



HANDBOOK ON
AIRCRAFT
LEASING.

CONTENTS

CHAPTER I:	
INTRODUCTION	4
CHAPTER II:	
THE STRUCTURE OF A LEASE TRANSACTION	6
2.1: Tax	6
2.1.1: Stamp Duty	6
2.1.2: Customs Duty and GST	7
2.1.3: Withholding Tax	8
2.2: Bilateral Tax Treaties	8
2.3: BEPS, GAAR & MLI	8
2.4: GIFT-IFSC	10
2.5: Law & Jurisdiction	10
CHAPTER III:	
TYPES OF LEASES	12
3.1: Finance Lease	12
3.2: Operating Lease	13
3.2.1: Dry Lease	14
3.2.2: Wet lease	14
3.3: Sale & Leaseback	15
3.4: Leasing structure through the IFSCA	16
CHAPTER IV:	
REGULATORY OVERVIEW OF LEASES	18
4.1: Exchange Control	18
4.2: NOC for Import	19
4.3: Registration	19
4.4: Customs	19
CHAPTER V:	
LEASE AND PURCHASE	20
CHAPTER VI:	
SECURITIES	21
6.1: Operating Lease vs. Finance Lease	21
6.2: Cape Town Securities	22
CHAPTER VII:	
INSURANCE	24
CHAPTER VIII:	
EVENTS OF DEFAULT	27

CONTENTS

8.1: Non-Payment	27
8.2: Failure to Maintain Insurance Cover	27
8.3: Insolvency	27
8.4: Breach	28
8.5: Suspension of Business	28
8.6: Cross Default	29
8.7: Cancellation of Registration of the Aircraft	29
8.8: Other Clauses	29
CHAPTER IX:	
CHANGING DYNAMICS AND THE PANDEMIC	30
9.1: Hell or High Water	30
9.2: Rework & PBH Agreements	31
CHAPTER X:	
REDELIVERY/ RETURN & DEREGISTRATION	33
CHAPTER XI:	
ESG	34
CHAPTER XII:	
CONCLUSION	35
APPENDIX A:	
GLOSSARY OF TERMS	36
APPENDIX B:	
ABOUT LINK LEGAL	38
Offices & Contact Details	39
ADDENDUM:	
ABOUT THE AUTHORS	40
Sanjay Gupta	40
Neha Singh	41
Disclaimer	42

CHAPTER I: INTRODUCTION.

An aircraft lease is essentially a contractual arrangement whereby the lessor conveys to the lessee in return for continued periodical payments, the right to use an asset for an agreed period of time. The arrangement allows the lessor to continue to hold the property in the aircraft whilst placing complete operational control and responsibility of holding the asset along with the obligation to meet insurance, legal, regulatory, and maintenance compliances with the operator.

Albeit most leases, globally, are governed by English law and are subject to the jurisdictions of English courts, the leases follow the same principles of a contract with respect to offer, acceptance, and consideration, and as a mobile asset, an aircraft, under the Indian legal framework, remains subject to the Transfer of Property Act, 1882; the Contract Act, 1872; the Aircraft Act, 1934; the Aircraft Rules, 1937; the Foreign Exchange & Management Act, 1999; along with the applicable international conventions on public and private international laws, such as the Chicago Convention⁻¹, the Montreal Convention⁻² and the more recent CTC.

Since the liberalization of the Indian economy in 1990, aviation has experienced a steep curve in the leasing structures employed for acquisition of aircraft. India is the third-largest domestic passenger market and the growth is manifested in the passenger traffic, i.e., from approx. 42 million in 2006-07 to 105 million in 2020-21. The market has also consistently moved to operating leases as the preferred model, as compared to financial leases – the latter provides an airline operator with an option to purchase an aircraft at the end of the lease term. Changing market dynamics and consistent growth demonstrated by the Indian aviation sector have also gradually contributed to the Lessees consolidating their position to negotiate better terms for leasing and purchase, with the Lessors, the OEMs, or with the banks and FIs⁻³.

The future prospects and growth in the field, and the leasing financing arrangement will likely be impacted by 'sustainability'. With more

⁻¹ The Chicago Convention 1944 came into force on April 4, 1947 and India ratified it on March 1, 1947. The Convention has been revised eight times (in 1959, 1963, 1969, 1975, 1980, 1997, 2000 and 2006).

⁻² The Montreal Convention 1999 came into force on November 4, 2003 and India ratified it on June 30, 2009. The Convention has been revised twice (in 2009 and 2019).

⁻³ Financial Institutions.

governments, businesses, and corporate houses committing to 'Net Zero', the adoption and integration of sustainability into leasing/ financing arrangements, business models, and lending requirements are steadily becoming a necessity. In the backdrop of COP26 and to reduce its carbon footprint, the aviation sector as a whole has started moving towards green financing, sustainable fuel, and efficient and clean machines, each one of which has the potential to considerably alter a typical transaction, particularly in view of cost and compliance.

This document aims at providing a comparatively detailed view of the primary methods by which aircraft and engines are acquired and financed, and the aspects that have come to gradually impact leasing models and how. It also more generally addresses transaction structuring and what goes into it; the regulatory and legal frameworks; leasing structures; contractual necessities; insurance requirements; the applicability and adoption of international conventions; position vis-a-vis return and repossession; sustainability; efficiency; and also touches upon the leasing platform provided under India's GIFT IFSC.

—————[end of Chapter I]—————

CHAPTER II:

THE STRUCTURE OF A
LEASE TRANSACTION.

Transaction structuring is a very important element of aircraft leasing since an aircraft is high value equipment, and the aim is at putting together a transaction that is *inter alia* efficient from multiple perspectives of tax, bilateral tax treaties, governing law and jurisdiction, quick enforcement and effective recourse, *et al*, in order to ensure maximum utilization and a good return on investment on an aircraft. Some key elements are outlined below.

2.1:
TAX.

An important aspect that affects transaction structuring is the impact and costs associated with the application of taxes to a particular transaction. Since Aircraft leasing invariably involves multiple jurisdictions, it becomes all the more important for the parties to assess and opt for the most beneficial tax arrangement that may be available.

Some of the taxes associated with leasing transactions, involving Indian jurisdiction, are outlined below.

2.1.1:
STAMP DUTY.

Under the Indian Constitutional framework, Stamp Duty is a state subject as it falls under the Concurrent List of the Constitution of India. The duty, therefore, varies from one state to another. Stamp Duty is levied on certain instruments in accordance with the Indian Stamp Act, 1899⁻⁴, a fiscal enactment that lays down the circumstances under which the duty needs to be paid; the form in which it is to be paid; the time of payment; and the implications of non-payment.

⁻⁴ Section 3, Indian Stamp Act: the following instruments shall be chargeable to duty of the amount indicated in the schedule (to the Act):
(i) every instrument executed in India;
(ii) every bill of exchange (payable otherwise than on demand) or promissory note drawn or made out of India and accepted and paid, or presented for acceptance or payment, or endorsed, transferred or otherwise negotiated in India;
(iii) every instrument (other than a bill of exchange or promissory note) which is executed out of India, relates to any property situate, or to any matter or thing done or to be done, in India and is received in India.

Transaction documents executed in India must be stamped before or at the time of execution. An insufficiently stamped document is inadmissible in evidence in an Indian Court⁻⁵. For documents that are executed outside India, stamp duty liability arises within three (3) months of the receipt of the original in India. However, since Stamp Duty is a state subject, the practice varies considerably, inasmuch as in certain states, such as Karnataka and Maharashtra, the liability for stamp duty arises even on unstamped copies of documents.

An important distinction is that no Stamp Duty is payable in Delhi on copies of unstamped documents. This becomes particularly relevant as the DGCA is seated in Delhi, where multiple documents with respect to the ownership and operation of the aircraft are filed over the period of the lease term of an aircraft.

Given the varying framework and liability to Stamp Duty, i.e., a lease agreement which may be amenable to a Stamp Duty of INR 500 in Delhi could be subject to a higher duty of approximately INR 200,000 in Karnataka, in most cases parties prefer to execute and keep the documents overseas in order to avoid Stamp Duty liabilities. It has also become increasingly common for aircraft leases to have a covenant which requires the parties to keep originals of the transaction documents outside India.

2.1.2: CUSTOMS DUTY AND GST.

The import of an aircraft or an aircraft engine into India is subject to IGST and customs duty depending on the type of import. For instance, there is a complete exemption of customs duty if an aircraft/ engine is being imported by a scheduled operator. Until very recently the aircraft imported into India on lease were also subject to IGST. The import IGST on leased equipment has since been removed⁻⁶. The removal of import IGST on leased equipment has helped in the cost-effective transition of an aircraft at a local/ domestic level⁻⁷.

The payment of rent under an aircraft lease agreement to an overseas lessor

⁻⁵ If an unstamped or an insufficiently stamped document is presented in Court proceedings or to a Government Office, then the Court / Office is obliged to impound the same and present it to the Collector of Stamps for adjudication of the proper stamp duty. The Collector of Stamps will determine the correct duty and may also impose a penalty of up to 10 times the amount of the duty saved.

⁻⁶ https://gstcouncil.gov.in/sites/default/files/Recommendations_of_45th_GST_Council_Meeting.pdf

⁻⁷ Local acquisition of aircraft was first permitted by the DGCA and Customs when aircraft leased to Jet Airways were internally acquired, on lease, by other Indian operators.

is subject to a GST of 5% on a reverse charge basis⁻⁸. The rate of GST and Customs Duty remains the same even in cases where the aircraft is leased from a lessor operating out of GIFT-IFSC.

2.1.3: WITHHOLDING TAX.

Where the income arises in India, the Indian regulations require the deduction of a WHT in respect of payments made to overseas parties/ lessors. Under Indian regulations, income is taxed on the basis of residence or accrual. Bilateral tax treaties entered into between various countries attain a lot of relevance since they have the effect of reducing the rate of taxation⁻⁹.

2.2: BILATERAL TAX TREATIES.

Under the provisions of Indian laws, where the income arises in India, the lessee/ operator is required to deduct a WHT in respect of payments made to foreign parties. DTAA's have the effect of substantially lowering the rates of withholding in certain cases⁻¹⁰. It becomes imperative therefore for the parties to a transaction to identify the most efficient tax jurisdictions.

The DTAA between India and Ireland was signed in November 2000, and was notified by India in February 2002, and is the most applied DTAA when it comes to aircraft leasing transactions. One of the principal elements of the Indo-Irish DTAA being preferred is that it essentially provides for the profits of an Irish enterprise to be taxed only in Ireland, provided it can be demonstrated that the enterprise is the beneficial owner and does not have a PE in India.

2.3: BEPS, GAAR & MLI.

Tax planning and identifying a favorable jurisdiction are a necessity in financing of high value equipment such as an aircraft, and structuring, keeping these broad principles in mind, has historically been applied by parties globally. India, in line with the other countries, has been consistently

⁻⁸ The application of GST should likely not impact the lessors as they are protected by the tax gross up clauses under the contract.

⁻⁹ To avail the exemption under the tax treaties it has become mandatory that the recipient of the income should obtain a permanent account number from the Indian Income Tax authority. This however is not consistent across the industry.

⁻¹⁰ To get such an exemption, it has become mandatory with effect from April 1, 2010, for recipient of such income to get a PAN. There is an alternate view that a PAN is not needed if the DTAA allows full exemption from Indian taxes.

taking measures to address tax evasion and forum shopping. India enacted the GAAR which came into effect on April 1st, 2017, which *inter alia* provides that tax benefits under a tax treaty may be denied if the transactions lack commercial substance, or are determined not *bona fide*, or not at arm's length, or which misuse tax provisions and are proclaimed impermissible.

Whilst the CBDT attempted to clarify and address the concerns of the stakeholders by a clarification issued, impermissible avoidance arrangements are defined in the following terms⁻¹¹:

"Section 96⁻¹². Impermissible avoidance arrangement. —

a. An impermissible avoidance arrangement means an arrangement, the main purpose of which is to obtain a tax benefit, and it—

(a) creates rights, or obligations, which are not ordinarily created between persons dealing at arm's length;

(b) results, directly or indirectly, in the misuse, or abuse, of the provisions of this Act;

(c) lacks commercial substance or is deemed to lack commercial substance under section 97, in whole or in part; or

(d) is entered into, or carried out, by means, or in a manner, which are not ordinarily employed for bona fide purposes.

b. An arrangement shall be presumed, unless it is proved to the contrary by the assessee, to have been entered into, or carried out, for the main purpose of obtaining a tax benefit, if the main purpose of a step in, or a part of, the arrangement is to obtain a tax benefit, notwithstanding the fact that the main purpose of the whole

⁻¹¹ On January 27th, 2017, the Central Board of Direct Taxes, in a clarification *inter alia* stated that:

"Adoption of anti-abuse rules in tax treaties may not be sufficient to address all tax avoidance strategies and the same are required to be tackled through domestic anti-avoidance rules. If a case of avoidance is sufficiently addressed by LOB in the treaty, there shall not be an occasion to invoke GAAR."

Also

"For GAAR application, the issue, as may be arising regarding the choice of entity, location etc., has to be resolved on the basis of the main purpose and the other conditions provided under section 96 of the Act. GAAR shall not be invoked merely on the ground that the entity is located in a tax efficient jurisdiction. If the jurisdiction of the FPI is finalized based on non-tax commercial considerations and the main purpose of the arrangement is not to obtain tax benefit, GAAR will not apply."

⁻¹² Chapter X-A of the Income Tax Act of 1961.

arrangement is not to obtain a tax benefit.”

In June 2017, India ratified the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting, or MLI, which entered into force from October 1st, 2019. MLI has its origin in the OECD’s BEPS project, and introduces the concept of the principal purpose test, and evaluation of PE status, and can potentially lead to denial of the application of tax treaty and the lower/ nil tax or withholding on rentals. Since the above, the lessor SPV is being increasingly required to showcase substance, which over the years has led to changes in the lease structures and capital being infused in the lessor SPV to establish substance.

2.4: GIFT-IFSC.

More recently aircraft leasing transactions have also been routed through GIFT-IFSC⁻¹³, the Indian leasing and financing platform. The platform enjoys an offshore status and provides a competitive tax regime to the lessors. So far, around 9 lessors have started operations with the GIFT-IFSC, and this number is showing strong signs of increasing in the due course of time.

Apart from a tax holiday of 10 years (*in a block of 15 years*), there is no MAT or capital gains tax, or WHT. It provides for customs duty, which is at par with what is available for an aircraft/ engine import into India, and a GST of 5% is on a forward charge basis which is levied on lease rentals.

2.5: LAW & JURISDICTION.

Aircraft leasing transactions have traditionally chosen the jurisdiction of the English courts and been governed by either English law or New York law, depending on the parties involved, the former being more prevalent of the two. Whilst the choice of law clause in a lease is invariably upheld and it does not matter whether it is English law or the US, it is important to understand why English law and jurisdiction have consistently been applied to these transactions.

Most aircraft leasing and financing transactions involve multiple jurisdictions. Some of the reasons that a transaction of this nature is usually governed by English law is embedded in the fact that many legal frameworks are largely

⁻¹³ IFSCA vide its Circular F. No. 28/IFSCA/ALF/2020-21 dated February 19th, 2021 notified the Operating Lease Framework for Aircraft Leasing in the IFSC. Available at: <https://ifsc.gov.in/Viewer/Index/148>. IFSCA notified the IFSCA (Finance Company) Regulations, 2021 on March 25, 2021. Available at: <https://ifsc.gov.in/Viewer/Index/161>.

rooted in the English common law framework; also for parties who do not have a presence in England, a process agent is appointed who is essentially contractually liable to accept service of process on behalf of a given party in cases of dispute; and the English language itself is one of the contributors.

These factors, and the fact that English courts have historically adjudicated on matters involving cross-border transactions relating to leasing and financing of aircraft, and have over time made the process of adjudication and enforcement more efficient in terms of time and cost, makes English and jurisdiction an easy choice, not to mention the evolution of the legal framework and assessment thereof which too have simultaneously evolved.

—————[end of Chapter I]—————

CHAPTER III: TYPES OF LEASES.

Leasing arrangements have evolved over the past three decades from conditional sales contracts, and chattel mortgages, to hybrid forms of operating and finance leases, wet leases, ECA supported financing, and Japanese operating leases with and without call options. Depending on the objective of the transaction, leasing arrangements can take multiple forms. Some of the leasing arrangements, which are usually adopted by the parties to a leasing transaction are discussed below.

3.1: FINANCE LEASE.

A finance lease substantially transfers all the risks and rewards incidental to ownership of an asset, and whilst it does provide an option to purchase, it may not always result in a transfer of title to the lessee at the end of the lease term.

The Indian Accounting Standard 17, provides for certain instances that individually or in combination lead to a lease being classified as a finance lease:

“(a) the lease transfers ownership of the asset to the lessee by the end of the lease term;

(b) the lessee has the option to purchase the asset at a price that is expected to be sufficiently lower than the fair value at the date the option becomes exercisable for it to be reasonably certain, at the inception of the lease, that the option will be exercised;

(c) the lease term is for the major part of the economic life of the asset even if title is not transferred;

(d) at the inception of the lease the present value of the minimum lease payments amounts to at least substantially all of the fair value of the leased asset; and

(e) the leased assets are of such a specialised nature that only the lessee can use them without major modifications.

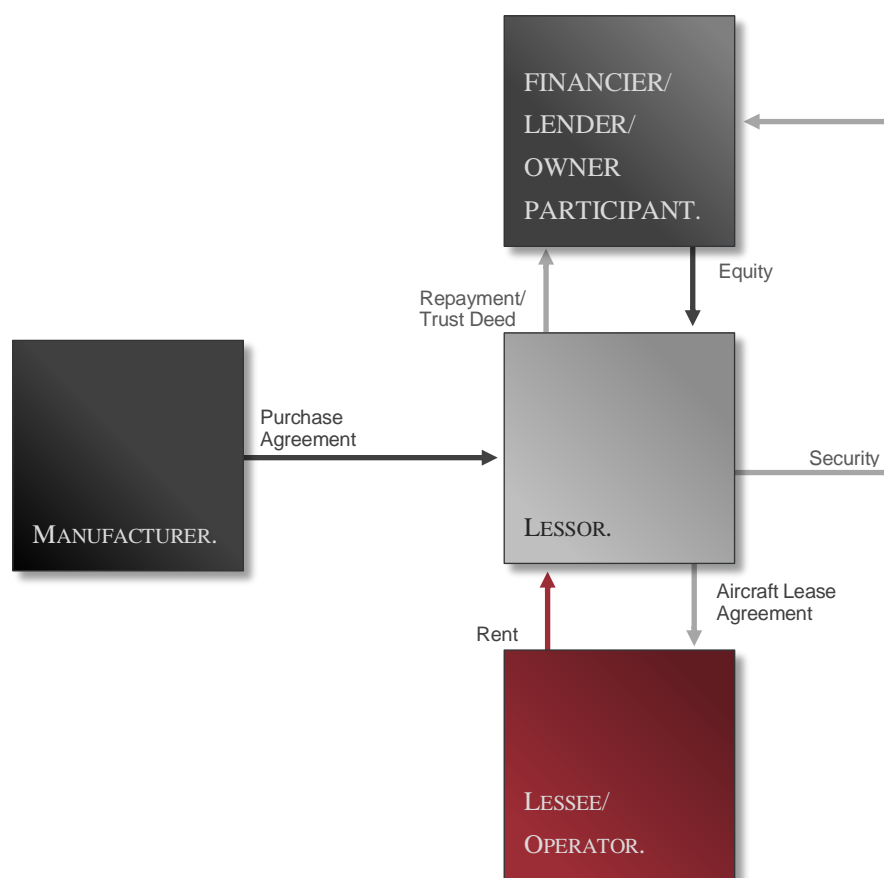
Also,

(a) if the lessee can cancel the lease, the lessor's losses

associated with the cancellation are borne by the lessee;

(b) gains or losses from the fluctuation in the fair value of the residual accrue to the lessee (for example, in the form of a rent rebate equalling most of the sales proceeds at the end of the lease); and

(c) the lessee has the ability to continue the lease for a secondary period at a rent that is substantially lower than market rent.”



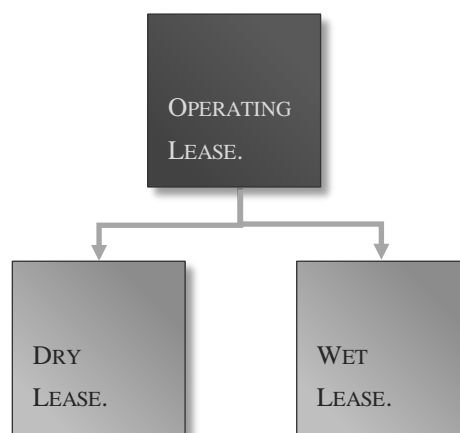
3.2: OPERATING LEASE.

A lease is classified as an operating lease if it does not substantially transfer all the risks and rewards incidental to ownership and has *inter alia* the following features:

- the lease is for a fixed term and on payment of lease rent;
- the risk and reward of ownership remains with the lessor;
- the return of aircraft to the lessor at the end of the lease term; and
- the re-lease of the aircraft to another operator.

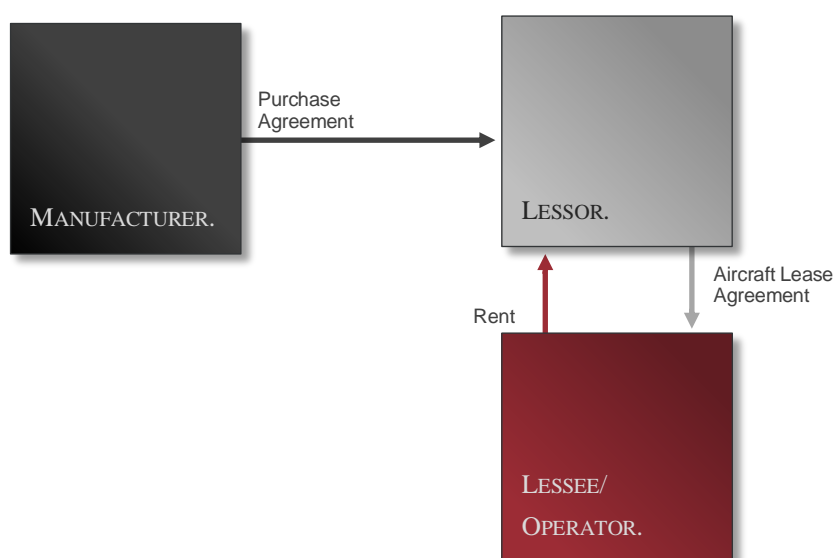
An operating lease provides an operator with much needed flexibility for managing and sourcing its fleet without blocking its capital or without making

it a capital-intensive exercise. An operating lease can be either a DRY LEASE or a WET LEASE.



3.2.1: DRY LEASE.

Most leases under which the scheduled passenger aircraft are operated, are dry leases, i.e., leases whereby the lessor, for agreed compensation, provides the aircraft to the lessee for a fixed period of time, and the lessee is required to operate the aircraft in accordance with the AOP/ AOC issued to it by the civil aviation authority, and also to maintain and remain current with insurance with respect to the aircraft. Dry leases, as compared to wet leases are cost-efficient and require less regulatory compliances.



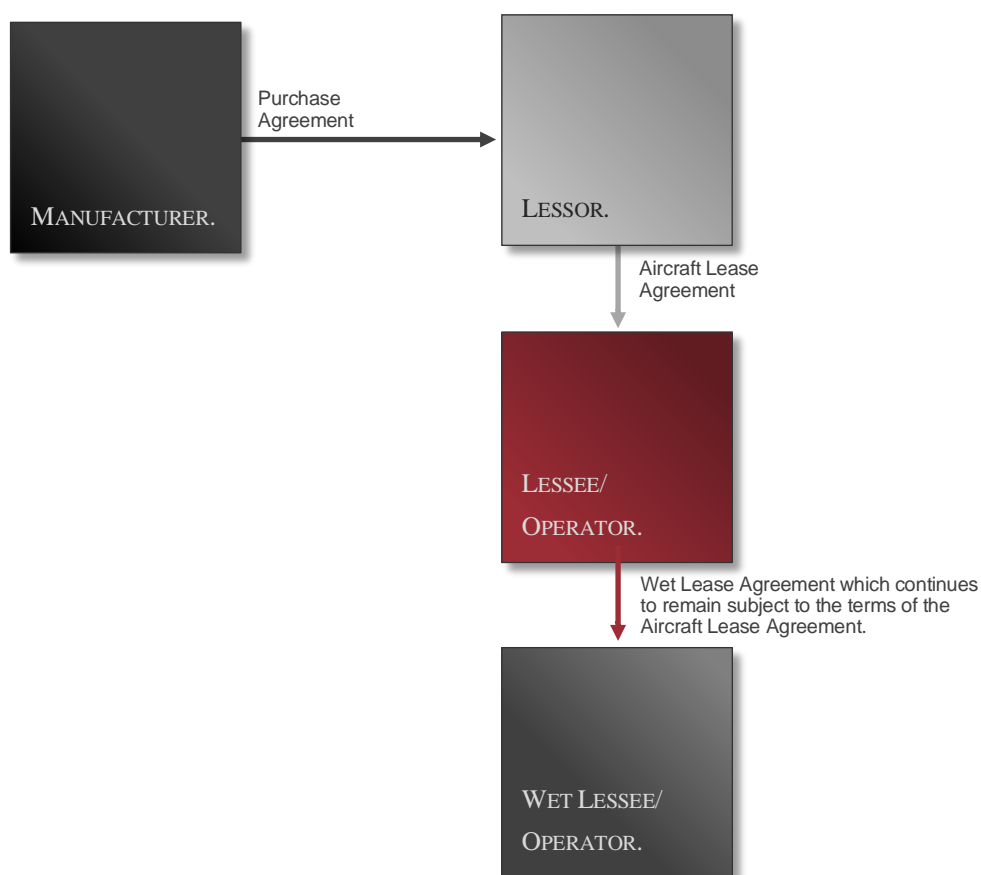
3.2.2: WET LEASE.

A wet lease is a type of operating lease, whereby the lessor provides an aircraft with the entire crew to the lessee for a specified period or an agreed number of flight hours. These are also referred to ACMI leases, where the

lessor provides the aircraft along with the crew, maintenance, and insurance. Briefly put, in a wet lease:

- a. the aircraft continues to operate on the AOP of the lessor;
- b. the lessor provides the crew; and
- c. the lessor retains the operational control and continues to remain responsible for:
 - i. insurance of the aircraft; and
 - ii. maintenance of the aircraft.

Wet leases are generally treated as a short-term arrangement for the reasons of cost and necessity. The DGCA allows *intrastate* wet leasing for a period of twelve months, subject to a one-time extension of another twelve months¹⁴.



3.3: SALE & LEASEBACK.

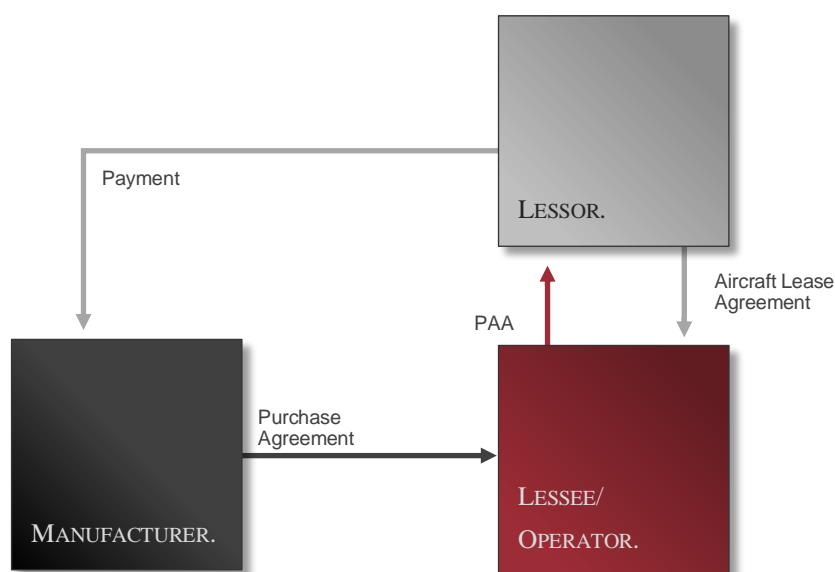
A typical SLB is one where an operator sells its used aircraft or its right to purchase new aircraft to a lessor, who then leases the same aircraft back to the operator.

¹⁴ Civil Aviation Requirement, Section 3 – Air Transport, Series C, Part I: March 24, 2017, on Criteria for Leasing of Aircraft.

An SLB transaction is used by operators as a tool:

- a. for fleet management; and
- b. for raising capital.

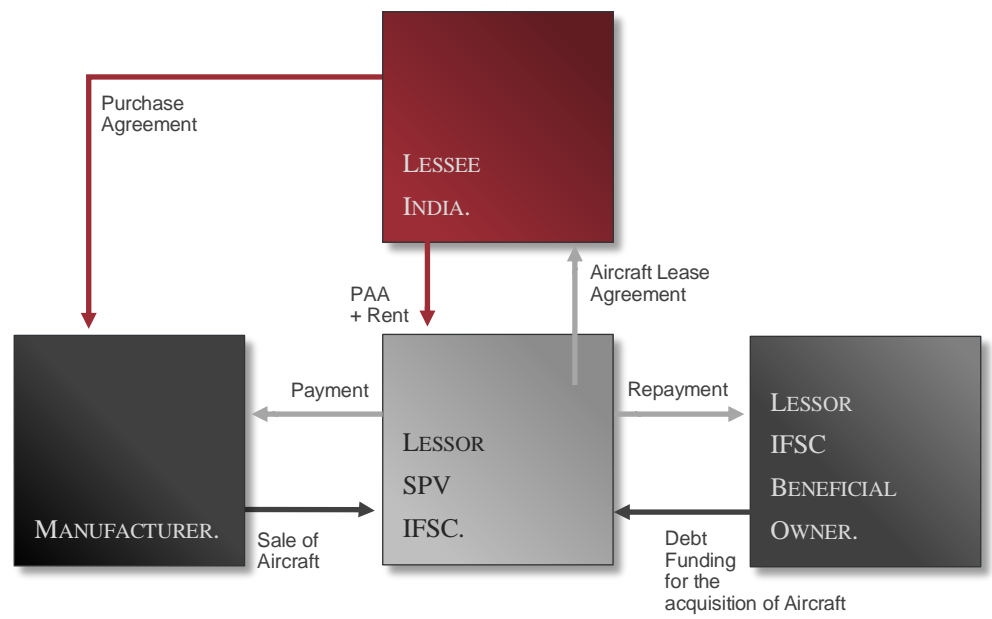
In the Indian jurisdiction, which continues to be under some degree of exchange control, the structure has gained favour. Given the high cost of funding and a comparatively low RoI in an aircraft purchase transaction, Indian operators have found it preferable to sell their right to purchase an aircraft at some margin, and then lease it back on an operating lease basis.



3.4: LEASING STRUCTURE THROUGH THE IFSCA.

A new leasing platform at GIFT-IFSC has been recently introduced, vide the “Framework for Operating Lease” issued on February 19th, 2021, and the International Financial Services Centres Authority (Finance Company) Regulations, 2021, which was notified on March 25th, 2021.

These regulations set out the framework for operating and finance leases where the lessor and the lessee intend to use the leasing platform created under IFSCA. The platform offers competitive tax rates and exemptions to bring it at par with platforms, such as Ireland which have been traditionally used by the parties.



[end of Chapter I]

CHAPTER IV: REGULATORY OVERVIEW OF LEASES.

As detailed in **Chapter 3** above, there are various kinds of leases that parties can enter into depending on their objectives. The regulatory aspects impacting the transaction may vary, contingent on the form and type of leasing arrangement.

4.1: EXCHANGE CONTROL.

India is an exchange control country, despite the relaxation of norms by the Government over the past years. Entry into and payments under a finance lease require prior permission of the RBI. An application has to be made to the RBI through the AD bank describing the structure, and providing details of the lender, borrower, interest rate, lease/ loan term, and security provided, along with necessary supporting documents. Once the RBI approves the application it provides an LRN. No change to the leasing arrangement without limitation, including the identity or name of the parties, the interest rate, the tenure, or any other component, can be affected without the prior permission of the RBI or the AD bank, as the case may be.

In a finance lease arrangement the lessee/ operator also has to pay WHT on the interest component of the rent⁻¹⁵.

Payments of rent due under Operating Leases, on the other hand, can be repatriated without any statutory permission. RBI's circular AP (DIR Series) Circular No. 24 dated March 1st, 2002, provides that:

"It has been decided that Authorised Dealers may allow remittance of payment of lease rentals, opening of Letter of Credit towards Security Deposit etc in respect of import of Aircraft/ aircraft engine/ helicopter on operating lease basis, after verifying documents to show that necessary approval from the appropriate authorities, like Ministry of Civil Aviation /Director General of Civil Aviation, Government of India has been obtained.

It is clarified that financial lease transaction i.e. the lease transaction containing option to purchase the asset at the end of

⁻¹⁵ On the assumption that the lessor/ lender would be based in Ireland.

the lease period will continue to require prior approval from the Reserve Bank of India.”

4.2: NOC FOR IMPORT.

An NOC⁻¹⁶ is required before an aircraft can be imported into India. Depending on whether the aircraft is being operated by a scheduled operator or for private use, the issuing authority could vary, for instance, the issuing authority for the latter is the DGFT.

Local acquisition of aircraft has now been permitted under the Indian regulations, and for this purpose, a new operator is required to obtain an *in-principle approval* followed by an aircraft-specific no-objection from the DGCA. The new operator is also required to obtain an NOC from the Customs authorities.

4.3: REGISTRATION.

Application for the registration of an aircraft is made through Form CA-28 to the DGCA, and is usually filed within ten working days (in case of leases) in advance of the desired date of issuance of the COR. The application has to be supported by documents/ information on the aircraft and its ownership; including the nationality of its owner, the lessor and the mortgagee; the customs certificate confirming payment and other details; the COR issued by the previous civil aviation authority; and the applicable fee.

The DGCA may, at its discretion, require proof in support of the statements made in Form CA-28.

4.4: CUSTOMS.

Import of an aircraft is subject to payment of Customs Duty. Necessary documents need to be filed with the Customs Authority, such as the NOC issued by the DGCA for import of an aircraft, and the bill of sale before a *Bill of Entry* is issued with respect to a particular aircraft.

Please also refer to para 2.1.2. above.

—————[end of Chapter]—————

⁻¹⁶ Import permissions, when being provided to a new airline/ operator are different and multi layered.

CHAPTER V: LEASE AND PURCHASE.

Globally, leasing has proven to be the most efficient and a go to model for acquiring and using an aircraft. Over 70% of the existing Indian fleet is on an operating lease basis. Leasing has become more lucrative for the following reasons:

- a. A simplified regulatory process;
- b. A low capital investment requirement;
- c. Leasing permits acquisition with limited resources, without the heavy expenditure required in financing (in the form of down payment or otherwise);
- d. Leasing offers a better RoI; and
- e. The residual value risk remains with the lessor.

The possible disadvantages of a leasing arrangement, are that the operator does not gain any equity in the fleet; the restrictive use of aircraft (*depending on the contractual arrangement*); fluctuations on lease rates that may depend upon exchange rate fluctuations; no specific tax benefits; and that the lessee may also need to pay WHT in cases of finance leases (*varies from one DTAA to another*).

In contrast to leasing, some of the benefits of a purchase transaction are:

- a. The control on fleet and operations;
- b. The equity in the fleet; and
- c. The tax benefits (*like depreciation*).

However, the outright purchase of an aircraft is still a very large investment, and financing requirements could be cost intensive. Apart from and unlike operating leases where the lessee has more room for fleet planning, purchase transactions in their very nature are limited in this respect where the operator also has to bear the residual value risk.

	LEASE	PURCHASE
Residual risk with the lessor	< >	Residual risk with the operator
Low/ no tax benefit	< >	Tax benefit
Flexibility in fleet management	< >	Less flexibility with purchased aircraft
No equity in fleet	< >	Equity in fleet
Restriction on operation	< >	No restriction on operation.

—————[end of Chapter]—————

CHAPTER VI: SECURITIES.

6.1: OPERATING LEASE VS. FINANCE LEASE.

Securities offered under a given leasing arrangement are of key importance, as they provide a necessary comfort to the owners and financiers, and also provide recourse mechanisms for securing the aircraft equipment. Depending on whether a lease is a finance lease or operating lease, the nature of securities offered in a transaction may differ:

OPERATING LEASE

Corporate/ Personal Guarantee
(Depending on the credit worthiness of the operator).

Security Deposit/
Security Deposit Letter of Credit
(Usually, an equivalent of 2~3 month lease rent, depending on the credit worthiness of the operator).

FINANCE LEASE

First priority charge, in the form of aircraft mortgage or hypothecation, in favour of the lender.

Recording of Charge⁻¹⁷/ Deed of Hypothecation with the RoC under the Companies Act, 2013, if such a charge⁻¹⁸ is created by an Indian company.

Registration of the lease and priority of interest of the lessor/ lender/ hypothecatee with the IR under the CTC.

⁻¹⁷ When any lien or encumbrance created on an asset of an Indian company has been registered with the RoC, to release the same, the company is required to give intimation to the RoC of the payment or satisfaction in full of such a charge. A prescribed Form CHG-4 must be filed within thirty (30) days from the date of the document executed by both parties whereby the charge is satisfied. Once letters are filed with the DGCA and the CoR is amended or a new CoR is issued, removing the interest of the Security Trustee/ Mortgagee, the security is deemed to be discharged. This process usually takes a few weeks and depends on how the Lessee pursues it with the DGCA.

⁻¹⁸ Where a charge is created over an asset of an Indian company, such registrations are compulsory and being open for inspection, it constitutes a public notice.

OPERATING LEASE

FINANCE LEASE

Registration of the lease and priority of interest of the lessor with the IR under the CTC.

Issuance of the COR by the DGCA – recording the interest of the concerned parties, being the lessor, lessee, mortgagee.

Issuance of COR by the DGCA – recording the interest of the lessor, the lessee, and the mortgagee, if any.

IDERA in favour of the lender/ security trustee under the provisions of CTC and Rule 30(7) of the Aircraft Rules, 1937, authorising the party named therein to *inter alia* seek deregistration and export of a given aircraft.

IDERA issued under the provisions of the CTC and Rule 30 (7) of the Aircraft Rules, 1937, authorising the party named therein to *inter alia* seek deregistration and export of a given aircraft.

CDCL, where applicable, and in favour of the party designated by the IDERA holder.

DPOA, authorising the party named therein to *inter alia* seek deregistration and export of a given aircraft.

DPOA in favour of the lessor, lender and the mortgagee, where applicable.

6.2: CAPE TOWN SECURITIES.

After the ratification of the CTC in July 2008 by the Government of India, securities and actions under the CTC have become a standard part of a leasing arrangement. The priority rules of registration under CTC and IR provide that a previously registered international interest shall have priority over a subsequently registered or unregistered interest. However, these interests remain subject to priorities created under the domestic law and as adopted by various contracting states in their declaration under CTC.

Some interests that have priority under the CTC in view of India's Declarations:

Creation of charge and their recordation either with the RoC or the IR under the CTC creates priority of interest and the holder of securities have the right

to enforce their interest in the order of priority whether inside or outside of insolvency, as the case may be. However, there is an exception carved out by the declarations made by India under Articles 39(1)(a) of the CTC as set out below, which provides for certain non-consensual liens over an aircraft, which are equivalent to that of the holder of a registered international interest inside or outside insolvency proceedings:

“(a) liens in favour of airline employees for unpaid wages arising since the time of a declared default by that airline under a contract to finance or to lease an aircraft object;

(b) liens or other rights of an authority of India relating to taxes or other unpaid charges arising from or related to the use of that aircraft object and owed by the owner or operator of that aircraft object, and arising since the time of a default by that owner or operator under a contract to finance or lease that aircraft object; and

(c) liens in favour of repairers of an aircraft object in their possession to the extent of service or services performed on and value added to that aircraft object.”

India has made opt-in declarations under Article 39(l)(b) of the CTC which provides that:

“Nothing in the Convention shall affect its right or that of any entity thereof, or any intergovernmental organisation in which India is a member, or other private provider of public services in India, to arrest or detain an aircraft object under its laws for payment of amounts owed to the Government of India, any such entity, organisation or provider directly relating to the service or services by it in respect of that object or another aircraft object.”

—————[end of Chapter]—————

CHAPTER VII: INSURANCE.

The lessee/ operator is required to maintain hull and liability insurance of the aircraft *inter alia* because it operates the aircraft and assumes the risk of operation. The following are the broad categories of insurances usually required under leasing arrangements.

Whilst hull insurances provide for the coverage of the value of the asset in the event of physical damage or total loss of the aircraft, liability insurance provides necessary cover for general legal liability including third-party liability, and passenger and baggage legal liability.

With respect to liability, the Montreal Convention, 1999 provides that:

“Article 50: Insurance

States Parties shall require their carriers to maintain adequate insurance covering their liability under this Convention. A carrier may be required by the State Party into which it operates to furnish evidence that it maintains adequate insurance covering its liability under this Convention.”

It is, however, up to the state parties to specify as to what kind of insurance would be considered adequate in terms of their domestic law. It is for this reason that the liability insurance cover varies from one jurisdiction to another.

Another relevant point on insurance, is the level of deductible agreed between the parties: deductible is the value of damage which is borne by the operator before the hull insurance policy responds – essentially higher the deductible, the lower the insurance premium, and vice versa.

HULL INSURANCE

(determined on a commercial basis).

LIABILITY INSURANCE

(determined in accordance with legislation and is mandatory).

Physical damage to the aircraft.

Third-party liability.

Total Loss of aircraft.

Passenger and baggage liability.

A typical insurance clause in a lease agreement would *inter alia* cover the

following:

The Lessee shall, at its expense and throughout the Term, effect and maintain or cause to be effected and maintained insurances as follows:

(a) an all risks hull insurance policy on each part of the Aircraft in an amount not less than its Required Insurance Value on an agreed value basis;

(b) hull war risk and allied perils insurance on the Aircraft in an amount in Dollars which shall be an amount not less than the required insurance value on an agreed value basis in accordance with LSW 555D which shall cover the perils of:

(i) war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, martial law, military or usurped power or attempts at usurpation of power;

(ii) strikes, riots, civil commotion or labour disturbances;

(iii) any act of one or more persons, whether or not agents of a sovereign power, for political or terrorist purposes and whether the loss or damage resulting therefrom is accidental or intentional;

(iv) any malicious acts or acts of sabotage;

(v) confiscation, nationalisation, seizure, restraint, detention, appropriation, requisition for title or use of the Aircraft or any part thereof by or under the order of any government (whether civil, military or de facto) and/or public or local authority;

(vi) hijacking or any unlawful seizure or wrongful exercise of control of the Aircraft or crew in flight (including any attempt at such seizure or control) made by any person or persons on board the Aircraft acting without the consent of Lessee;

(c) spares all risks (including war and allied risk) property insurance on all engines and parts when not installed on the Aircraft for their full replacement value and including engine test and running risks; and

(d) Aviation legal liability insurance, being aircraft third party, passenger, baggage, cargo and mail and “Airline” general third party legal liability and product liability (including war and allied perils under extended coverage endorsement as per AVN 52E or such extended coverage endorsement as is available in the commercial insurance industry (or by way of alternative risk transfer vehicles which Lessor finds acceptable, acting reasonably, after being provided with all information it reasonably requires in relation to the vehicles and the structure of the risk transfer), which provides insurance coverage at least equivalent to AVN 52E and reasonably acceptable to Lessor) for a combined single limit (bodily injury and property damage) of not less than the Required Liability Insurance per occurrence and in the annual aggregate for products and aviation war liability.

—————[end of Chapter 1]—————

CHAPTER VIII: EVENTS OF DEFAULT.

The constituents of an EOD are closely negotiated and an important lease term, as both parties need to protect their interests. These are in the nature of contractual breaches, which in turn provide remedies to the lessor, depending on the kind and nature of default. Some of the provisions are enumerated below:

8.1: NON-PAYMENT.

Non-payment of lease rental leads to a termination event. These include payments of all kinds, such as the rent and the maintenance reserve. These are usually subject to a grace period of two to three days, depending on the negotiation of the contract. In case of non-payment, the lessee/ operator has this time to remedy the default. A typical lease provision would read as below:

The Lessee fails to pay (a) any Basic Rent and Supplemental Rent within three (3) Business Days of the date that such payment was due.

8.2: FAILURE TO MAINTAIN INSURANCE COVER.

Insurance cover for an aircraft is of utmost importance, given its high value, and it is incumbent on the Lessee to maintain the insurance cover throughout the lease term. Failure to do so can trigger an EOD. A typical clause in a lease would provide that:

The Lessee fails, at any time, to procure, renew, or maintain the Insurances in accordance with the requirements of this Lease Agreement.

8.3: INSOLVENCY.

Insolvency or any insolvency related event triggers a termination event under the lease. These usually come with a cure period of thirty to sixty days, depending on the creditworthiness of the lessee/ operator. A typical lease provision would stipulate that:

Any proceedings, resolutions, filings or other steps are instituted with respect to Lessee relating to the bankruptcy, suspension of payment, insolvency, liquidation including initiating a corporate resolution process under the provisions of The Insolvency and Bankruptcy Code, 2016, receivership, examinership, reorganisation (other than for purposes of a reconstruction, merger or amalgamation neither involving nor arising out of the insolvency of Lessee) or protection from creditors of Lessee or a substantial part of Lessee's property. If instituted by Lessee, the same will be an immediate Event of Default. If instituted by another Person, the same will be an Event of Default if not dismissed, remedied or relinquished within sixty (60) days, unless in a jurisdiction where no substantial material assets of Lessee are located and are the result of frivolous or vexatious proceedings, and Lessee in good faith by appropriate proceedings actively contests such proceedings and such proceedings could not reasonably be expected to involve a risk of the sale, forfeiture or loss of the Aircraft.

8.4: BREACH.

Non-compliance with any of the provisions of the lease agreement or breach thereof by the Lessee would trigger an EOD. A typical lease provisions states that:

The Lessee fails to comply with any other provision of this Agreement and, if such failure is in the reasonable opinion of Lessor capable of remedy and Lessee is diligently pursuing to remedy such breach, the failure continues for thirty (30) days after notice from Lessor to Lessee.

8.5: SUSPENSION OF BUSINESS.

Suspension of Business is something which is of key importance, as it not only determines if there is a default, but it also to some extent determines the speed of acquisition, given the impact that suspension of business can have on the security of the asset. A typical lease provisions states that:

The Lessee suspends or ceases to carry on all or substantial part of its business (save and except in the case of labour or industrial action on the part of employees of Lessee), and this has a material adverse effect on Lessee's ability to perform its obligations under this Agreement.

8.6: CROSS DEFAULT.

Cross default is a provision usually found in cases where a lessor leases more than one aircraft to an operator, thereby creating connected transactions, and is of such nature, that a default in one transaction can lead to a default in another. A typical lease provision is set out below:

An “Event of Default” pursuant to and as defined in any lease agreement with respect to another aircraft/ sister aircraft/ connected lease shall have occurred and be continuing.

8.7: CANCELLATION OF REGISTRATION OF THE AIRCRAFT.

The Lessee, under the provisions of the lease agreement, is required to maintain a current COR with respect to the Aircraft. Failure or suspension or expiry of the COR can trigger EOD. A typical lease provision is reproduced below:

The registration of the Aircraft is cancelled other than as a result of an act or omission of the Lessor, unless the Lessee is taking all necessary steps to have the registration reinstated and there is no material risk that the Lessor's title to the Aircraft will be impaired and, if required by Applicable Law, the Aircraft is grounded until such registration is reinstated.

8.8: OTHER CLAUSES.

Other equally important EOD clauses include material adverse change and indebtedness. These provisions, if triggered provide a Lessor with certain rights, including the termination of the leasing of the aircraft, repossession, court action as may be necessary, and immediate repayment in terms of the operative documents.

The Lessee has to ensure that the EOD is not very regressive, and that there is always a sufficient grace period for the lessee to either remedy the default or seek deferral or exemption from the lessor, as the case may be.

—————[end of Chapter]—————

CHAPTER IX: CHANGING DYNAMICS AND THE PANDEMIC.

9.1: HELL OR HIGH WATER.

Despite a standard and tested leasing framework, there were fresh perspectives and new challenges posed to the functionality and effectiveness of a leasing structure during the COVID-19 pandemic. From frustration of contracts, to enforcement of ‘*hell or high water*’ clause, to rent deferrals, to reorganization, the industry had to reinvent to survive the pandemic.

The ability of the lessee to suspend payment, even during the multiple situations that arose due to COVID-19, is rather restricted given the ‘*hell or high water*’ clause, which specifies that the obligation of the lessee to pay rent is absolute and unconditional, disallowing a set off or a deduction on account of unavailability of the aircraft or otherwise. A typical clause in the lease agreement would read as below:

“... the Lessee’s obligations to pay rent and such other amounts under an operating lease or any other operative document are absolute and unconditional, irrespective of any contingency or circumstance whatsoever, including (but not limited to):

(a) any unavailability of the aircraft for any reason, including, but not limited to, requisition of the aircraft or any prohibition or interruption of or interference with or other restriction against lessee’s use, operation, or possession of the aircraft;

(b) any right of set-off, counterclaim, recoupment, reimbursement, defence, or other right which lessee, or any other person may have against another person;

(c) any lack or invalidity of title or any other defect in title, airworthiness, merchantability, satisfactory quality, fitness for any purpose, condition, design, or operation of any kind or nature of the aircraft for any particular use or trade, or for registration or documentation under the laws of any relevant

jurisdiction, or any total loss of or any damage to the aircraft;

(d) any insolvency, bankruptcy, reorganisation, arrangement, readjustment of debt, dissolution, liquidation or similar proceedings by or against lessee, or any other person

(e) any invalidity or unenforceability or lack of due authorisation of, or other defect in, an operative document, or any other document; ...”

For instance, the contractual requirement of payment of rent despite total loss of the aircraft (*as captured above*), makes it unlikely that the lessee could successfully invoke the *doctrine of frustration* in view of the circumstances and hardships that arose due to COVID-19, thereby discharging the lessee from further payment of rent particularly since the complete allocation of risk with respect to commercial operation of the aircraft is borne by the lessee.

It has been reiterated in various judgments that application of the *doctrine of frustration* requires a multi-factorial approach. Among the factors that are to be considered are the terms of the contract; its background and facts; the parties’ knowledge, expectations, assumptions, and contemplations as to risks at the time of entering into the contract; and the nature of the interrupting event. *“Events making a contract more onerous or financially less viable are not in itself sufficient to meet the test of the doctrine as it requires a rather strong ground to be invoked”*⁻¹⁹.

9.2:

REWORK & PBH AGREEMENTS.

PBH agreements have been used sporadically over the years by operators and lessors, and is essentially a model where an airline pays a certain amount for each hour that it flies, which is subject to PBH lease rates which offer a workable short-term solution to the parties involved by changing fixed costs into variable. The pandemic has triggered the usage of PBH agreements as parties were forced to re-evaluate their contracts for viability. It offered a suitable short to mid-term solution inasmuch as whilst the airline would continue to cover the cost of storage, the day-to-day maintenance, and the insurance, and would only pay rent when they operate an aircraft; the lessors/ financiers, on the other hand, would be able to avoid the costs of repossession, storage, remarketing (*assuming the airline would recover*),

⁻¹⁹ Wilmington Trust SP Services (Dublin) Limited vs. SpiceJet Limited, April 30, 2021; Edwinton Commercial Corporation vs. Tsaviris Russ (Worldwide Salvage and Towage) Limited; The Sea Angel, [2007] 2 Lloyd’s Rep 517 (at 111).

reconfiguration, and return to service associated placing the aircraft with a new airline.

Lessors and lessees have opted for the PBH agreements, rent deferrals, and other forms of rework agreements to rationalize lease costs in view of the challenges posed by the pandemic.

—————[end of Chapter]—————

CHAPTER X: REDELIVERY/ RETURN & DEREGISTRATION.

Redelivery and return of aircraft in a pre-agreed redelivery condition is a very important part of a leasing arrangement, and of particular importance to the lessor. In order for a consequent lease of the aircraft to another operator in a cost-effective and efficient manner, it's imperative that the lessee redelivers in the agreed condition and on time.

The process ensures evaluation of all lease requirements and the actual state of the aircraft and records. A redelivery is, therefore, planned much in advance and usually at an MRO of the lessor's choice. Upon successful redelivery and completion of the deregistration process with the relevant civil aviation authority, a redelivery certificate is executed between the parties.

It is also imperative that the parties simultaneously agree on the documentation and timing of the deregistration of aircraft from one aviation authority to another, in order to ensure continuity in operation. The Indian DGCA deregisters an aircraft on:

- a. a proper application being filed and on necessary consents being provided by the lessor, the lessee, and the security interest holder, as the case may be; or
- b. a proper application being filed by an IDERA holder and on submission of necessary documents and payment of dues of relevant authorities, such as an airport operator, and the Goods and Services Tax Department.²⁰

Return and deregistration can become tricky if the parties perceive dispute, or if this is a consequence of an EOD where the lessee is unwilling to cooperate. It is essentially to hedge and safeguard against the latter that necessary securities are embedded in the leasing arrangements (see *Chapter VI: Securities*).

—————[end of Chapter]—————

²⁰ Rule 30(7) of the Aircraft Rules, 1937.

CHAPTER XI: ESG.

Sustainability has been in focus and most governments and regulators have started requiring commitment and compliance from the stakeholders and participants. Airlines have begun to seriously explore green financing, sustainable fuel, and the possibility of getting more and more fuel-efficient aircraft. To invest in either of these is cost-intensive and it is imperative that the cost will be borne by each member of the value chain. There is a lot of action in the backdrop of COP26⁻²¹, which has also led to the signing of the International Aviation Climate Ambition Coalition by 23 countries, including India, which *inter alia* aims at reaching the target of 'Net Zero' emission by 2050⁻²².

Environmental and sustainability issues in aviation, along with the regulatory framework around it, are likely to continue to become more stringent, and would require implementation through the domestic legal framework of various countries and international frameworks, such as ICAO's Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA).

Sustainability Objectives:

- a. to create a regulatory framework and changes by keeping the market in the loop and by providing key stakeholders the necessary incentives;
- b. to build and invest in increasing efficiencies, including those for air traffic control, increased use of technology in airport management, passenger management, and health records;
- c. towards the development of sustainable fuel;
- d. government backing and support - both on the domestic and international levels for financing acquisition of new and efficient aircraft, new technology aircraft, ground handling efficiencies, and building sustainable infrastructure.

—————[end of Chapter]—————

⁻²¹ <https://www.reuters.com/business/cop/britain-drafts-cop26-deal-global-aviation-emissions-2021-10-28/>

⁻²² Whilst India is not a signatory, there is a lot of pressure and expectation that it does, given the growth that the Indian aviation sector is charted to achieve in the next 10-15 years.

CHAPTER XII: CONCLUSION.

From a pure contractual point of view, an aircraft lease agreement has, over the years, become more streamlined and sophisticated, providing the parties with multiple models of operation, financial planning, tax planning, and investment. Irrespective of the model and type of leasing being entered into by the parties, in order for the smooth operation and avoidance of conflict, it is necessary that each item of importance, as discussed above, be detailed and agreed between the parties, since leases are long-term and for a high-value asset.

The leasing models are also going to witness a substantial change as:

- (a) multiple competitive leasing and financing platforms become available to the lessors and the lessees;
- (b) the government and businesses become more and more ESG centric;
- (c) the cost of financing might vary in view of green financing;
- (d) the types of aircraft and manner of flying could change with the change in technology and more emphasis on electric vertical take-off and landing aircraft objects/ eVTOLs; and
- (f) more and more countries start aligning to BEPS and requiring the lessor SPVs to clear a PPT.

It will be very important for participants and stake-holders to keep a close watch on quickly changing regulations and policies to be able to use and deploy them for their respective business interests.

Despite the seeming headwinds, the future of aircraft leasing is not only promising, but on the verge of a revolution given the rise in sustainability, drone technology, eVTOLs, and clean and efficient machines. The dynamics of the legal framework will need to evolve simultaneously, both on the domestic level, and on the international level, for efficiency, cross-border functionality, and tax efficiencies, as aircraft leasing will continue to remain a global transaction involving multiple jurisdictions.

—————[end of Chapter]—————

APPENDIX A: GLOSSARY OF TERMS.

AD

Authorised Dealer.

AOP

Air Operators Permit.

BEPS

Base Erosion and Profit Shifting.

CBDT

Central Board of Direct Taxes.

CDCL

Certified Designee Confirmation Letter.

COR

Certificate of Registration.

CORSIA

Carbon Offsetting and Reduction Scheme for International Aviation.

COP26

Committee of Parties.

CTC

CAPE TOWN CONVENTION

Convention on International Interests in Mobile Equipment and the Protocol on Matters specific to Aircraft Equipment.

DPOA

Deregistration Power of Attorney.

DGCA

Directorate General of Civil Aviation, Government of India.

DTAA

Double Taxation Avoidance Agreement.

ECA

Export Credit Agency.

EOD

Event of Default.

ESG

Environmental, Social, and Governance.

EVTOL

Electric Vertical Take-Off and Landing.

FI

Financial Institution.

FEMA

The Foreign Exchange Management Act, 1999.

FPI

Foreign Portfolio Investor.

GAAR

General Anti-Avoidance Rules.

GIFT

Gujarat International Finance Tec City.

GST

Goods and Service Tax.

ICAO

International Civil Aviation Organization.

IDERA

Irrevocable Deregistration and Export Request Authorization.

IFSC

International Financial Services Centre.

IFSCA

International Financial Services Centre Authority.

IGST

Integrated Goods and Services Tax.

IR

International Registry.

LOB

Limitation of Benefit.

LRN

Loan Registration Number.

MAT

Minimum Alternative Tax.

MRO

Maintenance Repair and Overhaul.

NOC

No Objection Certificate.

OECD

Organisation for Economic Co-operation.

OEM

Original Equipment Manufacturer.

PAA

Purchase Agreement Assignment.

PAN

Permanent Account Number.

PBH

Power By Hour.

PE

Permanent Establishment.

PPT

Principle Purpose Test.

RBI

The Reserve Bank of India.

RoC

The Registrar of Companies.

RoI

Return on Investment.

SPV

Special Purpose Vehicle.

SLB

Sale and Leaseback.

WHT

Withholding Tax.

—[end of Appendix]—

APPENDIX B:

ABOUT
LINK LEGAL.

Link Legal is a full service corporate and commercial law firm that has been thriving for over twenty years, with 39 partners and almost 200 lawyers across multiple practice areas. Our principal office is in New Delhi, with others at Mumbai, Hyderabad, Bangalore, Chennai, and New York.

We blend our legal proficiency with deep commercial insight, so our practice provides you with responsive advice to assist in achieving your business objectives.

Our clientele includes some of India's leading corporate groups, public sector undertakings, public sector and private banks, private individuals, and multinational corporations across the world, particularly from the United States of America, the United Kingdom, France, Germany, the Netherlands, Australia, China, Indonesia, Canada, Hong Kong, Japan, and the United Arab Emirates.

Our strength lies in our team of experienced, well-trained and qualified lawyers, who integrate their skills to provide comprehensive legal advice and strategy on complex commercial issues that meet your needs and expectations. The partners bring hands-on expertise and a client-first approach to each transaction from a strategic perspective, by understanding your objectives and identifying potential issues in areas of public policy or litigation. Each client enjoys a high level of professional service with the advantage of discussing matters directly with their assigned partner.

Mr. Martin Harman, CBE, is our Chair - International Business. A former Chairman and Senior Partner of Pinsent Masons LLP, he is widely respected as an authority in infrastructure and construction law, and is consistently ranked by global legal directories as a senior statesman and leader in the field of construction, risk management, and dispute resolution.

We also have a China Desk that is the oldest practice group of its kind in the Indian legal market, whose team consists of experienced lawyers proficient in English and Chinese, and has been designated as the official partner by the largest chamber of commerce in China for providing legal services in India. We have advised over 100 Chinese clients across diverse sectors, and we work closely with government agencies, universities, and think tanks, to conduct legal research and promote economic ties between the two

countries.

Globally, we have advised clients under our Aviation; Banking & Finance; Defence, Dispute Resolution; Employment; Exchange Control & Foreign Investment; General Corporate & Commercial; Healthcare, Life Sciences, & Agriculture; Intellectual Property Rights; M&A, Joint Ventures & Private Equity; Projects, Claims & Disputes Management; Projects, Infrastructure, & Energy; Real Estate & Hospitality; Restructuring & Insolvency; Securities Markets; Statutory Risk Management Programme; Technology, Media, & Telecommunications; and White Collar Crime practices, across diverse sectors such as water and wastewater, airports, metro rail & urban transport, roads, ports, oil, gas, energy, power, aviation, media, broadcasting, advertising, pharmaceutical, information technology, business process outsourcing, consumer goods, mining, software, entertainment, insurance, and banking. Additionally, we regularly advise our international clients on regulatory approvals from the Central Government or the Reserve Bank of India for establishing legal entities or other forms of business presence in India.

OFFICES & CONTACT DETAILS.

NEW DELHI

Phone: +91-11-4651-1000

Email: delhi@linklegal.in

BENGALURU

Phone: +91-80-4123-1072

Email: bengaluru@linklegal.in

HYDERABAD

Phone: +91-40-4021-1095

+91-40-4240-6401

Email: hyderabad@linklegal.in

WEBSITE

www.linklegal.in

MUMBAI

Phone: +91-22-6633-6791

Email: mumbai@linklegal.in

CHENNAI

Phone: +91-44-4271-9731

Email: chennai@linklegal.in

NEW YORK

Phone: +1-212-389-6290

Email: ananda.chaudhuri@linklegal.in

anand@linklegal.in

— [end of Appendix] —

ADDENDUM:
ABOUT
THE AUTHORS.



SANJAY GUPTA
PARTNER

sanjay.gupta@linklegal.in
+91-98111-79045

SANJAY GUPTA.

Sanjay is a Partner at Link Legal, New Delhi, specializing in the Dispute Resolution practice.

With over two decades of experience, his strength lies in strategizing legal frameworks and identifying and providing solutions to the top management to mitigate risks. He has assisted Indian and multinational clients in domestic and international disputes across various sectors like aviation and infrastructure before the Supreme Court of India, High Courts and Tribunals including SIAC and ICC. Judgments on some of his matters involving questions of law have become part of the legal curriculum in the country.

He has assisted in the *disinvestment* of Air India whilst undertaking the comprehensive vendor litigation due diligence, and has also assisted airlines on various issues including those relating to aircraft lease agreements before the English Commercial and Appellate Courts and the Indian Courts. He has also assisted one of the largest air carriers in India in an arbitration dispute against a lessor before LCIA.

He has also represented an international airline before Supreme Court in a matter involving interpretation of the provisions of Carriage by Air Act.

He advises on complex legal matters at

ADDENDUM:
ABOUT
THE AUTHORS.

pre-litigation and litigation stages. He often addresses seminars and conferences, and has articles published on topics including technology, economics, and law.

NEHA SINGH.

Neha Singh is an Associate Partner at Link Legal, New Delhi, specializing in the Corporate Commercial and Aviation practices.

With over a decade of experience in successfully advising clients for transactions in the aviation sector, she is recognised by publications as a leading lawyer in the field, and she has advised and worked with leading international lessors, banks, and financial institutions.

She has also closely worked with the Government of India and the Aviation Working Group for the Cape Town Convention and its implementation, the various amendments to the Aircraft Rules and Project Rupee Raftaar, which lay the regulatory and legislative framework for making India a competitive aircraft leasing hub.



NEHA SINGH

ASSOCIATE PARTNER

neha.singh@linklegal.in

+91-99535-32772

— [end of Addendum] —

DISCLAIMER.

The contents of this document are for the purpose of information only, and not intended to address the circumstances of any particular individual or corporate body. These contents are not in the nature of legal opinion or advice and should not be treated as such. Link Legal ("The Firm") does not warrant the accuracy and completeness of this content, and readers are encouraged to seek appropriate professional advice based on a thorough examination of the facts and circumstances of a particular situation before acting upon any of the information provided therein. The Firm gives no assurance that the judicial/ quasi-judicial authorities may not take a position contrary to the views mentioned in the article. In no event will the Firm be liable for any loss whatsoever arising out of the use of or reliance upon the contents of this document. The Firm reserves the exclusive copyright of the contents and the same should not be circulated, reproduced or otherwise used by the intended recipient without the prior permission of its originator.

[document date: February 28, 2022]

[end of document]

