

AVIATION FINANCE & LEASING

Indonesia



Aviation Finance & Leasing

Consulting editors

Mark Bisset

Clyde & Co LLP

Quick reference guide enabling side-by-side comparison of local insights, including into applicable treaties, domestic legislation and restrictions on governing law; title transfer; registration of aircraft ownership and lease interests; security; enforcement; taxes and payment restrictions; insurance and reinsurance; and recent trends.

Generated 19 April 2023

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Contributors

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Iwan Nurjadin

iwan.nurjadin@nurjadinet.com

Nurjadin Sumono Mulyadi & Partners



Vera Noviani Harwanto

vera.noviani@nurjadinet.com

Nurjadin Sumono Mulyadi & Partners



Mahir Karim

mahir.karim@nurjadinet.com

Nurjadin Sumono Mulyadi & Partners

NURJADIN
SUMONO
MULYADI
&
PARTNERS

OVERVIEW

Conventions

To which major air law treaties is your state a party?

Indonesia has ratified and, therefore, is bound by:

- the Chicago Convention (1944) by virtue of Presidential Regulation No. 6 of 2005 on the Ratification of Protocol on the Authentic Six Language Text of the Convention of International Civil Aviation on 17 January 2005; and
- the Cape Town Convention (2001) by virtue of Presidential Regulation No. 8 of 2007 on the Ratification of the Convention on International Interests in Mobile Equipment and the Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment on 20 February 2007.

Such treaties are in effect.

Indonesia is not a party to and has not ratified the Rome Convention (1933) on the Unification of Certain Rules Relating to the Precautionary Arrest of Aircraft or the Geneva Convention (1948) on the International Recognition of Rights in Aircraft.

Law stated - 15 February 2023

Domestic legislation

What is the principal domestic legislation applicable to aviation finance and leasing?

There are no particular regulations for aircraft financing and leasing in Indonesia. This is usually dealt with in a contractual arrangement between the parties.

Law stated - 15 February 2023

Governing law

Are there any restrictions on choice-of-law clauses in contracts to the transfer of interests in or creation of security over aircraft? If parties are not free to specify the applicable law, is the law of the place where the aircraft is located or where it is registered the relevant applicable law?

There is no restriction on choice-of-law clauses in contracts to the transfer of interests in, or creation of security over, aircraft. Such documents may be governed by law other than Indonesian law, as it is a valid choice of law and should be honoured, recognised and applied by the Indonesian courts. However, in practice, the courts in Indonesia from time to time have applied the laws of Indonesia, notwithstanding the choice-of-law provisions in the relevant documents.

Law stated - 15 February 2023

TITLE TRANSFER

Transfer of aircraft

How is title in an aircraft transferred?

A bill of sale is effective to transfer title of aircraft. The new bill of sale in favour of the new owner of the aircraft and

other ancillary documents will be required to be filed with the Directorate General of Civil Aviation (DGCA) if the aircraft is to be registered in Indonesia.

Law stated - 15 February 2023

Transfer document requirements

What are the formalities for creating an enforceable transfer document for an aircraft?

The title transfer document (which, in this case, is the bill of sale) to be filed with the DGCA must be legalised in the form of a certified true copy by a public notary, seller or issuing institution.

Law stated - 15 February 2023

REGISTRATION OF AIRCRAFT OWNERSHIP AND LEASE INTERESTS

Aircraft registry

Identify and describe the aircraft registry.

The Directorate General of Civil Aviation (DGCA) of the Ministry of Transportation of Indonesia maintains the Civil Aircraft Register. The Civil Aircraft Register in Indonesia contains owner registrations and can only be accessed by the appointed DGCA officer.

The following information shall be recorded in the Civil Aircraft Register maintained by the DGCA:

- the aircraft serial number;
- nationality and registration marks;
- aircraft model according to manufacturer;
- the aircraft registration number;
- the year of manufacturing;
- the name and address of aircraft owner;
- the name and address of aircraft operator;
- the name and address of lessor (if any); and
- the date of the first issuance of a certificate of registration.

There is no specific engine register in Indonesia.

Law stated - 15 February 2023

Registrability of ownership of aircraft and lease interests

Can an ownership or lease interest in, or lease agreement over, aircraft be registered with the aircraft registry? Are there limitations on who can be recorded as owner? Can an ownership interest be registered with any other registry? Can owners', operators' and lessees' interests in aircraft engines be registered?

Yes, ownership or lease interests or lease agreements over aircraft can be registered with the Civil Aircraft Register. The DGCA records each of the aircraft registered in Indonesia. These records include the name and address of the owner and operator of the aircraft. To register the aircraft in Indonesia, the owner or its proxy must apply for a

certificate of registration from the DGCA. Once the certificate of registration has been issued, the DGCA will then record the aircraft data in the Civil Aircraft Register.

An aircraft shall be eligible for registration in Indonesia when the aircraft is owned by:

- an Indonesian citizen or Indonesian legal entity;
- a foreign citizen or foreign legal entity and operated by an Indonesian citizen or Indonesian legal entity for a minimum utilisation period of two years continuously based on an agreement or contract;
- a government agency or regional government and the aircraft is not utilised for law enforcement missions; or
- a foreign citizen or foreign legal entity whose aircraft is in possession of an Indonesian legal entity based on an agreement or contract subject to the law agreed upon by the parties for purposes of aircraft storage, hire, rental or commerce.

Owners', operators' and lessees' interests in aircraft engines cannot be registered in the Civil Aircraft Register.

Law stated - 15 February 2023

Registration of ownership interests

Summarise the process to register an ownership interest.

The application to register the aircraft in Indonesia must be submitted to the DGCA. The documentation required for an aircraft registration is an application to register an aircraft using the DGCA Form 47-11 (application for a certificate of registration, available at the DGCA office). This application form must be submitted together with copies of the following documents (among others):

- original evidence of aircraft ownership, or a copy legalised by a public notary, seller or issuing institution;
- evidence of cancellation of aircraft registration or that such aircraft is not registered in another country;
- evidence of insurance for the aircraft;
- the aircraft procurement approval issued to the operator by the DGCA;
- evidence of meeting the aircraft age requirement set out by the Minister of Transportation; and
- the lease agreement legalised in the form of a certified true copy by a public notary.

There is no specific length of time that it takes for the issuance of a certificate of registration by the DGCA. In practice, the DGCA will issue the certificate of registration upon the fulfilment of the above-mentioned requirements.

The fee payable for the registration of the aircraft is pursuant to the maximum take-off weights (MTOW) as follows:

- MTOW of zero–12,500 pounds: 7.5 million Indonesian rupiahs;
- MTOW of 12,501–100,000 pounds: 10 million Indonesian rupiahs;
- MTOW of 100,001–200,000 pounds: 15 million Indonesian rupiahs; and
- MTOW of more than 200,001 pounds: 20 million Indonesian rupiahs.

Law stated - 15 February 2023

Title and third parties

What is the effect of registration of an ownership interest as to proof of title and third parties?

The certificate of registration is not evidence of aircraft ownership; it is evidence that the aircraft has been registered in Indonesia.

Law stated - 15 February 2023

Registration of lease interests

Summarise the process to register a lease interest.

There is no specific process to register a lease interest. Once the aircraft (which is operated by an Indonesian operator based on the lease agreement) is registered in Indonesia, such a lease agreement and the status of the operator is automatically recorded in the Civil Aircraft Register. Any changes to the lease agreement must be reported to the DGCA by submitting DGCA Form 47-05.

Law stated - 15 February 2023

Certificate of registration

What is the regime for certification of registered aviation interests in your jurisdiction?

The certificate of registration under Indonesian law is issued by the DGCA or, more specifically, the Directorate of Airworthiness and Aircraft Operations.

The certificate of registration contains the following information:

- the registration number;
- nationality and registration marks;
- the name of the manufacturer and the manufacturer's designation of the aircraft;
- the aircraft serial number;
- the name of the owner;
- the address of the owner;
- the date of issuance; and
- the date of expiration.

The certificate of registration does not contain information related to the operator's or any mortgagees' interest over the aircraft.

There is no separate engine certificate of registration issued by the DGCA under Indonesian law.

Law stated - 15 February 2023

Deregistration and export

Is an owner or mortgagee required to consent to any deregistration or export of the aircraft? Must the aviation authority give notice? Can the operator block any proposed deregistration or export by an owner or mortgagee?

If there is no irrevocable deregistration and export request authorisation (IDERA) registered over the aircraft, the owner is required to consent to any deregistration of the aircraft by submitting the deregistration application to the DGCA. In this matter, the owner must consent to every submission required for deregistration, including consent from the operator (if no valid IDERA exists).

If there is a valid IDERA, then the party that is entitled to grant consent and apply for the deregistration is the authorised party whose name is written in the IDERA.

Based on the above application, the DGCA will then process and issue the deregistration confirmation upon fulfilment of all administrative requirements.

If there is a valid IDERA, the aircraft operator (ie, the lessee) will not be able to object to or block any proposed deregistration of the aircraft and, consequently, the DGCA will (within five days after the application is received) issue a deregistration approval. However, if a valid IDERA does not exist, the deregistration must be applied for by the owner. In this case, the operator may refuse to submit the consent letter for deregistration, which might hinder the deregistration application process.

Currently, the DGCA is not accepting any applications to record or register mortgages for aircraft. Previously, the DGCA accepted records of the registration of mortgages at a special registry. However, these records do not have any bearing on the validity, enforceability or perfection of a security interest. The purpose of these records is more as a public notice (in this case, consent from the mortgagee is required in the event of deregistration); they do not create any security interest and the preference right of the creditor is not secured.

As for the exportation, the relevant documentation must be submitted by the operator (as the importer of the aircraft when the aircraft was delivered to Indonesia) to the Directorate General of Customs and Excise to obtain an export declaration.

Law stated - 15 February 2023

Powers of attorney

What are the principal characteristics of deregistration and export powers of attorney?

Indonesia does not recognise deregistration and export powers of attorney. Indonesia only recognises the IDERA in a form specified by the DGCA as a valid instrument to enable owners or authorised parties to deregister and export aircraft.

Law stated - 15 February 2023

Cape Town Convention and IDERA

If the Cape Town Convention is in effect in the jurisdiction, describe any notable features of the irrevocable deregistration and export request authorisation (IDERA) process.

Indonesia has ratified and brought into force the Cape Town Convention, and it will respect the IDERA for the rights of the lessor and authorised party whose name is written in the IDERA. The IDERA must be signed by the aircraft operator as debtor, which will then be submitted to the DGCA for acknowledgement and recordation. To be valid for submission for acknowledgement and recordation by the DGCA, the IDERA must be in a form specified by the DGCA and be countersigned by the DGCA.

The following documents must be submitted for the acknowledgement and recordation of IDERA by the DGCA:

- an application letter;

- DGCA Form No. 47-18;
- a copy of a valid certificate of registration;
- DGCA Form No. 47-03;
- a summary of the lease agreement;
- a notarised and legalised power of attorney (if the application is authorised); and
- an IDERA statement letter signed by the authorised party and operator stating that the parties will not file any lawsuit against the Minister of Transportation regarding the registration of an IDERA and the deregistration using an IDERA.

The registration of an IDERA can be done in a multilayered way. The following parties are allowed to be the authorised party in an IDERA:

- the charge or security trustee in the security agreement;
- the conditional seller in the title reservation agreement; or
- the lessor in the lease agreement.

Indonesia also recognises the registration of a certified designee. The authorised party in the IDERA may appoint another party as the sole authorised party to deregister the aircraft. The certified designee shall be acknowledged and recorded by the DGCA in a form specified and countersigned by the DGCA.

Law stated - 15 February 2023

SECURITY

Security document (mortgage) form and content

What is the typical form of a security document over the aircraft and what must it contain?

Indonesian aviation law (ie, Law of the Republic of Indonesia No. 1 of 2009 concerning Aviation) does not regulate any of the security instruments or security documents for aircraft (including the regulation of mortgages). In practice, as an alternative, the fiduciary security instrument may be applied over the aircraft engine as well as over insurance and reinsurance claims of the aircraft. In accordance with the principle of fiduciary in Indonesia, the aircraft engine will be under the possession of the debtor. By way of registration of fiduciary security, the creditor must obtain a certificate of fiduciary security, which has the same executorial power as a court decision.

With respect to mortgages, a mortgage cannot be applied as a security instrument of aircraft in Indonesia considering that there is no hypothec (mortgage) registration office for aircraft. The preference right of the creditor comes from the registration of this hypothec or mortgage.

Law stated - 15 February 2023

Security documentary requirements and costs

What are the documentary formalities for creation of an enforceable security over an aircraft?

What are the documentary costs?

Below is the process to create fiduciary security over aircraft engines as well as over insurance and reinsurance claims of the aircraft:

- the fiduciary security is executed in a notarial deed between the fiduciary security holder and fiduciary security grantor in Bahasa Indonesia;
- the fiduciary security holder applies for the registration of the fiduciary security to the Ministry of Law and Human Rights by submitting the following information:
 - the identity of the fiduciary security holder and fiduciary security grantor;
 - the date and number of the fiduciary security deed;
 - the data of the master agreement (ie, the agreement whose payment is guaranteed by fiduciary security);
 - a description of the fiduciary security object;
 - the security value; and
 - the value of the fiduciary security object;
- the fiduciary security holder pays the registration fees to the designated bank; and
- the Ministry of Law and Human Rights records the fiduciary security electronically and issues the fiduciary certificate.

The cost for the registration of fiduciary security as well as the fiduciary security deed may vary depending on the security value.

Law stated - 15 February 2023

Security registration requirements

Must the security document be filed with the aviation authority or any other registry as a condition to its effective creation or perfection against the debtor and third parties? Summarise the process to register a mortgagee interest.

To give effect to the fiduciary security, the fiduciary security must be registered to the Ministry of Law and Human Rights (not to the aviation authority or the Directorate General of Civil Aviation). The fiduciary security is effective on the day it is registered in the fiduciary register book.

Law stated - 15 February 2023

Registration of security

How is registration of a security interest certified?

A fiduciary certificate will be issued by the Ministry of Law and Human Rights once the payment of the registration fee has been settled. In the event of bankruptcy, the holder of the fiduciary security certificate will be deemed as the secured creditor and has a higher rank than any concurrent creditors. This certificate has an executorial power equal to a court decision that has a binding legal force.

Law stated - 15 February 2023

Effect of registration of a security interest

What is the effect of registration as to third parties?

The fiduciary grantee will enjoy priority as the secured lender. The third party that becomes a creditor of a company will have no priority over the secured lenders. In the case of insolvency or liquidation, this priority will remain applicable and will not be eliminated from the fiduciary grantee. If there are two or more fiduciary agreements over the same object,

priority will be given to the party that first registered the object with the fiduciary registration office.

The fiduciary grantor is prohibited to regrant the same fiduciary security to the registered object. Upon registration of fiduciary security, access to the Fiduciary Registration Office will be open to the public; hence, third parties may rely on the accuracy of the public registration of such security.

Law stated - 15 February 2023

Security structure and alteration

How is security over aircraft and leases typically structured? What are the consequences of changes to the security or its beneficiaries?

Indonesia does not recognise the concept of a trust where there is segregation between the beneficial and legal ownership of the aircraft. However, the term 'trust' is used in the capital market sector (ie, a trustee in a bond issuance) and banking sector (ie, a trust service offered by banks), but it does not have the concept as it is known under the common law system.

Security registered in Indonesia is for the benefit of the registered party. Upon any changes to the beneficiary, the security must be re-registered under the name of the new beneficiary.

Law stated - 15 February 2023

Security over spare engines

What form does security over spare engines typically take and how does it operate?

There is no specific security as to spare engines. The security option that may be attached to the spare engine is fiduciary security.

Law stated - 15 February 2023

ENFORCEMENT MEASURES

Repossession following lease termination

Outline the basic repossession procedures following lease termination. How may the lessee lawfully impede the owner's rights to exercise default remedies?

There is no requirement to obtain a court order for the repossession of an aircraft provided that there is no dispute involved. With respect to the repossession of an aircraft, deregistration of the aircraft would have to be applied for and would be granted upon fulfilment of all prevailing policies and administrative requirements of the Directorate General of Civil Aviation (DGCA). For exportation of the aircraft or of the equipment, customs, security and DGCA clearance are required.

If there is a valid irrevocable deregistration and export request authorisation (IDERA), the aircraft operator (ie, lessee) will not be able to object to the deregistration of the aircraft and, consequently, the DGCA will (within five days after the application is received) issue a deregistration approval, which will then be forwarded to the owner and the lessee.

If a valid IDERA does not exist, cooperation from the lessee is needed (to, among others things, sign several administrative documents to apply for deregistration of the aircraft).

Furthermore, with respect to the repossession of an aircraft, a lessee will not have a lawful right to impede the owner's

rights to exercise default remedy.

Law stated - 15 February 2023

Enforcement of security

Outline the basic measures to enforce a security interest. How may the owner lawfully impede the mortgagee's right to enforce?

Upon the registration of the security interest (which, in this case, is fiduciary security), the fiduciary grantee will obtain a certificate of fiduciary security. This certificate has the same power as a court judgment. Once registered, the fiduciary grantee may self-execute the object by either selling the object through public auction or selling the object based on mutual consent between the fiduciary grantor and fiduciary grantee. In terms of insolvency or liquidation, the creditor would retain priority. The owner shall not have the right to impede the enforcement of this right.

Law stated - 15 February 2023

Priority liens and rights

Which liens and rights will have priority over aircraft ownership or an aircraft security interest? If an aircraft can be taken, seized or detained, is any form of compensation available to an owner or mortgagee?

This is the general order of priority over creditors' claims in Indonesia:

- court costs of foreclosure of movable and immovable goods, which are to be paid from the proceeds of this foreclosure and enjoy priority over all secured claims and privileged claims;
- tax liens;
- secured creditors (pledgees, mortgagees and fiduciary transferees);
- unsecured creditors holding privilege claims under the Indonesian Civil Code; and
- all remaining claims (ie, other unsecured without privilege or concurrent claims).

The Indonesian government may detain an aircraft for unpaid taxes or charges related to the use of the aircraft. Airport authorities may also detain an aircraft for unpaid charges related to the use of an airport, which would prevent the aircraft from being repossessed.

Law stated - 15 February 2023

Enforcement of foreign judgments and arbitral awards

How are judgments of foreign courts enforced? Is your jurisdiction party to the 1958 New York Convention?

Judgments from non-Indonesian courts will not be enforceable by courts in Indonesia unless there is a treaty between Indonesia and the country in which the judgment was rendered. To the best of our knowledge, there is no treaty between Indonesia and England or New York with respect to foreign court judgments. However, Indonesia is a party to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards by virtue of Presidential Decree No. 34 of 1981. In enforcing a foreign arbitral award, there are several requirements that need to be met, as

follows.

- The international arbitration awards must have been rendered by an arbitrator or arbitration tribunal in a country that, together with Indonesia, is a party to a bilateral or multilateral treaty on the recognition and enforcement of international arbitration awards.
- International arbitration awards are limited to awards that, under the provisions of Indonesian law, fall within the scope of commercial law.
- International arbitration awards may only be enforced in Indonesia if they do not conflict with public order.
- International arbitration awards may be enforced in Indonesia after obtaining a writ of execution from the chair of the District Court of Central Jakarta.

Law stated - 15 February 2023

TAXES AND PAYMENT RESTRICTIONS

Taxes

What taxes may apply to aviation-related lease payments, loan repayments and transfers of aircraft? How may tax liability be lawfully minimised?

There is a requirement to withhold any payments of interest, royalty and services to a non-Indonesian resident, which are subject to a 20 per cent withholding or a lower rate under the applicable tax treaty. For more detailed advice, please consult with an Indonesian tax consultant on this matter.

Law stated - 15 February 2023

Exchange control

Are there any restrictions on international payments and exchange controls in effect in your jurisdiction?

There are no foreign exchange controls in Indonesia. Residents of Indonesia remain free to hold foreign currencies and the Indonesian rupiah is freely convertible. There is also no restriction on the cross-border remittance of foreign currencies. However, pursuant to the Foreign Exchange Flow Law, there is a reporting system administered by Bank Indonesia (being the central bank) on foreign currency remittances conducted by banks on behalf of residents. A monitoring system by Bank Indonesia is carried out by requiring all banks in Indonesia to report:

- foreign exchange remittances through the bank either for its own account or the account of its customers; and
- changes in the position of the banks' foreign assets and liabilities.

A similar reporting scheme is applicable for non-bank financial institutions.

Banks will require their customers who wish to make a transfer of more than US\$10,000 (or its equivalent in other currencies) to disclose general information on the residency status of the beneficiary, the relationship between the transferor and the beneficiary, and the purpose of the transfer.

In 2022, Bank Indonesia issued a regulation in which the purchase of foreign currency of US\$100,000 above or equivalent per month must be proven by an underlying transaction. This regulation is issued not to control foreign exchange but to reduce the purchase of US dollars by speculators.

Relating to loan documents, Bank Indonesia has enacted sets of regulations that are intended to, among other things,

regulate the flow of foreign exchange. These regulations set out the flow of foreign exchange resulting from exports and offshore borrowing activities. With respect to an offshore loan, it must be first withdrawn by the borrower through an Indonesian foreign exchange bank (the Forex Bank) as opposed to foreign banks, failing which the borrower must provide a written explanation to Bank Indonesia if there is a difference of above 50 million Indonesian rupiahs between the loan commitment and the money disbursed in the Forex Bank prior to the expiry term of the relevant offshore loan. These regulations are, however, not applicable to leasing transactions (where the Indonesian lessee is not directly receiving loans from the offshore creditors).

There are also reporting obligations on offshore loan obligations, which must be carried out by the borrower on the granting of the guarantee, planning and realisation of the loan document as well as periodical reporting to Bank Indonesia and the Ministry of Finance (MOF). The reporting obligation to Bank Indonesia is carried out electronically and is also delivered to the MOF. Except for state-owned company subsidiaries with a portion of direct ownership by the Indonesian government, approvals for offshore loans are no longer required. Offshore loans received by state-owned company subsidiaries and the private sector, on the other hand, must be reported on a regular basis to the MOF, in this case the Director General of Financing and Risk Management and Bank Indonesia through the Foreign Debt Information System (SIULN) reporting scheme.

Law stated - 15 February 2023

Default interest

Are there any limitations on the amount of default interest that can be charged on lease or loan payments?

There is no specific regulation that limits the amount of default interest for lease or loan payments.

Law stated - 15 February 2023

Customs, import and export

Are there any costs to bring the aircraft into the jurisdiction or take it out of the jurisdiction? Does the liability attach to the owner or mortgagee?

Any importation of aircraft to the jurisdiction of Indonesia would be subject to value added tax (VAT) and VAT for luxury goods. However, for the leased aircraft, there will be a special treatment in place where the operator could file for a temporary importation certificate. This certificate can be granted as the operator will eventually export the aircraft back to outside the jurisdiction of Indonesia upon the end of the lease. With this temporary importation certificate, any aircraft brought into Indonesia will be released from any VAT and VAT for luxury goods.

Further, under this temporary importation certificate, the operator is obliged to pay a deposit for the importation of the aircraft. The deposit shall consist of the following:

- a customs fee;
- VAT or VAT for luxury goods; or
- income tax, according to article 22 of the Indonesian Tax Income Law.

The deposit will be returned to the operator when the aircraft is redelivered to the lessor or owner outside Indonesia. There is no export cost involved in bringing the aircraft out of the Indonesian jurisdiction.

However, in certain conditions, the aircraft can be brought into the jurisdiction by obtaining a requirement that the

imported goods are used based on:

- the applicable regulations;
- the Minister of Trade's authority; or
- recommendations or technical considerations from other government entities.

After obtaining the requirement, the aircraft may not be subject to VAT.

On the other hand, if the operator purchases the aircraft, he or she will become the owner of the aircraft. The operator will be subject to importation costs if he or she brings the aircraft into the Indonesian jurisdiction.

Law stated - 15 February 2023

INSURANCE AND REINSURANCE

Captive insurance

Summarise any captive insurance regime in your jurisdiction as applicable to aviation.

Captive insurance in Indonesia is not applicable as there are only four types of insurance that companies can provide in Indonesia:

- general insurance;
- life insurance;
- shariah insurance; and
- reinsurance.

Law stated - 15 February 2023

Cut-through clauses

Are cut-through clauses under the insurance and reinsurance documentation legally effective?

Yes, cut-through clauses are legally effective in Indonesia provided that they do not violate Indonesian laws or the public policy of Indonesian law.

Law stated - 15 February 2023

Reinsurance

Are assignments of reinsurance (by domestic or captive insurers) legally effective? Are assignments of reinsurance typically provided on aviation leasing and finance transactions?

Assignments of reinsurance shall be legally effective in Indonesia. The assignment of reinsurance is typically provided in the lease agreements by virtue of fiduciary security over reinsurance claims. The fiduciary security itself is regulated under the Indonesian Fiduciary Security Law.

Law stated - 15 February 2023

Liability

Can an owner, lessor or financier be liable for the operation of the aircraft or the activities of the operator?

No. The relevant party is only liable if the relevant parties are involved in the operation of the aircraft.

Law stated - 15 February 2023

Strict liability

Does the jurisdiction adopt a regime of strict liability for owners, lessors, financiers or others with no operational interest in the aircraft?

The lessors, owners, financiers or other parties with no operational interest are not liable under strict liability in tort law under the laws of Indonesia with respect to the aircraft.

Law stated - 15 February 2023

Third-party liability insurance

Are there minimum requirements for the amount of third-party liability cover that must be in place?

There is a minimum requirement for the amount of third-party liability cover that should be in place, which in this case must be fulfilled by the operator of the aircraft. Below are the minimum third-party liability requirements set under the Ministry of Transportation Regulation No. PM 77 of 2011 concerning Air Carrier Liability (PM 77/2011):

- death: 500 million Indonesian rupiahs;
- permanent disability (if declared by a doctor within 60 business days following the accident):
 - if a permanent disability: 750 million Indonesian rupiahs; and
 - if a partly permanent disability: as referred in the attachment under PM 77/2011;
- injury that requires medical treatment: 100 million Indonesian rupiahs per person; and
- any damage that occurred to property:
 - for aircraft with a capacity of up to 30 seats: 50 billion Indonesian rupiahs per person;
 - for aircraft with a capacity of 31–70 seats: 100 billion Indonesian rupiahs per person;
 - for aircraft with a capacity of 71–150 seats: 175 billion Indonesian rupiahs per person; and
 - for aircraft with a capacity of more than 150 seats: 250 billion Indonesian rupiahs per person.

Law stated - 15 February 2023

UPDATE AND TRENDS

Key developments of the past year

What were the key cases, decisions, judgments and policy and legislative developments of the past year?

On 25 November 2021, the Constitutional Court of the Republic of Indonesia issued Constitutional Court of Republic of

Indonesia No. 91/PUU-XVIII/2020 (CC Decision 91/2020) with salient rulings affecting the constitutionality and validity of Law No. 11 of 2020 on Job Creation (the Job Creation Law). Based on CC Decision 91/2020, the Job Creation Law, which was declared as 'conditionally unconstitutional', will remain in full force and in effect during the period of two years from its issuance.

As an implementation of CC Decision 91/2020, on 30 December 2022, the Indonesian government enacted a government regulation in lieu of Law No. 2 of 2022 (Perppu 2/2022). By the enactment of this Perppu 2/2022, the Job Creation Law is no longer in force. Perppu 2/2022 contains several alterations regarding the aviation sector compared to the Job Creation Law.

Even though Perppu 2/2022 has been issued and applies, it must still be approved by the People's Legislative Assembly of Republic of Indonesia (DPR). The DPR is expected to approve or reject Perppu 2/2022 in 2023.

If the DPR refuses, they should enact legislation revoking Perppu 2/2022, including all legal ramifications of revoking Perppu 2/2022. However, if such a situation occurs, the Job Creation Law will remain in force until a replacement law is enacted.

Law stated - 15 February 2023

Jurisdictions

	Austria	Benn-Ibler Rechtsanwälte GmbH
	Belgium	Kennedys Law LLP
	Brazil	Basch & Rameh Advogados Associados
	British Virgin Islands	Conyers
	Canada	YYZlaw
	Egypt	Shahid Law Firm
	Germany	Freshfields Bruckhaus Deringer
	India	Sarin & Co
	Indonesia	Nurjadin Sumono Mulyadi & Partners
	Israel	Gottlieb, Gera & Co
	Italy	Pierallini Studio Legale
	Japan	Nishimura & Asahi
	Latvia	SUCCESS410.COM Specialized Advisory Services
	Lithuania	Šulija Partners (Lithuania)
	Malta	Dingli & Dingli Law Firm
	Netherlands	Stek
	Nigeria	Streamsowers & Köhn
	Spain	Augusta Abogados
	Sweden	Vinge
	Switzerland	Meyer Legal
	United Arab Emirates	HFW
	United Kingdom - England & Wales	Clyde & Co LLP
	USA	Milbank LLP