

"Airlines Turbulence": Lessor options for Indonesian airlines during a difficult situation

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On 2 March 2020, the Indonesian President officially confirmed the first two cases of COVID-19 in the country, which has had a significant impact on the aviation industry in Indonesia, especially for the airlines. Some airlines have temporarily closed several flight routes and suffered a significant reduction in passenger numbers. Moreover, the Indonesian rupiah has also fallen against the US dollar, which puts more pressure on the airlines as most of their payment obligations are in US dollars.

COVID-19 Impact on airlines

On the other hand, the market practice of aircraft leases is a net lease with “hell or high water” clause that requires the lessee to pay the rent and perform all other obligations under the lease on an absolute and unconditional basis.

In light of the above situation, there are three possible scenarios that may occur:

1. the airlines obtain relief from their lessors to overcome their financial issues (e.g. amend fixed interest rate, interest only period, lease extension, early redelivery, etc.);
2. the airlines default on payment following their failure to secure relief from their lessors; or
3. the airlines enter into bankruptcy, whether voluntarily or involuntarily.

Deregistration and repossession

Undoubtedly, the scenarios 2 and 3 above will lead to aircraft repossession. Generally, the process for repossession of aircraft in Indonesia is, in normal conditions, as follows if the lessor holds an Irrevocable Deregistration and Export Request Authorisation (IDERA) from the airline:



The process will take significantly longer if the lessor does not hold the IDERA or the airline is not cooperative and refuses to hand over the aircraft and/or the aircraft documents to the lessor as the lessor might need to pursue other legal measures, e.g. submitting a police report.

Outstanding payments

The lessor may wish to initiate legal proceedings against the airline if the airline refuses to pay the outstanding payments under the lease agreement after the lessor successfully repossesses the aircraft from the airline. Under the standard lease agreement, the lessor can usually choose between pursuing legal proceedings in the courts of foreign countries, arbitration, or the courts where the lessee is domiciled, in our case, Indonesia's courts.

Foreign courts

Usually, the lessor will find the first two preferable. However, in the case of the first option, when the lessor comes to enforce the judgment in Indonesia (where most of the lessee's assets are located), a foreign court judgment is not enforceable in Indonesia and the lessor will need to re-litigate the case before the relevant Indonesian District Court. The lessors should be aware that this will be a time-consuming process as the judgment of a District Court can be appealed up to the Supreme Court, which may take at least three years to complete.

Arbitration

Arbitration may be the best option for the lessor. Since Indonesia is a party to the New York Convention on the Recognition and Enforcement of Foreign Arbitration Awards of 1958, a foreign arbitration award against an Indonesian party by a non-Indonesian arbitration panel can be enforced in the Republic of Indonesia.

Bankruptcy situation

With regard to bankruptcy, under the Indonesian Bankruptcy Law, a debtor (in the form of a company incorporated in

or resident in Indonesia) which has two or more creditors and fails to pay at least one debt which has become due and payable will be declared bankrupt through a court decision, either at his own request or at the request of one or more of his creditors.

By law the debtor forfeits his right to control and manage his assets included in his bankruptcy as of the date on which the declaration of bankruptcy is uttered provided that if the company still fulfils that function, expenses which may cause reduction in the bankruptcy assets will be under the authority of the curator / receiver.

To avoid bankruptcy, a debtor having at least one creditor (with debts that are due and payable but not yet paid) or a creditor (that foresees that the debtor cannot continue paying its due and payable debt) may submit a petition to the commercial court to be granted a 'suspension of payments'. A suspension of payments gives the debtor the opportunity to prepare, negotiate and submit a composition plan to its creditors for their approval. The composition plan sets out how outstanding debts are to be restructured and typically provides, among other things, a proposed timetable under which the debtor will pay its debts, whether the debts will be fully or partially paid, perhaps with a grace period, reduced interest rates and a waiver of penalties and overdue interest.

Dentons HPRP's experience

We have successfully assisted lessors in repossessing their aircraft from Indonesian airlines, either in consensual, hostile, or bankruptcy scenarios. We have also been involved in the restructuring of an airline which was granted its request for a suspension of payments by the commercial court to ensure the continued survival of the airline.

*The article above was prepared by **Hendra Ong (Partner) & Osha Adyancha (Senior Associate)**.*

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