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Contributing editor
Mark Bisset



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GETTING THE
DEAL THROUGH

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San Marino

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Overview

1 To which major air law treaties is your state a party? Is your state a party to the New York Convention of 1958?

The Republic of San Marino has ratified the following air law treaties:

- the Rome Convention of 1933 for the unification of certain rules relating to the precautionary arrest of aircraft;
- the Chicago Convention of 1944 on international civil aviation. The Chicago Convention was ratified by the Decree dated 26 January 1988 and came into effect on 16 May 1988;
- The New York Convention of 1958 on the recognition and enforcement of foreign arbitral awards; and
- the 2001 Convention on International interests in Mobile Equipment, together with the Protocol to the Convention on International Interest in Mobile Equipment on Matters Specific to Aircraft Equipment. The Cape Town Convention and the Protocol were ratified by the Decree 29 July 2014 No. 121 and are effective in San Marino as from 1 January 2015.

2 What is the principal domestic legislation applicable to aviation finance and leasing?

The principal domestic legislation applicable to aviation finance and leasing are the Law No. 125 of 29 July 2014 and the Delegate Decree No. 153 of 13 October 2015. These laws reflect, inter alia, the contents of the Cape Town Convention.

3 Are there any restrictions on choice-of-law clauses in contracts to the transfer of interests in or creation of security over aircraft? If parties are not free to specify the applicable law, is the law of the place where the aircraft is located or where it is registered the relevant applicable law?

The parties are free to choose either the laws of San Marino or the laws of a foreign country to govern contracts relating to transfer of interests in, or creation of security over an aircraft. In the event of the application of foreign laws, those would be upheld by the courts of San Marino to the extent that they do not contravene any national public policy rules.

Title transfer

4 How is title in an aircraft transferred?

A bill of sale is an effective method to transfer title of an aircraft registered at the San Marino Aircraft Registry.

5 What are the formalities for creating an enforceable transfer document for an aircraft?

The bill of sale must be in writing and executed by a duly appointed representative of the seller. It must also identify the aircraft, the purchase price and the buyer.

No execution formalities are required (eg, notarisation, legalisation, apostille).

Registration of aircraft ownership and lease interests

6 Identify and describe the aircraft registry.

The San Marino Aircraft Registry is an owner registry that can be used for aircraft intended to perform private, corporate, aerial work and commercial air transport operations.

To this day San Marino has entered into ICAO 83-bis arrangements with the following countries: Lebanon, Nigeria and Saudi Arabia.

There is no specific registry for engines in San Marino.

7 Over, aircraft be registered with the aircraft registry? Are there limitations on who can be recorded as owner? Can an ownership interest be registered with any other registry? Can owners', operators' and lessees' interests in aircraft engines be registered?

Ownership and lease interests can be registered in the San Marino Aircraft Registry. Currently this is the sole national registry where interests over aircraft can be registered.

Generally speaking, there are no limitations on who can be recorded as aircraft owner (including national or foreign individuals, companies and trusts).

If the owner of an aircraft engine is different from the owner of the relevant host aircraft, the title of the engine can be registered in the San Marino Aircraft Registry on the basis of a suitable proof of ownership (eg, bill of sale).

8 Summarise the process to register an ownership interest.

In order to register an aircraft at the San Marino Aircraft Registry, the following documents must be submitted to the Civil Aviation Authority (CAA):

- a certificate of incorporation (or an equivalent document) along with a list of company directors (for aircraft owned by foreign companies); or a copy of the passport (for aircraft owned by foreign individuals);
- Form SM 27 - application for domiciled representative. This application must be signed by the beneficial owner, company director or authorised representative holding a power of attorney. This form is only required in case a client is not willing to incorporate a company or a trust in San Marino;
- Form SM 01 - application for registration of aircraft. This application must be signed by the beneficial owner, company director or authorised representative holding a power of attorney. On receipt of this form, the CAA issues an ICAO Mode-S Code for T7 registration;
- Form SM 02 - application for the issuance of a certificate of airworthiness;
- evidence of payment of the registration fee (€500);
- proof of ownership: copy of a bill of sale or declaration of property in respect of the aircraft; and
- Deregistration Certificate or a Statement of Non-Registration: for used aircraft, a deregistration certificate is required from the aviation authority of the state where the aircraft was previously registered; of the aircraft is new and still unregistered, then a statement of non-registration is required from the aviation authority of the state where the aircraft manufacturer is based.

A transfer of title or ownership interest in an aircraft can be registered in the San Marino Aircraft Registry by providing the CAA with a duly executed bill of sale in favour of the buyer or new owner, along with the required ancillary documentation (including the certificate of incorporation of the buyer or new owner and Form SM 113 - change of aircraft details).

Usually speaking the timing to complete the registration of an aircraft - as well as of a transfer of title - is one business day from the submission of all the required documents.

The title in an engine is assumed to vest in the owner of the relevant host aircraft unless suitable evidence of a different ownership (eg, bill of sale) is given to the CAA.

9 What is the effect of registration of an ownership interest as to proof of title and third parties?

The San Marino Aircraft Registry is an owner registry. Therefore the aircraft title can be exercised and opposed against any third parties upon completion of the registration process.

Any prospective challenge on alleged defective title should be filed before the competent courts, either in San Marino or abroad (as the case may be), and the relevant final decision would be upheld by the San Marino CAA.

10 Summarise the process to register a lease interest.

In order to register a lease interest in the San Marino Aircraft Registry the following must be submitted to the CAA:

- the relevant lease contract duly executed by both parties. No execution formalities are required (eg, notarisation, legalisation, apostille);
- Form SM-121 by the lessor; and
- evidence of payment of the registration fees (€500).

The timing to complete the registration of a lease interest is usually one business day from the submission of all the required documents.

11 What is the regime for certification of registered aviation interests in your jurisdiction?

Registered aviation interests are certified by the issuance of the aircraft certificate of registration, where the following information are reflected: nationality and registration marks; manufacturer and manufacturer's designation of aircraft; manufacturer's serial number; name and address of the aircraft registered owner; notes on the registration of leases or security interests (if any), or both.

12 Is an owner or mortgagee required to consent to any deregistration or export of the aircraft? Must the aviation authority give notice? Can the operator block any proposed deregistration or export by an owner or mortgagee?

Yes, an owner and a mortgagee (as the case may be) must consent to any deregistration or export of an aircraft before the CAA proceed with the relevant process. Currently in the case of an owner it is the same that carries out the deregistration procedure, while in the case of a mortgagee the deregistration cannot be completed until the release of the mortgage.

The operator has no title to block any proposed deregistration or export by an owner or mortgagee.

In order to deregister an aircraft from the San Marino Aircraft Registry the following must be submitted to the CAA:

- Form SM-11 for deregistration must be filled in with the CAA;
- if the application is not signed by the beneficial owner or by the director (in case of a company), a power of attorney or evidence of authority detailing the following is required: (i) the authority to de-register the aircraft on behalf of the registered owner; (ii) the aircraft registration marks; (iii) manufacturer's designation and serial number of the aircraft;
- evidence of payment of the de-registration fees (€250); and
- the original certificate of registration and any other certificates or approvals issued by the CAA.

The timing to complete the deregistration of an aircraft is usually one business day from the submission of all the required documents.

13 What are the principal characteristics of deregistration and export powers of attorney?

Deregistration and export powers of attorney, which are duly executed by the aircraft owner, enable the relevant attorney to freely deregister and export the aircraft from San Marino. Powers of attorney can be irrevocable and grantable to more than one attorney.

Since San Marino is a contracting state of the Cape Town Convention, it is common practice that the registered aircraft owner grants an irrevocable deregistration and export request authorisation (IDERA) to the interested party (eg, the lender in the context of a credit facility).

14 If the Cape Town Convention is in effect in the jurisdiction, describe any notable features of the irrevocable deregistration and export request authorisation (IDERA) process.

As previously mentioned, the Republic of San Marino is a contracting state to the Cape Town Convention and it has made all of the 'qualifying declarations' under Annex 1 to the OECD 2011 Aircraft Sector Understanding, in order to create a more competitive legal framework. In particular:

- pursuant to article 54(2) of the Cape Town Convention, San Marino has opted to allow default remedies without requiring the leave of the court (ie, 'self-help' remedies are permitted);
- pursuant to article X of the Aircraft Protocol, San Marino has opted to allow availability of relief pending final determination (ie, 'speedy relief') and has chosen a period of 10 working days for the remedies under article 13, 1(a)-(c) and 30 working days for the remedies under article 13, 1(d)-(e);
- pursuant to article XIII of the Aircraft Protocol, San Marino has opted in to the mechanism providing for an irrevocable deregistration and export request (IDERA);
- pursuant to article VIII of the Aircraft Protocol the parties are free to choose the contractual law governing the agreement constituting the international interest; and
- pursuant to article XI of the Aircraft Protocol, San Marino has opted for 'Alternative A' insolvency procedure with a waiting period of 60 days in order to provide a more definitive insolvency framework for creditors (Alternative A provided by article XI of the Protocol).

Furthermore, San Marino has made a declaration under article XXX(1) of the Protocol providing for the recording and enforcement of the IDERA. Therefore, along with the other remedies available to a creditor under the Cape Town Convention, an authorised party may, upon request made pursuant to the IDERA:

- procure the deregistration and export of an aircraft; and
- procure the export of any related engines.

The Authority will accept and record an IDERA if such document: (i) is submitted in writing to the Authority substantially in the form annexed to the Cape Town Convention; (ii) identifies an aircraft registered in the Registry; and (iii) it is signed by the aircraft owner.

Once the IDERA is recorded, an authorised party (or its certified designee) shall be the sole person authorised to deliver a request and exercise the remedies specified in article IX(1) of the Protocol pursuant to such IDERA.

Security

15 What is the typical form of a security document over the aircraft and what must it contain?

The typical form of a security document over a San Marino registered aircraft is the mortgage. The mortgage agreement must at least indicate:

- the parties (mortgagor and mortgagee);
- details of the encumbered aircraft (manufacturer, designation and manufacturer's serial number);
- if applicable, indication of the separate parts or appurtenances of the aircraft (including engines) to which the mortgage extends;
- a clear commitment by the mortgagor to grant a security in favour of the mortgagee based on a certain contractual relationship (eg, credit facility), provided that the economic terms of the deal must not be recorded; and
- the maximum secured amount under the mortgage.

See question 17 for the security registration requirements.

16 What are the documentary formalities for creation of an enforceable security over an aircraft? What are the documentary costs?

The security document must be in writing and shall be written in Italian or English language. No documentary formalities are required (eg, notarisation, legalisation or apostille).

The CAA registration fee is equal to €500.

17 Must the security document be filed with the aviation authority or any other registry as a condition to its effective creation or perfection against the debtor and third parties? Summarise the process to register a mortgage interest.

In order to perfect the security in San Marino the CAA requires the filing of:

- a copy of the security document;
- a specific CAA form (SM-81) to reflect the main terms of the security document; and
- payment of the security registration fee, equal to €500,00.

Generally speaking the registration process with the CAA takes one business day. Registrations of securities do not require renewals.

18 How is registration of a security interest certified?

The registration of a security interest is certified by an annotation on the certificate of registration of the encumbered aircraft, which is usually made by the CAA within one business day from the filing of the required documentation.

The annotation reflects the date of registration, the details of the encumbered aircraft, the rank of priority, the main details of the security interests and the IDERA (if any).

19 What is the effect of registration as to third parties?

The effect of recording a mortgage is to create a right in rem over the encumbered aircraft and to make it enforceable against any third parties.

The priority of security interests is established according to the order of registration in the San Marino Aircraft Registry.

20 How is security over aircraft and leases typically structured? What are the consequences of changes to the security or its beneficiaries?

The concept of the trust is well recognised in San Marino and commonly used to structure security transactions, either by way of trusts governed by the San Marino laws or by foreign laws. A trust can be registered as owner or lessor of an aircraft and also act on behalf of a group of beneficiaries (eg, lenders).

As mentioned above, the typical securities over aircraft are mortgages, which can be registered both in the San Marino Aircraft Registry and in the International Registry under the Cape Town Convention. Mortgages create a right in rem over the encumbered aircraft.

In the event of loan transfers implemented through classic novations, new security registration must be effected in order to record the revised transaction structure and the new secured party (eg, a new lender) in the San Marino Aircraft Registry.

21 What form does security over spare engines typically take and how does it operate?

Please note that there is no specific registry for aircraft engines in San Marino. Therefore, to create a security over an engine (either installed or not installed) the same must be clearly indicated under the aircraft mortgage that is filed with the CAA to create a security over the host or related aircraft (see question 15 for the creation of mortgages over San Marino registered aircraft).

Enforcement measures

22 Outline the basic repossession procedures following lease termination. How may the lessee lawfully impede the owner's rights to exercise default remedies?

Self-help remedies are available in San Marino upon the occurrence of an event of default under the relevant lease contract. Therefore the lessor shall have the power to terminate the contract and to repossess the aircraft (and other aircraft objects) without the leave of the Court. The lessor shall be also entitled to exercise the default remedies set out under the Cape Town Convention. In the exercise of such remedies the CAA provides full cooperation to the lessor in terms of aircraft deregistration from, or change of registration in, the San Marino Aircraft Registry.

In case of lack of cooperation or obstacles by the lessee or third parties, the lessor may in any case request the intervention of the competent court to authorise the implementation of any default remedies. In that respect foreign court decisions are recognised and enforced in San Marino to the extent that they are not in conflict with the national public policy rules.

23 Outline the basic measures to enforce a security interest. How may the owner lawfully impede the mortgagee's right to enforce?

Self-help remedies are available also with respect to the enforcement of securities over the aircraft. Upon the occurrence of an event of default under a mortgage deed and to the extent that the mortgagor has so consented in writing thereunder, the mortgagee shall be entitled to adopt – inter alia, and without the intervention of the competent court – the following remedies:

- to take possession of the mortgaged aircraft even if it is held by third parties;
- to sell the mortgaged aircraft, provided that the sale shall not take place without the written consent of the mortgagees ranking higher in priority (if any);
- in the event of the owner's inaction, to carry out all acts and operations required for the maintenance of the status of airworthiness and validity of the aircraft registration;
- to lease the aircraft in order to set the relevant profits against the claims secured by the mortgage;
- to collect from the mortgagor the incomes generated from the use of the aircraft; and
- upon submission of an IDERA, to request the CAA to deregister the mortgaged aircraft. The mortgagee shall also be entitled to request the CAA to issue permits to fly and the airworthiness export certificate, as well as to initiate, in place of the mortgagor, customs export procedures with the competent San Marino offices.

The mortgagor shall be required to cooperate with the mortgagee in the exercise of such remedies, including the delivery of all documents, manuals and technical records of the aircraft. In case of lack of cooperation or obstacles by the mortgagor or third parties, the mortgagee may in any case request the intervention of the competent court to authorise the implementation of such remedies. In that respect foreign court decisions are recognised and enforced in San Marino to the extent that they are not in conflict with the national public policy rules.

24 Which liens and rights will have priority over aircraft ownership or an aircraft security interest? If an aircraft can be taken, seized or detained, is any form of compensation available to an owner or mortgagee?

All privileges referred to in article 17 of the San Marino mortgage law have priority in respect of a security over an asset (including assets of an holder of an international interest), either pending an insolvency procedure or otherwise.

Such privileges rank in the following order:

- creditors of legal expenses or fees;
- creditors of funeral expenses;
- salaries of employees for the past six months of service;
- creditors for alimonies in the past six months prior to death or default of the debtor;
- outstanding taxes and public duties relating to the last year (after one year the privilege is forfeited); and
- professionals for services rendered during the past 12 months.

It is established that no disposition of the Cape Town Convention shall prejudice the right of: (i) the Republic of San Marino, or any of its authorities; (ii) any intergovernmental organisation which the Republic of San Marino is a member of; and (iii) other private providers of public services in the Republic of San Marino; to attach or retain an asset for the recovery of payments due to any such authority, organisation or provider that is directly connected to services rendered in respect of that asset.

Taxes and payment restrictions

25 What taxes may apply to aviation-related lease payments, loan repayments and transfers of aircraft? How may tax liability be lawfully minimised?

To the extent that the involved parties are not resident for tax purposes in San Marino, there are no form of local taxes regarding the aviation-related lease payments, loan repayments and transfers of aircraft.

Update and trends

In addition to the ICAO 83-bis arrangements already in place (with Lebanon, Nigeria and Saudi Arabia), the Republic of San Marino is currently negotiating with several countries from different continents the entry into new bilateral arrangements for the delegation of aircraft regulatory oversight responsibilities between the state of registry and the state of operator. This broad commitment of the San Marino authorities is intended to increase the number of T-7 registered aircraft and allow reliable commercial operators throughout the world to benefit of the opportunities and efficiency of the San Marino Aircraft Registry.

26 Are there any restrictions on international payments and exchange controls in effect in your jurisdiction?

Under the San Marino laws there are no exchange controls or restrictions on international payments.

27 Are there any limitations on the amount of default interest that can be charged on lease or loan payments?

The mandatory limitation to default interest is fixed by the National Central Bank and it is available on the website: www.bcs.m.sm/site/home/servizi-per-il-pubblico/elenco-dei-servizi/tassi-soglia.html. The percentage is adjusted on a quarterly basis.

28 Are there any costs to bring the aircraft into the jurisdiction or take it out of the jurisdiction? Does the liability attach to the owner or mortgagee?

To the extent that the involved parties are not resident for tax purposes in San Marino, the importation and exportation of San Marino registered aircraft is exempt from VAT and other duties.

Insurance and reinsurance**29 Summarise any captive insurance regime in your jurisdiction as applicable to aviation.**

Pursuant to CAP No. 08 on the aircraft airworthiness, the CAA requires the submission of an aircraft insurance certificate showing the aircraft registration marks and stating the following in accordance with Regulation (EC) No. 785/2004:

- insured entity;
- policy period;
- aircraft, model and serial number;

- aircraft registration mark; and
- aviation legal liability insurance covering the insured's third-party legal liability, bodily injury and property damage, passenger (including passenger's baggage) legal liability, cargo, mail premises, hangar keepers and products legal liability.

30 Are cut-through clauses under the insurance and reinsurance documentation legally effective?

Yes, cut-through clauses are applicable to reinsurance documentation where there is a local insurance company that is not able to underwrite or retain all or any of the actual aviation exposure. In such event the purpose of the cut-through clause is for the reinsurers (usually internationally recognised aviation insurers) to settle hull losses directly with the insured party without involvement of the local insurance company.

31 Are assignments of reinsurance (by domestic or captive insurers) legally effective? Are assignments of reinsurance typically provided on aviation leasing and finance transactions?

Yes, such arrangements are effective under the laws of San Marino and are usually executed in connection with aircraft leasing and finance transactions.

32 Can an owner, lessor or financier be liable for the operation of the aircraft or the activities of the operator?

From a general point of view an owner, lessor or financier is not liable for the operation of the aircraft, to the extent that it is not involved in any activity regarding such operation.

33 Does the jurisdiction adopt a regime of strict liability for owners, lessors, financiers or others with no operational interest in the aircraft?

From a general point of view there is no regime of strict liability for owners, lessors and financiers in San Marino, always provided the privileges arising by operation of law which are as set out in question 24 on priority liens and rights.

34 Are there minimum requirements for the amount of third-party liability cover that must be in place?

See question 29 on captive insurances.

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