IRELAND

IRISH AVIATION SECTOR

Ireland continues to build on its reputation as a centre of excellence for aircraft financing and leasing and its position has been further enhanced in recent years. There are a number of reasons why Ireland attracts investment in this area which include its favourable tax regime, a wide double tax treaty network and professional expertise.

These factors combined with a government which is committed to growing and supporting the industry mean that Ireland has become the obvious location through which to finance and lease aircraft.

Taxation developments, 12.5% tax rate. The Irish government has repeated its commitment to maintaining the 12.5% corporation tax rate for active trading companies. This commitment has been welcomed by the aircraft financing and leasing community.

Irish ‘section 110’ companies. It is critical to ensure that aircraft finance can be raised in a tax efficient way. In structured finance and securitisation transactions, an Irish ‘section 110’ company is commonly used to raise debt financing to acquire assets on a tax neutral basis.

An Irish section 110 company is a standard Irish special-purpose company that satisfies the conditions of section 110 of the Taxes Consolidation Act 1997 of Ireland. An Irish section 110 company is generally entitled to claim a tax deduction for all of its financing expenses, including (subject to some conditions) its profit-linked financing expenses.

Therefore, it is generally possible to ensure that an Irish section 110 company can acquire assets using debt financing on a tax neutral basis by ensuring that the Irish section 110 company pays out all of its return in respect of those assets as tax deductible interest payments to lenders and investors.

Since 2011, the categories of assets which an Irish section 110 company may acquire have been extended to include plant and machinery, which includes aircraft and rolling stock.

As a result of these changes, Irish section 110 companies have proven to be very attractive vehicles to satisfy the bankruptcy-remote requirements of financing banks in aircraft financing transactions. This trend of using bankruptcy-remote Irish section 110 companies in aircraft financing transactions has continued in 2013 and 2014.

Expansion of double tax treaty network. Ireland has now signed 71 double tax treaties (68 of which are now in force). Ireland's most recently signed double tax treaties include treaties with Ukraine, Thailand, Botswana, Uzbekistan, Ukraine, Kuwait, Qatar, Bahrain, Saudi Arabia, Armenia and Egypt. The Irish tax authorities are very active in increasing the number of treaties to which Ireland is a party, particularly with emerging market and Middle-East jurisdictions.

New tax credit for non-treaty withholding taxes. Tax treaties play a key role in Ireland's successful leasing industry by reducing or eliminating withholding taxes on inbound lease rental payments. Tax treaties allow Irish lessors to claim tax credits against their Irish corporation tax for any unrelied foreign withholding taxes.

However, until recently, an Irish lessor could not claim a similar tax credit for foreign withholding taxes where no tax treaty applied. In recent developments, an Irish lessor carrying on a trade in Ireland may now also claim a tax credit for foreign withholding taxes on lease rentals where there is no applicable tax treaty. The relief is granted on a unilateral basis by Irish domestic law.

This recent development has positioned Ireland as an attractive leasing jurisdiction for leasing aircraft and other assets into jurisdictions which do not have a wide tax treaty network.

New investment. The Irish leasing market has been very active with strong investment from Japan and China in recent years. Set out below are just some of the new investments into Ireland in the aviation industry.

In 2014, the Chinese aviation operation of Bank of Communications Financial Leasing (JY Aviation) set up an Irish leasing platform as the site of its European headquarters. With its operation in Ireland, the company plans to recruit experienced aviation leasing experts including technical, legal and operation personnel before the end of 2015.

According to Luo Le, who currently heads up the Irish operations of Bank of Communications Financial Leasing (JY Aviation), “JY currently has a fleet of 21 aircraft leased to Chinese, Asian and European airline customers, and plans to add another 15 to 20 to its fleet through sale/leaseback, financial lease and portfolio acquisition within 2014.”

At the end of 2013, the leasing unit of China Minsheng Bank incorporated Minsheng Commercial Aviation (Ireland) Company Limited, an aviation unit in Dublin. Minsheng Commercial Aviation is seeking to grow internationally by buying aircraft in the secondary market or directly from aircraft manufacturers and then leasing the aircraft to airlines.

Following the acquisition by Mitsubishi UFJ Lease & Finance (“MUL”) of Jackson Square Aviation, MUL rebranded its Irish leasing platform in January 2014 from MUL Aviation Capital Limited to Jackson Square Aviation Ireland Limited and the MUL and Jackson Square Irish leasing platforms are currently in the process of being integrated. The Irish leasing company plans to acquire and lease narrow-body aircraft and lease to a variety of lessees in a number of jurisdictions.
Norwegian Air Shuttle ASA established Norwegian Air International Limited (“NAI”) which has been granted an Air Carrier Operating Licence by the Irish Commission for Aviation Regulation and an Air Operator’s Certificate by the Irish Aviation Authority. NAI is the first Irish airline which will be headquartered in Ireland but will initially have all of its operational bases outside of Ireland. It may operate long-haul flights from Ireland in 2015. NAI is an EU regulated low-cost long-haul airline which operates Boeing B787 Dreamliner aircraft.

AerCap acquired International Lease Finance Corporation (“ILFC”) in May 2014. The former ILFC portfolio of almost 1,400 aircraft will be serviced by AerCap Ireland Limited as the Irish based servicing arm of the AerCap Aviation Group.

AerCap’s CEO Aengus Kelly stated that “AerCap’s acquisition of ILFC will create the leading global franchise in the aircraft leasing industry. This transaction presents a unique strategic opportunity to bring together the outstanding and experienced personnel from both companies and two attractive portfolios of modern aircraft on lease to a highly diversified customer base. Further, we believe AerCap will now have the most attractive order book in the industry.”

**Capital market deals.** Ryanair, the Irish low-cost airline, raised €850m in its first ever bond offering in June 2014. The seven-year bond will be listed on the Irish Stock Exchange (“ISE”) and the funds raised from this offering, and subsequent offerings planned for the next few years, will be used to finance the purchase of 180 Boeing B737 aircraft which it has on order.

In 2014, Ryanair received a BBB+ rating from Standard & Poor's and Fitch which makes it the highest rated airline in the world.

In July 2014, CIT closed a US$640m securitisation capital markets financing of 28 aircraft. The Class A-1 Notes issued were listed on the Global Exchange Market of the ISE.

**Cape Town Convention and Aircraft Protocol.** Aviareto Limited, an Irish limited liability company which is a joint venture between the Irish Government and SITA was, in 2012, reappointed as the Registrar to the International Registry for a further five years.

Ireland was one of the first Contracting States to the International Registry and Aircraft Protocol and this has been another reason why lenders favour Ireland as a jurisdiction for aircraft financing.

If the borrower and mortgagor is located in Ireland, the lenders will get the benefit of the Cape Town Convention and Aircraft Protocol. The added protection afforded under the Cape Town Convention and Aircraft Protocol has been increasingly relied on by lenders and in certain transactions has replaced traditional local law mortgages where obtaining such mortgages was inefficient from a time and cost perspective.

The decisions of the Irish High Court in *PNC Equipment Finance LLC v Aviareto Limited and Link Aviation LLC* (unreported, High Court December 19, 2012) and *TransFin-M, Ltd v Stream Aero Investments S.A. and Aviareto Limited* (unreported, High Court (Commercial Division) April 18, 2013) illustrate that frivolous or unwarranted registrations made on the International Registry may ultimately be removed at the direction of the Irish Courts and at the expense of the registrant.

The decisions also illustrate the willingness of the Irish Commercial Court to accept jurisdiction to hear substantive causes of action in disputes relating to registrations originating entirely outside Ireland under the provisions of the Cape Town Convention and Aircraft Protocol, which were given effect in Ireland pursuant to the International Interests in Mobile Equipment (Cape Town Convention) Act 2005.

The approach of the Irish Courts, coupled with the speedy resolution of such disputes by the Irish Commercial Court, will greatly aid the proper and efficient functioning of the International Registry, and provide comfort to parties seeking to discharge unwarranted International Registry registrations that such discharges can be done in a timely, effective and efficient manner.

The State Airports (Shannon Group) Bill 2014 was published
recently and will enable the Irish government to make an order giving the Cape Town Convention Alternative A insolvency remedy force of law in Ireland. It is hoped that this Bill will become law by the end of 2014. This will be very similar to the US Chapter 11 insolvency remedy and will provide that in the case of an insolvency related event of a lessee, mortgagor or conditional purchaser, the lessor, mortgagee or conditional seller will be entitled to the return of the aircraft within 60 days unless certain criteria are met.

Irish Aviation Authority. Many aircraft which are operated in countries such as Russia and Italy are registered with the Irish Aviation Authority. Owners and lenders choose Ireland as the State of Registration to remove deregistration risk and protect the residual value of the aircraft by having the aircraft registered with an EASA registry. This trend has continued in recent years and has been further bolstered by the fact that registration of an aircraft in a Contracting State to the Cape Town Convention and Aircraft Protocol satisfies one of the connecting factors under the Convention and Protocol to create an international interest.

Further protection can be afforded through registration of an IDERA with the Irish Aviation Authority.

Irish Stock Exchange. The ISE has recently developed a dedicated Aviation Exchange for aviation related debt and other instruments. This move reflects the increasing importance of capital markets to the global aviation sector. At the beginning of 2014, there were 26 aviation debt listings with a total value of US$12.7bn.

ISE Chief Executive Deirdre Somers explained that the new Aviation Exchange will be a "dedicated platform specialising in aviation related debt instruments that will provide issuers and investors with what they are looking for: visibility and specialist knowledge of their sector."

Conclusion. Ireland’s reputation as a centre of excellence for the aircraft financing and leasing sector remains strong and has been enhanced by the extension of Irish section 110 companies to include aircraft assets. Combined with the existing taxation benefits, this is an additional tool in the box which permits the aviation financing structures required by aviation sector investors and lenders.

As a result, Irish section 110 companies are now frequently used in aviation financing and leasing structures. Ireland will continue to expand its double tax treaty network over the coming years demonstrating Ireland’s commitment to the aviation financing and leasing sector.