



*Integrity*

**ARTHUR COX**

E X P E C T E X C E L L E N C E

FEBRUARY 2010

*Arthur Cox has a depth of expertise in the aviation sector. With specialists drawing on leasing, tax, finance, contract, corporate, competition, environmental and litigation/dispute resolution backgrounds, Arthur Cox is in a strong position to give best advice to those doing business in this sector.*

## Aviation Briefing

# Detention and Sale of Aircraft for Non payment of Airport Charges: The Ultimate Sanction

### Airport Charges in Ireland - How they arise

Dublin Airport Authority p.l.c. (DAA) is a state-owned international airport company responsible for the management of Cork, Dublin and Shannon airports in Ireland. In return for the use of the state airports, DAA has the statutory power to collect payments and for such matters as: (i) runway landing and take-off charges; (ii) aircraft parking charges; (iii) charges for the use of an air bridge; and (iv) passenger processing charges. Part V of the Air Navigation and Transport (Amendment) Act, 1998 (the "1998 Act") governs the collection and enforcement of these Airport Charges.

### Who pays Airport Charges?

Liability for payment of Airport Charges may be imposed on: (i) the Operator of an aircraft; (ii) the Registered Owner of an aircraft; or (iii) both. The Operator is defined as any person responsible for the management of the aircraft. The 1998 Act is wide in scope and applies to aircraft whether registered in the state or not. In such circumstances, a lessor or mortgagee may be found liable for payment. The 1998 Act therefore provides extensive redress for DAA in an event of default. (*Section 39(2) of the 1998 Act*).

### Assessing the Payable Airport Charge

DAA may request any records necessary for the purpose of facilitating the assessment and collection of Airport Charges and in particular may request details of leasing/sub leasing arrangements which will enable DAA to determine who is/has been responsible for the management of the aircraft. It is an offence to refuse or fail to furnish DAA with such documentation. (*Section 39(3)/(5) of the 1998 Act*).

### Recovery of unpaid Airport Charges

It is an offence for a person to default on the payment of Airport Charges. DAA has extensive powers of recovery for due but unpaid Airport Charges either under the provisions of:

*This document contains a general summary of developments and is not a complete or definitive statement of the law. Specific legal advice should be obtained where appropriate.*

(i) section 39(4) as a simple contract debt in any Court; or  
(ii) section 40(1) which provides for the detention and sale of aircraft. Interest will be charged for the period of default.

DAA can detain the actual aircraft which incurred the charges or if this is not possible any other aircraft on which the defaulter is the Operator or Registered Owner. If the Airport Charges are not paid within 56 days from the date when the detention commences, DAA may, upon notification of interested parties and leave of the High Court, sell the aircraft at the best price that can be reasonably obtained to satisfy the charges. The power of detention extends to the aircraft equipment, stores and documents. To date, DAA has not used the power of sale under the 1998 Act. (*Section 40(1) of the 1998 Act*).

### Security in Lieu of Payment

Where any person claiming an interest in an aircraft, which has been detained, believes that these charges are not due, and provides DAA with sufficient security (as determined

by DAA) for the payment of the Airport Charges due, DAA will release the aircraft. Any security provided will be paid into an account nominated by DAA. On payment of the security the payee must provide to DAA any information as it may request. (*Section 40(2) of the 1998 Act*). As DAA determines the security the required cash on deposit may be sought.

### Distribution of Proceeds of Sale

The priority for distribution of the proceeds of the sale will be applied as follows: (1) the payment of any duty (whether customs or excise) or Irish V.A.T. chargeable on the aircraft in the State; (2) expenses incurred by DAA for the detention, keep, sale and the attendant proceedings (including expenses in connection with the Court Application); and (3) the Airport Charges found to be due and charges owed to the Aviation Authority, Eurocontrol or the Minister. These payments are in preference to other debts and any surplus goes to those whose interests have been divested by the sale. (*Section 40(9) of the 1998 Act*).

### Contacts

For further information on aviation matters please contact:



**Eve Mulconry** Partner  
Litigation  
+353 (0)1 618 0455  
eve.mulconry@arthurcox.com



**William Johnston** Partner  
Banking  
+353 (0)1 618 0560  
william.johnston@arthurcox.com



**Kathleen Garrett** Partner  
Banking  
Head of London Office  
+44 (0)20 7832 0205  
kathleen.garrett@arthurcox.com



**Caroline Devlin** Partner  
Tax and Leasing  
+353 (0)1 618 0585  
caroline.devlin@arthurcox.com

#### Dublin

Earlsfort Centre, Earlsfort Terrace, Dublin 2, Ireland  
tel: +353 (0)1 618 0000 | fax: +353 (0)1 618 0618  
email: dublin@arthurcox.com

#### London

12 Gough Square, London EC4A 3DW, England  
tel: +44 (0)20 7832 0200 | fax: +44 (0)20 7832 0201  
email: london@arthurcox.com

#### Belfast

Capital House, 3 Upper Queen Street, Belfast BT1 6PU, Northern Ireland  
tel: +44 (0)28 9023 0007 | fax: +44 (0)28 9023 3464  
email: belfast@arthurcox.com

#### New York

300 Park Avenue, 17th Floor, New York NY 10022, USA  
tel: +1 (1)212 705 4288 | fax: +1 (1)212 572 6499  
email: newyork@arthurcox.com