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# Aviation: Finance & Leasing 2022

Hungary: Law & Practice  
Szabolcs Mestyán, John Fenemore,  
Viktória Tamás and Nóra Kertai  
Lakatos, Köves & Partners

# HUNGARY

## Law and Practice

**Contributed by:**

*Szabolcs Mestyán, John Fenemore, Viktória Tamás  
and Nóra Kertai*

**Lakatos, Köves & Partners see p.25**



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## 1. AIRCRAFT AND ENGINE PURCHASE AND SALE

### 1.1 Sales Agreements

#### 1.1.1 Taxes/Duties Payable Upon Execution of the Sales Agreement

The execution of an aircraft or engine sale agreement (including for the sale of an ownership interest in an entity) or bringing such agreement into the territory of Hungary does not incur transfer tax, stamp duty or similar charges.

However, the transfer of the title of the aircraft or the engine, or the sale of an ownership interest in an entity, may give rise to tax liabilities (see **1.2.5 Taxes/Duties Payable upon Execution of a Bill of Sale**).

#### 1.1.2 Enforceability Against Domestic Parties

In order to be used as evidence before the Hungarian courts, a sale agreement will need to be translated into Hungarian.

In practice, it is sufficient for most purposes if only the bill of sale is translated into Hungarian. To have full evidential power under Hungarian law, the bill of sale should be appropriately witnessed or notarised and, if executed outside Hungary, legalised. The Hungarian Aviation Authority, ie, the Minister of Technology and Industry acting as aviation authority (CAA) accepts this approach as valid for registration of a change in the ownership of an aircraft.

### 1.2 Transfer of Ownership

#### 1.2.1 Transferring Title

Where an aircraft is registered in Hungary, Hungarian law applies to the proprietary (in rem) rights in relation to the aircraft.

In order to transfer title to an aircraft or engine under Hungarian law, two things are required:

- an agreement to transfer title to the aircraft and/or engine; and
- transfer of possession regarding the aircraft and/or engine.

#### Agreement to Transfer Title

The agreement to transfer title to the aircraft (and any bill of sale) may be drafted to include all installed parts, such as an APU.

#### Transfer of Possession

The transfer of possession regarding the aircraft (by virtue of which the ownership is transferred, beyond doubt, to the buyer) is a condition to the sale to be recognised, and thus an executed contract of sale in itself is not sufficient for a valid transfer.

Transfer of possession in respect of an aircraft can be performed in a “symbolic” way.

Transfer of title and possession is often documented by:

- the delivery to the buyer of a bill of sale executed by the seller; and
- acceptance of the aircraft by the buyer by delivery of an acceptance certificate to the seller.

#### 1.2.2 Sales Governed by English or New York Law

Provided that the requirements set out in **1.2.1 Transferring Title** are met, transfer of title to an aircraft or engine physically delivered in Hungary should be recognised if the bill of sale is governed by English or New York law.

#### 1.2.3 Enforceability Against Domestic Parties

In order to be enforceable against a Hungarian party, the bill of sale should have full evidential power under Hungarian law (ie, it should be in writing, translated into Hungarian and appropri-

ately witnessed or notarised and, if executed outside Hungary, legalised).

#### 1.2.4 Registration, Filing and/or Consent From Government Entities

Any change in ownership of an aircraft registered in Hungary must be reported to, and should be registered by, the CAA. The Hungarian Aircraft Register is a “notation” register in terms of ownership over aircraft. Registration itself does not constitute a change in ownership, but merely records any change in the ownership of any aircraft notified to the CAA.

#### Formalities

See **1.1.2 Enforceability against Domestic Parties** for the requirements for a bill of sale.

#### Registration

Any change in ownership must be reported to the CAA within 15 days from the effective date of the underlying purchase bill of sale.

The fees payable to the CAA for registration of a title transfer in the Aircraft Register is HUF64,000 (approximately EUR160).

No separate government consents are required for a transfer of non-military aircraft.

#### 1.2.5 Taxes/Duties Payable Upon Execution of a Bill of Sale

The transfer of the title, due to the execution or delivery of the bill of sale or consummating the sale of the ownership in an entity that owns an aircraft or engine, can be subject to tax or duties as follows.

#### Transfer of the Title of an Aircraft or an Engine

Upon the transfer of the title of an aircraft or an engine, the seller may be subject to Hungarian corporate income tax (CIT), levied at a flat rate of 9% of the positive tax base (which is the pre-tax

profit of the seller adjusted by various items) if the seller is either a Hungarian tax resident entity or has a permanent establishment in Hungary.

The revenue from the sale can also be subject to local business tax (LBT) levied by the Hungarian municipalities at the maximum rate of 2% provided that the seller is regularly engaged in the sale of aircraft and engines as its business activity.

In general, the sale of an aircraft located in Hungary or in transit to Hungary is subject to VAT (the general rate is 27%). The sale of an engine is subject to Hungarian VAT if the engine is located in Hungary at the time of the sale. Where the aircraft or engine is to be transported abroad in connection with the sale, no Hungarian VAT should apply.

However, the aircraft or the engine, operated by an entity engaged in international air traffic, is exempt from VAT under the currently applicable VAT laws.

See **1.2.4 Registration, Filing and/or Consent from Government Entities** on payable fees.

#### Sale of an Ownership Interest in an Entity

Where the ownership interest in an entity is held by a Hungarian tax resident company or a Hungarian permanent establishment of a foreign entity, the profit of the sale of the ownership interest can be subject to corporate income tax (the rate is 9%).

## 2. AIRCRAFT AND ENGINE LEASING

### 2.1 Overview

#### 2.1.1 Non-permissible Leases

Most types of operating, wet or finance leases are permissible including separate engine leases.

Providing credit is a regulated activity in Hungary and appropriate advice should be sought in relation to any finance lease.

#### 2.1.2 Application of Foreign Laws

Hungarian law will generally recognise and enforce a lease if it is governed by a non-Hungarian law (see **3.4.3 Application of Foreign Laws**).

The fact that one of the parties to the lease is a non-Hungarian resident (eg, the lessor) should in itself satisfy the above requirement. Therefore, the parties to the lease may validly enter into contracts governed by and interpreted in accordance with any other (non-Hungarian) law.

As an exception, there are restrictions in relation to certain state-owned assets: if an aircraft is owned by the Hungarian state or an emanation thereof, Hungarian law may need to be applied.

#### 2.1.3 Restrictions Concerning Payments in US Dollars

There are no material restrictions imposed on domestic lessees making rent payments to foreign lessors in US dollars.

#### 2.1.4 Exchange Controls

There are no (central bank or other) exchange controls or prohibitions on remitting or repatriation of proceeds in force in Hungary. Therefore, no Hungarian regulatory approval or other consent is required for any (lease or other) payments

to be made by the lessee under a lease, in either Hungarian forints or a foreign currency.

#### 2.1.5 Taxes/Duties Payable for Physical Execution of a Lease

No transfer tax, stamp duty or similar charges shall be payable upon the physical execution of a lease. The fact that the contract is brought into Hungary does not in itself give rise to a tax liability.

#### 2.1.6 Licensing/Qualification of Lessors

The CAA does not currently require any licence from a lessor if the relevant lease agreement provisions in respect of the aircraft set out that the lessee is responsible for all obligations in relation to operation of the aircraft. The CAA has the discretion to alter its future requirements in this regard.

The provision of financial leases is a regulated financial service in Hungary. Providers of financial leases should seek appropriate advice on the regulatory framework for providing financial leases in Hungary.

## 2.2 Lease Terms

### 2.2.1 Mandatory Terms for Leases Governed by English or New York Law

The lease should adequately identify the parties, the leased assets and the consideration for the lease. The lease should also contain valid governing law and jurisdiction clauses.

English and New York law-governed leases customarily used in the market typically satisfy the mandatory terms required by Hungarian law without amendment.

## 2.2.2 Tax and Withholding Gross-Up Provisions

No withholding tax applies to lease fees or similar payments under the currently applicable Hungarian tax laws.

However, should the lessee be required at any time by law to make any deduction or withholding, provided that the laws implementing this payment obligation would not introduce a comprehensive new structure to such transactions, the gross-up provision of the lease should be recognised and enforceable in Hungary.

## 2.2.3 Parts Installed or Replaced After a Lease's Execution

Hungarian law distinguishes between “components” and “accessories”. As a matter of Hungarian law, components installed or replaced after the execution of the lease will become part of the aircraft or engine upon installation. Accessories will, in the absence of a contrary agreement between the parties, not automatically become the property of the lessor as a matter of Hungarian law. The parties are free to stipulate that the terms of the lease cover any replacement parts and accessories installed or replaced after the date of the lease.

## 2.2.4 Risk of Title Annexation

Whether an aircraft engine qualifies as a “component” or an “accessory” of an aircraft, and thus whether ownership rights to the airframe (as principal asset) automatically extend to the engines, has not been tested before the Hungarian court.

International and Hungarian market practice, however, treats engines as accessories, the ownership of which may be transferred separately from the airframe. A Hungarian court is likely to take account of this consistent market practice.

In order to mitigate against the risk, the underlying lease agreement should be carefully drafted to provide appropriate safeguards.

## 2.2.5 Recognition of the Concepts of Trust/Trustee

Hungary is not a party to the 1986 Hague Convention on Trusts and the concept of trust is not familiar in domestic law.

The trust owner should be afforded the rights as the legal owner of the aircraft under Hungarian law. It is, however, untested as to whether a trust and the specific characteristics and duties of an owner trustee would be recognised under Hungarian law.

## 2.3 Lease Registration

### 2.3.1 Notation of Owner's/Lessor's Interests on Aircraft Register

The CAA requires all interested parties and the relevant legal relationships between them to be noted on the Aircraft Register. The registration process is now carried out in an electronic way and all documents need to be sent to the CAA via the appropriate online platform. In particular, if the operator is not the legal owner of the aircraft, the owner and the legal grounds on which the operator operates the aircraft in Hungary should be specified. There is no separate register for leases and details of any lease will be noted in the course of the aircraft registration procedure (in the case of a new aircraft) or change of ownership.

### 2.3.2 Registration if the Owner Is Different From the Operator

An aircraft may be registered domestically in the name of the aircraft operator if the operator is not also the owner, or in the name of the owner if the owner is not also the operator.

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### 2.3.3 Aircraft/Engine-Specific Registers

A specific Aircraft Register exists in Hungary and is operated by the CAA.

The Aircraft Register is a notation register, ie, (except for mortgages perfected upon registration), it has only declarative effect regarding the rights registered therein. The recognition of such rights takes effect in accordance with the underlying transaction documents and the Aircraft Register only officially acknowledges the existence of such rights.

No specific register for engines exists.

### 2.3.4 Registration of Leases With the Domestic Aircraft Registry

The registration of leases is required, as the CAA needs to see all the interested parties and the legal relationships between them, and, in particular, the legal grounds on which the operator operates the aircraft in Hungary. As there is no separate register for leases, a lease will be noted in the course of the aircraft registration procedure in the case of a new aircraft.

In the event of a title transfer, the new lease agreement or transferred novated agreement (as applicable) will be registered simultaneously with the new owner.

### 2.3.5 Requirements for a Lease to Be Valid and Registrable

A lease must be submitted to the CAA in Hungarian, accompanied by an official Hungarian translation.

The lease agreement under which the aircraft is operated is registered in the course of the process of registering the aircraft with the Aircraft Register.

In practice, notwithstanding the above, in order to avoid the need for obtaining a costly official

translation of the lease agreement, the CAA accepts a short form, bilingual or officially translated, executed by the relevant parties and submitted to the CAA together with the copy of the lease in its original language. Such a document (usually called a joint declaration) must contain relevant references to be admitted.

### 2.3.6 Taxes/Duties Payable for Registering a Lease

The operation of the aircraft must be registered, which may be subject to one of the following fees:

- the registration of the aircraft exceeding a take-off mass of 5,700 kg (HUF166,000, approximately EUR415); or
- the registration of the new owner (HUF64,000, approximately EUR160).

However, no separate stamp duties are payable for the registration of the lease, since it is always registered concurrently with one of the above.

### 2.3.7 Registration of Aircraft in Alternative Countries

This is not applicable in Hungary.

### 2.3.8 Requirements for Documents Concerning Registration

The CAA requires the following documents to be presented for registration:

- relevant original documents certifying the ownership of the aircraft and the legal grounds of being registered as lessee in the case of the lessee;
- an original official document that certifies the existence of the lessor and the power of representation;
- specimen signatures of relevant signatories; and
- relevant powers of attorney.

All documents should be provided in Hungarian (or accompanied by an official Hungarian translation). Documents should be originals or notarised copies and be legalised in the country in which they were signed.

## 2.4 Lessor's Liabilities

### 2.4.1 Tax Requirements for a Foreign Lessor

Unless the lessor has a Hungarian permanent establishment through which the aircraft or the engine is leased, the lessor shall not be subject to taxes on income or revenue (see **1.2.5 Taxes/Duties Payable upon Execution of a Bill of Sale**). As, currently, there is no withholding tax on lease fees or similar payments, a lessor should not be taxed on the lease on this account.

### 2.4.2 Effects of Leasing on the Residence of a Foreign Lessor

A foreign lessor should not be deemed to be resident, domiciled, carrying on business or liable to pay tax in Hungary solely as a result of entering into a lease agreement.

### 2.4.3 Engine Maintenance and Operations

Where an operator, which is independent from the lessor, is registered separately, no specific liability is imposed on the lessor regarding the operation, maintenance and insurance of the aircraft.

EU laws apply in respect of these issues. Underlying Hungarian laws also refer to the general applicability of relevant EU laws.

### 2.4.4 Damage or Loss Caused by an Asset

See **2.4.3 Engine Maintenance and Operations**.

### 2.4.5 Attachment by Creditors

Creditors of the lessee do not have any rights with respect to the aircraft under Hungarian law.

Under Hungarian law, a lease is a contractual relationship which does not constitute any title of ownership for the lessee, meaning the lessee is not entitled to exercise any right of disposition or encumbrance with respect to the aircraft, other than those expressly mentioned in the lease.

### 2.4.6 Priority of Third Parties' Rights

The Aircraft Register is a public and authentic register. The CAA will add rights (including other leases) to the Aircraft Register only if they are in compliance with the terms of the previously submitted documents and in accordance with the rights that have already been registered.

Registration of the owner ensures its priority over all other rights (including other leases) granted over or in respect of the aircraft other than any security rights that the owner has granted to mortgagee(s) of the aircraft.

## 2.5 Insurance and Reinsurance

### 2.5.1 Requirement to Engage Domestic Insurance Companies

There are no requirements to engage domestic insurance companies.

### 2.5.2 Mandatory Insurance Coverage Requirements

Mandatory EU rules apply in respect of insurances to cover liability.

### 2.5.3 Placement of Insurances Outside of Jurisdiction

Reinsurance can be placed outside of Hungarian jurisdiction.

### 2.5.4 Enforceability of "Cut-Through" Clauses

Enforceability of "cut-through" clauses should be analysed based on the governing law of such documents. Cut-through clauses are generally enforced by Hungarian courts.



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## 2.5.5 Assignment of Insurance/Reinsurance

Assignments of insurance/reinsurance is permitted.

## 2.6 Lease Enforcement

### 2.6.1 Restrictions on Lessors' Abilities

If the lessee is subject to bankruptcy procedures, a moratorium will prevent creditors (including the lessor) from terminating their contracts as a result of non-payment. While the lessor may be entitled to terminate the lease on the basis of other termination events, there is a risk that such termination would be recharacterised by the bankruptcy trustee as termination for non-payment. The right to terminate on the grounds of non-payment is suspended for the length of the moratorium period under the bankruptcy proceedings, which can last as long as 365 days.

See **2.8.11 Owner's/Lessor's Consent.**

### 2.6.2 Lessor Taking Possession of the Aircraft

The lessor can take possession of the aircraft in either a contractual or judicial way under Hungarian law, depending on the level of co-operation of the lessee.

### Repossession with the Co-operation of the Lessee

If the lessee is co-operative, the most effective way to take back physical possession of the aircraft is for the relevant parties to sign a redelivery agreement and proceed with the application for deregistration from the Aircraft Register.

### Repossession if the Lessee is not Co-operative

If the lessee impedes the exercise of the lessor to repossess the aircraft, the lessor may request the courts to compel the lessee to redeliver the aircraft in accordance with the lease. A judgment of a foreign court having jurisdiction will be recognised and enforced in Hungary, subject

to the considerations set out in **2.6.6 Domestic Courts' Recognition of Foreign Judgments/Awards.**

Under Hungarian law, the lessor may also commence a lawsuit against the lessee and request the Hungarian courts to compel the lessee to redeliver the aircraft on the basis that it no longer has a legal right to possess it.

### 2.6.3 Specific Courts for Aviation Disputes

There are no specific courts for aviation disputes.

### 2.6.4 Summary Judgment or Other Relief

It is not possible for the Hungarian courts to issue a summary judgment and it is rare for them to grant injunctive relief.

### 2.6.5 Domestic Courts' Approach to Foreign Laws and Judgments

Domestic courts uphold a foreign law as the governing law of an aircraft lease, the submission to foreign jurisdiction and waiver of immunity in accordance with Hungarian law requirements.

### 2.6.6 Domestic Courts' Recognition of Foreign Judgments/Awards

A judgment taken by a foreign court in proceedings should be recognised and enforced by a Hungarian court, insofar as such a judgment:

- is not contrary to public policy in Hungary;
- complies with the requirements relating to the form and content of foreign judgments as set out in Hungarian law; and
- the jurisdiction of such a foreign court was stipulated by the parties in the manner prescribed by Hungarian conflicts law.

In the event that any party to the transaction documents seeks to enforce its rights before the courts of Hungary, all relevant documents will have to be translated into Hungarian.

See **2.6.12 Enforcement of Foreign Arbitral Decisions** regarding foreign arbitral decisions.

### 2.6.7 Judgments in Foreign Currencies

In terms of lease agreements governed by foreign law, in respect of disputes, the jurisdiction in connection with the lease determines whether a lessor can obtain a judgment in a foreign currency under an aircraft lease.

If any arbitral award or judgment is obtained in a foreign currency, it is possible that it could only be enforced in Hungary in Hungarian forints. In the event of any proceeding being brought in a Hungarian court in respect of a monetary obligation payable in a currency other than forints, a Hungarian court may pass a judgment as an order to pay the equivalent of Hungarian forints at the time of actual payment by the debtor.

### 2.6.8 Limitations on Lessors' Actions Following Termination

Bankruptcy and insolvency laws may limit the lessor's ability to recover default interest (or the compounding thereof) or to charge additional rent following termination of the lease for default. See **2.9.5 Other Effects of a Lessee's Insolvency** for a more detailed description of potential limitations.

### 2.6.9 Lessor's Requirement to Pay Taxes/Fees

There are no fees connected with the enforcement of the lease other than the statutory fees for court enforcement.

### 2.6.10 Mandatory Notice Periods

There are no specific compliance requirements regarding notice periods for the termination of an aircraft lease that relate to aircraft operated domestically or leased by a domestic operator.

### 2.6.11 Lessees' Entitlement to Claim Immunity

The Hungarian state and emanations of the Hungarian state are, in certain situations, entitled to claim sovereignty and immunity from suit before the civil courts. This can be waived on the terms set out in applicable Hungarian law.

Most commercial aircraft lessees in Hungary are private companies and are not entitled to claim sovereignty or other immunity from suit.

### 2.6.12 Enforcement of Foreign Arbitral Decisions

Hungary is a party to the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the "New York Convention") and a decision by an arbitral tribunal in another contracting state should be recognised and enforced by the domestic courts in Hungary pursuant to the New York Convention.

### 2.6.13 Other Relevant Issues

This is not applicable in Hungary.

## 2.7 Lease Assignment/Novation

### 2.7.1 Recognition of the Concepts of Contractual Assignment and Novation

Hungarian law recognises contractual assignment and novation. When the novation agreement is governed by a foreign law, care should be taken in drafting to ensure that the assignment and novation will have the intended effects under Hungarian law.

### 2.7.2 Assignment/Novation of Leases Under Foreign Laws

The laws of Hungary should recognise and enforce the Novation of Leases governed by a non-Hungarian law (see **3.4.3 Application of Foreign Laws**).

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Under Hungarian law:

- the consent of the lessee is required for a novation of a lease from a seller to the buyer;
- the lessee must be notified of an assignment and instructed to perform its obligations to the buyer; and
- the existing rights of the lessor can be transferred by assignment, but the obligations of the seller as lessor cannot be validly released and transferred to the buyer without the consent of the lessee as the beneficiary of performance of such obligations.

Any novation must identify, with sufficient precision, the needs of the parties and the leased asset(s) in question. The novation should contain valid governing law and jurisdiction clauses.

### 2.7.3 Enforceability of Lease Assignments/Novations

If any party to an aircraft and/or engine lease assignment and assumption/novation seeks to enforce its rights before the courts of Hungary, or if any dispute before courts or other authorities arises, all relevant documents will have to be officially translated into Hungarian and certified versions may be required. Where documents have been executed outside Hungary, they will often need to be notarised and legalised.

### 2.7.4 Filing/Registration of Lease Assignments/Novations

#### Engine Lease Assignments and Novations

Engine lease novations do not need to be filed or registered with the CAA in Hungary.

#### Aircraft Lease Assignments and Novations

Aircraft lease assignments or novations should be filed for registration with the CAA in Hungary.

All relevant documents will have to be officially translated into Hungarian and certified versions may be required. For practical purposes, the

parties often conclude a bilingual joint declaration evidencing the information required for filing purposes.

Hungarian government consents are not currently required as a prerequisite for execution or delivery of aircraft/engine assignments and novations.

Any change in ownership of the aircraft should be filed with the CAA within 15 days from the effective date of the underlying purchase bill of sale.

### 2.7.5 Taxes/Duties Payable on Assignment/Novation

In general, assignment/novation is treated under the tax laws as transfer of the sum of obligations and rights under an agreement. Depending on the actual circumstances of the transaction, such a transfer can result in taxable gain; however, provided that the party realising the gain is not a Hungarian tax resident entity or does not have permanent establishment in Hungary (see **1.2.5 Taxes/Duties Payable upon Execution of a Bill of Sale**), it shall not be subject to CIT or LBT in Hungary. The fact that the contract is brought into the territory of Hungary does not result in a tax liability.

The transfer of a contractual position is generally subject to VAT (as it consists of transfer of rights and obligations). However, if both parties are foreign entities which do not have fixed establishments in Hungary, the transfer would likely be outside the scope of the Hungarian VAT Act.

No stamp duty would be levied on an assignment or assumption agreement.

### 2.7.6 Recognition of Transfer of Ownership Interests

From a Hungarian law perspective, the transfer of beneficial or other ownership interest in a

legal entity shall be governed by the law of the jurisdiction in which the relevant entity is incorporated, or trust has been created. For most practical purposes, Hungarian law is unlikely to look beyond the legal ownership of the aircraft by the foreign entity or trustee.

## 2.8 Aircraft Deregistration and Export

### 2.8.1 Deregistering Aircraft in This Jurisdiction

The owner is entitled to deregister an aircraft from the aircraft registry in Hungary.

#### Steps to Achieve Deregistration

Deregistration is typically performed by local counsel on the basis of a power of attorney from the owner.

For the purpose of deregistration, an application must be filed with the CAA in bilingual form along with evidence of the aircraft being registered on the Aircraft Register.

#### Estimated Time Period

The statutory time period for the CAA to complete deregistration is 55 days.

#### Costs

A fee of HUF19,000 (approximately EUR50) is payable to the CAA in connection with the deregistration.

### 2.8.2 Lessee's/Operator's Consent

As a general rule, an aircraft may not be deregistered if there is any due and payable third party claim in respect of the aircraft (eg, a mortgage is registered), unless the relevant third party gives consent to deregistration.

The owner of the aircraft is able to deregister the aircraft without the permission or involvement of the lessee. However, the process tends to be

more straightforward and quicker with the active co-operation of the lessee.

### 2.8.3 Required Documentation

The following documents are required to deregister the aircraft:

- an application for deregistration of the aircraft;
- an application for deregistration of any mortgage over the aircraft (together with a notarised mortgage release declaration);
- evidence that the aircraft will be registered elsewhere; and
- evidence that the person making the application has the necessary capacity and authority to do so.

### 2.8.4 Duration of Deregistration Process

The CAA has 55 days to complete the process from the date of filing a request for deregistration.

### 2.8.5 Aviation Authority's Assurances

The CAA does not provide advance assurances as to the prompt deregistration of the aircraft. In practice, however, it usually aims to comply with the reasonable requests of the parties.

### 2.8.6 Costs, Fees and Taxes Relating to Deregistration

Costs associated with the deregistration involve the fee of HUF19,000 (approximately EUR50), payable to the CAA.

### 2.8.7 Deregistration Power of Attorney

Deregistration powers of attorney are customarily provided, but their effectiveness on enforcement in Hungary remains untested. In particular, Hungarian law does not treat powers of attorney as being irrevocable. There is a risk that underlying transaction documents or supporting corporate documentation may be required for enforcement purposes, if the lessee is uncooperative.

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It is advisable that the deregistration power of attorney be prepared in bilingual form, notarised and duly certified.

## 2.8.8 Documents Required to Enforce Deregistration Power of Attorney

The enforcement practice of deregistration powers of attorney is untested in Hungary, therefore, underlying transaction documents or supporting corporate documentation may be required for enforcement purposes, if the lessee is not co-operative, and enforcing rights to repossession shall require further action before the courts.

## 2.8.9 Choice of Laws Governing Deregistration Power of Attorney

It is advisable to stipulate English law as the governing law of the deregistration power of attorney, as this is generally the chosen governing law of the other main transaction documents. Further, a power of attorney granted under Hungarian law will be revocable notwithstanding that it is expressed to be irrevocable.

## 2.8.10 Revocation of a Deregistration Power of Attorney

As a matter of Hungarian law, the grantor of a power of attorney may revoke the power of attorney even where it is stated to be irrevocable. As deregistration powers of attorney are customarily governed by non-Hungarian law, the effect of such a revocation should be considered in light of the law governing the deregistration power of attorney.

## 2.8.11 Owner's/Lessor's Consent

No export licence is required for re-exporting (ie, transferring out of Hungary) the aircraft in general. Import restrictions may apply if the aircraft is exported to a jurisdiction outside the EU.

For the repossession and export of the aircraft by a third party (eg, the security trustee), the consent of the owner is required.

## 2.8.12 Aircraft Export Permits/Licences

No aircraft export permits or licences are required for export from Hungary.

## 2.8.13 Costs, Fees and Taxes Concerning Export of Aircraft

Upon the exportation of an aircraft to outside the EU, customs fees may be payable depending on the jurisdiction the aircraft is being exported to.

## 2.8.14 Practical Issues Related to Deregistration of Aircraft

According to the practice of the CAA, any mortgage over the aircraft should be removed before a deregistration of the aircraft can take place. Therefore, the release of the relevant mortgage over an aircraft with the involvement of the mortgagee should be arranged for prior to requesting the deregistration of the aircraft.

## 2.9 Insolvency Proceedings

### 2.9.1 Overview of Relevant Laws and Statutory Regimes Governing Restructurings, Reorganisations, Insolvencies and Liquidations

The primary laws and regulations relevant to Hungarian lessees are as follows:

- Act XLIX of 1991 on Bankruptcy Proceedings and Liquidation Proceedings (the “Insolvency Act”), regulating the two main insolvency regimes, ie, bankruptcy proceedings and liquidation proceedings;
- EU Insolvency Regulation No 2015/848 (the “EU Insolvency Regulation”), addressing conflicts of law in relation to insolvency proceedings (directly applicable);
- Act XCIX of 2021 (the “State of Emergency Act”), providing an emergency and temporary pre-insolvency regime; and
- Act LXIV on Restructuring and the Amendment of Certain Laws for the Purposes of Harmonisation (the “Restructuring Law”), due

to enter into force from 1 July 2022, implementing key sections of Directive 2019/1023 on preventive restructuring frameworks on discharge of debt, disqualifications and measures.

### 2.9.2 Overview of Relevant Types of Voluntary and Involuntary Restructurings, Reorganisations, Insolvencies and Receivership

Relevant types of procedures under Hungarian jurisdiction are the following.

#### Liquidation Proceedings

Liquidation proceedings aim to satisfy creditors of a debtor company in the order determined by law by liquidating the assets of the debtor company and distributing them among the debtor company's creditors, following which the debtor company is dissolved. All debts of the debtor become payable and due at the start of the liquidation proceedings.

The procedure may be started by the debtor company or the creditors only on the basis of inability to pay.

Courts are responsible for the appointment of the liquidator.

Specific transactions listed under the Insolvency Act may be challenged by any creditors of the debtor or the liquidator within a one-year time period starting from the court order regarding commencement of the proceedings.

#### Bankruptcy Proceedings

The purpose of bankruptcy proceedings is to help distressed companies continue their business operations by reaching a composition agreement with creditors of the distressed company under a formalised procedure, also involving the court and a bankruptcy trustee. The bankruptcy proceedings provide a morato-

rium period to the debtor, during which creditors' rights are restricted.

The procedure may be started by the company. Bankruptcy proceedings are rarely successful and the proceedings often become liquidation proceedings.

#### Reorganisation Proceedings

Since no provisions which support formal restructuring proceedings are currently in effect in Hungary, a new pre-insolvency procedure was introduced in April 2021 to mitigate debtors' distressed positions during COVID-19. Similar to bankruptcy proceedings, its purpose is to help restructure debts of the distressed company by implementing a restructuring plan. The procedure may be started by the distressed company.

### 2.9.3 Co-ordination, Recognition or Relief in Connection With Overseas Proceedings

Relevant regulations enabling international co-operation in terms of overseas proceedings are, among others, the 1933 Rome Convention, the 1948 Geneva Convention, the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention), the 1965 Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters and the 2005 Hague Convention on Choice of Court Agreements.

Although, by implementation of EU regulations, co-operation and recognition is more comprehensively regulated on an EU level in Hungary, there is no well-developed practice or guidance regarding regulation of co-operation and recognition of cross-border overseas insolvency proceedings.

Act XXVIII of 2017 on Private International Law (the "Private International Law Act") regulates private relationships containing a foreign law element in Hungary, determining the conditions

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under which overseas foreign court decisions may be recognised and also the rules of determining Hungarian jurisdiction.

Currently, the UNCITRAL Model Law on Cross-Border Insolvency has not been adopted by Hungary, but this has been encouraged by several Hungarian experts of the field.

#### **2.9.4 Effect of Lessee's Insolvency on a Deregistration Power of Attorney**

Upon the bankruptcy or insolvency of the lessee, any power of attorney should, as a matter of Hungarian law, remain effective as the aircraft is not owned, but only used by the lessee.

Therefore, the deregistration and exportation of the aircraft will not deprive the lessee of its own assets, and thus would not be in conflict with the interest of its creditors.

In practice, the insolvency officer hindering the repossession of the aircraft by declaring such power of attorney withdrawn cannot be excluded.

#### **2.9.5 Other Effects of a Lessee's Insolvency Effects of Liquidation Proceedings**

Within a one-year period starting from publication of commencement of liquidation proceedings, any creditor of the insolvent company or the liquidator has the right to challenge transactions (which is to be made within a certain timeframe) concluded by such an insolvent company which is of a certain type.

The liquidator may seek to recover, within the time periods specified by law, any service rendered by the insolvent company within 60 days of the date preceding the date when a competent court received a petition for the initiation of liquidation proceedings or at any time thereafter, if the provision of such service resulted in a pref-

erence to any one creditor and was not made in its normal course of business.

The liquidator is also entitled to terminate the contracts previously concluded by the insolvent company with immediate effect, in which case the other contracting party has 40 days from the date of such termination to enforce its claim arising as a result of the termination by reporting the claim to the liquidator.

#### **Effects of Bankruptcy Proceedings**

During the period of a moratorium, the creditor of a bankrupt company is not entitled to rescind or terminate a contract with the bankrupt company on the basis that the bankrupt company does not pay its debts thereunder (other termination events may still be valid).

Consequently, the creditors may not terminate a lease on the basis of non-payment during the period of the moratorium even if there is an event of default.

During the moratorium period in a bankruptcy proceeding, the debtor cannot, without the approval of the appointed bankruptcy trustee, make any payments based on any claims already existing at the start of the bankruptcy proceeding and the creditor cannot enforce any claims regarding such payments.

#### **Effects of Reorganisation Proceedings**

Suppliers and service providers in a long-term relationship with a company under reorganisation may not terminate their contracts (with certain exceptions) with the company because of the reorganisation proceeding, provided that the company's director confirms to the supplier or service provider in writing that the company will be able to perform its due payment obligations.

### **Potential Delays of Repossessing the Aircraft in the Case of Termination of the Lease**

If an aircraft is not owned and only used by the lessee, it should not be in conflict with the interest of its creditors, as the aircraft is not a part of the insolvency estate.

In practice, it cannot be ignored that an insolvency officer may attempt to hinder the repossession of the aircraft.

During bankruptcy proceedings, the feasibility of termination is limited.

### **Subordination of Lease Payments to Creditors' Claims**

It is possible that subordination of the lease payments to other creditors' payments may be suggested under the restructuring plan in the case of bankruptcy or reorganisation procedures.

In the case of liquidation proceedings, a statutory waterfall of creditors' claims applies. Under such a waterfall, lease payments (if unsecured) would rank among "other claims", behind, eg, secured creditors and employees.

### **2.9.6 Risks for a Lender if a Borrower, Guarantor or Security Provider Becomes Insolvent**

The insolvency laws applicable to borrowers, guarantors or security providers should be considered in order to identify risks for lenders.

Where Hungarian insolvency proceedings are applicable, insolvency proceedings may be started by any creditor of the debtor company or by the debtor company itself. Such proceedings are highly regulated and hardening periods apply, where certain transactions may be challenged by either the liquidator or another creditor. The liquidator also has the right to terminate contracts previously concluded with immediate effect.

Tight deadlines apply to all parties, including creditors. All proceedings may include a moratorium period, during which creditors' rights are restricted.

### **2.9.7 Imposition of Moratoria in Connection With Insolvency Proceedings**

Moratorium provisions apply in terms of the following.

#### **Bankruptcy Proceedings**

A moratorium is the period between the date of publication of request for the initiation of bankruptcy proceedings until a rejection or commencement of the process.

A 180-day moratorium starts on the date of publication of the commencement of the bankruptcy proceedings and lasts until the end of such proceedings. Overall, this period may last up to 365 days.

#### **Liquidation Proceedings**

If a company is declared "strategically important" by the Hungarian government, a 90-day extraordinary moratorium may apply in the case of liquidation proceedings as well.

#### **Reorganisation Proceedings**

A moratorium applies from the day after the court receives the reorganisation expert's preliminary approval of the reorganisation plan, for a maximum period of 150 days.

### **2.9.8 Liquidation of Domestic Lessees**

See **2.9.2 Overview of Relevant Types of Voluntary and Involuntary Restructurings, Reorganisations, Insolvencies and Receivership** for methods applicable in Hungary.

In addition, please note that if a Hungarian company is solvent, it may still decide on its winding-up (solvent liquidation) procedure.



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Simultaneously with the decision on the commencement of the winding-up procedure, a liquidator should be nominated who shall fulfil the obligations of the executive officers. If the company cannot settle all of its debts, the winding-up procedure turns into liquidation proceedings.

## 2.9.9 Ipso Facto Defaults

Ipso facto defaults (specifically in the case of reorganisation) may not be recognised in certain cases under Hungarian law. See **2.9.5 Other Effects of a Lessee's Insolvency**.

## 2.9.10 Impact of Domestic Lessees' Winding-Up

See **2.9.5 Other Effects of a Lessee's Insolvency** for how domestic lessees' winding-up would impact the aircraft and lease rentals.

Applicable laws provide an exception from the stay on enforcement for financial collateral: if the early termination amount is secured by monies and/or securities subject to a Hungarian law security deposit created prior to the initiation of the insolvency proceedings, the beneficiaries may satisfy their claims directly from the deposits within three months of the commencement of the insolvency proceedings. Upon expiry of the deadline, security deposits will also be enforced by the liquidator.

Any maintenance reserves would probably be similarly classified as lease rentals under the waterfall of creditors' claims. See **2.9.5 Other Effects of a Lessee's Insolvency**.

## 2.10 Cape Town Convention and Others

### 2.10.1 Conventions in Force

The Convention on International Interests in Mobile Equipment and the related Protocol on Matters Specific to Aircraft Equipment are not in force in Hungary.

### 2.10.2 Declarations Made Concerning Conventions

This is not applicable in Hungary.

### 2.10.3 Application of Article XIII of the Protocol on Matters Specific to Aircraft Equipment

This is not applicable in Hungary.

### 2.10.4 Enforcement of Conventions

This is not applicable in Hungary.

### 2.10.5 Other Conventions

Hungary has ratified the 1948 Geneva Convention and the 1933 Rome Convention.

## 3. AIRCRAFT DEBT FINANCE

### 3.1 Structuring

#### 3.1.1 Restrictions on Lending and Borrowing

Lending (which also includes the arrangement, management of loans, the collection of debt and taking security interests) is a licensable activity under Hungarian law. Accordingly, financiers need to ensure that they possess adequate permissions, ie, they:

- are licensed in Hungary;
- have a licensed branch in Hungary; or
- are seated in a member state of the EU or the OECD and possess a lending licence which could be passported into Hungary.

There are no specific restrictions on borrowers in connection with the utilisation of loan proceeds other than rules applicable to the utilisation of monies generally.

### 3.1.2 Effect of Exchange Controls or Government Consents

There are no exchange controls or prohibitions on remitting or repatriation of proceeds in force in Hungary. Accordingly, no Hungarian regulatory approval or other consent is required for any payments to be made under a loan, guarantee or security document, in either Hungarian forints or a foreign currency.

### 3.1.3 Granting of Security to Foreign Lenders

Subject to the licensing requirements referred to in **3.1.1 Restrictions on Lending and Borrowing**, there are no restrictions applicable to borrowers in connection with the granting of security to foreign lenders.

### 3.1.4 Downstream, Upstream and Cross-Stream Guarantees

Under Hungarian law, downstream, upstream and cross-stream guarantees are all permitted in most circumstances, with certain restrictions applying to, among others, some insurance companies and funds.

There is no general requirement for corporate benefit, although certain restrictions may apply, eg, if the security provider does not receive compensation for the provision of security, the secured creditors or the liquidator of the security provider may challenge the security agreement.

### 3.1.5 Lenders' Share in Security Over Domestic SPVs

It is advisable in aviation finance transactions for a lender to take share security over a domestic SPV that has ownership over the aircraft, and Hungarian law recognises share pledge agreements. Although notarisation is not a perfection requirement, it is market practice to incorporate share pledge agreements into a notarial deed to ensure direct enforceability.

### 3.1.6 Negative Pledges

Negative pledge provisions are recognised under Hungarian law towards the security provider. Negative pledge provisions will not bind a subsequent owner of the asset acquired in breach of the negative pledge.

### 3.1.7 Intercreditor Arrangements

No material restriction or requirement is imposed on intercreditor arrangements under Hungarian law.

### 3.1.8 Syndicated Loans

The concept of agency and the role of an agent under a syndicated loan is recognised under Hungarian law.

### 3.1.9 Debt Subordination

The concept of debt subordination is generally permitted and recognised under Hungarian law. Debt can be subordinated by means of a contractual subordination.

### 3.1.10 Transfer/Assignment of Debts Under Foreign Laws

The transfer or assignment of all or part of an outstanding debt under an English or New York law-governed loan is permissible and recognised in Hungary. Certain provisions of the Rome I Regulation and the Private International Law Act may need to be considered.

### 3.1.11 Usury/Interest Limitation Laws

According to the Hungarian Civil Code, a usurious contract is null and void. A contract stipulating excessive interest may be qualified as a contract with undue consideration which is voidable.

## 3.2 Security

### 3.2.1 Typical Forms of Security and Recourse

In aviation finance transactions, typical forms of security and recourse are the following:

- an aircraft mortgage;
- a security assignment (over lease rent payments, insurance proceeds, requisition and total loss proceeds);
- a share pledge;
- an account pledge;
- a floating charge;
- a parent company guarantee;
- airframe and engine warranties arrangements;
- a security deposit; and
- a deregistration power of attorney.

### 3.2.2 Types of Security Not Available

There is no type of security that cannot be taken over an aircraft or related collateral.

### 3.2.3 Trust/Trustee Concepts

Hungary is not party to the Hague Convention on Trusts 1986 and therefore trusts cannot be established under Hungarian law. Whether or not a security trust would be effective in protecting the rights of its beneficiaries is untested. It is customary for the security trust to be enhanced by a parallel debt structure or more commonly the nomination by the secured creditors of the security trustee as a security holder for the purposes of Hungarian law.

It has become market practice in Hungary in recent years to use the security holder concept (often in addition to appointing a non-Hungarian law security trustee). Pursuant to the Hungarian Civil Code, a “security holder” (*zálogjogosulti bizományos*) may be appointed by the secured creditors under the security agreement or under a separate document. The security holder would be entitled to act under Hungarian law in its own name for the benefit of the secured creditor(s) regardless of whether the status of the secured creditors as beneficiaries of the trust is recognised by Hungarian law.

### 3.2.4 Assignment of Rights to an Aircraft by a Borrower to a Security Trustee

Hungarian law recognises the concept of assignment by way of security (including in relation to insurances) and there is no restriction on the form of such assignment.

### 3.2.5 Assignment of Rights and Benefits Without Attendant Obligations

Under Hungarian law, the assignment of rights and benefits without attendant obligations is permitted and there are no specific requirements in respect of such assignment.

### 3.2.6 Choice of Foreign Law

A security assignment or guarantee can be governed by English or New York law. Since aircraft lease agreements are generally governed by English or New York law, it is advisable that the security assignment is governed by the same law, since further to Rome I Regulation, the governing law of the security assignment shall govern all important enforcement-related matters in respect of agreement.

### 3.2.7 Formalities/Mandatory Terms to Create and Perfect Security Assignments

To the extent that the security assignment is governed by Hungarian law, the assignor should:

- notify third-party debtors of the assignment; or
- provide the assignee with a document evidencing the assignment vis-à-vis third parties.

Prior to notification, third-party debtors should perform their obligations in favour of the assignor.

There are no specific formality requirements in respect of assignment agreement. However, Hungarian authorities may require the translation of foreign language documents into Hungar-

ian to be admissible in evidence in such legal proceedings.

### 3.2.8 Domestic Law Security Instruments

Hungary is not party to the Cape Town Convention. Accordingly, it is advisable to create a Hungarian law mortgage over aircraft registered in Hungary, as the recognition of foreign law security interests in court enforcement proceedings is untested.

As a perfection requirement, the Hungarian law mortgage needs to be registered with the Hungarian aircraft registry and the Security Interest Register. Although notarisation is not a formal requirement, it is market practice to incorporate mortgage agreements into notarial deeds in order to ensure that they are directly enforceable.

### 3.2.9 Domestic Registration of Security Assignments Governed by Foreign Laws

From a Hungarian law perspective, it is possible but not required to register foreign law-governed security assignments, eg, with the Aircraft Register. However, such registration is not a perfection requirement under Hungarian law. The registration of security assignments in Hungary is rarely applied in aircraft financing transactions.

Separately, where an entity incorporated under Hungarian law (eg, the operator of the aircraft) is involved in any security assignment as assignor, the security assignment can and is recommended to be registered with the Hungarian Security Interest Register (regardless of its governing law). Such registration is not mandatory and is not a perfection requirement under Hungarian law; however, it ensures creditors' priority position under proceedings.

### 3.2.10 Transfer of Security Interests Over Aircraft/Engines

Under Hungarian law, in most cases, security interests over aircraft or engines can be transferred together with the relevant secured obligations and to the same secured party.

### 3.2.11 Effect of Changes in the Identity of Secured Parties

The effects of any change in the identity of the secured parties on a Hungarian law security assignment depend on the specific terms of the relevant security agreement.

### 3.2.12 “Parallel Debt” Structures

See **3.2.3 Trust/Trustee Concepts**.

### 3.2.13 Effect of Security Assignments on Residence of Secured Parties

A security trustee or other secured creditor should not be deemed to be resident, domiciled, carrying on business or liable to pay tax in Hungary as a result of being party to a security assignment. The secured party does not have to pay any taxes on the basis of it being party to the contract.

If, due to the enforcement of a security assignment, the title to the aircraft or the engine would be transferred, the transfer could be subject to Hungarian VAT (27%).

Where any asset is received by a secured creditor due to the foreclosure, the gain can be subject to Hungarian corporate income tax (9%) and local business tax (the maximum rate is 2%) provided that the creditor is a Hungarian tax resident entity or has a Hungarian permanent establishment to which the security assignment is related.

### 3.2.14 Perfection of Domestic Law Mortgages

Under Hungarian law, an aircraft mortgage is perfected upon its registration with the Hungar-

ian aircraft registry. A mortgage over the engines should be registered with the online Security Interest Register.

### 3.2.15 Differences Between Security Over Aircraft and Spare Engines

Under Hungarian law, regardless of the on-wing or spare nature of the engines, it is unclear whether the engines and replacement engines qualify as a “component” or an “accessory” of the aircraft and, as such, whether or not a mortgage covering the airframe (as principal asset) automatically extends to the engines. Accordingly, as an additional perfection requirement, the aircraft mortgage should also be registered with the Security Interest Register to ensure that it is duly perfected in respect of the engines.

### 3.2.16 Form and Perfection of Security Over Bank Accounts

Typically, an account pledge would be used to take security over a bank account. The account pledge would be perfected upon its registration with the Security Interest Register.

Other typical forms of account security include:

- a bank account security deposit on the basis of a tripartite security deposit agreement between the secured creditor, the security provider and the account bank; and
- a collection right on the basis of an authorisation letter granted by the owner of the account for the benefit of the secured creditor.

## 3.3 Liens

### 3.3.1 Third-Party Liens

Under Hungarian law, liens, similar possessory rights or rights of detention in favour of third parties cannot be exercised (with the theoretical exception of the rights exercised under the 1933 Rome Convention on the Unification of Certain

Rules relating to the Precautionary Arrest of Aircraft) if the person owing such taxes or dues is not the owner of the aircraft. Accordingly, no third-party creditors of the lessee or operator will be entitled to exercise any such right in respect of the aircraft.

The non-payment of Eurocontrol charges may delay or prevent taking-off since, if so requested by Eurocontrol, take-off shall be denied by the Hungarian air navigation service provider (“Hungarocontrol”). Although no express detention right is stipulated by domestic law, in practice, Hungarocontrol (on a contractual basis, on the basis of its terms of business/operation or on the basis of applicable international law) may require the owner to pay outstanding charges before allowing the aircraft to take off.

Under Hungarian law, it is feasible to create a mortgage over more than one aircraft.

### 3.3.2 Timeframe to Discharge a Lien or Mortgage

The CAA has 55 days from the date of submission to deregister the mortgage from the Aircraft Register from the date of filing such a request.

With regard to the deregistration of the mortgage over the engines of an aircraft from the security interest register, it is within the competence of a Hungarian public notary and the process takes approximately one to two business days.

### 3.3.3 Register of Mortgages and Charges

The mortgage over an aircraft and engines is required to be registered with the aircraft registry and the Security Interest Register. Such registration is a perfection requirement under Hungarian law. Following the registration, the interests of the mortgagee will be noted on the certificate of registration of the aircraft and recorded among the security interests encumbering the assets

of the security provider in the Security Interest Register.

### 3.3.4 Statutory Rights of Detention or Non-consensual Preferential Liens

The Hungarian government, other designated authorities or other governmental bodies may, in the case of extreme circumstances, effect (temporary) requisition through ordering a special regime. Such circumstances include:

- a national crisis;
- a state of emergency;
- a state of preventative protection;
- unexpected attacks; and
- a state of danger.

Under the special regime, the exercise of fundamental rights may be suspended or restricted and therefore, among others, the expropriation or nationalisation of the aircraft, or the application of any other measure with the same effect, becomes available for the Hungarian government. Compensation has to be paid, however, to the affected person or entity (with some exceptions).

According to the Hungarian Criminal Code, an aircraft may be forfeited if used in connection with any criminal activity. However, if the owner itself was not aware of the relevant offence (unless the forfeiture is prescribed by an international treaty), no forfeiture can be exercised.

### 3.3.5 Verification of an Aircraft's Freedom From Encumbrances

Security interests over the aircraft are indicated on the certificate of registration and in the security interest register. A potential purchaser of the aircraft could obtain the certificate of registration directly from the Hungarian CAA and do online searches in respect of the security interest register to verify that the aircraft is free of encumbrances.

## 3.4 Enforcement

### 3.4.1 Differences Between Enforcing Security Assignments, Loans and Guarantees

A security assignment over rights and claims is typically enforced by the secured party collecting any claims and in the case of other rights by realising them by private sale or auction. A loan or guarantee constituting claims may be enforced by filing a lawsuit against the debtor and seeking court title for payment or performance.

### 3.4.2 Security Trustees' Enforcement of Their Rights

Under Hungarian law, a notice and acknowledgement of a security assignment is not necessary to establish a valid security assignment. However, the lessee may continue to discharge its obligations under the lease by payment to the lessor, unless notice of assignment or other appropriate proof of assignment is given to the lessee by the relevant assignor.

### 3.4.3 Application of Foreign Laws

The Hungarian Conflicts Law and the Rome I Regulation confer on the parties to an international contractual transaction almost total autonomy in choosing the law which is to govern such a contract, provided that the presence of a "foreign" (ie, non-Hungarian) element in the transaction can be proven.

The parties to the relevant finance documents may validly enter into contracts governed by a non-Hungarian law, provided that the mandatory provisions of the Hungarian Conflicts Law or other Hungarian laws (if applicable at all) do not provide otherwise. Accordingly, the choice of, eg, English or New York law for a finance or security document is generally a valid choice of law and submission to jurisdiction.

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### 3.4.4 Recognition and Enforcement of Foreign Judgments and Arbitral Awards

See **2.6.6 Domestic Courts' Recognition of Foreign Judgments/Awards** and **2.6.12 Enforcement of Foreign Arbitral Decisions**.

### 3.4.5 Secured Parties' Right to Take Possession of Aircraft

In practice, it is not feasible under Hungarian law to take possession of the aircraft and enforce the security agreement or aircraft mortgage without the consent of the lessee or operator. Accordingly, a court order may have to be sought to obtain access to the aircraft or the engines.

However, in aircraft financing transactions, it is market practice that both the owner and the operator of the aircraft grant a deregistration power of attorney to the relevant secured creditor that contains prior consent to the repossession and deregistration of the aircraft, noting that the use of such deregistration power of attorney is untested in Hungary.

### 3.4.6 Domestic Courts Competent to Decide on Enforcement Actions

For questions of enforcement (outside insolvency proceedings) the competent court will have to be determined pursuant to general rules, eg, linking the place of venue to the debtor's seat, the place of performance or the location of the asset.

### 3.4.7 Summary Judgments or Other Relief

In Hungary, it is not possible for a court to issue a summary judgment.

### 3.4.8 Judgments in Foreign Currencies

A judgment can be obtained in any currency. However, if a judgment is obtained in a currency other than in forints, it is possible that it could only be enforced in Hungary in forints. In the event of any proceeding being brought in a Hungarian court in respect of a monetary obliga-

tion expressed to be payable in a currency other than Hungarian forints, a Hungarian court may give judgment as an order to pay the Hungarian forints equivalent of such currency at the time of actual payment of the debtor.

### 3.4.9 Taxes/Fees Payable

The stamp duty payable for the registration in the Aircraft Register of any third-party right (eg, mortgage) is HUF69,000 (approximately EUR175).

### 3.4.10 Other Relevant Issues

Enforcement of a Hungarian aircraft mortgage can be accelerated by ensuring that the mortgage is incorporated into a notarial deed, as in such a case, direct enforceability of the mortgage will be available and there will be no need to obtain a court judgment first.

## 4. OTHER ISSUES OF NOTE

### 4.1 Issues Relevant to Domestic Purchase, Sale, Lease or Debt Finance of Aircraft

#### Emergency Legislation

As a response to the COVID-19 pandemic, a state of emergency was declared in Hungary, in effect between 11 March 2020 and 18 June 2020. The state of emergency was reinstated due to acceleration of COVID-19, with effect from 4 November 2020, appointing the Hungarian Prime Minister as responsible for preventing/remedying the negative consequences of the state of emergency caused by the ongoing COVID-19 pandemic.

The Hungarian government terminated the state of emergency with effect from 1 June 2022; however, as a response to the ongoing war in Ukraine, it declared a state of emergency again with effect from 25 May 2022, appointing the Hungarian Prime Minister as responsible for pre-

venting/remedying the negative consequences of the state of emergency caused by the ongoing war in the neighbouring country.

The government is required to terminate the state of emergency when the circumstances giving rise to its declaration no longer apply. According to the Hungarian Constitution, during a state of emergency, the government is entitled to suspend the application of certain laws or derogate from the provisions of certain laws by adopting executive decrees, and may take other extraordinary measures.

#### **FDI Rules**

Hungary has enacted temporary FDI rules that restrict foreign investments in entities registered in Hungary that are engaging in certain activities specified by the government. According to the relevant Act LVIII of 2020 (the “FDI Act”), notification requirements apply to foreign investors that intend to acquire shares in such entities incorporated in Hungary. In certain exceptional cases, purely EU-domiciled entities also fall into this category.

Transactions which result in the acquisition/encumbrance of certain assets of a Hungarian target falling under the scope of the FDI Act are subject to notification requirements and the approval of the Minister of Technology and Industry. To the extent that such approval is denied, the transaction is considered void.

#### **4.2 Current Legislative Proposals**

As of 15 June 2021, there is no proposed Hungarian legislation specifically addressing transactions concerning a purchase, sale, lease or debt financing of an aircraft registered in Hungary or involving a domestic party.

As of 1 July 2022, air passenger transport activity is subject to contribution payment obligation in Hungary. The economic operator providing ground handling is obliged to pay the contribution.

The base of the contribution shall be the number of domestic passengers, excluding transit passengers, of an aircraft operated by the ground handling operator.

The amount of the contribution per passenger (which is HUF3,900 (approximately EUR10) or HUF9,750 (approximately EUR25)) depends on the final destination of the passenger.



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to create and establish innovative structures on the Hungarian market and has substantial experience in the full spectrum of aviation matters, including aircraft finance, securitisation of aircraft lease receivables, aviation regulatory, financial and operating leases, sale and lease-back transactions, pooling of engines, security interests, insurance and reinsurance liability, litigation and dispute resolution with strong trial capability and repossession of aircraft, including tax issues.

## AUTHORS



**Szabolcs Mestyán** is a partner at Lakatos, Köves & Partners and heads the banking and finance, capital markets and aviation teams. Szabolcs is regarded as a cutting-edge

expert in his areas of practice. He has a market-leading practice in aviation leasing and financing in the C&SEE region. He completed his law degree at ELTE University in 2005, completed his LLM at the University of London in 2015 and received a Diploma in aviation leasing and finance at the Law Society in Ireland in 2019.



**John Fenemore** is a partner in the banking and finance group at Lakatos, Köves & Partners. John is an English and Hungarian-qualified banking lawyer with extensive

experience of cross-border transactions throughout the region. John is a member of the Hungarian Bar Association, the Law Societies of England and Ireland, the IBA and INSOL. Before rejoining LKT in 2016, John spent 14 years in the banking group of Clifford Chance in London and Bucharest. John was awarded a Diploma in aviation leasing and finance by the Law Society in Ireland in 2019.

*Contributed by: Szabolcs Mestyán, John Fenemore, Viktória Tamás and Nóra Kertai, Lakatos, Köves & Partners*



**Viktória Tamás** graduated from the Faculty of Law of ELTE University in Budapest, where she was a member of Bibó Professional College. She started her career in Lakatos,

Köves & Partners' banking and finance practice group, specialising in aviation law and asset financing. Besides Hungarian, she speaks English and French fluently.



**Nóra Kertai** is a trainee lawyer in Lakatos, Köves & Partners' aviation and banking and finance practice groups. She graduated from the University of Szeged and spent a year of

study at the University of London. Besides her native Hungarian, she speaks fluent English, Italian and French.

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## Lakatos, Köves & Partners

1075 Budapest  
Madách Imre u. 14  
Hungary

Tel: +36 1 429 1300  
Fax: +36 1 429 1390  
Email: [info@lakatoskoves.hu](mailto:info@lakatoskoves.hu)  
Web: [www.lakatoskoves.hu](http://www.lakatoskoves.hu)



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