



2nd TRAVEL LAW FORUM

Athens - May 17, 2019

«AIRCRAFT REPOSSESSION»

*Prof. Laura Pierallini
Studio Pierallini, Name Partner*

Aircraft repossession

❑ One of the main concern of lessors, owners and financiers of aircraft is how to repossess an aircraft:

- in good order
- with all the records and documentation up to date
- duly de-registered/re registered

❑ Key factors to achieve the goal:

- jurisdictional analysis
- choice of law
- careful contract drafting:
 - complete list of events of default
 - termination notice is final
 - unconditional obligation to return the aircraft
 - failure to comply qualifies as an “unlawful act”

Aircraft repossession

□ Main issues:

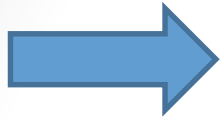
- no self help remedies available in certain jurisdiction
- enforcement through Court actions takes time
- liens arising from the operation of aircraft
- Eurocontrol/ Airport charges
- de-registration
- de-registration PoAs often not enforceable
- insolvency procedures
- reconstruction of records:
 - time consuming
 - expensive
 - depending of traceability of maintenance and repairs

Aircraft repossession

Enforcement analysis:

- ❑ Will the jurisdiction accept lessor's paperwork?
- ❑ Despite honoring choice of English / NY law, will the Courts really respect it?
- ❑ Do the Courts have the ability to apply the foreign law?
- ❑ Will the Courts enforce a foreign judgment if obtained abroad?
- ❑ Will lessor overcome the problem of national pride?
- ❑ Avoiding the problem of "Respecting contractual obligations vs. Killing a local airline"
- ❑ Procedures/actions required to gain possession of asset

Aircraft repossession



CAPE TOWN CONVENTION

The objective of the treaty is **to reduce the risk of loss in transactions**

That depends on **timely and predictable access to collateral**

Such widening is the basis of the economic benefits of the text

Cape Town is based on core **“asset based financing principles”**

- (1) prompt/predictable enforcement of remedies, including in insolvency,
- (2) clear and objective priority rules, and
- (3) on party autonomy, and reducing gap b/ contact and law

Cape Town permits a set of declarations that produce such benefits

Aircraft repossession

□ Impact of Cape Town

- Actual enforcement of remedies depending on applicable laws:
 - ART. 14 CAPE TOWN CONVENTION – *“PROCEDURE REQUIREMENTS - Subject to Article 54(2), any remedy provided by this Chapter shall be exercised in conformity with the procedure prescribed by the law of the place where the remedy is to be exercised”.*
 - ART. 54 (2) CAPE TOWN CONVENTION – *“DECLARATIONS REGARDING REMEDIES – A Contracting State shall, at the time to ratification, acceptance, approval of, or accession to the Protocol, declare whether or not any remedy available to the creditor under provision of this Convention which is not there expressed to require application to the court may be exercised only with leave of the court”.*
- Enforcement of IDERA to deregister and export the aircraft

Thank you!

Laura Pierallini

l.pierallini@pierallini.it

www.studiopierallini.it



Important Notice: This presentation is for informational purposes only and does not contain or convey legal advice. The information contained in these slides should not be used or relied upon in regard to any particular facts or circumstances without first obtaining specific legal advice.