

# Aircraft Finance in Turkey

Since aircrafts are high priced, airlines usually prefer different financing methods than payment for their fleet in cash. Apart from payment in cash, there are different means of aircraft finance.

Third parties providing the necessary finance of the purchase of the aircrafts are preferred by the buyers. There are many financial institutions and lenders in the aircraft finance market that may finance the purchasing of aircrafts as third parties.

Aircraft leasing should also be considered as one of the main means of aircraft finance. It should be noted that aircraft finance is very common and popular in Turkey. They are preferred due to their nature and option to buy at the end of the termination of the term.

Turkey has ratified the Convention on International Interests in Mobile Equipment (the "Convention") and the Protocol to the Convention on Matters Specific to Aircraft Equipment (the "Protocol" and, together with the Convention, the "Cape Town Convention") in 2011. By ratifying such Convention, Turkey has become a country which is very fit for aircraft finance in all respects.

In Turkish Law, the Directive of the Directorate General of Civil Aviation concerning the Methods and Principles of Aircraft Lease ("Directive") has entered into force in 2013.

## Lending

Real and legal persons interested in financing the purchase of an

aircraft should find a lender who can satisfy his/her needs and aims.

On the other hand, the processes and procedures for financing aircrafts are getting more complicated as the characteristics of the aircraft and the financed amount increases.

In order to evaluate the whole transaction, the lender, first, requires some information regarding the aircraft including model, year, registration and proposed purchase price submitted by the borrower.

The lender would require financial information, corporate documents from the borrower such as articles of association and resolutions regarding the approval and authorization of the transaction.

It is quite likely that the lender would require an appraisal of the aircraft in order to ensure that the value of the aircraft is consistent with the lenders expectations for the particular transaction.

The lender will further carry out a title search on the aircraft to detect the current owner of such and whether any security interests, liens or other encumbrances are recorded against the aircraft.

If any liens, encumbrances or other title defects are revealed upon the search, then the lender will require that any obstacles shall be released or otherwise resolved prior to the closing of the transaction. Searches on the judgments regarding the aircrafts will also be performed to ensure that clear title of the aircraft gets conveyed to the borrower.

The lenders have security interests over the financed aircrafts, for insuring such interests, lenders may purchase the title insurance of the aircrafts. By doing so, accurateness of the registration, documentation and that the transaction and security documents' being filed in a timely manner will be ensured by the aircraft title insurer. Then, if any title issues arise after the transaction closes, the title insurer will be responsible for securing the lender's interest in the aircraft and resolving any title defects covered in the insurance.

The loan documents typically associated with a basic aircraft finance transaction include a loan agreement, aircraft security agreements,

guaranty and authorization. Loan Agreement contains the terms and conditions of the loan and the borrower's promise to repayment of the loan pursuant to those terms and conditions. Loan Agreement also provides the lender with remedies if the borrower does not perform its obligations under such agreement.

The aircraft security agreement or mortgage agreement pledges the aircraft as security for the loan agreement. In the event that the borrower fails to repay the loan, the lender will have the right to collect the debt through aircraft. The lender would be able to sell or dispose of the aircraft to recover as much of the outstanding loan balance as possible.

In the financing transactions in which the loan is being guaranteed by a third party, that real or legal person third party will need to execute a guaranty that obligates the guarantor to repay the loan in the event that the borrower defaults.

The lender will require that the appropriate parties execute the loan documentation and also other transaction documentations such as mortgage agreement pursuant to their terms and conditions.

The mortgage agreements should be duly registered to the Civil Aviation Registry under Turkish Laws in order to protect the property against third-party claims, together with the aircraft itself or after the registration of the aircraft to the Turkish Civil Aviation Registry.

It should also be noted that related loan agreements are enjoying tax advantages in Turkey under certain conditions. Only the mortgage agreement is subject to stamp tax under the laws of Turkey. Thus, Turkish aviation practice enjoys a lot of that as well.

## Financial leasing: Legal reforms in civil aviation

# industry

Financial leasing is the most used type of aircraft finance in Turkey mostly because of various tax advantages.

Financial leasing transactions are governed by the Financial Leasing Code numbered ("the Code") and the financial leasing of aircrafts are subject to the abovementioned Directive. According to the Directive, aircrafts may be leased within the frame of dry-lease, wet-lease and short term wet-lease agreements.

The difference between dry-lease and wet-lease is that the lessee assumes the commercial liability regarding the flights, whereas the technical and operational liability is assumed by the lessor. For financial leasing of aircrafts, the written consent of the aircraft's owner is required.

Depending on the type of lease and the status of the parties (local or foreign airlines), the permission procedures and other terms and conditions for aircrafts leasing may vary which have been regulated in the Directive.

The financial lease agreements whose subject matter is the leasing of the aircrafts are also required to be registered with the Aviation Registry pursuant to Civil Aviation Code numbered 2920.

Protecting the lessor against any third party claim with respect to the leased aircrafts is the main function and aim of these registrations.

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