

The COVID-19 10-Point Aircraft Lessor Checklist

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At this time, the full effects and repercussions of the COVID-19 outbreak are uncertain. However, one thing that is certain is that leasing companies are receiving, and will continue to receive, requests from lessees across the globe to defer lease rentals and otherwise restructure leases. To that end, there are a number of actions that leasing companies can take now, or as part of any rent deferral or restructuring discussion, in order to ensure that they are as prepared as they can be should enforcement or related action be required in the future.

Below is a 10-point checklist of actions leasing companies may consider:

1. Registrations and Searches

Key to any repossession or other enforcement action is understanding the record of relevant registration and security filings at the applicable aviation authority or local registry. Lessors should take this opportunity to check applicable aviation authority and other registries to ensure that: (a) all existing security is adequately perfected; (b) all relevant aviation authority and other local filings have been made; (c) no unexpected or adverse registrations have been made against the relevant asset; and (d) any UCC and other filings which are time-limited on a transaction have been renewed.

2. Cape Town Convention

Similar to the above, it is worth considering whether new priority search certificates for each airframe and engine owned by a leasing company should be obtained (again to make sure that all historic interests that should no longer appear on the International Registry have been discharged, and that no non-consensual rights or interests have been filed).

3. Aviation Authority/Airport Charges.

Outstanding air navigation, airport and other charges can give rise to a lien on an aircraft, which might be expensive to discharge (even if the charges are not attributable to your aircraft). Accordingly, it is worth considering requesting relevant statements of account from the airline (or exercising available rights under air traffic control letters, Eurocontrol letters and EU-ETS letters).

4. Letters of Credit

Where a leasing company holds a letter of credit (an "LC") as security under a lease in respect of a security deposit, maintenance reserves or otherwise, it may be helpful to check that the demand procedure set out in the LC is fit for purpose. Issuing/confirming LC banks will only pay against demands which are made strictly in compliance with the relevant LC. In particular, it is worth checking that you are able to issue any LC "demand notice" in the form prescribed by the relevant LC. Where a maintenance LC has been provided, leasing companies should check that any adjustment to the LC amount has been made on a timely basis.

5. Maintenance Reserves

With respect to maintenance reserves, consider checking that all annual and other escalation has been applied correctly under the lease and that accrued balances correctly reflect the amounts owing.

6. Aircraft Status

If you are concerned about the condition of your aircraft, consider scheduling an inspection to confirm the maintenance status of the aircraft and confirming with the lessee the location of the engines, the aircraft records and other major components. If you are aware that your engines are off-wing or subsequently find out that your engines are off-wing, consider whether any related rights under the lease (such as the ability to obtain a recognition-of-rights letter from owners/mortgagees of any host airframe) have been or should be exercised. If the aircraft or any relevant item is undergoing overhaul, then confirm the payment status of the airline with the MRO.

7. Documentary Terms

Before starting any restructuring discussion with lessees, check where you stand with respect to the existing deal terms. The terms of the existing deal will almost certainly dictate the direction of the discussion and any agreement on the restructuring. For instance, has a default or event of default occurred? Does either event give rise to the exercise of new rights by you, or impose any restrictions on the exercise of rights by the airline (such as the subleasing of aircraft and the interchange/pooling of engines and parts)? Do cross-default provisions trip up any other leases or transactions? When are security deposits/accrued maintenance reserves available for application against outstanding amounts, and can amounts be cross-applied against other lessee indebtedness? Are any lessee obligations guaranteed?

8. Financing

It may be an obvious point but have you checked whether the aircraft is financed, and the provisions that apply in connection with any lease payment default or event of default? Is formal notification required under the financing at this stage? Do any lender consent/veto rights apply? Where the financing is secured and hedging arrangements apply, be aware that any rent rescheduling may give rise to material swap breakage costs. Consider whether any or all of these burdens should be passed to the lessee.

9. Aircraft Insurances

Insurances are often overlooked in circumstances such as these. Consider checking that the agreed value under the relevant insurance policy is correct, that the list of contracts and contract parties is correct and that the broker's letter of undertaking contains your up-to-date contact details.

10. Original Documents

Although less relevant nowadays, in a few jurisdictions original ink is king. Where the lessee or aircraft is located in such a jurisdiction, consider reviewing your files in order to ensure that you hold all appropriate original transaction documents and to check compliance of those documents with any required formalities (notarization and other legalization, and any associated registrations which may be required). Now is the time to get things fixed!

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