written security agreement involving a debtor situated in, or qualifying aircraft registered in, a contracting state of the Convention which creates an 'international interest' be registered in the International Registry in order for such interest to be enforceable against third parties and for its priority to be established. As a matter of best practice, mortgages over Isle of Man registered aircraft continue to be registered in the IoM Mortgage Register and (if the Convention criteria are satisfied) also at the International Registry.

The principal effects of registration on the IOM Mortgage Register are:

- a. a registered mortgage will, *ipso facto*, have priority over subsequent registered mortgages and unregistered mortgages, except for pre-October 1972 mortgages registered before 31 December 1972, and

subject to the priority rules under the Cape Town Convention detailed above. A registered mortgage will not, ipso facto, have priority over possessory liens or statutory rights of detention;

- b. all persons are deemed to have express notice of all facts appearing in the IOM Mortgage Register (though the registration of a mortgage does not constitute evidence of its validity);
- c. registered mortgages are not affected by any act of bankruptcy committed by the mortgagor; and
- d. the Registry will indemnify any person suffering loss by reason of any error or omission in the IOM Mortgage Register or of any inaccuracy in a copy of an entry in the IOM Aircraft Register supplied by the Registry.

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

Both finance leases and operating leases are recognised.

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

Outside of the usual rules of contract (consideration, offer and acceptance and intent to create legal relations), there are no additional formalities necessary to perfect rights under the lease.

11. Are the ownership rights relating to engines recognized as separate and distinct from the ownership of the rest of the aircraft in your jurisdiction? Please highlight any separate registration, filing or additional formalities that are required to be completed to perfect Lessor's interest in the engines

The engines will usually be sold together with the airframe. Title to the engines will transfer in the same way as title to an airframe, which requires the parties' agreement that title is transferred and transfer of physical possession or delivery of possession of the property from seller to purchaser.

A transfer is typically effected by way of a bill of sale.

It is possible for title to an engine to be held separately.

Title to an engine is not registrable in the Isle of Man, but may be registrable with the International Registry if the relevant requirements are met.

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

Usually, and most commonly a mortgage, which may be either legal or equitable. Under a legal mortgage, a mortgagor conditionally transfers its ownership of the aircraft to the mortgagee as a security for a debt. The mortgagor retains possession of the aircraft and a right to recover title to the aircraft free of encumbrances when the mortgage is discharged.

An equitable mortgage arises where there is a specifically enforceable agreement to create a legal mortgage. The equitable mortgage creates a charge over the aircraft but does not convey any legal interest to the mortgagee. There is no actual transfer of ownership. The transfer of the equitable title to the aircraft to the mortgagee is subject to the mortgagor's equity of redemption, as in the case of legal mortgages.

A charge has similar characteristics to an equitable mortgage, as the creditor obtains equitable proprietary interests in the aircraft, but does not obtain either legal or beneficial title to it. Given that a charge does not transfer ownership, it does not give the charge the right to enforce its security interest without a court order. Therefore, legal mortgages are more commonly used.

A lien is another form of security and it entitles a party to hold on to the aircraft in its possession pending payment of a debt owed. Any possessory lien in respect of charges for work done on an aircraft, whether before or after the creation or registration of a mortgage on the express or implied authority of any persons lawfully entitled to possession of the aircraft would take priority over a mortgage. The repairer's lien can only be exercised against the aircraft to which the charges relate and not against other aircraft, engines or parts belonging to the same owner, lessee or operator in the repairer's possession.

A lien does not confer on the lien holder an automatic right to sell the assets, unless the right to sell is granted under a contract. In exceptional cases, a lien holder can obtain a court order for sale of the aircraft.

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

the secured liabilities)?

Providing the mortgagor can transfer (or can direct a third party to transfer) its ownership to the mortgagee and provided that the mortgage constitutes a transfer of ownership (and not merely an agreement to transfer), no further formality is necessary. The mortgage can be created by an oral agreement between the parties though, in the case of aircraft, it will invariably be in writing since it will not otherwise be registrable in the IOM Mortgage Register. Mortgages usually contain powers on enforcement and will detail the power of sale upon default by the mortgagor. Even if there is no express power, there is an implied power of sale in the case of a legal mortgage, as well as a statutory power of sale when the mortgage is by way of deed.

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

See response to question 6 above.

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

The Isle of Man has a regime that permits the creation of captive insurance companies that can be utilised by airlines and aviation leasing businesses. Captive insurance companies are regulated by the Isle of Man Financial Services Authority.

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

As is the same in English law, under Isle of Man law, there is no specific provision which would limit or prohibit a contractual obligation on the re-insurer to pay any proceeds under the re-insurances directly to the original insured party, instead of to the reinsured party. However, in most cases, the original insured party will not be a party to the insurance policy, in which case the cut-through clause should expressly provide that it is intended for the benefit of the original insured party and that it may be enforced by the original insured party directly against the re-insurer. If not excluded under the re-insurances, the Third Party Rights Act 2001 may

assist. In addition to the governing law of the re-insurances, the law of the jurisdiction of each of the re-insurer and of the primary insurer, including its insolvency laws, may impact on the effectiveness of any cut-through clause.

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

Isle of Man registered aircraft must be insured to the minimum levels contained in EC Regulation 785/2004. More generally, air carriers and aircraft operators must take out insurance which meets minimum levels of cover in respect of liability for passengers, baggage, cargo and third parties. The precise level depends on the Maximum Take-Off Mass (MTOM) of the aircraft and on the number of passengers carried. Aircraft operators' insurance must cover passengers, baggage, third party cover, cargo and war risk.

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

On the occurrence of an event of default under a mortgage or a lease, the mortgagee or lessor can take possession of the aircraft without judicial intervention and subsequently sell the aircraft, provided that this has been specified in the mortgage or lease document or otherwise agreed in writing. Once there has been an event of default, the mortgagee will notify the mortgagor (in accordance with the terms of the mortgage) that there has been an event of default under the loan and that it intends to enforce its security.

There are, in addition to remedies available under Isle of Man law, remedies available to a mortgagee or a lessor without judicial intervention under the Convention, provided the parties to a transaction have agreed in the transaction documents that they are available.

Where the debtor / lessee has entered into insolvency proceedings the ability of creditor to enforce and

repossess the aircraft would be subject to restrictions imposed in the context of such insolvency proceedings in the Isle of Man.

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

The Isle of Man allows the deregistration and export of a qualifying aircraft (as defined under the Convention) by the use of an irrevocable deregistration and export request authorisation (an “**IDERA**”) where international interests under the Convention have been created. The IDERA should be executed and registered at the Registry at the time of financing or, if different, the registration of an aircraft on the IOM Aircraft Register using the prescribed form (Form 108).

Deregistration of a qualifying aircraft pursuant to the request of the authorised party under an IDERA does not require the consent of the registered owner or any other party.

Deregistration will normally be effected the same day provided instructions and the correct documentation has been presented to the Registry. However, deregistration may be delayed if an export certificate of airworthiness is required, as the aircraft must remain registered for the export certificate of airworthiness to be issued.

20. Can the government or the lessee lawfully prevent the repossession or deregistration and if so, in what circumstances

The circumstances of the Isle of Man’s Government interference would be rare if the mortgagee otherwise had a valid claim:

- a. The Isle of Man Government and the Registry may detain, or prevent, the flight of aircraft in certain limited circumstances.
- b. The Isle of Man Government may also provide for the requisition of aircraft in the event of hostilities (actual or imminent), severe international tension or great national emergency. Subordinate legislation would be

required and compensation would be payable. On nationalisation, compensation would almost certainly be payable.

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

Court proceedings for repossession of an aircraft will commence with the issuance of a claim form. The court will consider the mortgage terms and give full effect to the ordinary meaning of its provisions, including the ability to take possession of the aircraft.

The mortgagee or lessor can apply for interim relief if there is a real risk that either:

- a. the aircraft will be taken out of the Isle of Man; or
- b. the mortgagor or the lessee will deal with the aircraft in a way that would prejudice the mortgagee’s or the lessor’s position.

Notarisation, apostillation, legalisation or stamping of the bill of sale is not required to effect transfer of aircraft title under Isle of Man law.

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

There is no prescribed legal form, but a bill of sale is customarily used. The bill of sale records the title transfer for registration purposes, but does not reveal the entire terms of the commercial transaction. Delivery is not a prerequisite to title transfer but does usually accompany title transfer (by virtue of physical delivery or constructive delivery which would be the case where the aircraft is subject to a lease and where a novation / assignment and assumption of the lease would usually take place at the same time as transfer of title to the aviation asset).

23. Are there any restrictions on the sale of an aircraft following enforcement (for example, the requirement to obtain a court

order or conduct a public auction or other action in order to sell the aircraft upon enforcement)

None, other than Isle of Man insolvency laws, the sale of the aircraft following enforcement can be done by private sale, pre-judgment court sale or sale after judgment (by empowering a coroner in the Isle of Man to sell the aircraft to satisfy the judgment debt and costs).

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

There is no withholding tax in the Isle of Man. Generally, aviation leasing companies and lessees would be taxed at a rate of zero on their income.

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

The parties should seek advice on VAT.

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

The parties should seek advice on customs and excise charges.

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

No.

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

Generally, the Isle of Man is very creditor friendly allowing creditors to successfully and expediently enforce their security.

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

None.

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

No recent developments.

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

None.

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