Aviation Finance & Leasing 2025

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Philippines

Law and Practice

Law and Practice

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1. Aircraft and Engine Purchase and Sale

1.1 Sales Agreements

1.1.1 Taxes/Duties Payable Upon Execution of the Sales Agreement

Sale of Aircraft and Engine

Generally, the situs or location of the movable property is taken into consideration in determining whether a transaction is taxable. If the aircraft is located in the Philippines when the sale is consummated, the proceeds may be considered as income derived within the Philippines by a foreign aircraft owner, and therefore be subject to income tax. If a transaction occurs in multiple stages, income may be considered as having been sourced within the Philippines if any particular stage occurring in the Philippines is so integral to the overall transaction that the business activity would not have been accomplished without it.

Moreover, any person or entity who sells properties such as an aircraft or engine in the course of trade or business in the Philippines is liable for VAT. However, certain aircraft sale transactions may fall under a VAT-exempt category.

The physical location of the aircraft at the time of sale is critical, even if the seller, such as a foreign aircraft owner, is a non-resident of the Philippines.

An aircraft engine sales agreement does not attract documentary stamp tax.

Sale of Ownership in an Entity

The sale of an ownership interest (such as shares of stock) in an entity that owns the aircraft or engine accrues capital gains tax and documentary stamp tax. If the seller is a resident of a country that has a tax treaty with the Philippines, this may potentially reduce or eliminate the capital gains tax.

1.1.2 Enforceability Against Domestic Parties

The Philippine government is formalistic when it comes to documents executed outside the Philippines. While notarisation or legalisation (or lack thereof) does not generally affect the validity of a sales agreement, it is advisable for a sales agreement of an aircraft or engine executed outside the Philippines to be apostilled or legalised, in order to be enforceable in the Philippines. If any of the documents are

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Tan Hassani and Counsels is a Manila-based law firm with a focus on high-value commercial transactions and an unmatched aviation practice, having handled a wide variety of cross-border transactions throughout the years, from small turboprops and helicopters to business and commercial jets. The firm has also assisted in several key supplies of aircraft to the Philippine government, and was instrumental in setting up the maintenance, repair and overhaul of an original equipment manufacturer in the Philippines. Other high-value transactions include counselling the winning bidder in a USD2.5 billion design and build national railway system for the Philippine government, and an USD8 billion renewable energy investment into several offshore wind farms. The firm acts as retained counsel in the Philippines for a wide variety of businesses and investors from Australia, Austria, China, France, Germany, Japan, Korea, Taiwan, Singapore, Switzerland, the US and the UK.

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not in English, a translation should be provided, which should be apostilled or legalised as a certified true copy.

1.2 Transfer of Ownership

1.2.1 Transferring Title

Transferring the title of an aircraft will require the execution of a document conveying ownership (ie, a bill of sale), which will generally transfer ownership over the whole aircraft, including installed parts. However, the parties may enter into a more comprehensive sale and purchase agreement containing the terms and conditions of the sale, including whether or not to include installed parts. It is advisable for the new owner to lodge the bill of sale with the Civil Aviation Authority of the Philippines (CAAP) so that the aircraft's certificate of registration can be updated to reflect the new owner.

If ownership interests (eg, shares) in the entity owning the aircraft are acquired by another entity, there is no change in aircraft ownership: the aircraft will still be owned by the same entity as registered owner, regardless of any change in its ownership. The entity itself has a separate and distinct legal personality from the ownership interest.

1.2.2 Sales Governed by English or New York Law

The transfer of title to an aircraft or engine physically delivered in the Philippines will be recognised, even if such transfer of title is governed by English or New York law.

The Philippines courts will recognise the parties' choice of law as provided in the bill of sale so long as it is not contrary to law, public policy or public order.

The bill of sale should be in English and notarised. If executed outside the Philippines, it should be apostilled or legalised in order to be enforceable in the Philippines.

1.2.3 Enforceability Against Domestic Parties

While the lack of translation, notarisation or legalisation does not affect the validity of the sale, it is advisable for documents executed outside the Philippines to be apostilled or legalised for enforceability in the Philippines.

1.2.4 Registration, Filing and/or Consent From Government Entities

The bill of sale (and its supporting documents) should be lodged with the Philippine aviation authority. If the bill of sale and supporting documents were executed outside the Philippines, they should be apostilled or legalised in order to be accepted by government agencies. The estimated period is about three to four weeks.

Generally, no government applications or consents are required as a prerequisite to the execution and delivery of a bill of sale in relation to an aircraft or engine registered in the Philippines. However, while the bill of sale itself is generally not affected, if the aircraft or the engine was acquired through or with a special tax status, certain consents may be required from the relevant government entity prior to the delivery of the aircraft or engine.

1.2.5 Taxes/Duties Payable Upon Execution of a Bill of Sale

Generally, for foreign sellers, if the bill of sale is executed outside the Philippine jurisdiction and the aircraft is outside

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the Philippine territory, a sale will not be subject to income tax since it is considered as income from outside the Philippines.

2. Aircraft and Engine Leasing

2.1 Overview

2.1.1 Non-Permissible Leases

Operating/wet/finance leases are generally accepted and recognised in the Philippines. Leases concerning only aircraft engines or parts are common and not prohibited; hence, they can be registered.

2.1.2 Application of Foreign Laws

A lease involving a domestic party or asset situated in the Philippines can be governed by a foreign law. The High Court of the Philippines has recognised the validity of the choice of law by the parties.

2.1.3 Restrictions Concerning Payments in US Dollars

There are no material restrictions on domestic lessees making payments in US dollars. However, it would be prudent to review the payment process with the domestic bank, which would normally require proof of the transaction.

2.1.4 Exchange Controls

There are generally no exchange controls in the Philippines that could prevent rent payments under a lease, nor any repatriation of a realisation of proceeds. However, for foreign loans, the Bangko Sentral ng Pilipinas (ie, the central bank of the Philippines) has regulations if the borrower wishes to purchase foreign exchange from Philippine banks for loan payments. In a more recent update, there has been a further relaxing of the requirements set out in such regulations.

2.1.5 Taxes/Duties Payable for Physical Execution of a Lease

There is no documentary stamp tax due on account of executing a lease agreement for personal property such as an aircraft or engine, whether physically or electronically.

However, the rental payments received by a non-resident foreign lessor from a domestic lessee for the lease of an aircraft or engine are subject to a final withholding tax of 7.5% of the gross amount of the income.

2.1.6 Licensing/Qualification of Lessors

As a general rule, foreign lessors are required to be licensed in order to do business with a domestic lessee. However, there are exceptions to this rule, which should be taken into account when structuring the lease. Nonetheless, even if a foreign lessor is not licensed, this does not affect the validity of the lease, but rather the remedies available to the lessor.

A significant update in Philippine laws happened in 2022 when foreign ownership restrictions were lifted regarding the ownership of Philippine air operators and the recognition of foreign owners of aircrafts. In 2024, the Civil Aeronautics Board of the Philippines recognised foreign-owned Philippine air operators and allowed them to apply for and hold a licence to operate public air transport services. In 2025, the CAAP followed suit and issued the implementing regulations now recognising foreign-owned Philippine air operators and foreign-owned aircrafts. To implement these legislative updates, the CAAP also updated the format of an aircraft’s certificate of registration to distinguish between the identity of the aircraft operator (which must be a Philippine registered company but may have foreign shareholders) and the identity of the aircraft owner (who may be a foreigner).

There is now greater security in favour of foreign lessors or foreign owners of aircraft that are being leased and operated in the Philippines. In structuring the lease, therefore, if a foreign lessor is neither registered nor licensed in the Philippines, its ownership of the aircraft is now expressly recognised and even indicated in the aircraft certificate of registration itself.

2.2 Lease Terms

2.2.1 Mandatory Terms for Leases Governed by English or New York Law

There are no mandatory terms that are required to be included in a lease agreement governed by English or New York law that would not typically already be included in a Philippine law-governed lease agreement. The parties are free to stipulate the terms and conditions of their lease agreement, including their choice of law, provided that such terms and conditions are not contrary to law, morals, public policy or public order.

2.2.2 Tax and Withholding Gross-Up Provisions

The parties are free to stipulate in their contracts which party shall shoulder the payment of taxes. Hence, the parties may include a gross-up provision, and such provision would be valid.

2.2.3 Parts Installed or Replaced After a Lease’s Execution

A lease can have provisions covering parts that are installed or replaced after its execution. The proper language of the provisions should be clear and leave no doubt that such installed or replaced parts are covered by the lease. If the current lease terms are insufficient, the parties may also insert an addendum into the original lease agreement.

It is advisable to register any such addendum with the CAAP, in order to bind third parties.

2.2.4 Risk of Title Annexation

If the owner of the airframe is different from the owner of the engine, there is a risk of title annexation on the engine. It is advisable for the respective owners to register their interests in their properties with the CAAP, as such registration will serve as notice to third persons and reduce the risk of title annexation.

If the owner of the engine is also the owner of the airframe, the risk of title annexation applies equally to the engine and to the airframe.

2.2.5 Recognition of the Concepts of Trust/Trustee

The concept of a trust and the role of an owner trustee under a lease are recognised in the Philippines. The Philippines Civil Code expressly includes provisions on the establishment of a trust. Previously, aircraft in the Philippines could only be operated by a Philippine entity (such as a company or a trust), which must be considered a “Philippine national”. However, as discussed in **2.1.6 Licensing/Qualification of Lessors**, foreign owners and foreign-owned air operators are now recognised in the Philippines.

2.3 Lease Registration

2.3.1 Notation of Owner's/Lessor's Interests on Aircraft Register

The interest of the legal or beneficial owner, or a lessor of an aircraft, may be registered with the CAAP. Such registration will serve as a notice to all persons of the interest in the aircraft of the legal or beneficial owner or of the lessor. Due to the updated regulations issued in 2025 by the CAAP, a foreign aircraft owner is now expressly indicated and identified in the aircraft's certificate of registration. This is not merely a notation of interest, but rather an express recognition of the foreign aircraft owner, which was done only tangentially in the past.

2.3.2 Registration If the Owner Is Different From the Operator

An aircraft can be registered in the Philippines in the name of the aircraft operator. The CAAP's registry is an operator registry, and the aircraft operator will declare whether the aircraft is owned or leased. An aircraft's certificate of registration is not issued directly in the name of the owner if the owner is not also the operator, but the CAAP's updated regulations now provide for express recognition and identification of the foreign owner in the certificate of registration itself (see **2.1.6 Licensing/Qualification of Lessors**).

2.3.3 Aircraft/Engine-Specific Registers

Generally, the CAAP serves as the national registration for aircrafts in the Philippines, including liens, mortgages and other interests in aircraft or aircraft engines. The CAAP has sole authority to register aircraft and liens, mortgages or other interests in aircraft or aircraft engines.

However, aircraft engines may be covered by the Personal Property Security Act (PPSA). Notice of security interests and lien on aircraft engines may be registered with the Electronic Personal property Security Registry (PPSR).

2.3.4 Registration of Leases With the Domestic Aircraft Registry

The lease and a lessor's interest may be registered with the CAAP. Failure to register will not affect the validity of the lease, but such lease shall not be enforceable against persons who do not have notice of the existence of such lease, and the aircraft shall not be operated in the Philippines without the CAAP certificate of registration and certificate of airworthiness.

The lease agreement shall be notarised in order to be registered with the CAAP. If executed outside the Philippines, it shall be apostilled or legalised in order to be registrable.

No government applications or consents are required before the execution and delivery of an aircraft and/or engine lease in relation to an aircraft registered in the Philippines. However, the lessee is advised to prepare for the importation requirements.

2.3.5 Requirements for a Lease to Be Valid and Registrable

The lease has to be in writing and notarised. If executed outside the Philippines, the lease agreement should be apostilled or legalised. If written in a language other than English, an English translation shall also be included.

2.3.6 Taxes/Duties Payable for Registering a Lease

No taxes or duties are payable for registering a lease with the CAAP. However, the CAAP charges a minimal fee to register and record the lease.

2.3.7 Registration of Aircraft in Alternative Countries

Aircraft habitually based in the Philippines are mostly registered in the British Virgin Islands, the Cayman Islands (or similar jurisdictions) and Ireland.

2.3.8 Requirements for Documents Concerning Registration

The original wet signed document must be submitted for the registration of the lease. It shall be notarised or, if executed outside the Philippines, apostilled or legalised.

2.4 Lessor’s Liabilities

2.4.1 Tax Requirements for a Foreign Lessor

Generally, the income of non-resident foreign entities is taxable only if it is derived from sources within the Philippines. If a transaction occurs in multiple stages, income may be considered as having been sourced within the Philippines if any particular stage occurring in the Philippines is so integral to the overall transaction that the business activity would not have been accomplished without it.

Rentals, charters and other fees derived by a non-resident foreign lessor of aircraft, machinery and other equipment shall be subject to a final withholding tax of 7.5% of the gross amount of the income.

The payor (ie, the domestic lessee) serves as the withholding agent and is responsible for the withholding and payment of tax. In case of failure to withhold the tax, the deficient tax shall be collected from the payor/withholding agent (not the foreign lessor).

2.4.2 Effects of Leasing on the Residence of a Foreign Lessor

With the proper transaction structuring, a foreign lessor need not be deemed a resident, domiciled or carrying on business as a result of its being party to a lease (or on its enforcement).

2.4.3 Engine Maintenance and Operations

Merely being a party to the lease will not subject the foreign lessor to any liability in respect of aircraft or engine maintenance and operations. However, the parties may freely stipulate who shall be liable in respect of aircraft or engine maintenance and operations.

2.4.4 Damage or Loss Caused by an Asset

The foreign aircraft or engine owner or lessor is not liable under the doctrine of strict liability merely because it is the owner or lessor. Nonetheless, insurance for third-party liability is normally required by the owner or lessor.

2.4.5 Attachment by Creditors

Creditors of a domestic lessee cannot attach the leased aircraft, as only properties owned by the domestic lessee can be attached to satisfy creditors’ claims. Therefore, it is imperative for the owner to immediately register its title to the aircraft in order to notify third parties that the domestic lessee does not own the aircraft and should not be made to answer for the latter’s obligations. Fortunately, due to the CAAP's 2025 regulations (see **2.1.6 Licensing/Qualification of Lessors**), aircraft owners are already expressly identified in an aircraft's certificate of registration, separate and distinct from the identity of the aircraft's actual operator.

2.4.6 Priority of Third Parties' Rights

Taxes, duties and fees due to the Philippine government shall take priority over a lessor's rights under an aircraft or engine lease, including taxes due under the Philippine tax and customs code, and any liens imposed by the CAAP Director-General.

The Philippine rules on the concurrence and preference of credits over specific movable property such as an aircraft or engine will apply regardless of whether or not the lease is registered with the CAAP.

2.5 Insurance and Reinsurance

2.5.1 Requirement to Engage Domestic Insurance Companies

Under the Philippine Civil Aviation Regulations (PCAR), an aircraft shall not be operated unless it has valid insurance covering the aircraft hull, each person, freight and mail onboard the aircraft, and third-party liability, as may be prescribed by the CAAP.

While there is no requirement for the insurance to be taken with a domestic insurance company, Philippine insurance law states that authority to do business is required in order for an insurance company to transact.

The Insurance Commissioner may allow a foreign insurance company to transact insurance business in the Philippines if there is a written power of attorney designating a Philippine resident as its general agent on whom any notice, summons and processes may be served, and consenting that service upon such general agent shall be admitted and held as valid as if served upon the foreign company at its home office.

2.5.2 Mandatory Insurance Coverage Requirements

There are no strict mandatory insurance coverage requirements. The PCAR only requires that insurance is taken out to cover the aircraft hull, each person, freight and mail onboard the aircraft, and third-party liability, as prescribed by the CAAP. However, air operators that provide public air transport services are required to have not only hull insurance, but also passenger, pilot and third-party liability insurance.

2.5.3 Placement of Insurance Outside of Jurisdiction

Insurance companies doing insurance business in the Philippines may cede all or part of any risks situated in the Philippines by way of reinsurance directly to any foreign insurer that is not authorised to do business in the Philippines if such foreign insurer is represented by a resident agent duly registered with the Insurance Commissioner.

2.5.4 Enforceability of "Cut-Through" Clauses

There is no prohibition on "cut-through" clauses under the Insurance Code of the Philippines. Therefore, cut-through insurance can be enforceable.

2.5.5 Assignment of Insurance/Reinsurance

There is no prohibition under the Insurance Code of the Philippines on the assignment of insurance or reinsurance.

2.6 Lease Enforcement

2.6.1 Restrictions on Lessors' Abilities

Generally, restrictions on a lessor's ability to terminate an aircraft lease, re-export the aircraft and/or sell the aircraft following such termination shall be determined by the terms and conditions of the lease agreement entered into by the parties.

The aircraft location during any of the aforementioned actions will depend on what is provided in the lease agreement.

The lease agreement has the force of law between the parties. As long as it does not contain provisions that are contrary to law, public policy or public order, the courts will uphold the validity of such lease agreement.

For deregistration, the aircraft does not need to physically be in the Philippines, but the process will entail additional time and cost for the CAAP to ensure that the aircraft markings are removed prior to deregistration.

2.6.2 Lessor Taking Possession of the Aircraft

Generally, a court order is required if the lessee does not voluntarily give up possession. However, if the lease agreement includes a provision whereby the lessor may take physical possession of the aircraft while the lease agreement is still effective (eg, under a power of attorney), the lessor can take such possession without a court order.

2.6.3 Specific Courts for Aviation Disputes

There are no specific courts designated to decide aviation disputes. Court jurisdiction is defined by law rather than the subject matter.

2.6.4 Summary Judgment or Other Relief

Before Philippine courts, the lessor may move for a summary judgment, which will be issued only if there is no genuine issue as to any material fact requiring the presentation of evidence, except as to the amount of damages.

Other lessor remedies are:

- a preliminary injunction requiring the other party to refrain from a particular act or acts (eg, continued use of the aircraft); or
- a preliminary mandatory injunction to require the performance of a particular act or acts (eg, delivery of the aircraft).

The application for an injunction will require the posting of a bond and the conduct of hearings.

The lessor may also make use of replevin to recover possession of the aircraft during the pendency of the proceedings, subject to the posting of a bond equivalent to twice the fair market value of the aircraft.

2.6.5 Domestic Courts' Approach to Foreign Laws and Judgments

As long as the choice of law of the parties is not contrary to law, morals, public policy or public order, domestic courts will uphold and recognise such foreign laws as the governing law of an aircraft lease, as well as the submission to a foreign jurisdiction to try and resolve disputes and the waiver of immunity by the parties.

2.6.6 Domestic Courts' Recognition of Foreign Judgments/Awards

A party may commence an action for the recognition of a foreign judgment with a domestic court, and it can be recognised and enforced without re-examination of the matter as it enjoys a presumption of validity.

For foreign arbitral awards made in a state that is a party to the New York Convention or that extends reciprocity and comity to awards made in the Philippines, the lessor may apply for a Recognition and Enforcement of Foreign Arbitral Award at any time after receipt of the foreign arbitral award. Courts may hold hearings if deemed proper.

If the foreign arbitral award was made in a state that is not a party to the New York Convention, the court may treat the award as a foreign judgment.

2.6.7 Judgments in Foreign Currencies

Generally, monetary obligations shall be settled in the Philippine currency. However, parties may agree that the obligation will be settled in another currency at the time of payment, so a judgment may be based on the currency stipulated in the lease.

2.6.8 Limitations on Lessors' Actions Following Termination

Any limitations on a lessor's ability to recover default interest (or the compounding thereof) or to charge additional rent following termination of the lease for default, including where the lessee fails to return the aircraft, should be expressly provided for in the lease agreement in order to be held as valid and enforceable.

The lease has the force of law between the parties, and the courts will respect and uphold a lease as valid if it does not contain provisions that are contrary to law, morals, public policy or public order. However, Philippine courts may reduce interest and other penalty clauses if they find them unconscionable.

2.6.9 Lessor's Requirement to Pay Taxes/Fees

No taxes arise from actions to enforce aircraft leases. However, the lessor must pay filing fees to the court, with the amount depending on the relief sought or the value of the property involved in the case.

Moreover, the Philippine High Court has held that only a minimal filing fee shall be paid for the recognition of a foreign judgment, as the subject matter of the action is the foreign judgment itself and not the parties' claims, which have been decided in another country and should not be relitigated anew. The same rule applies to actions for the recognition of foreign arbitral awards under the New York Convention.

2.6.10 Mandatory Notice Periods

The parties must comply with the notice period for termination in the lease agreement, regardless of whether it is an aircraft operated domestically or if it is leased by a domestic operator. The agreement has the force of law between the parties and should be complied with by both parties in good faith.

2.6.11 Lessees' Entitlement to Claim Immunity

Generally, lessees are not entitled to claim immunity, which is available only for the Philippine and foreign governments. Nonetheless, immunity can be waived.

2.6.12 Enforcement of Foreign Arbitral Decisions

Since the Philippines has adopted the New York Convention, any party to a foreign arbitral award may file an action to recognise and enforce such award supported by:

- an authentic copy of the arbitration agreement;
- an authentic copy of the arbitral award; and
- if applicable, a translation of these documents into English.

2.6.13 Other Relevant Issues

An action for the recognition and enforcement of a foreign arbitral award must be brought within ten years from the time the right of action accrues; otherwise, it will be barred by prescription.

2.7 Lease Assignment/Novation

2.7.1 Recognition of the Concepts of Contractual Assignment and Novation

The Philippines recognises the concept of contractual assignment and novation found in the Philippine Civil Code.

2.7.2 Assignment/Novation of Leases Under Foreign Laws

The parties are free to enter into a novation agreement pursuant to New York or English law. Whether the lessee's consent will be required, or whether there are mandatory terms for such assignment, will depend on the governing law.

The parties are free to stipulate their governing choice of law, so long as the terms and conditions of the lease are not contrary to law, morals, public policy or public order.

2.7.3 Enforceability of Lease Assignments/Novations

While not affecting validity, lease assignments and assumptions/novations involving an aircraft should be in English, and it is advisable for them to be notarised. If executed outside the Philippines, they should be apostilled or legalised for purposes of enforcement against a domestic party.

2.7.4 Filing/Registration of Lease Assignments/Novations

An aircraft and/or engine lease assignment and assumption/novation can be registered with the CAAP to be binding on third parties; otherwise, they shall be valid only between the parties and their successors and assignees.

To register assignment or novation, the documents must be in English and notarised; if executed outside the Philippines, they must be apostilled or legalised. Estimated completion time is about three to four weeks.

Government applications or consents are not required before the execution and delivery of an aircraft and/or engine lease assignment and assumption/novation in relation to an aircraft registered domestically. However, while the assignment and assumption/novation themselves are generally not affected, if the aircraft or the engine was acquired through or with a special tax status, certain consents may be required from the relevant government entity prior to the delivery of the aircraft or engine.

2.7.5 Taxes/Duties Payable on Assignment/Novation

There is no documentary stamp tax for executing a lease agreement for personal property such as an aircraft or engine, whether physically or electronically, nor for assigning the original lease agreement.

2.7.6 Recognition of Transfer of Ownership Interests

Even if the entity ownership changes, there is no change in the ownership of the aircraft. The entity owning the aircraft is separate and distinct from any of its ownership interests (eg, shareholders).

2.8 Aircraft Deregistration and Export

2.8.1 Deregistering Aircraft in This Jurisdiction

Deregistration can be done by the lessee. If a deregistration power of attorney is executed by the lessee in favour of the lessor, then the lessor may apply for the deregistration of an aircraft.

If there is any annotation on the certificate of registration of the aircraft, the applicant shall settle or clear all liens or encumbrances prior to deregistration; no aircraft registered with the CAAP shall be deregistered until all liens and encumbrances annotated on the certificate of registration have been cancelled.

An application for deregistration shall be filed at the Aircraft Registration Section, which will then forward the application to the legal department for review. Once reviewed by the legal department, it will then be forwarded to the Director-General for approval.

In 2025, the CAAP issued a regulation updating the format of the deregistration certificate. In the updated format, there is now an express distinction between the identity of the operator and that of the owner. This provides greater clarity and, thus, greater protection to the aircraft owner.

2.8.2 Lessee’s/Operator’s Consent

An aircraft owner, mortgagee or lessor may apply for deregistration of the aircraft if the lessee or the operator executed a deregistration power of attorney to that effect.

2.8.3 Required Documentation

The following are required in order to effect aircraft deregistration:

- the notarised application;
- the original certificate of registration;
- the original certificate of airworthiness;
- proof of payment of the CAAP prescribed fees;
- CAAP Accounting Clearance of the current aircraft owner and aircraft operator;
- the notarised bill of sale (if due to the sale of the aircraft) or termination of lease (if due to the termination of an aircraft lease); and
- other documents the CAAP may deem necessary.

2.8.4 Duration of Deregistration Process

The period for deregistration may depend on whether there is co-operation from the lessee.

If the lessee co-operates, the process may be faster. The length of the process will depend on how fast the parties can prepare the necessary documents for submission. Normally, it will take three to four weeks.

If the lessee does not co-operate, the deregistration may take longer. Difficulties may be encountered in particular if the documents for the deregistration are executed outside the Philippines and must be apostilled or legalised.

2.8.5 Aviation Authority's Assurances

The CAAP does not provide advance assurances on aircraft deregistration.

2.8.6 Costs, Fees and Taxes Relating to Deregistration

The deregistration fee is currently PHP750, and the reissuance of the certificate of registration and the recording fee for the cancellation of annotation costs PHP400, exclusive of VAT.

2.8.7 Deregistration Power of Attorney

The CAAP may recognise a deregistration power of attorney, which must be in English and notarised. If executed outside the Philippines, it must be apostilled or legalised. However, the CAAP retains discretion on its recognition on a case-by-case basis, and may require additional proof of authority to file.

Advance lodging of the deregistration power of attorney is not required in order to be enforceable against a domestic party. Normally, the deregistration power of attorney is annotated on the certificate of registration of the aircraft.

2.8.8 Documents Required to Enforce Deregistration Power of Attorney

The deregistration power of attorney should be issued on the authority of, and accompanied by, a corporate authorisation, which must be in English and notarised. If executed outside the Philippines, it should be apostilled or legalised.

2.8.9 Choice of Laws Governing Deregistration Power of Attorney

There is no need for the deregistration power of attorney to be governed by the laws of the Philippines. The choice of law of the parties will be held as valid by the court so long as such choice is not contrary to law, morals, public policy or public order.

2.8.10 Revocation of a Deregistration Power of Attorney

Generally, the irrevocable power of attorney cannot be revoked. Under Philippine laws, an agency cannot be revoked if a bilateral contract depends on it or if it is the means of fulfilling an obligation.

The power of attorney is coupled with the interest of the lessor over the aircraft. Since the enforcement of the rights and obligations under the aircraft lease depends on the power of attorney, such may not be revoked.

2.8.11 Owner's/Lessor's Consent

Generally, self-help is not available in the Philippines. If a deregistration power of attorney has been granted in favour of the owner, mortgagee or lessor of the aircraft, they may export such aircraft without the lessee's consent, although this would be subject to actual possession of the aircraft.

During the negotiation of the lease or mortgage agreement, the owner, mortgagee or lessor may request that a deregistration power of attorney be issued in their favour so that they can export the aircraft without need for the lessee's consent. The language of the deregistration power of attorney should be all-encompassing and broad enough to cover all applicable government agencies likely to be affected by an application for export.

Subject to additional administrative requirements, the aircraft is not required to physically be in the Philippines during the deregistration process. However, any aircraft that is already the subject of a deregistration application shall not be permitted to be flown nor be given approval for flight.

2.8.12 Aircraft Export Permits/Licences

An aircraft must obtain an airworthiness approval for export by filing an application prescribed by the CAAP.

The airworthiness approval for export cannot be issued in advance as the aircraft must still meet the airworthiness requirement for a standard certificate of airworthiness. Used aircraft should have undergone an annual inspection, which should have been performed and properly documented within 30 days before the date of the application for airworthiness approval for export.

There is no specific timeline to receive an airworthiness approval for export, although in practice it takes about one to two weeks.

An aircraft that is not airworthy can still be exported (eg, disassembled and crated), but it will not be issued an export certificate of airworthiness.

2.8.13 Costs, Fees and Taxes Concerning Export of Aircraft

No significant export tax or any other customs duties need to be paid to export an aircraft.

2.8.14 Practical Issues Related to Deregistration of Aircraft

Issues may arise if the lessee or operator does not co-operate, as the execution of the necessary documents for the aircraft deregistration might not be easy. However, so long as the deregistration documents are complete, there should not be any issue (but proof of removal of registration marks is one of the requirements for deregistration).

2.9 Insolvency Proceedings

2.9.1 Overview of Relevant Laws and Statutory Regimes Governing Restructurings, Reorganisations, Insolvencies and Liquidations

Insolvency proceedings in the Philippines are governed by the Financial Rehabilitation and Insolvency Act of 2010 (FRIA), which provides for the rehabilitation and liquidation of a debtor undergoing a financial condition wherein it is generally unable to pay its liabilities as they fall due in the ordinary course of business or has liabilities greater than its assets.

2.9.2 Overview of Relevant Types of Voluntary and Involuntary Restructurings, Reorganisations, Insolvencies and Receivership

Court-Supervised Rehabilitation

In voluntary proceedings, an insolvent debtor voluntarily initiates the rehabilitation by filing a rehabilitation petition with the courts.

Involuntary proceedings may be used by any creditor of the insolvent corporation with a claim of – or the aggregate of whose claim is – at least PHP1 million or at least 25% of the subscribed capital stock or partners' contributions, whichever is higher.

Pre-Negotiated Rehabilitation

By itself or jointly with any of the creditors, an insolvent debtor may file a verified petition with the court for the approval of a pre-negotiated rehabilitation plan that has been endorsed or approved by creditors holding at least two thirds of the total liabilities of the debtor, including secured creditors holding more than 50% of the total secured claims of the debtor and unsecured creditors holding more than 50% of the total unsecured claims of the debtor.

Out-of-Court Rehabilitation

This involves an informal restructuring agreement or rehabilitation plan that meets the following requirements:

- the debtor must agree to the out-of-court or informal restructuring/workout agreement or rehabilitation plan;
- it must be approved by creditors representing at least 67% of the secured obligations of the debtor;
- it must be approved by creditors representing at least 75% of the unsecured obligations of the debtor; and
- it must be approved by creditors holding at least 85% of the total liabilities, secured and unsecured, of the debtor.

2.9.3 Co-Ordination, Recognition or Relief in Connection With Overseas Proceedings

The FRIA specifically provides for the adoption of the UNCITRAL Model Law on Cross-Border Insolvency ("UNCITRAL Model"), which shall apply if:

- assistance is sought in a Philippine court by a foreign court or representative in connection with a foreign proceeding;
- assistance is sought in a foreign state in connection with a proceeding governed by the FRIA and by the UNCITRAL Model;
- a foreign proceeding and a proceeding governed by the FRIA and the UNCITRAL Model are taking place concurrently; or
- creditors in a foreign state have an interest in requesting the commencement of or participating in a court-supervised rehabilitation, pre-negotiated rehabilitation or

out-of-court rehabilitation.

The “co-operation” and “co-ordination” principle under the UNICTRAL Model is also adopted under the FRIA. This principle places obligations on courts and insolvency representatives in different states to communicate and co-operate to the maximum extent possible.

2.9.4 Effect of Lessee’s Insolvency on a Deregistration Power of Attorney

The deregistration power of attorney will still be valid despite the lessee’s insolvency, regardless of whether or not it is irrevocable. The aircraft is only leased to the insolvent lessee; the lessor is still the owner of the aircraft.

Generally, the liquidation of the lessee would terminate the power of attorney at the point in time it is declared dissolved as an entity, unless it is validly constituted as being coupled with interest.

2.9.5 Other Effects of a Lessee’s Insolvency

Contracts will not be automatically set aside during insolvency proceedings. However, once a liquidation order is issued, the lessee’s juridical existence will be dissolved and all its contracts shall be deemed terminated and/or breached, unless the liquidator declares otherwise and the contracting party agrees, within 90 days from the date of assumption of office.

The aircraft will not be deemed part of the lessee’s property. The lessor will not be prevented from repossessing the aircraft upon the termination of the lease: as the aircraft owner, the lessor is entitled to recover the aircraft from the lessee upon termination of the lease agreement.

The FRIA expressly provides that the preference of credits under the Philippine Civil Code shall be observed. Therefore, duties, taxes and fees due to the state shall take priority over a lessor’s rights, including taxes due under the Philippine tax and customs code, and any liens imposed by the CAAP Director-General.

2.9.6 Risks for a Lender if a Borrower, Guarantor or Security Provider Becomes Insolvent

Generally, if a borrower, a guarantor or an entity providing security becomes insolvent, lenders run the risk of not being able to fully recover the amount lent. There may also be a delay in the payments as the debtor needs to first satisfy the claims by third parties that are preferred over the claims of the lender.

2.9.7 Imposition of Moratoria in Connection With Insolvency Proceedings

The Commencement Order of the rehabilitation proceedings shall include a stay or suspension order, which shall:

- suspend all actions or proceedings, in court or otherwise, for the enforcement of claims against the debtor;
- suspend all actions to enforce any judgment, attachment or other provisional remedies against the debtor;
- prohibit the debtor from selling, encumbering, transferring or disposing in any manner any of its properties, except in the ordinary course of business; and
- prohibit the debtor from making any payment of its liabilities outstanding as of the commencement date,

except as may be provided therein.

2.9.8 Liquidation of Domestic Lessees

Voluntary Liquidation

An insolvent debtor (or lessee) may apply for a liquidation by filing a petition for liquidation with the court, establishing its insolvency.

Involuntary Liquidation

This may be used by three or more creditors (or lessors) whose claims in aggregate are at least PHP1 million or at least 25% of the subscribed capital stock of the debtor (or lessee), whichever is higher.

An insolvent domestic lessee may be placed under administration or receivership in the circumstances listed in **2.9.2 Overview of Relevant Types of Voluntary and Involuntary Restructurings, Reorganisations, Insolvencies and Receivership**.

2.9.9 Ipso Facto Defaults

Ipso facto defaults, or the termination of a contract by reason of a party's insolvency, are recognised in the Philippines, and are usually stipulated in contracts.

There is no need for the debtor to be in default in the performance of their obligation. If the lease agreement provides that the contract will be terminated once the lessee is deemed insolvent, then the lessor may take possession of the aircraft. However, this assumes that the lessee co-operates, as there is no self-help in the Philippines (otherwise, the lessor should proceed with the dispute resolution mechanism in the lease).

2.9.10 Impact of Domestic Lessees' Winding-Up

If the domestic lessee is wound-up, then the lease contract shall be terminated and the aircraft must be returned to the lessor. All other matters pertaining to rentals, security deposits and maintenance reserves would be decided by the court, taking into account the unique circumstances of the lessee's case.

2.10 Cape Town Convention and Others

2.10.1 Conventions in Force

At the time of writing, the Philippines has not ratified the Convention on International Interests in Mobile Equipment nor the related Protocol on Matters specific to Aircraft Equipment.

2.10.2 Declarations Made Concerning Conventions

See **2.10.1 Conventions in Force**.

2.10.3 Application of Article XIII of the Protocol on Matters Specific to Aircraft Equipment

See **2.10.1 Conventions in Force**.

2.10.4 Enforcement of Conventions

Philippine courts have no experience in enforcing the Convention on International Interests in Mobile Equipment, as the Philippines has not ratified said Convention.

2.10.5 Other Conventions

The Philippines is a party to the 1948 Geneva Convention on the International Recognition of Rights in Aircraft. However, it is not a party to the 1933 Rome Convention on the Unification of Certain Rules relating to the Precautionary Arrest of Aircraft.

3. Aircraft Debt Finance

3.1 Structuring

3.1.1 Restrictions on Lending and Borrowing

There are no express statutory restrictions on foreign lenders financing an aircraft in the Philippines, nor on borrowers using the loan proceeds. However, due to the doctrine of “doing business” in the Philippines, great care must be taken to properly structure the transaction such that the foreign lender is not seen to be doing business in the Philippines without a licence.

3.1.2 Effect of Exchange Controls or Government Consents

There are generally no exchange controls in the Philippines that could prevent rent payments under a guarantee or security. However, for foreign loans, the Bangko Sentral ng Pilipinas (ie, the central bank of the Philippines) has regulations if the borrower wishes to purchase foreign exchange from Philippine banks for loan payments. In a more recent update, there has been a further relaxing of the requirements set out in such regulations.

3.1.3 Granting of Security to Foreign Lenders

There is no restriction in the Philippines on granting security to foreign lenders. Borrowers may provide security under the PPSA for personal or movable property, or under Republic Act No 4882 for real property.

3.1.4 Downstream, Upstream and Cross-Stream Guarantees

Downstream, upstream and/or cross-stream guarantees in favour of the lenders are recognised in the Philippines. However, care should be taken to review the corporate documents of the entities involved to ensure that issuing a guarantee does not violate their charter or constitutive documents.

3.1.5 Lenders’ Share in Security Over Domestic SPVs

The lender may take a share security over a domestic special purpose vehicle that will operate the financed aircraft.

3.1.6 Negative Pledges

Negative pledges are recognised in the Philippines.

3.1.7 Intercreditor Arrangements

No restrictions or requirements are imposed on intercreditor arrangements in the Philippines. However, Philippine law provides for the priority of creditors in certain situations.

3.1.8 Syndicated Loans

The concept of agency and the role of an agent (such as the facility agent) under a syndicated loan are recognised in the Philippines.

3.1.9 Debt Subordination

The Philippine Civil Code provides for the claims that must be preferred over others. The FRIA also provides that, in cases of liquidation in rehabilitation plans, the priority established under the Civil Code on the concurrence and preference of credits shall be followed.

3.1.10 Transfer/Assignment of Debts Under Foreign Laws

The transfer or assignment of all or part of an outstanding debt governed by English or New York law is permissible and recognised in the Philippines. Parties are free to agree on terms and conditions that are not contrary to law, morals, public policy or public order.

3.1.11 Usury/Interest Limitation Laws

Philippine usury law is currently suspended, and the lender and the borrower can agree on any interest that may be charged on the loan. However, courts may strike down interest rates that are iniquitous or unconscionable.

3.2 Security

3.2.1 Typical Forms of Security and Recourse

If an aircraft is financed, it generally means that the lessor is still the owner of the aircraft, even though it will be operated by the lessee. The ownership of the lessor is usually annotated on the certificate of registration of the aircraft, to notify the public of the identity of the lessor. A corporate guarantee is also usually taken out, to ensure the timely payment of the rent.

3.2.2 Types of Security Not Available

The Civil Aviation Authority Act does not expressly provide for types of security that cannot be taken over an aircraft or related collateral.

3.2.3 Trust/Trustee Concepts

The concept of trust and the role of a security trustee are recognised in the Philippines. The Philippine Civil Code expressly includes provisions on the establishment of a trust. However, as a practical matter, trust arrangements in the Philippines are not as sophisticated as in other countries.

3.2.4 Assignment of Rights to an Aircraft by a Borrower to a Security Trustee

A borrower can assign its rights to the aircraft or under an aircraft lease pursuant to a security assignment or a mortgage. It is advisable to register such assignment with the CAAP and to annotate it in the certificate of registration of the aircraft.

3.2.5 Assignment of Rights and Benefits Without Attendant Obligations

When the lessor assigns their rights over the leased aircraft to an assignee, the lessor still holds ownership over the leased aircraft. The lessor remains as the lessor and, as such, is still required to comply with the obligations of the lessor as provided for in the aircraft lease.

3.2.6 Choice of Foreign Law

The parties are free to stipulate their choice of law that will govern the security assignment, so long as the choice of law and the terms and conditions of the security assignment are not against law, morals, public order or public policy.

3.2.7 Formalities/Mandatory Terms to Create and Perfect Security Assignments

The security assignment shall be in writing and notarised. If executed outside the Philippines, it must be apostilled or legalised in order to be enforceable in the Philippines. If written in any language other than English, the security assignment should also be accompanied by an English translation.

The security assignment shall then be registered with the CAAP and annotated in the certificate of registration of the aircraft in order to bind third persons.

3.2.8 Domestic Law Security Instruments

There is no domestic law security instrument that a financier should take in addition to a security agreement that is governed by English of New York Law.

The Philippines has not ratified the Cape Town Convention.

3.2.9 Domestic Registration of Security Assignments Governed by Foreign Laws

A security assignment governed by English or New York law and a domestic law security instrument may be registered with the CAAP.

Any of the documents related to the security instrument that are executed outside the Philippines must be apostilled or legalised in order to be registered with the CAAP, and must be annotated in the certificate of registration of the aircraft in order to bind third persons.

3.2.10 Transfer of Security Interests Over Aircraft/Engines

The transfer of security interests over an aircraft and/or engines is recognised in the Philippines. It is advisable to register such transfer with the CAAP, and with the PPSR for engines.

3.2.11 Effect of Changes in the Identity of Secured Parties

Subrogation of a third person in the rights of a creditor is either legal or conventional. Legal subrogation takes place without the agreement of the parties but by operation of law.

However, in conventional subrogation, the consent of the original creditor, the original debtor and the third person who is subrogated to the rights of the original creditor must be obtained. In effect, the original obligation will be extinguished and a new obligation shall be made between the person subrogated of the rights of the original creditor and the original debtor.

The original creditor can assign their rights over the security agreement to a third person without the consent of the debtor. The original security will not be extinguished or modified.

Nevertheless, in both subrogation and assignment, the security interest will not be jeopardised.

3.2.12 “Parallel Debt” Structures

There is no express prohibition on the use of “parallel debt” structures in the Philippines. They can be used so that the security trustee has an independent right to the secured debt. The concept of security trustee is recognised.

3.2.13 Effect of Security Assignments on Residence of Secured Parties

The secured party under a security assignment will not automatically be deemed to be resident, domiciled or carrying on business in the Philippines by reason of such security assignment alone. One of the exceptions to the doctrine of “doing business” is the isolated transaction rule.

However, if the secured party receives income by reason of the security assignment, such income may be subject to income tax. Income derived from sources within the Philippines is taxable as income of a non-resident foreign corporation (subject to any applicable tax treaty).

3.2.14 Perfection of Domestic Law Mortgages

A security interest over an aircraft may be perfected by the registration of such interest with the CAAP and annotated in the aircraft’s certificate of registration. However, for its engine, which may be covered by the PPSA, it may be perfected by registration at the PPSR or upon possession by the secured creditor.

3.2.15 Differences Between Security Over Aircraft and Spare Engines

The mortgage registration for an aircraft is with the CAAP, while that for a spare engine may be with the PPSR.

3.2.16 Form and Perfection of Security Over Bank Accounts

Security interest through a security agreement over deposit accounts can be taken in accordance with the PPSA. A security agreement must be contained in a written contract signed by the parties, and must identify the collateral and the secured obligation. It may consist of one or more writings that, taken together, establish the intent of the parties to create a security interest.

On the other hand, a control agreement is an agreement in writing between the grantor and the secured creditor, which perfects the security interests over intangible assets. Such security must still be registered in the registry in order to be implemented under the PPSA.

3.3 Liens

3.3.1 Third-Party Liens

A third party can register a lien over an aircraft or engine to answer for the owner-lessor’s obligations. The lien can be registered with the CAAP for aircrafts or with the PPSR for engines, to serve as notice to third parties. The lien can cover the value of the work done on the aircraft and other assets.

The Philippine Civil Code covers credits for the making, repair, safekeeping or preservation of personal property.

A fleet lien may be imposed by the CAAP Director-General, who has the power to impose liens on aircraft, machinery and any other assets of persons, corporations and partnerships who are in default, have failed to perform their obligations or have failed to pay fines and other penalties. On the other hand, third parties other than the CAAP Director-General may impose liens on an entire fleet if there is an agreement. However, third parties may not be able to detain the aircraft, as it will be sold and the proceeds of the sale shall be applied to the satisfaction of the obligation.

Depending on the nature of the security, the third party may foreclose on or attach or levy the aircraft.

3.3.2 Timeframe to Discharge a Lien or Mortgage

There is no specific timeframe provided for the discharge of a lien or mortgage over an aircraft. Normally, the CAAP will take about two to three weeks to remove an annotation, counted from the date all requirements are met.

3.3.3 Register of Mortgages and Charges

Mortgages and charges related to aircraft are registered with the CAAP, which maintains a registry for security over aircrafts. Aircraft engines may be registered in the PPSR. Such registration will serve as a notice to third parties of the existence of such mortgage or charge.

3.3.4 Statutory Rights of Detention or Non-Consensual Preferential Liens

Statutory rights of detention or non-consensual preferential liens can arise over an aircraft and/or on a “fleet-wide” basis. The CAAP Director-General shall have the power to impose liens on aircraft and machinery in the following circumstances:

- if the charges and other fees are not paid in full on the due date, or if any part of the charges or the late payment penalty thereto remain unpaid; and
- failure to pay administrative fines arising from violation of any rules and regulations promulgated by the CAAP.

3.3.5 Verification of an Aircraft’s Freedom From Encumbrances

A potential purchaser can verify that an aircraft is free of encumbrances by inquiring with the CAAP and checking the database of aircraft. The potential purchaser may also check the PPSR.

3.4 Enforcement

3.4.1 Differences Between Enforcing Security Assignments, Loans and Guarantees

A secured loan involves having encumbered property to answer for the loan in case of non-payment. In the case of an unsecured loan, the creditor only relies on the principal debtor or the guarantor or surety’s commitment to pay.

Thus, in a security assignment, the creditor may proceed against the encumbered property, while in an unsecured loan the creditor may file an action against the debtor and the guarantor or surety.

3.4.2 Security Trustees’ Enforcement of Their Rights

The parties are free to decide on the terms and conditions of their security agreement, so long as they are not contrary to law, morals, public policy or public order. The applicable governing law will therefore be relevant. The security trustee can enforce its rights pursuant to an agreed notice and acknowledgment by the lessor and the lessee.

3.4.3 Application of Foreign Laws

The parties are free to stipulate their choice of governing law and jurisdiction, so long as the choice of law and the terms and conditions are not contrary to law, morals, public order or public policy.

3.4.4 Recognition and Enforcement of Foreign Judgments and Arbitral Awards

A party may commence an action for recognition of a foreign judgment with a domestic court without re-examination of the matter as it enjoys a presumption of validity.

For foreign arbitral awards made in a state that is a party to the New York Convention or that extends reciprocity and comity to awards made in the Philippines, the lessor may apply for a Recognition and Enforcement of Foreign Arbitral Award at any time after receipt of the foreign arbitral award. Courts may hold hearings if deemed proper.

If the foreign arbitral award was made in a state that is not a party to the New York Convention, the court may treat the award as a foreign judgment.

3.4.5 Secured Parties’ Right to Take Possession of Aircraft

The Philippine High Court has declared that a creditor cannot immediately take possession of the object as it will constitute pactum commissorium, which is against good morals and public policy. Even if the parties agree, it may be deemed null and void. While the PPSA has allowed a creditor to take possession of secured collateral, to a certain extent, it has limited application to aircraft, which are governed by a different law. Therefore, taking possession of an aircraft to enforce a security is prohibited regardless of whether or not the lessee or operator consented.

3.4.6 Domestic Courts Competent to Decide on Enforcement Actions

Philippine courts are competent to decide enforcement actions. The jurisdiction of the appropriate level trial court will be determined by the amount claimed in the action.

3.4.7 Summary Judgments or Other Relief

See **2.6.4 Summary Judgment or Other Relief**.

3.4.8 Judgments in Foreign Currencies

See **2.6.7 Judgments in Foreign Currencies**.

3.4.9 Taxes/Fees Payable

There are no taxes on the enforcement of a security agreement or aircraft mortgage. However, court filing fees are required, the amount of which will be based on the relief sought or the property value involved.

3.4.10 Other Relevant Issues

In the case of a mortgage, an action to enforce must be done within ten years from the time the mortgagor defaults in the payment; otherwise, it will be barred by prescription and the mortgagee will lose their rights under the mortgage.

4. Other Issues of Note

4.1 Issues Relevant to Domestic Purchase, Sale, Lease or Debt Finance of Aircraft

The material issues and court judgments are those that pertain to the doctrine of doing business in the Philippines by a foreign aircraft owner, seller or lessor. While they are not specific to aircraft transactions, the overall structure of an aircraft transaction – whether it be by sale, lease or finance – should always take care to ensure that the aircraft owner, seller or lessor does not fall into "doing business" in the Philippines without a licence. An aircraft owner, seller or lessor should take full advantage of all possible exceptions in structuring the deal.

4.2 Current Legislative Proposals

There are no current proposals before the legislature relating to the foregoing items.

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