

CASE LAW UPDATE:

JUDICIAL SEIZURE OF AIRCRAFT ENGINES IN ROMANIA

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[ADRIAN IORDACHE](#)

In a dispute over the return of an aircraft engine located in Romania, the lessor may successfully secure the preservation of the asset pending trial by means of ‘judicial freezing order’ (*sechestrul judiciar*).

An aircraft engine is arguably the single most valuable part of an aircraft. As the airframe ages, the relative economic importance of the engine for both Lessors and Lessees escalates. This further raises the stakes of repossession actions in disputes over the lease.

The first line of protection for Lessors is contract drafting. But while drafting can go a long way in clarifying the Lessees’ return obligations, ensuring that an aircraft engine is preserved and secured until final resolution of the dispute remains of paramount importance. In this context, the effectiveness of the Lessor’s protection depends as much on the contract provisions as on the procedural tools available in the domestic procedural law of the jurisdiction where the engine is located at the relevant time.

In a recent dispute over a lease of an aircraft engine located in Romania, Iordache Partners successfully assisted the Lessor in securing the conservation of the engine pending finalization of the dispute. The engine lease was based on the IATA contract form and the case is pending before a Romanian “Tribunal” (a court of general competence with jurisdiction in commercial claims of high value).

In that case (not elsewhere reported), the Lessor had sued the Lessee of the engine for past rent, termination and return of the leased engine. The contract is governed by the New York State law. In ancillary proceedings, the Lessor applied for injunctive relief to secure the amounts in dispute (a type of freezing order, or *poprire asiguratorie*) and a

lien over the asset by way of a ‘judicial freezing order’ (*sechestrul judiciar*). Both were granted in December 2020 and January 2021

This type of the relief with respect to the asset in dispute, involves the appointment, by order of the court, of a ‘receiver’ for the asset, which can be the debtor itself (a common scenario used to save costs). The receiver is tasked with the preservation of the asset as a duty to the court. Once issued and communicated, the order is served on the debtor by means of Court Bailiff, who informs the debtor/receiver of the obligations incumbent upon it over the duration of the dispute.

The mechanism does not necessarily entail immediate repossession. However, it does effectively convert a contractual duty of the debtor into a specifically enforceable public order duty to the court. This provides comfort to the creditor going into the main litigation and increases certainty with respect to practical enforcement when the court issues judgment on the main dispute or the dispute is otherwise settled.

Precedent on this procedural tool as it applies to aircraft engines is scarce and, as far as we are aware, there is no other reported case of a successful application before a Romanian court. **This decision therefore provides much needed clarity to engine Lessors in assessing enforcement risks when transacting on the Romanian market.**



For more information, or if you require advice on any aspect of aircraft and engine leasing, do not hesitate to reach out to one of our specialist lawyers at: aviation.matters@iordache.partners

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