



The Legal 500 Country Comparative Guides

Malaysia: Aviation Finance & Leasing

This country-specific Q&A provides an overview of aviation finance & leasing laws and regulations applicable in Malaysia.

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1. What international aviation conventions has your jurisdiction signed and/or ratified?

Malaysia has signed and ratified the following major international aviation conventions:

1. Chicago Convention on International Civil Aviation 1944.
2. Convention for the unification of certain rules relating to international carriage by air – the Warsaw Convention, as amended at The Hague in 1955 and the Montreal Protocol No. 4 of 1975.
3. The Guadalajara Convention 1961.
4. International Convention for the Unification of Certain Rules Relating to International Carriage by Air – the Montreal Convention 1999.
5. Convention on the Recognition and Enforcement of Foreign Arbitral Awards – the New York Convention 1958.
6. Convention on International Interests in Mobile Equipment and the Protocol to the Convention on Matters Specific to Aircraft Equipment – the Cape Town Convention 2005.

2. If your jurisdiction has signed and ratified the Cape Town Convention: a. Which qualifying declarations (opt-in and opt-out) has your jurisdiction made under the Cape Town Convention? b. Does the Cape Town Convention take priority over conflicting national law?

a.

Malaysia has made the following declarations when acceding to the Cape Town Convention:-

1) Malaysia declares that the following categories of non-consensual right or interest have priority under its laws over registered international interests:

a) Declaration under Article 39(1)(a) of the Cape Town Convention:-

- liens in favour of airline employees for unpaid wages arising since the time of a declared default by that airline under a contract to finance or lease an aircraft object;
- liens or other rights of an authority of Malaysia relating to taxes or other unpaid charges arising from or related to the use of that aircraft object and owed by the owner or operator of that aircraft object, and arising since the time of a default by that owner or operator under a contract to finance or lease that aircraft object; and
- liens in favour of repairers of an aircraft object in their possession to the extent of service or services performed on and value added to that aircraft object.

b) Declaration under Article 39(1)(b) of the Cape Town Convention:-

- nothing in the Cape Town Convention shall affect the rights of Malaysia or that of any entity thereof, intergovernmental organization in Malaysia or other private provider of

public services in Malaysia to arrest or detain an aircraft object under the laws of Malaysia for payment of amounts owed relating to those services provided in respect of that or another aircraft object.

2) Declaration under Article 40 of the Cape Town Convention: Malaysia declares that the following categories of non-consensual right or interest shall be registrable under the Cape Town Convention as regards any category of aircraft object as if the right or interest were an international interest:-

- liens in favour of airline employees for unpaid wages arising since the time of a declared default by that airline under a contract to finance or lease an aircraft object;
- liens or other rights of an authority of Malaysia relating to taxes or other unpaid charges arising from or related to the use of that aircraft object and owed by the owner or operator of that aircraft object, and arising since the time of a default by that owner or operator under a contract to finance or lease that aircraft object; and
- rights of a person obtaining a court order permitting attachment of an aircraft object in partial or full satisfaction of a legal judgment.

3) Declaration under Article 53 of the Cape Town Convention:

- Malaysia declares that all courts with competent jurisdiction under the laws of Malaysia are the relevant courts for the purposes of Article 1 and Chapter XII of the Cape Town Convention.

4) Declaration under Article 54(2) of the Cape Town Convention:

- Malaysia declares that any and all remedies available to the creditor under the Cape Town Convention which are not expressed under the relevant provision thereof to require application to the court may be exercised without court action and without leave of the court.

Lodged by the Malaysian government under the Protocol at the time of the deposit of its instrument of accession in respect thereof:

5) Declaration under Form No. 19 (opt-in declaration under Article XXX(1) in respect of Article VIII). Malaysia declares that it shall apply Article VIII.

6) Declaration under Form No. 26 (opt-in declaration under Article XXX(1) in respect of Article XII). Malaysia declares that it shall apply Article XII.

7) Declaration under Form No. 27 (opt-in declaration under Article XXX(1) in respect of Article XIII). Malaysia declares that it shall apply Article XIII.

8) Declaration under Form No. 21 (opt-in declarations under Article XXX(2) in respect of Article X providing for the application of the entirety of Article X). Malaysia declares that it shall apply Article X of the Protocol in its entirety and that the number of working days to be used for the purposes of the time limit laid down in Article X(2) of the Protocol shall be no more than:

- ten (10) working days in respect of the remedies specified in Article 13(1)(a), (b) and (c) of the Convention (respectively, preservation of aircraft objects and their value; possession, control or custody of aircraft objects; and, immobilisation of aircraft objects); and,
- thirty (30) working days in respect of the remedies specified in Article 13(1)(d) and (e) of the Convention (respectively, lease or management of aircraft objects and the income thereof; and, sale and application of proceeds from aircraft objects).

9) Declaration under Form No. 23 (general opt-in declarations under Article XXX(3) in respect of Article XI providing for the application of Alternative A in its entirety to all types of insolvency proceedings). Malaysia declares that it shall apply Article XI, Alternative A, of the Protocol in its entirety to all types of insolvency proceedings, and that the waiting period for the purposes of Article XI(3) of that Alternative shall be sixty (60) working days.

b.

Section 7(2) of the International Interests in Mobile Equipment (Aircraft) Act 2006, which incorporates the Cape Town Convention and the Aircraft Protocol into Malaysian law, states that:

“(2) ... to the extent of any conflict or inconsistency between the provisions of this Act and those of any other written law relating to matters governed by the Cape Town Convention and the Aircraft Protocol, the provisions of this Act shall prevail and the conflicting or inconsistent provisions of such other written law shall, to the extent of the conflict or inconsistency, be deemed to be superseded.”

The Cape Town Convention takes priority over any conflicting Malaysian law insofar as matters relating to the Cape Town Convention and the Aircraft Protocol are concerned.

3. Will a court uphold the choice of a foreign governing law in respect of the following contracts and if so, please also state any conditions or formality requirements to this recognition a. Lease and b. Security document (for example, mortgage)?

a. Lease

Generally, Malaysian courts will uphold and give effect to the governing law chosen by the parties to a contract, if such choice of law was made bona fide and not with an intention to

evade the provisions of Malaysian law.

In addition, Malaysia has made a Declaration that it shall apply Article VIII (Choice of Law) of the Aircraft Protocol.

b. Security document

Generally, Malaysian courts will uphold and give effect to the governing law chosen by the parties to a contract, if such choice of law was made bona fide and not with an intention to evade the provisions of Malaysian law.

In addition, Malaysia has made a Declaration that it shall apply Article VIII (Choice of Law) of the Aircraft Protocol.

4. Please confirm whether it is (i) customary and (ii) necessary to also take a local law mortgage and if so, why?

Malaysia has ratified the Cape Town Convention and pursuant to the International Interests in Mobile Equipment (Aircraft) Act 2006, a registered International interest under a mortgage is recognized and enforceable as a matter of Malaysian law. Therefore, it is not customary nor necessary, from a Malaysian law perspective, to take a Malaysian law mortgage.

5. Is your aircraft registry an owner-register (registering ownership interests) or an operator-register (registering interests as operator)? Please also state any conditions, procedural steps or formality requirements for such registration and explain how this is evidenced (for example, the issuance of a Certificate of Registration)

The Aircraft Registry maintained by the Civil Aviation Authority of Malaysia (“CAAM”) is an owner-register.

Aircraft registered in the Aircraft Registry maintained by CAAM must be owned by or leased to a “qualified person”. A “qualified person” is defined as:

1. the Government of Malaysia;
2. a citizen of Malaysia; or
3. a body incorporated and having its principal place of business in Malaysia.

Thus, an aircraft owned by a foreign entity may be registered in the Aircraft Registry maintained by the CAAM, provided that the aircraft is leased to a qualified person.

The owner of the aircraft may make an application to the CAAM to register the aircraft in the

Aircraft Registry by submitting a form together with all evidence of ownership. If the aircraft owner is a foreign entity, the aircraft must be leased to a qualified person and evidence of the lease must be submitted.

Once the CAAM registers the aircraft in the Aircraft Register, a Certificate of Registration will be issued.

6. Is there a security document register in your jurisdiction where a mortgagee's interests will be recorded? If so, please also state any conditions, procedural steps or formality requirements for such registration and explain how this is evidenced (for example, the issuance of a certificate or official stamp on the security document)

There is no separate register of aircraft mortgages in Malaysia. An aircraft mortgagee's interests may be registered in the Aircraft Register maintained at the CAAM.

Once registered in the Aircraft Register, the details of the aircraft mortgage and the mortgagee will be disclosed on an aircraft search made on the aircraft registered in the Aircraft Register. The registration of an aircraft mortgage on the Aircraft Register has no effect on the validity or priority of the aircraft mortgage. Such registration serves as a notice to third parties of the security interests of the mortgagee in the aircraft that is registered in the Aircraft Register.

If the mortgagor is a Malaysian or Labuan incorporated company, details of the mortgage will have to be registered in the Register of Charges of such company. A statement of the particulars of the aircraft mortgage has to be lodged:

(a) in the case of a Malaysian company incorporated under the Companies Act 2016, with the Companies Commission of Malaysia ("**CCM**"), within 30 days of the date of creation of the aircraft mortgage; or

(b) in the case of a Labuan company incorporated under the Labuan Companies Act 1990, with the Registrar of Companies at the Labuan Financial Services Authority ("**LFSA**"), within 1 month of the creation of the aircraft mortgage.

Once the mortgage is registered under paragraphs (a) or (b) above, a Certificate of Registration of Charge would be issued by the CCM or LFSA (as the case may be). The details of the registered charge will be disclosed in any company search conducted at the records of CCM or LFSA.

7. What is the effect of registration of: a. Ownership interest (for example, proof of title to third parties of ownership) b. Lease (for example, perfects the status of the

Lessor under the Lease) c. Security document (for example, secures priority over later registered security). If there are any interests that could rank prior to the security document please state these

a. Ownership interest

Registration of an owner's interest in the Aircraft Register maintained at the CAAM is a legal requirement under the Civil Aviation Act 1969 and Civil Aviation Regulations 2016 of Malaysia. Any changes in the ownership of the aircraft has to be registered within 30 days of the change in ownership.

The registered owner of the aircraft in the Aircraft Registry is prima facie, though not conclusive, evidence of ownership of the aircraft.

b. Lease

There is no requirement under Malaysian law for the registration of an aircraft lease per se. There is no separate registration of leases in the Aircraft Register. If the aircraft is leased by the owner to a lessee, the lease agreement is to be submitted to the CAAM and the lease is noted in the Aircraft Register. The entry of the lease of the aircraft in the Aircraft Register serves as a notice to third parties of the existence of the lease over the aircraft.

c. Security document

The entry of the details of an aircraft mortgage in the Aircraft Register maintained by the CAAM serves as a notice to third parties of the existence of the mortgage on the aircraft. Under Malaysian law, the entry of the aircraft mortgage on the Aircraft Register does not secure any priority of the aircraft mortgage over other security interests.

In the case of a mortgagor which is a Malaysian company incorporated under the Companies Act 2016, registration of a statement of particulars in respect of a charge with the Companies Commission of Malaysia ("CCM") within 30 days of the creation of the mortgage is a legal requirement under the Companies Act 2016. If the mortgage is not registered with the CCM by the 30-day deadline, the mortgage would be void against the liquidator and other creditors of the mortgagor, as provided under the Companies Act 2016.

In the case of a mortgagor which is a Labuan company, registration of a statement of particulars in respect of a charge with the Labuan Financial Services Authority ("LFSA") within 1 month of the creation of the mortgage, is a legal requirement under the Labuan Companies Act 1990. However, unlike the Companies Act 2016, breach of this registration of charge requirement would not affect the validity or priority of the mortgage under the Labuan Companies Act 1990.

Please refer to the Declarations made by Malaysia (as discussed above) in respect of the Cape Town Convention, on interests that would rank prior to a security document.

8. What types of lease are recognized in your jurisdiction (for example, translation, notarization, apostille, legalization etc.)?

Malaysian law recognizes financial leases and operational leases.

9. What formalities are required to perfect Lessor's rights under a lease in your jurisdiction?

Under Malaysian law, a lease agreement may be executed under hand. It may be in the English language and no local law translation is necessary. There are no notarization, apostille or legalization requirements for the legality and validity of the lease agreement under Malaysian law. The usual Malaysian law formalities for a lease agreement are:

1. Stamp duty at the rate of 0.5% of the value of the rentals under the lease, is payable on a lease agreement. However, if the lease is executed by a Labuan leasing company pursuant to its Labuan leasing business, and the lease agreement is exempt from stamp duty, if the Labuan company as a Labuan business activity is in compliance with the Labuan Business Activity Tax (Requirements for Labuan Business Activity) Regulations 2018.
2. If the lease agreement contains a power of attorney, the execution of the lease agreement has to be authenticated by, inter alia, an Advocate and Solicitor of the High Court of Malaya, a Commissioner for Oaths or a Notary Public, and the power of attorney has to be registered in the High Court of Malaya pursuant to the Powers of Attorney Act 1949. If the power of attorney is not registered in the High Court of Malaya, the power of attorney is ineffective within West Malaysia.

10. Are the ownership rights relating to engines recognized as separate and distinct from the ownership of the rest of the aircraft in your jurisdiction? Please highlight any separate registration, filing or additional formalities that are required to be completed to perfect Lessor's interest in the engines

Ownership rights in engines are recognized as separate from the ownership of the aircraft, pursuant to the International Interests in Mobile Equipment (Aircraft) Act 2006. Any ownership interests in engines which are registered at the international registry will be recognized by Malaysian law. However, there is no engine registry maintained by the CAAM and there is no means in Malaysia of registering an owner's or mortgagee's interests in any aircraft engine.

11. What form does security over aircraft generally take in your jurisdiction?

The usual form of security in Malaysia over an aircraft is an aircraft mortgage.

12. Are there any particular terms or characteristics that such a security document must take (for instance, a cap on the secured liabilities)?

There are no specific terms or characteristics that an aircraft mortgage must take for it to be valid and enforceable in Malaysia.

13. Are there any perfection requirements for such security document? If so, please state any conditions, procedural steps, formality requirements or documentation (for example, corporates, list of directors etc.) required to effect this

We assume that the owner/mortgagor is a foreign (i.e. non-Malaysian) entity, which grants an aircraft mortgage in favour of a mortgagee over aircraft that is leased to a Malaysian lessee/operator.

An aircraft mortgage which is registered in the international registry would be recognized under Malaysian law pursuant to the International Interest in Mobile Equipment (Aircraft) Act 2006.

The usual formalities in Malaysia in respect of an aircraft mortgage created by a foreign entity are as follows:

1. The particulars of the aircraft mortgage may be entered at the Aircraft Register maintained at the CAAM. This registration of the mortgage with the CAAM serves to give notice of the existence of the aircraft mortgage.
2. Ad valorem stamp duty of up to RM2,000 (if the mortgage secures a foreign currency credit facility), is payable on the mortgage document, and a nominal stamp duty of RM10 is payable on each duplicate set thereof. However, if the mortgage document is executed by a Labuan company as a Labuan business activity is in compliance with the Labuan Business Activity Tax (Requirements for Labuan Business Activity) Regulations 2018, the mortgage document would be exempt from stamp duty.
3. If the mortgage document contains a power of attorney:
 - the execution of the mortgage has to be authenticated by, inter alia, an Advocate and Solicitor of the High Court of Malaya, a Commissioner for Oaths or a Notary Public, and
 - the power of attorney has to be registered in the High Court of Malaya pursuant to the Powers of Attorney Act 1949.

If the power of attorney is not registered in the High Court of Malaya, the power of attorney is ineffective within West Malaysia (though the effectiveness of the power of attorney outside West Malaysia is not affected by such non-registration).

14. Are cut-through clauses under the insurance and reinsurance documentation legally effective in your jurisdiction?

Cut-through clauses should be effective as a matter of Malaysian law.

15. Are there minimum requirements for the amount of third-party liability cover that must be in place in your jurisdiction?

Article 50 of the Montreal Convention 1999, which mandates state parties to require a carrier to maintain adequate insurance covering the carrier's liability, has been incorporated into Malaysian law under the Carriage by Air Act 1974.

However, there is no publicly available information on the specific minimum amount of third party liability cover a carrier must have in place. Carriers are required to submit details and evidence of insurances when applying for various licenses and permits from the CAAM or the Malaysian Aviation Commission (MAVCOM). For example:

(a) when applying for an Air Services License or Air Services Permit from MAVCOM, applicants must submit certificates from insurers evidencing that appropriate insurance is held by the applicant in relation to:

- (i) Passenger liability;
- (ii) Third party liability;
- (iii) Cargo and baggage liability; and
- (iv) Injury and loss because of active hostilities or civil unrest.

(b) a holder of Foreign Air Operator Certificate granted under the law of any state must submit, inter alia, the Carrier's Liability Insurance Certificate to the CAAM.

16. Can a mortgagee (or equivalent security interest holder) or lessor following an event of default under a mortgage (or equivalent security document) or lease, respectively, take possession of the aircraft without judicial intervention in your jurisdiction? Please also state any conditions, procedural steps, formality requirements or documentation (for example, original, legalized, translated Lease/Mortgage, corporates etc.) required to effect this

A mortgagee or lessor can technically repossess an aircraft without judicial intervention in Malaysia, by exercising their respective enforcement powers in the mortgage/lease.

Malaysia has made a Declaration under Article 54(2) of the Cape Town Convention that any and all remedies available to the creditor under the Cape Town Convention which are not expressed under the relevant provision thereof to require application to the court, may be exercised without court action and without leave of the court.

However, if the repossession is contested by the mortgagor/lessee (such as where

mortgagor/lessee denies access to the aircraft, or fails to deliver up the aircraft to the lessor/lender), the lessor/lender may need to obtain an order of Court for, inter alia, the enforcement of the terms and conditions of the mortgage/lease and the re-delivery of the aircraft in accordance with the terms of the mortgage/lease.

The formalities required to commence a court action in Malaysia would include the filing of an originating summons in court, affidavits in support of the originating summons, and the submission of the duly stamped (or duly exempted from stamp duty) lease/security documents (including IDERAs) relied on by the lessor/mortgagee to enforce its rights under the lease/mortgage.

17. How can a mortgagee (or equivalent security interest holder), lessor under a lease or designee/beneficiary of an IDERA deregister the aircraft? Please also state any conditions, procedural steps, formality requirements or documentation (for example, original, legalized, translated Lease/Mortgage/IDERA etc.) required to effect this

A lessor under a lease has the right to deregister an aircraft, as the Aircraft Register maintained by the CAAM is an owner-register.

A mortgagee enforcing an IDERA to deregister an aircraft has to ensure that the IDERA has been duly registered with the CAAM prior to the exercise of the rights under the IDERA.

Deregistration may be effected by the owner (if there is no mortgage or IDERA in place) or holder of an IDERA (as the case may be) by submitting to the CAAM a duly completed Application for the Deregistration of Aircraft Form.

18. Can the government or the lessee lawfully prevent the repossession or deregistration and if so, in what circumstances

The repossession or deregistration may be delayed or withheld if there are preferred creditors ranking in priority to the interests of the mortgagee/lessor, which include:

- airline employees' unpaid wages;
- liens or other rights of an authority of Malaysia relating to taxes or other unpaid charges arising from or related to the use of that aircraft; and
- liens in favour of repairers of that aircraft, to the extent of service or services performed on and value added to that aircraft.

19. If judicial intervention is required, please describe the process? Please also state

any procedural steps, length of time to complete and advise as to documentation required

Court proceedings in Malaysia to enforce the rights of a lessor/mortgagee may be commenced by the filing of an originating summons in court by the lessor/mortgagee, affidavits in support of the originating summons, and the submission of the duly stamped (or duly exempted from stamp duty) lease/security documents (including IDERAs) relied on by the lessor/mortgagee, to enforce its rights under the lease/mortgage.

The Declarations made by the Cape Town Convention and Aircraft Protocol oblige Malaysian courts to provide timely relief, for example:

- ten (10) working days in respect of the remedies specified in Article 13(1)(a), (b) and (c) of the Convention (respectively, preservation of aircraft objects and their value; possession, control or custody of aircraft objects; and, immobilisation of aircraft objects); and,
- thirty (30) working days in respect of the remedies specified in Article 13(1)(d) and (e) of the Convention (respectively, lease or management of aircraft objects and the income thereof; and, sale and application of proceeds from aircraft objects).

To date there are no publicly reported cases in Malaysia on a contested repossession of aircraft pursuant to the Cape Town Convention.

20. How is legal title transferred under the laws of your jurisdiction? Please also state any conditions, procedural steps, formality requirements or documentation (for example, corporates etc.) required to effect this

Legal title of an aircraft may be transferred by:

1. Physical delivery of the aircraft; or
2. Pursuant to a Bill of Sale.

Under Malaysian law, a Bill of Sale has to be stamped with ad valorem stamp duty of up to 4% of the value of the asset being transferred, if the asset is located in Malaysia when the transfer is effected.

For this reason, most Bills of Sale in respect of transfers of title of Malaysian aircraft are executed and kept outside Malaysia, and the title transfers take place when the aircraft is over international airspace.

21. Are there any restrictions on the sale of an aircraft following enforcement (for example, the requirement to obtain a court order or conduct a public auction or other action in order to sell the aircraft upon enforcement)

An aircraft may be sold by way of private treaty. There is no legal requirement to obtain a court order for sale or conduct a public auction following an enforcement. However, in the Malaysian practice relating to enforcement by chargees over charged assets, court orders are normally obtained, as court orders may ease the enforcement process. A sale by way of public auction would also reduce the risks of allegations against the chargee of the sale being at under value or prejudicing the interests of the chargor.

22. Would lease rentals be subject to tax (for example, withholding or income tax)? Please also state if there are any conditions for such tax to be imposed and any steps usually taken to mitigate this

Payments by a Malaysian lessee to a foreign lessor may be subject to withholding tax. Many aircraft leases in Malaysia are structured with a lessor or intermediate lessor which is a Labuan leasing company. Rentals, interests, royalties, fees and other payments paid to a Labuan lessor by a Malaysian lessee would not attract withholding tax, and such payments by a Labuan lessee to a foreign lessor would also not attract withholding tax.

23. Would a sale of an aircraft in your jurisdiction incur sales tax? Please also provide details of amount or calculation and any steps usually taken to mitigate this

The sale of aircraft is exempted from sales tax in Malaysia.

24. Are there any restrictions on the import or export of aircraft in your jurisdiction and would such importation or exportation incur any liability as to customs or taxes? Please also state if any consents or approvals are required and the procedural steps taken to obtain these, and any procedural steps or formality requirements to mitigate any taxes

The import or export of Aircraft is not subject to any import or export duty in Malaysia.

There is no requirement to obtain an import or export license or permit, but a complete declaration must be made to the Royal Malaysian Customs (“**RMC**”) before the aircraft is being imported into or exported out of Malaysia.

25. Are there any foreign exchange restrictions on transfers of funds

An operational leasing facility is exempted from the definition of a “borrowing” for the purposes of the Foreign Exchange Notices (“**FX Notices**”) issued by Bank Negara Malaysia (“**BNM**”). Therefore, no foreign exchange approvals are necessary for in an operational lease for:

- a Malaysian lessee enter into an operational lease with a foreign lessor;
- a Malaysian guarantor issue a guarantee to a foreign lessor to guarantee obligations under an operational lease.

A financial lease falls within the definition of a “borrowing” under the FX Notices. A Malaysian-resident entity is allowed to borrow in foreign currency:

- in any amount from:
 - a licensed onshore bank, or
 - a non-resident foreign entity within the Malaysian entity’s corporate group (other than a non-resident financial institution or a non-resident special purpose vehicle); and
- up to the limits stated in the FX Notices from a non-resident of Malaysia.

If the financial lease exceeds the borrowing limits stated in the FX Notices, the financial lease would require the approval of BNM.

In respect of a financial guarantee (which is a guarantee that secures a borrowing), a non-bank resident guarantor is allowed to give a financial guarantee in any amount in ringgit or foreign currency to secure a Borrowing obtained by the non-resident in ringgit or foreign currency, excluding a financial guarantee given to secure a Borrowing:

- Obtained by a non-resident borrower which is a Special Purpose Vehicle (being an entity set up solely for the purpose of Borrowing and is not an operating business unit);
- Where the resident guarantor has entered into a formal or informal arrangement to make repayment of the Borrowing in foreign currency other than for an event of default.

The breach of the approval or registration requirements under the FX Notices would be a contravention of Section 214(9) of the Financial Services Act 2013 (“FSA”). However, such contravention would not affect the legality and validity of the underlying transaction. The possible practical effect of any breach of the FX Notices are that the repatriation of lease rental, principal, interest or other proceeds or payments due to the lender or lessor under the transaction documents may be withheld or delayed, pending the grant of the relevant approvals from or registrations with Bank Negara Malaysia.

26. How successful have foreign creditors and lessors been in enforcing their security and lessor rights over and successfully repossessing aircraft in a timely manner?

There has been no publicly reported cases of foreign creditors or lessors repossessing aircraft in Malaysia in a contested repossession scenario.

27. What government led reforms affecting creditor and lessor rights are currently underway in the aviation sector in your jurisdiction?

There is a COVID-19 Act being drafted by the Malaysian government. From press reports, we understand that the COVID-19 Act provides for a moratorium on certain contractual claims, and is not specific to the Malaysian aviation sector. We are unable to comment whether the Malaysian COVID-19 Act will affect creditor and lessor rights in the aviation sector in

Malaysia.

We are not aware of any government led reforms affecting creditors and lessors rights which are specific to the aviation sector. The reported Malaysian Government efforts at supporting the aviation sector in Malaysia have, to date, mainly been in providing liquidity to the airlines by way of government guaranteed loans and credit facilities, and waiver of certain governmental taxes and fees due from companies in the aviation sector.

28. Please describe any interesting legal development in your jurisdiction (for instance, decided court cases or arbitral awards) which affect creditor and lessor rights?

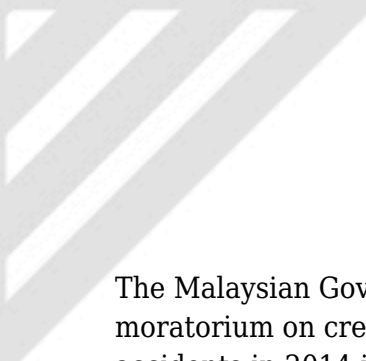
The Malaysian Companies Act 2016 has introduced judicial management as an alternative corporate rescue mechanism. Certain distressed debtor companies in Malaysia have attempted to use judicial management as a shield, to put in place a moratorium against creditors' actions for the period of judicial management. We have also seen creditors use the threat of judicial management as a means to pressure debtor companies for payment or to restructure.

29. Please discuss any relevant governmental regulations implemented in your country to help alleviate the financial and other difficulties faced by airlines in your jurisdiction caused by CoVid 19 and whether that will impact rights of lessors (who lease aircraft to the airlines) and lenders (who finance such aircraft which are mortgaged in favour of the lenders)? Are such governmental regulations expected to be in place until the difficulties faced by airlines caused by the CoVid 19 subside or are they more long term?

We are not aware of any specific concrete proposals made by the Malaysian Government that will affect the rights of lessors and financiers vis-à-vis difficulties faced by Malaysian airlines caused by COVID-19. Thus far, the Malaysian Government's efforts which have been reported have been concentrated in alleviating consumers' burdens, with a 6-month moratorium (expiring 30 September 2020) on housing and car loan repayments, and supporting businesses operating in Malaysia by providing soft loans.

The reported Malaysian Government efforts at supporting the aviation sector in Malaysia have, to date, mainly been in providing liquidity to the airlines by way of government guaranteed loans and credit facilities, and waiver of certain governmental taxes and fees due from companies in the aviation sector.

There is a COVID-19 Bill currently being drafted by the Malaysian Government, which may affect creditors' rights of enforcement generally, but there is to date little public information on the exact scope of the COVID-19 Bill. The Malaysian Minister of Finance has stated that the COVID-19 Bill will follow the equivalents in New Zealand and Singapore.



The Malaysian Government had, in the past, passed specific legislation that imposed a moratorium on creditors' claims against Malaysian Airline System (MAS), following the twin accidents in 2014 involving the disappearance of MH370 and the shooting down in Ukraine of MH17. This was the Malaysian Airline System Berhad (Administration) Act 2015 (the "MAS Administration Act"), that imposed a 2-year moratorium on claims against MAS while MAS restructured its operations. The MAS Administration Act is still in the statute books, but the administration of MAS has ended. Following the administration of MAS, a new company, Malaysia Airlines Berhad (MAB) has taken over the operations of MAS.

We are not aware of any attempt, to date, by the Malaysian Government to repeat this method of airline restructuring involving airline-specific legislation that imposes a moratorium on creditors' (including aircraft lessors and mortgagors) claims against a specific airline.