

# International Comparative Legal Guides



Practical cross-border insights into aviation law

## Aviation Law 2022

10<sup>th</sup> Edition

Contributing Editors:

**Alan D. Meneghetti**  
RadcliffesLeBrasseur LLP

**Philip Perrotta**  
K&L Gates LLP

WORLDWIDE AIRPORTS  
LAWYERS ASSOCIATION 

**ICLG.com**

## Industry Chapter

1

**WALA: Bringing Together Airport Lawyers as We Emerge From the COVID-19 Pandemic**  
Elizabeth Albergoni, Worldwide Airports Lawyers Association (WALA)

## Expert Analysis Chapters

4

**The Use of Personal Data in the Commercial Aviation Industry**  
Alan D. Meneghetti, RadcliffesLeBrasseur LLP

9

**Investing in Mid-Life Aviation Assets – The Final Edition**  
Philip Perrotta, K&L Gates LLP

15

**Post-Pandemic Aviation News: Airlines Recover and Passenger Rights**  
Marc S. Moller, Justin T. Green & Erin R. Applebaum, Kreindler & Kreindler LLP

19

**Regulations on Drone Flights in Japan**  
Hiromi Hayashi & Koji Toshima, Mori Hamada & Matsumoto

24

**EU Law: Passenger Rights and Protections**  
Anna Anatolitou & Rachel Richards, Ince

## Q&A Chapters

32

**Austria**  
Benn-Ibler Rechtsanwaelte GmbH:  
Mag. Irena Gogl-Hassanin, LL.M.

39

**Belgium**  
Goemans, De Scheemaecker & De Wit:  
Birgitta Van Itterbeek & Annick Sleeckx

51

**British Virgin Islands**  
Maples Group: Michael Gagie, Rebecca Lee &  
Ruairi Bourke

59

**Cayman Islands**  
Maples Group: Sherice Arman & Joe Jackson

67

**Chile**  
PRAT & CIA. Abogados: Francisco Prat &  
Valentina Ravera

76

**Cyprus**  
Phoebus, Christos Clerides & Associates LLC:  
Professor Christos Clerides

86

**Dominican Republic**  
Raful Sicard Polanco & Fernández: María Esther  
Fernández Álvarez de Pou, María Fernanda Pou  
Fernández & María Gabriela Pou Fernández

96

**France**  
Clyde & Co: Grégory Laville de la Plaigne &  
Ionna Poirer

106

**Germany**  
Urwantschky Dangel Borst PartmbB: Rainer Amann &  
Claudia Hess

115

**India**  
AZB & Partners: Anand Shah, Rishiraj Baruah &  
Abhilasha Agarwal

127

**Indonesia**  
Bahar: Wahyuni Bahar, Fairuz Rista Ismah &  
Endraswari E. Sayekti

135

**Ireland**  
Maples Group: Mary O'Neill & Mary Dunne

149

**Israel**  
Gross, Orad, Schlimoff & Co. (GOS): Omer Shalev

160

**Italy**  
Vitale & Partners: Professor Salvatore Vitale

177

**Japan**  
Mori Hamada & Matsumoto: Hiromi Hayashi

188

**Malaysia**  
SARANJIT SINGH, Advocates & Solicitors:  
Saranjit Singh & Dhiya Damia Shukri

199

**Mexico**  
Canales, Dávila, De la Paz, Enríquez, Sáenz, Leal, S.C.:  
Bernardo Canales Fausti & Aldo Álvarez Martínez

206

**Nigeria**  
ÆLEX: L. Fubara Anga, SAN & Rafiq Anammah

213

**Panama**  
Galindo, Arias & López: Cristina Lewis, Daniel E. Sessa &  
Claudia Juárez

## Q&A Chapters Continued

219

### Portugal

PLMJ Advogados, SP, RL: Saul Fonseca & Diogo Perestrelo

228

### Spain

Augusta Abogados: Sergi Giménez Binder

237

### Switzerland

VISCHER AG: Urs Haegi & Dr. Thomas Weibel

247

### Thailand

SRPP Limited: Passawan Navanithikul & Viparvee Chaemchaeng

254

### United Kingdom

RadcliffesLeBrasseur LLP: Alan D. Meneghetti  
K&L Gates LLP: Philip Perrotta

270

### USA

Fox Rothschild LLP: Diane Westwood Wilson,  
Paul N. Bowles III & Jean M. Cunningham

# Cayman Islands

Maples Group



Sherice Arman



Joe Jackson

## 1 General

**1.1 Please list and briefly describe the principal legislation and regulatory bodies which apply to and/or regulate aviation in your jurisdiction.**

The Cayman Islands is a British Overseas Territory. The Secretary of State of the United Kingdom Government takes lead responsibility for ensuring that the Cayman Islands (and other overseas territories) comply with the obligations of the Chicago Convention. The Civil Aviation Authority of the United Kingdom has established a subsidiary company, Air Safety Support International (“ASSI”), to oversee, support and promote aviation safety regulation in its overseas territories, including the Cayman Islands. ASSI is responsible for supporting the UK’s overseas territories in all aspects of aviation safety regulation.

### Regulatory Body: The Civil Aviation Authority of the Cayman Islands

The Civil Aviation Authority of the Cayman Islands (the “CAACI”) is the body responsible in the Cayman Islands for ensuring that civil aviation in the Cayman Islands conforms to the standards of the International Civil Aviation Organization (“ICAO”).

The CAACI’s functions include the following:

- (a) the regulatory oversight of the aviation industry throughout the Cayman Islands;
- (b) the certification and licensing of aerodromes, heliports and air transportation services;
- (c) registration of aircraft, including maintenance of the Cayman Islands Aircraft Register (the “**Aircraft Register**”) and the issuance, renewal, cancellation, revocation and variation of certificates of airworthiness of aircraft;
- (d) the validation of crew and maintenance personnel licences;
- (e) the safety oversight of Cayman Islands Air Operator Certificate (“**AOC**”) holders;
- (f) the issuance of air transport permits and operating licences for foreign-registered scheduled and non-scheduled carriers operating in the Cayman Islands;
- (g) the regulation of charges levied by airport operators;
- (h) acting as liaison between the Government of the Cayman Islands and the UK Department for Transport; and
- (i) regulation of air traffic.

It should be noted that the Aircraft Register is primarily for aircraft undertaking private use operations, and aircraft registered on the Aircraft Register must not be used for commercial operations (i.e. for hire or reward) unless an AOC is obtained or the aircraft falls within an Article 83 *bis* agreement.

### Legislation

The principal legislation which applies to and regulates

aviation in the Cayman Islands is the Air Navigation (Overseas Territories) Order 2013 (“**ANOTO**”).

Other notable legislation pertaining to the aviation industry is as follows:

- Air Navigation (Fees) Regulations, 2010.
- Air Navigation (Overseas Territories) (Amendment) (No. 2) Order, 2014.
- Air Navigation (Overseas Territories) (Amendment) (No. 2) Order, 2021.
- Air Navigation (Overseas Territories) (Amendment) Order, 2014.
- Air Navigation (Overseas Territories) (Amendment) Order, 2015.
- Air Navigation (Overseas Territories) (Amendment) Order, 2021.
- Air Transport (Licensing of Air Services) Regulations, 1977.
- Aircraft (Landing and Parking Fees) Regulations, 2020.
- Airport Regulations (1995 Revision).
- Airports Authority Act (2005 Revision).
- Civil Aviation Act 1949 (Overseas Territories) Order 1969 SI No. 592 of 1969.
- Civil Aviation Act 1982 (Overseas Territories) (No. 2) Order 2001 SI No. 3367 of 2001.
- Civil Aviation Act 1982 (Overseas Territories) Order 2001 SI No. 1452 of 2001.
- Civil Aviation Act 1982 (Overseas Territories) Order 2021 SI No. 477 of 2021.
- Civil Aviation Authority Act (2015 Revision).
- Civil Aviation (Investigation of Air Accidents and Incidents) Regulations, 2019.
- Mortgaging of Aircraft Order, 1972.
- Mortgaging of Aircraft Regulations, 2015.

The Overseas Territories Aviation Requirements (“**OTARs**”) provide guidance to the aviation industry in the Cayman Islands (and other UK overseas territories) on the effective implementation of the standards and recommended practices under the Chicago Convention and the ANOTO.

**1.2 What are the steps which air carriers need to take in order to obtain an operating licence?**

Application for an AOC must be made to the CAACI as the competent authority in the Cayman Islands with responsibility for issuing operator’s licences.

The operation of aircraft on a foreign AOC is permitted; however, the grant of air transport permits and operating licences by the CAACI will be required for foreign registered scheduled and non-scheduled carriers to operate in the Cayman Islands. There are minimum requirements that must be met for non-scheduled/charter air transport operations to the

jurisdiction as well as scheduled/charter air transport operations to the jurisdiction together with payment of the applicable fees. In addition, companies that supply more than one-off *ad hoc* charters or who provide air ambulance services can be issued with either a blanket permit or verification letter.

**1.3 What are the principal pieces of legislation in your jurisdiction which govern air safety, and who administers air safety?**

The principal legislation in the Cayman Islands that governs air safety is the ANOTO. The CAACI is responsible for administering air safety in the jurisdiction under the provisions of the ANOTO and the Civil Aviation Authority Act (2015 Revision).

**1.4 Is air safety regulated separately for commercial, cargo and private carriers?**

The CAACI regulates all aspects of safety in the aviation industry.

**1.5 Are air charters regulated separately for commercial, cargo and private carriers?**

Air charters are not regulated separately for commercial, cargo and private charters.

**1.6 As regards international air carriers operating in your jurisdiction, are there any particular limitations to be aware of, in particular when compared with 'domestic' or local operators? By way of example only, restrictions and taxes which apply to international but not domestic carriers.**

The Airports Authority Act (2005 Revision) provides that one of the functions of the Airports Authority is to ensure airports in the Cayman Islands conform to the standards and recommended practices of ICAO.

Pursuant to Article 135 of the ANOTO, all foreign-registered aircraft operating into the Cayman Islands for valuable consideration are required to be licensed to do so by the CAACI.

**1.7 Are airports state or privately owned?**

Airports in the Cayman Islands are state-owned.

**1.8 Do the airports impose requirements on carriers flying to and from the airports in your jurisdiction?**

Airports in the Cayman Islands prescribe and regulate conditions of use, as well as charges. Users of airports are subject to charges, which are regulated by the Cayman Islands Airports Authority under the Airport Regulations (1995 Revision), the Airports (Security Tax) Regulations (2016 Revision), the Airports Authority (Charges) Regulations, 2008, the Airports Authority Act (2005 Revision) and the Aircraft (Landing and Parking Fees) Regulations, 2020.

**1.9 What legislative and/or regulatory regime applies to air accidents? For example, are there any particular rules, regulations, systems and procedures in place which need to be adhered to?**

There are extensive laws, regulations and guidelines that regulate

the reporting and investigation of accidents and incidents that are applicable in the Cayman Islands. These include the following:

- a) ICAO Annex 13 Aircraft Accident and Incident Investigation.
- b) The Civil Aviation Act 1982 (Overseas Territories) Order 2001 – Article 75.
- c) Memorandum of Understanding between the Governor and the UKAAIB 2006.
- d) Civil Aviation (Investigation of Air Accidents and Incidents) Regulations, 2019.
- e) The ANOTO – Articles 5, 7, 174, 175.
- f) OTAR Part 13 Occurrence Reporting (OTAR 13 Issue 4 dated April 2012).
- g) Overseas Territories Aviation Circular (“OTAC”) 13-1 Occurrence Reporting (OTAC 31-1 Issue 4 dated July 2015).

The Manual of Aircraft Accident and Incident Reporting – Part I and Part II issued by the CAACI sets out in detail a summary of the legislation, regulations and guidelines relating to aircraft accident and incident reporting.

The Civil Aviation (Investigation of Air Accidents and Incidents) Regulations, 2019 provide for the Governor of the Cayman Islands to, amongst other things, appoint a chief investigator to carry out investigations into accidents involving aircraft involved in civil aviation. Accidents, Serious Incidents and Incidents (each as defined in ICAO Annex 13 Aircraft Accident and Incident Investigation) are required to be reported and investigated.

**1.10 Have there been any recent cases of note or other notable developments in your jurisdiction involving air operators and/or airports?**

We are not aware of any cases dealing specifically with air operators and/or airports.

**1.11 Are there any specifically environment-related obligations or risks for aircraft owners, airlines, financiers, or airports in your jurisdiction, and to what extent is your jurisdiction a participant in (a) the EU Emissions Trading System (EU ETS) or a national equivalent, and (b) ICAO's Carbon Offsetting and Reduction Scheme for International Aviation (CORSA)?**

The Air Navigation (Overseas Territories) (Environmental Standards) Order 2014 as amended by the Air Navigation (Overseas Territories) (Environmental Standards) (Amendment) Order 2015 has been extended to the Cayman Islands. This Order requires certain aircraft to obtain a noise certificate in accordance with the standards set out in the sixth edition – July 2011 of Volume I of Annex 16 to the Chicago Convention and certain emissions certification as to compliance with the standards set out in the third edition – July 2008 of Volume II of Annex 16 to the Chicago Convention. As a member of ICAO, the UK is obliged to implement CORSIA in its national law. For the purposes of the Chicago Convention, the UK's Overseas Territories (which include the Cayman Islands) are treated as part of the UK. The Cayman Islands will therefore join CORSIA along with the UK and the UK would be required to legislate for CORSIA in the Cayman Islands and other Overseas Territories of the UK.

Aeroplane operators have been voluntarily monitoring, reporting and verifying their emissions since 2019 to set the global baseline for CORSIA.

Consultation is currently ongoing in relation to the development of a draft Air Navigation (CORSA) (Overseas Territories) Order. This is not yet in force.

## 2 Aircraft Trading, Finance and Leasing

### 2.1 Does registration of ownership in the aircraft register constitute proof of ownership?

The registration of title to an aircraft on the Aircraft Register maintained by the CAACI constitutes proof of title to the aircraft. However, such evidence is not conclusive.

### 2.2 Is there a register of aircraft mortgages and charges? Broadly speaking, what are the rules around the operation of this register?

#### Mortgage Registration

The CAACI maintains an aircraft mortgage register (the “**Mortgage Register**”) in accordance with the Mortgaging of Aircraft Regulations, 2015 (the “**Mortgaging Regulations**”), thereby offering a system for obtaining the priority and perfection of security interests over aircraft. Registration on the Mortgage Register constitutes express notice to all persons of all facts appearing on the Mortgage Register.

The Cape Town Convention came into force in the Cayman Islands on 1 November 2015 pursuant to the International Interests in Mobile Equipment (Cape Town Convention) Act, 2015 (the “**Cape Town Law**”). As a result, there exists a dual system for perfection and priority of security over Cayman Islands registered aircraft for entities that qualify as follows:

- (i) where there is a registerable “international interest” under the Cape Town Convention (as defined in the Cape Town Law), any such international interest in respect of an aircraft may be recorded on the international registration facilities established under the Cape Town Convention (the “**International Registry**”) for aircraft that meets the requirements under the Cape Town Convention. In circumstances where an international interest has been registered against an aircraft that is registered with the CAACI in accordance with the Cape Town Convention, priority of a mortgage over that aircraft will be determined solely by the filings on the International Registry. No additional registrations are required with the CAACI in relation to a mortgage over such aircraft; or
- (ii) if the Cape Town Convention does not apply, then the priority of a registered mortgage against the particular Cayman Islands registered aircraft will be determined in accordance with registration on the Mortgage Register pursuant to the Mortgaging Regulations.

#### Priority Notices

It is also possible to file a priority notice with the CAACI by filing the applicable documentation and paying the applicable fee. If the relevant mortgage is filed within 14 days of the date of such a priority notice, it will be deemed to have priority from the time when the priority notice was registered.

### 2.3 Are there any particular regulatory requirements which a lessor or a financier needs to be aware of as regards aircraft operation?

As mentioned in question 1.1, the Aircraft Register is primarily for aircraft undertaking private use operations and a separate AOC must be obtained before undertaking commercial operations.

Taking physical possession of the aircraft is permitted under Cayman Islands law. Cayman Islands law recognises self-help remedies in the context of security interests in aircraft (often over the shares of the aircraft owning vehicle) without the need

to obtain a court order (subject to any liens and other statutory detention or retention rights of third parties); however, it is open to the relevant enforcing party to seek a court order.

Permission of the CAACI is not required prior to pursuing remedies on enforcement. However, possession via either a transfer of title or change of details of the entity registered with the CAACI will require the cooperation of the CAACI (and, as such, compliance with any transfer requirements of the CAACI).

### 2.4 As a matter of local law, is there any concept of title annexation, whereby ownership or security interests in a single engine are at risk of automatic transfer or other prejudice when installed ‘on-wing’ on an aircraft owned by another party? If so, what are the conditions to such title annexation and can owners and financiers of engines take pre-emptive steps to mitigate the risks?

While there is no concept of title annexation under Cayman Islands law, Cayman Islands law recognises the concept of accession which is similar to annexation.

Based on the example above, where an engine owned by one party is installed “on wing” of any aircraft owned by another party, it is common market practice for relevant parties to require entry into a contractual “recognition of rights” agreement (which is typically governed by English law) as a condition to installing an engine on a different airframe. As noted previously, while aircraft engines are not capable of being registered with the CAACI, relevant parties are able to make filings on the International Registry under the Cape Town Convention in relation to engines.

### 2.5 What (if any) are the tax implications in your jurisdiction for aircraft trading as regards a) value-added tax (VAT) and/or goods and services tax (GST), and b) documentary taxes such as stamp duty; and (to the extent applicable) do exemptions exist as regards non-domestic purchasers and sellers of aircraft and/or particular aircraft types or operations?

The Cayman Islands currently has no form of income, corporate or capital gains tax and no estate duty, inheritance tax or gift tax.

Customs duty may apply to an aircraft which is brought into the Cayman Islands from any other jurisdiction unless the Collector (as defined in the Customs and Border Control Act, (2021 Revision) (the “**Customs Act**”)) has exercised his discretion pursuant to section 22(1) of the Customs Act to permit the import of such aircraft free of duty, for retention in the Cayman Islands on a temporary basis with a view to its subsequent exportation, for a period not exceeding six months or such extended period as the Collector may authorise.

### 2.6 Is your jurisdiction a signatory to the main international Conventions (Montreal, Geneva and Cape Town)?

The Cayman Islands is not signatory to the Montreal Convention or Geneva Convention.

#### Cape Town Convention

The Cape Town Convention came into force in the Cayman Islands on 1 November 2015 pursuant to the International Interests in Mobile Equipment (Cape Town Convention) Act 2015.

#### The Chicago Convention

While the Cayman Islands is not signatory to the Chicago Convention of 1944 on International Civil Aviation, certain provisions thereof are reflected in the ANOTO.

### 2.7 How are the Conventions applied in your jurisdiction?

#### Cape Town Convention

The UK Government ratified the Cape Town Convention with UNIDROIT on 27 July 2015. The Cape Town Convention entered into force for the UK, and by extension the Cayman Islands, on 1 November 2015.

The Cayman Islands Government passed enabling legislation entitling the Cayman Islands to international recognition as a territorial unit of a contracting state to the Cape Town Convention and to recognition of the declarations deposited by the UK Government on behalf of the Cayman Islands Government, with the International Institute for the Unification of Private Law acting as depository pursuant to Article 62(1) of the Cape Town Convention and Article XXXVII(1) of the Protocol–UNIDROIT.

#### Chicago Convention

As mentioned in question 2.6, the Cayman Islands is not a signatory to the Chicago Convention, but certain provisions thereof are reflected in the ANOTO.

### 2.8 Does your jurisdiction make use of any taxation benefits which enhance aircraft trading and leasing (either in-bound or out-bound leasing), for example access to an extensive network of Double Tax Treaties or similar, or favourable tax treatment on the disposal of aircraft?

No, the Cayman Islands does not make use of any taxation benefits which enhance trading and leasing.

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

Typically, security documents and lease agreements over Cayman Islands registered aircraft are not governed by Cayman Islands law. As a result, the impact of any issues under the governing law of such documents should be taken into consideration. Cayman Islands law would usually recognise a foreign law security interest subject to the insolvency laws applicable to the grantor of the security interest and such security interest will usually have priority over any claims by third parties (other than those preferred by law) provided it is a valid security interest under its governing law. An aircraft mortgage would usually include provisions which facilitate the lender's self-help remedy of repossession of the aircraft. In addition, where the security interest has been registered pursuant to the Cape Town Convention, a lender would be able to exercise remedies under the security documents and the Cape Town Convention, subject to the provisions therein (including any waiting period), to take possession of the aircraft and apply for its deregistration, exercise its power of sale or remove it from its location without a court order.

## 3 Litigation and Dispute Resolution

### 3.1 What rights of detention are available in relation to aircraft and unpaid debts?

Under Cayman Islands law, rights to detain (or potentially sell)

an aircraft can arise under the common law or legislation. Such rights may arise in the following circumstances:

- (a) Airport charges: aircraft can be detained and sold for non-payment of airport charges; default of payment creates a statutory lien.
- (b) Possessory lien: where a person has carried out work to an aircraft with the authorisation of the owner, thereby enhancing the aircraft's value; that person may have a lien on the aircraft to the extent that they remain unpaid for the work carried out and may refuse to return the aircraft until they are paid. Such a lien arises from the common law.
- (c) Customs: where anything becomes liable to forfeiture under the Customs Law, any aircraft used for the carriage, handling, deposit or concealment of that thing shall also be liable to forfeiture. Forfeiture of an aircraft may also occur where it has been adapted to be used for or is used for the purposes of smuggling or concealing goods.
- (d) Crimes: where a person is convicted of an offence, any aircraft in his or her possession or under his or her control that was used in connection with such an offence or intended to be used for that purpose may be forfeited to the Crown by order of the court.
- (e) War or national emergency: regulations made under the Emergency Powers Act (2006 Revision) can give powers to the Governor of the Cayman Islands to authorise the taking possession or acquisition of any property.
- (f) Terrorism: where a person is convicted of an offence under the Terrorism Act (2018 Revision), the court can make a forfeiture order in respect of any property in that person's possession or control which he intended to use or it was suspected he would use for the purpose of terrorism.

### 3.2 Is there a regime of self-help available to a lessor or a financier of an aircraft if it needs to reacquire possession of the aircraft or enforce any of its rights under the lease/finance agreement?

Self-help remedies are available under Cayman Islands law (under both the common law and the Cape Town Convention).

For creditors that have taken security, it is possible to enforce certain security rights without a court order; for example, if the documentation allows the mortgagee to take possession of the aircraft or appoint a receiver. Both are self-help remedies (i.e. they are methods by which a secured creditor can enforce its security, realise the assets secured and obtain the repayment of the debt outstanding). A receiver may be appointed by the secured creditor in accordance with the terms of the security document pursuant to which the appointment is to be made and without an order of the court. The receiver acts principally in the interests of his appointor and not for the general body of creditors. Receiverships are governed exclusively by the terms of the documents and the common law. The powers granted to a receiver are therefore primarily derived from the security document(s) pursuant to which the receiver is appointed. The powers are usually wide and should generally enable him to do all things necessary to realise the secured property for the benefit of the secured creditor. In the unlikely event that the security documentation does not contain a right to appoint receivers (or the right is disputed or subject to doubt), the secured creditor may apply to the court for the appointment of a receiver.

The Cape Town Convention also provides creditors with self-help remedies. These remedies include:

- taking possession or control of any aircraft;
- selling or granting a lease of any aircraft;
- collecting or receiving any income or profits arising from the management or use of any aircraft;

- procuring the: (i) de-registration of the aircraft; and (ii) export and physical transfer of the aircraft from the territory in which it is situated; and
- certain interim relief pending the determination of any claim.

**3.3 Which courts are appropriate for aviation disputes? Does this depend on the value of the dispute? For example, is there a distinction in your jurisdiction regarding the courts in which civil and criminal cases are brought?**

Aviation disputes will be heard by the Cayman Islands Grand Court (Civil Division). While the Cayman Islands Grand Court has a Financial Services Division, the majority of disputes which arise in the aviation context are unlikely to fit within the meaning of “financial services proceedings”.

**3.4 What service requirements apply for the service of court proceedings, and do these differ for domestic airlines/parties and non-domestic airlines/parties?**

For domestic airlines/parties that are companies incorporated in the Cayman Islands, any originating process must be served on their registered office in the Cayman Islands.

For non-domestic airlines/parties, leave of the court is required before the service out of the jurisdiction of any originating process. Order 11 of the Grand Court Rules (“GCR”) sets out a prescribed list of proceedings that may be served out of the jurisdiction with the leave of the court – an aviation dispute is likely to fall within this list. Before the court will order that a party has leave to serve out of the jurisdiction, it must be satisfied that:

- the applicant has demonstrated a good arguable case that the claim has an appropriate nexus to the Cayman Islands under one or more heads set out in Order 11, rule 1 of the GCR;
- there is a serious case to be tried on the merits; and
- it is proper in the exercise of its discretion to grant leave and particularly that the Cayman Islands is the appropriate forum.

**3.5 What types of remedy are available from the courts or arbitral tribunals in your jurisdiction, both on i) an interim basis, and ii) a final basis?**

Although remedies will vary depending on the nature of the dispute, generally the following may be available:

On an interim basis:

- an injunction relating to the aircraft and other aviation assets (for example, an order for detention of the aircraft or a freezing injunction preventing the disposition of the aircraft); and
- interim relief available under the Cape Town Convention (see question 3.2).

On a final basis:

- damages;
- a permanent injunction relating to the aircraft and other aviation assets;
- an order to take control of an aircraft and other aviation assets;
- an order for the sale of an aircraft and other aviation assets; and
- remedies available under the Cape Town Convention (see question 3.2).

**3.6 Are there any rights of appeal to the courts from the decision of a court or arbitral tribunal and, if so, in what circumstances do these rights arise?**

Appeals from the Grand Court are to the Cayman Islands Court of Appeal (“CICA”), which usually sits three times a year. Subject to certain restrictions, there is an automatic right of appeal to the CICA from any final decision of the Grand Court. In general, leave of the court is required to appeal an interlocutory decision.

An appeal may lie to the Privy Council from the CICA.

**3.7 What rights exist generally in law in relation to unforeseen events which might enable a party to an agreement to suspend or even terminate contractual obligations (in particular payment) to its contract counterparties due to *force majeure* or frustration or any similar doctrine or concept?**

The concepts of *force majeure* and frustration exist as a matter of Cayman Islands law. The rights that arise when a *force majeure* clause is triggered will be set out in the contract itself and will therefore be a matter of contractual interpretation, although it is not unusual for *force majeure* clauses to confer on the parties a right to terminate the contract in the event of a “*force majeure* event”.

Even in the absence of such contractual provisions, the legal doctrine of frustration still applies and may be invoked. In order for a contract to be frustrated as a matter of Cayman Islands law, it must have become incapable of performance and not due to the fault of any of the parties. However, the contract will not be frustrated if only one of the possible methods of performance of the contract is no longer possible.

In the event that a contract has become frustrated, either party may exercise their common law right to terminate the contract with forward-looking effect. This means that any rights and obligations of the parties that had crystallised prior to termination will survive, subject always to the terms of the contract itself. Accordingly, a party who exercises its right to terminate the contract for frustration will still be liable to make any outstanding payments owing under the contract at the time of termination, but will not be liable to make any future or other payments that were not yet owing under the contract at that time. Furthermore, a party will still have the right to sue the other party for damages for any earlier breaches of the contract that occurred prior to termination.

## 4 Commercial and Regulatory

**4.1 How does your jurisdiction approach and regulate joint ventures between airline competitors?**

There are no restrictions or regulations affecting joint ventures between airline competitors in the Cayman Islands.

**4.2 How do the competition authorities in your jurisdiction determine the ‘relevant market’ for the purposes of mergers and acquisitions?**

Please see question 4.1. There are no restrictions or regulations applicable to airline competitors in the Cayman Islands.

**4.3 Does your jurisdiction have a notification system whereby parties to an agreement can obtain regulatory clearance/anti-trust immunity from regulatory agencies?**

Please see question 4.1. There is no notification system with application to such parties.

#### 4.4 How does your jurisdiction approach mergers, acquisition mergers and full-function joint ventures?

Please see question 4.1.

#### 4.5 Please provide details of the procedure, including time frames for clearance and any costs of notifications.

Please see question 4.1.

#### 4.6 Are there any sector-specific rules which govern the aviation sector in relation to financial support for air operators and airports, including (without limitation) state aid?

We are not aware of any sector-specific rules which would apply.

#### 4.7 Are state subsidies available in respect of particular routes? What criteria apply to obtaining these subsidies?

So far as we are aware, there are no state subsidies with respect to particular routes that apply in the Cayman Islands.

#### 4.8 What are the main regulatory instruments governing the acquisition, retention and use of passenger data, and what rights do passengers have in respect of their data which is held by airlines and airports?

The Data Protection Act (2021 Revision) of the Cayman Islands (the “DPA”) came into force on 30 September 2019.

A data controller must comply with the data protection principles in respect of personal data which it processes, or which is processed on its behalf by any “data processor”. Broadly, personal data must only be processed by a data controller for purposes of which a data subject is aware and would expect. It is incumbent on the data controller to ensure that the personal data for which it is responsible is protected by its data processors. A data controller is also required to disclose how and why personal data is processed in the context of its activities, and by whom. This is customarily set out in a privacy notice.

Personal data shall be obtained only for one or more specified, explicit and legitimate purposes, and shall not be further processed in any manner incompatible with that purpose or those purposes. Legal bases for processing personal data are set out in the DPA. Additional conditions apply to the processing of sensitive personal data.

Personal data processed for any purpose shall not be kept for longer than is necessary for that purpose. Retention periods should be considered and determined by the data controller.

The DPA grants specific rights to individuals, including the right to be informed, the right of access, the right to rectification, the right to stop/restrict processing, the right to stop direct marketing, the right to complain and seek compensation and rights in relation to automated decision making.

#### 4.9 In the event of a data loss by a carrier, what obligations are there on the airline which has lost the data and are there any applicable sanctions?

The DPA prescribes actions to be taken by a data controller in the event of a personal data breach.

A “personal data breach” is defined in the DPA as “a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of or, access to, personal data transmitted, stored or otherwise processed”. However, Ombudsman guidance provides that a personal data breach does not need to be reported if it is unlikely to prejudice the rights and freedoms of the affected data subjects.

Sanctions under the DPA include fines of up to CI\$100,000 (approximately US\$120,000) and monetary penalty orders of up to CI\$250,000 (US\$300,000). The DPA also provides that a person who suffers damage due to a contravention of the DPA has a cause of action against the data controller for that damage.

#### 4.10 What are the mechanisms available for the protection of intellectual property (e.g. trademarks) and other assets and data of a proprietary nature?

The Cayman Islands Intellectual Property Office (“CIPO”) and relevant Cayman Islands laws provide for a robust and modern regime in the Cayman Islands for the protection of intellectual property rights to the highest international standards.

##### Trade Marks

Cayman Islands law provides for trade marks to be registered with the CIPO and also for, *inter alia*, assignments, licences and security interests be recorded with the CIPO against a registered trade mark.

##### Patents

Cayman Islands law provides for the recordal in, and extension to, the Cayman Islands of: (i) a patent that is current and effective in the United Kingdom; (ii) a patent granted under the Convention on the Grant of European Patents designating the United Kingdom, and which under the law of the United Kingdom is treated as if it were a patent granted under such law; or (iii) a patent granted under the Community Patent Convention.

##### Design Rights

Cayman Islands law provides for the recordal in, and extension to, the Cayman Islands of existing registered UK and EU design rights.

The effect of the recording of an extension of the UK or EU patent or design right in the Cayman Islands is to afford in the Cayman Islands to the owner of the right so recorded all the equivalent rights and remedies available to the owner in respect of such patent or design right in the UK. Such protection and rights in the Cayman Islands continue from the time the right arose in the UK and continue in force so long as the protection and rights remain in force in the UK.

##### Copyright

The Copyright (Cayman Islands) Order, 2015 and the Copyright (Cayman Islands) (Amendment) Order, 2016 came into force on 30 June 2016, extending certain provisions of the UK Copyright, Designs and Patents Act 1988 to the Cayman Islands. The copyright regime provides modern IP protection for computer software and databases, among other things such as original literary work, dramatic, musical or artistic work.

#### 4.11 Is there any legislation governing the denial of boarding rights and/or cancelled flights?

There is no specific Cayman Islands legislation governing the denial of boarding rights and/or cancelled flights. Certain provisions of the Warsaw Convention may apply by extension

to the Cayman Islands via the United Kingdom, subject to the flight in question being classified as an international flight.

**4.12 What powers do the relevant authorities have in relation to the late arrival and departure of flights?**

There is no specific Cayman Islands legislation regulating late arrival and departure of flights.

**4.13 Are the airport authorities governed by particular legislation? If so, what obligations, broadly speaking, are imposed on the airport authorities?**

The Cayman Islands Airport Authority (“CIAA”) is governed primarily by the Airports Authority Act (2005 Revision).

Broadly speaking, the obligations imposed on the CIAA include the following:

- (i) plan, develop, redevelop, construct, administer, control and manage airports in the Cayman Islands;
- (ii) provide and maintain runways, terminals and other services and facilities as necessary for the efficient operation of airports in the Cayman Islands;
- (iii) provide rescue and fire-fighting equipment and services at airports, and carry out regular drills and exercises and other checks of all security and safety equipment;
- (iv) provide meteorological services to users of the airports;
- (v) provide adequate facilities for the exercise of the regulatory powers of the Cayman Islands, including customs, immigration and health and security checks;
- (vi) collect prescribed or approved dues, rents, landing and parking fees and charges; and
- (vii) ensure that the airports conform to ICAO-recommended standards and practices.

**4.14 To what extent does general consumer protection legislation apply to the relationship between the airport operator and the passenger?**

There is no consumer rights legislation in the Cayman Islands that applies to the aviation sector.

**4.15 What global distribution suppliers (GDSs) operate in your jurisdiction?**

The major air carriers operating in the Cayman Islands use the main GDS platforms – such as Sabre, Amadeus, Worldspan and Apollo. Information regarding whether these GDSs operate from the Cayman Islands is not publicly available at the time of this publication.

**4.16 Are there any ownership requirements pertaining to GDSs operating in your jurisdiction?**

Please see question 4.15.

**4.17 Is vertical integration permitted between air operators and airports (and, if so, under what conditions)?**

There are no restrictions on vertical integration between air operators and airports under Cayman Islands law.

**4.18 Are there any nationality requirements for entities applying for an Air Operator’s Certificate in your jurisdiction or operators of aircraft generally into and out of your jurisdiction?**

In order to qualify to hold an AOC, an applicant must have a principal place of business (physical presence) in the Cayman Islands. As a result, operators generally establish a company in the Cayman Islands or register in the Cayman Islands a branch of an existing company incorporated outside the Cayman Islands.

## 5 In Future

**5.1 In your opinion, which pending legislative or regulatory changes (if any), or potential developments affecting the aviation industry more generally in your jurisdiction, are likely to feature or be worthy of attention in the next two years or so?**

Developments in the data protection and consumer protection sectors are likely to feature as major focus areas for the Cayman Islands in the next year or two. Following the implementation of data protection legislation in September 2019, operators in the aviation industry will need to put policies and procedures in place to ensure they meet their obligations under the legislation.

Further, legislative proposals are being made to introduce safeguards for consumer interests in matters relating to the supply of goods and services which will be worthy of attention by the aviation sector over the course of the next couple of years, particularly during the consultation phase of the process.

## Acknowledgments

The authors are grateful to Partners Abraham Thoppil, Tim Dawson and Nick Herrod for their contributions to this chapter.

Abraham’s expertise covers a range of areas including M&A, private equity, hedge fund, insurance and structured finance transactions. He also has extensive experience in local Cayman Islands business matters and all types of general corporate and commercial law; in particular, technology, fintech, patent, trade mark and other intellectual property matters. (Tel: +1 345 814 5366 / Email: abraham.thoppil@maples.com.)

Tim is a member of the Cayman Islands Financial Services Regulation team. He provides all aspects of regulatory and financial services advice, including in respect of Cayman Islands licensing, prudential and conduct of business requirements, reporting and information exchange obligations (including those deriving from FATCA and the Common Reporting Standard), and advice on duties of data protection and confidentiality, anti-money laundering and combatting the financing of terrorism. Tim is a member of both industry and Cayman Islands Government legal and regulatory working groups. (Tel: +1 345 814 5525 / Email: tim.dawson@maples.com.)

Nick is a member of the Cayman Islands Dispute Resolution & Insolvency team at Maples and Calder, the Maples Group’s law firm. He provides a wide range of advice on international restructurings, contentious and non-contentious insolvency issues, structured finance and derivatives. He specialises in cross-border insolvency, schemes of arrangement and structuring transactions to mitigate against the risks of insolvency. (Tel: +1 345 814 5654 / Email: nick.herrod@maples.com.)



**Sherice Arman** is a Partner in the Cayman Islands Finance team at Maples and Calder, the Maples Group's law firm, where she specialises in financing transactions, including banking and asset finance, fund and corporate finance. Sherice heads up the shipping group and is recognised as an industry leader in asset finance in the Cayman Islands, in particular for ship and aircraft finance. She also has significant experience in the field of regulated M&A transactions and Cayman Islands regulatory advice.

**Maples Group**

PO Box 309, Ugland House  
South Church Street, George Town  
Grand Cayman, KY1-1104  
Cayman Islands

Tel: +1 345 814 5248  
Fax: +1 345 949 8080  
Email: [sherice.arman@maples.com](mailto:sherice.arman@maples.com)  
URL: [www.maples.com](http://www.maples.com)



**Joe Jackson** is an associate of Maples and Calder's Finance team in the Maples Group's Cayman Islands office. He has experience in banking, fund financing, aircraft financing and structured finance transactions. He also advises on general corporate and commercial matters.

**Maples Group**

PO Box 309, Ugland House  
South Church Street, George Town  
Grand Cayman, KY1-1104  
Cayman Islands

Tel: +1 345 814 5287  
Fax: +1 345 949 8080  
Email: [joe.jackson@maples.com](mailto:joe.jackson@maples.com)  
URL: [www.maples.com](http://www.maples.com)

The Maples Group, through its leading international law firm, Maples and Calder, advises global financial, institutional, business and private clients on the laws of the British Virgin Islands, the Cayman Islands, Ireland, Jersey and Luxembourg. With offices in key jurisdictions around the world, the Maples Group has specific strengths in areas of corporate commercial, finance, investment funds, litigation and trusts. Maintaining relationships with leading legal counsel, the Group leverages this local expertise to deliver an integrated service offering for global business initiatives. For more information, please visit: [maples.com/services/legal-services](http://maples.com/services/legal-services).

[www.maples.com](http://www.maples.com)



# ICLG.com



## Current titles in the ICLG series

Alternative Investment Funds  
Anti-Money Laundering  
Aviation Finance & Leasing  
Aviation Law  
Business Crime  
Cartels & Leniency  
Class & Group Actions  
Competition Litigation  
Construction & Engineering Law  
Consumer Protection  
Copyright  
Corporate Governance  
Corporate Immigration  
Corporate Investigations  
Corporate Tax  
Cybersecurity  
Data Protection  
Derivatives  
Designs  
Digital Business  
Digital Health  
Drug & Medical Device Litigation  
Employment & Labour Law  
Enforcement of Foreign Judgments  
Environment & Climate Change Law  
Environmental, Social & Governance Law  
Family Law  
Fintech  
Foreign Direct Investment Regimes  
Franchise  
Gambling  
Insurance & Reinsurance  
International Arbitration  
Investor-State Arbitration  
Lending & Secured Finance  
Litigation & Dispute Resolution  
Merger Control  
Mergers & Acquisitions  
Mining Law  
Oil & Gas Regulation  
Patents  
Pharmaceutical Advertising  
Private Client  
Private Equity  
Product Liability  
Project Finance  
Public Investment Funds  
Public Procurement  
Real Estate  
Renewable Energy  
Restructuring & Insolvency  
Sanctions  
Securitisation  
Shipping Law  
Technology Sourcing  
Telecoms, Media & Internet  
Trade Marks  
Vertical Agreements and Dominant Firms