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In 27 jurisdictions worldwide

Contributing editor
Mark Bisset

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GETTING THE DEAL THROUGH

GETTING THE DEAL THROUGH

Aviation Finance & Leasing 2015

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Overview

1 To which major air law treaties is your state a party? Is your state a party to the New York Convention of 1958?

The Philippines is a signatory to, and has ratified, the 1948 Geneva Convention on the International Recognition of Rights in Aircraft and the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

The Philippines is not a signatory to the 1933 Rome Convention for the unification of certain rules relating to the precautionary arrest of aircraft and the 2001 Cape Town Convention on International Interests in Mobile Equipment.

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

The principal domestic legislation applicable to aviation finance and leasing are Republic Act No. 386, otherwise known as the Civil Code of the Philippines, and Republic Act No. 9497, otherwise known as the Civil Aviation Authority Act of 2008 (the CAAP Law).

3 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?

Under our Civil Code, personal property is subject to the law of the country where it is situated. This covers transactions involving sale, mortgage, barter, exchange, lease assignment, or any form of alienation relating to the personal property.

Philippine law also allows contracting parties to select a foreign law to govern their contract. The chosen law must also bear a substantive relationship to the transaction. Philippine courts will generally respect such choice of law, as long as the foreign law is not contrary to law, morals, good customs, public order or public policy, and is not designed to evade some provisions of law of another jurisdiction having a closer connection with the transaction contemplated therein.

While the choice of a foreign law as the governing law will generally be recognised by Philippine courts, such courts may, in disregard of the chosen law, apply the laws of the Philippines with respect to matters bearing upon the authority and capacity of any Philippine national to enter into and perform its obligations under the contract, in determining compliance of the contract with all requirements of governmental approvals in the Philippines, in determining compliance of the contract with the formalities required under Philippine law for the conveyance of, and the creation of security interests in, properties situated in the Philippines, and insofar as Philippine law may have a closer connection to the transactions contemplated therein.

Title transfer

4 How is title in an aircraft transferred?

The execution of a bill of sale, coupled with delivery, is effective to transfer title over an aircraft. Delivery may be accomplished by actual or real delivery, constructive or legal delivery, or delivery in any other manner signifying an agreement that the possession is transferred to the buyer.

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

The transfer document should state: the interest in the aircraft of the person by whom such conveyance is made or executed and the interest transferred by the conveyance.

In addition to being in writing, the transfer document must also comply with the formal requirements for documents similar to conveyance of an interest in land (ie, initialled on each page, notarised following a specific notarial attestation format).

Any conveyance affecting title to or interest in any Philippine-registered aircraft or any portion thereof must be recorded with the Civil Aviation Authority of the Philippines (the CAAP) in order to be valid and effective against third persons (section 49, CAAP Law).

If executed abroad, the transfer document should be consularised at the Philippine consulate in the jurisdiction where it was signed. The CAAP will also require documentation showing the authority of the persons who executed the transfer document (eg, special power of attorney, a board resolution or an equivalent corporate authorisation).

Registration of aircraft ownership and lease interests

6 Identify and describe the aircraft registry.

The aircraft registry is maintained by the CAAP, which has a broad range of powers and functions including the duty to operate as the sole and exclusive registry for aircraft, aircraft engines, as well as liens and security interests thereon. There is no separate engine registry in the Philippines.

The CAAP registry is an operator registry. The CAAP Law provides that, except as otherwise provided in the Philippine Constitution and existing treaty or treaties to which the Philippines is a party, no aircraft shall be eligible for registration in the Philippines unless it is owned by or leased to a citizen of the Philippines or corporations or associations organised under the laws of the Philippines at least 60 per cent of whose capital is owned by Filipino citizens (section 44, CAAP Law). Thus, the nationality of the owner or the operator is the principal factor in determining which entity will be issued the Philippine certificate of registry. The owner of the aircraft (if not qualified to be the entity named in the aircraft registry) may still record its interest in the aircraft register and cause the annotation of the Philippine certificate of registry to reflect such interest.

The Philippines has entered into a delegation agreement with Ireland on the implementation of article 83-bis of the Chicago Convention, or the Convention of International Civil Aviation.

7 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?

As mentioned under question 6, an ownership or lease interest in an aircraft may be entered in the CAAP registry. Interests in aircraft engines, whether as owner, operator, or lessee, may likewise be registered.

8 Summarise the process to register an ownership interest.

For registration of an aircraft with the CAAP, a deregistration fax and e-mail have to be issued by the former registry, if any. A proper application for the issuance of the Certificate of Registration is made in writing, signed

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and sworn to by the owner, ie, notarised (if eligible) or lessee of any aircraft eligible for registration. The application shall state the date and place of filing, specification, construction and technical description of the aircraft and such other information that may be required by the CAAP. A standard application form is available from the CAAP.

The application for registration is filed with the CAAP Engineering and Registration Division, Airworthiness Department and Flight Standards Inspectorate Service.

The supporting documents that must be attached to the initial Certificate of Registration application form are as follows:

- documentary evidence of ownership or for leased aircraft, notarised duplicate signed copy of the lease agreement (if the lease agreement is signed outside the Philippines, it must be notarised and consularised at the Philippine consulate in the jurisdiction where it was signed);
- special power of attorney or equivalent document such as a board resolution authorising the applicant to sign on behalf of the applicant owner or lessee;
- customs clearance or tax exemption (if applicable), customs release or payment;
- certificate of non-registration, if factory new;
- official receipt, payment of registration fee (which depends on the gross weight of the aircraft);
- official receipt, payment of recordation fee of 400 pesos;
- CAAP Accounting Clearance;
- assignment of registration number or RP-C number (note: the applicant must reserve a registration number which must be used within 90 days, otherwise the reserved registry number is deemed automatically cancelled if not used within that specified period);
- constitutive documents of the applicant owner or lessee; and
- certified true copy of the aircraft's certificate of insurance.

Additionally, for aircraft for hire to the general public, the following must also be submitted:

- Civil Aeronautics Board (CAB) permit or approval; and
- air operator certificate.

The CAAP may require the submission of additional supporting documents. If the CAAP Director General, upon considering the application for registration, finds that the aircraft is eligible for registration, such aircraft shall be registered and a Certificate of Registration will be issued.

As a general rule, title to engine is presumed to vest with the owner of the aircraft, unless title to the engine is specifically claimed by a different party, and a separate certificate of engine registration is sought from the CAAP.

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

Registration of an ownership interest in an aircraft is considered as proof of title that is binding on third parties. Third parties may rely on the accuracy of such registration.

10 Summarise the process to register a lease interest.

An aircraft may also be registered in the name of a lessee, who is a citizen of the Philippines or a corporation or association organised under the laws of the Philippines at least 60 per cent of whose capital is owned by Filipino citizens. The timing, prescribed forms, supporting documents and other requirements for the registration of a lease interest and issuance of a Certificate of Registration in the name of a lessee is the same as that for an owner. See question 8.

See also question 5 with respect to the formalities for the lease agreement, to qualify for registration with the CAAP.

A minimal recording fee of 400 pesos is charged for registration of the lease with the CAAP.

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

The CAAP is the sole and exclusive registry for aircraft, aircraft engines, as well as liens and security interests thereon. Any and all interests registered with the CAAP must be annotated on the Certificate of Registration of the aircraft to bind third parties. Certification of registered aviation interests is accomplished through the issuance by the CAAP of a certified true copy of the Certificate of Registration of the aircraft.

Certificates of Registration for aircraft recorded in the CAAP reflect the following:

- type of registration (whether original, renewal or transfer);
- usage (whether for air commerce or general aviation);
- nationality and registration marks;
- name of manufacturer and designation of aircraft;
- aircraft serial number;
- gross weight of the aircraft;
- name of owner or operator;
- address of owner or operator;
- date of issue;
- fees paid and the official receipt number pertaining to the payment; and
- leases, mortgages and encumbrances, if any, on the back page.

A separate engine certificate of registration may be issued by the CAAP. Conveyances affecting title to, or interest in, aircraft engines may also be recorded in the CAAP registry.

12 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?

The appropriate party to apply for deregistration is the entity in whose name the aircraft is registered (ie, the owner (if eligible) or the lessee). To this extent, the owner or lessee (as may be applicable) must consent to the deregistration of the aircraft and, without such consent, the owner or lessee (as may be applicable) may block the proposed deregistration of the aircraft by a third party. On the other hand, the owner or lessee (as may be applicable) may delegate such power through a Special Power of Attorney in favour of a third party.

Deregistration will not be permitted without the consent of any recorded mortgagee or lessee, whose interests are recorded in the CAAP registry and annotated at the back of the Certificate of Registration of the aircraft.

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

The entity in whose name the aircraft is registered may delegate the power to apply for deregistration of the aircraft through a power of attorney in favour of a third party. The power of attorney creates an agency between the registered owner or lessee and the attorney-in-fact, who is provided with authority to represent the registered owner or lessee before the appropriate government agencies for the deregistration and exportation of the aircraft.

Our jurisdiction recognises the concept of an irrevocable power of attorney coupled with an interest if a bilateral contract depends on such agency, or if such agency is the means of fulfilling an obligation. The deregistration power of attorney is typically issued specifically to ensure the fulfilment by the lessee of its obligations under a lease (ie, the deregistration of the aircraft, among others, upon the termination or expiry of the lease).

In financing transactions, registered owners of an aircraft would also issue deregistration powers of attorney in favour of a security agent (or trustee, representing the interest of lenders).

A deregistration power of attorney may be granted in favour of more than one attorney-in-fact.

Under Philippine corporate law, no right or remedy against any corporation or any liability incurred by a corporation is impaired by the subsequent dissolution of the corporation and, thus, the power of attorney should survive such dissolution of the corporation.

Although not strictly a security interest over an aircraft which requires to be registered with the CAAP, the CAAP has allowed the registration of deregistration powers of attorney in our most recent transactions.

14 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.

The Philippines is currently not a party to the Cape Town Convention.

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Security

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

A security document over the aircraft typically takes the form of a chattel mortgage. Under Philippine law, a chattel mortgage must sufficiently describe the mortgaged property and the secured obligation. A chattel mortgage can only cover obligations existing at the time the mortgage is constituted, and may refer to a determined principal amount and undetermined interest, penalties and other charges, by making reference to the principal financing document.

The chattel mortgage is typically written in English (being one of our official languages). For purposes of registration with the CAAP, the formal requirements similar to documents relating to a conveyance of land are also applicable. The chattel mortgage must be registered with the CAAP in order to bind third persons. If the chattel mortgage is not recorded, it is nevertheless binding as between the parties.

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

The formalities discussed in question 5 for conveyance of an interest are also applicable to security documents.

The CAAP collects a nominal fee of 400 pesos for every security document filed for registration.

17 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.

Yes. Any conveyance which affects title to, or interest in, an aircraft of Philippine registry, or any portion thereof (which includes a security document) must be recorded in the CAAP registry to be valid against third parties having no actual notice thereof. Although no period for the recordation of the security document is specified in the CAAP Law, it is recommended that the instrument be recorded promptly after execution.

To register a security interest over an aircraft with the CAAP, the security document must be filed and recorded in the registry of the CAAP and annotated on the rear portion of the Certificate of Registration. See question 16 for the formalities and other requirements.

Once registered, there is no requirement to periodically renew the registered security interests.

18 How is registration of a security interest certified?

After registration, a security interest is annotated on the rear portion of the Certificate of Registration of the aircraft. The CAAP does not issue a separate certificate or evidence of registration of the security interest. Upon written request of a third party conducting a search on an aircraft, the CAAP may issue a certified copy of the Certificate of Registration with all the annotations reflected at the back.

The annotation of the security interest does not state the rank or priority of such security interest.

19 What is the effect of registration as to third parties?

The registration of a security interest with the CAAP constitutes public notice to third parties and is valid and binding against all persons from the date of its recordation with the CAAP. Third parties may rely on the accuracy of such registration.

Generally, prior registration coupled with good faith, confers a better right over the aircraft in favour of the registered interest holder.

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

The concept of trust is recognised in the Philippines. The typical security structure involves a security agent holding the security over the aircraft and leases in trust for a changing pool of beneficiaries. The registration of a security document with the CAAP operates as notice, and binds the lessee and third parties to its terms. In that regard, the security constitutes a right in rem.

The change in the identity of the beneficiaries in whose favour the security agent holds the assignment will not affect the security interest under a particular security document. On the other hand, a change in the person of the security agent would require a new registration and annotation process with the CAAP.

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

A security document over spare engines typically takes the form of a chattel mortgage. Please refer to the discussion under item no. 15 for the creation and registration of a chattel mortgage.

Unless otherwise stipulated by the parties, a security interest created over a financed aircraft generally covers the installed engines, on the assumption that the owner of the aircraft and the installed engines are one and the same entity. A security interest may, however, be created over an engine independently, whether installed or uninstalled, especially so if the engines are owned by an entity other than the owner of the aircraft.

Unless the parties stipulate otherwise, the removal of an engine or the installation of an engine on another aircraft will not cause the encumbrance on it to be discharged or lifted.

Enforcement measures

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

No court proceeding is necessary if the lessee voluntarily relinquishes possession of the aircraft. However, in the event that the lessee refuses to voluntarily redeliver the aircraft to the lessor, judicial intervention will be necessary to forcibly take possession of the aircraft. The lessor may elect to file an action in the Philippines, or alternatively in a foreign jurisdiction.

Filing an action in the Philippines

The owner may file an action for replevin for the recovery of the aircraft, with an application for the issuance of a writ of replevin, which is a provisional remedy, relying on the termination of the lease as the lessor's cause of action. Replevin, broadly understood, is both a form of principal remedy and of a provisional relief. It may refer either to the action itself, ie, to regain the possession of personal chattels being wrongfully detained from the plaintiff by another, or to the provisional remedy that would allow the plaintiff to retain the thing during the pendency of the action and hold it pendente lite. The action is primarily possessory in nature and generally determines nothing more than the right of possession.

Upon filing of the case in court, the owner may include in the complaint an application for the immediate delivery of the aircraft to the owner while the principal action is still being litigated, upon a showing that the owner has good legal basis for seeking such interim possession and posting of a replevin bond equivalent to double the value of the property, intended to indemnify the lessee against any loss it may suffer by reason of it being compelled to surrender the possession of the aircraft pending trial of the action.

To impede the lessor's remedy, the lessee may object in court as to the sufficiency of the bond or the sureties. The court may deny its objection or, if the objection is held to be valid, require the submission of a new bond. Alternatively, the lessee may submit to the court, copy furnished the lessor, a redelivery bond equivalent to double the value of the aircraft as stated in the lessor's affidavit for the return of the aircraft to it.

Filing an action for enforcement of a foreign judgment in the Philippines

Instead of filing an action in the Philippines, the owner may file an action in a foreign tribunal and consequently, commence an action for recognition and enforcement of the foreign judgment in the Philippines with replevin as provisional remedy.

A final judgment may be enforced before a Philippine court without a rehearing on the merits, but such judgment may be repelled by evidence that such foreign court did not have jurisdiction in accordance with the jurisdictional rules of such court, the party against whom the judgment was rendered had no notice of the proceedings, or the judgment of such foreign court was obtained through collusion or fraud or was based on clear mistake of law or fact (section 48 of Rule 39, Rules of Court).

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

The owner may resort to either judicial foreclosure of the mortgage or extrajudicial foreclosure as provided under Act No. 1508 (the Chattel Mortgage Law). Recourse to an extrajudicial foreclosure of mortgage is premised on the voluntary surrender of the aircraft by the lessee to the owner. In case the lessee refuses to turn over the aircraft to the owner, the owner must invoke the aid of the competent court by filing a replevin case against the lessee prior to applying for extrajudicial foreclosure.

Self-help remedies are not available to an owner who does not have possession of the aircraft. When possession has already been lost, the owner must resort to judicial process for the recovery of property (see article 536, Civil Code).

An insolvency proceeding shall not affect the rights of the creditor to enforce its security rights over the aircraft, since the ownership of the aircraft does not belong to the lessor.

24 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?

The Director General of the CAAP has the power to impose liens on aircraft and machineries in the following cases: if the charges and other fees are not paid in full on due date or any part of the charges or the late payment penalty thereto remains unpaid; and failure to pay administrative fines arising from violation of any rules and regulations promulgated by the CAAP (section 73, CAAP Law).

Under the Tax Code and the Tariff and Customs Code, a tax lien is created in favour of the government for failure to pay Philippine taxes and customs duties (section 210, Tax Code; section 2205, Tariff and Customs Code).

Under Executive Order No. 903, the Manila International Airport Authority (the MIAA), which is empowered to levy and collect dues, charges and fees or concessions, for any service provided by the MIAA, on its own authority, may detain any aircraft, equipment or furniture belonging to the owner or agent of said aircraft, until the amounts have been paid. This could effectively be a lien over the aircraft in favour of the government.

Aside from the MIAA which has authority over the Ninoy Aquino International Airport, the Mactan Cebu International Airport Authority which has authority over the Mactan Cebu International Airport, the Subic Bay Metropolitan Authority which has authority over the Subic Bay International Airport, and the Clark International Airport Corporation which has authority over the Diosdado Macapagal International Airport, all other airports are under the control and authority of the CAAP. Only the charter of MIAA contains the provision in relation to the authority to detain aircraft for non-payment of duties, fees and charges.

The Civil Code recognises possessory liens in respect of claims for the unpaid price of movables sold and in respect of credits for the making, repair, safekeeping or preservation of personal property – such as an aircraft – thus made, repaired, kept or possessed (article 2241, Civil Code).

If the aircraft is taken, seized or detained by the state through the fault of the lessee, the owner is entitled to recover damages from the lessee.

Taxes and payment restrictions

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

Non-resident foreign entities are taxed only on income derived from sources within the Philippines (section 23(F), National Internal Revenue Code).

Lease payments received by a non-resident lessor of aircraft, machineries and other equipment from a Philippine lessee constitute Philippine-sourced income and are subject to withholding tax at the rate of 7.5 per cent (section 28(B)(4), National Internal Revenue Code), unless there is an existing tax treaty between the Philippines and the country of residence of the lessor (ITAD Ruling No. 067-02 dated 24 April 2002).

Income derived from the purchase and sale of personal property are treated as derived entirely from the country in which sold, which means the place where the property is marketed (section 159, Revenue Regulations No. 2-40). The situs of sale of personal property for taxation purposes is the place where the sale is perfected and consummated. A contract of sale is perfected at the moment there is a meeting of minds upon the object of the contract and the price and is consummated upon delivery of the object of the contract (BIR Ruling No. DA-512-04 dated 30 September 2004). Thus, if personal property (eg, aircraft) produced outside the Philippines is sold outside the Philippines, any income derived from the sale thereof will be considered as sourced outside the Philippines, and the seller, who is a non-resident foreign entity, will not be liable for Philippine income tax. On the other hand, if personal property produced outside the Philippines is sold in the Philippines – as when the sale is perfected and consummated while the aircraft is on the ground or in Philippine airspace – any income derived from the sale thereof will likely be considered as sourced in the Philippines, and the seller should be liable for Philippine income tax.

Generally, the assumption of tax by a party other than the taxpayer itself constitutes an additional income for the original taxpayer. The assumption of tax, absent any law expressly allowing it, consequently gives rise to tax (*Old Colony Trust Co v Commissioner*, 279 US 716).

In the Philippines, the franchise of airline companies may provide for tax relief with respect to Philippine source income of foreign lessors or lenders. As in the case of our national carrier Philippine Airlines, its legislative franchise provides that all taxes on lease rentals, interest, fees and other charges payable to lessors, whether foreign or domestic, of aircraft, engines, equipment, machinery, spare parts and other property rented, leased, or chartered the airline company are exempt from all taxes, where the payment of such tax is assumed by the airline. Gross-up provisions in lease and loan agreements qualify as assumption of taxes otherwise payable by a foreign lessor or lender, allowing a local airline to avail of the tax exemption provided by its legislative franchise.

Under Philippine tax law, the sale, importation or lease of passenger or cargo vessels and aircraft, including engine, equipment and spare parts thereof for domestic or international transport operations is exempt from the value-added tax (section 109(1)(S), National Internal Revenue Code). Accordingly, no value-added tax should be payable.

Any other payments (not considered lease rentals and other than indemnification for actual losses incurred by a lessor) made to the lessor under the lease, which constitute Philippine-sourced income under Philippine tax laws, will generally be subject to a 30 per cent final withholding tax, in the absence of an applicable tax treaty.

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

Yes, cross-border transfers of Philippine pesos and foreign currencies are regulated in the Philippines. Any person importing, exporting or bringing with him into or taking out of the Philippines, or electronically transferring, legal tender Philippine notes and coins, checks, money order and other bills of exchange drawn in pesos against banks operating in the Philippines in an amount exceeding 10,000 pesos must secure authorisation from the Bangko Sentral ng Pilipinas (our central monetary authority, BSP).

On the other hand, any person who brings into or takes out of the Philippines foreign currency, as well as other foreign currency-denominated bearer monetary instruments, in excess of US$10,000 or its equivalent, is required to declare the same in writing and to furnish information on the source and purpose of the transport of such currency or monetary instrument.

With regard to sourcing foreign currencies for making payments, authorised agent banks in the Philippines may sell foreign currency for non-trade purposes (such as lease payments) to a Philippine resident without the prior approval of the BSP. As a general rule, only an application to purchase foreign exchange is required to be submitted to an AAB to purchase foreign currency. To purchase amounts in excess of US$1,200,000, however, the application to purchase foreign exchange must be accompanied by supporting documents. For charters and leases of vessels or aircraft, it must be supported by the billing statement from the non-resident lessor or owner of the vessel or aircraft, and a photocopy of the contract or agreement (section 2, Annex A, Appendix 1 & Glossary of Terms, Manual of Foreign Exchange Transactions).

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

Subject to the general principles of equity under our Civil Code, there are no limitations on the amount of default interest that can be charged in a lease or loan agreement.

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Update and trends

A practical hurdle that has increasingly been confronted in recent transactions is the delay in the CAAP's process of registration of documents. This is primarily owing to the bureaucratic process that characterises the CAAP's procedures. Parties to transactions should be aware beforehand of this practical issue so that they take a commercial view of and manage risks that such delays may cause (eg, conditions precedent periods to accomplish registration of security interest).

The BSP has implemented a market-oriented interest rate policy since 1983. The BSP has adopted the policy that the rate of interest, including commissions, premiums, fees and other charges, on a loan or forbearance of any money, goods or credits, regardless of maturity and whether secured or unsecured, that may be charged or collected by any person, whether natural or juridical, shall not be subject to any ceiling prescribed under or pursuant to the Usury Law, as amended (CB Circular No. 905, Series of 1982, effective on 1 January 1983).

Based on jurisprudence, our courts may adjust contractually stipulated interest and penalties if they are determined to be unconscionable.

28 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?

Aircraft, equipment and machinery, spare parts commissary and catering supplies imported by and for the use of scheduled airlines operating under Congressional franchise, provided that such articles or supplies are not locally available in reasonable quantity, quality and price and are necessary or incidental for the proper operation of the scheduled airline importing the same are considered conditionally free imports, which are exempt from the payment of import duties, subject to the regulations to be promulgated by the Customs Commissioner (section 105 (u), Tariff and Customs Code).

Insurance and reinsurance

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

By express provision of law, a Philippine entity is not allowed to procure or accept policies or contracts of insurance from any insurance company not authorised to transact business in the Philippines, covering risks, life or non-life, situated in the Philippines. However, this restriction for obtaining insurance coverage locally does not apply to reinsurance, and it is typical for local insurers to cede up to 98 per cent of insurance risk to their reinsurers, including foreign reinsurers.

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

Cut-through clauses are generally valid under Philippine law.

31 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 are legally effective under Philippine law. Assignments of reinsurance are typically provided in aviation leasing and finance transactions we handle.

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

Being the entity in whose favour the CAB has issued permits to engage in air commerce or air transportation, the lessee is generally the party liable for the operation, maintenance and insurance of the aircraft.

The owner, lessor or financier will only be held liable for any damage caused by the aircraft to third parties due to its own fault or negligence (article 2176, Civil Code).

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

While Philippine law generally recognises the concept of strict or vicarious liability, such liability has generally not been applied to the lessor as owner or lender as secured party of the equipment for the action or inaction of the operator. Generally, the lessor or financier will only be held liable for any damage caused by the equipment to third parties through its own fault or negligence (article 2176, Civil Code).

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

Yes, no person may operate an aircraft unless it has a valid insurance guarantee covering aircraft hull, each person, freight and mail on board the aircraft, and third-party liability.

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