

# NAVIGATING AIRCRAFT AND ENGINE LEASING IN INDONESIA

Joint Article with IAB&F

May 2019

[www.bcplaw.com](http://www.bcplaw.com)

BRYAN  
CAVE  
LEIGHTON  
PAISNER 

## NAVIGATING AIRCRAFT AND ENGINE LEASING IN INDONESIA

With the demand for new aircraft and spare aircraft engines at an all-time high in the South-East Asia region, and foreign financiers and lessors meeting the majority of this demand, an understanding of local requirements and regulations is essential to mitigate enforcement and repossession risk successfully for such participants.

Indonesia is a jurisdiction in which domestic traffic has more than tripled over the past 12 years, with Indonesia being the world's fifth largest domestic aviation market today.

This briefing, in conjunction with IAB&F, provides a high level summary for lessors and financiers of aircraft and aircraft engines of certain key legal issues associated with leasing aircraft and aircraft engines into Indonesia.

### 1 LEASING STRUCTURE

To mitigate withholding tax, typically the leasing of aircraft and aircraft engines by an Irish lessor to an Indonesian aircraft operator is transacted through a lease-in-lease-out structure using a French *société par actions simplifiée* intermediate lessor to take advantage of the Ireland/France and France/Indonesia double taxation treaties. Consideration should be given as to whether the lessor would prefer to have its own captive entity act in this capacity or lease through an aircraft operator owned entity. Pure pass-through vehicles are likely to come under scrutiny from regulators and consideration should be given to the "substance" requirements of such intermediate lessor entities by the parties.

### 2 SECURITY

#### 2.1 Cape Town and IDERAs

Indonesia has ratified the Convention on International Interest in Mobile Equipment and the associated Protocol on Matters Specific to Aircraft Equipment, Cape Town 2001 (CTC). Interests in the airframe and engines can be registered on the international registry under the CTC. It is worth noting that the CTC is not applicable to an engine if the only nexus to the CTC is the registration of the aircraft it is affixed to on the national aviation registry of a contracting state. When using a structure involving a French intermediate lessor, an international interest in the engine cannot be created by the head lease as the creditor is not located in a CTC contracting state, an issue to be considered if an aircraft operator owned French intermediate lessor is utilised.

An aircraft operator has the ability to issue an irrevocable deregistration and export request authorisation (IDERA) in favour of a creditor and the introduction of Minister of Transportation Regulation No. PM 52 of 2018 and Directorate General of Civil Aviation Regulation No: KP 311 of 2018 have helped to clarify the registration requirement for IDERAs (which previously had

*Note: This report is for general information purposes only, and is not a substitute for specific legal advice.*

only been eligible for registration if the IDERA was granted by the aircraft operator to its direct lessor – being the intermediate lessor instead of the owner in a lease-in lease-out structure).

If the Directorate General of Civil Aviation (DGCA) new form of IDERA is used and is submitted with (i) a bilingual summary of agreements, (ii) a statement letter in the DGCA's prescribed form and (iii) the DGCA application form, the DGCA will consider registering an IDERA in the name of the proposed authorised party. A certified designee deed of appointment and certified designee letter (CDL) may also be used to designate another party as the authorised party under an IDERA – useful in the context of financings where the original IDERA can remain in the name of the owner but with a designation to its financier.

A certified designee under a CDL must have a legal relationship with the authorised party under the IDERA by way of a security agreement, lease agreement or title reservation agreement and also be entitled to submit a deregistration request to deregister an aircraft. A CDL will be accepted for filing by the DGCA if this is submitted together with the IDERA.

## 2.2 Deregistration Power of Attorney

In addition to an IDERA, an aircraft operator will also provide a dual language de-registration power of attorney and de-registration consent letter to the owner/financier which will also permit the owner/financier to deregister an aircraft without judicial intervention. These are taken in addition to an IDERA to protect the owner/financier if the DGCA either refuses to register an IDERA or the registration process has yet to be completed and a termination event occurs.

## 2.3 Fiduciary Security

Indonesian law does not recognise an English law assignment by way of security. A fiduciary security deed governed by Indonesian law is instead used to transfer the rights to insurance proceeds by the aircraft operator to the owner. An equivalent in respect of the reinsurances can also be provided by the primary insurer.

There is a requirement for the fiduciary security deeds to be signed in the presence of an Indonesian notary by a duly appointed signatory. Most owners appoint an Indonesian attorney (e.g. their own Indonesian counsel) to execute the fiduciary security deeds on their behalf. A notary will require evidence of this appointment, and as the power of attorney is a foreign document to be used in Indonesia, it must be notarised and legalised/apostilled (as applicable) by the relevant officials of the Embassy of Indonesia in the country from which it is issued. In our experience, this process can be lengthy and as such should be prioritised at the outset of a transaction.

Security over spare engines can also be taken by way of fiduciary security as aircraft engines are considered movable objects under Indonesian law. Fiduciary security can be taken independently over the engine and does not need to be combined with the security taken over the aircraft on which the engine is installed. It can be created while the engine is off-wing or when it is installed on an aircraft.

An online system managed by the Ministry of Law and Human Rights allows fiduciary security to be registered with any registration request containing certain information on the parties and the fiduciary security deed itself.

## 3 DOCUMENTS IN BAHASA INDONESIA

On 9 July 2009, Indonesia enacted Law No. 24 of 2009 on The National Flag, Seal and Anthem which requires, among other things, that agreements entered into by an Indonesian person must be written in the Indonesian language, Bahasa Indonesia. A conservative view is that all agreements should be prepared in Bahasa Indonesia, but we have seen owners and financiers take a practical approach in terms of which documents to have in Bahasa Indonesia.

We also see Bahasa Indonesia versions being obtained in respect of certain key transaction documents as a condition subsequent. The documents we see prepared commonly are the operating lease and any guarantee being taken from an Indonesian parent company. The IDERA, de-registration power of attorney and de-registration consent letter are all in a dual language form.

#### 4 AIRCRAFT OWNERSHIP

The DGCA maintains the aircraft registry in Indonesia. The registry is an owner's registry, although it also includes details of the operator of the aircraft if different from the owner. The registration of the ownership of the aircraft will be made by the operator as the Indonesian "citizen/legal entity" entitled to submit the application. The certificate of registration (COR) issued by the DGCA is not (on its face) evidence of ownership of an aircraft and the DGCA does not endorse any of the information on the COR. It is issued to the person who appears to be the owner on the basis of the evidence provided to it (bill of sale etc.).

That being said, the registration of an ownership interest with the registry constitutes a public notice of ownership and perfects the owner's right of ownership as against the operator and any third parties in Indonesia. Third parties can rely on the accuracy of the COR.

#### 5 ENGINES

Much of the approach taken with leasing aircraft into Indonesia also applies to leasing aircraft engines. However, whilst there are specific regulations in place for aircraft, there is very little regulation around aircraft engines other than in respect of their import regime and import tax payment.

There is no separate registry for an aircraft engine in Indonesia and no specific documents are required to be lodged with the DGCA. As neither the usual aircraft deregistration power of attorney nor an IDERA would be available to an aircraft engine lessor/financier, protection is typically obtained through a form of dual-language repossession and export power of attorney. Import documentation may dictate that any export clearance needs to be provided by the aircraft operator, so obtaining this power of attorney in advance mitigates some of the risk of an uncooperative aircraft operator.

An owner/financier can avail itself of the remedies set out in the engine lease on the occurrence of an event of default or those in Article 14 of the CTC. Obtaining a final judgment in Indonesia is a lengthy process, and to the extent agreed with the aircraft operator, a lessor may seek interim relief in the form provided for in Article 20 of the CTC instead. There is also a procedure in Indonesia for bringing criminal proceedings against company directors where a leased asset has not been returned voluntarily in Indonesia, however, this procedure should obviously be used as a last resort.

Please feel free to get in contact with any of the BCLP or IAB&F team listed below should you wish to discuss any points raised in this article.

**Bryan Cave Leighton Paisner**



**Simon Spells**

Partner  
Singapore  
[simon.Spells@bclplaw.com](mailto:simon.Spells@bclplaw.com)



**Marius Toime**

Partner  
Foreign Counsel (On  
secondment to Ivan Almaida  
Baely & Firmansyah)  
Indonesia  
[marius.toime@bclplaw.com](mailto:marius.toime@bclplaw.com)



**Jennifer Ince**

Senior Associate  
Singapore  
[jennifer.Ince@bclplaw.com](mailto:jennifer.Ince@bclplaw.com)

**Ivan Almaida Baely & Firmansyah**



**Ivan F. Baely**

Partner  
Jakarta  
[baely@iab-net.com](mailto:baely@iab-net.com)



**Erwin Purba**

Partner  
Jakarta  
[erwin.purba@iab-net.com](mailto:erwin.purba@iab-net.com)



**Nita Damayanti**

Associate  
Jakarta  
[nita.damayanti@iab-net.com](mailto:nita.damayanti@iab-net.com)

### Getting in touch

When you need a practical legal solution for your next business opportunity or challenge, please get in touch.

### Singapore

9 Raffles Place, #24-01 Republic Plaza  
Singapore 048619

Simon Spells  
Tel: +65 6571 6623  
simon.spells@bclplaw.com

### Jakarta

Intiland Tower 9th Floor  
Jl. Jenderal Sudirman 32  
Jakarta Pusat 10220

Ivan Baely  
Tel: +62 21 5790 5090 ext.103  
baely@iab-net.com