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Legal Overview of Aircraft Finance in Israel

We often advise local and international financial institutions in constructing Israeli security packages relating to financing of aircraft or other aviation assets (engines, parts, etc.). Such security package may vary depending on numerous factors such as the type of financing required (pre-delivery, post-delivery, leveraged lease, etc.) the legal identity and nationality of the owner and/or operator of the aircraft, whether the owning entity is a special purpose vehicle or not, the legal identity and nationality of shareholders or partners of the entity owning the aircraft, the type of aircraft or specific aviation asset.

The main security over aircraft and/or aviation assets in Israel is a charge or pledge over the aircraft or asset. As Israel does not have a register of mortgages (as opposed to ship finance), the "mortgaging" of aircraft is perfected by creating and registering a charge or pledge over the same (as would be done for the charging or pledging of any assets). The distinction between a charge and pledge is somewhat technical and is ultimately dependent on the legal nature of the entity creating the security.

If the entity were an Israeli company then the relevant security over the aircraft or aviation asset would be a charge. A charge is commonly created by the parties entering into a debenture and thereafter registering the same with the Israeli Companies Registrar within 21 days of execution. It should be noted that the current policy of the Companies Registrar is not to accept the filing of any documents in English and therefore it is now common practice to have the documents requiring filing translated and signed also in Hebrew.

If the owner of the aircraft were an individual or a partnership then the relevant security over the aircraft or aviation asset would be a pledge. This should not be confused with the English equivalent of such term and does not require the pledgee to actually have possession of the pledged asset. A pledge is commonly created by the parties entering into a pledge agreement and thereafter filing a notice of the same to the Pledges Registrar. It should be noted that the filing of the underlying pledge agreement is not required when filing pledges (and therefore no translations are required in such case) as all that is filed is the notice of pledge which is a standard Hebrew form wherein the specifics of the underlying pledge are described.

Even though following perfection of the pledge or charge set out above the pledgee or chargee is thereafter considered under Israeli law a "secured creditor" and is granted priority in a bankruptcy of the borrower/owner it is important that such pledge or charge is also noted with the Register of Aircraft within the Civil Aviation Authority and endorsed upon the aircraft's certificate of registration of the aircraft itself.

We would note that the laws dealing with creating security are about to undergo significant modification in the near future, which may affect the analysis above. For instance, it is the intention of the Israeli legislature to cancel the existing distinction between pledges and charges and have all security created by means of pledges registered within one registration authority.

In any event, specific advice should be sought in respect to each type of financing and our experienced multi-disciplinary team is happy to assist and advise as may be necessary in order to construct the most appropriate security package depending on the needs of the client.

This note was prepared by *Gottlieb, Gera, Engel, Heifetz & Co.* as a general overview and should not be viewed as comprehensive legal advice. We highly recommend that specific legal advice should be sought on a case by case basis.

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