Legal 500
Country Comparative Guides 2025

Panama

Aviation Finance & Leasing

Contributor

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

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Panama: Aviation Finance & Leasing

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

The Republic of Panama is a party to the following aviation conventions: 1) The Chicago Convention of 1944 on International Civil Aviation; signed and adhered, along with its amendments; 2}The Convention for the International Recognition of Rights over Aircraft's, approved in Geneva in 1948, signed and adhered; 3}The 2001 Cape Town Convention on International Interests in Mobile Equipment and the associated Protocol on Matters Specific to Aircraft Equipment, was formally approved through Law No. 29 of March 26, 2003 and was formally ratified on the 13 of September, 2002; and 4} Convention for the Unification of Certain Rules for International Carriage by Air, approved in Montreal in 1999, was approved through Law No. 31 of June 19, 2002 and was formally ratified on the 13 of September of 2022.

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:

As indicated previously, Panamanian jurisdiction has ratified the Cape Town Convention on Interests in Mobile Equipment and the Protocol to the Convention on International Interests in Mobile Equipment on Matters specified to Aircraft Equipment (ratification took place in 2003 by means of Law 29 of 2003).

Pursuant to Article 56 (1) of the Convention and Article XXXII of the Protocol and in accordance with its internal legal system, the Republic of Panama makes the following declarations in respect of Articles 13, 39, SO, 53 and 54 of the Convention and Article XXX of the Protocol:

1. In respect of Article 13(1)(a), (b) and (c) of the Convention, the words "speedy relief" shall be taken to mean seven (7) working days and, in respect of Article 13(1)(d), the same words shall be taken to mean twenty (20) working days.
2. In respect of Article 39 of the Convention, the following non-consensual rights and interests shall prevail over an international interest registered in accordance with the Convention: -any sums due from or capable of being demanded from the debtor by way of salaries, pensions and other social security benefits and employment allowances owed in respect of employees of that debtor; -any sums due from or capable of being levied from the debtor by way of fiscal and parafiscal contributions owed in respect of employees of that debtor; -any sums due from or capable of being levied from the debtor, by way of taxes, duties or contributions payable to the Panamanian State or to the decentralized bodies that collect such revenue, in accordance with Panama's internal laws; -the right of the Republic of Panama to arrest, attach or confiscate mobile equipment and aircraft equipment in the event of breach of the customs or criminal laws of the Republic of Panama. The Republic of Panama declared that the rights or interests covered by this declaration shall prevail over an international interest registered before the date of the deposit of its instrument of ratification in respect of the Convention and the Protocol. -Likewise, declared that none of the provisions of the Convention shall affect the right of the Panamanian State, a State entity, an intergovernmental organization or a provider of public services to arrest or detain an object under the laws of the Republic of Panama for payment of amounts owed to such entity, organization or provider directly relating to those services in respect of that object. -Finally, the Panamanian State declared that these declarations do not pose an unacceptable risk to the holders of registered rights.
3. As to Article SO of the Convention, the Convention and the Protocol shall not apply to any transaction which is an internal transaction in relation to the Republic of Panama with regard to all those types of objects falling within the sphere of application of the Convention or the Protocol.
4. As to Article 53 of the Convention, in

accordance with the internal laws of the Republic of Panama, the relevant courts are as follows: – ordinary courts; administrative courts; – the civil aviation authority; – those advisory bodies exercising supervisory functions in respect of financial institutions and insurance companies (superintendencias); – arbitral tribunals, subject to the powers vested in them by the internal laws of the Republic of Panama.
5. Pursuant to Article 54(2) of the Convention, any remedies available to the creditor under any provision of the Convention and the Protocol which are not there expressed to require application to the court may be exercised without leave of the court.
6. As to Article XXX(l) of the Protocol, it will apply Articles VIII, XII and XIII of the Protocol.
7. As to Article XXX(2) of the Protocol, it will apply Article X of the Protocol.
8. As to Article XXX(3) of the Protocol: – (a) it will apply the entirety of Alternative A of Article XI of the Protocol to all types of insolvency proceeding, as defined in the Convention; – (b) the waiting period under Article XI shall not exceed 60 days.

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

Yes, the Cape Town Convention and the Aircraft Protocol, as ratified by Panama through Law No. 29 of 2003, form part of Panamanian domestic legislation and generally take priority over conflicting national law in respect of matters falling within their sea pe. The Convention's priority rules therefore govern, subject to the specific declarations made by Panama, which define important limitations to this priority.

Panama declared under Article 39 that certain non-consensual rights and interests-such as taxes, labor-related claims, and rights arising from breaches of customs or criminal laws-prevail over a registered international interest.

Additionally, under Article 50, Panama declared that the Convention and Protocol do not apply to "internal transactions" in relation to the Republic of Panama. In such cases, Panamanian domestic law applies exclusively, and the Convention's priority rules are not engaged.

Under Article 53, Panama identified the competent courts and administrative bodies responsible for applying the Convention domestically. This ensures that, when applicable, the Convention has binding effect before Panamanian authorities, including ordinary courts, administrative courts, the Civil Aviation Authority, relevant supervisory bodies, and arbitral tribunals.

Subject to these declarations, the Cape Town Convention prevails over conflicting national law in Panama.

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

Yes. Panamanian courts will uphold a foreign governing law in respect of an aircraft lease. However, the courts will not enforce provisions that are deemed contrary to the laws of Panama, public order, or moral principles of Panama. Recognition of a submission to a foreign jurisdiction is subject to the terms of the lease and these same limitations.

b. Security document (for example, mortgage)

Yes. Panamanian courts will also uphold a foreign governing law in respect of a finance or security document. As with leases, the courts will not enforce provisions that conflict with Panamanian law, public order, or moral principles. Notwithstanding the governing law chosen by the parties, the creation, perfection, and enforceability of a security interest over an aircraft registered in Panama must comply with Panamanian statutory requirements.

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

Panamanian legislation does not stipulate the requirement of a local law mortgage. The Law 21 of 2003 (the "Panamanian Aviation Law") that in the event the parties establish a Panamanian mortgage over the aircraft as security, the mortgage may cover the whole of the aircraft or parts of it. It must be recorded within the Public Registry of Panama and it would have the following costs within the procedure of registering the mortgage in the Public Registry:

- a fixed fee of USDl00.00; and

- in addition to a fixed fee, USD2.50 for every USDl,000.00 or fraction thereof of the amounts secured by the mortgage, up to a maximum of USDSl,250.00.

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)?

Foreign judgments are recognized in Panama. In order for a foreign judgment to be enforced in Panama, the Supreme Court has to issue an exequatur first. Judgments of courts outside Panama, may only be recognized and enforced by the courts of Panama if the Supreme Court of Panama validates the judgment by the issuance of a writ of exequatur. Subject to a *writ of exequatur*, any final judgment rendered by a foreign will be recognized, conclusive and enforceable in the courts of Panama without reconsideration of the merits, provided that (i) such foreign court grants reciprocity to the enforcement of judgments of courts of Panama (which the Panamanian Supreme Court will presume to be the case, unless proved otherwise), (ii) the party against whom the judgment was rendered, or its agent, was personally served in such action, (iii) the judgment arises out of a personal action against the defendant, (iv) the obligation in respect of which the judgment was rendered is lawful in Panama and does not contradict the public policy of Panama, (v) the judgment is properly authenticated by diplomatic or consular officers of Panama or pursuant to the 1961 Hague Convention on the legalization of documents and (vi) a copy of the final judgment is translated into Spanish by a licensed translator in Panama.

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

The Civil Aeronautics Authority {the “CAA”) serves both functions, as an owner register and an operator register. Aircraft registered in Panama must be registered with the CAA and title on aircraft must be registered at the Public Registry of Panama. The CAA does issue a Certificate of Registration to aircraft registered in Panama, along with the registration on the Public Registry of Panama, both actions constitute a formal registration.

If a bill of sale is arranged in a language other than Spanish, it must be translated into Spanish and subsequently transcribed into a Notarial Deed by a Panamanian Notary Public for filing with the Public Registry of Panama.

In accordance with the regulations of the CAA, aircraft registration is limited to three categories a) aircraft owned by the Republic of Panama, b) aircraft for public transportation, exclusively operated by Panamanians duly authorized and c) aircrafts for private use, operable by both that nationals or foreigners.

Aircraft must be operated by a Panamanian national (Panamanian entity with at least 51% of its shares in the hands of Panamanian nationals), which could be done under an agreement with the owner(which could be a foreign entity) which allows the Panamanian national to exercise exclusive control over its operation (i.e., a lease agreement).

The following are the main requirements that must be met for the registration of aircraft in Panama within the CAA:

- a. Completing and filing application by owner or operator of aircraft.
- b. Bill of sale or title document evidencing ownership of aircraft in the name of owner. In case owner of aircraft does not meet the nationality test, a lease to a Panamanian national must be included. All documents must be translated to Spanish and subsequently recorded at the Public Registry of Panama.
- c. Appraisal of aircraft by an official of CAA. Payment of appraisal duties.
- d. Certificate of airworthiness (to be issued by CAA upon presentation of certificate of airworthiness from prior registry or manufacturer and inspection of aircraft by inspectors appointed by CAA).
- e. Evidence that aircraft is not registered anywhere else and that it is free from recorded liens.

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)

The aircraft mortgage must be arranged through a public instrument that has to be recorded with the Public Registry of Panama, if the secured obligations exceed B./20,000.00 in order for such interests to be effective vis-a-vis third parties.

All foreign documents require certification by a notary public, affirming the authenticity of the signature and confirming, based on adequate evidence presented, that the signing party is duly authorized to act on behalf of the company. Subsequently, the notary's signature must be authenticated either in accordance with the 1961 Hague Convention on Apostille or by a Panamanian Consul in the place of execution.

In case the security document is arranged in a language other than Spanish, it must be translated into Spanish and subsequently transcribed into a Notarial Deed by a Panamanian Notary Public for filing with the Public Registry of Panama.

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)

Under Panamanian law, ownership of an aircraft must be recorded both with the CAA and with the Public Registry of Panama. Registration serves as formal proof of title vis-a-vis third parties and is a prerequisite for obtaining navigation and operational authorizations for the aircraft. Failure to register ownership will prevent the aircraft from receiving the required authorizations.

b. Lease (for example, perfects the status of the Lessor under the Lease)

The interest of the lessor (and any superior lessor or financing party) under an aircraft lease must be formally recorded at the Public Registry of Panama to ensure its effectiveness against third parties. Registration perfects the lessor's rights under the lease and ensures enforceability vis-a-vis third-party claimants, as detailed in Question 7.

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

Security interests-such as an aircraft mortgage-must be recorded at the Public Registry of Panama in order to be effective against third parties and to establish priority. A registered mortgage will generally take precedence over any subsequently registered security interests.

However, Panamanian Aviation Law provides that certain privileged credits rank ahead of registered security interests. These include national taxes associated with the aircraft, which take first priority. The aircraft mortgage then follows as the second-ranking credit.

9. What types of lease are recognized in your jurisdiction?

Panamanian law does not prohibit any type of lease. The leases can be written in a foreign language, nevertheless, in order to present them to Panamanian offices or to the courts, the documents must be legalized with the apostille (pursuant to the 1961 Hague Convention) or by a Panamanian consul and in case that it was executed on another language, it must be accompanied by a translation from an authorized public translator in Panama.

10. What formalities are required to perfect Lessor's rights under a lease in your jurisdiction (for example, translation, notarization, apostille, legalization etc.)?

Under Panamanian laws, in order to perfect the signatures of lessor and lessee must be authenticated by a notary public, if executed abroad, the documents must be legalized with the apostille (pursuant to the 1961 Hague Convention) or by a Panamanian consul and it must be accompanied by a Spanish translation made by an authorized translator in Panama.

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

In Panama there is no separate and distinct registration on engines. Nonetheless, the transfer of security interest over engines would be recognized under Panamanian law.

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

Security for aircraft financing in Panama may takes various forms. For instance, a loan financing an aircraft registered in Panama could be secured by an aircraft mortgage, a pledge of shares in the aircraft-owning company or its holding parent or guarantees provided by a parent company or its affiliates.

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

For the security document to be enforceable against third parties, it must comply with the following requirements:

- If executed locally, the signatures of the parties must be ratified by a Panamanian Public Notary.
- If executed outside of Panama, the signatures must be ratified by a Public Notary, which shall then be further legalized either by a Panamanian Consul or through the Apostille, in accordance with the 1961 Hague Convention Abolishing the Requirement of Legalization for Public Documents.

Additionally, the security document must be accompanied by a Spanish translation performed by an authorized translator in Panama. It must also be executed as a public deed and registered with the Public Registry of Panama.

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

To be effective vis-a-vis third parties, mortgages need to be recorded with the Public Registry of Panama. For such purposes, the signatures to the mortgage need to be authenticated by a Notary Public from the place of execution. If done outside of Panama, the Notary Public's signature would have to be legalized either by a Panamanian Consul or the Apostille.

The mortgage would also need to be translated into Spanish if executed in a foreign language and protocolized (transcribed) into a Notarial Deed by a Panamanian Notary Public for further filing with the Public Registry of Panama for recordation.

The mortgage must meet the following requirements:

- The date of execution;
- The full names and details of the parties and their representatives;
- the economic terms including the maximum amount secured;
- the interest agreed;
- the manner in which payments will be made;
- a complete description of the mortgaged aircraft indicating its value;
- the place where the aircraft will be located; and
- any other lawful conditions agreed to by the parties.

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

Panamanian laws indicate that insurance related to aircraft registered in Panama must be obtained from domestic insurance companies if such insurance is available. Along with the requirement to air carriers and airport concessionaires to contract insurance for the risk of damage to third parties on the ground, to the crew, to users and in general, to anyone who could suffer damages as a result of the carrier's operations. Regulations governing maritime insurance similarly apply to aviation insurance, as far as they are relevant and compatible.

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

The current perspective is that cut-through clauses within insurance and reinsurance documents should be enforceable.

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

Panamanian Aviation Law stipulates the amount minimum requirement for third party liability that applies to aviation as follows:

- For damages suffered by a passenger, twenty-five thousand balboas (B/.25,000.00).
- For loss, destruction or damage of the hand luggage, an amount up to thirty-three balboas with twenty cents (B/.33.20).
- for the loss or destruction of the checked or paid luggage, up to twenty-four with twenty-five cents of balboas (B/. 24.75) per kilogram.

The indemnification limit for paid luggage would not exceed the declared value being transported. The previously mentioned limits for indemnification will not be paid if it is proven that the damage resulted from the deliberate actions of the carrier, operator, or their dependents, with the intention to cause harm, or with reckless disregard and knowledge that harm may occur. In the case of an omission or action by the dependents, it must be proven that the action occurred during the performance of their duties. The carrier shall also be exempt from the above indemnifications if it is proven that the carrier took necessary measures to prevent the damages, and the responsibility of the carrier may be exempt or mitigated if the damage was partly caused by the person damaged or by force majeure.

Panamanian Aviation Law has settled the maximum amount of compensation per aircraft:

- a. Sixteen thousand six hundred Balboas (B/.16,600.00) for aircraft weighing not more than one thousand {1,000) kilograms;
- b. Sixteen thousand six hundred Balboas (B/.16,600.00) plus thirteen Balboas and twenty-five cents (B/.13.25) per kilogram over one thousand {1,000) for aircraft weighing more than one thousand (1,000) but not exceeding six thousand {6,000) kilograms;
- c. Eighty-two thousand eight hundred fifty Balboas (B/.82,850.00) plus eight balboas and thirty cents (B/.8.30) per kilogram over six thousand (6,000) for aircraft weighing more than six thousand (6,000) but not exceeding twenty thousand {20,000) kilograms;
- d. One hundred ninety-nine thousand Balboas and fifty cents (B/.199,000.50) plus five Balboas (B/.5.00) per kilogram over twenty thousand (20,000) but not exceeding fifty thousand {50,000) kilograms;
- e. Three hundred forty-nine thousand Balboas and fifty cents (B/.349,000.50) plus three thousand three hundred twenty-five Balboas (B/.3,325.00) per kilogram over fifty thousand {50,000) for aircraft weighing more than fifty thousand {50,000) kilograms.

The indemnity in case of death or injury shall not exceed twenty-five thousand Balboas (B/.25,000.00) per injured or deceased person. The weight of the aircraft shall be indicated in the Certificate of Airworthiness.

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

Lessor may take physical possession of the Aircraft if Lessee does not oppose it and there is a breach of the peace. In the absence of the foregoing conditions, Lessor may have to recur to the authorities.

In case of recurring to authorities, documents presented as evidence to a Panamanian court must be translated to Spanish by an official translator in Panama, and if executed abroad, legalized by a Panamanian Consul thereat or by the Apostille. Additionally, stamp taxes at the rate of U.S.$0.10 for each U.S.$100.00 of face value would be payable on each document that is presented in evidence to a Panamanian court.

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 Panamanian law and regulations state that owners of aircraft or an authorized person empowered by the owner are entitled to request the deregistration of their aircraft. The law and regulations do not mention that lessees or operators of such aircraft will have to consent to such deregistration. In practice, however, the Civil Aeronautics Authority has requested written evidence on the part of the counterparty to the effect that the lease has been terminated or that it does not have objections to the cancellation of the registry.

Upon the termination of the lease, Lessor will be able to de-register the aircraft. The National Aeronautical Register of the CAA is the governmental office in charge of processing the de-registration.

To start the de-registration process, the Lessor will have to file an application with the CM. The application may be prepared and signed by attorney-at-law acting on behalf of Lessor. The documents to be presented with the CAA are the following:

1. Application (which should indicate if any confirmation must be sent to another registration of the cancellation of the Panamanian registry).
2. Power of attorney and other documents evidencing the authorization of the persons signing the de-registration application and other documents on behalf of Lessor.
3. Certificate from the Public Registry of Panama attesting to the ownership of the aircraft by Lessor, in which is also proven that the aircraft is free of encumbrances.
4. Certificate from the Public Registry of Panama attesting the good standing of the corporation and its legal representation.
5. Return of certificates on board the aircraft: registration certificate, certificate of airworthiness, etc.
6. Evidence that the lease has terminated, in the form of any of the following: (a) certification signed by Lessor and Lessee evidencing such termination; (b) consent on the part of Lessee; (c) power of attorney previously granted by Lessee for the purpose of effecting such de-registration (which may enable Lessor to make statements on Lessee's behalf for purposes of effecting de-registration); (d) judicial order, etc.
7. Certificate evidencing that applicant and aircraft are up to date in their payments to the CAA.
8. If the aircraft is used for commercial use, the exclusion request for the Operation Certificate and Operational Specifications of the company must be made.
9. Request Certificate of Airworthiness for Exportation.
10. Payment of duties in the amount of US$100.00.

The deregistration process of an aircraft may take between two to six weeks. Nevertheless, it will depend on the co-operation from lessee.

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

A. The constitution of Panama allows the government, due to reasons of public policy or interest, to expropriate and requisition private property. In such instances, the government is obligated to indemnify the owner of the property. Expropriation or nationalization of foreign owned property has been rare in the last 40 years. In addition, Panama has entered with several countries (the United States, the UK, and France, among others) into foreign investment protection treaties, which offer some additional protection to the nationals of such countries from arbitrary expropriation or acts from Panamanian authorities.

B. See Question 19.

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

Chattel mortgages are enforced pursuant to mortgage executory proceedings. These proceedings are designed for the enforcement of mortgages and other forms of written obligations that provide for a clear obligation on the part of mortgagor/debtor to pay a debt. These proceedings are supposed to be expeditious and allow for a few defenses on the part of mortgagors (i.e., that the statute of limitations has expired or that mortgagor has paid the debts claimed by mortgagee). The lawsuit must be accompanied with the public deed of the mortgage and a certificate of the public registry of the aircraft which reflects the mortgage details, the certificate must not have more than two (2) months since its issuance date.

In anticipation to starting mortgage executory proceedings, holders of aircraft mortgages may ask the court to attach the aircraft, to gain immediate custody thereof, thereby preventing operators from taking them out of the country. These petitions are typically filed with the court before the filing of the complaint and are decided by the court ex-parte. To immediately attach or seize the aircraft (before even filing the complaint), the mortgagee may be required to post a bond or guarantee, which may be equivalent to 30 to 40% of the amounts claimed against the borrower under the mortgage. This bond will be returned to the mortgagee once the court has decreed the formal attachment of the aircraft pursuant to the executory proceedings (this order by the court may be issued a few weeks after the filing of the complaint). The procedure will conclude with a public auction if the mortgagor does not present a defense or if the court does not consider them valid, the announcement of the public auction shall be published in a national newspaper for three consecutive days.

For further reference, the self-help remedies included in Law 129 of 2013 allow the mortgagee to file a mortgage execution form at the corresponding registry to initiate the extrajudicial execution proceeding. It is important to point out that Law 129 of 2013 provides that for the extrajudicial execution of a mortgage, the mortgagee must appoint, within the mortgage, a representative that shall be in charge of notifying the counterparty of the extrajudicial execution.

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

In Panama, the transfer of legal title for aircraft typically occurs through a bill of sale. Such bill of sale may be governed and executed under foreign law. However, it is imperative that the bill of sale explicitly state a symbolic figure representing the purchase price, in addition to valuable consideration (e.g., US$1.00). Moreover, the transferee must acknowledge and accept title to the aircraft by executing the bill of sale or a separate document confirming acceptance of the sale.

The bill of sale may be granted abroad or in Panama under powers of attorney. If the bill of sale is granted abroad, it will have to be legalized by a Panamanian consul or with the apostille, as per the 1961 Hague Convention. If the bill of sale is granted in Panama under powers of attorney, the powers of attorney will also have to come legalized by a Panamanian consul or with the apostille, as per the 1961 Hague Convention. In case (a) the bill of sale is granted abroad or (b) it is granted in Panama under powers of attorney, seller and buyer will have to submit evidence of authorizations by their governing bodies to enter the bill of sale (these authorizations will also have to be legalized by a Panamanian consul or with the apostille, as per the 1961Hague Convention). Panamanian authorities generally accept evidence of corporate authorizations in the form of certifications issued by public notaries that are appended to the bills of sale and powers of attorney. Subsequently, the notary must arrange a public deed. Following this, the documents must be formally registered at the Public Registry of Panama and with the CAA.

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)

As indicated in question 21, The mortgage executory proceeding concludes with a public auction on the aircraft if the mortgagor does not present a defense or if the court does not consider them valid.

Unless it is agreed on the mortgage, the procedure would be according to the judicial procedure.

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

Unless rental payments to Lessor are exempted by double taxation or any similar treaty or other legal provision, rental payments under the lease may be subject to a 12.5% withholding tax (the withholding tax would apply to each payment of lease rental).

Lease rentals should be exempt from withholding taxes and VAT if the following conditions are met:

1. The laws of Panama exempt lease rentals from the payment of withholding taxes if such payments are made to a lessor that is a company organized under the laws of a country that, on the basis of reciprocity with the Republic of Panama, exempts residents of or companies organized under the laws of the Republic of Panama from the imposition of taxes on the income derived from the operation of aircraft.
2. The laws of Panama exempt lease rentals from

the payment of withholding taxes and transfer taxes (VAT) if the Agreement is characterized as an international finance lease under the laws of the Republic of Panama and the aircraft is employed in international transport. In general terms, a lease may be characterized as finance lease if: – I. the lessor and the lessee are located in different countries; – II. the lessee specifies the equipment and selects the supplier without relying primarily on the skill and judgment of the lessor; – III. the equipment is acquired by the lessor in connection with a leasing agreement which, to the knowledge of the supplier, either has been made or is to be made between the lessor and the lessee; – IV. the rentals payable under the leasing agreement are calculated so as to take into account in particular the amortization of the whole or a substantial part of the cost of the equipment; and – V. the aircraft is employed in international air transport.

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 sale of aircraft registered in Panama and engaged in international transport is exempted from payment of income tax. *Impuesto de Transferencia de Bienes Muebles y Prestacin de Servicios* ("ITBMS") would only apply in cases where the aircraft is located within Panamanian territory during the sale of the aircraft, the currently rate of ITMBS is 7%.

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

As stated above, Panamanian law indicates that the companies and engaged in international transport is exempted from payment of income tax. Panamanian laws do not require an export license in the case of deregistration and removal of aircraft from Panama and it does not charge taxes, etc, in respect of the export of an aircraft.

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

The only restrictions that apply to international transfers of monies are those imposed by on anti -money laundering laws and regulations (i.e., Lessor may have to fill out forms and provide explanations to bank officials on the source of the funds and their intended use). These money laundering restrictions are similar to those in existence in other jurisdictions (such as Europe and the United States of America) and, generally, do not impede the free transfer of legal funds.

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?

Courts in Panama have little (if any) experience with regard to the termination of documents (in particular lease agreements) with respect to equipment on lease to a counterparty from a foreign lessor and or secured by a foreign financier.

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

There are currently no reforms affecting creditor and lessor rights underway in the aviation sector in Panama. The Law No. 129 of 2013 that promotes credit access, modernizes the regime for secured transactions using moveable assets, and prescribes other provisions has not been amended.

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

Law 415 of November 22, 2023, modifies the court-ordered sale procedure and the criteria for the appraisal of real and personal property to be auctioned. The amendments predominantly affect real property, as they alter the valuation process of such property. Formerly, the valuation of real property was based on its cadastral value at the time of the court-order sale procedure; now real property must be appraised based on its commercial value and this appraisal must be made by a qualified professional.

Under the modification, the mortgagor and mortgagee party are entitled to present their respective appraisals, signed by a qualified professional. The judge is tasked with averaging the values presented by both parties to determine the auction's base price.

These significant changes aim to enhance the accuracy and fairness of property valuations in court-ordered sales, providing a more reliable basis for determining the auction's starting price.

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