

# Aircraft leasing and financing-issues and challenges

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International carriage by air is one of the greatest marvels of this remarkable age of science and technology and India has emerged as one of the most promising and fastest growing aviation markets in the world.

To keep pace with this growth, large orders for aircraft acquisition have been placed by almost all airlines in India. Thus, finding enough capital for their ambitious fleet expansion programme is one of the key concerns of all Indian Airlines. Before discussing on the phrase 'Aircraft Leasing', it is pertinent to note that an aircraft cannot be leased but can be bailed. Under Transfer of Property Act, 1882 a lease is defined under Section 107 but relates only to immovable property but not to movable property. So the appropriate word to be used is 'Bailment of an Aircraft' defined under Section 148 of the Indian Contract Act, 1872. Generally in common parlance it is used as 'Leasing of Aircraft'. Aircraft Leasing has become a common technique to acquire an aircraft, since this asset has become expensive and always subject to a variety of laws and regulations.

One of its main advantages is that it assists to settle cost considerably. The players in Airline industry can be categorized in three groups like Public Players, Private Players and Startup Players. Owning an aircraft is an expensive affair. An Airliner's decision to acquire an aircraft is invariably accompanied by the question of whether the aircraft is to be taken on lease or to be purchased. The answer largely depends on the airline's requirements, cost of the aircraft, availability of capital, legal constraints and taxation issues. Prior to the 1980's purchasing an aircraft was the primary choice for the airlines - but new aircrafts were becoming an unattractive

proposition for airline operators to buy aircrafts. Therefore, it is a common practice in the airline business to take aircrafts on lease.

Leasing not only helps in increasing the fleet size at a fairly quick rate but also, and more importantly, reduces the cost of airline operators. There are different types of leases depending on the terms and conditions of the agreement like (i) Finance Lease and Operating Lease, (ii) Leveraged Lease, (iii) Sale and Leaseback, (iv) Wet Lease and (v) Dry Lease. In order to tap the more conventional and cost effective sources of aircraft financing, it is essential that the Indian legal system be able to generate sufficient confidence in Bankers, Financiers and Aircraft Lessors as being protective of their ownership rights and being clear and transparent so that there are no ambiguities regarding applicable laws. The criteria for leasing of aircrafts by Indian Operators are mainly based upon the permission from the Director General of Civil Aviation (DGCA). DGCA's permission is mandatory before leasing an aircraft in India. An Indian operator can either take an aircraft on lease from a foreign operator or another Indian operator but for an acquisition of an aircraft permission is required from the Ministry of Civil Aviation and also from Reserve Bank of India (RBI). The most widely used method of aircraft acquisition in India is leasing, out of which operating lease is the most popular.

The advantages of leasing to airlines are volume discounts for aircraft purchase can be passed on to airline, the conversion of an airline's working capital and credit capacity, the provision of up to 100% of finance, with no deposits or pre-payments, the possibility of excluding lease finance from the

balance sheet etc. The possible disadvantages could be a higher cost than, say, debt finance for purchase, the profit from eventual sale of the aircraft going to the lessor (as a title holder), aircraft specifications not tailor-made for lessee airline (short term leases) etc. The important issues involves requirement at lease commencement and termination (i. e. lessee payment obligations and security, subleasing, repossession, governing law and jurisdiction, delivery conditions, date of elivery, acceptance and inspection of flights, registration formalities, and return conditions), Lessee Payment Obligations and Security (i. e. Lease rent, security deposit, maintenance reserves), Repossession and Tax issues etc.

In conclusion, if the Indian Airline Operators enter into agreements on Leasing of Aircraft from a foreign company then the issues at international front will multiply like that of conflict of laws, international instrument to bring uniformity in asset-based financing etc.