

# Hong Kong



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## 1 General and Contractual

### 1.1 What are the typical structures available for financing the purchase of an aircraft?

In line with its free-market philosophy and common law traditions, the legal, tax and regulatory environment in Hong Kong SAR generally supports all forms of financing structures used in commercial aircraft financing and leasing globally.

In July 2017, Hong Kong SAR introduced a dedicated profits tax regime for aircraft lessors with a view to bolstering Hong Kong SAR's attractiveness as a hub for aircraft ownership and leasing. The regime ushered in an effective headline tax rate of 1.65% on profits generated from leasing activities and an 8.25% rate on profits from lease management activities, subject to certain conditions and specific anti-avoidance measures.

In 2015, Hong Kong SAR had secured a reduction in the withholding tax rate applying to operating lease rental payments from China to Hong Kong SAR, down from 7% to 5% (lower than the rates applying to payments from China to either Ireland or Singapore). With the reduced withholding tax rate, coupled with the dedicated profits regime, Hong Kong SAR is a particularly attractive hub for operating leases to Chinese lessees.

Tiang & Partners and the PricewaterhouseCoopers (PwC) global network have been intimately involved in advising numerous aircraft finance and leasing participants on these reforms and advising clients on legal and tax structures, taking into account the favourable legal landscape and tax conditions in Hong Kong SAR.

### 1.2 What are the key advantages/disadvantages and main issues arising in relation to these financing structures?

We note, generally, that: (a) asset (metal) transfers have been more prevalent over sale of shares of aircraft-owning companies; (b) depreciation of aircraft is unavailable in Hong Kong SAR unless the aircraft is operated by a Hong Kong SAR airline (however, see above in question 1.1 in relation to the dedicated profits tax regime for aircraft lessors and lease managers); (c) as Hong Kong SAR is not a Cape Town Convention jurisdiction (see below question 6.1), any application for export credit agency supported financing from Hong Kong SAR would not be eligible for the "Cape Town discount"; and (d) while Hong Kong SAR does not impose withholding taxes of relevance to financing structures, certain rules around denial of tax deductibility for financing expenses must be carefully considered by borrowers in Hong Kong SAR (see question 2.2).

### 1.3 What types of leasing are possible under the laws of your jurisdiction? What are their essential characteristics?

All forms of leasing (operating or finance leasing), chartering (wet, damp, ACMI) and/or other forms of bailment are permissible.

### 1.4 Are there any proposals for reform in the area of aviation finance?

No; however, the tax and related conditions for aircraft lessors in Hong Kong SAR continue to be under review for further reforms to bolster the aviation hub, including in light of the anticipated introduction of BEPS 2.0 – Pillar Two rules. There is also increasing attention being given to the topic of ESG and green financing/investments.

### 1.5 Is it possible according to the laws in your jurisdiction to enter into non-binding or partially binding pre-contractual agreements (e.g. 'letters of intent') that will NOT take effect as fully enforceable agreements?

Yes. The position in Hong Kong SAR is in line with English law.

### 1.6 Is there a doctrine of 'good faith' in your jurisdiction that applies to all pre-contractual agreement, financing and leasing transaction documents, and the conduct of parties connected to them?

Generally, no. The position in Hong Kong SAR is in line with English law.

## 2 Taxation and Related Matters

### 2.1 Which government authority in your jurisdiction has primary responsibility for the accounting for and regulation of revenue control and taxes?

Inland Revenue Department, the Government of Hong Kong SAR.

### 2.2 What are typically the taxes in your jurisdiction that may arise in relation to a sale, a lease or a financing of an aircraft or an engine?

There are no transfer taxes (value-added taxes or sales taxes)

associated with the sale of an aircraft or an engine by way of a metal transfer. The Hong Kong SAR profits tax position on the metal transfer of an aircraft or an engine is typically the key tax consideration involved.

Hong Kong SAR does have stamp duty, which may apply to aircraft sales effected by way of a share sale.

Payments out of Hong Kong SAR pursuant to a lease or financing are not subject to withholding taxes, although, in the case of financing, borrowers in Hong Kong SAR must carefully consider certain restrictions around denial of tax deductibility for financing expenses where an offshore lender is not a licensed bank.

**2.3 Is the provision of a current tax-residency certificate by a payee sufficient for a lessee or a borrower potentially subject to withholding taxes in your jurisdiction on rental or interest payments to avail itself of treaty access and the mitigation of tax liability?**

This is not applicable as Hong Kong SAR does not have withholding taxes of relevance to leasing or borrowing.

**2.4 Has the advent of BEPS (the Base Erosion and Profit Shifting initiative of the OECD) had any effect as regards structures in aviation finance and leasing or their interpretation?**

Hong Kong SAR took steps to ensure its dedicated profits tax regime, implemented in 2017 and referred to in question 1.1, is BEPS-compliant, with substance in Hong Kong SAR being key to qualification for the regime. In addition, while not yet ratified, Hong Kong SAR is a signatory to the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS, which is targeted at structures involving perceived treaty abuse.

Tiang & Partners and PwC continue to monitor Hong Kong SAR's implementation of BEPS 2.0. It is too early to determine the extent to which the expected changes will impact aircraft finance and leasing transaction structures in Hong Kong SAR. However, we anticipate that, if necessary, certain changes may be made to the leasing regime to retain its competitiveness.

**2.5 What are the typical thresholds in your jurisdiction for which a permanent establishment may be triggered under the terms of any relevant double-tax treaty or similar?**

There are no set domestic thresholds for determining whether a permanent establishment is generally triggered under the terms of Hong Kong SAR's double-tax agreements. The specific provisions of each treaty govern the relevant thresholds in each case, though the permanent establishment articles in Hong Kong SAR's double-tax agreements have generally broadly followed those in the prevailing OECD guidance at the time of implementation of the relevant treaties.

Where a party is not resident or otherwise entitled to qualify for access to one of Hong Kong SAR's double-tax agreements, the equivalent domestic determination is whether or not the party should be regarded as "carrying on business" in Hong Kong SAR for tax purposes. There are no set guidelines for determining what constitutes "carrying on business"; however, precedent case law has set a low bar for what constitutes as such.

**2.6 Is the authority at question 2.1 likely to establish a 'look-through' right or similar as regards a lender or a lessor that is a special-purpose vehicle involved for the purpose of tax treaty access?**

In certain circumstances, an effective "look-through" or holistic approach to tax treaty access determination is referenced in Hong Kong SAR tax authority guidance. However, the ability for either a taxpayer or the tax authorities to adopt such approach is very much fact-dependent and should be determined on a case-by-case basis.

**2.7 Will the import of an aircraft into your jurisdiction and/or the sale or leasing of the aircraft give rise to any VAT, sales or use taxes or any customs import or excise duties?**

No, there are no customs/import duties imposed on aircraft in Hong Kong SAR, nor are there any value-added taxes or sales taxes in Hong Kong SAR.

**2.8 Are there any documentary taxes (for example, stamp duty payable on the execution of documents)?**

Generally, no; however, among other dutiable transactions not likely to apply to a metal aircraft sale transaction, stamp duty applies to the sale of aircraft effected by way of the sale of shares of Hong Kong SAR aircraft ownership vehicles.

### 3 Registration and Deregistration

**3.1 Which government authority in your jurisdiction has primary responsibility for the regulation of aviation and the registration of aircraft? Is it an owner registry or an operator registry? If the aircraft register is an operator register, is it possible to record the details of an owner or lessor and any financier with an aircraft mortgage?**

The Air Transport Licensing Authority (ATLA) has the responsibility for the regulation of air carrier licences and licensees.

The Civil Aviation Department, the Government of Hong Kong SAR (CAD) administers the civil aircraft register (CAD register).

The CAD register is an owner and operator registry; either the owner or the operator must be a "qualified person" to be able to register an aircraft with the eligible applicant noted as "registered owner" on the CAD register. "Qualified persons" include permanent residents of Hong Kong SAR and bodies incorporated under Hong Kong SAR law or Chinese law and which have their principal place of business in Hong Kong SAR or another part of China.

If registered in the name of the operator, it is not possible to publicly record the details of the legal owner, lessor and/or financier, although such information is routinely submitted to the CAD for its own record keeping, on a voluntary basis and carrying no legal effect on third parties.

**3.2 What is the effect of registration of the aircraft? Does registration on your national aircraft register confer proof of ownership of the aircraft and/or engine?**

Registration in the name of the legal owner would be *prima facie* evidence of ownership but not conclusive.

### 3.3 Can foreign-owned aircraft be registered on your national aircraft register and are there limits or restrictions on the age of aircraft that may be registered or operated?

Yes, provided that the lessee meets the “qualified persons” requirement; see question 3.1 above.

There are no strict limits or restrictions based solely on the age of aircraft to be eligible for registration.

### 3.4 Can aircraft leases be registered? If so, in what circumstances? Must the lease be in a particular form if it is to be valid and enforceable (for example, must it be in a particular language or be notarised, legalised or apostilled)?

Leases cannot be registered, nor do they need to meet any particular formality requirements to be valid and enforceable.

### 3.5 How is deregistration affected and what steps can a lessor take to deregister the aircraft on termination of the lease?

By an application to the CAD, the “registered owner” (as described in question 3.1) may deregister an aircraft by filing a notification of deregistration.

Accordingly, where the operator is the “registered owner”, it is advisable that the lessor seeks a deregistration power of attorney to enable the lessor to make such an application in a default termination situation where the operator may be unwilling or unable to make a deregistration application.

While it remains untested, there should be no legal reason why such a deregistration application signed by the lessor under a deregistration power of attorney should not be accepted by the CAD, although, on a practical level, a consensual deregistration with the assistance of the operator would avoid any risk of the CAD asking for additional documentation or information that can only be provided by the operator during the deregistration process.

A properly drafted deregistration power of attorney, signed as a deed by the operator, should be irrevocable and survive the insolvency of the operator.

## 4 Security

### 4.1 Is it possible to create a mortgage over an aircraft or engine in your jurisdiction? If so, what are the types of aircraft mortgage and engine mortgage available and what formalities are required in order to perfect it?

Yes. It is possible to create a mortgage over an aircraft or an engine in Hong Kong SAR.

Mortgages can be legal or equitable, usually created as a fixed charge. There are no specific formalities, except that where such security is granted by a Hong Kong SAR incorporated company or an overseas company registered in Hong Kong SAR under Part 16 of the Companies Ordinance, the security instrument may need to be registered with the Companies Registry within one month of the date of creation.

### 4.2 Can spare parts, including future parts, be subject to the aircraft mortgage or engine mortgage (as the case may be)? If not, are there any other forms of security that can be taken over spare parts?

Yes. See question 4.1. The security instrument could be expressed

to take effect as a floating charge, especially on circulating assets, such as spare parts or engines.

### 4.3 Is there a register of mortgages or rights over aircraft and/or engine?

No; however, it is common practice for financiers to notify the CAD of its security over an aircraft registered in Hong Kong SAR. See question 3.1.

### 4.4 What other forms of security can be taken over an aircraft and/or engine and can these other forms be registered?

See question 4.2 above. It is also common practice to take security over the shares in the aircraft ownership vehicle.

### 4.5 What claims and rights would take priority in your jurisdiction over a registered mortgage?

The following claims could rank ahead of a registered mortgage: (a) common law liens such as rights of repairers and mechanics, which are usually possessory in nature and arise by way of operation of law or contract; and (b) statutory liens and rights of detention in favour of the airport authority for airport charges and other unpaid amounts, or in favour of the Director-General of Civil Aviation in respect of unpaid air passenger departure taxes, or in favour of the Inland Revenue Department in respect of unpaid profits taxes.

### 4.6 What other forms of security can be granted over an aircraft and/or engine lease?

See question 4.2. While not a form of security, financiers could seek additional comfort by taking legal ownership of the aircraft, and instead lease the aircraft to a lessor or airline under a finance lease.

Financiers could also create an orphan trust or charitable trust structure in Hong Kong SAR similar to those commonly formed in offshore jurisdictions for an enhancement in the security structure from a bankruptcy remoteness standpoint, and for additional comfort as to reducing the potential for improper dealings with the aircraft ownership vehicle or aircraft asset.

It is also common to seek a negative pledge from the relevant grantors of security.

Where Hong Kong SAR grantors of security are involved, registration of the security interests provides constructive notice of such security, to the extent of those third parties who could reasonably be expected to search the register.

## 5 Enforcement and Repossession

### 5.1 What are the circumstances in which a mortgagee or owner can take possession of the aircraft and/or sell the aircraft? What requirements must the mortgagee or owner comply with?

The default provisions and enforcement powers set out in a typical mortgage or lease, providing for a mortgagee’s or owner’s right to take possession and/or sell the aircraft, will generally be respected.

Hong Kong SAR also recognises self-help remedies as matter of general law. In each case, these rights are subject to the debtor's rights to contest the default and subject to the repossession not being conducted in a manner so as to constitute a breach of the peace.

#### 5.2 What is the procedure for repossession of the aircraft?

With respect to operating leases, after default, owners/lessors can issue a notice of termination in relation to the leasing of the aircraft and, using self-help remedies or with the assistance of a competent court, impound the aircraft and export the aircraft to another jurisdiction.

With respect to financings, secured creditors usually initiate proceedings through the appointment of a receiver pursuant to the enforcement powers set out in the relevant security documentation to achieve the same result.

#### 5.3 Will local courts recognise a choice of foreign law in an aircraft mortgage? Are there any mandatory local rules that apply, despite a choice of foreign law?

Yes, Hong Kong SAR courts will recognise a choice of foreign law made in good faith and provided it is not against public policy; however, Hong Kong SAR conflicts of laws principles will mandatorily apply to transfers of interests in aircraft (including sale or creation of security over aircraft), giving rise to the issue of needing to ensure that a sale or mortgage of an aircraft whilst located in Hong Kong SAR is validly documented and effected with reference to Hong Kong SAR domestic rules and interpretations without regard to its conflicts of laws principles.

#### 5.4 Will local courts recognise and enforce a foreign court judgment in favour of a mortgagee or lessor? Are any interim relief measures available?

Generally, yes, in the case of judgments from other common law countries and depending on whether there is a treaty of reciprocal enforcement.

In the case of Mainland China, there are a number of important bilateral agreements providing for the mutual recognition of judgments. It is advisable that creditors to Mainland China parties avail themselves of these arrangements.

#### 5.5 Are powers of attorney from a local airline in favour of a lessor or mortgagee likely to be effective to allow the lessor or mortgagee to deregister the aircraft? Can such powers be irrevocable, be governed by a foreign law and/or do they need to be in any particular form for local recognition?

Yes. See question 3.5.

#### 5.6 If recovery of the aircraft is contested by the lessee and a court judgment is obtained in favour of the lessor, how long is it likely to take to gain possession of the aircraft?

This process could be undertaken within six to nine months.

#### 5.7 To what extent is there a risk from the perspective of an owner or financier that a lessee of aircraft or other aviation assets in your jurisdiction may acquire an economic interest in the aircraft merely by payment of rent and thereby potentially frustrate any rights to possession or legal ownership or security?

Generally, no.

#### 5.8 Are there any restrictions on the ability of the lessor to export the aircraft from your jurisdiction on termination of the leasing?

Subject to aircraft operational and safety requirements being met, there are no restrictions.

Hong Kong SAR does not require a party to obtain an export licence or authorisation to export a civil aircraft out of the jurisdiction.

#### 5.9 Are exchange controls prevailing in your jurisdiction as regards payments in foreign currency? Will any consents be required for the remittance of the sale proceeds abroad?

Currently, there are no restrictions or requirements to seek consent or authorisation in relation to remittance of sale proceeds out of Hong Kong SAR.

#### 5.10 If the lease is governed by English law and a judgment is obtained by the lessor in the English courts, can that judgment be automatically enforced in your jurisdiction or will the case have to be re-examined on its merits?

In the case of English judgments, it is possible to enforce a final and conclusive monetary foreign judgment by obtaining a summary judgment from the Hong Kong SAR courts without a retrial or re-examination of the merits of the matters adjudicated, subject to common law requirements, including that the judgment is not penal in nature, not subject to fraud nor against public policy.

#### 5.11 What is the applicable procedure for repossession of an aircraft under other forms of security interests?

See question 5.2. Where a share charge has been provided over the aircraft ownership vehicle, the enforcement of the share charge can largely be undertaken out of court, by transferring the title to the shares to the creditor or its nominee. Again, generally, creditors would be expected to deal with secured property in an enforcement scenario after first appointing a receiver. See also question 8.2.

## 6 Conventions

#### 6.1 Has your jurisdiction ratified any of the following: (a) The Chicago Convention of 1944 on International Civil Aviation (the Chicago Convention); (b) The 1948 Convention on the International Recognition of Rights in Aircraft (the Geneva Convention); (c) The 1933 Convention for the Unification of Certain Rules Relating to the Precautionary Arrest of Aircraft (the 1933 Rome Convention); and (d) The Convention on International



**Interests in Mobile Equipment on Matters Specific to Aircraft Equipment (the Cape Town Convention) and the Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment?**

Hong Kong SAR has not ratified: (a) the Chicago Convention; (b) the Geneva Convention; (c) the Rome Convention; nor (d) the Cape Town Convention – although the People’s Republic of China ratified the Cape Town Convention in 2009, it did not extend to Hong Kong SAR.

**6.2 Has ratification of the Cape Town Convention caused any conflicts or issues with local laws?**

This is not applicable.

**6.3 What is the legal position regarding non-consensual rights and interests under Article 39 of the Cape Town Convention?**

This is not applicable.

**6.4 Has your jurisdiction adopted the remedies on insolvency provided under Article XI of the Protocol to the Cape Town Convention?**

This is not applicable.

**6.5 What is the procedure to file an irrevocable deregistration and export request authorisation under the Cape Town Convention (IDERA)?**

This is not applicable.

## 7 Liability for Damage and Environmental

**7.1 Can the owner be strictly liable – liable without a requirement to prove fault or negligence – for any damage or loss caused by the aircraft assuming the owner is an innocent owner with no operational control of the aircraft?**

Generally, no, provided that, at the time the material damage is caused: (a) the aircraft is being operated by the operator for more than 14 days; (b) the operator is responsible for the airworthiness of the aircraft; and (c) no member of the crew of the aircraft is employed by the owner.

**7.2 Does the EU Emissions Trading System (EU ETS), or ICAO’s Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA), apply to aircraft and aircraft operators in your jurisdiction? Will charges levied according to the EU ETS, or its equivalent, give rise to any *in rem* rights in relevant aircraft that are part of the fleet of the operator concerned and, if so, will such rights rank in priority ahead of any mortgage interests properly registered in the relevant aircraft and/or engine?**

No. However, we note that since 2019, in accordance with requirements set by the CAD, Hong Kong SAR aircraft

operators have developed and implemented monitoring plans for carbon dioxide emissions of their international flights under CORSIA.

**7.3 What liabilities (actual or potential) could an owner, lessor or financier of an aircraft incur in your jurisdiction because of a failure to comply with local environmental law and/or regulations on the part of an operator of aircraft leased or financed by it?**

Generally, no, except in the unlikely scenario that the owner, lessor or financier has contributed to the failure pursuant to the general application of the principles of negligence and apportionment of liability.

## 8 Insolvency and Searches

**8.1 Are there any public registers in your jurisdiction where a search can be carried out to determine whether an order or resolution for any bankruptcy, bankruptcy protection or similar insolvency proceedings has been registered in relation to an operator or lessee?**

Yes. Searches must be undertaken with the Companies Registry as well as the Official Receiver’s Office on these matters.

**8.2 In the event that an operator or lessee were to become insolvent either on a balance sheet basis (assets less than liabilities) or is unable to pay debts as they fall due, would an operator or lessee be required to file for insolvency protection?**

Although the Government of Hong Kong SAR has announced the introduction of a corporate rescue procedure and insolvency trading provisions, currently there is no regime for a moratorium-style insolvency procedure or stay of proceedings, and there is no statutory corporate regime regulating insolvent trading by directors; that is, directors do not directly owe additional duties in respect of a company’s insolvent trading.

However, in addition to a statutory duty to exercise reasonable care, skill and diligence, and the general fiduciary duties owed towards the company, directors have a duty to take into account the interests of the company’s creditors (as a class) as a company approaches insolvency.

Where the directors fail to have regard to the company’s financial status and cause the company to enter into transactions in breach of their fiduciary duties with losses incurred, the directors may become personally liable for such losses.

Most restructurings in Hong Kong SAR take place by way of informal arrangements between parties concerned. In the absence of a voluntary restructuring agreement between the company and all of its creditors, a company may enter into a court-sanctioned scheme of arrangement with its members and/or creditors to preserve the company as a going concern (which requires a simple majority consent by head count, representing at least 75% in value of each class of members/creditors) or apply for provisional liquidation to preserve the company’s assets in the interval between the presentation of a winding-up petition and the making of a winding-up order.

However, the commencement of procedures to implement schemes of arrangement does not provide the benefit of a statutory moratorium on creditor actions, and there remains a possibility of a creditor taking enforcement action after a scheme of arrangement has been initiated.

Creditors may also initiate a compulsory liquidation by presenting a winding-up petition to the Hong Kong SAR courts.

Following the appointment of a liquidator by a court or the issuance of a winding-up order, there is an automatic stay on proceedings against the company other than by leave of the court.

Secured creditors, on the other hand, have priority over the rights of the liquidator and may take enforcement action outside an insolvency proceeding to the extent of their secured assets, which is usually done by the appointment of a receiver over the secured assets.

**8.3 Do the available forms of insolvency protection in your jurisdiction involve the appointment of either an officer of the court or a specifically court-appointed official to take control of the operator or lessee (an 'Insolvency Official') while in insolvency protection?**

Yes, see question 8.2 as to the appointment of a liquidator.

**8.4 Does the commencement of insolvency protection involving the appointment of an Insolvency Official in your jurisdiction have the effect of prohibiting the owner from taking the following actions to enforce the lease after commencement of such protection: (a) applying any security deposit held by the owner against any unpaid amounts due under the lease; (b) accepting payment of rent or other lease payments from the lessee, a guarantor or a shareholder; (c) giving notice of default under the lease; (d) obtaining a judgment or arbitral award for unpaid lease payments; (e) giving notice to terminate the leasing of the aircraft and/or engine; or (f) exercising rights to repossess the aircraft and/or engine?**

Generally, leased aircraft would be treated as assets outside the estate of the lessee.

Once a liquidator is appointed by a court pursuant to liquidation proceedings:

- notwithstanding those proceedings, lessors may be able to apply security deposits;
- subject to the risk of a "clawback" on the basis of being an unfair preference, lessors may be able to accept rent and other amounts payable;
- notwithstanding those proceedings, lessors may be able to validly give notice of default under a lease;
- unless the leave of the court is obtained, there is a stay on proceedings against the company; however, it is generally expected that the court may grant such leave in relation to aircraft lessors;
- notwithstanding those proceedings, lessors may give notice to terminate the leasing of an aircraft object; and
- notwithstanding those proceedings, lessors may exercise rights to repossess aircraft objects.

**8.5 Can the commencement of insolvency proceedings have retrospective effect in relation to any such actions taken before commencement? If so, for what period can there be a look back?**

Generally, look-back periods apply in relation to unfair preferences and undervalue transactions.

For unfair preferences, the look-back period is six months unless the parties are deemed to be "associated", in which case the look-back period is two years.

For undervalue transactions, the look-back period is five years.

A floating charge created within 12 months of a winding-up (or two years, if in favour of a "connected" person) could be invalid, subject to certain exceptions.

**8.6 Is there, either under law or as a matter of practice in your jurisdiction, a period of time within which the Insolvency Official will either 'adopt' the lease and pay rent and other lease payments as an expense of the insolvency or 'reject' the lease and permit the owner to enforce such rights as it may have under the lease? (a) If the lease is 'adopted', will the Insolvency Official also pay any unpaid lease payments due as at commencement of the insolvency protection? (b) If not or if the lease is 'rejected', would the owner's claim for any outstanding sums rank equally with other ordinary unsecured creditors of the lessee?**

No, there is not.

**8.7 Are there certain types of preferred creditors whose claims will rank above claims of the owner?**

Yes, see question 4.5.

**8.8 If the aircraft is in the possession of a person other than the operator or lessee at the commencement of insolvency protection of the operator or lessee, for example, an independent maintenance facility, will such person be entitled, under the laws of your jurisdiction, to assert a lien arising under law or contract over the aircraft in respect of amounts then due and unpaid to such person by the operator or lessee?**

Yes, see question 4.5.

## 9 Detention and Confiscation

**9.1 Other than insolvency laws (see section 8), are there any laws that may have the effect of defeating the owner's right in the aircraft – for example, government requisition? Do the laws of your jurisdiction provide for any compensation in such circumstances?**

Yes, the Basic Law (Hong Kong SAR's constitution, promulgated as an act of executive power of the People's Republic of China) provides for the protection of the right of legal persons to compensation for lawful deprivation of their property.

Such compensation shall correspond to the "real value" of the property concerned at the time and must be freely convertible and paid without undue delay.

While untested in the case of aircraft, the "real value" is likely to be similar to the English law test of "fair compensation" for losses fairly attributable to the taking of property, which could be the market value or replacement value of the aircraft.

**9.2 Are there any rights in relation to third parties to detain or sell the aircraft pursuant to illegal activities, tax or any other laws if the operator or lessee fails to pay when due? If so, can the aircraft be forfeited and sold without the owner being made aware?**

Yes, see question 4.5(b), which claims are generally given the rights of detention and power of sale, although owners generally need to be notified and proceeds remaining after satisfying the relevant debt will be given back to the owner.

Hong Kong SAR also provides for powers to freeze property, including aircraft, in the defence of national security and in the combat of terrorism and organised crime.



**Tejaswi Nimmagadda** is a Partner in the Banking & Finance practice at Tiang & Partners.

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John has broad-based experience advising on the tax structuring and other tax considerations associated with cross-border aviation finance and leasing transactions, debt capital market transactions including aircraft and aviation finance loan portfolio asset-backed securitisations and aircraft leasing, and financing international platform establishments.

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Tiang & Partners is an independent Hong Kong SAR law firm that works closely with the PwC Global Legal Network, the most geographically extensive legal services network in the world with over 3,700 legal professionals operating across nearly 100 territories, and with PwC.

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