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Aviation Working Group ("**AWG**")
Clarendon House, 2 Church Street,
Hamilton HM11,
Bermuda

Our Reference: PEAD1/EUROPE/64109624v2

8 June 2020

Dear Sirs

Global Aircraft Trading System (GATS) – Forms of Performance Undertaking

1 BACKGROUND

1.1 This opinion letter

We have been asked to issue this opinion letter on the enforceability under English law of the two forms of performance undertaking (the "**Version A Form**" and the "**Version B Form**", respectively and, together, the "**Forms**" and each a "**Form**") appended to this opinion in Schedule 3 (*Forms of Performance Undertaking*).

1.2 The GATS structure

The Forms are contemplated to be used in connection with future aircraft and engine leasing transactions making use of the GATS trust structures to be established in (or in a territorial unit of, as applicable) one of the GATS trust branches, initially the United States, Ireland and Singapore, whereby (i) legal title to the relevant asset will be held by a trustee (or, where applicable, the GATS trust as a separate legal entity) for the benefit of a beneficiary from time to time, (ii) the trustee or the GATS trust, as applicable (in this capacity, the "**Lessor**") will lease the relevant asset to the lessee (the "**Lessee**") under a Lease Agreement and (iii) the beneficiary of the GATS trust or other party from time to time will enter into an Version A Form or an Version B Form in favour of the Lessee.

1.3 Nature of this opinion letter

This opinion letter accordingly does not relate to actual documents in a specific transaction but only to forms of documents in the abstract. It is addressed to the AWG for information purposes only. This opinion letter may be disclosed to members of the AWG and in the GATS guidance materials to be published on the AWG website and/or the GATS platform and website (<http://e-gats.aero/>) (the "**GATS Platform**"), on the basis that it may not be relied upon by, nor does it create any legal rights in favour of, the AWG, any of its members or any other person. We assume no, and disclaim any, responsibility or liability to the AWG, any of its members or any other person.

1.4 GATS Transactions

Without prejudice to the generality of paragraph 1.3, this opinion letter may not be relied upon by any party from time to time or at any time entering into any GATS Transaction.

1.5 Version A Form and Version B Form

In the assumptions in Schedule 1 (*Assumptions*) and the qualifications in Schedule 2 (*Qualifications*) certain provisions apply specifically to one only but not both of the Forms, as indicated by the reference to the applicable Form in bold type.

2 DEFINITIONS

2.1 Definitions

Terms defined in each Form (either explicitly or by cross reference) which are not otherwise defined shall have the same meaning in this opinion letter.

2.2 Certain definitions and expressions

In this opinion letter:

"**GATS Transaction**" means a transaction using the GATS structure as outlined in paragraph 1.2 and involving the execution of a performance undertaking by a Lessor in the form of either of the Forms;

"**Insolvency Proceedings**" means winding-up, the appointment of a provisional liquidator, an administration (whether appointed by the court or out of court), a voluntary arrangement, a moratorium, and a scheme of arrangement, including any form of territorial, secondary or ancillary insolvency proceeding; also any form of receivership or administrative receivership, whether the receiver is appointed by the court or otherwise and any other English insolvency proceedings without limitation; and any proceedings or procedure under the laws of any other jurisdiction which is comparable to any of the foregoing;

"**Performance Undertaking**" means an executed performance undertaking in the form of either Form, conformed to reflect that it is governed in accordance with the laws of England; and

"**any other jurisdiction**" or "**another jurisdiction**" means a jurisdiction other than England.

2.3 Headings

Headings in this opinion letter are for ease of reference and shall not affect the construction.

3 SCOPE OF OPINION

3.1 Structure and basis of opinion

(a) The opinions in paragraph 4 are given:

(i) on the basis of the assumptions set out in Schedule 1 (*Assumptions*);

- (ii) subject to the qualifications set out in Schedule 2 (*Qualifications*).
- (b) A number of the qualifications in Schedule 2 (*Qualifications*) may not appear to be applicable on the face of the Forms but may be applicable to the (unknown) provisions of the Lease Agreement. Accordingly, all such qualifications are or could be relevant to the enforceability of the Forms, having regard to the Version A Form taking effect as a performance guarantee and the Version B Form being an undertaking to perform Relevant Obligations.
- (c) This opinion letter is not to be read as implying any opinion on any matter not covered by its express terms.

3.2 English law only

This opinion letter is confined to matters of English law in force on the date of this opinion letter as currently applied and interpreted by the English courts. No opinion is expressed as to the laws of any other jurisdiction.

3.3 No updating

We assume no responsibility to update this opinion letter to take account of changes in law taking place after its date of issue, or any amendments made to or updated versions of the Forms posted to the AWG website after the date on which we accessed them.

3.4 Fact

No opinion is expressed on matters of fact, commercial matters or intention.

4 OPINIONS

We are of the opinion that:

4.1 Applicable law

The English courts, applying English conflict of laws rules, would hold that English law is the applicable law of a Performance Undertaking.

4.2 Enforceability

The obligations of a Performance Obligor under a Performance Undertaking will constitute the valid, binding and enforceable obligations of that Performance Obligor.

4.3 No consents or registrations

No consent of any governmental or official authority in England applicable to companies generally would be required in connection with a Performance Undertaking in order for it to be valid or enforceable under English law or to be admissible in an English court; and it is not necessary to deliver or register a Performance Undertaking at any public office in England.

4.4 No stamp duty

No stamp duty or registration duty or similar charge or tax would be payable in the UK on the execution and delivery of a Performance Undertaking.

5 GOVERNING LAW

This opinion letter, and all obligations (whether contractual or non-contractual) arising out of it, shall be governed by and constituted in accordance with English law.

Yours faithfully



Watson Farley & Williams LLP

SCHEDULE 1

ASSUMPTIONS

We have assumed the following:

1 Parties: capacity etc.

- (a) The due incorporation and valid existence under the laws of its jurisdiction of incorporation of each of the parties to the Lease Agreement and the Performance Undertaking.
- (b) The capacity and authority of each of the parties to the Lease Agreement and the Performance Undertaking to execute it to exercise its rights and perform its obligations under them.
- (c) The due execution (and, where relevant, delivery) of the Lease Agreement and the Performance Undertaking by each of the parties to them.
- (d) That the entry into and performance by a Performance Obligor party to a Performance Undertaking does not contravene any of its obligation, whether express or implied, under any contract or document entered into by the Performance Obligor.

2 Execution

Without prejudice to the generality of paragraph 1(c), that the Performance Undertaking is duly executed and delivered as a deed in accordance with the requirements of English law.

3 Governing Law

That the Lease Agreement is expressed to be governed by English law and that English law is selected as the governing law of the Performance Undertaking.

4 Lease Agreement obligations

That the obligations of each of the parties to the Lease Agreement are valid, binding and enforceable and that the terms of the Lease Agreement contemplate the execution of the Performance Undertaking.

5 Version A Form: Notice of terms

That the Performance Obligor has full notice of all the terms of the Lease Agreement.

6 Version B Form: Notice of terms

That the Performance Obligor has full notice of the terms of the Relevant Obligations.

7 Version B Form: Nature of obligations

That the Relevant Obligations are obligations which are capable of performance by the Performance Obligor notwithstanding that it is neither a party to the Lease Agreement nor the legal owner of the asset which is the subject of the Lease Agreement.

8 Other laws etc.

That the laws of any other jurisdiction which may apply with respect to the transactions and matters contemplated in a Performance Undertaking will not affect any of the opinions stated in this opinion letter.

9 Filings in other jurisdictions

That all consents, approvals, licences and filings which are necessary under any applicable laws of any other jurisdiction to permit the execution, delivery and performance of a Performance Undertaking have been made or will be made or obtained within any permitted period.

10 No modification etc.

That no side-letter or other communication (written or oral) modifies any provision of a Performance Undertaking.

11 Fraud etc.

A Performance Undertaking is not void, voidable, repudiated, rescinded frustrated or capable of being so by reason of fraud, misrepresentation, undue influence, duress, mistake, bribery, corruption or any other reason which is not apparent from its face.

12 No Insolvency Proceedings

That there are no Insolvency Proceedings in any party to a Lease Agreement or a Performance Undertaking, and no steps taken with a view to any such Insolvency Proceedings.

13 Financial Services and Markets Act 2000

Each of the parties to a Lease Agreement or Performance Undertaking has complied and will comply with all applicable provisions of the Financial Services and Markets Act 2000, and any related or similar legislation, and all applicable regulations and rules from time to time in effect thereunder or in connection therewith with respect to anything done by it in relation to a Lease or Performance Undertaking in, from or otherwise involving the United Kingdom.

14 Anti-terrorism etc.

Each of the parties to a Lease Agreement or Performance Undertaking complies with all applicable anti-terrorism, anti-corruption, anti-money laundering and human rights laws and regulations, and that there is nothing in the transaction that is inconsistent with all such laws and regulations.

SCHEDULE 2
QUALIFICATIONS

1 Enforceability

1.1 General

In stating that a Performance Undertaking constitutes valid, binding and enforceable obligations of a Performance Obligor we refer to the relevant terms not as read literally, but as they would be construed by the English courts. It is not necessarily the case that a Performance Undertaking will be enforced in accordance with its terms in all circumstances, as indicated by the matters set out below.

1.2 Remedies

Apart from claims for the payment of debts, contractual obligations are normally enforced by an award of damages for the loss suffered as a result of a breach of contract; and recoverable loss is restricted by principles such as causation, remoteness and mitigation. Orders for specific performance of contractual obligations, forfeiture and injunctions are discretionary remedies and are only available in limited circumstances.

1.3 Equity and public policy

Enforcement may be limited by general principles of equity or public policy from time to time.

1.4 Time barring of claims

Claims may become time-barred under the Limitation Act 1980 or the Foreign Limitation Periods Act 1984, or by application of the doctrines of laches or estoppel.

1.5 Foreign illegality

English courts will not enforce obligations to be performed in another jurisdiction to the extent that such performance would be illegal or contrary to principles of public policy under the laws of that jurisdiction.

1.6 Frustration

Enforcement may be limited by the doctrine of frustration.

1.7 Version A Form: Rights of sureties

The Version A Form is an undertaking by the Performance Obligor to "*cause the Lessor to pay and perform when due all of its obligations under the Lease Agreement arising or required to be performed during the Relevant Period*". This is likely to be construed by the English courts as a guarantee, i.e. a suretyship obligation. English law is protective of the right of sureties in a number of respects, including without limitation:

- (a) releasing a surety from liability if there is an amendment or variation of the underlying obligations;

- (b) limiting the scope of the surety's liability to the "purview" of the suretyship obligations.

We note that English law guarantees usually contain provisions which attempt to address defences available to a surety but that the Version A Form does not contain these.

1.8 Version A Form: Specific suretyship issues

The wording of the Version A Form would likely be construed by an English court as a 'pure' or 'see to it' guarantee. This is a secondary liability with the following consequences:

- (a) the Lessee's remedy against the Performance Obligor is in the first instance a remedy in damages (see paragraph 1.2 above);
- (b) the liability of the Performance Obligor to the Lessee will be no greater than the liability of the Lessor; and
- (c) the Performance Obligor would have rights of subrogation against the Lessor arising from performance of the Performance Guarantor's obligations (and we note that such rights are not deferred for the benefit of the Lessee, as is customary in an English law guarantee).

1.9 Version B Form: Extent of Performance Obligor's obligations

The scope of the Performance Guarantor's obligations will be construed to be limited to the express terms of the Relevant Obligations, i.e. the Performance will be under no more extensive or varied obligations unless it expressly agrees.

1.10 Jurisdiction

The Forms do not contain any submission to the jurisdiction of the English Courts (with appointment of a process agent) and we express no opinion as regards jurisdictional issues.

1.11 Consideration

The Forms express the consideration for the Performance Obligor's obligations being the Lessee entering into the Lease Agreement which, depending on the applicable circumstances, could be invalid as past consideration. If a Performance Undertaking is validly executed and delivered as a deed in accordance with English law, however, lack of consideration would not negate its validity and enforceability.

1.12 Assignment and transfer

We give no opinion on the ability of either party to a Performance Undertaking to assign its rights or transfer its obligations.

1.13 Third party rights

The Forms are not expressed to exclude the rights of third parties.

1.14 Repudiatory breach

If a party is in repudiatory breach of a contract, the innocent party is discharged from further performance of that contract if it accepts that repudiation as terminating the contract.

1.15 Contractual interpretation

The meaning which the English courts will give to a Performance Undertaking is the meaning which the Performance Undertaking would convey to a reasonable person having all the background knowledge which would reasonably have been available to the parties in the situation in which they were at the time of the contract. A document might be capable of having terms implied or of being rectified by an English court if it is found not to reflect the common intention of the parties. Where language is capable of more than one interpretation an English court will prefer the interpretation which is consistent with business common sense.

1.16 Certificates and determinations

The English courts may hold that a certificate, determination or notification is not conclusive or final if it might be shown that it was made on an incorrect basis or if the relevant power or discretion was exercised on an arbitrary or capricious basis; or if manifest error applies. This is so despite any provision to the contrary, for example a provision stating that the exercise of a power or discretion or the making of a determination shall be conclusive and binding.

1.17 Negotiation and co-operation

A term obliging a party to negotiate or co-operate may not be legally binding.

1.18 General indemnities

A person claiming under an indemnity might be unable to recover in respect of losses which he could have avoided by taking reasonable steps; or losses of a kind which was outside the contemplation of the parties at the time of contracting.

1.19 Costs indemnity

A contractual indemnity for costs will not cover costs unreasonably incurred or unreasonable in amount, nor override the court's discretion under Section 51 of the Senior Courts Act 1981 and the Civil Procedure Rules as to costs connected with proceedings. Moreover, costs may be subject to quantification by the courts.

1.20 Stamp duty indemnity

An indemnity in respect of stamp duty might be void under Section 117 of the Stamp Act 1891.

1.21 Exclusion clauses

A term which seeks to exclude or restrict a duty of care, or liability for breach of such a duty is limited by law.

1.22 Sums payable on default

A term providing that, in the event of a person committing a breach of contract (or in the event of a breach or certain other events), that person shall pay a certain sum (including default interest) or shall transfer a certain asset, or cease to have a certain right, may be held to be unenforceable on the ground that it is a penalty or a forfeiture clause.

1.23 Severance

If a Lease Agreement contains a provision to the effect that an invalid provision is to be severed in order to preserve the validity of the remaining provisions, severance will not be permitted if:

- (a) it does not accord with English public policy; or
- (b) the illegal provision forms a main part of the consideration; or
- (c) the provisions in an agreement are all so closely related that to sever one will completely rewrite the contract;

1.24 Waivers

A failure or delay in enforcing a right may in certain circumstances be construed by an English court as constituting a waiver of that right notwithstanding any provisions to the contrary in a Lease Agreement.

1.25 Oral variations

Provisions requiring any waiver, variation or amendment to a Lease Agreement to be in writing may not be effective.

1.26 Judgment interest

It is possible that any provision relating to interest will be held by an English court to be superseded by interest at the rate prescribed by the court following any judgment, whether in England or another jurisdiction.

1.27 Entire agreement clause

English courts may refuse to give effect to an entire agreement clause.

1.28 Deemed receipt of notices

No opinion is expressed as to whether a court would give effect to a provision that a notice shall be deemed to have been served at a fixed time after dispatch, where it is proved that the notice was not in fact received by the addressee or that he received it after the time fixed.

1.29 Process Agent

No opinion is expressed as to whether the appointment of a process agent in England pursuant to a Lease Agreement would remain in force after a purported termination by the appointing party or a

winding up or other Insolvency Proceedings in respect of the appointing party; or as to whether a relevant party would have any remedy in the event of that process agent declining to accept service.

2 Insolvency

2.1 General

The obligations of a Performance Obligor are subject to laws affecting creditors' rights generally, such as those relating to insolvency (which includes liquidation, administration, administrative receivership and reorganisation).

2.2 Cross-border insolvency issues

The jurisdiction or jurisdictions in which a company may be made subject to Insolvency Proceedings will be determined, where applicable, by European Union Council Regulation (EC) No. 2015/848 on insolvency proceedings (recast). The Cross-Border Insolvency Regulations 2006 (SI 2006/1030), implementing in English law the UNCITRAL Model Law on cross-border insolvency, provides for recognition in England of foreign insolvency proceedings and co-operation between the English courts and foreign courts. A foreign company can be made subject to Insolvency Proceedings in England in certain circumstances. Finally, Section 426 of the Insolvency Act 1986 provides for the English courts to assist foreign courts in specified jurisdictions in Insolvency Proceedings. This is subject to change depending on when, and the basis on which, the United Kingdom withdraws from the European Union.

3 Choice of law

The choice of English law as the governing law of a Performance Undertaking would be upheld by the English courts as regards contractual matters subject to EC Regulation No. 593/2008 on the law applicable to contractual obligations ("**Rome I**"), provided that the relevant contractual obligation is within the scope of, and the choice is permitted by, Rome I. This is subject to change depending on when, and the basis on which, the United Kingdom withdraws from the European Union. We express no opinion on choice of law as regards non-contractual matters.

4 Foreign currency judgments

English courts sometimes give judgments in currencies other than sterling. However, a judgment would have to be converted into sterling for the purposes of enforcement or for claiming in a liquidation or administration, and no opinion is expressed as to whether, in such circumstances, any currency indemnity clause in the Lease Agreement would be enforceable.

5 Sanctions

The opinions expressed in this opinion letter are subject to the effect of sanctions imposed by the laws of the United Kingdom (including sanctions imposed by the European Union, the United Nations or otherwise which are, or are made, a part of English law) on:

- (a) parties which are expressly designated by such sanctions;

- (b) parties resident or incorporated in a country which is the subject of such general, country-wide sanctions;
- (c) parties controlled by or connected with parties referred to in (a) or (b);
- (d) activities which are the subject of such sanctions,

and this is subject to change depending on when, and the basis on which, the United Kingdom withdraws from the European Union.

SCHEDULE 3

FORMS OF PERFORMANCE UNDERTAKING

FORM OF PERFORMANCE UNDERTAKING (VERSION A)

NOTE 1: this Version A of the Form of Performance Undertaking contemplates that the GATS Beneficiary (or other Performance Obligor) will be liable for the performance by the Lessor (i.e. the GATS Trustee) of all of the Lessor's obligations. Accordingly, this Form of Performance Undertaking makes the Lessor's obligations owed to the Lessee enforceable by the Lessee against the GATS Beneficiary (or other Performance Obligor).

NOTE 2: it is anticipated that the Form of Performance Undertaking is added as a schedule to the Lease Agreement.

NOTE 3: while typically the Performance Obligor would be the GATS Beneficiary from time to time, this need not be the case.

SCHEDULE [●] (Form of Performance Undertaking)

From: *[insert name of GATS Beneficiary or other performance obligor]* (the **Performance Obligor**)

To: *[insert name of Lessee]* (the **Lessee**)

[insert date]

Aircraft Lease Agreement dated [as of] *[insert date]* between *[insert name of Lessor]* (the **Lessor) and the Lessee (as assigned, assumed and amended from time to time, the **Lease Agreement**) relating to one (1) *[insert aircraft model]* Aircraft bearing manufacturer's serial number *[insert serial number]***

1. We refer to the Lease Agreement.
2. Words and expressions defined in the Lease Agreement (including by reference to another document) shall bear the same respective meanings in this Undertaking unless otherwise defined in this Undertaking or the context otherwise indicates or requires.
3. In this Undertaking:

Relevant GATS Beneficiary means [the Performance Obligor][*or, if different, insert name of GATS Beneficiary*].

Relevant Period means the period commencing at the GATS Transfer Effective Time described in the GATS Transfer Notice pursuant to which the Relevant GATS Beneficiary became the 'GATS Beneficiary' (or, if the Relevant GATS Beneficiary was the 'GATS Beneficiary' at the date of the Lease Agreement, the date of the Lease Agreement), and ending at the GATS Transfer Effective Time described in the GATS Transfer Notice pursuant to which the Relevant GATS Beneficiary ceases to be the 'GATS Beneficiary'.

4. In consideration of the Lessee entering into the Lease, the Performance Obligor, for the benefit of the Lessee:
 - (a) consents to the terms of the Lease Agreement [and each other [Lease Document] to which the Lessor is a party]; and
 - (b) shall cause the Lessor to pay and perform when due all of its obligations under the Lease Agreement arising or required to be performed during the Relevant Period.

This Undertaking shall be governed by and construed in accordance with the laws of [England][the State of New York].

IN WITNESS WHEREOF the Performance Obligor has executed and delivered this Undertaking [as a deed] on the date first above written.

[EXECUTED AS A DEED]¹

[INSERT NAME OF PERFORMANCE OBLIGOR],
as Performance Obligor

By: _____

Name: _____

Title: _____

¹ NOTE: It is recommended that, if governed by English law, this Performance Undertaking should be executed and delivered as a deed.

FORM OF PERFORMANCE UNDERTAKING (VERSION B)

NOTE 1: this Version B of the Form of Performance Undertaking contemplates that the GATS Beneficiary (or other Performance Obligor) agrees to a standalone set of representations, warranties and other obligations directly with the Lessee (i.e. the 'Relevant Obligations', which might also include an obligation to cause the Lessor to perform its obligations under the Lease Agreement). However, these need not be set out in a separate tri-partite 'participation agreement', but instead in a schedule to the Lease Agreement or in some other document which, by operation of this Form of Performance Undertaking, the GATS Beneficiary (or other Performance Obligor) from time to time agrees to become bound by and perform without having to novate/assign such document on each Beneficial Interest Transfer. Accordingly, this Form of Undertaking makes the Relevant Obligations enforceable by the Lessee against the GATS Beneficiary (or other Performance Obligor).

NOTE 2: it is anticipated that the Form of Performance Undertaking is added as a schedule to the Lease Agreement.

NOTE 3: while typically the Performance Obligor would be the GATS Beneficiary from time to time, this need not be the case.

SCHEDULE [•] (Form of Performance Undertaking)

From: *[insert name of GATS Beneficiary or other performance obligor]* (the **Performance Obligor**)

To: *[insert name of Lessee]* (the **Lessee**)

[insert date]

Aircraft Lease Agreement dated *[as of] [insert date]* between *[insert name of Lessor]* (the **Lessor**) and the Lessee (as assigned, assumed and amended from time to time, the **Lease Agreement**) relating to one (1) *[insert aircraft model]* Aircraft bearing manufacturer's serial number *[insert serial number]*

1. We refer to the Lease Agreement.
2. Words and expressions defined in the Lease Agreement (including by reference to another document) shall bear the same respective meanings in this Undertaking unless otherwise defined in this Undertaking or the context otherwise indicates or requires.
3. In this Undertaking:

Relevant GATS Beneficiary means *[the Performance Obligor][or, if different, insert name of GATS Beneficiary]*.

Relevant Obligations means *[describe the relevant clause or schedule in the Lease Agreement or other document containing the Performance Obligor's obligations intended to be covered by paragraph 4(b) below.]*

Relevant Period means the period commencing at the GATS Transfer Effective Time described in the GATS Transfer Notice pursuant to which the Relevant GATS Beneficiary became the 'GATS Beneficiary' (or, if the Relevant GATS Beneficiary was the 'GATS Beneficiary' at the date of the Lease Agreement, the date of the Lease Agreement), and ending at the GATS Transfer Effective Time described in the GATS Transfer Notice pursuant to which the Relevant GATS Beneficiary ceases to be the 'GATS Beneficiary'.

4. In consideration of the Lessee entering into the Lease, the Performance Obligor, for the benefit of the Lessee:

(a) consents to the terms of the Lease Agreement [and each other [Lease Document] to which the Lessor is a party]; and

(b) agrees to be bound by and shall perform all of the Relevant Obligations arising or required to be performed during the Relevant Period.

This Undertaking shall be governed by and construed in accordance with the laws of [England][the State of New York].

IN WITNESS WHEREOF the Performance Obligor has executed and delivered this Undertaking [as a deed] on the date first above written.

[EXECUTED AS A DEED]¹

[INSERT NAME OF PERFORMANCE OBLIGOR],
as Performance Obligor

By: _____

Name: _____

Title: _____

¹ NOTE: It is recommended that, if governed by English law, this Performance Undertaking should be executed and delivered as a deed.