

## Procurement of Aircraft by Non-Aviation Company in Indonesia

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### **Regulatory Framework:**

1. Law No. 15 Year 1992 regarding Aviation;
2. Minister of Transport Decision No.25 of 2008 regarding Aviation Management;
3. Law No. 17 of 2006 regarding Customs;
4. Minister of Finance Regulation No.140 of 2007 regarding Temporary Import;
5. Government Regulation No.145 of 2000 as amended by Government Regulation No.7 of 2002 regarding Value Added Tax for Luxurious Goods;
6. Minister of Finance Decree No.236 of 2003 regarding Withholding Tax Article 22 for Import;
7. Minister of Finance Decree No. 370 of 2003 regarding Value Added Tax Exemption for Import; and
8. Civil Aviation Safety Regulation Part 91 and Part 135.

### **Purchase Options:**

#### **1. Purchased or leased (operating lease) directly by Indonesian Company**

An Indonesian Company may purchase or lease (operating lease) an aircraft or helicopter under Part 91 of the Civil Aviation Safety Regulation, subject to the following procedures:

- Obtain an Aircraft / Helicopter Procurement Permit from Directorate General of Civil Aviation;
- Obtain a Permit for Import of Used Aircraft / Helicopter from Dept. Of Trade (if purchased from overseas);
- Obtain a Temporary Import Permit (if under operating lease) or an Import Permit (if purchased) from Directorate General of Customs and Excise;
- Registration of aircraft in Indonesia (under PK registry).

Taxes applicable for this scheme are:

- Import duty : 0%
- Value Added Tax : 10%
- Import Withholding Tax : 2,5%
- VAT for luxurious goods: 50%

Total duties and taxes to be paid is 62,5% from the purchase price of aircraft / helicopter.

In addition to the high taxation, this scheme requires a lot of effort to be approved by the Directorate General of Civil Aviation since the company needs to meet the requirements of the Civil Aviation Safety Regulations Part 91, which among others are: maintenance plan and equipments, manpower for operating the aircraft, hanggar, manuals (flight, operations, maintenance, safety,etc), safety department with qualified personnel, etc.

## 2. Leased by a local Indonesian Air Operator for usage by Indonesian Company

Indonesian Company may use the aircraft based upon an Exclusive Charter Agreement with an Indonesian Air Operator which is chosen by Indonesian Company to operate the helicopter.

The scheme will be the following:

- Seller sells the helicopter to one of the affiliate overseas company of Indonesian Company;
- The offshore company then provide the helicopter for an Operating Lease to the local Air Operator;
- The operating lease shall be entered in a secure manner and is to be registered in accordance with the Convention on International Interest in Mobile Equipment on Matters specific to Aircraft Equipment (Cape Town Convention) at the International Registry in Dublin;
- Local Operator enters into an Exclusive Charter Agreement with Indonesian Company.

This transaction scheme shall be under Part 135 of the Civil Aviation Safety Regulation and the procedures are the same as the transaction in point number 1, but the party applying for the permits will be the Air Operator and not Indonesian Company.

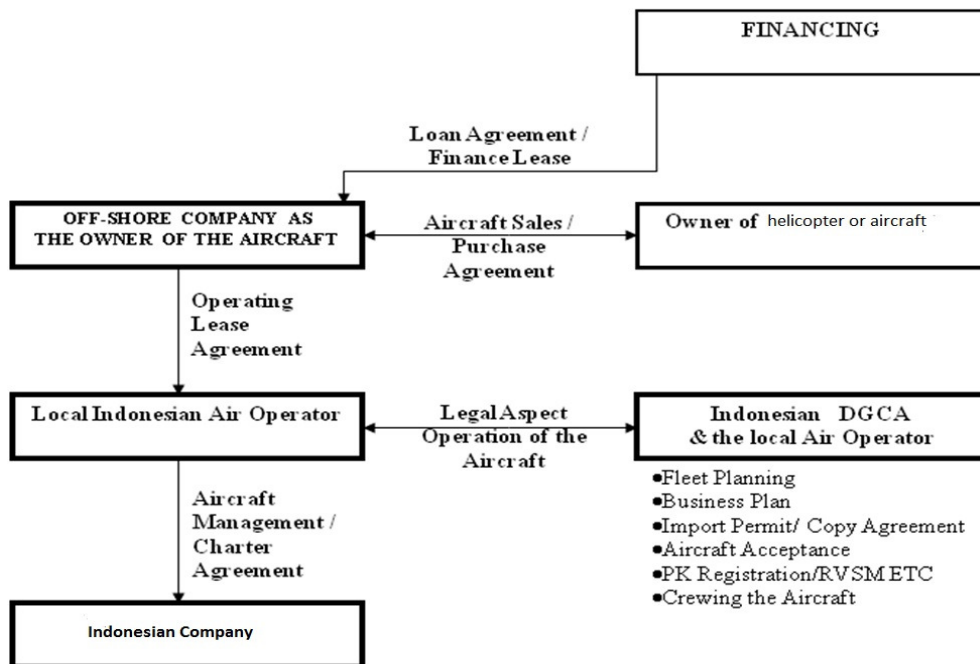
Taxes applicable for this scheme are:

- Import duty : 0%
- Value Added Tax : 0%
- Import Withholding Tax : 0%
- VAT for luxurious goods: 0%

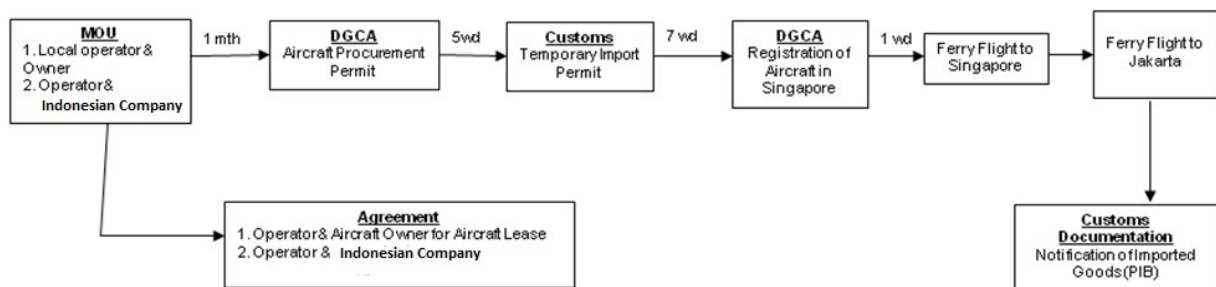
Total duties and taxes to be paid is 0% from the purchase price of aircraft / helicopter.

However, the negative side of this transaction is that there will be a double taxation (Air operator have to pay lease payment to the owner of helicopter which is the overseas company and therefore is subject to tax, and Indonesian Company also have to pay the local Air Operator for operating and maintenance of aircraft which we shall cover as charter payment and this is also subject to tax). The only way to minimize this tax exposure is by making the aircraft/helicopter to be owned by a company domiciled in France. Indonesia and France have a tax treaty pertaining to aviation and will only be subject to 0% tax.

The diagram for this scheme are as follows (in the next page):



**Legal Process for Importing Aircraft / Helicopter to Indonesia**



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