

# AIRCRAFT FINANCE ONLINE

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# KYRGYZSTAN

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# KYRGYZSTAN

## REGISTRATION

### REGISTRATION OF AIRCRAFT

1

#### Is there a Register of Aircraft?

1.1

Yes. The Air Code of the Kyrgyz Republic 1483–XII dated April 15, 1994 (“Air Code”) and the Aviation Rules–7 of the Kyrgyz Republic 12–08 dated February 28, 2008 On the State Registration of Civil Aircraft–7 approved by Order 14 of the Ministry of Transport and Communications dated January 24, 2008 (“Aviation Rules–7”) set forth the registration requirements for aircraft in the Kyrgyz Republic.

Pursuant to the Air Code and the Regulation on the Department of Civil Aviation under the Ministry of Transport and Communications approved by the Government of Kyrgyz Republic 310 dated June 17, 2008, the Department of Civil Aviation (“Aviation Department”)<sup>1</sup> is the state agency responsible for the registration of an aircraft and for maintaining the Aircraft Register. Aviation Rules–7 lays down detailed procedures concerning the state registration of civil aircraft in the Kyrgyz Republic.

#### What Aircraft must be registered?

1.2

An aircraft is defined in Kyrgyz legislation<sup>2</sup> as any apparatus which is supported in the atmosphere due to its interaction with air, which differs from the interaction of air with the surface of land.

Kyrgyz aircraft are divided into the following categories: civil, State and experimental.<sup>3</sup> Civil and state aircraft are subject to registration in the Aircraft Register. Pursuant to the Air Code, state aircraft include aircraft used by the military, customs and law enforcement agencies or state departments.<sup>4</sup>

Civil aircraft are operated to provide for:

- the transport of passengers, cargo and post;
- aviation services;
- educational, sport and cultural occasions. Also, the development of technical creativity; and
- search and rescue operations, in the event of natural disasters.<sup>5</sup>

It should be noted that gliders, balloons used exclusively for meteorological purposes (or unmanned free balloons without commercial downloads), and other similar light aircraft may not be registered in the Aircraft Register. In this case, such aircraft are subject to special accounting by the Aviation Department.<sup>6</sup>

Aircraft registered in another country may not be registered in the Kyrgyz Republic.

All types of civil aircraft—whether foreign or locally made—which are not registered in the “aircraft register” of a foreign country and which are owned, or operated, in the Kyrgyz Republic must be registered with the Aviation Department. It should be noted that foreign individuals and legal entities are permitted to register their aircraft with the Aviation Department.

According to the Decree of the Government 202 dated May 2, 2008, on Civil Aircraft recoded in the Register of Civil Aircraft of the Kyrgyz Republic, the following aircraft may not be registered:

- starting from May 1, 2008 an aircraft, which is more than 30 years from the date of manufacture;
- starting from January 1, 2010 an aircraft, which is more than 25 years from the date of manufacture;
- an aircraft that transports passengers, previously included in the Aircraft Register, which is more than 40 years from the date of manufacture.

### **1.3 What documentation and consents are required for registration?**

Pursuant to the Aviation Rules–7, in order to register an aircraft, the owner (the operator) must submit the following documents to the Aviation Department:

- completed standard Application Form;
- a Certificate of Airworthiness or standard form report on an aircraft’s technical condition, confirming the airworthiness of the aircraft;
- a Type Certificate;
- sale agreement or other document evidencing the ownership of the aircraft;
- where the party seeking to register the aircraft is not the owner, a lease agreement or other document evidencing the operator’s right to dispose of the aircraft;
- export Certificate of Airworthiness approved in the Kyrgyz Republic in the case of aircraft imported into the Kyrgyz Republic; and
- a report (or other document) which contains a list of operating, technical, and other documents, and of removable (and other)

equipment of an aircraft in accordance with its technical documents and its purpose of use.

The report on an aircraft's technical condition and maintenance is made by a commission or organisation appointed by the operator/owner of an aircraft.

Information on an aircraft's technical condition may be submitted in a form different from the standard form. In any case it must include—at least—the information provided in the standard form for the establishment of an aircraft's technical condition.<sup>7</sup>

#### **What particulars are recorded in the Register? 1.4**

Once an aircraft is registered with the Aviation Department it will be issued a Certificate of Registration and a registration mark. An aircraft's country and registration marks are recorded in the Certificate of Registration and in the Aircraft Register.

The Country mark of the Kyrgyz Republic of an aircraft registered in the Kyrgyz Republic consists of a combination of two capital letters "EX". The registration mark of an aircraft registered in the Kyrgyz Republic consists of a combination of three or five Arabic numerals assigned to this aircraft by the Aviation Department.

#### **What are the opening hours and registration fees? 1.5**

The regular working hours of the Aviation Department are from 8.00am to 5:30pm.

The address is:

184 Ahunbaev St,  
Kyrgyz Republic, Bishkek 720044.  
Tel/Fax: 996 312 542140, 542141  
The website is: <http://www.avia.kg>

There is no fee payable for the registration of an aircraft. At present, the services (for the registration of an aircraft, lease, etc.) of the Aviation Department are free of charge. However, the Aviation Department is working on drafting laws according to which the registration of any aircraft and all encumbrances will be chargeable.

#### **Can the Register and Certificate of Registration be amended? 1.6**

Aviation Rules-7 requires the amendment of an aircraft's Certificate of Registration, and the data contained in the Aviation Department, on the occurrence of the following events:

- a modification to an aircraft and/or a change in its ownership; and
- damage to the original Certificate of Registration such that it becomes impossible, or difficult, to recognise any information in the certificate.

The operator/owner of an aircraft registered in the Kyrgyz Republic must immediately notify the Aviation Department of any change regarding the ownership of an aircraft.

### **1.7 What is the effect of registration?**

The registration of an aircraft in the Aviation Department does not constitute the registration of the transfer of title to an aircraft. Nor does the Certificate of Registration evidence the ownership of an aircraft. Registration in the Aviation Department is merely evidence of compliance with Kyrgyz law, so that an aircraft can be operated in the Kyrgyz Republic.

### **1.8 How is deregistration effected?**

Under the Aviation Rules–7, an aircraft is required to be deregistered from the Aviation Department in the following cases:

- at the request of an aircraft’s operator/owner;
- the retirement, or withdrawal from service, of the aircraft;
- an aircraft’s operator/owner’s failure to comply with the requirements of any aviation rules, where the safe operation or maintenance of the airworthiness of an aircraft is not provided for or where there are reasons to believe that the restoration of the airworthiness (or the use) of an aircraft is impossible or impractical.

In order to deregister an aircraft, the owner/operator must submit:

- an application for deregistration in the standard form. The relevant document confirming the retirement, or withdrawal from service, of an aircraft;
- a report on an aircraft’s technical condition ( a pre-requisite to the issue of the Export Certificate of Airworthiness);
- the relevant document confirming the obligation of another country to register an aircraft in its registry when an aircraft is exported to, or registered in, another country;
- the original of the Certificate of Registration. The operator/owner of an aircraft registered in the Kyrgyz Republic shall immediately notify the Aviation Department of any decision to retire, or withdraw, the aircraft from operation. It must also confirm the fact that the aircraft has actually been retired, or withdrawn, from operation.



In accordance with the Air Code withdrawal of an aircraft from registration—and/or the revocation of a Certificate of Registration—shall be confirmed by the relevant entry in the Aircraft Register.

**Can a Deregistration Certificate be obtained on registration? 1.9**

Aviation Rules–7 requires the issue of a Certificate of Deregistration by the Aviation Department once an aircraft is deregistered. A Certificate of Deregistration is not available before deregistration has occurred.

**REGISTRATION OF AIRCRAFT PLEDGES 2**

**Is there a Register of pledges or rights over aircraft? 2.1**

There is no requirement for the registration of a pledge or rights over an aircraft with the Aviation Department. According to Kyrgyz legislation, an aircraft is considered to comprise movable property. A pledge agreement of movable property should be registered in the Pledge Registration Office at the pledgee’s or the pledgor’s discretion. Pledge registration is not an obligatory procedure. However, it must be done in order to establish the priority of the pledgee’s rights over other creditors who do not register a prior pledge, as well as against third parties.<sup>8</sup>

**What documentation and consents are required for registration? 2.2**

A completed application form shall be submitted to the Pledge Registration Office.

**What are the opening hours and registration fees? 2.3**

The regular work hours of the Pledge Registration Office are from 8.30am to 5.30pm.

The address is:

219 Chuy Avenue,  
5 floor, Kyrgyz Republic, Bishkek  
Tel: 996 312 614626, 610103  
Fax: 996 312 610168

See also below, 9(b).

**Can the Aircraft Register be amended? 2.4**

Yes. To amend the details in the “aircraft register” of the Pledge Registration Office in respect of a pledge, an application to amend—together with the relevant documents supporting the amendment—must be submitted.

## **2.5 Will registration secure priority for the pledgee?**

According to the Law on Pledge 49 dated March 12, 2005 (“Pledge Law”), if an aircraft is subject to more than one pledge (unless the initial aircraft pledge agreement prohibits a subsequent pledge) the respective pledgees’ claims will be satisfied in the order in which they have registered their pledge in the Pledge Registration Office,<sup>9</sup> by reference to the date, and time, of registration. Thus, the pledgee who has the first registered security interest in an aircraft will have priority over subsequent pledges.

## **2.6 What is the effect of registration?**

The registration of a pledge in the Pledge Registration Office has the effect of giving public notice of it and making it effective against third parties. See above, 2.5.

## **2.7 How is deregistration effected?**

To deregister an aircraft pledge, the pledgee must submit to the Pledge Registration Office an application form for deregistration—together with all of the relevant supporting documents.

# **3 TYPES OF AIRCRAFT PLEDGE**

**What types of aircraft pledge are possible under the laws of the Kyrgyz Republic? What are their essential characteristics? What are their respective advantages and disadvantages?**

The Civil Code of the Kyrgyz Republic (“Civil Code”) and the Pledge Law distinguish a mortgage from a pledge. An aircraft is considered to be movable property. According to Kyrgyz legislation a mortgage is a type of pledge or security interest related to real estate (i.e. immovable property). Thus, a security interest in an aircraft is referred to, hereafter, as an aircraft pledge.

There is no specific legislation governing an aircraft pledge, as such, in the Kyrgyz Republic. The Pledge Law defines the following types of pledge:

1. Possessory pledge—the pledgee receives, or retains, possession of the pledged property in accordance with the pledge agreement.

The pledgee shall be entitled to use the property, which is the subject of the possessory pledge, only as provided in the pledge agreement. Material benefits received by the pledgee from the pledged property shall be first used for the reimbursement of any expenses incurred by the pledgee in connection with maintenance, and preservation, of the pledged property, and then may be applied to the principal debt.<sup>10</sup> This type of pledge will

generally be unsuitable for the pledgor—since the intention of the parties (typically) is that the pledgor retains possession of the aircraft and must discharge the debt secured by the pledge.

2. Non-possessory pledge—the pledgor retains possession of the pledged property.

The pledgor uses the pledged property. The pledgor must take all steps necessary to preserve the pledged property, to insure at its own expense the pledged property up to its full value, in the event of loss of the pledged property to restore, or replace, it and to inform the pledgee of any lease of the pledged property.<sup>11</sup>

3. Pledge of rights by the pledge—the subject matter of the pledge comprises property rights, which can be alienated, or pledged, by the pledgee).

## **LAW GOVERNING THE PLEDGE**

4

### **What law will govern the validity of the pledge?**

Transport vehicles (which may include aircraft) and other property subject to state registration shall be determined under the law of the country where these transport vehicles or other property is registered.<sup>12</sup> If the aircraft is registered in the Kyrgyz Republic (i.e. it is included in the Aircraft Register) the law of the Kyrgyz Republic will govern the validity, and effect, of the pledge.

## **PLEDGE GOVERNED BY FOREIGN LAW**

5

### **If the parties to the pledge stipulate that the pledge will be governed by the laws of a foreign country, would a Kyrgyz court uphold such a clause?**

See above, 22

## **PLEDGE TERMS**

6

### **What are the general terms of an aircraft pledge under the laws of the Kyrgyz Republic? Are there any special terms such a pledge should contain?**

There are no specific requirements with regard to an aircraft pledge. As a result, they are subject to the general requirements applicable to pledges under the Civil Code and the Pledge Law. More specifically, according to art.10.4 of the Pledge Law a pledge agreement should contain details of:

- the parties to the pledge agreement and their addresses;

- details of the obligations secured by the pledged property, including the date of the pledge execution;
- property subject to the pledge, its estimated value, its location and all other details for the identification of the pledged property;
- the right pursuant to which the pledgor owns the property; and
- the obligation of the pledgor under the underlying contract with the pledgee and the term of its obligation.

The parties may provide an “arbitration clause” in the pledge agreement. That is, to refer to an arbitral court all or certain disputes which may arise between parties regarding the pledge relationship.

## 7 SPARE PARTS

**Under the laws of the Kyrgyz Republic can spare parts, including future parts, be subject to the pledge? Are any special formalities required? If such parts cannot be pledged what other forms of security interests are available to the pledgee in relation to them?**

Spare parts (including future parts)—such as engines not attached to an aircraft—can be subject to an aircraft pledge under Kyrgyz law. Although there is no specific legislation on this subject relating to an aircraft, general principles relating to the pledge of a movable property will apply.

## 8 PERFECTION OF PLEDGES

**What additional formalities are required to perfect the status of the pledge?**

An aircraft pledge should be registered in the Pledge Registration Office. Kyrgyz law does not impose any other requirements or additional formalities.

## 9 STATUTORY FEES, CHARGES, TAXES

**Are there any fees, charges or taxes payable in respect of the creation or registration of the pledge?**

There are no fees, charges or taxes payable in respect of the creation of the pledge.

The registration of an aircraft pledge in the Pledge Registration Office costs KGS370, which is approximately US \$11.

**RENEWAL OF REGISTRATION** 10

**Will the registration in respect of the pledge remain valid throughout the term of the pledge (or the underlying obligation secured by the pledge) or will the registration require renewal? If so, what will be the approximate cost of renewal?**

The registration of the aircraft pledge is not subject to any additional filing or renewal and it will remain valid throughout the term of the pledge and the underlying obligation (until the underlying obligation is satisfied, in the case of a default under the underlying obligation).

**CONVENTIONS** 11

**Has the Kyrgyz Republic 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”)?**
- (d) **The 2001 Cape Town Convention on International Interests in Mobile Equipment (the ‘Cape Town Convention’)**

In 1992, the Kyrgyz Republic ratified the Chicago Convention.<sup>13</sup> In 1999 it ratified the Geneva Convention.<sup>14</sup> It has not as yet, ratified the Rome or Capetown Conventions.

**POSSESSION BY THE PLEDGEE** 12

**On the occurrence of an event of default under the underlying obligation or the pledge agreement, can the pledgee take possession of an aircraft without judicial intervention?**

Yes, if the non-judicial procedure is specified in the pledge agreement. The pledgee can take possession of the aircraft without judicial intervention according to the terms of the pledge agreement set by the parties. In this case, the pledgor must deliver the pledged property to the pledgee and—if the pledge agreement so provides—the pledgee may conduct a private sale of the pledged property.<sup>15</sup>

## 13 JURISDICTION

**In what circumstances would a Kyrgyz court have jurisdiction over an action brought by the pledgee to obtain possession of the aircraft and obtain payment of the underlying debt?**

According to the Civil Procedure Code 146 dated December 29, 1999, Kyrgyz courts have jurisdiction in the following cases:

- a defendant who is an individual and has a place of residence in the Kyrgyz Republic;
- a defendant which is a legal entity and has an authority body, branch or representative office in the Kyrgyz Republic;
- a defendant who is a foreign individual and has property located in the Kyrgyz Republic;
- the contract (full or partial) shall be—or has been—executed within the territory of the Kyrgyz Republic.<sup>16</sup>

The Civil Procedure Code provides that, even if, during the course of the trial in the Kyrgyz Republic, the case falls under the jurisdiction of another foreign court (including where there has been a change of nationality or in the place of residence) the Kyrgyz court will still retain jurisdiction to examine the case.

## 14 JUDICIAL PROCEDURE FOR POSSESSION

- 14.1 Upon an event of default under the underlying obligation or the pledge agreement, what is the judicial procedure for the pledgee to obtain possession of an aircraft both before and subsequent to judgment? What is the cost of initiating proceedings? Will a bond or other security be required?**

*Before the judgment*

The pledgee cannot obtain possession of an aircraft before the judgment.

*Subsequent to judgment*

The pledgee must obtain an order of the court which directs that the pledgee may realize its claim in respect of the pledged aircraft by way of ordering the public sale of the pledged aircraft.

The public sale shall be in the form of an auction and tender specified by the court.<sup>17</sup>

*Injunctive Relief*

On an application by the pledgee, the Kyrgyz courts may take the following measures to protect the interests of the pledgee<sup>18</sup>:

- arrest the pledged property;
- prohibit the pledgor from performing certain actions;
- prohibit other persons from transferring the pledged property or from performing other obligations in respect of the pledged property;
- suspend the sale of the pledgor's property; and
- suspend collection under an executory document contested by the pledgee.

The court may take other interim measures to secure the underlying obligation or the pledged property. The court may take several measures to secure the pledged property or the claim simultaneously.

**What documents will the court require to support the enforcement of the pledge? 14.2**

In addition to the documents generally required under the Civil Procedure Code, a claimant must file various documents to support its claim. Specifically, a claimant must file:

- an original of the pledge agreement;
- evidence of registration of the pledge; and
- evidence of the non-payment of the secured debt by the pledgor pursuant to the underlying loan contract.

**LENGTH OF TRIAL 15**

**How long will the trial of the action take?**

Generally, a judge must adjudicate the claim within two months of its being filed.<sup>19</sup> Usually, a case is heard in one day. However, the adjudication of certain complicated matters (including those related to the aircraft pledge) may take longer.

**CLAIMS RANKING PRIOR TO PLEDGE 16**

**What claims would rank prior to the pledge?**

No claims rank prior to the pledge—except in cases of bankruptcy of the pledgor. In accordance with Kyrgyz Law On Bankruptcy 74 dated 15 October 1997, the claims of obligees secured by the pledge shall be satisfied in priority to other obligees (the claims of individuals against the debtor with respect to any harm caused to their life and health, employees of the pledgor with respect to their unpaid salaries, etc.) within the limits of the amount received from the sale of the pledged property. The subject of a pledge shall not be part of the pool of liquidation assets in the event of the bankruptcy of the pledgor.<sup>20</sup>

## **17 SALE OF THE AIRCRAFT**

### **17.1 May the pledgee sell the aircraft prior to judgment being given and, if so, what is the procedure?**

The pledgee cannot sell the aircraft prior to judgment.

### **17.2 Costs of initiating proceedings**

The following costs arise in the event of initiating proceedings by way of the judicial procedure: a court fee, fees for organising the sale, payment to the person who has organised the sale, etc. These amounts vary in different circumstances.

There is no bonding, or other security requirement, in connection with the judicial procedure.

### **17.3 Enforcement of Judgment**

A court judgment becomes effective 30 days after the court of initial jurisdiction issues it—unless this judgment is appealed.<sup>21</sup> Generally, once the judgment is effective, the court will issue a writ of execution to the bailiff.

## **18 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 the Kyrgyz Republic?**

According to Kyrgyz legislation, the national currency, the Som, is the sole legal tender in the Kyrgyz Republic. Kyrgyz courts can issue their judgments only in soms. However, operations on the national and foreign currency exchanges are not restricted. Residents and non-residents have the right to purchase and sell foreign currency without restrictions and unnecessary delay in currency exchange institutions.<sup>22</sup>

According to the law On Operations in Foreign Currency<sup>23</sup> 6–1 dated July 5, 1995 Residents are defined as:

- individuals, permanently living in the Kyrgyz Republic, including those staying abroad. Foreign individuals, permanently living in the Kyrgyz Republic, become residents after presenting notification of immigration to correspondent agencies;
- legal entities, created in accordance with the legislation of the Kyrgyz Republic;
- diplomatic and other official representatives of the Kyrgyz Republic, staying abroad;



- branches and representatives of foreign legal entities, created in accordance with the legislation of the Kyrgyz Republic; and
- branches and representatives of legal entities of the Kyrgyz Republic, staying abroad.

## REMITTAL OF PROCEEDS ABROAD

19

**In the event of the pledgee recovering the debt, whether through court process or by means of 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 consent be withheld? How long would such consent take to obtain? Will there be any export restrictions on the export of the aircraft?**

A pledgee can remit abroad the proceeds from the public or private sale of an aircraft. Transfers of a foreign currency from abroad—or to abroad—are not restricted. Imports and exports of currency are not subject to any restrictions (providing the holding of such currency has been declared by the relevant person in a declaration made to the customs control offices).

Kyrgyz law does not prohibit the export of civil aircraft. However, in this case, the corresponding “aviation department” of a foreign Country shall inform the *Aviation Department* of the Kyrgyz Republic of its agreement to register an aircraft. The *Aviation Department* of the Kyrgyz Republic will then provide the Certificate of Withdrawal from service of an aircraft.

## RECOGNITION OF FOREIGN JUDGMENT

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**Were the pledge to be subject to the jurisdiction of a foreign court and were judgment to be given by that court, would the judgment be recognised and enforced by the courts of the Kyrgyz Republic? Are there any prerequisites to such enforcement? Would the Kyrgyz courts enforce such a judgment without a rehearing of the issues? Would a Kyrgyz court enforce a foreign decree or other executive act confiscating an aircraft regardless of the pledgee’s security interest in it?**

Kyrgyz Law distinguishes decisions of foreign arbitral courts from judgments of the foreign courts.

### *(a) Foreign Arbitral Awards*

In general, Kyrgyz courts enforce the decisions (being a foreign decree or other executive act confiscating an aircraft) of foreign arbitral courts. The Kyrgyz Republic has duly ratified the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. The Civil

Procedural Code<sup>24</sup> defines the grounds for the denial of the recognition, and enforcement of foreign arbitral awards as defined in the above mentioned Convention. However, art.434 of the Civil Procedural Code extends the grounds for denial:

- if the decision of a foreign arbitral court has not come into legal force or has not become enforceable;
- if the party against whom the decision was made has not timely and adequately been informed of the time, and place, of the legal proceedings or for other reasons it could not submit its explanation to the court;
- if the case, in accordance with international treaty or law of the Kyrgyz Republic, belongs to the exclusive jurisdiction of the Kyrgyz courts;
- if, prior to the decision of a foreign arbitral court, a court decision in the Kyrgyz Republic becomes enforceable on the dispute by the same parties, on the same subject, and on the same grounds;
- if a Kyrgyz court is hearing a dispute between the same parties, on the same subject and on the same grounds—litigation for which has been initiated before the proceedings in a foreign court;
- if the limitation period has expired to enforce foreign court's decisions and no additional time has been granted by the Kyrgyz court; and
- if the execution of foreign court decisions may impair the sovereignty of the Kyrgyz Republic or threaten the security of the Kyrgyz Republic.

Currently, the Kyrgyz Republic recognises and enforces: Judgments of other countries' arbitral courts established subject to arbitration rules of the UN Commission for International Trade Law (UNCITRAL).

*(b) Foreign Court Judgments*

The Kyrgyz Republic is a party to a treaty with a number of CIS countries. This treaty obligates the Kyrgyz Republic to enforce the judgments of the courts of another CIS country. Therefore, a judgment of the court of a CIS country with whom such a treaty exists can be enforced in the Kyrgyz Republic.

However, the Kyrgyz Republic does not have treaties with most Western countries and the judgments of courts of such countries are unlikely to be enforceable in the Kyrgyz Republic. If, however, a Kyrgyz court considers enforcing the foreign judgment of such countries the grounds for the denial of the recognition, and enforcement, of foreign court judgments would be the same as for foreign arbitral awards (See art.434 of the Civil Procedural Code above).

Currently, the Kyrgyz Republic recognizes and enforces judgments of the courts of: Armenia, Belarus, Kazakhstan, Latvia, Moldova, Russia,

Tajikistan, Turkmenistan, Ukraine, and Uzbekistan on civil, matrimonial, and criminal cases.

## GOVERNMENT INTERFERENCE

21

**In what circumstances would the executive organs of government seize an aircraft or otherwise exercise a power of expropriation so as to defeat or substantially impede the pledgee's right? In what circumstances would the executive organ order or refuse to permit the deregistration of an aircraft from the Pledge Registration Office or refuse to permit the registration of the pledge in the Pledge Registration Office**

According to Kyrgyz legislation,<sup>25</sup> the compulsory taking of property from an owner by the Government of the Kyrgyz Republic is not permitted, except in cases where the following is performed:

- Requisition;
- Confiscation;
- Nationalisation.
- *Requisition.* Pursuant to the Civil Code<sup>26</sup> in the case of natural disasters, accidents, epidemics, epizootic and other circumstances of an emergency character, for the public benefit and according to the resolution of a state agency, property may be taken from the owner by paying him the market price of the property. The assessed value according to which the owner shall be reimbursed for his requisitioned property may be appealed before a Kyrgyz court.

A person whose property has been requisitioned has a right, on the completion of the circumstances which have led to requisition, to claim for the return of the remaining property before the Kyrgyz court.

- *Confiscation.* Pursuant to the Civil Code<sup>27</sup> in cases stipulated by law, property may be taken from the owner without compensation pursuant to a court decision as a sanction for committing a crime or any other infraction.
- *Nationalisation.* Pursuant to the Civil Code<sup>28</sup> the State can acquire title to the property of physical and legal persons in accordance with Kyrgyz law by means of nationalisation—subject to the reimbursement to the person (whose property was nationalized) of the value of the property and other losses caused.

In general, however, Kyrgyz authorities can neither interfere with the owner's valid title to an aircraft, nor with the pledgee's security interest in it.

## **AIRCRAFT LEASING**

### **22 LEASING OF AIRCRAFT**

#### **22.1 Is there a Register in which leases may be registered? May only certain types of leases be registered?**

Leases of aircraft (all types of lease) of the Kyrgyz Republic must be registered in the Aircraft Register of the Aviation Department. See above, 1.

The Kyrgyz Republic, in accordance with art.83 *vis* of the Convention on International Civil Aviation (which the Kyrgyz Republic has ratified) may transfer, or accept, the right of the registration of a lease of an aircraft to, or from, another country on agreement.

#### **22.2 What documentation and consents are required for registration?**

The lease original executed agreement must be submitted. However the Aviation Department may require other information at its discretion.

#### **22.3 What are the opening hours and registration fees?**

See above, 1.5.

#### **22.4 Can the Aircraft Register be amended?**

The Law On Financial Leasing requires the amendment of the data contained in the Aircraft Register on the occurrence of the following events:

- termination of the lease agreement; and
- seizure of the leased aircraft by the lessor.

The operator/owner of an aircraft registered in the Kyrgyz Republic shall immediately notify the Aviation Department of any change regarding the ownership of an aircraft.

#### **22.5 What is the effect of registration?**

See above, 1.7.

#### **22.6 How is deregistration effected?**

See above, 2.7.

**What types of aircraft lease are possible under the laws of the Kyrgyz Republic? What are their essential characteristics?**

Kyrgyz legislation distinguishes different types of aircraft lease: lease of aircraft with a crew; lease of aircraft without a crew; and financial lease.

*Lease of aircraft with a crew*

During the entire effective period of the lease contract, the lessor must maintain the leased aircraft in good order—including the performance of current and overhaul repairs and the provision of all necessary appurtenances. The members of the crew will be the lessor’s employees. They must follow the lessor’s instructions related to the aircraft’s operation and maintenance, and the lessee’s instructions related to the commercial use of the aircraft.

Certain rules—concerning the renewal of the contract of lease for an indefinite term and the lessee’s priority right to renew the contract of lease—do not apply to the contract of aircraft lease with a crew.<sup>29</sup>

*Lease of aircraft without a crew*

The lessee, for the entire effective period of the contract of a lease without a crew, shall keep the aircraft in good order—including the performance of current and overhaul repairs. The lessee shall be held liable for any damage caused to third parties by the aircraft, its mechanisms, devices, or equipment.

Certain rules—concerning the renewal of the contract of lease for an indefinite term and the lessee’s priority right to renew the contract of lease—do not apply to the contract of aircraft lease without a crew.

*Financial lease*

The Civil Code<sup>30</sup> provides that, under a financial lease, the lessor is obliged to acquire ownership in the property from the seller and to lease such property to the lessee. Pursuant to the law On Financial Lease<sup>31</sup> 21 dated July 23, 2002, a lease will qualify as a “financial lease” if it meets one of the following tests:

- at the end of the lease term, there is a transfer in the ownership of the leased object to the lessee;
- the lease contract provides for the lessee’s right to purchase the lease object according to the price specified in the lease contract;
- the term of the lease exceeds three-quarters of the economic life of the lease object (in this case the ownership of the asset may not be transferred to the lessee);

- the current (discounted) cost of the lease payments for the total term of the financial lease exceeds 90 per cent of the cost of the leased object; or
- the leased object possesses a special attribute to the lessee, and only the lessee can use it without significant modifications.

## 24 LAW GOVERNING THE LEASE

**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 Kyrgyz court uphold such a clause?**

See above, 4.

## 25 LEASE TERMS

**Are there any special terms that an aircraft lease governed by the laws of the Kyrgyz Republic should contain?**

The Civil Code provides that the material terms of the aircraft lease shall include:

- the parties to the lease agreement;
- the term of the lease agreement;
- the parties' rights, and obligations, under the lease agreement; and
- the amount, and frequency, of lease payments;

The Law "On Financial Lease"<sup>32</sup> requires that a financial lease contain the following:

- description of the leased asset for the purposes of identification;
- the rights, and obligations, of the parties in connection with the acquisition and transfer of the leased asset;
- the procedure, terms and conditions for making lease payments; and
- the party who is responsible for choosing the leased asset and the seller.

## 26 SPARE PARTS

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

Yes. See above, 7.

**PERFECTION OF LEASES** 27

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

Apart from registration, none.

**CHARGES AND TAXES** 28

**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?** 28.1

Regarding creation or registration of an aircraft lease see above, 1.5.

*Withholding Tax*

In accordance with the Tax Code 25 dated June 26, 1996, rental payments required to be made by a resident lessee to a non-resident lessor are subject to Kyrgyz withholding tax at the rate of 30 per cent.<sup>33</sup> In accordance with a number of double tax treaties to which Kyrgyz Republic is a party, income obtained by the resident should be paid in the country of its domicile.

*Income Tax*

A Kyrgyz lessee must pay a 10 per cent income tax based on its results as per each calendar year.<sup>34</sup> Apart from withholding tax, there should not be any income tax liabilities in the Kyrgyz Republic arising in respect of non-resident lessors of the aircraft.

*Profit Tax*

Payers of profits tax are:

- all legal persons—residents of the Kyrgyz Republic which carry on economic activity and gain profits from a source of income both in the Kyrgyz Republic and outside it; and
- all non-resident legal persons who carry on an economic activity in the Kyrgyz Republic as part of a permanent establishment and gain profits from a source of income in the Kyrgyz Republic.

The taxable profit of legal persons shall be taxed at the rate of 10 per cent.<sup>35</sup>

Income from the works and services performed and rendered by the non-resident taxpayer on the territory of the Kyrgyz Republic are taxable at the place of payment without deductions at the rate of 30 per cent.

## **28.2 VAT**

Payment of VAT is made at the rate of 20 per cent and applies to the taxable value of taxable supplies and taxable imports of goods. The international transport of passengers, baggage and cargo are zero-rated supplies.

## **29 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?**

No registration renewal is required in order for the aircraft lease to be effective throughout the lease term.

## **30 POSSESSION BY THE LESSOR**

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

### **30.1 Lease of aircraft with/without a Crew**

On an event of default, as specified in a lease contract, the lessor is entitled to terminate the lease. Once the lease is terminated, the lessee must return the leased property to the lessor. If the lessee refuses to do so—or if it disputes that the lease has been terminated—the lessor must seek a court order to confirm the termination of the lease.

### **30.2 Financial Lease**

If the lessee does not object to the return of the leased aircraft, the lessor may take possession of the aircraft without judicial intervention. Under the law On Financial Lease in case of the lessee's bankruptcy, property arrest, confiscation or seizure the lessor is entitled to the return of the leased property.

## **31 JURISDICTION**

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

See above, 13.



## **JUDICIAL PROCEDURE FOR POSSESSION**

32

**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?**

Upon an event of default under the lease, according to the Civil Code,<sup>36</sup> at the lessor's request, the court may terminate the lease contract before the time of the expiration of the lease in the event the lessee:

- uses the property in a way which considerably violates the terms of the lease contract or uses the property not according the purpose of using the property, or does it with repeated violations of Kyrgyz law;
- substantially worsens the property;
- fails to make a rent payment more than two times during the term of the lease contract;
- does not perform the overhaul repairs of the property within the period laid down in the lease contract, and if no period was provided in the contract, within a reasonable period, or if the obligation to perform overhaul repairs was assigned to the lessee.

The lessor shall have the right to demand in a court the early termination of the lease contract only after mailing a written notice to the lessee on the lessee's failure to fulfill its obligation under the lease contract, demanding the mandatory fulfillment of its obligation within a reasonable period.

## **LENGTH OF TRIAL**

33

**How long will the trial of the action take?**

See above, 16.

## **DOCUMENTS FOR POSSESSION**

34

**What documents will the court require for ordering the lessee to return the aircraft into the property of the lessor?**

According to the Civil Procedural Code, the claimant's complaint should be accompanied by:

- confirmation of the submission of copies of the claim to the lessee, along with a copy of the lease agreement; and
- evidence of the lessee's default under the lease agreement.

### **35 CLAIMS RANKING PRIOR TO THE LESSOR**

#### **What claims would rank prior to the lessor's rights?**

In the case of the liquidation of a legal entity, which comprises a lessor or a lessee, the claims of the obligees shall be satisfied in the following order<sup>37</sup>:

- first priority, the claims of citizens to whom the liquidating legal entity is liable for causing damage to life or health;
- second priority, severance and salary payments shall be furnished to persons who have worked under a labor agreement (contract), but for not in excess of three months;
- third priority, claims of obligees against the principal amounts and interest thereon of obligors not secured by a lien shall be satisfied. Irrespective of the claims of other obligees of this priority, the claims of non-affiliated individuals, which are bank depositors shall first be satisfied and the claims of affiliated individuals, which are bank depositors, shall then be satisfied;
- fourth priority, recovery of the balance due to the budget and non-budgetary funds shall be made;
- fifth priority, claims for the forfeit (fine and penalty) of obligees of the third and the fourth priority—including interest on the principal amounts of payments which are due to budget and non-budgetary funds.

### **36 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 the Kyrgyz Republic?**

See above, 20.

### **37 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 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?**

See above, 21.

## RECOGNITION OF FOREIGN JUDGMENT

38

**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 the Kyrgyz Republic? Are there any prerequisites to such enforcement? Would Kyrgyz courts enforce such a judgment without a rehearing of the issues?**

See above, 22.

## GOVERNMENT INTERFERENCE

39

**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 Pledge Registration Office?**

See above, 23.

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- Civil Code (Pt I)15 dated May 8, 1996
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- Civil Procedural Code 146 dated December 29, 1999
- Tax Code 25 dated June 26, 1996
- Law on Pledge 49 dated March 12, 2005
- Law on Bankruptcy 74 dated October 15, 1997
- Law on Operations in Foreign Currency 6-1 dated July 5, 1995
- Law on Financial Leasing 121 dated July 23, 2002
- Aviation Rules-7 12-08 dated February 28, 2008 of the Kyrgyz Republic  
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of Transport and Communications 135 dated April 29, 1999
- Decree of the Government 202 dated May 2, 2008 on Civil Aircraft  
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## ENDNOTES

- <sup>1</sup> Regulation of the Government On the Department of Civil Aviation under the Ministry of Transport and Communications art.3.
- <sup>2</sup> Aviation Rules-7 art.1.5.
- <sup>3</sup> Guide on Air Traffic Service of the Kyrgyz Republic 106-02 dated July 17, 2002 art.1.2.1
- <sup>4</sup> Air Code art.3.
- <sup>5</sup> Guide for procedures on certification and inspection of operators' aircraft of the Kyrgyz Republic approved by the Order of the Ministry of Transport and Communications 135 dated 29 April 1999.
- <sup>6</sup> See above, fn.5, art.29.
- <sup>7</sup> Aviation Rules-7 art.3.3.
- <sup>8</sup> Pledge Law art.3.
- <sup>9</sup> Pledge Law art.11.5.
- <sup>10</sup> Pledge Law art.26.
- <sup>11</sup> Pledge Law art.33
- <sup>12</sup> Civil Code art.1195.
- <sup>13</sup> Ratified by the Resolution of the Supreme Council 1117-XII dated 18 December 1992.
- <sup>14</sup> Ratified by the Kyrgyz Law 88 dated 21 July 1999.
- <sup>15</sup> Pledge Law art.61.
- <sup>16</sup> Civil Procedure Code art.370.
- <sup>17</sup> Pledge Law art.72.
- <sup>18</sup> Civil Procedure Code art.141.
- <sup>19</sup> Civil Procedure Code art.316.2.
- <sup>20</sup> Civil Procedure Code art.155.
- <sup>21</sup> Bankruptcy Law art.86.3.
- <sup>22</sup> Law on Operations in Foreign Currency art.9.
- <sup>23</sup> Law on Operations in Foreign Currency art.1.
- <sup>24</sup> Civil Procedure Code art.442.
- <sup>25</sup> Civil Code art.281.
- <sup>26</sup> Civil Code art.286.
- <sup>27</sup> Civil Code art.287.
- <sup>28</sup> Civil Code art.288.
- <sup>29</sup> Civil Code art.571.2.
- <sup>30</sup> Civil Code art.603.
- <sup>31</sup> Law on Financial Lease art.2.
- <sup>32</sup> Law on Financial Lease art.8.2.
- <sup>33</sup> Tax Code art.109.
- <sup>34</sup> Tax Code art.89.
- <sup>35</sup> Tax Code art.106.
- <sup>36</sup> Civil Code art.558.
- <sup>37</sup> Bankruptcy Law art.87.