

AIRCRAFT FINANCE ONLINE

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TÜRKIYE

Fulya Dikici, Barrister-at-Law¹

1. REGISTRATION OF AIRCRAFT/HELICOPTERS/AIRCRAFT ENGINES

Is there a Register of Aircraft?

Yes. In Türkiye, the registration of aircraft is the responsibility of the Ministry of Transport and Infrastructure whose activities cover, inter alia, the certification and regulation of aircraft, air crews and airports together with the control of air traffic which are performed through Directorate General of the Civil Aviation Authority (the Civil Aviation Authority). The Civil Aviation Authority is required to maintain a register of aircraft, the Turkish Aircraft Register (“Aircraft Register”). Requirements in respect of registration are laid down in the Law of Civil Aviation No.2920 which came into effect on 19 October 1983 (the Civil Aviation Law). The Civil Aviation Law art.3 describes an aircraft as every type of vehicle deriving support and cruising in the air.

TUR 1.1

What aircraft (including helicopters) may be registered? Is it possible to register engines separately (either as part of the aircraft or as a spare engine)?

The Civil Aviation Law provides that an aircraft may only be registered if it is “a Turkish civil aircraft” which definition comprises aircraft owned by public legal entities of the Turkish Republic or Turkish citizens.² It excludes, however, “State aircraft”. That is, aircraft used by the State for military, security or customs purposes.

TUR 1.2

All aircraft are required to bear the flag of the country where it is registered, and the registration mark thereof in accordance with ICAO Annex-7. Each aircraft has its own registration mark and a registration mark may not be used by more than one aircraft concurrently. A registration mark is used once only. Accordingly, any registration mark is not used for any other aircraft. Furthermore, the Civil Aviation Authority has issued the Helicopter Construction and Operation Regulation (SHY-14-B) published in the *Official Gazette* on 3 May 2017.

There is no separate registration for the engines. The airframe and the engines are registered as a whole with the Civil Aviation Authority. Since the engines and the aircraft are recorded together, the interest of the aircraft owner will appear in the registry. The Aircraft Register also keeps records of helicopters, ultralights/microlights, balloons and gliders.

¹ Dikici Law Office, Ahi Evran Cad. No.6, 42 Maslak, Ofis 3, No.5, Maslak, 34398 Istanbul—Türkiye; Tel: + 90 212 288 4919; Fax: + 90 212 288 4912; Email: office@dikici-law.com..

² *The law in this chapter is up to date to October 2023.*

² Civil Aviation Law art.3.

In accordance with the Turkish Civil Aviation Law art.49, a civil aircraft is considered to be a Turkish civil aircraft under the following conditions:

- Aircraft owned by public agencies such as occupational organisations, associations, political parties, trade unions or foundations, all established pursuant to Turkish laws, whose executive positions are held by a majority of Turkish nationals.
- Aircraft owned by trade companies, co-operative societies and their unions registered in the Turkish Trade Register, with a majority of Turkish nationals holding executive and representational power and the voting majority of which, according to the articles of association, consists of Turkish stockholders and partners.

The Civil Aviation Commercial Air Transport Regulation (SHY-6A) which has come into effect in 16 November 2013 and amended and updated from time to time, lastly on 19.08.2022, stipulates the requirements of the Civil Aviation Authority to grant an operating license to Turkish civil aircraft operators.¹

What documentation and consents are required for registration?

TUR 1.3

In order for a civil aircraft to be registered, the owner must satisfy the pre-requisites for registration laid down in the Civil Aviation Law (see TUR 1.2) and it must remit an application for registration to the Civil Aviation Authority acting under the Ministry of Transport and Infrastructure. If, on the basis of the documentation supplied, an objection is raised on the grounds that the applicant has not fulfilled the necessary conditions to acquire a right of ownership in the aircraft or that the applicant does not otherwise satisfy the pre-requisites for its registration, then, registration will not be effected until the legal position is resolved with certainty. Both the application—and any objection thereto—will be recorded in the form of a “process verbal” which is held at the Aircraft Register. Once a civil aircraft has been registered, a Registration Certificate will be issued.

According to the Civil Aviation Law, in order for the aircraft to be registered, it must not be registered in any other country.² If the aircraft has been registered in a foreign registry prior to Turkish registration, a deletion certificate from the foreign registry must be produced in order for the aircraft to be registered before the Aircraft Register. A certificate of maintenance release evidencing the technical compliance with Turkish requirements and, also, an export certificate of airworthiness are required by the Aviation Authority. The procedures for registration of any civil aircraft embraces a wide range of registration types regarding aircraft. Such registrations range from identity details to technical details or flight details regarding the aircraft. However, the registration type, falling under the scope of the Aircraft Register, is the registration, which may be called as the identity details of the aircraft.

It is a general requirement of the Civil Aviation Law that aircraft have a certificate issued by the Ministry of Transport, and Infrastructure to the effect that it is airworthy. If an aircraft is to be deregistered and exported from Türkiye, the Civil Aviation Authority will review whether the aircraft meets the requirements of the aviation safety agencies, as applicable. and whether it meets the specifications of the civil aviation authority of the country to which the aircraft will be exported. In the

¹ Civil Aviation Law art.55.

² Civil Aviation Law art.54.

case of a discrepancy between the requirements of the aviation safety agencies, civil aviation authorities and the condition of the aircraft, those may be required to be rectified.

If the acquisition is performed through a purchase, the purchase agreement together with its certified translation will be submitted in case the same have been drawn up in any language other than Turkish. The authenticity of the signature of the foreign party will necessitate notarization and apostilled original. Copy of the receipt of stamp duty arising from the agreement and bill of sale will also be submitted. The notarized and certified corporate documents evidencing the authority of the signatories will also be expected. Documents that are expected abroad shall need to be presented notarised and apostilled form.

In the event that the registry of the aircraft shall be performed through dry leasing, original copy of the lease agreement together with notarised translation of the agreement shall be submitted. If the registry of the aircraft shall be required based on financial leasing, the lease agreement needs to be registered first by the Association of Financial Institutions. Authorisation of signatories of each instance shall be supported with notarised and apostilled corporate evidences.

The Civil Aviation Authority requires for the registration application form, the original copy of the letter of aircraft importation from the Customs Offices and the certificate of deregistration and export certificate of airworthiness from the previous registration. Also, a list of previous maintenance surveys carried out on the aircraft together with the aircraft's operating manuals will also be required, as will two photographs (6cm x 9cm) of the aircraft.

Insurance policies covering passenger and third-party claims (and, in the case of large aircraft, policies covering luggage and cargo claims) must also be submitted together with the application form. There is a Turkish Law for the Supervision of Insurances, art.15 of which specifies that hull insurances in respect of aircraft (and ships) purchased with a foreign credit (as well as imported under the Financial Lease Law) can be secured abroad for a period of time limited to the validity of the lease agreement. However, third party liability insurances are required to be purchased locally in respect of aircraft. The minimum requirements for the amount of third-party liability cover that must be in place are established by the Civil Aviation Authority, based on international standards.

What particulars are recorded in the Register?

According to the Civil Aviation Law, the Aircraft Register will include the following particulars:¹

TUR 1.4

- name of the aircraft's manufacturer and its address;
- date of manufacture of the aircraft and its serial number;
- type, model and make of the aircraft;
- if the owner is an individual, his name. Otherwise the company's name, the Registry of Commerce in which it is registered and its registration number;
- if the owner comprises a commercial partnership, the type of partnership, its commercial name, the Registry of Commerce in which it is registered and its registration number;
- if the owner comprises another kind of legal entity, its name and legal residence;
- the means by which the owner acquired title to the aircraft (e.g. by a sale

¹ Civil Aviation Law art.57.

- agreement or pursuant to a forced sale etc); and
- the call sign of the aircraft.

What are the opening hours and registration fees?

TUR 1.5 The opening hours of the Aircraft Register are Monday to Friday from 9.00am to 12.30pm and from 1.30pm to 5.00pm, excluding public holidays.

Under the recent Flight Standards Tariff of the Civil Aviation Authority, the Ministry of Transport imposes a fee for the first-time issue of the Certificate of Registration of each aircraft. Further, in accordance with this Tariff, the issue of any renewals, the issue of certain certificates and various approvals are subject to fees—which are relatively minor (see <http://www.shgm.gov.tr>).

Can the Register be amended?

TUR 1.6 The Civil Aviation Law requires any change in the particulars recorded in the Aircraft Register to be communicated to the Aircraft Register within 15 days thereof.¹ The Aircraft Register and the Certificate of Registration must, then, be amended accordingly.

What is the effect of registration?

TUR 1.7 The Civil Aviation Law stipulates that an aircraft registered in the Aircraft Register is deemed to have Turkish Nationality and a Turkish registration mark.² This implies that it has a right to operate on, and over, Turkish territory—subject to the discretion of the Government or the Chief of Staff of the Armed Forces to forbid flight over certain areas due to considerations of public order, and for state security and military reasons.

The Civil Aviation Law also provides that the acquisition of a right of ownership or a mortgage or any other real right over an aircraft by a person who relies in good faith on the information recorded in the Aircraft Register will be upheld as a valid acquisition.³ This also applies in cases where any legal steps are taken for the benefit of the recorded owner of such a right or when the recorded owner enters into a contract with a third party disposing of such a right.

How is deregistration effected?

TUR 1.8 Deregistration means deletion of the registration of any aircraft, from the Aircraft Registry in accordance with arts 61 and 62 of the Turkish Civil Aviation Law. One of such articles, which constitute the legal basis for deregistration of any aircraft, is ex officio deregistration, and the other one is deregistration upon request.

The Ministry of Transport and Infrastructure will automatically deregister an aircraft if:⁴

- the pre-requisites for an aircraft to be considered as a Turkish civil aircraft (see above) cease to exist or if the ownership of the aircraft is transferred to a person not satisfying such pre-requisites;

¹ Civil Aviation Law art.57.

² Civil Aviation Law art.58.

³ Civil Aviation Law art.52.

⁴ Civil Aviation Law art.61.

- a Turkish civil aircraft is registered in a foreign registry or if, despite its being registered in the Turkish Registry, it has not been deregistered from the foreign registry; and
- the permitted period for registration (see above) has expired.

The Civil Aviation Law also provides that, if the aircraft is a total or constructive loss, then its owner may apply for deregistration.¹ Although such article is limited to the actual or nominal destruction or total loss of any aircraft, justification of any and all processes for deregistration performed in practice is carried out upon application of the owner.

Can a Deregistration Certificate be obtained on registration?

It is not possible to obtain an undated deregistration certificate in advance.

TUR 1.9

Can an airline based in Türkiye operate foreign registered aircraft (for example, under Chicago Convention 83bis arrangements)?

Türkiye is a signatory to the Chicago Convention and, in accordance with the provisions of art.94(a) of the Convention, when an aircraft registered in Türkiye is operated pursuant to an agreement for the lease, charter or interchange of the aircraft or any similar arrangement by an operator who has his principal place of business (or, if he has no such place of business, his permanent residence) in another contracting State, the Turkish Aviation Authority may, by agreement with such other State, transfer to it all (or part) of its functions and duties as the State of registry in respect of that aircraft.

TUR 1.10

2. REGISTRATION OF AIRCRAFT MORTGAGES

Is there a Register of mortgages or rights over aircraft?

Mortgages and other rights acquired over aircraft are registered in the Aircraft Register. No separate mortgage register is maintained.

TUR 2.1

What documentation and consents are required for registration?

The Civil Aviation Law requires that the mortgage agreement must be in written form and must be executed before a Notary Public in statutory form, “ex officio”.²

TUR 2.2

The particulars recorded in the Aircraft Register are:³

- the mortgagee’s name and address;
- the principal of the debt and the interest rate; and
- if the debt is not conclusively fixed, then the highest sum (including interest) which is secured by the mortgage.

Special provisions have to be taken into consideration when a mortgage is secured with the aim of guaranteeing the issue of nominal or bearer bonds.⁴

What are the opening hours and the registration fees?

See TUR 1.5.

TUR 2.3

¹ Civil Aviation Law art.62.

² Civil Aviation Law art.70.

³ Civil Aviation Law art.74.

⁴ Civil Aviation Law art.74.

Can the Register be amended?

TUR 2.4 See TUR 1.6.

Will registration secure priority for the mortgagee?

TUR 2.5 A registered mortgage will have priority over:

- mortgages having a lower rank;
- mortgages having the same rank but registered on a subsequent date (it is the date of registration which grants priority, not the date of execution); and
- unsecured and ordinary debts.

For liens the general rule is priority that depends on date of establishment.

Scope of the priority claim

- **Charges and taxes-related liens:** Public institutes' liens (such as CAA).
- **Employee liens:** Employees and employment claims arising from employment agreements.
- **Other liens:** Under the Turkish Enforcement and Bankruptcy Law guardians (*vasiler*) and protectors (*veliler*) are regarded as having a lien with respect to their receivables from the debtor
- **Repairers liens:** Under Turkish Civil Aviation Law repairers' claims are also regarded as UPL.

The Code of Enforcement and Bankruptcy art.206 provides both for unsecured and for secured obligations and lists those accordingly with regard to the priority for distribution of the proceeds upon the force sale of the asset.

In principle, detention rights can be exercised only on the assets owned by the debtor, meaning that the assets (finance) leased to the debtor by a third party cannot be detained as these are owned by this third party. However, this rule has two exceptions. Accordingly, (i) detention rights can be exercised over the assets of a third party if the third party gives its consent, or (ii) if the creditor has acquired the possession of the third party's asset in good faith.

What is the effect of registration and does it need to be renewed?

TUR 2.6 The holder of a registered right will be protected against the claims of third parties. A registered encumbrance will continue to be in effect for the tenure of its registration without requirement for renewal. This will include other mortgages.

Registration will also protect a mortgagee in the case of the deregistration of the aircraft while the mortgage is still current, in that the Civil Aviation Law provides that mortgagees must be informed of such an intention before deregistration is effected and they are accorded 30 days in which to object to such a decision.¹ If an objection is made and considered valid by the court, the mortgagees' rights will be maintained in the Aircraft Register even if the aircraft has been deregistered.

How is deregistration of a mortgage effected?

TUR 2.7 If the mortgagee forgoes its rights to repayment of the debt—or if the mortgagee and the owner become one and the same person or if the debt is paid—the mortgage will no longer be effective and, therefore, it will be deregistered.²

¹ Civil Aviation Law art.63.

² Civil Aviation Law art.84.

The owner of the aircraft may ask the mortgagee to forgo its rights under the mortgage if, due to a valid reason, the mortgage becomes permanently unenforceable.

There are no fees payable on the deregistration of the mortgage. The deregistration of a mortgage can be effected by the Civil Aviation Authority upon application by a mortgagee requesting the lifting of the mortgage and also the consent of the mortgagor for such lifting is required.

The mortgagee must be informed of any prospective deregistration of the mortgage and have 30 days in which to object. If such an objection is valid, then, the rights of the mortgagee will be upheld even if the aircraft is then deregistered.

Is it possible to register a mortgage or rights over a helicopter on the Register?

TUR 2.8

The Turkish Civil Aviation Law arts 50 and 70 stipulate as to the creation and registration of mortgages—and the effect of such registration in respect of the validity of mortgages over aircraft. Since the definition of an aircraft embraces helicopters as well, a mortgage having been created in accordance with Turkish laws, would be capable of registration over the helicopters as well. In order for a mortgage to create a security interest in rem over a helicopter, it must be filed and registered over the aircraft in accordance with relevant Turkish laws and the Turkish Civil Aviation Law.

AIRCRAFT MORTGAGES

3. TYPES OF AIRCRAFT MORTGAGE

What types of aircraft mortgage are possible under the laws of Türkiye? What are their essential characteristics? What are their respective advantages and disadvantages?

TUR 3

Mortgages over aircraft may occur as contractual mortgages (“Akdi İpotek”), mortgages granted by law (“Kanuni İpotek”) or joint mortgages (“Birlikte İpotek”).

Contractual mortgages

According to the Civil Aviation Law, the owner and the mortgagee may agree to, and thereafter register, a mortgage.¹ Such mortgages must be in written form executed *ex officio* and certified by a notary public. The mortgage should be in Turkish or a notarially certified sworn translation into Turkish must be provided in respect thereof. All documents to be filed must be notarised and consularised.

Mortgages granted by law

Aircraft builders and repairers may apply for the registration of a legal mortgage over an aircraft, in order to secure money due to them for any repairs and any building work which they have performed thereon.

The procedure to be followed in order to secure such a mortgage is provided for in the Turkish Civil Code.² The mortgage rights of workers and contractors may be registered as soon as they undertake to perform their work. They must, however, be registered within three months of the termination of the work. In order for the registration to be made, the money due to the workers or contractors must be

¹ Civil Aviation Law art.70.

² Civil Code art.882.

acknowledged by the owner of the aircraft or a court judgment in respect thereof must have been given. If the owner otherwise provides sufficient security to cover the outstanding sum registration will not be effected.

Mortgage rights of workers and contractors registered on different dates all rank equally among themselves.¹ Mortgages granted by law (i.e. mortgages in favour of builders or repairers) have certain advantages over contractual mortgages since the Turkish Civil Code provides that contractual mortgagees must compensate such mortgagees before being able to enforce their own mortgages.²

Joint mortgages or fleet mortgages

According to the Civil Aviation Law, if a debt is secured by a mortgage on more than one aircraft and no agreement as to the respective liability of each is stated in the Aircraft Register, then, each aircraft is responsible for the whole debt.³ Joint mortgages may be used to cover a fleet of aircraft—whether or not all such aircraft are owned by the same entity.

Mortgages based on foreign currency

According to the Code of Obligations art.851/1, foreign currency loans being provided by foreign banks can be secured with foreign currency mortgages. The Civil Aviation Authority has previously obtained a general opinion from the Under Secretariat of Treasury in respect of the registration of foreign currency mortgages over an aircraft, and as a matter of current practice, does not seek a separate opinion corresponding to every transaction but follows the general opinion for every transaction effected thereafter.

4. LAW GOVERNING THE MORTGAGE

What law will govern the validity of the mortgage?

TUR 4

Turkish law will apply in respect of the validity, registration, enforcement, of mortgages and sale of an aircraft if the enforcement and sale procedures take place in Türkiye.⁴

5. MORTGAGE GOVERNED BY FOREIGN LAW

If the parties to a mortgage stipulate that the mortgage will be governed by the laws of a foreign country, would a Turkish court uphold such a clause?

TUR 5

The Civil Aviation Law specifies that—save for any provision to the contrary in the law—aircraft are considered to be *movable* property, but as far as the validity of liens is concerned, the principles of *immovable* property apply. The Turkish law provides that mortgages over immovable properties are subject to Turkish laws, in that Turkish law will apply to aircraft mortgages.

¹ Civil Code art.896.

² Civil Code art.893.

³ Civil Aviation Law art.72.

⁴ Civil Aviation Law art.65.

6. MORTGAGE TERMS

What are the general terms of an aircraft mortgage under the laws of Türkiye? Are there any special terms such a mortgage should contain?

TUR 6

The mortgage agreement will be kept by the Registrar in a special file which is at the disposal of all interested parties. Consequently, the usual terms of such mortgages may be examined on demand. The usual terms for aircraft mortgages comprise, inter alia, the following:

- an identification of the parties and the aircraft;
- a description of the loan and the additional undertakings secured by the mortgage;
- the interest rate and a repayment schedule;
- an acceleration clause in the event of a default in the terms of the mortgage;
- a description of the aircraft and all the properties attached to it which are included in the mortgage;
- insurances;
- any covenants usually granted in such circumstances;
- the means of evidencing the debt (creditors' books etc);
- the legal remedies of the mortgagee on default;
- the choice of law and jurisdiction clause (subject to conformity with imperative Turkish legal provisions; see TUR 5); and
- the maintenance and operational requirements imposed on the mortgagor.

7. SPARE PARTS

Under the laws of Türkiye can spare parts, including future parts, be subject to the mortgage? Are any special formalities required? If such parts cannot be mortgaged what other forms of security are available to the mortgagee in relation to them?

TUR 7

The Civil Aviation Law states that the extent of a mortgage agreement will be regulated by the applicable articles of the Turkish Civil Code.¹ This article stipulates that a mortgage agreement will also cover the essential parts and the accessories of the mortgaged item.

The Civil Code describes essential parts as comprising those parts which cannot be separated without damaging the main item and which are considered as such by local custom.² Accessories are described in the Civil Code as those parts which are allocated to the use of the main item.³ Any legal act taken in respect of the main item (i.e. in this case, the aircraft) will also take effect on the accessories unless there is a stipulation to the contrary. The Civil Code further states that an accessory will not lose its nature as such even if it is temporarily separated from the main item.⁴

In order to be considered as an accessory of the main item, the owner of the main item must either show that the parties manifested a clear intention that the part be treated as an accessory or it must be considered as such by local custom.

¹ Civil Aviation Law art.76.

² Civil Code art.684.

³ Civil Code art 686.

⁴ Civil Code art 686.

According to the above, *spare parts* fall within the definition of accessories. The Civil Code further provides that items, such as engines, which are clearly described as accessories in the mortgage agreement, will be considered to be such unless it is provided that the law regards them as otherwise.¹ Third persons' rights over accessories are protected. Thus, where a part owned by a third party is attached to an aircraft, the right of the third party still remains and may be asserted despite such attachment. Liens on spare parts can only be established by retaining possession of the movable property pending the discharge of the outstanding obligation incurred in respect of services rendered to the movable property. In order to allow alternative remedies, the Pledge on Movables in Commercial Transactions Law No.6750 provides for pledge agreements to be registered with the movables pledge registry system (TARES Registry). The records will be publicly accessible.

8. EXECUTION AND PERFECTION OF MORTGAGES

Are there any special execution formalities, such as (i) witnessing the mortgage; (ii) attesting the mortgage, that is the witness signing when present at the execution of the mortgage; (iii) making the mortgage by way of deed; (iv) notarising the mortgage; (v) legalising (consularising) the mortgage; (vi) translating the mortgage; or (vii) stamping the mortgage; and any significant costs, such as stamp duty or certification fees, associated with mortgages of aircraft under the laws of [enter jurisdiction]? Can a mortgage be executed by electronic signature?

TUR 8.1

The Civil Aviation Law provides that the registration of any right, or encumbrance, over an aircraft (apart from ownership), together with any transfer or endorsement thereof, must be in the form of an agreement in written form.² In order for a mortgage to create a security interest in rem, it must be filed and registered over the aircraft in accordance with the relevant Turkish laws and the Turkish Civil Aviation Law, which is applicable to the registration of mortgages over aircraft which are kept in the Aircraft Register.

The mortgage agreement is required to be executed *ex officio* before a notary public in statutory form with the attendance of both parties. The Turkish Civil Code arts 851 and 882 require a security interest.

The Civil Code and the Turkish Civil Aviation Law art.70 provide for a security interest over an aircraft, to be created by way of the registration of an officially executed deed in the presence of the deed registrar. The mortgage agreements will not bind third parties until they are registered in the Aircraft Register. The security interest will become invalid with its deletion from the deed registry.

The Civil Aviation Law also provides that the acquisition of the right of ownership or any mortgage (or other real right) over an aircraft by a person relying in good faith on the information recorded in the Aircraft Register will be upheld as a valid acquisition.³

Agreements which are signed in Türkiye are, ordinarily, subject to stamp duty to be imposed in accordance with the amount contemplated by the agreement at a rate of 9,48 per thousand (0.948%) payable in Turkish Lira. The Civil Aviation Authority charges a small registry fee for the registration of a mortgage.

¹ Civil Code art 682.

² Civil Aviation Law art.58.

³ Civil Aviation Law art.52.

What additional formalities are required to perfect the status of the mortgage?

The notary public and the Registrar of the Aircraft Register must check:

TUR 8.2

- whether the mortgagor (i.e. an individual or the person acting on behalf of a legal entity such as a company) is entitled to enter into the mortgage; and
- whether the relevant powers of attorney contain the required authority to permit the mortgagor to enter into the mortgage and that they have been duly certified by the competent authorities—particularly, if the power of attorney is sent from abroad.

Obviously, it would be a wise precaution for the mortgagee itself (or its attorney) to double check these points and, also, to ensure that the required insurance policies in its favour have been issued (and the premiums paid) by the mortgagor if it is a condition of the mortgage that such insurance be effected, as is invariably the case (although the insurance of aircraft is not made compulsory by law).

9. STATUTORY FEES, CHARGES, TAXES

It should be noted that the tax matters stated herein may raise a necessity for external tax advice;

TUR 9**Are there any statutory fees, charges or taxes payable in respect of the creation of the mortgage?**

The Civil Aviation Authority charges a registration fee in respect of an aircraft mortgage, whether in respect of its creation or registration. Agreements which are signed in Türkiye are subject to stamp duty to be imposed by Law No.488 dated 1 July 1964 (as amended), to be imposed in accordance with the amount contemplated by the agreement at a rate of 9,48 per mille (0.948%) payable in Turkish Liras (TL).¹ For agreements that are signed outside Türkiye, such stamp duty will, ordinarily, become payable if, and when, the document is presented to any Government body in Türkiye, including the Turkish courts, or if they are used and benefited from in Türkiye.

TUR 9.1

If the aircraft over which the mortgage is to be placed is leased to a Turkish operator by virtue of the Financial Lease Law and if such a lease is considered to be a finance lease and consideration will be given whether it is entitled to benefit from certain tax reductions and exemptions of notarial fees and stamp duty as provided by the Financial Lease Law art.37.

Financial Leasing Law (No.6361) art.37 defines the stamp tax exemption to read:

“Finance lease agreements, the documents relating to the transfer or the amendment of these agreements, the documents between the lessor and the seller relating to the supply of the goods that are subject to the finance lease transaction and the documents prepared as a guarantee of these, are exempted from stamp tax” .

It should be noted that a mortgage which is not related to an aircraft enjoying the benefits of the Financial Lease Law, will be subject to stamp tax. Furthermore, if a mortgage is created over the aircraft in order for the lessor to obtain financing—but not, necessarily, to complete the leasing of the aircraft to a Turkish operator—documentary and other tax exemptions will not be applied. Hence, the execution of such a mortgage (or any other security document) will be subject to stamp tax and to other related documentary charges.

¹ Stamp Duty Law Nr.488.

Are principal, interest and any other amounts payable under a loan secured against an aircraft to a lender which is not incorporated nor resident for tax purposes in Türkiye subject to withholding tax or other deduction?

TUR 9.2 Withholding tax is payable on the principal, the interest and any other amounts payable under a loan under Turkish law.

Is a contractual obligation for the borrower to pay an amount equal to such withholding or deduction so that the lender receives an amount as if such withholding or deduction did not apply (a “gross-up payment”) valid and enforceable under the laws of Türkiye?

TUR 9.3 Gross-up provisions may be valid between the parties to the underlying document, with the possibility, and the ability, of the Turkish tax authorities to resort to the contracting parties, in order to seek the collection of such a tax from the lessor or from any relevant party. The tax offices will collect the due payment from any party as it is possible that the Tax Authorities shall have the capacity and the ability to seek collection of such tax from the Beneficiary or from any relevant party;

10. RENEWAL OF REGISTRATION

Will the registrations in respect of the mortgage remain valid throughout the tenure of the mortgage or will they require renewing? If so, what will be the approximate cost of renewal?

TUR 10 The mortgage will remain valid until either the debt secured by the mortgage has been fully repaid or otherwise released or until deregistration of the mortgage has been made on the joint application of the contracting parties.¹

11. CONVENTIONS

Has Türkiye ratified:

- TUR 11.1**
- (a) Chicago Convention of 1944 on International Civil Aviation (Chicago Convention)?**
 - (b) 1948 Convention on the International Recognition of Rights in Aircraft (Geneva Convention)?**
 - (c) 1933 Convention for the Unification of Certain Rules Relating to the Precautionary Arrest of Aircraft (1933 Rome Convention)?**
 - (d) Convention on International Interests in Mobile Equipment and Protocol thereto on Matters specific to Aircraft Equipment (Cape Town Convention) and, if so, which Contracting State declarations has it made?**
 - (e) Any of the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, the Geneva Protocol on Arbitration Clauses of 1923 or the Geneva Convention on the Execution of Foreign Arbitral Awards of 1927?**
 - (f) Hague Convention of 1961 related to The Hague Convention Abolishing the Requirement of Legalisation for Foreign Public Documents?**

Türkiye is not a signatory to the:

- the 1948 Convention on the International Recognition of Rights in Aircraft (the Geneva Convention);

¹ Civil Aviation Law art.63.

- the 1933 Convention for the Unification of Certain Rules Relating to the Precautionary Arrest of Aircraft (commonly known as the Rome Convention);
- the Geneva Protocol on Arbitration Clauses of 1923; or
- the Geneva Convention on the Execution of Foreign Arbitral Awards of 1927.

Türkiye is a signatory to the Chicago Convention of 1944 on International Civil Aviation (the Chicago Convention) and Türkiye has signed the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

Türkiye is a Contracting State to the Cape Town Convention and to the Cape Town Aircraft Protocol (the Cape Town Agreements). Türkiye has submitted an entry to Unidroit on 23 August 2011 with declarations made under arts XXX(1), (2), (3). The Cape Town Agreements entered into force in Türkiye as of 1 December 2011.

Concise Summary of Declarations made by Türkiye

Convention	
Article 39(1)(a), 1(b)	Rights having priority under Turkish Laws over a registered international interest
Article 40	Registrable non-consensual rights or interest
Article 50	Internal transactions
Article 54(2)	Declaration regarding remedies
Protocol	
Article VIII	Choice of law
Article X	Modification of provisions regarding relief pending final determination
Article XI (Alternative A)	Remedies on Insolvency
Article XII	Insolvency assistance
Article XIII	Deregistration and export request authorisation

Turkish law provides for possession, ownership and other rights over movable property to be subject to the law of the place in which such property is at the time when the cause resulting in the acquisition or loss of possession, ownership or other rights over the property arose (the “lex situs”).

There is no legislation stating that—in case of contradiction with Turkish law—the Cape Town Agreements shall supersede—in that the general principles of the conflict of laws/rules should apply. Some scholars challenge the superiority of international agreements against other Turkish law in effect. Since, in general, “self-help” remedies are not recognised in Türkiye, there is not any precedent under Turkish law as to how these self-help remedies will be applied.

There is no jurisprudence or precedent that would indicate how the Cape Town Agreements will be implemented, interpreted, applied or enforced in Türkiye. It cannot be foreseen how the established practice of the courts, and bailiffs, in Türkiye against the requirements of the Cape Town Agreements, will change and be adapted.

Has Türkiye implemented the Cape Town Convention as a matter of domestic law? Have there been any judicial proceedings in or decisions of the English courts regarding the interpretation or the application of the treaty?

TUR 11.2 As the Cape Town Agreements have entered into force in Türkiye recently, there is a small amount of jurisprudence and a lack of definitive administrative guidance which would indicate, and create, a precedent on how the Cape Town Agreements will be implemented, interpreted, applied or enforced in Türkiye by the courts and bailiff offices. Except for the Civil Aviation Law art.68/A stating that—in the event of any conflict between the laws and Cape Town Agreements—the provisions of Cape Town Agreements shall predicate, there is no legislation giving supremacy to the Cape Town Agreements. Hence in the case of contradiction with Turkish law the general principles of the conflict of laws/rules should apply. The Turkish Civil Aviation Authority has issued an administrative directive on 9 July 2014, as amended from time to time (the Administrative Directive), with respect to the registration, perfection and enforcement of an IDERA.

Provided that an IDERA executed before a notary in due form is submitted to the Civil Aviation Authority by the lessee, as debtor, in the manner described in the Administrative Directive with an IDERA declaration letter and that its recordation is confirmed, it should be effective to give the right to obtain deregistration of the Aircraft from the Civil Aviation Authority and to export the aircraft from Türkiye in accordance with the Cape Town Aircraft Protocol art.IX(1).

Since Turkish law is mostly codified, the doctrine of precedent does not, in general, apply. In other words, precedent has no legally binding effect on courts of the same level.

Our law firm was involved, last year, with various repossessions of aircraft pursuant to the Cape Town Convention and to the employment of certain remedies as applicable to the relevant case. Thus:

- filings for the enforcement of IDERAs were made on behalf of the relevant Authorised Party—and the Civil Aviation Authority issued deregistration letters as stipulated by the relevant IDERA Directive, as defined below;
- an application was made to the bailiff’s office in order to trigger the implementation of Additional Article 2 of the Enforcement and Bankruptcy Code. While opposition by the lessee was taken to the review of the Bailiff’s Court who held fixed hearings to listen to both parties, eventually, the Bailiff’s Court issued judgment in favour of lessor; and
- claims were lodged before the authorised Commercial Courts of First Instance with injunction requests for speedy relief in accordance with Cape Town Convention art.13.

12. POSSESSION BY THE MORTGAGEE INCLUDING INSOLVENCY

On the occurrence of an event of default under the mortgage, can the mortgagee take possession of the aircraft without judicial intervention?

TUR 12.1 The Turkish Civil Aviation Law art.83, provides that a mortgagee may recover its credit over the assets falling within the scope of the mortgage only by way of compulsory execution measures. The article further provides that—if the mortgagor fails to pay all its debts—any agreement giving the mortgagee entitlement to take possession of the aircraft will bear no validity and a mortgagee will have to enforce its claim using compulsory enforcement procedures.

It is not possible, under Turkish law, to take possession of a mortgaged item such as an aircraft other than by way of judicial intervention (and an agreement by which the mortgagee is given the right to acquire the aircraft on the occurrence of an event of default will be held invalid under Turkish law).

Generally speaking, “self-help” remedies are not recognised in Türkiye. An article has been enacted to the Enforcement and Bankruptcy Law No.2004. Accordingly, the chargee enforcing its rights under art.8 subcl.1 para.(a) of the Convention—and the conditional seller, or lessor, enforcing its rights under art.10 subcl.1 para.(a) of the Convention—may, without leave of court, request the enforcement of its preferred right by presenting the certificate of registration showing it is the holder of the right which has been issued by the Civil Aviation Authority, to the Ankara Execution Office. The required directives in connection with the procedures to be carried out by the Execution Office have not yet been issued by Ministry of Justice and by Ministry of Transport and Infrastructure. Consequently, until this matter has been clarified, the method of execution of a mortgage (and any other security interest) relating to an aircraft—as well as the execution of a lease—may continue to be governed by certain imperative provisions of Turkish law. Consequently, it is advisable that a mortgage be recorded with the Civil Aviation Authority.

If the owner or operator of the aircraft enters into insolvency protection, can the mortgagee enforce its rights under the mortgage and/or over the aircraft?

All debts of the debtor become due from the moment the bankruptcy decision is declared by the commercial court. Upon which, the bankrupted company will be in liquidation for the purpose of generating proceeds in order to pay its debts in accordance with the Financial Lease Law art.30—and the bankruptcy of the lessee will give the lessor the right to terminate the lease.

TUR 12.2

Pursuant to the Financial Lease Law art.28, a bankruptcy trustee would not (likely) include a leased aircraft in the bankruptcy estate of the lessee. Therefore, the lessor would be able to initiate a judicial procedure to terminate the relevant lease and to repossess the aircraft outside of the scope of the bankruptcy proceeding.

13. JURISDICTION

In what circumstances would a Turkish court have jurisdiction over an action brought by the mortgagee to obtain possession of the aircraft and secure payment of the mortgage debt?

Turkish courts would have jurisdiction:

TUR 13

- if the parties agreed to such jurisdiction in the registered mortgage;
- if the mortgagor’s legal residence was in Türkiye; or
- if the aircraft had been arrested in Türkiye and either the aircraft itself (or any security given in order to secure its release) were still in Türkiye at the time of the commencement of the formal collection or enforcement proceedings.

According to the provisions of the newly stated Code on Civil Procedure dated 4 February 2011 which came in to force on 1 October 2011, the competent court, in every case, is the one situated in the defendant’s place of residence. Nevertheless, Law No.5781 on Private International Law and Procedure deals with the freedom of the contracting parties to jointly elect (choose) a court.

14. JUDICIAL PROCEDURE FOR POSSESSION

Upon an event of default under the mortgage, what is the judicial procedure for the mortgagee to obtain possession of the aircraft both before and subsequent to judgment? What will be the cost of initiating proceedings? Will a bond or other security be required? Are there any summary or expedited proceedings available?

*Detention of the aircraft***TUR 14**

The Turkish court has a full discretion whether to grant, or to refuse, an order for the detention of the aircraft according to the prevailing circumstances. It will take into consideration whether such a detention, even if it would protect a mortgagee's rights, might prejudice third parties or might it entail a commercial loss for all parties concerned.

Enforcement proceedings

Enforcement proceedings, in the case of a default, must be performed in accordance with provisions of the Enforcement and Bankruptcy Law No.2004.

According to this Law a writ must be issued together with certified copies of the registered mortgage.¹ It will be served upon the mortgagor by a bailiff. The Law also provides that the debtor must pay its debts within 30 days following the service of the writ, failing which, the mortgagee will be entitled to request the forced sale of the aircraft.²

The mortgagor may file an opposition (i.e. a defence) against the writ within seven days following service.³ The right of opposition will be examined by a specialised court dealing with such urgent matters. The mortgagor may also, under certain circumstances, start proceedings before the Civil Court for the cancellation of the mortgage. Once these oppositions have been determined by the appropriate court, the bailiff—upon the application of the mortgagee—will commence the forced sale proceedings. The mortgagee must apply for the forced sale within two years, failing which, such a right will be lost.

Costs

An application for the enforcement of the mortgage will be subject to a deposit of an applicable proportional charge, to be calculated pro rata based on the amount claimed. Such percentages may be changed or regulated by the Law on Duties. Additional expenses—such as the publication of notice of the prospective forced sale in the appropriate newspapers—will also be incurred.

15. LENGTH OF TRIAL AND ARBITRATION

How long will the trial of the action take?**TUR 15.1**

Courts proceedings on the merits are lengthy and they may last two to three years. There will, also, be an additional appeal procedure.

¹ Enforcement and Bankruptcy Law Nr.2004 art.146.

² Enforcement and Bankruptcy Law Nr.2004 art.149.

³ Enforcement and Bankruptcy Law Nr.2004 art.147.

What is the likely timing for enforcing an arbitral award?

Enforcement of an arbitration award may take up to six months and then there would be an appeal period which may take longer.

TUR 15.2

16. DOCUMENTS FOR POSSESSION AND SALE

What documents will the court require for?

- (a) the taking of possession of the aircraft;
(b) the sale of the aircraft?

TUR 16

In relation both to taking possession of the aircraft and to its forced sale, certified copies of the mortgage will be required. There is no requirement that evidence of the non-payment of the debt be given. The burden of proof that payment has been effected lies upon the debtor.

If, and when, it is necessary to file with any authority in Türkiye—or in any proceeding before a Turkish court to enforce the respective agreement—the party seeking the enforcement will need to submit to such Turkish court an executed copy of the relevant document and a Turkish translation thereof, which has been certified by a Turkish notary. When the Turkish translation is notarised—in addition to the payment of the stamp tax as applicable—there will be additional notarial charges and fees.

17. SALE OF THE AIRCRAFT

May the mortgagee sell the aircraft prior to judgment being given and, if so, what is the procedure?

The aircraft may be sold pursuant to the enforcement of the mortgage only by the bailiff and by way of public auction. There are exceptional provisions in the law which permit an application for an early sale in the case of perishable goods or when a delay to a sale will—due to exceptional circumstances—cause serious prejudice to all parties concerned. Such an eventuality, however, seems quite remote in the case of an enforced sale of an aircraft.

TUR 17

The court will fix the terms of the sale and the lowest bid price, after having ordered an appraisal of the aircraft. The mortgagee may bid. In the event that the sale proceeds do not cover the full amount of the mortgage debt due in the mortgage currency, additional proceedings may be commenced by the mortgagee to recover the shortfall.

Procedure for sale of the aircraft

The sale of the aircraft is subject to the following formalities:

- if the highest bid at the first sale (the date of which must be published in advance) does not reach 60% of the value of the aircraft as assessed by the surveyor who has been appointed by the bailiff, then the sale is postponed to a subsequent date, which should be, at least, ten days after the first sale;
- the highest bid at the second sale (the date of which must also be published in advance) should reach 40% of the assessed value, it being understood that—in any case—it should exceed the total claims having priority over the mortgage debt in respect of which the sale has been requested, as well as the costs of effecting such a sale (e.g. bailiff's costs and legal costs etc); and

- the bidders are required to deposit 20% deposit to the Bailiff before the auction while the mortgagee is exempted from depositing such a security. VAT, at the rate of 18% of the purchase price, will be deposited with the Ministry of Finance as a bank guarantee.

The proceeds obtained from the sale of the assets of the debtor are distributed amongst the creditors according to the following order (rank):

- expenses arising out of bankruptcy and liquidation procedure as described in the Enforcement and Bankruptcy Law No.2004 art.248;¹
- Government receivables such as taxes, duties, fees and other Government charges relating to the properties that have been sold as a result of the relevant execution sale;
- secured obligations which (as explained above) include the mortgaged, lien or pledged assets; the priority of these, among themselves, will rank according to the date of their establishment;
- unsecured but privileged obligations, including: (a) receivables of employees that have accrued during the last year prior to bankruptcy order and the severance and notice payments due to termination of their employment contracts after bankruptcy; (b) debts to syndicates or similar labour organisations which are due under the labour contracts; and (c) matrimonial, and other family law, debts which have been incurred during the course of the last year prior to the bankruptcy; (d) debts arising from assets which have been left to the management or custody of the debtor prior to the bankruptcy;
- debts of the bankrupt which are determined to comprise privileged receivables of the bankrupt pursuant to specific laws (i.e. debts of the bankrupt to its legal counsel, debts of the bankrupt to participate in utilities etc); and
- other unsecured receivables which are not privileged as described above.

The period for the forced sale of aircraft will start from the service of the writ by the bailiff until the completion of the forced sale. This will depend upon whether the mortgagor has sought to raise any defence against the claim for payment of the debts or possession of the aircraft and/or whether there are any claims raised by third parties in relation to the aircraft. Even if no objections are raised, the completion of the forced sale will take, at least, three months (bearing in mind that the bailiff must obtain an assessment as to the value of the aircraft from a qualified surveyor; and that the publication of notices of the prospective forced sale must be made, at least, twice in the appropriate newspapers, inviting the public to participate in such a forced sale etc).

18. CLAIMS RANKING PRIOR TO MORTGAGE

What claims would rank prior to the mortgage?

TUR 18

Taxes owed to the Turkish State (both taxes in respect of the aircraft and taxes owed by the owner of the aircraft), possessory liens, claims for storage and watchmen's salaries, will rank prior to a mortgage.

Statutory liens—such as liens for taxes, social security premiums, wages, duties, fees and other Government charges will take priority over any mortgages and other

¹ Enforcement and Bankruptcy Law Nr.2004 art.159.

rights in rem. The lien will, even, extend over property which is not the debtor's property if the creditor took possession of it in good faith. Such possessory liens based on the Civil Code will take priority over previously established rights in rem provided that the lienholder acts in good faith. Of course, a mortgage having a higher rank to the mortgage sought to be enforced—or having a prior date within the same rank—will also take precedence (see also TUR 2.5).

19. JUDGMENT CURRENCY

In the event of a judicial sale of the aircraft, will judgment be given in the currency of the debt if that currency differs from Turkish liras?

The Turkish legal system provides for lodging of a claim in a foreign currency. The courts—when issuing a ruling—may award damages in a foreign currency, however, the bailiff will convert this to Turkish Liras at the exchange rate prevailing on the date the claim was lodged for enforcement.¹ If there has been devaluation in the meantime—leading to a consequential loss caused by the difference in the exchange rates—a further claim will have to be lodged in order to recover the loss.

TUR 19

20. REMITTAL OF PROCEEDS ABROAD

In the event of the mortgagor recovering the debt, whether through court process or by means of private sale, can the proceeds be freely remitted abroad? Is any foreign exchange control, central bank or other official consent required? If there is, under what circumstances would this be withheld? How long would such consent take to obtain? Will there be any export restrictions on the export of the aircraft?

Transfer of proceeds

Collection under the mortgage (or under a security assignment) will be subject to the foreclosure of the mortgage (and the security assignment). In Türkiye, a suit could be filed and judgment given in a foreign currency. The courts, when issuing a ruling, will award damages in the foreign currency and the bailiff will convert this to Turkish Liras at the exchange rate prevailing on the date the claim was lodged for enforcement. If there has been devaluation in the meantime—leading to a consequential loss caused by the difference in the exchange rate—a further claim will have to be lodged in order to recover the loss.

TUR 20

If the mortgage in favour of the foreign mortgagee has been registered with the authorisation of the Ministry of Finance as required, the transfer of the proceeds out of the jurisdiction will be authorised as well. There are exchange controls in Türkiye although most have been, progressively, lifted since 1989.

Export

Should the entity acquiring the aircraft at the public auction be a foreign one there will be no restriction on the export of the aircraft. However, this will, still, be subject to an authorisation from the competent authorities (the Ministry of Finance and the Ministry of Customs and Trade).

¹ Civil Aviation Law art.57.

21. RECOGNITION OF FOREIGN JUDGMENT

Were the mortgage to be subject to the jurisdiction of a foreign court and were judgment to be given by that court, would the judgment be recognised and enforced by the courts of Türkiye? Are there any prerequisites to such enforcement? Would the Turkish courts enforce such a judgment without a rehearing of the issues? Would a Turkish court enforce a foreign decree or other executive act confiscating the aircraft regardless of the mortgagee's security interest in it?

*Enforcement***TUR 21**

Under the International Private and Procedural Law of Türkiye No.5781,¹ foreign court judgments cannot be directly enforced in Türkiye and an application should be made to a Turkish court. It will only enforce a foreign judgment if the requirements of Turkish law are satisfied.

Countries which have a treaty for reciprocity with Türkiye are rather restricted. It may be possible to obtain a ruling for the enforcement of a foreign judgment by proving that—even though there is no contractual reciprocity—there is effective reciprocity between the two countries. In other words, if it can be proven to the Turkish court that the court of the said foreign country would similarly enforce a Turkish judgment, then, the Turkish court may enforce the said foreign judgment as well. If effective reciprocity cannot be proven, then, the said foreign judgment will be produced as convincing supporting evidence of the debt and the obligation to repay. However, such would be without binding force upon the Turkish courts.

Confiscations

A Turkish court will not enforce a foreign decree, or other Executive act confiscating the aircraft, regardless of the mortgagee's security in it.

Arbitration awards

The Turkish Government has ratified the 1958 New York Convention by means of Law No.3731 of 1991, pursuant to which the Convention has become applicable from 30 September 1992. Enforcement proceedings for a foreign arbitral award in Türkiye will depend on the country where the arbitration award has been issued and whether that country is also a party to the New York Convention. The enforcement of the foreign arbitration awards are examined under International Private and Procedural Law of Türkiye No.5781.

22. GOVERNMENT INTERFERENCE

In what circumstances would the executive organs of government seize the aircraft or otherwise exercise a power of expropriation so as to defeat or substantially impede the mortgagee's entitlement? In what circumstances would the executive order or refuse to permit deregistration of the aircraft from the Turkish Register of Civil Aircraft or refuse to permit the registration of the mortgage?

TUR 22

Türkiye has a stable legal system and is a signatory to the United Nations Pacts and NATO. Up to this date, no power has been granted to the Turkish Government

¹ International Private and Procedural Law of Türkiye No.5781 art.54.

in order to requisition—or otherwise detain—the assets owned by bona fide owners in case of national emergency—unless the bona fide owner fails to comply with the laws and decrees in force in Türkiye at that particular time. It is, however, not possible to express an opinion as to the consequences of war, invasion, hostilities or similar cases which might—in the worst eventuality—create temporary changes to the laws in force. The Turkish authorities may take possession of the aircraft in exceptional circumstances such as war and great national emergency.

AIRCRAFT LEASING

23. LEASING OF AIRCRAFT

Is there a Register in which leases may be registered? May only certain types of lease be registered?

Turkish law recognises the concept of an aircraft lease. Aircraft leases entered into for the operation of aircraft in Türkiye tend to be in the form of cross border “finance leases”, entered into by virtue of the Financial Lease Law.

A “finance lease agreement”, however, should not always be interpreted as finance lease that will grant its lessee the right to purchase the aircraft at the completion of the lease term. An operating lease may also be entered into by its parties so as meet the requirements of the Financial Lease Law as a cross border finance lease—thus, enabling its parties to benefit from reduced taxes and stamp duty exemptions.

It is also possible to register a sub-lease with the permission of the Civil Aviation Authority or enter into a wet lease/ACMI.

In order for the lease to qualify as a finance lease by virtue of the Law on Financial Leasing, Factoring and Financing Companies No.6361 (the Financial Lease Law) and to benefit from stamp duty exemptions and tax reductions, its filing before the respective authority which deals with financial leases is required. The new Law No.6361 changed the filing authority for such leases from the Banking Regulation and Supervision Agency (BDDK) to an association called the Association of Financial Leasing, Factoring and Financing Companies (the Association) formed by the members of leasing and factoring companies under control of the BDDK.

TUR 23.1

What documentation and consents are required for registration?

In order for a lease to be registered pursuant to Financial Lease Law an application must, first, be made to the Association, together with the following documents:

- the duly signed original lease. In order for a lease to be governed by the Financial Lease Law it is required to be issued ex officio before a notary public both in Turkish and English. In the case where the agreement is executed abroad before a foreign notary public in authentic form, the executed version will constitute the original contract and—in order to be registered in Türkiye—it will have to be submitted to the authorities together with a Turkish translation (effected in Türkiye by a sworn translator and certified by a notary public). The notary public in this case will only certify the signature of the sworn translator but not the contents of the agreement whereas when an agreement is executed ex officio before a notary public in Türkiye in a foreign language and Turkish, both versions will be considered to comprise originals. Hence, should the agreements be signed in Türkiye before a notary public, a clause to the effect that—in case of a conflict between the two versions—the English version will prevail, is advisable to be inserted in the agreement.

TUR 23.2

- a proforma invoice indicating the value of the aircraft, the hull (and engine) serial numbers and the place of import (the invoice notarised and apostilled in accordance with the Hague Convention 1961);
- the Articles of Association and/or bye-laws of the lessor and the lessee, indicating their ability (capacity) to enter into cross border leases and to finance aircraft (such being notarised and apostilled);
- a Board Resolution of the parties empowering particular persons to sign the lease on behalf of the company or a power of attorney granted in favour of such persons for this purpose (all of which need to be notarised and apostilled);
- Incumbency certificates obtained from the relevant companies' registry, confirming that the said companies are actively engaged in business (as notarised) and a specimen of the signatures of the attorney(s);
- a certified copy of the bill of sale relating to the aircraft; and
- if the lessor is a trust, a certified copy of the trust agreement.

There are no provisions under Turkish Law similar to the concept of trust under US laws (or under English laws). In Türkiye, the Turkish courts may consider a security trustee as being entitled to enforce rights and obligations in its capacity as the entity to whom the mortgage has been granted. Provided that title to the relevant aircraft is vested in a security trustee, it can appear as the owner and the lessor of the aircraft and be entitled to enforce the rights and obligations of the lessor under the lease. However, a security trustee of an assignment cannot act as a registered owner and cannot proceed with the enforcement of rights expressly granted to the lessor under the relevant lease agreement.

What are the opening hours and registration fees?

TUR 23.3 See TUR 1.5.

The Ministry of Transport imposes a, relatively minor, registration fee for the registration of an aircraft lease.

Can the Register be amended?

TUR 23.4 See TUR 1.6.

The Civil Aviation Law requires that any change in the particulars recorded in the Aircraft Register be communicated to the Aircraft Registry within 15 days thereof.¹

What is the effect of registration?

TUR 23.5 The Civil Aviation Law provides that the acquisition of a real right over an aircraft by a person who relies in good faith on the information recorded in the register will be upheld.² This also applies in the case where any legal steps are taken for the benefit of a recorded owner of such a right. Hence, third party creditors of the lessee are deemed to be aware of an aircraft lease once it is registered and are, therefore, unable to exercise any rights over the aircraft.

The Financial Lease Law expressly provides for the lessor to be the owner of the aircraft.³

¹ Civil Aviation Law art.57.

² Civil Aviation Law art.52.

³ Financial Lease Law art.23.

How is deregistration effected?

Deregistration is effected by the Civil Aviation Authority on the request of either party to the lease if the lease period has expired and if the parties have not agreed to an extension of the lease. (such an extension must be reported to the Association pursuant to Financial Lease Law three months prior to the expiry of the lease).¹

TUR 23.6

Alternatively, deregistration is effected on the request of either party to the aircraft lease on the occurrence of an event of default as defined in the lease and provided the “cure” period—as regulated by the Financial Lease Law—has expired and the termination of the lease agreement has been registered before the Association.

Will deregistration powers of attorney and/or Cape Town Irrevocable Deregistration and Export Request Authorisations (IDERAs) be enforceable?

In order to regulate the method of the recording, cancelling and enforcement of an IDERA, the Civil Aviation Authority has issued an Administrative Directive. The Civil Aviation Authority has agreed to accept and to acknowledge the registration of the IDERA pursuant to the Administrative Directive.

TUR 23.7

In order for an authorised party to enforce an IDERA, the Authorised Party (or its certified designee) shall submit an application in the form acceptable to the Civil Aviation Authority as stipulated in the Administrative Directive. The Administrative Directive art.10 states that, based on an IDERA which was previously submitted and recorded by the Civil Aviation Authority according to the relevant procedure, the Authorised Party, with its request letter, may request the Civil Aviation Authority: (a) to procure the deregistration of the aircraft; and (b) to procure the export and the physical transfer of the aircraft object from the territory in which it is situated. Such deregistration and export requests must meet certain customary procedural requirements. Incomplete applications will not be honoured by the Civil Aviation Authority. According to the Administrative Directive there can only be one IDERA, and one Authorised Party in a transaction and for each aircraft.

In order for an IDERA to be recorded by the Civil Aviation Authority, together with a formal application, the Turkish operator/lessee will have to provide a consenting statement in order for the Civil Aviation Authority to accept the IDERA for filing—which statement is also required to be executed before a notary as a deed.

In the Administrative Directive sub-cl.(4) of art.10 it is stated that the Civil Aviation Authority will perform the request within five business days following the applicant showing to it, its entitlement to the remedies in art.(IX)1 of the Protocol. In sub-cl.(5) of the same article it is agreed that, while performing such, the Directorate General shall not seek any document or approval in connection with the cancellation of the agreement.

Is it possible to register the lease of a helicopter in the Register?

The Civil Aviation Law art.3 describes an aircraft as any type of vehicle deriving support and cruising in the air. This includes helicopters.

TUR 23.8

¹ Financial Lease Law art.30/3.

24. TYPES OF AIRCRAFT LEASE

What types of aircraft lease are possible under the laws of Türkiye? What are their essential characteristics?**TUR 24**

The two main types of aircraft lease possible under the laws of Türkiye are the financial lease and the operating lease. It is also possible to register a wet lease or sub-lease with the permission of the Civil Aviation Authority.

In order for the lease agreement to be registered pursuant to the Financial Lease Law, it should fulfil any of the following conditions:

- it should be entered into for the purpose of providing financing by a lessor authorised by the Financial Lease Law or relevant legislation;
- agreement must be reached to transfer the title of the aircraft to lessee at the end of the lease term; and
- it should grant to the lessee the right to purchase the property for a price less than its actual value, at the end of the lease term; and
- the terms of the lease should cover a period which is over 80% of the economic life of the property. Or, for the aggregate present value of the rental payments to be made according to the lease agreement to constitute a value which is over 90% of the actual value of the property.

That said, cross-border lease transactions based on financial lease agreements which are for a term of a minimum two years, in relation to aircraft (as well as their engines, parts and accessories) to airlines active in the carriage of passengers and cargo, by companies, corporations and financial leasing companies authorised to lease such items according to the regulations of their home jurisdiction, will be considered to comprise a financial lease within the scope of the Financial Lease Law without being subject to the restrictions specified above.

The essential characteristics of various lease types are as follows:

A lease agreement entered into pursuant to Financial Lease Law

- the minimum period of an aircraft leased is two years;¹
- once the agreement has been registered, the aircraft cannot be detained, liened or otherwise arrested by the third-party creditors of the lessee;²
- it should have a minimum length of two years and a mandatory cure period of 30 days (this goes up to 60 days if the lease has a purchase option);³
- in the case of the bankruptcy of the lessee and/or any legal action taken against it, the enforcement officer (i.e. the bailiff) should exclude the leased aircraft from the lessee's own assets;⁴
- the lessor must be the owner of the aircraft; and
- the withholding tax which foreign lessors are liable to pay is low compared to that payable on an operating lease. However, if the financial lease is terminated prior to the minimum two-year period, theoretically, the Government may ask for the payment of the saved and benefited tax—together with (any) applicable late payment charge. Having said this, the effective collection of these benefited

¹ Financial Lease Law art.2/5 and related regulations.

² Financial Lease Law art.29/2.

³ Financial Lease Law art.2/5 and art.31.

⁴ Financial Lease Law art.28.

taxes—in the case of the early termination of a lease due to an event of default—has not, to our knowledge, occurred up to now.

Operating lease

An operating lease is regulated by the provisions of the Turkish Code of Obligations Law, dated 22 April 1926. Its characteristics are as follows:

- the minimum period of such a lease must be six months;¹
- there are no restrictions in respect of the capital of the lessor;
- there are no restrictions in respect of the “cure” period which must be given before an event of default can be declared; and
- there are no tax exemptions, and the parties have to pay very high import and withholding taxes.

Wet lease

Its characteristics are as follows:

- it must have a maximum period of six months duration;² and
- the approval by the Civil Aviation Authority is subject to the need of the operator for such an aircraft and for such a type of aircraft.

It should be noted that wet lease agreements between Turkish operators are excluded from the mandatory restriction of having to be of six months duration.

Sub-lease

There are restrictions on the number of aircraft which a Turkish airline may sub-lease within a certain period. Article 43 of the Government Decree with regards to Customs Law No.2009/15481 provides that the possessor of an asset which is leased to Türkiye and imported under temporary regime cannot be subject to sub-leasing.

25. LAW GOVERNING THE LEASE

What law will govern the validity of the lease? If the parties to the lease stipulate that the lease will be governed by the laws of a foreign country, would a Turkish court uphold such a clause?

Turkish law will govern the validity of the lease. However, it is possible for the contracting parties to stipulate that the lease be governed by the laws of a foreign country and a Turkish court would uphold such a clause as long as the provisions of such law are not contrary to Turkish public policy nor imperative provisions of the applicable laws in Türkiye. In any case matters relating to execution, filing, registration and enforcement will be subject to Turkish laws.

In case of contradiction among Turkish laws, the general principles of conflict of laws/rules may be applied by the Turkish courts as well as by authorities in Türkiye. It is not established, as a matter of Turkish law, whether non-contractual obligations (i.e. obligations arising out of torts) can be made subject to a foreign law in advance of the occurrence of such a tortious act.

TUR 25

¹ Civil Aviation Law art.55.

² Civil Aviation Authority Directive on Aircraft Leasing Terms and Conditions Rev.02.

26. LEASE TERMS AND INSURANCES

Are there any special terms that an aircraft lease governed by the laws of Türkiye should contain?

TUR 26.1 Apart from the two-year time period restriction, a financial lease must stipulate a “cure” period of 30 days on a payment default by the lessee. This period must be 60 days if the lease incorporates a purchase option.

In accordance with the Financial Lease Law, the ownership of an aircraft subject to such a lease should remain with the lessor and, during the lease term, the lessor would not be able to transfer possession of the aircraft to third parties. The lessor may sell the aircraft if such a title transfer is agreed to by the parties in the lease.

Since the Financial Lease Law implies that the lessor and the owner are required to be the same entity, a head-lease/sub-lease structuring is not acceptable for a lease the parties to which have chosen to benefit from the Financial Lease Law.

Are there any special documentary conditions precedent to the leasing of an aircraft (including the execution of the lease agreement and the physical or constructive delivery of the aircraft) which a lessor should require?

TUR 26.2 Subject to TUR 1.3 and TUR 24, a duly executed lease agreement—together with its certified Turkish translation—would be required by the Civil Aviation Authority.

Are any licences or other authorisations required of a lessor under the laws of Türkiye for the leasing of aircraft?

TUR 26.3 In case the aircraft is entered into pursuant Financial Lease Law, the lessor must be the owner of the aircraft and with ability (capacity) to enter into financial leases under the laws of its own jurisdiction.

Is there a doctrine of strict liability or equivalent statutory regime in Türkiye which applies to lessors or owners of aircraft (or aircraft engines) for any aviation related incidents?

TUR 26.4 In accordance with the opinion of scholars—especially in cases where the leased asset is a motor vehicle—the Code of Obligations No.6098 arts 49–56 which relate to debts arising from tort cases as well as the provisions of Law No.2918 concerning Auto Routes Traffic Law, shall apply. According to the Turkish Code of Obligations No.6098 art.66, the employer is held liable for damages caused by its employees regardless of any fault or culpability on the part of the employer. Also, in the Code of Obligations art.69, the owner of a building (or any manufactured item) is held liable from any poor manufacturing (or any faulty safeguarding of the item).

In accordance with the above, save for liens such as customs, tax and some Government claims, third-party creditors of a lessee cannot seek recovery against a leased aircraft. There is, however, a risk of equity being built up under the Taxation Procedure Law (as opposed to the Financial Lease Law art.23). It states that the ownership of an asset subject to a lease is with lessor during the term of the lease.

Are there any legal or regulatory requirements for lessors or owners of aircraft (or aircraft engines) to place or to retain insurances (including re-insurances) with insurers incorporated in Türkiye?

TUR 26.5 In order for an aircraft to be registered in Türkiye, insurances should be maintained to the satisfaction of the Civil Aviation Authority. Except for certain

third-party liabilities that are required to be purchased locally, there is no requirement under Turkish law for a leased aircraft to be fully insured in Türkiye by Turkish insurance companies.

Is a “cut-through clause” pursuant to which a re-insurer agrees to pay any insurance proceeds payable under the re-insurances directly to the original insured party and not to the re-insured party valid and enforceable under the laws of Türkiye?

A reinsurance “cut-through” clause does not violate any law in Türkiye. Although we are not aware of any instance when such a “cut-through” clause has been invoked in Türkiye, we are not aware of any reason why such a clause would not be enforceable under Turkish law.

TUR 26.6

Is it possible to assign by way of security or otherwise create a security interest in respect of the rights under a lease of an aircraft, including rentals and other payments?

Turkish law provides for the possibility of the transfer of a debt or the assignment of a credit to third parties without creating a security in rem provided that there is no restriction arising from the nature of the assigned property which is required to be clearly specified, intangible and to be precise.

TUR 26.7

Consequently—while it is possible for a lessor to transfer some of its credits and tangible receivables under an aircraft lease to a security trustee by way of an assignment, it is not possible to transfer the title (or the rights and obligations) particularly vested in the lessor, as owner under the laws. The security trustee will be able to enforce its rights under the security assignment only after its entitlement as such is recognised by the competent Turkish court, by means of an order issued in the proceedings for the enforcement of such a security assignment. Therefore, it is not possible for a security trustee which is not an owner but only an assignee to step in the shoes of the lessor and to proceed with enforcement under the lease.

Is it possible under the laws of Türkiye to assign the rights or to novate (or otherwise transfer) the rights and obligations under a lease of an aircraft?

In the case of a transfer of title by the lessor to a new owner, the contracting parties would enter into an assumption, assignment and amendment agreement to be executed between new lessor, existing lessor and the lessee in order to change the title of the aircraft from the previous owner to the new owner, thus, transferring the aircraft lease from an existing lessor to the new lessor. This will also be evidenced by the submission of the relevant bill of sale to the Association.

TUR 26.8

27. SPARE PARTS

Under the laws of Türkiye can spare parts, including future parts, be subject to the lease? Are any special formalities required?

It is possible for spare parts to be leased under Turkish law. However, there is no separate registry where such a lease can be registered. Therefore, no special formalities are required.

TUR 27

Engines—so long as they are mounted on a particular aircraft—are regarded as component parts of the said aircraft and they are subject to the same provisions applicable to the aircraft. Considering that title to a movable part is evidenced by way of possession, the title holder of such an engine in the possession of the owner of the

airframe as appears in the Aircraft Register, will be considered by bona fide third parties to be the owner unless the contrary is proved. The moment an engine is dismantled from the aircraft and becomes an independent entity, possession of the engine will be evidence—towards bona fide third parties—as being in the ownership of the possessor which will then have the movable asset.

28. EXECUTION AND PERFECTION OF LEASES

Are there any special execution formalities, such as (i) witnessing the lease; (ii) attesting the lease, that is the witness signing when present at the execution of the lease; (iii) making the lease by way of deed; (iv) notarising the lease; (v) legalising (consularising) the lease; (vi) translating the lease; or (vii) stamping the lease; and any significant costs, such as stamp duty or certification fees, associated with leases of aircraft under the laws of [enter jurisdiction]? Can a lease be executed by electronic signature?

TUR 28.1 Subject to TUR 1.3, TUR 23.2, TUR 24 and TUR 26.2 above, a duly executed lease agreement—together with its certified Turkish translation—will be required by the Civil Aviation Authority.

The authorities will expect a lease to be entered into pursuant to Financial Lease Law. With an order issued by Administrative Court, the procedural directive put in place by Association requiring notarization for the leases is now terminated. Unless the Banking Regulation and Supervision Agency, as comptroller of Association, puts in place a new procedural directive or a change of law becomes effective, the lease agreements will be signed in its original language only i.e. English, and be submitted to the Association to be registered together with Turkish translations made by a sworn translator.

What additional formalities are required to perfect the status of a lease, such as registration?

TUR 28.2 If, and when, the required documents (see TUR 23.2) are properly submitted to the Association and to the Civil Aviation Authority, the aircraft lease will be considered to be in order.

If the Association agrees to register the aircraft lease—upon a review of the lessor and lessee’s corporate structure and stating that the lease and the parties to it are in compliance with the requirements of the Financial Lease Law. The Association will inform registration of the lease by it to the Civil Aviation Authority and to the Ministry of Trade, this to enable registration of the aircraft in Türkiye.¹

Do any of the above formalities apply to powers of attorney (deregistration or otherwise)?

TUR 28.3 The Turkish authorities would recognise acts taken by a proxy under a duly executed notarised, and apostilled, express power of attorney as long as such is valid and not revoked.

¹ Financial Lease Law arts 21 and 22.

Do any of the above formalities apply to assignments of the rights or novations of the rights and obligations under a lease (or any other form of lease transfer agreement)?

Assumption, assignment and amendment agreements should be executed by same means as the lease itself. In other words, ex officio before a notary public together with a Turkish translation and they should be filed with the Association. The Civil Aviation Authority will issue a new registration certificate upon the completion of the Association filing. It should not be understood that—by way of an assignment and assumption that the parties have entered into a new agreement with different contracting parties but rather that the lease of the aircraft by the lessee is continuing without any interruption or interference.

TUR 28.4

29. CHARGES AND TAXES

Are there any fees, charges or taxes payable in respect of the creation of an aircraft lease or its registration? What is the tax effect of different types of lease?

Fees and charges

There are minor statutory filing fees under the recent Flight Standards Tariff of the Civil Aviation Authority and the Ministry of Transport imposes different fees for the issuance of each certificate and/or consent letter.

TUR 29.1

Agreements which are signed in Türkiye are subject to stamp duty to be imposed by Law No.488 as explained above. Subsequently with the recent amendment to the law, the Financial Lease Law art.37 now reads that financial leasing agreements, the documents related to transfer or amendments of these agreements, the documents between the lessor and the seller related to the supplying of the goods that are subject to the financial leasing transaction and the documents prepared as a guarantee of these are exempted from stamp tax.”

Taxes

Customs import tax

All customs formalities relating to the importation of Aircraft will be completed upon their arrival in Türkiye. Unless lessee is benefiting from government incentives or has a special status document, lessee will be able to obtain an import license following the payment of required customs duties. Under Turkish law, at the time of importation of the vehicle into Türkiye, the lessee will be required to pay the applicable Special Consumption Tax. Unless the sufficient deposit is obtained, the Customs may well try to confiscate the Aircraft owned by lessor and is subject to leasing.

Withholding tax

In the case of an operating lease, withholding tax in the amount of up to 20% of the monthly rentals will be payable. In the case of a financial lease the rate of withholding tax for cross-border aircraft leasing transactions is 1%.

Value added tax (VAT)

In the case of an operating lease, 20% of the monthly rental would be payable as VAT. However, the lessee will be charged VAT in the amount of 1% of each invoice (i.e. on the gross amount of each rental) for a lease approved by virtue of Financial Lease Law.

Are there any fees, charges or taxes payable in respect of the assignment of the rights or the novation of the rights and obligations under a lease (or any other form of lease transfer agreement)?

TUR 29.2 There are minor statutory filing fees under the recent Flight Standards Tariff of the Civil Aviation Authority and the Ministry of Transport and Infrastructure imposes different fees for the issuance of each certificate and/or consent letter.

Agreements which are signed in Türkiye are subject to stamp duty to be imposed by Law No.488 as explained above, unless an exemption is applied pursuant to the Financial Lease Law art.37.

Are rentals or other amounts payable under a lease of an aircraft to a lessor which is not incorporated nor resident for tax purposes in Türkiye subject to withholding tax or other deduction?

TUR 29.3 Rental payments and other payments payable under a lease are subject to withholding tax pursuant to Turkish law.

Is a contractual obligation for the lessee to pay an amount equal to such withholding or deduction so that the lessor receives an amount as if such withholding or deduction did not apply (a “gross-up payment”) valid and enforceable under the laws of Türkiye?

TUR 29.4 Netting arrangements may be valid between the parties contractually, however, Turkish courts and Turkish tax authorities would have the ability and the possibility resorting to the lessor or any other relevant party for collection of the tax in the event of failure on the part of the lessee to effect such payment of tax.

Are there any customs duties, import and export taxes or similar charges payable in respect of the lease of an aircraft and if so, is the lessor liable for these? What about spare aircraft engines?

TUR 29.5 All customs formalities relating to the importation of the Aircraft will be completed upon arrival of such Aircraft in Türkiye. Lessee will be able to obtain an import license for such Aircraft following the inspection of the Aircraft by the Turkish Customs authorities and payment by the Lessee of the applicable Customs duties, and Special Consumption Tax to the Customs authorities. Unless the sufficient payments are obtained, the Customs may well try to confiscate the Aircraft even though the Aircraft is subject to leasing Türkiye.

In accordance with the Law on Value Added Tax art.1, VAT may be imposed for the goods delivered from one party to the other in Türkiye, or if the sale is to Türkiye, Customs would impose VAT when the definite importation of the goods to Türkiye is completed.

30. RENEWAL OF REGISTRATION

Will any registrations in respect of the lease remain valid throughout the lease term or will they require renewal? If so, what will be the approximate cost of renewal?

Registration of a lease will remain valid throughout the lease term. However, on the termination of the lease period, any renewal is subject to the obtaining new permission from the Association.¹

TUR 30

31. POSSESSION BY THE LESSOR INCLUDING INSOLVENCY

On the occurrence of an event of default under the lease, can the lessor take possession of the aircraft without judicial intervention?

The Financial Lease Law describes those events which may give rise to early termination of the lease.² These include, bankruptcy or entry into receivership or liquidation of one, or both, of the parties, loss of legal competence by one, or both, of the parties to perform the transactions contemplated, payment defaults by the lessee, other” defaults in the face of which the other party cannot be expected to continue performance.

TUR 31.1

In accordance with the Financial Lease Law art.31, the lessor may terminate the lease in case the leasing value (rental) has not been paid by the defaulted lessee within the period of 30 days given by lessor. However, if it is agreed to transfer the title at the end of the term of the leasing the given period should not be less than 60 days. If the airline fails to remedy the default within the given period, a termination notice of the lease may then be served. In the second section of art.31 it is stated that if any one of the parties is in violation of the agreement, the other party in cases where such party cannot be expected to continue the leasing, may terminate the lease agreement. It is a matter of appreciation left to the discretion of the court whether or not to accept the subsequent defaults entering into the scope of the Financial Lease Law art.31/II thereby enabling lessor to terminate the leasing.³

According to the Financial Lease Law, on the occurrence of an event of default under the lease, once the “cure” period has expired, lessor may terminate the lease and request the return of the aircraft. It is stipulated in art.33 that in case of termination of the lease by lessor, lessee is obliged to return the asset and is additionally obliged to pay the rentals which have not yet become due and to pay any damages suffered by lessor for the access of such undue rentals.

In the event of termination of the lease agreement by lessor and if lessee opposes to such termination, lessor will have to apply to the competent court for confirmation of its rightful termination and for the return of its own Aircraft. This may take up to six months. In almost all past repossession examples, repossession was secured without going through court procedure. Upon confirmation by the filing authority that the lease was terminated the Civil Aviation Authority, processed deregistration provided that various requirements, such as the settlement of outstanding motor vehicle taxes, payment of deregistration fees, etc were satisfied and that lessor has arranged ferry flight permits, deregistration and export of the aircraft was concluded within 30 days.

¹ Financial Lease Law art.30.

² Financial Lease Law art.30.

³ Financial Lease Law art.31/II.

Turkish Courts are quite difficult in granting precautionary measures or other injunctions due to the unsecured obligations by lessee. As precautionary measures will not be for the return of the aircraft to lessor but will be in respect of the delivery of the possession of aircraft to a court appointed custodian, until a final judgment is obtained the aircraft may not be moved or deregistered and the counter security being deposited to the court will remain at the court's safe. Therefore, it is possible to say that considering the urgency of matters related to aircraft, the court entering into merits of the claim during the proceedings would not bring a remedy to the lessor in a short time.

If the lessee enters into insolvency protection, may the lessor enforce its rights under the lease and/or over the aircraft and terminate the lease?

TUR 31.2 Lessee who is financially distressed could avail insolvency protection by making an application to the court to execute a concordat with its creditors to structure its debt payments. Pursuant to recent change in law, deferral of bankruptcy is not availed.

Bankruptcy proceedings are lengthy requiring the commercial court to issue the order and this may take at least two years during which claimants may be free to follow any possible assets in order to secure their receivables.

If the lessee enters into insolvency protection and retains the aircraft, will it or its insolvency officer be required to pay rentals as they fall due and otherwise perform the terms of the lease?

TUR 31.3 Upon declaration of bankruptcy, the bailiff court will appoint the liquidator who will establish the bankruptcy estate of the debtor with the aim to secure the creditors' claims which will include all of the assets of the debtor. All other assets acquired by the debtor in the meantime until conclusion of the bankruptcy are included in such estate the terms of the agreements having been entered in by the debtor prior to bankruptcy is declared, will continue throughout the bankruptcy proceedings. Although the Financial Lease Law stipulate that in the case of bankruptcy, the lease will terminate, theoretically with consent by lessor, creditors of the estate may decide to continue the leasing in order to generate moneys if the leasing will be profitable.

If the lessee enters into insolvency protection, will its insolvency officer be able to claim against the lessor for any payments made by the lessee as security for its obligations under the lease, including any letter of credit issued in favour of the lessor?

TUR 31.4 Courts could permit a lessor of an aircraft to (i) terminate the leasing of; and (ii) repossess aircraft that is being leased to the insolvent lessee following the commencement of insolvency proceedings. However, liquidator appointed for the insolvent company may see benefit to continue the leasing and may decide to fulfil the contractual obligations by keeping the lease in effect. It would then be a matter to be determined by the court whether in the absence of other defaults liquidator's keeping the lease continuing is a breach.

If the lessee enters into insolvency protection, will any power of attorney (including a deregistration power of attorney) granted by the lessee continue to be enforceable, including if it is stated to be irrevocable?

Under Turkish law it is not possible to obtain an irrevocable power of attorney. Once the bankruptcy is declared and a liquidator is appointed, previously granted powers of attorney will become void.

TUR 31.5

Are letters of credit preferable to cash deposits (for example, due to insolvency regime and ability of insolvency administrator to seek clawback of deposits)?

This specific query needs to be inquired directly from banking experts.

TUR 31.6

Can deposits be applied/set-off if an airline goes into insolvency?

It is a possibility for deposits to be applied to claims, however, there is a risk of claw back depending on the time and nature of the set off. Also, the following transactions can be cancelled by the court on the request of the creditors or the bankruptcy administration: Donations or undervalue transfers which are made by the debtor within two years before the opening of bankruptcy proceedings. Agreements under which the value received by the debtor is too insignificant in return for the debtor's obligation are deemed as donations. The following payments made by the debtor within the one-year period before the opening of bankruptcy proceedings: (i) payments made for undue debts; (ii) payments that are not made in cash; and (iii) payments that are made in an unusual manner, and the issuance of new pledges for existing debts.

TUR 31.7

32. JURISDICTION

In what circumstances would a Turkish court have jurisdiction over an action brought by the lessor to obtain possession of the aircraft?

Turkish courts would have jurisdiction:

TUR 32

- if the parties have agreed to such jurisdiction in the lease;
- if the lessee's legal residence is in Türkiye; and
- if the aircraft has been arrested in Türkiye and the aircraft (or any security given in order to secure its release) was still in Türkiye at the time of the commencement of the formal collection or enforcement proceedings.

33. JUDICIAL PROCEDURE FOR POSSESSION

Upon an event of default under the lease, what is the judicial procedure for the lessor to obtain possession of the aircraft both before and subsequent to judgment? What will be the cost of initiating proceedings? Will a bond or other security be required? Are there any summary or expedited proceedings available?

In an event of default under the lease, the lessor may apply to the court for an order of attachment and/or arrest of the aircraft in order to prevent the flight of the aircraft by the lessor. The court has complete discretion whether to grant or refuse an order for the detention of the aircraft in accordance with the prevailing circumstances. Once the attachment is obtained, formal proceedings must be lodged within 15 days, failing which the order of attachment will become void. The lessor

TUR 33

cannot obtain possession of the aircraft prior to the conclusion of the proceedings and the giving of judgment. In order to obtain an order of attachment, the lessor must deposit security with the court. Furthermore, the lessee can obtain the lifting of the order of attachment by depositing security with the court in the form of a bank guarantee in the amount for which the attachment is obtained.

At the time of the institution of any action or proceeding in Türkiye, it will be necessary to:

- pay statutory court fees imposed pursuant to the Law on Charges, as amended from time to time;
- pay court fees payable in connection with the making of an appeal from an adverse judgment;
- deposit, at the court's discretion, security for costs (*cautiojudicatum solvi*), provided however, that the court may in its discretion waive such requirement for security in the event that the plaintiff is considered to be:
 - a national of one of the contracting states of the Convention Relating to Civil Procedure at The Hague on 1 March 1954 (ratified by Türkiye pursuant to Law No.1574 published in the *Official Gazette* No.14137 dated 23 March 1972); or
 - a national of a state that has signed a bilateral treaty with Türkiye, which has been duly ratified, containing inter alia a waiver of the *cautiojudicatum solvi* requirement on a reciprocal basis; and
- pay lawyers' fees in accordance with the most recent tariff in force at the time of judgment as published in the *Official Gazette*, together with other court expenses.
- produce notary certified copies of supporting evidence and their translations.

If there is no treaty exempting a party from a particular country from depositing security for *cautiojudicatum solvi*, the court would require the claimant to provide such security. While there are no provisions in the Law on Private International Law and Procedure No.5781 in respect of method of reimbursement of the *cautiojudicatum solvi*, the amount is up to 15%.

Although the costs to obtain an order of attachment are minimal, the courts require counter security in an amount equal to approximately 20% of the amount claimed. Even though the Code of Civil Procedure specifies the alternative security which may be provided such as a letter of bank guarantee, Treasury bonds or cash.

For collection proceedings, there are court charges to be paid up front in order to lodge the formal claim. The percentage changes from time to time and the rate is published in the *Official Gazette*.

If the court issues a judgment in favour of the lessor, thereby stating that possession of the aircraft be returned to the lessor, the lessor must then apply to the Civil Aviation Authority for the deregistration of the aircraft. The Civil Aviation Authority may refuse to deregister the aircraft until any tax debts (or other debts to institutions such as the State Airport Management Authority) are settled.

34. LENGTH OF TRIAL AND ARBITRATION

How long will the trial of the action take?

TUR 34.1

Obtaining an order of attachment generally takes up to ten business days depending on the evaluation of the supporting evidence by the court. The formal claim which has to be lodged subsequently would take approximately one to two years

before the Commercial Court. There would be an additional period for appeal proceedings. While an order to ground an aircraft is hardly given and may be subject to high counter securities, the Turkish Courts are not reluctant to issue injunction or arrest orders for the debt arising from a check or a promissory note. It is always possible to lodge an appeal against the decision of the lower court which would be lengthy.

What is the likely timing for enforcing an arbitral award?

Proceedings to be commenced for enforcement of an arbitration award would take at least one year. There would be an additional period for appeal proceedings. **TUR 34.2**

35. DOCUMENTS FOR POSSESSION

What documents will the court require for the taking of possession of the aircraft?

The court would want to examine the terms of the lease, the documents proving ownership of the aircraft and the evidence of the occurrence of an event of default. **TUR 35**

36. CLAIMS RANKING PRIOR TO THE LESSOR

What claims would rank prior to the lease?

The Code of Enforcement and Bankruptcy art.206 provides for unsecured and secured obligations and lists those accordingly with the priority for distribution of proceeds upon the force sale of the asset.¹ The liabilities which are mandatorily preferred by laws of Türkiye (and not by contract), statutory liens, including the mortgages, lien or pledges, the government receivables such as taxes, duties, social security premiums, fees and other governmental charges related to the properties that have been sold through the relevant execution sale, secured obligations, personnel and workers' salaries severance and seniority compensation, duties such as social insurance premium debts, lawyers' fees, debts to the Military Assistance Fund will have priority. Other than preferential rights, the claims of lessor under the lease obligation of the lessee will rank *pari passu* in priority of payment with all other unsecured and unsubordinated indebtedness of lessee. Furthermore, enforcement may be limited or affected by bankruptcy, insolvency, liquidation, reorganisation, compulsory composition or other similar laws affecting generally the enforcement of creditors' rights. Türkiye **TUR 36**

37. JUDGMENT CURRENCY

In the event of damages being sought by the lessor under the lease, will judgment be given in the currency of the lease if that currency differs from legal tender in Türkiye?

See TUR 19. Under the Turkish legal system, it is possible to start a claim in a foreign currency.² The courts, when issuing a ruling, may award damages in the foreign currency and the Bailiff will convert this amount to Turkish liras at the exchange rate prevailing at the date the claim was lodged for enforcement. If there **TUR 37**

¹ Enforcement and Bankruptcy Law Nr.2004 art.206.

² Code of Obligations art.99.

has been devaluation in the meantime, leading to a consequential loss caused by the difference in the exchange rates a further claim would have to be lodged in order to recover the loss.

38. REMITTAL OF PROCEEDS ABROAD

In the event of the lessor recovering any debt under the lease, can the proceeds be freely remitted abroad? Is any foreign exchange control, central bank or other official consent required? If there is, under what circumstances would this be withheld? How long would such consent take to obtain? Will there be any restriction on the export of the aircraft?

Transfer of proceeds

TUR 38

If aircraft owned by a foreign lessor and leased to a Turkish lessee is registered in the Aircraft Registry with confirmation by the Association that the lease is registered pursuant to Financial Lease Law, the transfer of proceeds relating to any debt payable pursuant to the lease outside the jurisdiction will be authorised. There is no restriction on the payment of rent in foreign currency on condition that the payments are made through a Turkish bank and the bank would notify the Turkish Central Bank as the payments would exceed certain limits.

Export

Providing all tax debts and other debts to other State-owned institutions which take effect as possessory liens over the aircraft have been paid, the Civil Aviation Authority will deregister the aircraft and confirms to the Customs that it may be exported.

In general, the lessee must apply for deregistration of the aircraft and for other consents required to export the aircraft from Türkiye upon the termination of the lease. Such consents should be granted provided that the proper application has been made and a termination event exists. In other words, once the requirements justifying termination of the lease have been satisfied, the Civil Aviation Authority will expect the Association to register such termination and notify it to the Civil Aviation Authority, as well as to the relevant departments of the Customs before the Ministry of Trade. This will enable the aircraft, according to the relevant provisions of Turkish law, be exported. Following the expiry of the leasing, the Customs asks for export to be completed as there will be no legal ground left for the aircraft to remain in Türkiye failing which penalties will be imposed.

If there is a dispute between lessor and lessee in respect of the existence of the termination event, it is up to lessor to satisfy the authorities of the existence of such event. The Civil Aviation Authority would not deregister the aircraft and permit its export in cases where lessee argues that a termination event does not exist which would then require for the issuance of final court order giving the lessor the right to repossess the aircraft and confirming the termination.

39. RECOGNITION OF A FOREIGN JUDGMENT

Were the lease to be subject to the jurisdiction of a foreign court and were judgment to be given by that court, would the judgment be recognised and enforced by the courts of Türkiye? Are there any prerequisites to such enforcement? Would Turkish courts enforce such a judgment without a rehearing of the issues? Would a Turkish court enforce a foreign decree or other executive act confiscating the aircraft regardless of the lessor's ownership of it?

See TUR 21. A final judgment obtained against Lessee in a competent foreign court would, whether or not it has entered an appearance in such action, be enforceable against it by the courts of Türkiye provided that the following requirements of the Turkish International Private and Procedure Law No.5718 arts 50 and 54 are satisfied:¹

TUR 39

- There must either be a treaty of reciprocity concerning the enforcement of court judgments between the two countries or a law in the foreign country where the judgment was issued, permitting the enforcement in that country of a Turkish Court judgment or alternatively, de facto reciprocity between the two countries. In other words, if it can be proven to the Turkish court that the court of the said foreign country would similarly enforce a Turkish judgment, then the Turkish court may enforce the said foreign judgment as well.
- The object of said judgment should not concern a matter restricted to the exclusive jurisdiction of the Turkish Court or the said judgment should not be given by a court of a country which authorises itself where it has no connection with the dispute or the parties and provided that the defendant objects to the said judgment.
- The said judgment should not be in clear infringement of public order.
- The foreign judgment should be a final judgment and all possibilities of appeal should have been exhausted.
- If the person against whom a judgment of enforcement is applied for has not been invited to attend the court proceedings in infringement of the procedural rules or if the judgment has been issued “in absentia” (by default) by infringing such laws, and that said person would not raise oppositions against such a request for enforcement by referring to these provisions.

Also, we are aware of judgments issued by the Turkish Supreme Court stating that appointing foreign courts to examine the dispute would not exclude the right of examination of the Turkish courts where the competent court is the Turkish court where the defendant is residing.

Türkiye has entered into treaties providing for the reciprocal recognition and enforcement of foreign judgments and awards but no such treaty exists between Türkiye and the UK, or between Türkiye and the US. As such, there likely is no de facto reciprocity between Turkish courts and the courts of the US. However, we are aware of de facto reciprocity evidenced and proven between Turkish courts and the UK courts although such judgments were not on similar types of transactions. Enforcement of foreign court judgments is independent from Cape Town Agreements and is subject to Turkish Laws.

¹ Law on Private International Law and Procedure No.5781 arts 50–54.

Since only a final judgment can be subject to enforcement in Türkiye, interim relief or precautionary measures obtained before foreign courts cannot be enforced before Turkish courts.

40. GOVERNMENT INTERFERENCE

In what circumstances would the executive organs of government seize the aircraft, or otherwise exercise a power of expropriation so as to defeat or substantially impede the lessor's ownership of it? In what circumstances would the executive order or refuse to permit deregistration of the aircraft from the Turkish Aircraft Register?

TUR 40

Up to this date no power has been granted to the Turkish Government to requisition or otherwise detain the assets owned by the bona fide owners in case of national emergency, unless the bona fide owner fails to comply with the laws and decrees in force at that particular time and save for the consequences of war, invasion, hostilities or similar cases which might, in the worst eventuality, create temporary changes in the Laws in force. Any asset may be detained by the court upon the application of third parties for an attachment or injunction order on the basis of alleged private law claims, as well as for the detention rights of tax departments arising from the failure of a party to settle taxes. The Penal Code and the Customs Act¹ contain certain provisions that would allow the Turkish authorities to detain and, in certain instances confiscate a vessel or an aircraft that is found to have been actively involved in the commission of certain criminal offenses or smuggling activities and the procedures for an innocent third party owner or secured party to obtain a release of the vessel or aircraft may be very lengthy. In addition, by virtue of the National Defence Liability Law No.3634, the Government of Türkiye has authority to requisition the use of certain vessels or aircraft registered in Türkiye in the event of war or national mobilisation and Law No.3634 does not specifically address the payment of compensation to the owner of the vessel or aircraft that has been requisitioned.²

Also, the Savings Deposit and Insurance Fund, a government entity in charge of collecting and disposing of the assets of various banks put under the control of the State, have in the past used powers granted to them and with an executive order pending the resolution of various matters concerning the assets of a Turkish bank have been able to prevent the deregistration of an aircraft which was leased to the main shareholder of such bank. However, this is an extreme circumstance and by proving their ownership the lessors were able to secure the reversal of such executive order.

41. ANTI-BRIBERY AND CORRUPTION

Are there any specific anti-bribery and/or corruption laws in [enter jurisdiction] that a lessor or financier of aircraft needs to be aware of, including limitations on gifts and entertainment of customers or government officials?

TUR 41

Turkish Penal Code, Government Employees Law No.657 as amended and various other applicable Turkish laws bring high penalties and bans aiming to prevent corruption. Türkiye ratified the OECD Convention on Combating Bribery of Public Officials, and passed implementing legislation in January 2003, to provide that

¹ Customs Law No.4458 and the Penal Code No.5237.

² National Defence Liability Law No.3634.

bribes of foreign officials, as well as domestic, are illegal and not tax deductible. In 2006, Türkiye's parliament ratified the UN Convention Against Corruption. The Penal Code makes it unlawful to promise or to give any advantage to foreign government officials in exchange for their assistance in providing improper advantage in the conduct of international business. In the event that such a crime makes an unlawful benefit to a legal entity, such legal entity shall be subject to certain security measures.

42. SPECIFIC ENGINE LEASING QUESTIONS

Accession of Title

(a) If an aircraft engine owned by party A is affixed on an aircraft owned by party B, does the law regard such aircraft engine as being owned by party B?

The relevant Turkish Law specifies that save any provision to the contrary in the Law aircraft and the engines are considered as movable property. The title of a movable party may be evidenced by way of possession. Engines, as long as mounted on a particular aircraft are regarded as component part of said aircraft and therefore subject to the same provisions applicable to the aircraft.

TUR 42.1

(b) If an aircraft engine owned by party A is affixed on an aircraft owned by party B and such aircraft is mortgaged to party C, does the law regard such aircraft engine as being subject to party C's mortgage?

Turkish Civil Code art.686 refers to accessories and Turkish Civil Code art.684 refers to fixed items. A registered interest over the aircraft will cover the engine and parts, unless specifically agreed that the engine will not accede to the aircraft to which it is to be attached. On the other hand, a lien may be created on an engine by creating a pledge by way of possession, by retaining possession of the engine pending the discharge of the outstanding obligation. In order to allow alternative remedies to possessory pledges, the Pledge on Movables in Commercial Transactions Law No.6750 (the Law on Pledge of Movables) was entered into force on 1 January 2017. Providing for pledge agreements to be registered with the movables pledge registry system (TARES Registry).

Helicopter Engines

Does Türkiye law recognise a separate interest in helicopter engines that can be registered and/or secured while on-wing or off-wing? If relevant in this jurisdiction, please consider that under the Cape Town Convention, helicopter engines are arguably considered part of the aircraft when they are installed.

N/A.

TUR 42.2

General Comments on Aircraft Engines

Please identify any specific issues related to aircraft engines that affect the answers you have given to the previous questions related to leasing or financing of aircraft.

TUR 42.3 There is no separate registration for the engines. Airframe and the engines are registered as a whole before the Civil Aviation Authority. Since engine and aircraft are recorded together, interest of aircraft owner will appear in the registry.

43. AIRCRAFT SALES

Are there any special execution formalities for an agreement for sale and/or any title transfer instrument in respect of an aircraft, such as (i) witnessing the agreement; (ii) attesting the agreement, that is the witness signing when present at the execution of the agreement; (iii) making the agreement by way of deed; (iv) notarising the agreement; (v) legalising (consularising) the agreement; (vi) translating the agreement; or (vii) stamping the agreement; and any significant costs, such as stamp duty or certification fees, associated with agreements for sale and/or title transfers of aircraft under the laws of Türkiye? Can an agreement for sale and/or any title transfer instrument in respect of an aircraft be executed by electronic signature?

TUR 43.1 The laws of Türkiye will recognise an agreement issued to transfer title as evidence of intention of the parties to transfer the title to be completed subject to applicable Turkish laws in general as well as the terms and conditions thereunder. However, transfer of title would be concluded and evidenced only by way of registry before the relevant aircraft registry.

Bill of Sale and its delivery would be considered by the Turkish Courts as evidence of intention of the parties to transfer title, *however* the title transfer will not become effective under Turkish Law until the Civil Aviation Authority amends the Aircraft Registry reflecting the title towards bona fide third parties.

What additional formalities are required to perfect the status of the agreement for sale and/or any title transfer instrument in respect of an aircraft, such as registration?

TUR 43.2 It is possible to complete the transfer of title in the aircraft by executing an assignment, assumption and amendment agreement without interrupting the leasing of the aircraft by lessee. A novation agreement which may be executed by terminating the initial lease agreement would not be acceptable. Following transfer of the lease, the new owner would be registered as the lessor and owner of the aircraft. The Financial Lease Law requires for the lease and any lease transfer/amendments to the lease to be executed in the same manner, and filed with the Association, together with a certified Turkish version. The Association would send one copy to the Civil Aviation Authority and one copy to the Customs to complete import and registration matters. The various corporate documents of the new lessor which are required to be submitted are as follows: (a) Articles of Association (this should have a clear provision stating that lessor is entitled to enter into cross border agreements, financial lease agreement, sale and lease back and to lease or finance aircraft); (b) Incumbency certificate and a resolution of the board, authorising transaction and the signatories for the company; (c) an affidavit confirming the ability of new lessor to enter into leasing; (d) Certificate of good standing showing lessor is duly incorporated; and (e) Bill of Sale. Each these documents are required to be submitted in the notarised and apostilled form.

Are there any fees, charges or taxes payable in respect of the sale of an aircraft?

Except for the translation costs with respect to the execution of the relevant transfer agreement with respect of an aircraft registered in Türkiye, there are Türkiye relatively minor charge to be collected by the Association for registry of the transfer agreement and by the Civil Aviation Authority for the issuance of an aircraft certificate of registration.

TUR 43.3

In accordance with Law No.488, unless there are exemptions applied pursuant to relevant laws and regulations, all agreements which are signed in Türkiye or even if not signed in Türkiye when used or benefitted from in Türkiye are subject to stamp duty to be imposed on the amount involving the agreement.

