



VENEZUELA

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1. REGISTRATION OF AIRCRAFT

1.1 Is there a Register of Aircraft?

In Venezuela the Civil Aviation Law has established the National Air Registry of the Bolivarian Republic of Venezuela (the "Registry").¹ The Registry is an agency of the National Civil Aviation Institute ("INAC" by its Spanish acronym), which in turn is part of the Ministry of Infrastructure ("MOI"; previously the Ministry of Transportation and Communications).² The following matters are under the jurisdiction of the Registry, and are therefore required to be registered:

- (a) The grant, renewal and termination of the registration of national aircraft.
- (b) Titles or instruments related to ownership, leases and other property rights in civilian aircraft and their accessories, such as engines and propellers, as well as any legal act that could change their legal nature.
- (c) Contracts for the use by national operators of foreign aircraft.
- (d) Declarations on the loss or abandonment of aircraft.
- (e) Judicial or administrative measures with respect to aircraft or engines, or the owners thereof.
- (f) Privileges on aeronautical equipment.
- (g) Obligatory insurance policies and contracts.³

The Civil Aviation Law also establishes the National Aeronautical Archives, which is administratively under the Registry. The following documents or actions are to be filed at the National Aeronautical Archives:

- (a) Airworthiness certificates for national and foreign aircraft.
- (b) Nationality, registration and specifications of foreign aircraft.
- (c) Articles of incorporation and bylaws of commercial aviation companies, along with the names, nationalities and domiciles of their directors.
- (d) Concessions and administrative permits granted by INAC, along with all acts that affect these.
- (e) General conditions for the providing of a public air transport service, along with applicable rules on indemnification of the public.
- (f) Information on airfares.

- (g) Information on computerized ticketing.
- (h) Any other documentation required by INAC in accordance with the Civil Aviation Law and its regulations.⁴

Specifically, Section 47.10 of the Regulations on the National Air Registry detail the documentation that must be filed with the Registry in order to obtain Venezuelan registration.

1.2 What aircraft may be registered?

The Civil Aviation Law defines aircraft as all types of vehicles capable of flight regardless of their intended use. The law further distinguishes between civil and state-owned aircraft. The latter includes aircraft used by the military, police or the customs authority; however, these aircraft are also subject to the terms of the Civil Aviation Law when they provide civil aviation services. All other aircraft are deemed to be civilian, even when they belong to public sector entities.⁵

In addition to filing the corresponding documentation listed above required by the Registry or by the National Aeronautical Archives, other basic conditions for registration in the Registry are as follows:

- (a) As a general proposition, the aircraft may not be registered in another country and once registered in Venezuela the aircraft acquires Venezuelan nationality. However, the Civil Aviation Law contemplates that foreign-registered aircraft may be used by Venezuelan entities, with the special authorization of INAC.⁶
- (b) Only Venezuelan citizens and national entities may register commercial aircraft in Registry.⁷ However, this rule does not apply in the case of private aircraft, whether of individuals or of companies. In the case of Venezuelan commercial aviation entities, they must fulfill the following conditions:
 - (i) The control and administration of the company must be exercised by Venezuelans domiciled in the country;
 - (ii) In the case of partnerships, at least 51 per cent of the partners with unlimited liability must be Venezuelan citizens;
 - (iii) In the case of stock companies, at least 51 per cent of the authorized shares must belong to Venezuelans, and the president of the company and at least 51 per cent of the directors and administrators must be Venezuelan citizens; and
 - (iv) Any other condition established by the MOI by resolution.⁸

1.3 What documentation and consents are required for registration?

To register an aircraft, a Registration Application (**see Appendix A⁹**) must be filed together with other required documentation which includes:

- (a) Full identification of the owner or legitimate party in possession, as well as of the applicant and the legal representative;
- (b) The airport where the aircraft will be based;
- (c) The type of service to be rendered by the aircraft;
- (d) Deregistration telex if the aircraft was previously registered abroad;
- (e) Documents that evidence the ownership or legitimate possession of the aircraft, as well as its origin (these include a copy of the bill of sale, a copy of the lease agreement, and any others that are pertinent);

- (f) A receipt for the payment, or evidence of the temporary exoneration, of customs duties and the VAT;
- (g) Evidence of payment of the tax amounts payable to INAC;
- (h) Copy of the articles of incorporation/bylaws in the case of companies;
- (i) Civil liability insurance policy and any other coverage required by law; and
- (j) Any power of attorney that has been granted in relation to the aircraft.¹⁰

All documents originating outside of Venezuela must be apostilled or legalized by the appropriate Venezuelan consulate and, if necessary, they must be presented together with a Spanish translation certified by a licensed public translator.

1.4 What particulars are recorded in the Register?

All of the particulars specified above that must be filed at the National Aeronautical Archives, as well as those specified in the Regulations on the National Air Registry are recorded at the Registry and remain on permanent file. In addition, any mortgage or lien on an aircraft (or its principal parts) must also be registered. Registered documents, authorizations and other required items must, moreover, be kept up to date in order to maintain the registration of an aircraft.

Once all of the required documents and consents have been duly registered or granted, the Certificate of Registration will then be issued by the INAC.

1.5 What are the opening hours and registration fees?

The Registry is open from 8.30 a.m. to 12:30 p.m. and from 2:00 p.m. to 4 p.m. on all days on which the MOI is open.

As of November 28, 2001, when the current Civil Aviation Law entered into effect, the fees charged by the Registry¹¹ are as follows:

- (a) Registration of aircraft: 10 tax units¹² (under 2,000 kilograms gross weight), 20 tax units (2,000 to 7,000 kilograms), and 50 tax units (over 7,000 kilograms).
- (b) Registration of transfers of title: same as for the registration of aircraft.
- (c) Airworthiness certificates: 2, 4 and 6 tax units, based on the same gross weight categories.
- (d) Authorization to constitute a mortgage or liens: 5 tax units.

In addition, Article 161 of the Civil Aviation Law establishes the fees for various specific air service activities, such as the operation of any type of commercial air service, whether national or international, involving passengers and/or freight, agriculture, air taxi, aerial photography, publicity etc, as well as for pilots' licenses, the construction and operation of airports, and so forth.

1.6 Can the Register be amended?

The Register may be amended in cases of error or when there is a material change in the information recorded in the Register, such as a change of ownership or when the use of the aircraft is to be changed. The registered owner or operator is obliged to inform the Registry of any such material change. To request or advise of a material change, an application must be addressed to INAC (see **Appendix B**¹³).

1.7 What is the effect of registration?

Registration provides a public record with respect to the deeds, acts, declarations and certificates on file at the Registry. The mere act of registration, however, does not

evidence ownership of the aircraft.¹⁴ Further, the Civil Aviation Law stipulates that legal rights with respect to ownership, transfers, encumbrances or leases (or modifications thereof); declarations of loss or abandonment; judicial measures; or privileges “shall not have effect vis a vis third parties” if not recorded in the Registry.¹⁵

1.8 How is deregistration effected?

Registration of an aircraft will be cancelled on:

- (a) A formal request from the owner or operator presented to INAC, together with the authorization of the creditor, if the aircraft is affected by an encumbrance;
- (b) A declaration of loss or abandonment of the aircraft;
- (c) A declaration that the aircraft is registered in another jurisdiction;
- (d) Revocation of the registration for the reasons contemplated in the Civil Aviation Law;
- (e) Any other reasons contemplated in the pertinent regulations; or
- (f) Pursuant to a judicial order.¹⁶

The requirements for requesting the deregistration and exportation of an aircraft (see **Appendix C¹⁷**) are as follows:

- (a) Tax solvency documents from the Commercial Office of INAC, if pertinent;
- (b) Current registration and airworthiness certificates, and flight permit;
- (c) Evidence of payment of the aeronautical tax to INAC, depending on the weight of the aircraft;
- (d) Power of attorney granted by the owner to its agent; and
- (e) Present the application form for exportation.¹⁸

1.9 Can a Deregistration Certificate be obtained on registration?

No, INAC will not issue a conditional or future deregistration certificate at the time of the initial registration. A deregistration certificate will only be issued to the owner or operator in possession of the aircraft at the time of the definitive cancellation of registration. A telex will also be sent to the country in whose aircraft register the aircraft will subsequently be registered, certifying that registration has been cancelled in Venezuela. A copy of this telex is given to the owner of the aircraft.

2. REGISTRATION OF AIRCRAFT MORTGAGES

2.1 Introduction

The Venezuelan Chattel Mortgages Law stipulates that the mortgages on chattels and intangibles are only to be granted in situations distinct from vendor financing when the terms of the Sales with Reserve of Title Law (conditional sales) would be applicable.¹⁹ Accordingly, in the case of the sale of an aircraft, normally a mortgage would only arise in the event that the vendor has sold the aircraft to the purchaser subject to the financing of the transaction by a distinct financial institution, which then has a financial credit with the purchaser and is permitted to hold a mortgage on the aircraft as collateral for the financial debt.

2.2 Is there a Register of mortgages or rights over aircraft?

The Civil Aviation Law stipulates that aircraft mortgages must be registered with the Registry in order to be enforceable against third parties. All transfers of Venezuelan civil aircraft and equipment, together with any mortgages or other liens or

encumbrances over aircraft, must be registered in order to be effective against third parties.²⁰

In addition, the Chattel Mortgages Law indicates that aircraft mortgages are to be registered in the civil registry, located in Caracas, as indicated by the Ministry of Internal Affairs and Justice by resolution.²¹ This is a preliminary step to registering with the Registry.

2.3 What documentation and consents are required for registration?

Except in the case of state entities, which by law may need to have special National Assembly (*i.e.* congressional) or other authorization in order to mortgage their assets,²² generally only the specific consent of the Superintendency of Banks is required for registration of the mortgage when the mortgagee is a foreign bank or international financial entity, or of the Ministry of Infrastructure when the mortgagee is not a financial institution.²³ Otherwise the Subalternate Registrar is responsible for verifying that all aspects of registration are in due and proper form.

Apart from any authorization referred to above the only documentation required is the mortgage document, which must be duly notarized and contain, at least, the following information²⁴:

- (a) The name, company, nationality, marital status, address and occupation of the mortgagee and mortgagor (as well as that of the owner of the aircraft if different).
- (b) The amount, in Venezuelan currency, of the secured debt, the stipulated interest rate thereon, its term, the place and form of payment of both principal and interest, and the estimated costs of execution of the mortgage.
- (c) A description of the aircraft, its nature, estimated value, condition, and any other distinguishing aspects such as its registration number, make, model, serial number, manufacturer, country of origin, date of manufacture etc.²⁵
- (d) The document, deed or other evidence by which title to the aircraft was acquired together with a sworn declaration by the mortgagor that the aircraft is not subject to a prior mortgage, lien or judicial order, and that the purchase price for the aircraft has been fully paid (unless the object of the mortgage is to guarantee the balance of the purchase price).
- (e) A statement as to the obligation of the mortgagor to insure the aircraft, when required, together with details of all insurance policies in force in respect of the aircraft.
- (f) The address of the mortgagor (and, if applicable, the owner) for the service of notice and any other legal documentation.

Once the mortgage has been registered in the Subalternate Registry a certified copy thereof must be filed with the Registry,²⁶ which is sufficient to accomplish the registration.

2.4 What are the opening hours and registration fees?

The Subalternate Registry is open from 8.30 a.m. to 12:30 p.m. and from 1:30 p.m. to 3 p.m. Monday to Friday, except for public holidays. The fee for the registration of a mortgage was 0.25 per cent of mortgage amounts of Bs2,000,001 and higher. However, since May 2002 all civil registries have not been permitted to charge the corresponding fee due to a decision of the Constitutional Chamber of the Supreme Tribunal of Justice, which matter has still not been resolved by the enactment of a corrective law by the National Assembly.²⁷

For the Air Registry office hours and fees, see **1.5**.

2.5 Can the Register be amended?

A registered mortgage may only be amended pursuant to the agreement of the parties thereto. In order to register any amendment the new mortgage, as amended, must be reregistered, which has the effect of canceling the previously registered mortgage.

2.6 Will registration secure priority for the mortgagee?

The mortgagee of a registered mortgage is in a privileged position with respect to all other creditors, except for the following:

- (a) Fines, fees and taxes payable to the national government stipulated in the Civil Aviation Law during the year in course and the prior year;
- (b) Judicial expenses in the interest of all creditors;
- (c) Indemnization for damages as stipulated in the Civil Aviation Law;
- (d) Rescue and salvage expenses for an endangered aircraft, and for its last flight; and
- (e) Salaries of the crew for the last flight and up to 15 days thereafter.²⁸

2.7 What is the effect of registration?

The registration of a mortgage provides the public notice required to make the mortgage and the rights of the mortgagee effective against third parties. Although registration does not guarantee the validity of the mortgage, it does establish a presumption to that effect.

2.8 How is deregistration effected?

The duly notarized document evidencing the cancellation of the aircraft mortgage must be filed with the same Subalternate Registry office. For deregistration at the Registry, see **1.8**. Otherwise the registration of the mortgage will expire six years after its expiration date and will be cancelled *ex officio*.²⁹

AIRCRAFT MORTGAGES

3. TYPES OF AIRCRAFT MORTGAGE

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

Venezuelan law only contemplates one type of mortgage over an aircraft, that as stipulated in the Chattel Mortgages Law, the essential characteristics of which are the following:

- (a) A chattel mortgage may only be constituted to guarantee certain classes of creditors, among whom are Venezuelan government entities, foreign banks and international financial institutions duly authorized to be mortgagees by the Superintendency of Banks, and Venezuelan financial entities and insurance companies.³⁰ Expressly prohibited from being a chattel mortgagee is the vendor of the aircraft or particular equipment if the vendor's credit is within the conditions contemplated in the Sales with Reserve of Title Law.³¹
- (b) The mortgaged aircraft must be free and clear of any other mortgages or liens (unless the mortgage being constituted is established as a secondary or subsequent mortgage) and the purchase price must have been fully paid (unless the mortgage is being constituted to guarantee the payment of the purchase price).³² If the aircraft

belongs to various owners, the mortgage can only be constituted with the consent of all of them.³³

- (c) The chattel mortgage must be constituted by a public document duly registered.³⁴
- (d) The mortgagor will retain possession and the right to use the mortgaged aircraft.³⁵
- (e) The owner of the mortgaged aircraft cannot sell or further encumber the aircraft without the prior consent of the mortgagee. In the event of an unauthorized sale or encumbrance, the obligation will be deemed to be due and payable.³⁶ The unauthorized sale will also be a criminal act.³⁷
- (f) The mortgage will include insurance indemnities paid or arising in relation to incidents occurring after the inception of the mortgage.³⁸
- (g) In using the aircraft the mortgagor will be held to the highest standards of care and must undertake all necessary repairs and maintenance at its own expense.³⁹
- (h) Unless the contrary is agreed, the mortgage will cover the aircraft's motors, radio and navigation equipment, instruments, accessories, furnishings and, in general, all belongings and gear destined for permanent use. The mortgage will cover such items even if they are removed from the aircraft, unless they are replaced with identical equipment. Replacement parts can also be included if they are inventoried and specified in the mortgage.⁴⁰
- (i) In the case where the mortgagor is required to insure the aircraft and then fails to pay the insurance premium, the mortgagee is entitled to either declare the mortgage to be in default or to pay the premium due at the mortgagor's expense. In the latter case, the amount paid for the premium plus the stipulated default interest (or the market rate if not stipulated) shall also become due and payable, but only up to the maximum amount stipulated in the mortgage for collection fees and expenses.⁴¹
- (j) The mortgage gives the mortgagee a privileged position over other creditors with respect to the mortgaged assets (except as otherwise stipulated in **2.6**), including legal costs involved in executing the mortgage.⁴²
- (k) The statute of limitations for the chattel mortgage is two years.⁴³

4. LAW GOVERNING THE MORTGAGE

What law will govern the validity of the mortgage?

By virtue of express provisions of Venezuelan law, in order for a mortgage to be enforceable in Venezuela, it must be strictly in accordance with, and so governed by, Venezuelan law. Accordingly, a mortgage drawn up under, and intended to be interpreted according to, a foreign law, or litigated in a foreign jurisdiction, would not be given effect in Venezuela as a chattel mortgage (with the corresponding effect of creating a security interest in the mortgaged aircraft, and the right to an executory foreclosure) notwithstanding the effect that it may be accorded in that foreign jurisdiction. That is, while a foreign law mortgage may serve to evidence the indebtedness, it would not have the effect of a security interest over the aircraft in Venezuela thereby leaving the creditor in an unsecured position as to the Venezuelan asset.

That said, it is necessary to distinguish between the mortgage and the law that governs it, and the financial or other obligations underlying the grant of the mortgage. Thus, generally,⁴⁴ Venezuelan law imposes no restrictions on the freedom of the contracting parties to select a foreign governing law and jurisdiction to resolve contractual disputes. Indeed this is standard practice in many types of international financing and trade

transactions. In the case of the purchase and importation of an aircraft by a Venezuelan party involving financing from a foreign financial intermediary it is possible for the financing documentation to be governed by a foreign law and submission to a foreign jurisdiction, but for the underlying financial obligation to be secured in whole or in part by a Venezuelan chattel mortgage over the aircraft. Thus the issue of default under the financing agreement could be litigated in a foreign court, with only the matter of the execution of the mortgage being brought before the Venezuelan courts. However, as a general proposition it should be noted that this could considerably delay the execution of the mortgage in Venezuela if this were to be first dependent on resolving the dispute on the underlying loan. Generally, then, the standard practice in Venezuela is to have both the financial obligation and the mortgage subject to Venezuelan law. Moreover, while not required, it is customary to incorporate both the loan transaction and the mortgage into a single document.

5. MORTGAGE GOVERNED BY FOREIGN LAW

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

As stated in 4, by virtue of express legislation on chattel mortgages, as an issue of public policy⁴⁵, the Venezuelan courts will only recognize Venezuelan law with respect to all matters relating to the form and procedures of the mortgage and its execution. However, these aspects must be distinguished from the substantive legal aspects of the underlying transaction, which could be made subject to a foreign law and jurisdiction.

6. MORTGAGE TERMS

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

For the general terms of an aircraft mortgage see 3. Otherwise, the Chattel Mortgages Law stipulates that an aircraft mortgage should also make express reference to the registration (tail) number and other distinctive signs of the aircraft; the manufacturer, serial number, year of manufacture and any other details that would help to identify it; and a specification of all applicable insurance. In addition, the mortgage should specify if the engines, navigation equipment, and other accessories attached to the aircraft are not to be included in the mortgage, as unless expressly excluded, they will be deemed to be included. In contrast, if unattached spare parts, which must be identified in a separate inventory, are to also be included in the mortgage, they must be expressly included.⁴⁶

7. SPARE PARTS

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

Spare parts will become subject to the mortgage only when they have been detailed in an inventory and then specified in the mortgage. Unless expressly provided to the contrary, future parts will become subject to the mortgage when they replace identical, or similar, parts included in the mortgage, which parts are no longer serviceable or are upgraded.⁴⁷

8. PERFECTION OF MORTGAGES

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

As indicated in 2.2, it is only necessary that the mortgage be first registered in the Subalternate Office of the Third Registry Circuit of the Capital (previously “Federal”) District and subsequently in the Registry.

9. STATUTORY FEES, CHARGES, TAXES

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

9.1 Fees

For the statutory fees charged for the registration of the mortgage see 2.4.

9.2 Taxes

The payment of interest on the debt obligation will generally be subject to tax payable by the mortgagee.⁴⁸ The parties may agree that the mortgagor will pay any tax obligation that would otherwise be the responsibility of the mortgagee, although if the former fails to pay it, the mortgagee will remain liable for the tax payable.⁴⁹

10. RENEWAL OF REGISTRATION

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

The Chattel Mortgages Law does not establish any time limitation for the term of the mortgage or the registration thereof. Hence, the registration of the mortgage will remain valid and will not have to be renewed during the tenure of the mortgage.

11. CONVENTIONS

Has Venezuela ratified:

(a)The Chicago Convention of 1944 on International Civil Aviation (the “Chicago Convention”)?

(b)The 1948 Convention on the International Recognition of Rights in Aircraft (the “Geneva Convention”)?

(c)The 1933 Convention for the Unification of Certain Rules Relating to the Precautionary Arrest of Aircraft (the “1933 Rome Convention”)?

Venezuela has ratified the Chicago Convention,⁵⁰ but is not a signatory to either the Geneva Convention or the 1933 Rome Convention.

12. POSSESSION BY THE MORTGAGEE

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

In the event of a default under the mortgage the mortgagee may not take possession of the aircraft. Any action with respect to the mortgage will require the bringing of a suit and a judicial procedure. Even if the mortgage were to stipulate that a default by the mortgagor should give rise to the right to take possession of the aircraft by the mortgagee, such a stipulation will be deemed null and void under the Civil Code.⁵¹

However, in accordance with the special judicial procedure established in the Chattel Mortgages Law for executing a mortgage, when the court accepts jurisdiction over an action brought in respect of the mortgage it may, at the same time, issue an order to sequester the aircraft and deliver it into the custody of the mortgagee (or any other qualified custodian).⁵²

Notwithstanding, it should be noted that Venezuela has a public use doctrine that could at least delay this procedure for executing a mortgage on an aircraft, as well as the application of any other judicial preventive measure. The public use doctrine is contained in both the Attorney General's Law and in the Civil Aviation Law. In this context, Article 97 of the Attorney General's Law provides that whenever a judge decrees a preventive measure that would affect aviation assets that are providing a public service, before executing any such measure the court must notify the Office of the Attorney General. Thereupon the execution of the measure is to be suspended for 45 days from the date of notification, during which time the government may take measures to attempt to assure that the public service is not disrupted.

This policy is reiterated in the Civil Aviation Law, Article 76 of which provides that a court being requested to attach or sequester an aircraft shall, if possible, assure that any such judicial measure does not affect the public service being provided by the operator. Likewise, the court is to notify INAC, as well as the Office of the Attorney General.

In principle, if the public use doctrine were to be applied in the case of a mortgage, a lease or any other form of contract between a financier or owner of an aircraft or part, the court should nevertheless seek to protect the interests of the financier or owner, such as by attaching funds of the mortgagor or lessee, requiring the mortgagor or lessee to seek an alternate aircraft, working with INAC to have another airline cover the affected routes, and so forth. The application of the public use doctrine is intended to be a temporary measure that does not cause long-term harm to the financier or lessor, although there is no certainty as to how long the application of the doctrine could be in effect. The public use doctrine has not been applied in the case of mortgages on aircraft, however, as in recent years nearly all aircraft used by commercial airlines in Venezuela are leased rather than purchased. Nevertheless, this is an important factor that financiers of aircraft transactions must be aware of.

13. JURISDICTION

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

By virtue of specific legislation relating to chattel mortgages, the Venezuelan courts would have jurisdiction over the mortgaged aircraft and the mortgage debt only when the mortgage is duly constituted and registered as prescribed by Venezuelan law.

14. JUDICIAL PROCEDURE FOR POSSESSION

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

As stipulated in the Chattel Mortgages Law, in the event of a default by the mortgagor, the mortgagee must proceed as follows:

(a) Initiate a legal action to foreclose on the mortgage by filing a complaint with the Mercantile Court of First Instance having jurisdiction where the mortgage was registered (unless the parties specified a different jurisdiction).⁵³ The mortgage must be accompanied by all of the supporting documents required (see **16**).

The mortgagee may also request the court to order the sequestration of the aircraft and the delivery thereof in custody to the mortgagee or another qualified depositary,⁵⁴ although this may be delayed or denied based on the public use doctrine (see **12**).

(b) Under the special procedure for the execution of chattel mortgages, simultaneously with accepting jurisdiction the judge will issue a notice to the mortgagor (or any other guarantor or third party in possession of the aircraft) stipulating that the debtor must appear within eight days from the date of notification to settle the mortgage debt obligation. The notice will also be posted at the court and published in the local daily newspaper with the greatest circulation in the area. In the event that the aircraft is in the possession of a third party, the notification to said party will be deemed to occur on the execution of the sequestration order. In this same notice the court may order the sequestration of the aircraft⁵⁵, unless the public use doctrine is applied.

(c) If the aircraft is located within the jurisdiction of the court and sequestration is to be ordered, the court may order a court official (with or without police support as the circumstances warrant) to effect the sequestration. If the aircraft is located in another Venezuelan jurisdiction, the first court is to commission a court of that jurisdiction to order sequestration. If the aircraft is located outside of Venezuela at the time the proceedings begin, the Venezuelan court would have to resort to a letter rogatory procedure requesting the appropriate court to sequester the aircraft.⁵⁶

(d) If, eight days after the last of the notices were published and served, the mortgagor (or any guarantor) has failed to cancel the debt obligation, on the request of any of the parties with a secured interest over the aircraft the court is to proceed to order its auction, unless the public use doctrine is to be applied. The auction must be announced at least eight days prior to the sale by a notice posted at the domicile of the mortgagor as well as in a public place where the aircraft is located, and by publication in a major newspaper. The notice must fully identify the parties, set the time and place of the auction, provide a detailed description of the aircraft and specify the base price for the auction, which shall be exactly the same as the mortgage debt. In the case that any party is not in agreement with the base price (or where such is not adequately specified in the mortgage) there is a procedure for the appointment of an expert appraiser to assist the court in establishing a fair value.⁵⁷

All parties, except the executing mortgagee (which may also participate in the auction) must deposit with the court a sum equal to at least 10 per cent of the base price in order to take part in the auction.⁵⁸

If, at the auction, no party makes a bid for, at least, the base price, within three days thereof the mortgagee may petition the court to adjudicate the mortgaged aircraft to the mortgagee for the base price. If the mortgagee does not avail itself of this option, any interested party may petition the court to convoke a second auction, at which the base price shall be half of the original base price. If, at the second auction, there is no bid that reaches the reduced base price, by petition to the court as many subsequent auctions as any interested parties desire may be held, at which there shall be no minimum bid price.⁵⁹

If the chattel is sold at auction, the court will order the purchase price to be applied against the debt obligation, interest thereon, and the costs and expenses incurred by the executing mortgagee. If the purchase price exceeds these amounts, the excess is to be paid to the mortgagor. If the purchase price is insufficient to cover these amounts the mortgagee's right to take further actions against the mortgagor is preserved.⁶⁰

(e) Except for the application of the public use doctrine, the legal proceedings to execute the mortgage may only be suspended or terminated in one of the following cases (regardless of the death, bankruptcy etc, of the mortgagor or guarantor):

(i) On the presentation of certification by the registry where the mortgage is registered

that the mortgage debt was paid or waived;

(ii) On the filing of a lawsuit by a third party based on registered documentation which shows such party to have been the owner (and which ownership continues) of the aircraft prior to the creation of the mortgage over it;

(iii) If it can be shown that a criminal action, based on an allegation that the title asserted over the aircraft is fraudulent, was commenced prior to the initiation of the proceedings to execute the mortgage; or

(iv) If it can be shown, through registered documents, prior to the adjudication of the aircraft that it was subject to a prior and continuing mortgage.

In cases (i) to (iii) the mortgagor must file its defense within the eight-day period granted at the beginning of the proceedings for making payment.

The mortgagee may respond to the defense during the same, or at any succeeding, court session. However, in any event the court shall resolve the defense within not more than three subsequent court sessions, unless the judge determines that the facts alleged need to be proven. In such a case, the judge may establish a period of eight court sessions within which the parties must file any relevant evidence on the matter, with the court then announcing a decision at the ninth session.

If the situations described in (ii) and (iv) were partially valid, on the petition of the mortgagee, mortgage execution proceedings may continue based on the chattels unaffected by such allegations.⁶¹

(f) The mortgage foreclosure action does not have the effect of making the action *res judicata*. Thus, either party may initiate in the ordinary mercantile courts a civil action at any time prior to three months following the conclusion of the mortgage foreclosure proceedings. However, any such lawsuit shall neither prevent the commencement of the mortgage foreclosure proceedings, nor cause them to be suspended.⁶² Likewise, the mortgage foreclosure proceeding may not be joined with any other legal action involving the relationship of the parties or the mortgaged aircraft. Furthermore, any aspects of the mortgage foreclosure proceedings, which may be appealed to a higher court in accordance with the provisions of the Code of Civil Procedure, will be limited in scope only to such mortgage foreclosure.⁶³

The court costs to initiate the mortgage foreclosure are small and normally would not exceed US\$175. However, all legal expenses of the proceedings and court costs must initially be borne by the mortgagee and may eventually exceed several thousand U.S. dollars. As a general rule, the principal costs of executing a mortgage are for the sequestration of the chattel, the depository and the honoraria of expert appraisers. Assuming that the mortgaged aircraft will eventually produce sufficient funds on its sale, the mortgagee should recover all the sums expended in bringing the action, as well as its lawyers' fees. While the latter will depend on various factors, the mortgagee's costs, including lawyers' fees, could reach 30 per cent of the mortgage debt. In the case of large debts, the court has the prerogative to lower the percentage for the execution, if the percentage established in the mortgage is deemed excessive.

The mortgagee does not have to post a bond or other collateral to initiate the execution proceedings, nor to have the mortgaged aircraft sequestered, to act as custodian of it, or to participate as a bidder in the auction process. Indeed, the lack of such a requirement is one of the benefits of the Chattel Mortgages Law.

15. LENGTH OF TRIAL

How long will the trial of the action take?

The duration of the foreclosure action will depend on how long it takes to serve notice on the mortgagor (or any third party in possession of the aircraft), whether any defense is raised by the mortgagor, whether any delays and complications may arise in the event that it were necessary to effect an expert appraisal of the value of the aircraft, which could be ordered by the court, and the time required to sell the mortgaged aircraft. Moreover, the execution could be delayed by the application of the public use doctrine (see **12**). If no defense is presented within eight days of the final notice of sale, the auction of the aircraft may proceed immediately. As contemplated in the Chattel Mortgages Law, mortgage foreclosures should take from six to 16 weeks.⁶⁴ However, if defenses are raised by the mortgagor (or a third party) and evidence must be presented, or a dispute arises as to the market value of the aircraft, and so forth, the proceedings can take considerably longer. The present unsettled state of the Venezuelan judiciary is also a factor that should be taken into account with respect to possible delays in the procedure and uncertainty as to the outcome.

16. DOCUMENTS FOR POSSESSION AND SALE

What documents will the court require for

(a) The taking of possession of the aircraft?

(b) The sale of the aircraft?

The court will require the following documents for the taking of possession and sale of the aircraft:

(a) All of the financial documentation on which the mortgagee bases its claim against the mortgagor. These must be in the form of public documents or otherwise be authenticated and they must clearly indicate the debtor's obligation. Alternatively, the creditor may present a promissory note or other private document recognized by the mortgagor.⁶⁵ The mortgage document must also be presented.

(b) A certification by the registry where the mortgage is registered attesting as to the existence and status thereof, issued within 15 days prior to the commencement of the action against the mortgagor.⁶⁶

17. SALE OF THE AIRCRAFT

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

The mortgagee may not independently sell the aircraft, which may only occur through a court ordered auction. For the auction procedure see **14.1(d)**. It may be recalled that Venezuela is not a party to the Chicago Convention (see **11**).

18. CLAIMS RANKING PRIOR TO MORTGAGE

What claims would rank prior to the mortgage?

For claims that would rank prior to the mortgage see **2.6**.

19. JUDGMENT CURRENCY

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

Judgment will be given in the currency of the debt provided that the underlying financial documentation clearly indicates that the obligation is to be in a foreign currency. Venezuelan law stipulates that unless the instrument containing the financial

obligation expressly provides for payment in a foreign currency, any obligation owed by a debtor in Venezuela may be paid either in such foreign currency or in bolivars. If paid in the latter, then the amount paid is to be equal to the debt in the foreign currency on the date, and at the place, of payment.⁶⁷

Venezuelan law further requires that any public document in Venezuela containing sums expressed in a foreign currency must also state the equivalent, at the then prevailing exchange rate, in bolivars. This is solely for referential purposes, and the obligation may in any case be established in the foreign currency.⁶⁸ The mortgage would be subject to this rule (as would any underlying financial instrument if attached to a complaint upon the bringing of a foreclosure action or lawsuit by the mortgagee).

20. REMITTAL OF PROCEEDS ABROAD

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

Will there be any export restrictions on the export of the aircraft?

Venezuela again enacted a restrictive regime of foreign exchange controls in January 2003. This is the third time in the last two decades that exchange controls have been imposed (the previous periods were from 1983 to 1989, and 1994 to 1996). As of the date of this update, there are no provisions in the exchange control norms for the payment of private sector foreign debt, although such regulations are under discussion and presumably will be promulgated. Accordingly, as of the date of this update, a mortgagor creditor could not apply to the exchange control authority, the *Comisión de Administración de Divisas* (Commission for the Administration of Foreign Exchange, CADIVI by its Spanish acronym), for access to official-rate foreign currency,⁶⁹ as there are no provisions for under the exchange control regime for authorizing such access to foreign exchange.

At the same time, as of the date of this update, there exists a quasi-legal parallel or grey exchange market through which a party possessing local currency can obtain foreign currency at the higher parallel market rate, essentially through currency swaps. In recent months discussions have been underway in the National Assembly to enact a law that may have the effect of prohibiting this parallel market, but as of this date it is not certain whether this law will be promulgated.⁷⁰

Assuming that the aircraft is not subject to any limitations based on sovereign immunity, there are no restrictions on the export of aircraft. However, a deregistration certificate and an export certificate will have to be obtained from the Registry (see **1.8** and **1.9**).

21. RECOGNITION OF FOREIGN JUDGMENT

Were the mortgage to be subject to the jurisdiction of a foreign court and were judgment to be given by that court, would the judgment be recognized and enforced by the courts of Venezuela? Are there any prerequisites to such enforcement? Would the Venezuelan courts enforce such a judgment without a rehearing of the issues?

Would a Venezuelan court enforce a foreign decree or other executive act confiscating the aircraft regardless of the mortgagee's security interest in it?

With respect to foreign-law mortgages, as well as foreign-court orders for confiscation

and related actions, see 4. However, as a general proposition, foreign judgments, *e.g.* regarding the loan instrument, will be recognized and enforced by the Venezuelan courts only after having been granted an *exequatur* by the Venezuelan Supreme Tribunal of Justice, for which purpose an action must be commenced before the Supreme Tribunal of Justice. Once the *exequatur* is granted, the Venezuelan courts will assist in the execution of the foreign judgment, including the making of any order for the attachment of the mortgagor's assets (whether or not such assets are subject to the foreign-law mortgage, which again, would not be recognized as such in Venezuela).

The following requirements have to be met for the Supreme Tribunal of Justice to recognize a foreign judgment:

- (a) The foreign judgment must be from a country which recognizes a Venezuelan judgment without a review of the merits of the case;⁷¹
- (b) Venezuela must not be denied jurisdiction in the case;
- (c) The foreign judgment must be final and without recourse under the laws of the country where it was given;
- (d) The cause of action in respect of which the foreign judgment was given is a civil or mercantile matter in nature;
- (e) The defendant must have been duly summoned according to the legal procedure of the foreign country where the proceedings took place and where the summons was effected, and had sufficient time to appear and sufficient procedural guarantees to be able to present a reasonable defense;
- (f) The foreign judgment may not be contrary to Venezuelan jurisprudence; and
- (g) The foreign judgment must not contain declarations or provisions contrary to Venezuelan public policy.⁷²

It should be noted that there is a tendency to use arbitration (including with respect to the enforcement of mortgages) in Venezuela in lieu of judicial action in the courts. Significantly, Venezuela promulgated the Commercial Arbitration Law in 1998 that, *inter alia*, provides for the automatic recognition and enforcement of foreign arbitral awards without having to bring an *exequatur* action before the Supreme Tribunal of Justice, *i.e.* it is sufficient to merely petition for enforcement of the foreign arbitral award before the corresponding Venezuelan court of first instance.⁷³

A Venezuelan court could execute a foreign decree or other executive act attaching, or confiscating, an aircraft regardless of the mortgagee's security interest in it when the aircraft is registered in the country from which the decree or act originates. Depending on the circumstances, this would require the issuance of a letter rogatory to a Venezuelan court or it would have to be handled on a government to government basis.

22. GOVERNMENT INTERFERENCE

In what circumstances would the executive organs of government seize the aircraft or otherwise exercise a power of expropriation so as to defeat or substantially impede the mortgagee's entitlement?

In what circumstances would the executive order refuse to permit the deregistration of the aircraft from the Venezuelan Air Registry or refuse to permit the registration of the mortgage in the Aircraft Mortgage Register?

There are three situations in which the Venezuelan governmental authorities could generally expropriate, seize or confiscate a private aircraft, thereby defeating or substantially impeding the rights of a mortgagee. These are as follows:

(a) In the case of a national emergency the government may suspend normal constitutional rights and expropriate private property, notwithstanding the right of affected parties to claim adequate compensation.⁷⁴

(b) When the aircraft is used in the transportation of illicit drugs it may be confiscated, unless the owner can demonstrate noncomplicity.⁷⁵

(c) An aircraft may be confiscated if it is utilized in contraband activities, but only if the owner of the aircraft is directly involved or is an accomplice in the illicit activity.⁷⁶

A mortgaged aircraft could also be affected by a national tax claim against the mortgagee-owner. As noted in 2.6, such taxes could include those contemplated in the Civil Aviation Law.

If the aircraft is expropriated, seized or confiscated for any reason, matters relating to the deregistration of the aircraft (or the registration of a mortgage thereover) will be suspended until the situation is resolved.

Likewise, there could be governmental interference with the rights of a mortgagee if the public use doctrine were to be applied in the event of an execution of the mortgage (see 12).

Mortgages on aircraft would only not be registered in the event that they do not fulfill all of the requirements therefor.

AIRCRAFT LEASING

23. LEASING OF AIRCRAFT

23.1 Introduction

The lease of aircraft must be distinguished between operating leases and financial leases, as the latter term is generally understood in accordance with specific legislation on this concept. In Venezuela, only qualified domestic financial institutions may engage in financial leasing, in accordance with the specific norms of the General Banking Law,⁷⁷ whereas operating leases are subject to the general laws on private or commercial contracts.

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

As indicated in 1.1, leases of aircraft must also be registered in the Registry. The provisions relating to the registration of aircraft do not distinguish among different types of lease. Therefore, all aircraft leases must be registered.

23.3 What documentation and consents are required for registration?

No distinction is made between the registration of an aircraft that has been acquired by purchase and one that is leased. Accordingly, the documentation that is required is the same as indicated in 1.3.

23.4 What are the opening hours and registration fees?

See 1.5.

23.5 Can the Register be amended?

See 1.6.

23.6 What is the effect of registration?

In addition to that stated in 1.7, registration of the lease also serves to constitute public evidence of the lawful right of the lessee to have possession of the aircraft, as well as

ownership of the aircraft by the lessor. In the event of a legal action by the owner/lessor it would nevertheless be necessary to attach to the complaint, or otherwise introduce before the court, proof as to the continued legal ownership of the aircraft.

23.7 How is deregistration effected?

See 1.8.

24. TYPES OF AIRCRAFT LEASE

24.1 What types of aircraft lease are possible under the laws of Venezuela? What are their essential characteristics?

Aircraft leases under Venezuelan law are a form of contract, and are generally subject, with a few exceptions, to the basic provisions of the Civil Code and other relevant basic Venezuelan legislation, such as the Code of Civil Procedure.⁷⁸ The essential elements of a contract are the consent of the parties (who must be legally able to contract), the object must be of a contractual nature and the purpose of the contract must be legitimate.⁷⁹ An aircraft lease must be in written form.

Aircraft leases would normally comprise either operating or financial leases. The former are subject to the general provisions of law on leases whereas the latter, by virtue of being a specific type of financing mechanism, are reserved to domestic financial institutions and are subject to certain special provisions of the General Banking Law.⁸⁰ Additionally, operating leases may not be linked to any type of credit or conditional sale transaction, *i.e.* an operation in which the owner/lessor has the obligation to transfer to the lessee, at any time, title to the leased chattel, *e.g.* upon the exercise of a purchase option granted by the lessor to the lessee. The Civil Code expressly stipulates that if title is to be transferred by the lessor to the lessee at any moment, then the transaction is deemed to be a sale and not a true lease, meaning that the lessor would be deemed to have conveyed title upon entering into the lease (regardless of the condition for the transfer of title agreed upon between the parties) and, in consequence, the lessor would lose the benefit of ownership and would have the position of only an unsecured creditor with respect to the balance of the purchase price.⁸¹

Notwithstanding the foregoing, the Civil Aviation Law provides, confusingly, that public service aircraft may be under the control of Venezuelan airlines “under any of the types of contract contemplated in the Civil Code or under any contract commonly used in international air transport, provided that the nature of the contract is not contrary to national public policy”. Likewise, private aircraft may be subject to “any contractual regime that is not contrary to national public policy”.⁸² However, to the date of this update no regulations have been promulgated to clarify the types of contractual convention that could be used or to define “national public policy”.

24.2 Financial leases

Venezuelan law defines financial leasing as:

“... the operation by which a financial lessor acquires a real property or a chattel in accordance with the specifics provided by the interested party, who receives it for its use for a set period in exchange for a monetary payment that includes amortization of the price, interest, commissions and fees stipulated in the contract”.⁸³

The General Banking Law also provides that, if the lessee opts to purchase the item at the end of the lease period, the price at that time may not exceed the residual value originally stipulated in the terms of the lease.⁸⁴

The General Banking Law also establishes regulations for financial leasing entities which, under Venezuelan law, are treated as distinct financial institutions, although now major financial institutions that qualify as “universal” banks may engage in essentially all forms of financial sector activities.⁸⁵ Accordingly, only properly licensed finance leasing companies may engage in financial leasing in Venezuela.

24.3 Operating leases

There is no specific definition of an operating lease under Venezuelan law. The general definition of the legal concept of “lease” states, “Leasing is a contract whereby one of the contracting parties is obligated to permit the other to utilize [the leased item] for a certain time and for a determined price that the latter is obligated to pay to the former”.⁸⁶

Operating leases of aircraft are a fairly common practice in Venezuela and include both the leasing of large commercial aircraft from abroad by the nation's various airlines, as well as the foreign or domestic leasing of smaller aircraft more typically for private use. Likewise, both “dry” leases (under which the aircraft is leased without a trained crew) and “wet” leases (which require the services of a flight crew trained in the operation of the particular aircraft involved) are common.

24.4 Distinction between leases and other agreements

In the case of both financial and operating leases legal title to the aircraft remains with the owner/lessor, with the lessee merely acquiring a right to possess and use the aircraft during the term of the lease subject to any conditions established therein. The more significant legal distinction is between leases and any other type of credit or conditional sale agreements under which the intention of the parties is that title to the aircraft will pass to the purchaser as an integral part of the agreement. This legal distinction also has important tax consequences for the parties involved (see **29**).

25 LAW GOVERNING THE LEASE

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

In the case of an operating lease between private parties, generally Venezuelan courts will uphold the contracting parties’ choice of law, as well as a choice of jurisdiction, providing that provision is made for this in the lease or adequately demonstrated to the court. Thus, there should be no obstacle to the parties stipulating foreign law and jurisdiction in the case of an aircraft lease entered into by contracting parties at least one of which is not a Venezuelan national or legal person. The contrary would apply in the case of a finance lease entered into by a domestic financial leasing entity and, likewise, save for unusual circumstances, in connection with a domestic leasing transaction between local parties or in the case of a lease to the State or to a State enterprise.

26 LEASE TERMS

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

Aircraft operating leases are generally subject only to the provisions on contracts of the Civil and Commercial Codes, which allow for considerable flexibility as to contract terms negotiated between the parties. Likewise, aircraft financial leases are subject to the norms of the Civil and Commercial Codes, except for the special provisions on financial leases in the General Banking Law.

Notwithstanding the foregoing, the new Regulations on the National Air Registry, in conjunction with the current exchange control norms (see **20**), contain a provision that is to be included in, essentially, international lease contracts, which reads as follows: “In the case of lease contracts it shall be required, if necessary, that the provisions of Article 115 of the Law of the Central Bank of Venezuela, with respect to obligations denominated in foreign currency, which must be paid at the official exchange rate in [national] legal tender, the bolivar, must be fulfilled.”⁸⁷ Even though as of the date of this update there is no experience on the part of the Registry or of INAC with respect to this provision, upon consultation with INAC officials it is understood that in the case of international lease contracts the intention is that they may still be denominated in a foreign currency, but that the Venezuelan lessee is to follow the procedure of paying the lease amount in bolivars, at the official exchange rate, through the exchange control system. Provided that the lease payments have been duly authorized by CADIVI, and further provided that the Central Bank is not restricting the availability of foreign exchange, in principle the lessee should be granted the required amount of foreign currency with which to pay the lease amount in exchange for the corresponding sum in bolivars at the official exchange rate.

This provision of the Regulations of the National Air Registry, as well as the regulatory procedures of CADIVI, should be read in conjunction with a recent resolution of the Ministry of Production and Commerce, which has the effect of pre-authorizing, for the purposes of CADIVI, the foreign exchange requirements of Venezuelan airlines.⁸⁸ In this respect, these defined requirements include the payment of foreign leases, international insurance policies, spare parts purchased from abroad, and so forth. Notwithstanding the pre-authorization by the Ministry of Production and Commerce, however, this does not assure that CADIVI will accept or register all aircraft leases or other foreign exchange requirements of domestic airlines.

26.2 Prior authorization required

For the operation of leased, as well as purchased aircraft, it is obligatory to obtain the prior authorization of the MOI.⁸⁹ Hence, this would normally be made a condition precedent in the contract.

26.3 Formal validity

Although not a legal requirement, it is customary for contracts to be authenticated, which provides them with greater legal certainty. The authentication of a document is done by a notary public. In the case of authentication the actual document is entered in the records of the notary and is kept on permanent file.⁹⁰

In the case of leases executed abroad (or in Venezuela, in a language other than Spanish) the lease will have to be translated into Spanish by a licensed translator, who will then have to certify before a notary public the accuracy of the translation. In addition, leases executed abroad or that are held abroad and brought to Venezuela for enforcement, it will be necessary to first have the apostilled or legalized in the place of origin.

26.4 Insurance

The Civil Aviation Law of 2001 made a significant change in the liability of owner-lessors of aircraft, which are now jointly and severally liable for damages caused from the operation or use of the aircraft to (i) passengers, cargo, mail and luggage; (ii) persons and objects on the ground; and (iii) other aircraft in the event of a collision.⁹¹ However, financial lessors, even though they legally own the respective aircraft, are

expressly exempt from such liability.⁹² Likewise, in the case of damages caused on the ground, owners and operators would be exempt if it can be proven that the harm was caused by third parties.⁹³ Previously such liability was the sole responsibility of lessees and operators, provided that there was no evidence of contributory responsibility on the part of an owner-lessor.

Normally the lessor would require that the lessee procure adequate insurance coverage both for the aircraft and with respect to any third party liability. Generally also it would be stipulated in the lease contract that the lessor would be able to ensure that the insurance over the aircraft as provided for in the lease is maintained and it would also usually be stipulated that the lessor could pay any insurance premiums not otherwise paid by the lessee.

27 SPARE PARTS

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

As with aircraft mortgages (see 7) generally spare parts that are sufficiently described may be the subject of a lease. Future parts that replace originally leased parts that have been changed for whatever reason, may also be the subject of a lease. Spare parts may also be the subject of one or more separate leases.

No special formalities are required in the case of a lease of spare parts alone since the prior authorization requirement in the case of commercial aircraft (see 26.2) is only for the aircraft itself, independent of a spare parts inventory.⁹⁴ However, complete spare engines would have to be registered in the Registry.⁹⁵

Normally it is important for the lease to stipulate any restrictions or controls that would apply to the utilization and pooling of such spare parts, which is primarily a matter of protecting the interest of the lessor in its property.

28 PERFECTION OF LEASES

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

Aside from obtaining the prior authorization of the MOI as to the aircraft and the registration of the lease with the Registry, along with the other documentation and information on the aircraft, there are no additional formalities for perfecting the status of the lease.

29 CHARGES AND TAXES

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

29.1 Fees and charges

There are no fees or taxes (whether tax stamps or otherwise) connected with the creation of a lease. However, since the lease must be registered in the Registry the fees are the same as in the case of a purchased aircraft (see 1.5).

29.2 Income tax considerations

(a) Lease expenses deductible by lessee

In the case of operating leases, the Venezuelan Income Tax Law permits the lessee to deduct from gross income as an expense the full amount paid to the lessor, provided that the leased aircraft is used by the lessee in productive activities.⁹⁶ In the case of financial leases, by virtue of the fact that as defined in the General Banking Law it is presumed

that the lessee is actually purchasing the aircraft and will acquire title to it, the lessee may only deduct the financial cost of the operation but not the portion of each payment that constitutes amortization of the purchase price.⁹⁷

(b) Depreciation allowances

In the case of both financial and operating leases only the owner/lessor is entitled to take the benefit of depreciation on the leased aircraft.⁹⁸ This is even in the case of a financial lease, in which it is presumed that the lessee will eventually acquire title to the leased aircraft (although that is not the only alternative).

(c) Tax treatment of residual value

In the case of a financial lease the residual value of the chattel must be established in the initial contract and the total price of the item would have included the financial charges.⁹⁹ Hence, on the final sale no further income tax would be payable, although the residual value would be subject to value added tax (see **29.2(f)**).

(d) Withholding tax

Lease payments under operating leases in Venezuela are subject to a withholding for income tax, which is applicable regardless of whether the lessor is domiciled in Venezuela or abroad. This withholding tax, which is calculated on the gross lease payment and is payable by the lessee on the occasion of each rent payment (with the lessee then being responsible for reporting and paying the amount withheld to the tax authority), presently comprises 3 per cent of the rental payments for domiciled individuals, 34 per cent for non-domiciled individuals, and 5 per cent for both domiciled and non-domiciled companies.¹⁰⁰ In the case of financial leases, no withholding tax is required on the interest and other financial charges paid to the respective financial institutions.¹⁰¹

Notwithstanding, it may be noted that the income tax payable in Venezuela on the operating lease of aircraft by non-domiciled lessors may be affected by the provisions of a double tax treaty between Venezuela and the country where the lessor is domiciled. Likewise, in accordance with certain double tax treaties the income tax liability of the lessor may be affected by virtue of whether the leased aircraft is used primarily in domestic or in international service. Lastly, it may be noted that it is a common practice under international operating leases for the lessor to require the lessee to pay any Venezuelan income tax obligation of the lessor, by grossing up the rent amount sufficient to cover the tax obligation. However, this contractual provision does not relieve the lessor of its Venezuelan tax obligation in the event of default in this respect by the lessee.¹⁰²

(e) Corporate and individual taxes

Anyone engaged in leasing as a business in Venezuela is subject to income tax on any net earnings. Any income taxes withheld and paid to the tax authority by the lessee may be credited against this tax liability. This income tax liability applies to lessors, whether companies or individuals, under operating leases and to domestic banking entities under finance leases.

Corporate and individual income tax rates rise to a maximum rate of 34 per cent. Corporate income tax rates begin at 15 per cent on net income under 2,000 tax units, rising to 22 per cent on net income up to 3,000 tax units, and 34 per cent on net income above 3,000 tax units. In the case of individuals, there are eight graduated scales, with the maximum rate of 34 per cent applying only on net income over 6,000 tax units.¹⁰³

(f) Value added tax

In September 1993 Venezuela adopted for the first time a value added tax (VAT). The VAT law contemplates that the amount of VAT shall be established annually in the budget law approved by the National Assembly and shall be in the range of 8 per cent to 16.5 per cent.¹⁰⁴ As of September 1, 2004 the VAT is 15 per cent.¹⁰⁵

Under the VAT Law all sales of aircraft, as well as aircraft leases, are subject to VAT. In the case of purchased aircraft (including Venezuelan financial lease transactions), the VAT would be payable upon the nationalization; *i.e.* importation; of the aircraft. In addition, domestic banks engaged in financial leasing must charge the VAT on each amortization payment, but not on the interest charged, which is exempt from VAT.¹⁰⁶ However, in the case of operating leases, as a general proposition the lessee will request authorization of the Ministry of Finance to “temporarily” import the aircraft, which has the effect of exonerating the importation from both the VAT and the applicable customs duty until such time, if ever, that the aircraft is nationalized, when both of these taxes would be payable. Nevertheless, the VAT is payable on each operating lease payment.¹⁰⁷

(g) Business assets tax

From November 1993 until September 1, 2004 the government imposed an anticipated income tax obligation generally referred to as the business assets tax (“BAT”). This anticipated income tax mechanism required the definite payment of a tax equivalent to 1 per cent of most tangible, productive assets owned by business enterprises, which anticipated tax could subsequently be credited against the definitive income tax obligation of the business entity. Accordingly, aircraft owned by companies, as well as those possessed (even though title had not yet transferred) under financial leases were subject to the BAT, but aircraft under an operating lease were not. However, the BAT has now been repealed.¹⁰⁸

(f) Tax exemptions

Although not related to leases of aircraft, it may be noted that the Civil Aviation Law provided for the possibility of several types of tax exemptions for Venezuelan airlines purchasing new aircraft. These include (i) a tax exemption from customs duties, (ii) an income tax reduction up to 75 per cent of the cost of new aircraft, and (iii) an exemption from the BAT. All of these exemptions were or are to be for a period of five years from the entry into effect of the Civil Aviation Law. However, these exemptions were subject to special regulations to this effect to have been promulgated by the executive branch, but as of the date of this update none of these regulations, effecting the exemptions, had been issued. Moreover, these same provisions of the Civil Aviation Law contemplate that these exemptions could be extended to the purchase of private aircraft.¹⁰⁹

30 RENEWAL OF REGISTRATION

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

The registration of the lease will remain in effect for so long as there is no material change with respect to the aircraft or the terms of its possession. If there is any fundamental change in the registration, a new registration (as opposed to a renewal) would be required.

31 POSSESSION BY THE LESSOR

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

As in the case of an aircraft mortgagee, the aircraft lessor cannot merely take possession of the aircraft in the event of a default by the lessee. Rather, it is necessary for the lessor to commence a judicial action based on the lease. Notwithstanding this, as in the case of the mortgagee, the lessor may, simultaneously with filing the action, request the court to issue an order to sequester the aircraft and to deliver it into the custody of the lessor (or its designated depository). Specifically the law contemplates the possibility of sequestration when the default consists of the nonpayment of a rental amount, deterioration of the aircraft, or failure to undertake contractually required improvements.¹¹⁰ Otherwise, the parties may stipulate the possibility of sequestration for other specific eventualities in the lease, which stipulation would generally be respected by the courts. Notwithstanding, the recovery of a leased aircraft would similarly be subject to the application of the public use doctrine (see **12**).

31.2 Sums due under the lease

The lessor bringing suit against the lessee for default will normally at the same time sue for all possible damages available by law. These will generally include all past due rental payments, the future value of the lease (unless limited by a liquidated damages or similar clause), any damage or loss with respect to the aircraft, any expenses incurred in relation to the aircraft (such as insurance premiums that should have been paid by the lessee) and the expenses of the lessor in bringing legal action against the lessee. With respect to the claim for future rental payments, unless the requirement that these be paid in full is carefully worded so as to appear as a liquidated damages provision and the total amount is reasonable under the circumstances so as not to constitute an unjust enrichment to the lessor, the court will tend to fix the amount of future rental payments which will be recoverable. This will usually approximate to the net earnings available to the lessor during the period in which it could be supposed that the lessor would be attempting to find another lessee for the aircraft, among other possible considerations. In other words, the court will apply the principle that the lessor is entitled to be fully indemnified for the loss of anticipated profits, but without being unjustly enriched at the expense of the lessee.¹¹¹

31.3 Setting aside the lease

Either party may sue to rescind or set aside the lease based on any alleged default thereunder or on the basis of any defect in the capacity of one of the parties to enter into the lease. However, depending on the circumstances the other party may bring a claim for damages.

If the lessee requests the protection of the courts from its creditors or is declared bankrupt, the lessor may attempt to rescind the lease, provided that the contract clearly stipulates that such an event is a cause of immediate termination. However, the termination of a lease is not contemplated in the Commercial Code as a creditor's right in such circumstances. Accordingly, the court, or the intervenor or liquidator, together with the body of creditors, will determine, in accordance with the general provisions on bankruptcy and, if appropriate, liquidation,¹¹² whether the lease must be extended to be consistent with the orderly management or winding-down of the business of the bankrupt lessee. In this context, if the lease were to be determined to not have been a legitimate or proper transaction, it may be set aside by the court, intervenor or liquidator.

32 JURISDICTION

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

The Venezuelan courts will always have jurisdiction with respect to any actions by a lessor to obtain repossession of an aircraft in the Venezuelan territory, even if the operating lease agreement is subject to a foreign law and jurisdiction. As a general proposition, the civil law does not recognize the concept of “self-help” such that any repossession attempt would either entail an original action in the Venezuelan courts or a petition to enforce a foreign judgment ordering the return of the aircraft. In the case of a financial lease, as noted this could only be under Venezuelan law and, thus, the jurisdiction of the Venezuelan courts. For operating leases, as indicated (in 25), the Venezuelan courts will tend to honor any reasonable choice of jurisdiction agreed upon by the contracting parties with the exception of where the lessee was a Venezuelan government agency and the lease was deemed to be in the national interest.¹¹³

If the parties did not make a specific choice of jurisdiction, the Venezuelan courts will accept jurisdiction whenever there is a significant link with Venezuela, including, in particular, when the lessee is domiciled in Venezuela or when a part of the lease is to be performed there.

33 JUDICIAL PROCEDURE FOR POSSESSION

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

In the case of default by the lessee the lessor must commence a judicial action both to repossess the aircraft and to recover any damages to which it may be entitled. Unlike an aircraft mortgage which is subject to a special executory (short) procedure, leases are enforceable only through suits on the contract, which are longer procedures and admit all usual defenses available to the defendant. Thus, even though the lessor may request the court to order the immediate sequestration and delivery of the aircraft to the lessor (or a designated depository), the lessee may oppose this order and so delay the sequestration, unless the court has special grounds for proceeding forthwith (usually based on evidence of possible loss or damage to the aircraft). The court may also be prevented from ordering that the aircraft be sequestered by virtue of the public use doctrine (see 12).

For the costs of initiating a civil action see 14.

It is not necessary to post a bond or other security either to commence the legal action or to apply for the sequestration of the aircraft, even though the lessor may be designated as the custodian.¹¹⁴

Assuming that the lessor is successful in the suit for termination of the lease and repossession of the aircraft, upon the conclusion thereof the court will order the lessee to deliver the aircraft in accordance with the conditions stipulated in the contract (or to pay any corresponding damages), if the aircraft had not been sequestered, or if it had been sequestered, the court will order its release and, likewise, will assess the lessee for any contractual costs that correspond to it. The one exception to this procedure would be in the case of the public use doctrine, in which case the court should make arrangements for the continued payment to the lessor for the use of the aircraft and retain jurisdiction over the matter normally until the lessee is able to acquire a substitute aircraft or is released of any affected public service obligation by the civil aeronautics

authority.

34 LENGTH OF TRIAL

How long will the trial of the action take?

It is difficult to predict the length of an ordinary proceeding in a civil case. Generally, depending on the complexity of the case and the nature of the defense, the suit at the level of first instance could take from about six months to a year.

If the decision of the court of first instance is appealed to the superior court, it may require another six months to a year to obtain judgment. If the case is further appealed to the Supreme Tribunal, it could take two or more years to obtain a final decision.

35 DOCUMENTS FOR POSSESSION

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

For the court to order the sequestration of the aircraft the lessor will have to present at least with its complaint the original (or a certified copy) of the lease and sufficient evidence that the lessee is in default.

The court may require other evidence or documentation, depending on the assertion of the lessee.

36 CLAIMS RANKING PRIOR TO THE LESSOR

36.1 What claims would rank prior to the lease?

Since the lessor is the owner (or represents the owner) of the aircraft, generally it is entitled to recover possession of the aircraft, except in certain statutory situations (see 22).

Also, the privileged credits with respect to aircraft noted in 2.6 would be applicable to leases, as well. The acts of the lessee may give rise to these privileged credits, in which case the creditors could bring a claim against the aircraft requiring the lessor to satisfy the debt prior to securing the release of the aircraft. Under such circumstances the lessor would have a claim against the lessee. Since these privileged credits are not subject to registration, they would usually arise in the course of a suit against the lessee for repossession, along with other claims.

36.2 Priority of a lessor's rights when the lessee enters into bankruptcy

Distinct from the right to recover possession of the aircraft once so resolved by the bankruptcy court or the liquidator, the rights of an operating lessor to claim financial credits in the event of the bankruptcy of the lessee are no better than the mass of unsecured creditors. Venezuelan law establishes that preferential creditors comprise only those possessing a privilege or having a duly constituted and registered mortgage.¹¹⁵

37 JUDGMENT CURRENCY

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

See 19.

38 REMITTAL OF PROCEEDS ABROAD

In the event of the lessor recovering any debt under the lease, can the proceeds be freely remitted abroad? Is any foreign exchange control, central bank or other

financial consent required? If there is, under what circumstances would this be withheld? How long would such consent take to obtain? Will there be any export restrictions in the export of the aircraft?

See 20.

39 RECOGNITION OF FOREIGN JUDGMENT

Were the lease to be subject to the jurisdiction of a foreign court and were judgment to be given by that court, would the judgment be recognized and enforced by the courts of Venezuela? Are there any prerequisites to such enforcement? Would Venezuelan courts enforce such a judgment without a rehearing of the issues?

Would a Venezuelan court enforce a foreign decree or other executive act confiscating the aircraft regardless of the lessor's ownership of it?

See 21.

40 GOVERNMENT INTERFERENCE

In what circumstances would the executive organs of government seize the aircraft, or otherwise exercise a power of expropriation so as to defeat or substantially impede the lessor's ownership of it?

In what circumstances would the executive order or refuse to permit the deregistration of the aircraft from the Air Registry?

See 22.

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ENDNOTES

* Mr. Pate is a senior partner at De Sola, Pate & Brown. The author wishes to acknowledge the assistance of Antonio López, an associate at De Sola, Pate & Brown.

¹ Civil Aviation Law, Art. 66.

² Ibid., Art. 16.

³ Ibid., Art. 68.

⁴ Ibid., Art. 71.

⁵ Ibid., Arts. 56 and 57.

⁶ Ibid., Arts. 61, 62 and 64.

⁷ Ibid., Art. 70.

⁸ Section 47.8(d) of the Regulations on the National Air Registry.

⁹ Note that the three forms included with this chapter, i.e. Appendices A, B and C, are still in use as of the date of this update. However, with the publication of the multiple new regulations covering various aspects of aviation matters in the Official Gazette dated July 6, 2004, but which was not available until August 23, 2004, these forms will shortly be substituted by newly designed forms that follow the particulars of the new regulations.

¹⁰ All of these documents, plus other required information, are specified in Section 47.10 of the Regulations on the National Air Registry.

¹¹ With the promulgation of the Civil Aviation Law at the end of 2001, all of the fees related to aircraft and aviation matters were taken out of the Stamp Tax Law and included in the Civil Aviation Law, as Art. 161.

¹² The “tax unit” is an artificial economic value established annually based on the rate of inflation of the previous fiscal year. The purpose of the tax unit is to maintain approximate equivalence of official values, such as taxes, fees, and other similar assessments, by virtue of the relatively high rates of inflation experienced by the Venezuelan economy since the late 1970’s. In 2004 the tax unit is valued at approximately US\$12.50 at the official rate of exchange.

¹³ See n. 9.

¹⁴ Section 47.8(c) of the Regulations on the National Air Registry.

¹⁵ Civil Aviation Law, Art. 68.

¹⁶ Ibid., Art. 65. In addition, Section 47.14 of the Regulations on the National Air Registry add that deregistration is to occur when an aircraft is to be registered in another jurisdiction, if the ownership is transferred, or if the registrant loses its Venezuelan nationality.

¹⁷ See n. 9.

¹⁸ Section 47.16 of the Regulations on the National Air Registry.

¹⁹ Chattel Mortgages Law, Art. 2.

²⁰ Civil Aviation Law, Art. 68.

²¹ Chattel Mortgages Law, Art. 81(4). The specific registry designated by the Ministry of Internal Affairs and Justice is the Subalternate Registry of the Third Registry Circuit of the Federal District. In this connection, it is essential to understand that the duplication in this case is due to the existence of both a general law (the Chattel Mortgages Law) and a specific law (the Civil Aviation Law) referring to the matter of the registration of aircraft mortgages. Hence, the principal registration is with the Subalternate Registry, with the Chattel Mortgages Law establishing the basic criteria therefor. Only after the registration with the Subalternate Registry has been accomplished is a certified copy thereof merely filed with the Registry for simple recordation. Thus, the registry officials of the Registry are not responsible for anything beyond merely filing said certified copy together with the registration documentation relating to the aircraft.

²² Constitution, Art. 150.

²³ Chattel Mortgages Law, Arts. 19(2) and (6). Additionally, it should be noted that under the General Banking Law foreign lenders not domiciled in Venezuela, or not having authorized representative offices, must act through banking or other financial institutions domiciled in the country. Mortgages related to loans made to Venezuelan borrowers in contravention of this norm will not be approved by the Superintendency of Banks and thus cannot benefit from the rights and procedures established in the Chattel Mortgages Law.

²⁴ Ibid., Art. 22.

²⁵ Ibid., Art. 22.

²⁶ Civil Aviation Law, Art. 68.

²⁷ What occurred was that in November 2001 when the executive branch, acting under extraordinary powers delegated by the National Assembly to issue certain laws by decree, promulgated the Public Registry and Notary Law the fee schedule that civil registries may charge for different types of registrations was omitted, while the previous law was repealed. As a result of this vacuum, registries continued to apply the previous fee schedule pending the enactment of a new law. However, this was challenged in the courts and the Supreme Tribunal of Justice, by Decision No. 61 of the Constitutional

Chamber of May 24, 2002, declared that practice to be unconstitutional, thus suspending the right to charge any fee. As of the date of this update, the National Assembly has yet to enact a new law with respect to this matter.

²⁸ Civil Aviation Law, Arts. 74 and 75. Given that the Civil Aviation Law is a newer and specific law with respect to privileges as related to aircraft, that established in these articles would take precedence over the general norms of the Civil Code and the Chattel Mortgages Law.

²⁹ Chattel Mortgages Law, Art. 85.

³⁰ Ibid., Art. 19.

³¹ The Sales with Reserve of Title Law regulates conditional sale transactions in which title to the items sold remains with the vendor until the purchaser makes final payment. The goods subject to this mechanism must be chattels that are specifically identified and that are not to be processed or transformed. This mechanism is essentially used, then, in the case of suppliers' credits given in respect of capital goods.

³² Chattel Mortgages Law, Art. 2.

³³ Ibid., Art. 1.

³⁴ Ibid., Art. 4.

³⁵ Ibid., Art. 5.

³⁶ Ibid., Art. 6.

³⁷ Ibid., Art. 16.

³⁸ Ibid., Art. 7.

³⁹ Ibid. Art. 8.

⁴⁰ Ibid., Art. 40.

⁴¹ Ibid., Art. 9.

⁴² Ibid., Art. 17.

⁴³ Ibid., Art. 18.

⁴⁴ The principal exception is in the case of contracts in the national interest, as established in the 1999 Venezuelan Constitution, Art. 151 of which requires that such contracts may only be subject to Venezuelan law and jurisdiction.

⁴⁵ Art. 2 of the Code of Civil Procedure establishes the general principle that Venezuelan courts are to have jurisdiction with respect to real property located in the country, and with respect to matters of public interest or good customs.

⁴⁶ Arts. 39 and 40 of the Chattel Mortgages Law.

⁴⁷ *Ibid.*, Art. 40.

⁴⁸ Prior to the September 1991 income tax law reform interest on certain loan facilities provided by foreign financial institutions was tax exempt, but subsequently only pre-existing grandfathered transactions would have continued to be tax exempt, with most of those exemptions expiring before the mid-1990s.

⁴⁹ See Art. 14 of the Organic Tax Code.

⁵⁰ The ratification, together with the text of the convention, appears at *Gaceta Oficial Extraordinario* No. 1.976 of February 22, 1989.

⁵¹ Civil Code, Art. 1878.

⁵² Chattel Mortgages Law, Art. 70, Second Rule.

⁵³ *Ibid.*, Arts. 69 and 70, First Rule.

⁵⁴ *Ibid.*, Art. 70, Second Rule.

⁵⁵ *Ibid.*, Art. 70, Second and Third Rules. On sequestration, see also the Code of Civil Procedure, Art. 588.

⁵⁶ Regarding letters rogatory, see the Code of Civil Procedure, Art. 188. The Civil Code, Art. 1877 provides that mortgages follow the chattels wherever they may be located.

⁵⁷ Chattel Mortgages Law, Art. 70, Fourth Rule.

⁵⁸ *Ibid.*, Art. 70, Fifth Rule.

⁵⁹ Ibid., Art. 70, Sixth, Seventh and Eighth Rules.

⁶⁰ Ibid., Art. 70, Ninth to Twelfth Rules.

⁶¹ Ibid., Art. 71.

⁶² Ibid., Art. 72.

⁶³ Ibid., Art. 73.

⁶⁴ It should be noted that judicial periods in Venezuela are measured by court sessions, that is when the presiding magistrate is present and acting. Normally there should be four court sessions per week, but in practice the average reduces to three or fewer, depending on the docket of the court and the general state of the judicial system. Hence, suits tend to extend longer than anticipated, which fact cannot be known in advance.

⁶⁵ Chattel Mortgages Law, Art. 70, Second Rule.

⁶⁶ Ibid.

⁶⁷ Central Bank Law, Art. 115.

⁶⁸ Ibid., Art. 117. However, see section 26.1 of the text with respect to lease payments.

⁶⁹ As of the date of this update the official exchange rate is Bs.1,920=US\$1 versus approximately Bs.2,700=US\$1 at the parallel or grey market rate.

⁷⁰ To the date of this update no prosecutions have occurred under the exchange control regime for transactions on the parallel market which, indeed, the government itself has encouraged by selling dollar-denominated bonds for bolivars. Accordingly, most financial advisors and other analysts have opined that the parallel market is, in fact, a legal market.

⁷¹ Code of Civil Procedure, Art. 850.

⁷² Points (b)-(g) are contained in the Code of Civil Procedure, Art. 851.

⁷³ Commercial Arbitration Law, Art. 48.

⁷⁴ Constitution, Art. 337. See also the States of Exception Law, Arts. 24 and 25.

⁷⁵ See Art. 66 of the *Ley Orgánica sobre Sustancias Estupefacientes y Psicotrópicos*, published in the *Gaceta Oficial Extraordinario* No. 4.636 of September 30, 1993.

⁷⁶ Art. 110 of the Customs Law (*Ley Orgánica de Aduanas*, published in the *Gaceta Oficial Extraordinario* No. 5.353 of June 17, 1999) provides that in case of contraband the objects of the crime, as well as the vehicles used shall be confiscated, provided that the owner of the vehicle is the author, coauthor, accomplice or collaborator of the contraband.

⁷⁷ General Banking Law, Arts. 117 to 124.

⁷⁸ The Civil Code, Art. 1140 provides in relevant part that "All contracts, whether or not having a special name, are subject to the general rules established in this Title, without prejudice to those especially established in the respective Titles... [of other laws]".

⁷⁹ *Ibid.*, Arts. 1141 and 1142.

⁸⁰ These norms are now contained in the General Banking Law, Arts. 117 to 124. With the promulgation of the 1993 General Banking Law the previous special norms on financial leasing, promulgated by Decree 1611 in 1982 (*Gaceta Oficial Extraordinario* No. 32.554 of September 7, 1982) were repealed and this activity was left exclusively to domestic financial institutions.

⁸¹ Civil Code, Art. 1579. Also, Art. 120 of the General Banking Law expressly stipulates that financial leasing contracts shall not be deemed to be installment sales.

⁸² Clause First of the Final Provisions of the Civil Aviation Law.

⁸³ General Banking Law, Art. 120.

⁸⁴ *Ibid.*, Art. 121.

⁸⁵ *Ibid.*, Art. 74.

⁸⁶ Civil Code, Art. 1579.

⁸⁷ This provision is Section 47.10(f)(7) of the Regulations to the National Air Registry. Art. 115 of the Central Bank Law stipulates, in essence, that contractual obligations payable inside the country, even though denominated in a foreign currency, may be paid in bolivars, although in sufficient amount that when converted will be the equivalent to the foreign currency obligation. (Also see the text at **19**).

⁸⁸ The resolution of the Ministry of Production and Commerce is Resolution DM/No. 295, published in the *Gaceta Oficial*, No. 37.999, August 11, 2004.

⁸⁹ This is required by Decree 898, Art. 1.

⁹⁰ Public Registry and Notary Law, Art. 82.

⁹¹ See Arts. 142 and 143, 150, and 154, respectively, of the Civil Aviation Law.

⁹² *Ibid.*, Art. 153.

⁹³ *Ibid.*, Art. 152.

⁹⁴ Decree 898, Art. 1.

⁹⁵ Civil Aviation Law, Art. 68(2). The Registry has on occasion been reluctant to separately register unattached engines, notwithstanding the provisions of the law. However, this may be accomplished and there is precedence for doing so.

⁹⁶ Income Tax Law, Art. 27(12).

⁹⁷ *Ibid.*, Art. 27(2).

⁹⁸ *Ibid.*, Art. 27(5).

⁹⁹ General Banking Law, Art. 121.

¹⁰⁰ Regulations on Withholding Tax, Art. 9(13).

¹⁰¹ *Ibid.*, Art. 10.

¹⁰² Tax Code, Art. 14.

¹⁰³ Income Tax Law, Arts. 52 and 50, respectively.

¹⁰⁴ VAT Law, Art. 27.

¹⁰⁵ Modification of VAT Law (*Ley de Reforma Parcial de la Ley que Establece el Impuesto al Valor Agregado*), published in the *Gaceta Oficial*, No. 37.999, August 11, 2004.

¹⁰⁶ VAT Law, Art. 5, 1st para.

¹⁰⁷ *Ibid.*, Art. 4(4).

¹⁰⁸ Repeal of the BAT Law (*Ley que Deroga el Decreto Ley No. 3.266, de Fecha 26 de Noviembre de de 1993, Mediante el Cual se Dicta la Ley de Impuesto a los Activos Empresariales*), published in the *Gaceta Oficial*, No. 38.002, August 17, 2004. For the norms of the BAT that were applicable, see in particular Arts. 1, 10 and 11 of the Business Assets Tax.

¹⁰⁹ Civil Aviation Law, First Transitory Provision.

¹¹⁰ Code of Civil Procedure, Art. 599(7). Previously this law also provided for sequestration upon the failure of a lessee to return an aircraft upon the termination of a lease period. However, this provision was repealed in March 1987, thus requiring a lessor to resort to a lawsuit on the lease contract for eventual restitution and damages.

¹¹¹ Civil Code, Art. 1184.

¹¹² Bankruptcy and liquidation of commercial enterprises are generally governed by Title II of the Third Book of the Commercial Code, Arts 914-1068.

¹¹³ See n. 44.

¹¹⁴ Code of Civil Procedure, Art. 599(7).

¹¹⁵ Commercial Code, Art. 1041.