

# Omnibus Law

## Legal Insight

### The Impact of the Enactment of Omnibus Law's Implementing Regulation on Businesses in the Aviation Sector

As mandated by Law No. 11 of 2020 concerning Job Creation ("**Job Creation Act**") with the aim of harmonization and simplification of laws and regulations, the Indonesian government has enacted an implementing regulation in the aviation sector, i.e., Government Regulation No. 32 of 2021 concerning the Operation of the Aviation Sector ("**GR 32/2021**").

Essentially, GR 32/2021 regulated the following matters further:

- a. Airport Environmental Development and Conservation;
- b. Airworthiness and Aircraft Operation;
- c. Air Carriers;
- d. Airports;
- e. Flight Navigation;
- f. Aviation Service Provider Safety Management; and
- g. Administrative Sanctions.

As a breakthrough regulation, the Job Creation Act, although comprehensive, has left detailed technical requirements to be regulated further in implementing regulations. We have prepared a series of brief analyses explaining the key points from several matters outlined in GR 32/2021.

#### 1st Series: Aircraft Operation and Air Carriers

##### Aircraft Registration

The criteria for aircraft to be registered in Indonesia stay the same, which is in line with Article 25 of Law No. 1 of 2009 concerning Aviation as amended by the Job Creation Act ("**Aviation Law**"). Like the provisions in CASR 47, GR 32/2021 provides that an application for aircraft registration must be made by the owner or its proxy. However, it remains unclear whether the Directorate General of Civil Aviation ("**DGCA**") will adjust the administrative requirements provided in the existing implementing regulations, as we note that the administrative requirements listed in Article 14 of GR 32/2021 are more general in nature than those in CASR 47. For example, the requirement to have a certified true copy of bill of sale issued by local notary public is not stated in GR 32/2021.

##### Aircraft Deregistration: The Aviation Law should prevail

Article 15 paragraph a point 8 of GR 32/2021 essentially provides that the deregistration of an aircraft can be made, among others, on a request from the owner or an authorized individual, if there is a breach (default) by the aircraft lessee according to a final and binding court decision. The implication of the new provision in GR 32/2021 is that in the event of a default by a lessee under a lease agreement, the owner or authorized individual can only deregister the aircraft registration after obtaining a court decision (even if it holds a valid Irrevocable Deregistration and Export Request Authorization or IDERA).

Although the Job Creation Act amended several articles of the Aviation Law, Article 29 paragraph (a) point (7) of the Aviation Law, which provides that deregistration can be proceed if there is a breach (default) by the aircraft lessee without a court decision, is not amended. With the understanding that both Article 29 of Aviation Law and Article 15 of GR 32/2021 are currently in effect, it is our view that in the event of a conflict such as this, the provisions under the Aviation Law should prevail as it is of a higher rank in the hierarchy of statutory legislation than GR 32/2021.

We understand from our informal consultation with the DGCA that the DGCA is doing its usual business and still accepting deregistration using the IDERA on the basis of the Aviation Law. The DGCA is working together with the relevant government institutions to resolve the matter.

### Proof of Aircraft Ownership

As commonly interpreted, the deletion of the elucidation of Article 118 of the Aviation Law by the Job Creation Law confirms that the proof of aircraft ownership stated in Minister of Transportation (“MOT”) Regulation No. PM 97 of 2015 on Implementation Guidelines for Aircraft Ownership and Possession (“PM 97/2015”) is in line with the current Aviation Law. GR 32/2021 in Article 27 paragraph (1) generally outlines similar criteria for aircraft ownership to those provided in PM 97/2015.

A lease with the option to purchase, one of the valid proofs of ownership stated in Article 27 paragraph (1) letter c of GR 32/2021, has been acceptable since PM 97/2015 came into effect. This type of ownership must be evidenced with a guarantee from the owner, legalized by a notary, that the lessee will become the owner of the aircraft at the end of the lease period. However, such requirement may be deemed unnecessary on consideration that the concept of purchase option bestows on the lessee the choice to exercise the purchase option or not at the end of the lease period.

It is worth asking what would happen if the purchase option were not exercised at the end of the lease period, as it may mean that the owner/lessor was in default for providing a false guarantee or the lessee was in default for not exercising its purchase option. GR 32/2021 does not provide sanctions for the foregoing, and has kept the lease context vague in this GR 32/2021.

### Reduction in the Mandatory Numbers of Aircraft Owned and Possessed

The number of aircraft that an operator of scheduled commercial, non-scheduled commercial and air cargo services must own and possess is stipulated under Article 65 paragraph (2) of GR 32/2021, as follows:

	Owned	Possessed
<b>Scheduled commercial operator</b>	1	2
<b>Non-scheduled commercial operator</b>	1	1
<b>Air cargo operator</b>	1	1

In the event that an operator has more than 1 (one) business license, the number of aircraft to be owned and possessed must be adjusted to comply with the provisions. The stipulation of these implementing provisions in GR 32/2021 is aimed at providing the Central Government with flexibility in policy making policies following developments in society and globalization.

### Some Relaxation of Business Permit and Aircraft Requirements

We have found that the relaxation of business permit and aircraft requirements which were deleted from the original Aviation Law by the Job Creation Act still stands as GR 32/2021 did not reinsert these obligations in its provisions. Among others are:

- requirement of a holder of Commercial Air Transport Business Permit to operate and obtain approval from the MOT for transfers of their Commercial Air Transport Business Permits to other parties;
- requirement to obtain the MOT’s approval for low operating cost services (Low Cost Carriers); and
- deletion of provisions on air transport supporting business activities.

As such, the relaxation provides a more positive framework for businesses as it simplifies the forms of permit which have to be obtained.



## Conclusion

In conclusion, despite the relaxation provided in the Job Creation Act, the technical details of which are provided in GR 32/2021, GR 32/2021 has imposed on businesses requirements that some might consider burdensome and time-consuming, as also augmented by the generalization of certain technical requirements which in some cases do not fit the situation. It may be necessary to confirm with relevant governmental authorities on the spirit of some provisions provided under GR 32/2021 in order to have a better understanding as to how this may be to the benefit of businesses in the aviation sector.

DENTONS

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