

Philippines



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1 General and Contractual

1.1 What are the typical structures available for financing the purchase of an aircraft?

The typical structure for financing the purchase of aircraft in the Philippines is a loan extended by a bank to foreign aircraft lessors, which in turn enter into finance leases with local operators. The loan is usually secured by a Philippine law aircraft mortgage for the purpose of registration with the Civil Aviation Authority of the Philippines (“CAAP”), and a foreign law aircraft mortgage for the purpose of registration in international registries.

1.2 What are the key advantages/disadvantages and main issues arising in relation to these financing structures?

The various modes of acquisition of aircraft by way of finance leases include: Japanese operating leases with call options (“JOLCO”); and French tax leases, which are more cost-efficient, widely accepted and readily available to local operators. The only disadvantage lies in the lengthy period of registration of aircraft and transaction documents in the local aircraft registry.

1.3 What types of leasing are possible under the laws of your jurisdiction? What are their essential characteristics?

The most common types of aircraft leasing in the Philippine jurisdiction are operating leases and finance leases.

Bureau of Internal Revenue (“BIR”) Revenue Regulation No. 19-86 dated 10 November 1986 provides that a lease arrangement may be treated as either an operating lease or a finance lease (or a conditional sale), depending on the substance of the transaction.

An operating lease is defined as a contract under which the asset is not wholly amortised during the primary period of the lease, and where the lessor does not rely solely on the rentals during the primary period for his profits, but looks for the recovery of the balance of his costs and for the rest of his profits from the sale or re-lease of the returned asset after the primary leased period.

A finance lease is defined as a contract involving payment over an obligatory period (also called primary or basic period) of specified rental amounts for the use of a lessor’s property, sufficient in total to amortise the capital outlay of the lessor and to provide for the lessor’s borrowing costs and profits. The obligatory period refers to the primary or basic non-cancellable period of the lease, which in no case shall be less than 730 days (or two years).

1.4 Are there any proposals for reform in the area of aviation finance?

There are no proposals in the Philippines for reform in the area of aviation finance now or in the foreseeable future.

The Philippine Airlines, Inc. (“PAL”) insolvency proceedings recently concluded in the US Bankruptcy Court has resulted in a better understanding of the application of insolvency laws in the aviation industry in general, and of aviation finance concepts such as maintenance reserves, security deposits and debt-to-equity conversion in particular. These rules and concepts of widespread application in aviation finance practised in more advanced jurisdictions are accepted in the Philippines insofar as they do not violate local law, public order or public policy.

1.5 Is it possible according to the laws in your jurisdiction to enter into non-binding or partially binding pre-contractual agreements (e.g. ‘letters of intent’) that will NOT take effect as fully enforceable agreements?

It is customary for parties to prepare pre-contractual agreements, such as letters of intent, which are not generally binding unless otherwise provided in the same agreement.

1.6 Is there a doctrine of ‘good faith’ in your jurisdiction that applies to all pre-contractual agreement, financing and leasing transaction documents, and the conduct of parties connected to them?

Without limitation as to the nature of agreements, the Civil Code of the Philippines broadly provides that every person must, in the exercise of his rights and the performance of his duties, act in a just manner, give everyone his due, and observe the principles of honesty and good faith.

2 Taxation and Related Matters

2.1 Which government authority in your jurisdiction has primary responsibility for the accounting for and regulation of revenue control and taxes?

The BIR has primary responsibility.

2.2 What are typically the taxes in your jurisdiction that may arise in relation to a sale, a lease or a financing of an aircraft or an engine?

Under Philippine law, the *situs* of sale of personal or movable property for the purpose of taxation is the place where the sale is perfected and consummated. Hence, when aircraft or an engine is within Philippine territory at the time of perfection and consummation of an aircraft and/or engine sale agreement, income derived from such agreement will be deemed as income derived from Philippine sources, and shall be subject to income tax.

A foreign aircraft lessor is subject to a final withholding tax of 7.5% on the gross rental.

The execution of an aircraft or engine sale agreement or a contract of lease will entail the payment of the documentary stamp tax.

2.3 Is the provision of a current tax-residency certificate by a payee sufficient for a lessee or a borrower potentially subject to withholding taxes in your jurisdiction on rental or interest payments to avail itself of treaty access and the mitigation of tax liability?

The main documentary requirement to support eligibility for tax treaty relief is the tax residency certificate (“TRC”).

2.4 Has the advent of BEPS (the Base Erosion and Profit Shifting initiative of the OECD) had any effect as regards structures in aviation finance and leasing or their interpretation?

The Philippines only joined the Organization for Economic Cooperation and Development/G20 Inclusive Framework on Base Erosion and Profit Shifting on 8 November 2023. The effect of this initiative in terms of structures in aviation finance and leasing is yet to be realized.

2.5 What are the typical thresholds in your jurisdiction for which a permanent establishment may be triggered under the terms of any relevant double-tax treaty or similar?

A permanent establishment will be deemed to exist pursuant to the presence of a place of management, a branch, an office, a factory, building sites, construction or assembly projects that last for a defined period, the presence of employees, agents or representatives in the Philippines for a defined number of days and also pursuant to the extent and nature of activities being carried out in the Philippines. The presence of such activities will entitle the Philippine tax authority to tax foreign entities on their business income derived from the Philippines related to their presence or activities.

2.6 Is the authority at question 2.1 likely to establish a ‘look-through’ right or similar as regards a lender or a lessor that is a special-purpose vehicle involved for the purpose of tax treaty access?

Although there is little case law on the matter, the BIR usually will not apply a “look-through” approach as regards a lender or a lessor that is a special-purpose vehicle involved for tax treaty access.

2.7 Will the import of an aircraft into your jurisdiction and/or the sale or leasing of the aircraft give rise to any VAT, sales or use taxes or any customs import or excise duties?

Aircraft imported into the Philippines for use by airlines operating under congressional franchises are exempt from customs import duty, as well as VAT on sale or lease.

2.8 Are there any documentary taxes (for example, stamp duty payable on the execution of documents)?

The execution of an aircraft sale agreement will entail payment of documentary stamp tax once an original or a copy of such agreement has entered the Philippines physically or electronically.

3 Registration and Deregistration

3.1 Which government authority in your jurisdiction has primary responsibility for the regulation of aviation and the registration of aircraft? Is it an owner registry or an operator registry? If the aircraft register is an operator register, is it possible to record the details of an owner or lessor and any financier with an aircraft mortgage?

The CAAP has primary responsibility. The CAAP is an operator registry. If the owner of the aircraft is not the operator, the aircraft cannot be registered in the name of the owner. However, a local operator may disclose the name of the owner, lessor or mortgagee in the Certificate of Registration issued by the CAAP.

3.2 What is the effect of registration of the aircraft? Does registration on your national aircraft register confer proof of ownership of the aircraft and/or engine?

Registration of the aircraft in the CAAP will confer upon the aircraft Philippine nationality, as well as permit it to be operated by a Philippine owner or lessee. The aircraft registration certificate shall be conclusive evidence of ownership that is valid and effective in rem, except in a proceeding where such ownership is, or may be, at issue.

3.3 Can foreign-owned aircraft be registered on your national aircraft register and are there limits or restrictions on the age of aircraft that may be registered or operated?

In addition to foreign-owned aircraft leased to local operators, foreign-owned or registered aircraft may be registered if the aircraft will be utilised by members of aero clubs organised for recreation, sport or the development of flying skills. This

is a prerequisite to any aeronautical activities carried out by such clubs within the Philippine airspace. There are no age restrictions to register an aircraft in the Philippines. However, all aircraft are subject to airworthiness evaluation by the CAAP.

3.4 Can aircraft leases be registered? If so, in what circumstances? Must the lease be in a particular form if it is to be valid and enforceable (for example, must it be in a particular language or be notarised, legalised or apostilled)?

Yes, aircraft leases can be registered with the CAAP. For the purpose of registering a lease with the CAAP, the same should be in writing and acknowledged before a notary public. If the lease is executed outside the Philippines, the same should also be apostilled or authenticated at the Philippine Consulate or Embassy nearest to the place where the same is executed. The lease need not be translated to Filipino if it is in the English language. If the lease is in a foreign language other than English, an accompanying English translation is required.

3.5 How is deregistration affected and what steps can a lessor take to deregister the aircraft on termination of the lease?

Deregistration is effected by way of an application filed with the CAAP by a lessor, through the lessee, in order to obtain an Export Certificate of Airworthiness and a notice of deregistration from the CAAP addressed to the succeeding registry. An Exit Permit will also have to be obtained from the Bureau of Customs.

4 Security

4.1 Is it possible to create a mortgage over an aircraft or engine in your jurisdiction? If so, what are the types of aircraft mortgage and engine mortgage available and what formalities are required in order to perfect it?

A chattel mortgage may be constituted in the Philippines over a Philippine-registered aircraft or engine. For registration with the CAAP, the mortgage should be in writing and acknowledged before a notary public. If the mortgage is executed outside the Philippines, it should also be apostilled or authenticated before the Philippine Consulate or Embassy nearest to the place of execution. If the mortgage is in a foreign language other than English, an accompanying English translation is required.

4.2 Can spare parts, including future parts, be subject to the aircraft mortgage or engine mortgage (as the case may be)? If not, are there any other forms of security that can be taken over spare parts?

After-acquired properties such as future spare parts and accessories may be subject to an aircraft or engine mortgage.

4.3 Is there a register of mortgages or rights over aircraft and/or engine?

The exclusive registry of mortgages or rights over aircraft and/or engines is also held by the CAAP.

4.4 What other forms of security can be taken over an aircraft and/or engine and can these other forms be registered?

Philippine law allows borrowers to provide security to lenders in the form of guarantees and special contracts such as pledges, letters of credit and security assignments involving aircraft and/or engines. These forms of security may be constituted for financing aircraft or engine lease or purchase agreements and may be registered with the CAAP.

4.5 What claims and rights would take priority in your jurisdiction over a registered mortgage?

Taxes, duties and fees due to the Philippine government shall take priority over a registered aircraft and/or engine mortgage. Aviation charges imposed by airport authorities may also take priority over a registered mortgage.

4.6 What other forms of security can be granted over an aircraft and/or engine lease?

A borrower/lessor may enter into a security assignment and effectively assign to a security trustee any of the former's alienable rights over aircraft and/or engines under a lease.

5 Enforcement and Repossession

5.1 What are the circumstances in which a mortgagee or owner can take possession of the aircraft and/or sell the aircraft? What requirements must the mortgagee or owner comply with?

The contracting parties can stipulate that in the case of default, the creditor may sell the mortgaged aircraft either by judicial foreclosure of the mortgage or extrajudicial foreclosure under the Chattel Mortgage Law and apply the proceeds thereof to the payment of the debt. Extrajudicial foreclosure of the mortgage may be availed if the lessee voluntarily surrenders possession of the aircraft to the mortgagee. If the lessee refuses to surrender possession of the aircraft, the mortgagee must seek judicial intervention to recover possession of the aircraft by way of writ of replevin. Extrajudicial foreclosure of the mortgage may ensue.

5.2 What is the procedure for repossession of the aircraft?

If the lessee voluntarily relinquishes possession of the aircraft, court intervention will not be necessary. However, in a hostile scenario in which the lessee is unwilling to relinquish possession of the aircraft despite its contractual obligations to the contrary, repossession can be legally effected only by means of a court order. The lessor or owner may file a suit for recovery of possession of the aircraft with an application for the issuance of a writ of replevin, which is a provisional remedy obtained to gain possession of movable property wrongfully detained by another. The issuance of a writ of replevin is conditioned upon the posting by the plaintiff of a replevin bond equivalent to double the value of the aircraft and is intended to answer for the return of the aircraft to the lessee if such return is finally adjudged by the court, and for damages suffered by the lessee if it should be finally determined that the aircraft was not wrongfully detained.

5.3 Will local courts recognise a choice of foreign law in an aircraft mortgage? Are there any mandatory local rules that apply, despite a choice of foreign law?

Local courts may recognise a choice of foreign law in an aircraft mortgage, subject to said foreign law being pleaded and proven in such action, and provided that the choice of foreign law does not violate Philippine law, public order or public policy.

5.4 Will local courts recognise and enforce a foreign court judgment in favour of a mortgagee or lessor? Are any interim relief measures available?

Philippine courts will recognise and enforce a final judgment of a foreign court in favour of a mortgagee or lessor without re-examination of the facts from which it prescinds, subject to certain exceptions. There is no law which prohibits a party from obtaining any available interim relief measures such as an injunction if there are legally justifiable reasons and if the requisites for issuance are present.

5.5 Are powers of attorney from a local airline in favour of a lessor or mortgagee likely to be effective to allow the lessor or mortgagee to deregister the aircraft? Can such powers be irrevocable, be governed by a foreign law and/or do they need to be in any particular form for local recognition?

The deregistration of aircraft can be accomplished by the lessor or mortgagee if a deregistration and free export power of attorney (“DPoA”) is executed by the local airline-lessee in favour of the lessor or mortgagee. The DPoA can be made irrevocable if it is coupled with the interest of the owner/lessor in the aircraft. A DPoA may be governed by foreign law. For the purpose of registration with the CAAP, the DPoA must be acknowledged before a notary public.

5.6 If recovery of the aircraft is contested by the lessee and a court judgment is obtained in favour of the lessor, how long is it likely to take to gain possession of the aircraft?

In a hostile scenario in which the lessee is unwilling to relinquish possession of the aircraft despite its contractual obligations to the contrary, repossession can be legally effected only by means of a court order. In a suit for recovery of possession of movable property, a trial court judge may issue a writ of replevin *ex-parte*, conditioned upon the posting by the plaintiff of a bond equivalent to double the value of the aircraft, which is intended to answer for the return of the aircraft if such return is finally adjudged, and for damages suffered by the lessee if it should be finally determined that the aircraft was not wrongfully detained by the lessee or other adverse party. The process of obtaining a writ of replevin, implementing the same and gaining possession of aircraft under such adversarial circumstances could take between 60 and 90 calendar days.

5.7 To what extent is there a risk from the perspective of an owner or financier that a lessee of aircraft or other aviation assets in your jurisdiction may acquire an economic interest in the aircraft merely by payment of rent and thereby potentially frustrate any rights to possession or legal ownership or security?

Under BIR Revenue Regulation 19-86 dated 10 November 1986,

a contract or agreement purported to be a finance lease shall be treated as a conditional sales contract if one or more of the following compelling persuasive factors are present: (1) there is an option to purchase the asset at any time; (2) the lessee acquires automatic ownership of the asset upon payment of the rentals under the contract; (3) portions of the periodic rental payments are credited to the purchase price; and (4) the receipts of payments indicate that partial payments of the assets were made.

In addition, even in the absence of compelling persuasive factors, the Revenue Regulation states that the lease agreement may still be viewed as a conditional sale if, for example, one or more of the following conditions are met: (1) portions of the periodic payments are made specifically applicable to equity to be acquired by the lessee; and/or (2) the property is acquired under a purchase option, at a price which is nominal in relation to the value of the property at the time the option may be exercised, as determined at the time of entering into the original agreement, or which is a relatively small amount when compared with the total payments that are required to be made.

5.8 Are there any restrictions on the ability of the lessor to export the aircraft from your jurisdiction on termination of the leasing?

The lessor’s ability to terminate a lease and export the aircraft from the Philippines shall be governed and may be restricted only by the terms and conditions incorporated in the lease agreement.

5.9 Are exchange controls prevailing in your jurisdiction as regards payments in foreign currency? Will any consents be required for the remittance of the sale proceeds abroad?

There are no legal or regulatory restrictions imposed on domestic lessees making rent payments to foreign aircraft lessors in foreign currency. No consents are required for the remittance of sale proceeds if the foreign currency will not be sourced from the local banking industry.

5.10 If the lease is governed by English law and a judgment is obtained by the lessor in the English courts, can that judgment be automatically enforced in your jurisdiction or will the case have to be re-examined on its merits?

Philippine courts will recognise and enforce a final judgment of a foreign court without re-examination of the facts from which it prescinds. To be recognised and enforced: (i) the foreign judgment must have been rendered by a foreign court with competent jurisdiction; (ii) notice must have been given to the parties involved; (iii) the foreign judgment must not have been obtained through collusion, fraud or clear mistake of fact or of law; (iv) the foreign judgment must have become final and executory; and (v) the foreign judgment must not violate Philippine law, morals, good customs, public order or public policy.

5.11 What is the applicable procedure for repossession of an aircraft under other forms of security interests?

The applicable procedure for repossession of aircraft under other forms of security interests is the same as that involving a lessee unwilling to relinquish possession despite contractual obligations to the contrary.

6 Conventions

6.1 Has your jurisdiction ratified any of the following: (a) The Chicago Convention of 1944 on International Civil Aviation (the Chicago Convention); (b) The 1948 Convention on the International Recognition of Rights in Aircraft (the Geneva Convention); (c) The 1933 Convention for the Unification of Certain Rules Relating to the Precautionary Arrest of Aircraft (the 1933 Rome Convention); and (d) The Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment (the Cape Town Convention) and the Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment?

The Philippines has only ratified the Chicago Convention and the Geneva Convention.

6.2 Has ratification of the Cape Town Convention caused any conflicts or issues with local laws?

The Philippines has not yet ratified the Cape Town Convention.

6.3 What is the legal position regarding non-consensual rights and interests under Article 39 of the Cape Town Convention?

Since the Philippines has not yet ratified the Cape Town Convention, it has no legal position regarding the non-consensual rights and interests under Article 39 of the Cape Town Convention.

6.4 Has your jurisdiction adopted the remedies on insolvency provided under Article XI of the Protocol to the Cape Town Convention?

Since the Philippines has not yet ratified the Cape Town Convention, it has not adopted the remedies on insolvency provided under Article XI of the Protocol to the Cape Town Convention.

6.5 What is the procedure to file an irrevocable deregistration and export request authorisation under the Cape Town Convention (IDERA)?

Since the Philippines has not yet ratified the Cape Town Convention, there is no procedure to file an IDERA under the Cape Town Convention. Customarily, lease agreements are supplemented by deregistration and free export powers of attorney which are generally couched in the same language and intended for the same purpose as IDERA. A deregistration and free export power of attorney will be recognised by the courts and the relevant government agencies of the Philippines.

7 Liability for Damage and Environmental

7.1 Can the owner be strictly liable – liable without a requirement to prove fault or negligence – for any damage or loss caused by the aircraft assuming the owner is an innocent owner with no operational control of the aircraft?

Unless there is an agreement to the contrary, a foreign aircraft or engine owner, lessor or financier cannot be held liable

concerning any claim arising out of the use and operation of aircraft by the lessee. The concepts of strict liability and vicarious liability have no application to leased aircraft, vessels, motor vehicles, equipment or other leased property where the owner is not operating the leased property.

7.2 Does the EU Emissions Trading System (EU ETS), or ICAO's Carbon Offsetting and Reduction Scheme for International Aviation (CORSA), apply to aircraft and aircraft operators in your jurisdiction? Will charges levied according to the EU ETS, or its equivalent, give rise to any in rem rights in relevant aircraft that are part of the fleet of the operator concerned and, if so, will such rights rank in priority ahead of any mortgage interests properly registered in the relevant aircraft and/or engine?

The Philippines is a participating state under CORSA. According to CORSA's timetable, ICAO member states, including the Philippines, shall start complying with the CO₂ off-setting requirements by 2024 to 2026, while mandatory compliance is set for 2027 to 2035. Since the Philippines has yet to mandatorily comply with the provisions of CORSA, no charges and levies resulting from violation thereof apply.

7.3 What liabilities (actual or potential) could an owner, lessor or financier of an aircraft incur in your jurisdiction because of a failure to comply with local environmental law and/or regulations on the part of an operator of aircraft leased or financed by it?

Local environmental laws do not charge the owner, lessor or financier of the aircraft for violation thereof, provided such parties do not actually operate the aircraft.

8 Insolvency and Searches

8.1 Are there any public registers in your jurisdiction where a search can be carried out to determine whether an order or resolution for any bankruptcy, bankruptcy protection or similar insolvency proceedings has been registered in relation to an operator or lessee?

Insolvency proceedings are under the jurisdiction of Regional Trial Courts designated by the Supreme Court as commercial courts. Hence, information and public records involving such cases can be obtained from Clerks of Court of these commercial courts. There are no other public registers where a search can be carried out to determine whether an order or resolution for any bankruptcy, bankruptcy protection, or similar insolvency proceedings has been registered in relation to an operator or lessee.

However, extraordinary business and industry developments such as these become matters of public knowledge that are widely reported in mass media, business publications, non-government financial and banking associations and Bench and Bar circles.

8.2 In the event that an operator or lessee were to become insolvent either on a balance sheet basis (assets less than liabilities) or is unable to pay debts as they fall due, would an operator or lessee be required to file for insolvency protection?

If the operator-lessee becomes insolvent, they are not required to file for insolvency protection. In the Philippines,

court-supervised rehabilitation proceedings are optional and may be initiated by either the insolvent debtor or its creditor/s, and approval is subject to the court's determination that: (i) there is a business to be restored; and (ii) the rehabilitation plan is feasible.

If rehabilitation proceedings are not pursued because rehabilitation will not result in a better present value recovery for the creditors or because the proceedings fail, liquidation proceedings may be commenced. Liquidation refers to the process where the assets of the insolvent debtor are converted to cash, usually requiring the sale of assets or business. Liquidation proceedings may be commenced by either the insolvent debtor (voluntarily liquidation) or by the creditors (involuntary liquidation).

8.3 Do the available forms of insolvency protection in your jurisdiction involve the appointment of either an officer of the court or a specifically court-appointed official to take control of the operator or lessee (an 'Insolvency Official') while in insolvency protection?

Except for an out-of-court or informal restructuring agreement, if court-supervised insolvency proceedings are initiated and the rehabilitation plan is approved by the rehabilitation court, a rehabilitation receiver shall be appointed by the court. A rehabilitation receiver may be a natural or juridical person appointed by the court who shall be entrusted with such powers, duties, and responsibilities as set forth therein. Rehabilitation receivers are officers of the court tasked to study the best way to rehabilitate the company and to implement the rehabilitation plan after its approval.

In liquidation proceedings, the person authorised to undertake an inventory, carry out the accounting, and manage the sale and distribution of proceeds to creditors is the court-appointed liquidator.

8.4 Does the commencement of insolvency protection involving the appointment of an Insolvency Official in your jurisdiction have the effect of prohibiting the owner from taking the following actions to enforce the lease after commencement of such protection: (a) applying any security deposit held by the owner against any unpaid amounts due under the lease; (b) accepting payment of rent or other lease payments from the lessee, a guarantor or a shareholder; (c) giving notice of default under the lease; (d) obtaining a judgment or arbitral award for unpaid lease payments; (e) giving notice to terminate the leasing of the aircraft and/or engine; or (f) exercising rights to repossess the aircraft and/or engine?

Under Philippine law, rehabilitation proceedings shall commence upon the issuance of the Commencement Order, which shall, among others, include a Stay or Suspension Order: (i) suspending all actions or proceedings, in court or otherwise, for the enforcement of claims against the debtor; (ii) suspending all actions to enforce any judgment, attachment or other provisional remedies against the debtor; (iii) prohibiting the debtor from selling, encumbering, transferring or disposing in any manner any of its properties, except in the ordinary course of business; and (iv) prohibiting the debtor from making any payment of its liabilities outstanding as of the commencement date, except as may be provided under the law. Thus, (a) applying

any security deposit held by the owner against any unpaid amounts due under the lease, (b) giving notice of default under the lease, (c) obtaining a judgment or arbitral award for unpaid lease payments, and (d) giving notice to terminate the leasing of the aircraft and/or engine will be precluded under item (i) of the Stay or Suspension Order. Exercising rights to repossess the aircraft and/or engine will be precluded under item (ii) of the Stay or Suspension Order because exercising rights to repossess the aircraft will involve the provisional remedy of replevin, (e) accepting payment of rent or other lease payments from the lessee will be precluded under item (iv).

The Stay or Suspension Order will not apply to the enforcement of lease payments from a guarantor, or a shareholder provided that the guarantor or the shareholder is jointly and severally liable with the debtor. Consistent with the liability of a solidary obligor, the latter's obligation to pay is not conditioned on the prior exhaustion of the lessee's assets. (*MWSS vs. Hon. Daway Et Al*, GR No. 106732 June 21, 2004.)

8.5 Can the commencement of insolvency proceedings have retrospective effect in relation to any such actions taken before commencement? If so, for what period can there be a look back?

There is no specific look-back period provided under the FRIA. The rehabilitation court may, upon motion and after notice and hearing, rescind or declare as null and void any sale, payment, transfer or conveyance of the debtor's unencumbered property or any encumbering thereof by the debtor or its agents or representatives before or after the commencement date which are not in the ordinary course of the business of the debtor.

8.6 Is there, either under law or as a matter of practice in your jurisdiction, a period of time within which the Insolvency Official will either 'adopt' the lease and pay rent and other lease payments as an expense of the insolvency or 'reject' the lease and permit the owner to enforce such rights as it may have under the lease? (a) If the lease is 'adopted', will the Insolvency Official also pay any unpaid lease payments due as at commencement of the insolvency protection? (b) If not or if the lease is 'rejected', would the owner's claim for any outstanding sums rank equally with other ordinary unsecured creditors of the lessee?

Within 90 days of the issuance of the Commencement Order, the debtor is granted the power to confirm or cancel pre-existing contracts entered into. This gives the debtor the opportunity to disclaim extremely onerous contracts. Contracts not confirmed shall be considered terminated.

Accordingly, throughout the implementation of the confirmed rehabilitation plan, lessors of aircraft will not be allowed to recover possession of leased aircraft that form part of the insolvent lessee's fleet and are essential to its continued operations. The utilisation of these aircraft shall entitle the lessors to payment of rent under the terms and conditions of the confirmed rehabilitation plan.

Contractual obligations of the debtor arising or performed during this period, and afterwards for confirmed contracts, shall be considered administrative expenses. Contracts not confirmed shall be considered terminated. Claims for actual damages, if any, arising from the election to terminate a contract shall be considered pre-commencement claims against the debtor.

8.7 Are there certain types of preferred creditors whose claims will rank above claims of the owner?

Taxes, duties and fees due to the Philippine government shall take priority over the claims of the owner.

8.8 If the aircraft is in the possession of a person other than the operator or lessee at the commencement of insolvency protection of the operator or lessee, for example, an independent maintenance facility, will such person be entitled, under the laws of your jurisdiction, to assert a lien arising under law or contract over the aircraft in respect of amounts then due and unpaid to such person by the operator or lessee?

Article 2241 of the Civil Code of the Philippines enumerates preferred claims or liens on specific personal property arising under law or contract in respect of amounts due and unpaid to such person from an obligor such as an operator or lessee of aircraft. These preferred claims include: (i) credits for the making, repair, safekeeping or preservation of personal property on the movable thus made, repaired, kept or possessed; (ii) claims for labourers' wages on the goods manufactured or the work done; (iii) for expenses of salvage, upon the goods salvaged; and (iv) transportation credits, upon the goods carried, for the price of the contract and incidental expenses, until their delivery and for 30 days thereafter.

9 Detention and Confiscation

9.1 Other than insolvency laws (see section 8), are there any laws that may have the effect of defeating the owner's right in the aircraft – for example, government requisition? Do the laws of your jurisdiction provide for any compensation in such circumstances?

The following rights and regulations exist:

1. the tax liens imposed by the National Internal Revenue Code of the Philippines and the Tariff and Customs Code for failure to pay Philippine taxes and/or customs duties;
2. the statutory lien imposed by the Director General of the CAAP under Section 73 of the Civil Aviation Authority Act of 2008 (Republic Act 9497) for non-payment of charges and other fees and failure to pay administrative fines arising from violation of rules and regulations of the CAAP;
3. the lien imposed by the Manila International Airport Authority ("MIAA") for failure to pay dues, charges and fees or concessions for any service provided by the MIAA; and

4. the possessory liens under Article 2241 of the Civil Code of the Philippines for the unpaid price of movables sold and credits for the making, repair, safekeeping or preservation of personal property such as aircraft.

9.2 Are there any rights in relation to third parties to detain or sell the aircraft pursuant to illegal activities, tax or any other laws if the operator or lessee fails to pay when due? If so, can the aircraft be forfeited and sold without the owner being made aware?

Other than the entities mentioned in our answer to question 9.1, Philippine tax authorities may also distraint or sell an aircraft for failure to pay Philippine taxes. Customs authorities may likewise sell an aircraft for failure to pay customs duties, fees, charges, or fines, or for carriage of smuggled or contraband goods unless, in the latter case, such aircraft are used as a duly authorised common carrier.

The Director General may also detain an aircraft if it may not be airworthy or the operation would cause imminent danger to persons or property on the ground, (Section 39, CAAP Law), and impose a lien on an aircraft if the charges and other fees are not paid in full on the due date or any part of the charges or the late payment penalty remains unpaid or for failure to pay administrative fines arising from violation of any rules and regulations promulgated by the CAAP.

10 Aircraft/Engine Technology

10.1 With the global commitment of IATA to zero-emissions by 2050, are there any particular developments regarding the associated new aircraft and engine technology which might be foreseeable as regards aviation finance in your jurisdiction, e.g. as regards taking security (battery powertrain equipment) or enforcement (different airport infrastructure environments)?

The national flag carrier, PAL, is investing in an all-out carbon reduction programme as part of its commitment to combat climate change. Its net zero goal will be comprehensive, covering both flight and ground operations. PAL has begun the process by shifting to renewable energy for the electricity supply of its major offices and working on the potential use of sustainable aviation fuel for its fleet of aircraft.

Cebu Air, Inc. partnered with the consultancy and advisory services firm "South Pole" to establish a climate strategy that will strengthen its commitment to environmental stewardship in line with IATA's net zero carbon emissions by 2050.

Philippines AirAsia, Inc. aims to achieve net-zero carbon emission by 2050 by upgrading their planes to newer, more efficient models such as the A321 Neo. This model is widely acknowledged as the most fuel-efficient aircraft in the market currently.



Jose Luis V. Agcaoili specialises in the following practice areas: Aircraft Finance and Leasing; Aviation; Banking and Finance; Corporate and other Commercial laws; Criminal Law and Civil Litigation; Family Law; and Labour Law.

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Agcaoili & Associates was established in 1974 by lawyers Antonio V. Agcaoili and Alfonso V. Agcaoili. It is primarily engaged in the comprehensive practice of law, specialising, among others, in Aviation, Banking and Finance, Bankruptcy, Corporations, Civil, Insurance, Intellectual Property, Immigration, Labour, Property and Taxation laws, as well as litigation and alternative dispute resolution.

The law firm provides services to a wide range of clients, several of which are leading banks and financial institutions both local and foreign, corporations engaged in the business of aircraft finance and leasing, advertising, chemicals, educational plans, garments, health care services, hotel and condominium development, information technology, manufacturing, pharmaceuticals, real estate property development, and the like.

The law firm likewise acts as correspondent counsel for various law firms in the United States, Europe and Asia.

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