

Newsletter

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INDONESIAN LEGAL DIGEST - AVIATION LAW

Cape Town Convention in Indonesia: A Brief Overview

On 20 February 2007 by Presidential Regulation No. 8 of 2007, Indonesia ratified the Convention on International Interests in Mobile Equipment and the related Protocol on Matters Specific to Aircraft Equipment (known as the “**Cape Town Convention**”).

The Cape Town Convention ratified by Indonesia is lessors/financiers-friendly. Key features that worth to note are as follows:

- (i) Indonesia has adopted “Alternative A” for all insolvency proceedings. This is the most lessor favourable option as it requires the receiver to give possession of the Aircraft to the lessor within a defined waiting period (60 calendar days in the case of Indonesia).
- (ii) Indonesia applies all provisions under Article X of the Protocol of the Cape Town Convention. Article X relates to Article 13 of the Cape Town Convention and deals with a number of key issues related to “Relief pending final determination”. The Cape Town Convention provides the creditor (including lessors) with a right to obtain “speedy relief” from a court in relation to certain orders pending final determination of a claim, relating for example to preservation, possession and immobilisation of the Aircraft.

Under the Protocol to the Cape Town Convention, a contracting state can declare a number of working days by which the court must provide the relief – i.e. defining “speedy”. The Indonesian declaration defines this to be:

- a. ten calendar days in respect of the remedies specified in Article 13 (1) (a) (b) and (c) of the Convention; and
 - b. thirty calendar days in respect of the remedies specified in Article 13 (1) (d) and (e) of the Cape Town Convention for the court orders mentioned above.
- (iii) Indonesia applies the entire provisions of Articles VIII, XII and XIII of the Protocol to the Cape Town Convention. These Articles are related to Choice of Law; Insolvency Assistance and De-registration and Export. Article XIII is the most critical in terms of the requirement that the contracting state must recognise and give effect to and irrevocable deregistration and export request authorisation issued by the airline (known as the IDERA. The authorisation cannot be revoked without the consent in writing of the authorised person.

- (iv) Indonesia has declared that, pursuant to Article 54(2) of the Cape Town Convention, any remedy available to a creditor (including lessor) under any provision of the Cape Town Convention which is not expressed to require application to a court, may be exercised without leave of the court. This is very positive to expedite the process (including a repossession process).
- (v) Indonesia did not made any declaration under Article 55 of the Cape Town Convention. Declaration to Article 55 of the Cape Town Conventions is required if a contracting state will not apply the provisions of Article 13 or 43 of the Cape Town Convention. This is a lessor friendly outcome.
