

BERMUDA STRENGTHENS AIRCRAFT FINANCING LAWS

by Shannon Cann

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Recent legislative amendments have further strengthened Bermuda's position as an offshore leader in the global aircraft finance market.

The island has long been a jurisdiction of choice for aircraft financing transactions. Going forward, the continued positive outlook in the global aircraft finance sector means that protecting the interests of secured parties over aircraft and engines is crucial.

In this regard, Bermuda recently amended the Mortgaging of Aircraft and Aircraft Engines Act 1999 (**Act**) to remove the requirement that an aircraft or aircraft engine must be owned by, leased or chartered to, or otherwise in the lawful possession of a company incorporated in Bermuda to be made security for a loan. The Act, together with ancillary regulations made under the Act, provide for the establishment and maintenance of a register of aircraft mortgages and aircraft engine mortgages.

Prior to the amendment, mortgages could only be registered against Bermuda-registered aircraft and aircraft engines if such aircraft or aircraft engine were either owned by, or otherwise in the possession of, a Bermuda incorporated company. On 2 June 2017, the Mortgaging of Aircraft and Aircraft Engines Amendment Act 2017 (**Amendment Act**) amended the Act to remove such requirement.

The amendments to the Act now allow security for loans or other valuable consideration to be made by qualified registrants over:

- aircraft registered on the Bermuda register (or capable of being registered); and
- aircraft engines if: (a) the engine is attached to an aircraft registered on the Bermuda register (or attached to an aircraft capable of being registered) or (b) the engine is for such aircraft and is owned by, or leased to, the owner of such aircraft.

The Amendment Act follows amendments that were made to the Air Navigation (**Overseas Territories**) Order that took effect on 1 January 2015 (**Amended ANOTO**). The amendments to the Amended ANOTO expanded the list of persons and corporations eligible to register an aircraft on the Bermuda register of aircraft to include:

- Commonwealth citizens or nationals of any European Economic Area (**EEA**) state;
- bodies incorporated in any other part of the Commonwealth and having their registered office or principal place of business in the United Kingdom or any other part of the Commonwealth; and
- undertakings formed in accordance with the EEA state having their registered office, central administration or principal place of business within the EEA.

However, despite the Amended ANOTO there remained a Bermuda policy that continued to stipulate that a Bermudian company was required in the structure for the purposes of registration. It was the removal of the policy at the end of 2015 that resulted in parties being in a position to take advantage of the Amended ANOTO.

On 27 July 2016, Royal Assent was received in respect of the Bermuda International Interests in Mobile Equipment (**Cape Town Convention**) Act 2016. The International Institute for the Unification of Private Law, commonly known as **UNIDROIT**, has now confirmed that the Cape Town Convention on International Interests in Mobile Equipment and the Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment will be extended to Bermuda, effective January 2018.

The Cape Town Convention facilitates aircraft finance by standardising transactions involving moveable property with respect to "aircraft objects" (airframes, aircraft engines and helicopters) by the creation of an electronic international registry of "international interests" that are recognised by those states that have implemented the Convention and to provide various default remedies to a creditor (including in the context of insolvency) should the need arise.

These latest initiatives by Bermuda underline the importance to the island of having a modern legislative framework to facilitate aircraft financing transactions.

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