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The Magazine > May 2022 > Sky-High Sanctions: Q&A With Clifford Chance's Emily Wicker

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## Sky-High Sanctions: Q&A With Clifford Chance's Emily Wicker

**Emily Wicker, partner at Clifford Chance, speaks with *Global Finance* about how sanctions against Russia are affecting the air transport sector worldwide.**

MAY 07, 2022 | Author: ANDREA MURAD



***Global Finance:*** Broadly speaking, how have sanctions affected the airline industry?

**Emily Wicker:** Shortly after the war began, the EU, the UK and US passed sanctions making it illegal for leasing companies to supply aircraft to any person in or for use in Russia. There are very specific nuances: Not only are Russian airlines affected, but any entity beneficially owned by Russian parties. Daily updates to sanction rules may also change which activities were permitted—like a lessor flying an aircraft back from Russia. And then the Russian Federation imposed countermeasures making it illegal for any Russian airlines to redeliver

aircraft to certain jurisdictions.

***GF:*** How many aircraft are affected?

**Wicker:** Initially, about 500 commercial aircraft with about \$12 billion in value; now, about 475 remain in Russia. These aircraft cannot be serviced, since the West can't supply spare parts into Russia. With regards to insurance, many leasing companies are treating this as a government requisition event, but the literal terms of insurance policies may not characterize it that way.

In this situation, parties that typically compete for business are very much aligned. This situation has progressed with a coordinated effort across the aviation sector, including governments and international organizations, because there's concern about safety and asset values. These assets have a long lifespan, and ordinarily, an aircraft would be repossessed, and after maintenance redeployed, but this situation makes that difficult.

***GF:*** How are aircraft-related sanctions affecting companies?

**Wicker:** Most lessors terminated affected aircraft leases within days of the EU sanctions. Some parties outside the EU may have thought they were not subject to the initial EU sanctions. For example, many Chinese leasing companies own aircraft, but the entity owning or servicing them tends to be in Ireland

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because of tax efficiency. Ireland requires boards of directors have Irish citizenship—or a critical mass be Irish. While these companies might think they're not subject to these sanctions, they in fact are, and the board members are potentially personally liable.

Also, certain US sanctions for the aviation sector are export control regulations, which attach to the item—in this case, the aircraft—regardless of the owner or operator. An aircraft with sufficient US manufactured content is subject to an export control, and its owner must comply with US law or face implications.

**GF: How do sanctions interact with existing international agreements?**

**Wicker:** There are international treaties that are relevant to what's happening right now, most notably, the Chicago Convention. A coalition of governments established a standardization of safety procedures and similar registration procedures that's been sacrosanct despite nationalization and privatization of assets—and this treaty is now being contravened. Aircraft may only be registered in one jurisdiction at a time, and many Russian-operated aircraft are registered in Bermuda. Since the sanctions required lessors to terminate their leases, the Bermudian safety authorities had no assurances that these aircraft were maintained to their standards, so they suspended the airworthiness certificates of these aircraft, without which a plane cannot fly.

In response, the Russian Federation created a law permitting dual registration, in contravention of the Chicago Convention, and ordered Russian airlines to register these aircraft in Russia to receive a separate airworthiness certificate.

Similarly, under the Cape Town Convention, if an airline defaults under a lease, creditors can repossess the aircraft. However, lessors are not being allowed to repossess aircraft in Russia. The Russian position is that sanctions aren't valid, so there's no default and remedies shouldn't be exercised.

The Russian government also dictated that rental payments should be paid in rubles to Russian bank accounts established to accommodate aircraft owners. However, lessors didn't establish accounts at Russian banks, and sanctions prohibit lessors from accepting rental payments from Russian airlines.

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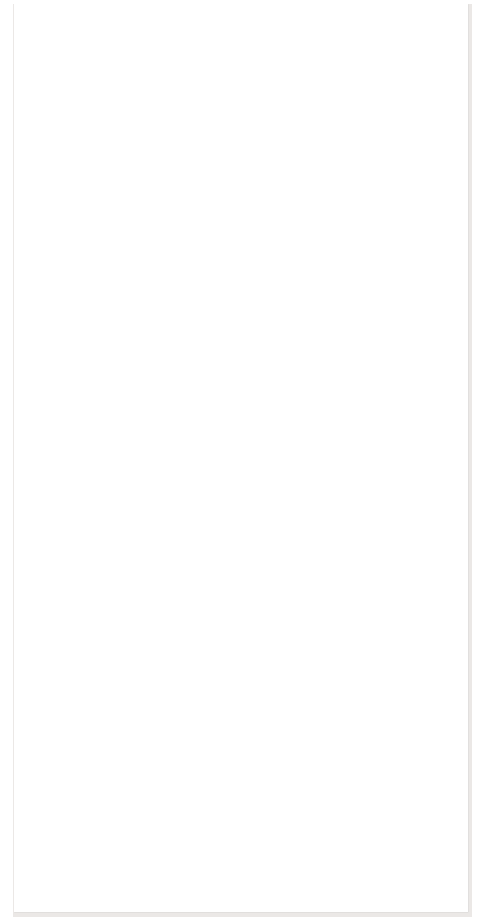
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