

# Aviation Finance & Leasing 2021

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# Aviation Finance & Leasing

## 2021

**Contributing editor****Mark Bisset**

Clyde &amp; Co LLP

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Lexology Getting The Deal Through is delighted to publish the eighth edition of *Aviation Finance & Leasing*, which is available in print and online at [www.lexology.com/gtdt](http://www.lexology.com/gtdt).

Lexology Getting The Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique Lexology Getting The Deal Through format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes new chapters on Egypt and Indonesia.

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Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Lexology Getting The Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editor, Mark Bisset of Clyde & Co LLP, for his continued assistance with this volume.



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# Singapore

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## OVERVIEW

### Conventions

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

Singapore is a party to and has ratified the Chicago Convention (1944), the Warsaw Convention (1929) as amended by the Hague (1955) and the Protocol No. 4 of Montreal (1975), the Tokyo Convention (1963), the Montreal Convention (1999) and the Cape Town Convention (2001).

### Domestic legislation

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

There is no primary legislation pertaining to aviation finance and leasing. However, the pertinent legislation applicable to aviation in Singapore include the Air Navigation Act (Chapter 6) (ANA), its subsidiary legislation, the Air Navigation Order (Chapter 6, section 3) (ANO), and the Civil Aviation Authority of Singapore Act (Chapter 41) (the CAAS Act). The International Interests in Aircraft Equipment Act (Chapter 144B) has implemented the Cape Town Convention. This Act provides for aircraft mortgages, leases and such other international interests as defined by the Convention (International Interests) to be registered with the International Registry of Mobile Assets (International Registry).

### Governing 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?

The laws of Singapore do not restrict choice-of-law clauses in contracts for the transfer of interests in or creation of security over aircraft. The common law position is that the *lex situs* will be the applicable law relating to the creation of the security interests.

However, pursuant to the International Interest in Aircraft Equipment Act (Chapter 144B), which implements the Convention on International Interests in Mobile Equipment and the Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment (namely, the Cape Town Convention), the common law position is qualified. Should an International Interest be created and registered with the International Registry, such interest would prevail and be binding on parties.

Additionally, article 42 of the Cape Town Convention specifically recognises the rights of parties to exclusively apply their chosen forum whether or not the chosen forum has a connection with the parties or the transaction.

Further, Singapore is also signatory to the Hague Convention on Choice of Court Agreements (the Hague Convention), which was brought into effect through the Choice of Court Agreements Act 2016 (Chapter 39A).

## TITLE TRANSFER

### Transfer of aircraft

#### 4 | How is title in an aircraft transferred?

Title in an aircraft is transferred by a bill of sale, which is customarily prescribed in the sale and purchase agreement.

Typically, the sale and purchase agreement for the aircraft will provide that the title to the aircraft passes at the time of delivery, or when possession is given to the party acquiring the aircraft. It is also possible to have a conditional sale agreement where parties agree to defer the passing of title until the fulfilment of certain conditions.

### Transfer document requirements

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

The aircraft sale and purchase agreement and bill of sale should be in writing to ensure certainty of terms that parties have agreed to. There are no requirements for the document to be stamped or notarised or otherwise legalised if the document is executed in Singapore. If it is executed as a deed, it should conform with the required formalities. Notarisation may be required if the document is executed outside Singapore. A certified translation will be required if the document is not in English.

## REGISTRATION OF AIRCRAFT OWNERSHIP AND LEASE INTERESTS

### Aircraft registry

#### 6 | Identify and describe the aircraft registry.

The Civil Aviation Authority of Singapore (CAAS) is vested with the powers of administering the registration of an aircraft in Singapore. The CAAS maintains the Singapore Aircraft Register pertaining to all civilian aircraft registered in Singapore.

An owner of a legal or beneficial interest in an aircraft may register the aircraft in Singapore, if that person is a 'qualified person' as defined under paragraph 4(3) of the Air Navigation Order (Chapter 6, section 3) (ANO).

Pursuant to paragraph 4(3) of the ANO, only the following persons and no other shall be qualified to be the owner of a legal or beneficial interest in an aircraft registered in Singapore or a share therein:

- the government;
- citizens of Singapore;

- citizens of any Commonwealth country; and
- bodies incorporated in Singapore or in some part of the Commonwealth and having their principal place of business in some part of the Commonwealth.

However, pursuant to paragraph 4(4) of the ANO, unqualified owners who reside or have a place of business in Singapore may also, with the approval of the chief executive of the CAAS being satisfied that the aircraft may otherwise be properly so registered, register their aircraft in Singapore. Nonetheless, unqualified owners will not be permitted to cause or permit the aircraft, while it is registered in pursuance of paragraph 4(4) of the ANO, to be used for the purpose of public transport or aerial work.

Similarly, where the aircraft is chartered by demise (ie, dry lease) to a qualified person, the chief executive may permit the aircraft to be registered in Singapore in the name of the charterer, whether or not an unqualified person is entitled as owner to a legal or beneficial interest in the aircraft. Such a charterer may be the operator of the aircraft. The aircraft may remain so registered for the duration of the charter.

CAAS generally does not transfer its safety oversight responsibilities to other authorities pursuant to the article 83 bis agreement. However, CAAS may accept the transfer of the state of registry responsibilities from another authority, if it deems it necessary to maintain effective oversight of the aircraft.

There is no register for aircraft engines in Singapore. The Singapore Aircraft Register only provides details of the type or types of engine or engines fitted on a registered aircraft.

### Registrability of ownership of aircraft and lease interests

- 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?

Registration of title to the aircraft constitutes prima facie evidence of ownership of the aircraft. It is, however, not conclusive.

It is not possible to separately register ownership of aircraft engines. When an aircraft is registered, only the type of engine or engines fitted on the aircraft is noted on the Singapore Aircraft Register.

There is also neither a register for aircraft mortgages or leases in Singapore, nor a separate registry for mortgages or leases pertaining to aircraft engines. Mortgages, leases, rights or interests over aircraft and engines that are capable of registration under the Cape Town Convention can be registered with the International Registry.

A Singapore company, or a foreign company registered under the Companies Act (Chapter 50) and having a place of business in Singapore, that grants a mortgage or any charge registrable under section 131 of the Companies Act (Chapter 50) over its aircraft, spare parts or engines that is not capable of registration under the Cape Town Convention must register the relevant interest with the Accounting and Corporate Regulatory Authority.

### Registration of ownership interests

- 8 | Summarise the process to register an ownership interest.

The requirements for registration of an aircraft are set out in Chapter 1.3 of the Singapore Airworthiness Requirements. To register an aircraft with the CAAS, Form CAAS (AW) 39 must be completed and submitted to the Airworthiness/Flight Operations Division of the CAAS. An applicant must also satisfy the eligibility criteria of the ANO, which requires that the applicant be a qualified person either as the owner of a legal or

beneficial interest in an aircraft or as a demise charterer. An unqualified person may, pursuant to paragraph 4(4) of the ANO, also register his or her legal or beneficial interest in an aircraft or share therein with the approval of the chief executive.

More information can be obtained at <https://www.caas.gov.sg/operations-safety/aircraft/certificate-of-registration>. Upon registration, a certificate of registration will be issued by the CAAS.

To operate radio equipment onboard an aircraft, the applicant must separately apply to the Infocomm Media Development Authority for a radio station licence.

The transfer of ownership of an engine that is not part of an aircraft must be undertaken as a separate transaction. Title to the engine does not automatically vest in the owner of the host airframe.

### Title and third parties

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

The effect of registration of an ownership interest of an aircraft constitutes prima facie evidence of ownership of the aircraft. However, such evidence is not conclusive.

Under the Cape Town Convention, International Interests that are registered with the International Registry will provide notice (of such interests that are registered) to third parties. This protects the priority of the registered interest against any other subsequent interest and unregistered interest.

Where the provisions of the Cape Town Convention apply, a person may acquire or purchase an aircraft even if he or she has actual knowledge of another person's interest (in that same aircraft) if that other person's interest has not been registered with the International Registry.

### Registration of lease interests

- 10 | Summarise the process to register a lease interest.

A lease interest in an aircraft cannot be registered in Singapore. However, a lease would subsist as an International Interest under the Cape Town Convention and may, therefore, be registered with the International Registry.

### Certificate of registration

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

A certificate of registration issued by CAAS would contain the following details:

- the certificate number;
- the nationality mark of the aircraft;
- the registration mark assigned to it by the chief executive of the CAAS;
- the name of the aircraft manufacturer and manufacturer's designation of the aircraft;
- the aircraft serial number;
- the name and address of every person who is entitled as owner to a legal interest in the aircraft or a share therein; and
- in the case of an aircraft that is demise chartered or where its legal and beneficial interests or a share therein is held by an unqualified person who resides or has a place of business in Singapore, that it is so registered.

There is no separate register for aircraft engines in Singapore and a separate certificate of registration will not be issued for an aircraft engine.

## Deregistration and export

- 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?

Generally, an application for the deregistration of an aircraft must be accompanied with a letter of authorisation from the owner. As a matter of policy, the CAAS will notify the owner before deregistration is effected. However, upon the default of a mortgagor, a mortgagee authorised under a valid irrevocable deregistration and export request authorisation (IDERA) will be able to exercise its powers of repossession and sale and deregister the aircraft without the consent of the owner. Nonetheless, it would be prudent for the mortgagee to obtain a court order.

Assuming the interests of the owner, lessor or the mortgagor have been properly registered as International Interests in the International Registry, if an operator commences an action before the Singapore courts to stall or otherwise block the deregistration process, such an action is unlikely to succeed. The Singapore courts will give effect to such International Interests registered under the Cape Town Convention.

## Powers of attorney

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

An irrevocable power of attorney (IPOA) executed under Singapore law will generally prevail even in the bankruptcy of the donor. However, as Singapore has ratified and brought into effect the Cape Town Convention, aircraft leases would invariably require the execution of an IDERA instead of an IPOA.

## Cape Town Convention and IDERA

- 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.

An IDERA is customarily filed with the CAAS at the time of registration of the aircraft. Nonetheless, the holder of a certificate of registration or the party entitled to register the aircraft in Singapore can submit the IDERA at any time.

If the party submitting the IDERA is a company, a letter of authorisation or a power of attorney must accompany the IDERA. Notarisation or legalisation, or both, may be required if the documents originate from outside Singapore.

The IDERA that is submitted must be in the format set out in Form CAAS 135 (Annexed to Second Schedule, International Interests in Aircraft Equipment Act (Chapter 144B)). No deviation from this format will be accepted by CAAS.

The CAAS will record and acknowledge receipt of an IDERA within seven working days of receipt of the same. Thereafter, the CAAS will issue its acknowledgment of acceptance to the company.

## SECURITY

### Security document (mortgage) form and content

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

A mortgage is a typical form of security over an aircraft. It is usually based on the commercial terms agreed between the parties.

There are no statutory requirements relating to the terms of aircraft mortgages in Singapore. However, generally an aircraft mortgage would include the following provisions:

- the particulars of the secured obligations;
- an acknowledgment of the obligations secured;
- covenants;
- enforcement of security; and
- powers of the mortgagee.

A condition for waiver of sovereign immunity is usually required where the mortgagor is a sovereign body or government.

Where a mortgage is not executed in English, for the purposes of enforcement, a certified translated English version will be required.

### Security documentary requirements and costs

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

There is no requirement in Singapore to notarise or stamp or otherwise legalise security documents customarily used in the financing of aircrafts. A certified translation in English will be required if the document is executed in another language.

There are no documentary costs to be incurred.

### Security registration requirements

- 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.

There is no requirement to lodge security documents with the Civil Aviation Authority of Singapore (CAAS). Security interests subsisting as International Interests under the Cape Town Convention must be registered with the International Registry.

Security interests or charges created on the assets of a Singapore incorporated company or a foreign company registered in Singapore that cannot be registered under the Cape Town Convention should be registered with the Accounting and Corporate Regulatory Authority (ACRA) pursuant to the Companies Act (Chapter 50).

### Registration of security

- 18 | How is registration of a security interest certified?

There is no registry in Singapore to register security interests of an aircraft. If a lodgement or filing of a registrable charge under the Companies Act (Chapter 50) is made (where applicable), it would be filed electronically with ACRA. Searches may be undertaken with ACRA on the registrable charges lodged against such a company. However, no certification will be issued.

### Effect of registration of a security interest

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

Singapore does not have a register for mortgages, charges or liens created over aircraft. Although section 91 of the Civil Aviation Authority of Singapore Act (Chapter 41) requires the CAAS to maintain a Register of Statutory Liens, CAAS has not implemented such a register.

International Interests created in respect of aircraft are capable of registration under the Cape Town Convention and can be registered with the International Registry. Such registration will take priority over subsequently registered interests or unregistered interests, subject to certain exceptions.

A registrable charge that has not been registered with ACRA within 30 days after the creation of the charge, as required by section 131 of Companies Act (Chapter 50), would be rendered void against the chargor's liquidator or creditor. However, non-registration does not affect the underlying debt due by the chargor to the chargee.

### Security structure and alteration

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

Security over aircraft is typically structured as a mortgage. The concept of a security trustee is recognised in Singapore. A security trustee may be appointed for the benefit of the person to whom the debt or obligation is owed under a mortgage. As the security trustee will be acting as the mortgagee, he will be able to exercise all such powers as a mortgagee.

Further, as the security trustee is the person in whose favour the mortgage is registered, there would be no reference to the underlying lenders. Accordingly, the change of lenders will not affect the mortgage document.

### Security over spare engines

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

A mortgage may be created over a spare engine. However, as there is no mortgage register in Singapore, it would not be possible to register the mortgage. Nonetheless, parties can create a mortgage or other forms of security over spare engines. A spare engine subsequently installed on an airframe could have separate interests from that of the airframe. In other words, the interest of the mortgagee of the spare engine would continue to be recognised notwithstanding that the spare engine is installed on an airframe that is owned by another party.

If the spare engine is an asset of a Singapore incorporated company or is registered in Singapore, the mortgage would subsist as a registrable charge, which should be registered with ACRA, pursuant to section 131 of the Companies Act (Chapter 50).

## ENFORCEMENT MEASURES

### Repossession following lease termination

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

Aircraft leases customarily provide that on the occurrence of default, the lessor may at its option terminate and take possession of and remove the aircraft. Though self-help remedies may be available under the lease in practice, it may be difficult to do so without a court order unless the lessee is agreeable to the repossession of the aircraft.

There are no statutory provisions that specifically relate to the taking of possession of an aircraft. The procedure for the taking of possession of an aircraft is therefore similar to that of any claim in respect to personal chattels. Proceedings will be commenced by way of a service of a writ. The body of the writ may contain, inter alia:

- a claim by the lessor for the rentals and other monies owing under the lease, interest and costs;
- a claim for the delivery up of possession of the leased aircraft;
- a claim for injunction when necessary; and
- a claim for further or other relief as the court may order.

Where the Cape Town Convention applies, the lessor can take possession or control of any aircraft object without a court order on the occurrence

of an event of default. However, if the lessee is not willing to allow the lessor or owner to repossess the aircraft, a court order will be necessary.

If the aircraft lease does not expressly allow the lessor to take possession of the aircraft, article 12(2) of the consolidated text of the Cape Town Convention (found in the Third Schedule of the International Interests in Aircraft Equipment Act (Chapter 144B)) provides that the lessor can apply to court for an order authorising or directing the lessee to transfer possession or control, or both, of the aircraft to the lessor.

### Enforcement of security

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

While a mortgagee may exercise self-help remedies, it is recommended that the mortgagee obtain a court order in such matters. A court action may be commenced by way of an originating summons with a supporting affidavit. The application may be made by way of an ex parte application. However, the court hearing the application has the discretion to order that the other party be served and may order that the matter be heard inter partes.

### Priority liens and rights

**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 right to detain an aircraft in respect of unpaid levies or service charges is provided for in sections 89 to 94 of the Civil Aviation Authority of Singapore Act (Chapter 41) (the CAAS Act). Under section 89 of the CAAS Act, if any levy or service charge imposed in respect of an aircraft is not paid in full by the due date for payment, the Civil Aviation Authority of Singapore (CAAS) may make an entry in the Register of Statutory Liens. However, there is no register of statutory liens.

Upon the making of an entry, a statutory lien on the aircraft will vest in the CAAS and this will have effect as a security interest in respect of the aircraft ranking in priority after any security interest (other than a floating charge) in respect of the aircraft created before the time of registration of the statutory lien, to the extent that the security interest covers a debt incurred before that time.

Any aircraft that is subject to a statutory lien cannot be removed from Singapore or be dismantled without prior approval of the CAAS, and any person doing so will be guilty of an offence and shall be liable on conviction to a fine not exceeding S\$200,000 or to imprisonment for a term not exceeding 12 months or to both.

Where the amount covered by a statutory lien remains unpaid at the end of nine months, the CAAS may seize and keep possession of the aircraft until all outstanding amounts covered by the statutory lien are paid. If so, the CAAS must take reasonable steps to give notice of the seizure to persons having an interest in the aircraft.

Where an aircraft is to be seized under sections 89 to 94 of the CAAS Act, the CAAS has to insure the aircraft against the loss of or damage to the aircraft during its seizure or while it is in the custody, possession or control of the CAAS or its agents. However, the CAAS is entitled to recover any premium paid on the insurance policy in court as a debt due by the person who is liable to pay the amounts covered by the statutory lien on the aircraft.

Alternatively, where the amount covered by a statutory lien remains unpaid at the end of nine months, the CAAS may, only after taking reasonable steps to give reasonable notice of the sale or disposal to persons having an interest in the aircraft, sell or otherwise dispose of the aircraft, whether or not the aircraft has been seized.

Order of priority for liens will be statutory liens, contractual liens, possessory liens, registered International Interests and unregistered interests.

### Enforcement of foreign judgments and arbitral awards

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

Singapore is a party to the 1958 New York Convention. The arbitral awards made by contracting states to this Convention may be enforced in Singapore.

In respect of foreign judgments, in 2019, Singapore repealed the Reciprocal Enforcement of Commonwealth Judgments Act (RECJA) and amended its Reciprocal Enforcement of Foreign Judgments Act (Chapter 265) (REFJA) to consolidate the RECJA framework under it and to expand the scope of judgments covered by reciprocal arrangements between Singapore and foreign countries.

The REFJA covers 11 jurisdictions:

- the United Kingdom;
- Australia;
- Hong Kong;
- New Zealand;
- Sri Lanka;
- Malaysia;
- India (except the state of Jammu and Kashmir);
- Pakistan;
- Brunei Darussalam;
- Papua New Guinea; and
- the Windward Islands.

The amendments made to the REFJA expanded the scope of the REFJA to recognise and enforce non-money judgments, interlocutory judgments, judicial settlements, consent judgments and consent orders. However, REFJA does not apply to the Choice of Court Agreements Act 2016 (Chapter 39A). Singapore passed the Choice of Court Agreements Act 2016 (Chapter 39A) in June 2016 as part of its obligations under the Hague Convention.

Choice of court agreements confine disputes to the courts of one jurisdiction as chosen by the parties.

It is notable that the United States, although a signatory to the Hague Convention, has yet to ratify it.

Where the REFJA and Choice of Court Agreements Act 2016 (Chapter 39A) do not apply, foreign judgments may be enforced under common law. Under common law, the party seeking both recognition and enforcement would have to commence a fresh action on the judgment.

## TAXES AND PAYMENT RESTRICTIONS

### Taxes

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

Pursuant to section 45 of the Income Tax Act (Chapter 134), a Singapore-based lessee will be required to withhold taxes on the payment of lease rentals to a lessor who is not resident in Singapore. Typically lease agreements will require the lessee to gross up on lease payments which would be enforceable.

For the current withholding tax on aircraft leasing please refer to the link below: <https://www.iras.gov.sg/irashome/Other-Taxes/Withholding-tax/Non-resident-companies/Withholding-Tax-Rates/>.

If a non-resident company has a permanent establishment in Singapore, the withholding tax is at 17 per cent. Withholding taxes can

be mitigated by various double tax treaties that Singapore has entered into with various jurisdictions.

If the lessor is a goods and services tax (GST) registered entity in Singapore, the lessee will be required to pay GST unless the chargeable GST is zero rated. The current GST rate is 7 per cent.

There are no taxes payable in Singapore where there is a transfer of the aircraft title or if delivery of the aircraft takes place in Singapore. There is no stamp duty payable in respect of an aircraft lease either.

### Exchange control

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

There are no restrictions on international payments and exchange controls in Singapore.

### Default interest

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

There are no limitations to the amount of default interest charged on a lease or a loan. It would be construed as a commercial term agreed between the parties.

Unless there is an allegation of fraud or illegality of the contract, the same would be enforceable.

### Customs, import and export

#### 29 | 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?

No duties are payable in Singapore for the import or export of civil aircrafts used for international travel or commercial purposes.

## INSURANCE AND REINSURANCE

### Captive insurance

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

There is no requirement to place insurance with local insurers.

### Cut-through clauses

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

There are no prohibitions against the enforceability of cut-through clauses in insurance and reinsurance documents in Singapore.

### Reinsurance

#### 32 | 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 binding as long as the formalities for the legal assignment are met. Assignments of reinsurance are common in aviation leasing and finance agreements.

## Liability

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

Generally, no. Each may, however, incur independent liabilities for their own acts or omissions. Moreover, there is a statutory strict liability imposed on the owner for loss and damage caused by the aircraft to any person and property on the surface, with the owner having the right to be indemnified by any third party who has legal liability for that loss and damage.

## Strict liability

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

Section 9(2) of the Air Navigation Act (Chapter 6) (ANA) states that the owner of an aircraft has strict liability for loss and damage caused by the aircraft to any person and property on the surface.

However, per section 9(3) of the ANA, where damages for loss are recoverable from the owner by virtue of section 9(2) of the ANA, and legal liability is created in a third party to pay damages in respect of that damage or loss, the owner is entitled to be indemnified by that third party in respect of that damage or loss.

## Third-party liability insurance

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

There are no statutory limits prescribed for third-party liability insurance. Although there are legislative provisions enabling the Civil Aviation Authority of Singapore and the Minister to make regulations in respect of insurance requirements, at the moment there no mandatory insurance requirements for operators of aircrafts.

## UPDATE AND TRENDS

### Key developments of the past year

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

No updates at this time.

## Coronavirus

### 37 | What emergency legislation, relief programmes and other initiatives specific to your practice area has your state implemented to address the pandemic? Have any existing government programmes, laws or regulations been amended to address these concerns? What best practices are advisable for clients?

On account of the covid-19 pandemic, Singapore government released a slew of measures in 2020 to prop up and support the aviation sector to retain the Republic's position as an air hub in South East Asia. These measures included:

- In its annual budget in February 2020, the government set aside a sum of S\$112 million to assist the airline industry cope with the territorial restrictions. This amount was subsequently increased to S\$350 million.
- In March 2020, a S\$750 million aid package for the aviation industry was announced under the 'supplementary budget'.
- The supplementary budget also provided the aviation sector an enhanced wage subsidy programme up to the end of 2020, whereby,

for every local employee in an aviation company, the employer was provided a total of 75 per cent wage offset for the employees' first S\$4,600 of monthly wages.

- The Civil Aviation Authority of Singapore (CAAS) also announced that it would allow Singapore carriers and the airport operator to partially or fully defer payment of certain fees to CAAS between April 2020 and March 2021. The amount of deferred fees was estimated to be S\$140 million.
- In August 2020, the government announced that it would induct another S\$187 million into the country's aviation sector as part of the efforts to extend aid under the enhanced aviation support package until March 2021.
- The extended financial relief (announced in August 2020) was for airlines, ground handlers and cargo agents who were to be provided the relief through rebates for landing, parking charges and rent of their premises. For scheduled airlines specifically, the relief included a 10 per cent landing charge rebate for all scheduled passenger flights landing in Singapore; a 50 per cent rental rebate for the airlines' lounges and offices within the airport terminal buildings; and a full rebate on aircraft parking charges at the airport (this relief for scheduled airlines, when announced in August 2020, was to remain in effect until 31 March 2021. Under the Annual Budget 2021 (announced on 16 February 2021), the duration has been extended to the end of 2021).
- In December 2020, the government announced that it would provide an additional S\$84 million to the aviation sector to cushion the blow of the covid-19 pandemic on workers and businesses. This financial relief was on top of the S\$112 million Aviation Sector Assistance Package, announced in February, and the S\$187 million Enhanced Aviation Support Package, announced in August.
- It was also announced that the CAAS will freeze the fees for Singapore-based airlines for their renewal of the certificates of airworthiness and the related inspections, which have since been extended to 31 March 2021. Pilots, air traffic controllers and aircraft maintenance engineers who have to pay for their licence fees and medical evaluation fees would get a full rebate for fees payable between 1 April 2020 and 31 March 2021.

Further, the CAAS issued the Information Circular on Conversion to a Singapore Professional Pilot Licence or Endorsement of an aircraft rating in an existing Singapore Professional Pilot Licence (the Circular) (IC 03/2021 dated 26 January 2021).

The Circular provides that the CAAS will support professional pilots who have recently been retrenched by foreign air operators to:

- convert to a Singapore professional pilot licence; or
- endorse an aircraft rating on their Singapore professional pilot licence.

In the normal course, an applicant (irrespective of their nationality) is required to first seek employment with a Singapore air operator, and the employer will then undertake to arrange the necessary training and tests for the use of their aircraft.

However, recognising the difficulty faced by the applicants in gaining employment with Singapore air operators during this pandemic, the CAAS has made appropriate arrangements with aviation training organisations to conduct the flight training and tests. However, this arrangement is open only for Singapore citizens who hold a professional pilot licence.

In addition to the above, Singapore passed the Covid-19 (Temporary Measures) Act 2020 (the Act) on 7 April 2020 (which was subsequently amended on 5 June 2020, 18 September 2020 and 16 November 2020).

The basic premise of the Act was to provide temporary relief to certain businesses and individuals for their inability to perform

contractual obligations owing to the covid-19 pandemic. However, contracts for air travel were specifically excluded from the ambit of the Act. This was because the airlines in Singapore invariably have a refund policy that involves provision of refunds for air tickets either by way of a cash refund or a credit shell.

Within the context of the aviation industry, it may be argued that the Act could potentially extend to aircraft leasing agreements, whereby an aircraft lessee may seek to rely on the relief (accorded under the Act) to defer the lease payments. However, given that the relief is, at-best, temporary, it may be more appropriate for the aircraft lessee to instead negotiate with the lessor for other long-term solutions including without limitation, rescheduling lessee's payment obligations under the lease for the remainder of the lease.

To date, there have been no reported cases on the interpretation or application of the provisions of the Act to the aviation sector.

On 16 February 2021, Singapore announced its annual budget for the year 2021, wherein it was announced that airlines and other aviation players would receive an additional financial support of S\$870 million during 2021 to secure the country's position as a key aviation hub and maintain Singapore's position as a safe, trusted and well-connected airport for travellers.

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