

## **Aircraft Finance in Turkey**

The Turkish aviation industry and the civil aviation sector have made remarkable progress over the last decade in terms of fleet size, passenger number and profitability. As a consequence of new players' intention to enter this attractive market and the existing players' thirst for growth, aircraft finance has been in high demand these last years. Below you may find the essentials of the Turkish aircraft finance practice from a legal standpoint.

### **Overview**

In Turkey, there is no specific piece of legislation applicable to aircraft finance. Due to various tax advantages that it provides (especially in terms of Valued Added Tax), financial leasing is the most commonly used vehicle in aircraft finance in the Turkish market.

Under Turkish law, financial lease transactions are governed by the Financial Lease Law No. 3226 (the **Law**)<sup>1</sup>. Both movables and real properties may be subject to financial lease. However, the financial lease of intellectual property rights (e.g., patents, trademarks) is expressly excluded from the scope of the Law.

The parties to a financial lease agreement are the lessor (*kiralayan*) and the lessee (*kiraci*). The lessor may only be a financial leasing institution established either in Turkey or abroad. Upon the lessee's choice and request, the lessor purchases (or somehow provides) the subject matter of the financial lease agreement (the **Leased Property**) from a third party and transfers its possession (*zilyetlik*) to the lessee. The lessor continues to be the owner of the Leased Property throughout the agreement's term. However, the lessee may be given the right to acquire the ownership of the Leased Property upon termination of the agreement. The lessee's main duty is paying the contractually-determined lease amount (*i.e.*, the consideration) to the lessor.

Pursuant to the Law, certain criterion must be met in order for any financial lease agreement to be valid and enforceable.

### **Financial lease agreement and its registration**

As a formal requirement, financial lease agreements have to be made in writing and executed before a notary public in Turkey.

Pursuant to the Law, in case the Leased Property is a movable (e.g., an aircraft), the financial lease agreement has to be registered with the special registry held by the notary public of the lessee's place of residence (*i.e.*, any notary public within the city where the lessee is resident). The Law does not set forth any specific registration procedure for aircrafts. If the lessor is a foreign entity and does not have any branch in Turkey, the financial lease agreement has to be registered by the Banking Regulation and Supervision Agency (the **BRSA**).

Considering the provisions of the Civil Aviation Law No. 2920<sup>2</sup>, the financial lease agreements regarding the lease of aircrafts have also to be registered with the Aviation Registry, which is publicly available and held by the Civil Aviation Directorate of the Ministry of Transport.

The main function of the above-mentioned registration procedures is to protect the lessor against any third-party claim with respect to the Leased Property. For instance, if a third party (which has a receivable from the lessee) attempts to seize the Leased Property and liquidate it through foreclosure sale (*i.e.*, public auction), the lessor may object stating that the Leased Property belongs to itself and thus cannot be seized for the lessee's debt.

### **Consideration and limits**

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<sup>1</sup> Published in the Official Gazette dated 28 June 1985 and numbered 18795.

<sup>2</sup> Published in the Official Gazette dated 28 June 19 October 1983 and numbered 18136.

The consideration in a financial lease agreement is freely determined by the parties. That is to say, the parties may agree on a fixed or variable consideration, which can be in Turkish Lira or in a foreign currency exchanged by the Central Bank of the Republic of Turkey. In practice, the consideration is paid by monthly installments.

Nevertheless, in case the lessor is a foreign entity, the annual consideration cannot be less than the equivalent of US\$25,000 in Turkish Lira, which does not have a major impact on aircraft finance.

### **Term**

Pursuant to the Law, a financial lease agreement cannot be terminated for the first four years. The Law provides that the BRSA is authorized to reduce such term.

### **Material provisions**

Pursuant to the Law, the lessee is not entitled to transfer the possession of the Leased Property to a third party. However, as per the amendment brought to the Law in 2007, if a written prior consent is obtained from the lessor, the lessee may transfer the possession of the Leased Property to a third party. In such case, the above-mentioned registration procedures have to be renewed in order to avoid any prejudice. Similarly, unless otherwise provided in the financial lease agreement, the lessor cannot transfer the ownership (*mulkiyet*) of the Leased Property during the agreement's term.

In accordance with the Law, the lessor is under the duty of providing insurance for the Leased Property. Yet, insurance premiums are paid by the lessee.

### **Tax exemptions and incentives**

Financial lease agreements are exempted from any tax, charge or duty. Furthermore, the General Communiqué Serial No. 13 on Law on Charges<sup>3</sup> issued by the Ministry of Finance specifies that not only the execution of the financial lease agreements but also their registration with the relevant registries benefit from such exemption.

Finally, the Law provides that in case of import of the Leased Property, the temporary customs exemption regime, which contains more friendly provisions, shall be applicable.

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<sup>3</sup> Published in the Official Gazette dated 7 June 1986 and numbered 19130.