PAPUA NEW GUINEA

Michael Sullivan (with assistance from Special Counsel John Biddle and lawyer Naomi Anis)[1]

Registration

1. Registration of Aircraft

Is there a Register of Aircraft?

PNG 1.1 Yes.

Pursuant to the Civil Aviation Act 2000 (Civil Aviation Act), the Independent State of Papua New Guinea (PNG) has established the Papua New Guinea Register of Aircraft (Register of PNG Aircraft). The Civil Aviation Act and the Register of PNG Aircraft are administered by the Civil Aviation Safety Authority of Papua New Guinea (CASA PNG). Under the Civil Aviation Act, the Director of Civil Aviation (the Director) is authorised to record on the Register[2] :

- such particulars as may be prescribed under the Civil Aviation Act relating to the aircraft to be registered (see PNG 1.4) including:
    - particulars of every lien against a registered aircraft; and
    - at the absolute discretion of the Director, a note of any security or other financial interest held by any person in a particular aircraft.

The form of Application for Registration of an Aircraft and an extract of the Register of PNG Aircraft current at 4 December 2023 can be viewed at *https://casapng.gov.pg/forms-and-applications/* [Accessed 29 January 2024].

What aircraft may be registered?

PNG 1.2 The Civil Aviation Act provides that a person lawfully entitled to the possession of an aircraft for a period of 28 days or longer which flies to, from, within or over PNG territory must register that aircraft and hold a valid certificate of registration (a Certificate of Registration) for that aircraft from one of the following[3] :

- the Director, where the aircraft is operated by a PNG operator and is registered on the Register of PNG Aircraft;
- the appropriate aeronautical authorities of a Contracting State[4] —in this case, the aircraft is registered on an overseas aircraft register; or
- the appropriate aeronautical authorities of another State that is party to an agreement with the Government of PNG or CASA PNG which provides for the acceptance of each other's registrations—in this case the aircraft is registered on an overseas aircraft register.

No aircraft may be registered in or remain registered in PNG if it is registered in another country.

---

[1] LEAHY LEWIN LOWING SULLIVAN LAWYERS, Level 5, MRDC Haus (formerly Pacific Place), Cnr Champion Parade and Musgrave Street, Port Moresby, Papua New Guinea; Tel: +675 3203333; Fax: +675 3213631; Email: sullivan@llls.com.pg. Michael Sullivan is the firm's managing partner and an experienced aircraft financing lawyer. *The law in this chapter is up to date to January 2024.* [2] Civil Aviation Act s.65.

[2] Civil Aviation Act s.65.

[3] Note that this is also a requirement of ordinary rules (commonly referred to as the Civil Aviation Rules) issued in accordance with the Civil Aviation Act.

[4] "Contracting State" means a country which has ratified the Convention on International Civil Aviation at Chicago on 7 December 1944 (the Convention) and includes: (i) any amendment to the Convention which has entered into force under art.94(a) of the Convention and has been ratified by PNG; and (ii) any Annex or amendment thereto accepted under art.90 of the Convention; and (iii) the international standards and recommended practices from time to time accepted and amended by the International Civil Aviation Organisation pursuant to art.37 of the Convention.

The Director may decline to register an aircraft in accordance with the provisions of regulations (the Regulations) or rules (the Rules) made under the Civil Aviation Act.

The Rules provide that an applicant is entitled to have an aircraft registered in PNG and is entitled to the grant of a Certificate of Registration if the Director is satisfied that:

- the aircraft is not registered in any other State;
- the applicant is lawfully entitled to the possession of the aircraft for 28 days or longer;
- the applicant is a fit and proper person in accordance with the criteria specified in Civil Aviation Act s.50; and
- the granting of the Certificate of Registration is not contrary to the interests of aviation safety.

What documentation and consents are required for registration?

PNG 1.3 The applicant for registration is required to complete a Civil Aviation and Safety Authority form (CASA Form) 47/01, which must specify[5] :

- the manufacturer, model and serial number of the aircraft;
- the name and address for service in PNG of the applicant; and
- such further particulars relating to the aircraft and the applicant as may be required by the Director.

CASA Form 47/01 must be submitted to the Director along with the application fee prescribed by the Regulations (see PNG 1.5, below). The Director may also require the applicant to produce all, or any, of the following, as may be reasonable in the circumstances[6] :

- details of the manufacturer, model and serial number of the aircraft;
- evidence of the identity of the applicant; or
- a statutory declaration by the applicant that that person is, or on a date specified in the application will be, lawfully entitled to the possession of the aircraft for 28 days or longer.

As a matter of practice, the list of manufacturer and maintenance documents required by CASA PNG depends on the identity of the manufacturer and the model of the aircraft proposed to be registered. In order to ensure that registration occurs smoothly, it is advisable that a technical person from the entity proposing to register the aircraft in PNG (for example, an engineer):

- contacts CASA PNG in advance of the proposed registration of the aircraft to ascertain the documents that CASA PNG will require to satisfy itself of the airworthiness of the aircraft proposed to be registered; and
- inspects those documents and confirms that all the relevant documents which CASA PNG will require to satisfy itself of the airworthiness of the aircraft are in fact available.

What particulars are recorded in the Register?

PNG 1.4 The Register of PNG Aircraft includes the following particulars for each PNG registered aircraft[7] :

- the date of registration;
- the description of the aircraft given in the application;
- the name and address for service of the person lawfully entitled to the possession of the aircraft for 28 days or longer;

---

[5] Civil Aviation Rules Pt 47.53(b).
[6] Civil Aviation Rules Pt 47.53(c).
[7] Civil Aviation Rules Pt 47.55.

- the registration mark allocated to the aircraft by the Director; and
- other information recorded in the Certificate of Registration (in particular, the name and address of the legal owner of the aircraft).

As a matter of practice, CASA PNG requires the name and address of each person and company holding an interest in the aircraft and their respective signatures on the application form. In the past, CASA PNG has also accepted:

- correspondence outlining details of various interests held in the subject aircraft; and
- copies of any relevant security documents, leases, sale of aircraft agreements or powers of attorney granted in relation to the subject aircraft.

What are the opening hours and the registration fees?

PNG 1.5 The registry is open on weekdays from 8.00am to 4.30pm.

Aircraft Registration Fees (updated in June 2019 and still current at January 2024)[8]	
Action	Minimum charge payable in advance (monetary amounts shown with the prefix K are in PNG Kina)
Initial registration	K600
Annual fee for maintenance of the Register	The annual fee is charged according to the aircraft weight. (a) FWA – < 4,500 kg K100 (b) FWA – > 4,500 kg – 6,500 kg K300 (c) FWA – > 6,500 kg – 18,000 kg K2,000 (d) FWA – >18,000 kg K4,000 (e) RWA – up to 4,500 kg K50 (f) RWA – < 4,501 to 6,500 kg K100 (g) RWA – > 6,500 kg K200
Change of registration	K500
Cancellation of PNG registration	K300
Change of ownership	K300

Can the Register be amended?

PNG 1.6 The Director, through CASA PNG, may amend the Register of PNG Aircraft whenever it appears necessary or appropriate to bring it up to date or to correct the registered particulars. Pursuant to the Rules,[9] this may include cancellation/revocation of the Certificate of Registration if the Director is satisfied that:

- the aircraft is destroyed, lost or stolen;

---

[8] See *https://casapng.gov.pg/wp-content/uploads/2019/06/Revised-Regulatory-Fees-Charges-Updated-June-2019.pdf* [Accessed 21 October 2020].

[9] Civil Aviation Rules Pt 47.69.

- the aircraft is permanently withdrawn from use;
- a person lawfully entitled to possession of the aircraft for 28 days or longer has applied to register the aircraft in another country; or
- the aircraft is registered in any country other than PNG.

The holder of a Certificate of Registration is obliged to notify the Director, in writing, within 14 days of becoming aware that the aircraft is destroyed, lost or stolen or permanently withdrawn from use. Likewise, where there is a change of ownership, or the holder of a Certificate of Registration ceases to have lawful entitlement to possession of the registered aircraft for a period of 28 days or longer, the Certificate of Registration will expire and the holder is obliged, within 14 days of the date of such expiry, to ensure the completion of:

- the form printed on the reverse side of the Certificate of Registration; or
- CASA Form 47/01,

and submit such form to the Director with a payment of the appropriate fee prescribed by the Regulations.

What is the effect of registration?

PNG 1.7 The registration of the owner's details in the Register of PNG Aircraft constitutes prima facie evidence of ownership of the aircraft. However, such evidence is not conclusive. Although indicative, the Register of PNG Aircraft is not conclusive concerning the priority of interests of owners and secured parties. Notation in the Register of PNG Aircraft does not confer recognition and priority and does not give an owner/lessor priority over any subsequent filings.

Each aircraft registered by the Director in the Register of PNG Aircraft is accorded PNG nationality.

See also PNG 2.1.

How is deregistration effected?

PNG 1.8 Generally, an application for cancellation of a Certificate of Registration is made by the registered owner of the aircraft. The holder of the Certificate of Registration must complete the relevant form and submit this to the Director within 14 days of the expiry of the Certificate of Registration (see PNG 1.6). The registration will be cancelled if the Director is satisfied that the Certificate of Registration has expired and that no new application has been submitted within 14 days of the date on which the Certificate of Registration expired.[10]

In the event that registration is disputed, or where there is a change in possession of the aircraft, the party seeking to dispute the registration particulars or deregister the aircraft must provide evidence to the Director or CASA PNG that the entity noted as the owner/operator in the Register of PNG Aircraft is no longer lawfully entitled to possession of the registered aircraft.[11] The Director is entitled to revoke the Certificate of Registration at the Director's discretion.

The Director also retains broad authority to revoke the Certificate of Registration in accordance with the Civil Aviation Act (for example, the Director may cancel registration of an aircraft in the interests of aviation safety).

Finally, where the Director is satisfied that any outstanding amounts secured by a lien on the aircraft are unpaid, the Director may, having regard to all the circumstances, including the steps taken, if any, by a person to pay the whole or part of the outstanding amounts secured by the aircraft lien, cancel the Certificate of Registration.[12] The aircraft will not be re-registered

[10] Civil Aviation Rules Pt 47.69(a)(5).
[11] Civil Aviation Rules Pt 47.57(a)(2).
[12] Civil Aviation Act s.113 and the Civil Aviation Rules Pt 47.69(a)(4).

until the aircraft lien is withdrawn or the Director otherwise considers it appropriate to re-register the aircraft.

Can a Deregistration Certificate be obtained on registration?

PNG 1.9 A Deregistration Certificate is not issued. When it comes to the process of seeking deregistration, a power of attorney in relation to deregistration of an aircraft is not expressly recognised in the aviation law of PNG. CASA PNG, however, has previously accepted a power of attorney authorising a lessor to take all necessary actions on behalf of a lessee to deregister an aircraft and export it from PNG.

2. Registration of Aircraft Mortgages

Is there a Register of mortgages or rights over aircraft?

Civil Aviation Act

PNG 2.1 No—see PNG 1.1 and PNG 1.2.

There is no requirement that the interests of a person (such as the holder of a security interest) be recorded in the Register of PNG Aircraft.. However, under the Civil Aviation Act s.65(4), the Director has a discretion to record in the Register of PNG Aircraft at the request of any person a note of any security or other financial interest held by that person in an aircraft.

As a matter of practice, CASA PNG requires the name and address of each person and company holding an interest in the aircraft and their respective signatures on the application form for Registration of Aircraft.

Personal Property Security Act

Yes.

A “security interest” in personal property (including aircraft or any component of an aircraft) may be registered under the Personal Property Security Act 2011 (the PPS Act).

A “security interest” may be registered electronically by filing a “Notice” at the Personal Property Security Registry (PPS Registry) maintained by the Companies Office website.

“Personal property” is essentially any form of property other than land, and is defined to include:

(a) goods (equipment, inventory, farm products, crops, manufactured or demountable homes and minerals and petroleum from the time of extraction);

(b) chattel paper (a document that evidences both a monetary obligation and a security interest in specific goods);

(c) investment property;

(d) document of title (a document that evidences bailment that covers goods);

(e) an instrument (bill of exchange, note, cheque or any other document that evidences a right to payment of money);

(f) money; or

(g) intangible property (any personal property not mentioned above, including bank accounts, intellectual property, licence and an interest in a mortgage or charge with respect to real property).

“Personal property” clearly includes aircraft and spare parts.

A “security interest” is defined generally as an interest in personal property that secures payment of money or performance of an obligation.

A security interest in an aircraft in PNG may be perfected in any of the ways prescribed by the PPS Act. This will generally involve registering a notice electronically in the PPS Registry or by taking possession of the aircraft.[13] While the PPS Act details various other ways in which security interests may be perfected, those methods in practice would apply where the security interest is held in an instrument rather than in something like an aircraft.

Enforcement of a security interest in an aircraft in PNG will also be regulated by the PPS Act.

A security interest under the PPS Act, whether or not it is perfected, is subordinate to a mortgage, charge, lien or other interest registered with respect to aircraft under the Civil Aviation Act without regard to the time of attachment or perfection of the security interest under the PPS Act or the time of registration of a notice under the PPS Act.[14] .

Accordingly, it is important to seek to have details of an aircraft mortgage recorded in the Register of PNG Aircraft as soon as possible. Note however that the Director may, but is not obliged to, record those details in the Register of PNG Aircraft.

Recognition of common law concepts of mortgages and charges

In accordance with the Constitution of the Independent State of Papua New Guinea (the Constitution) Sch.2.3 and Underlying Law Act 2000 s.3, PNG has adopted the principles and rules of common law and equity in force in England immediately prior to the country's independence on 16 September 1975.

PNG law therefore recognises common law concepts of legal and equitable mortgages, and the various rights of a mortgagee under contract to enforce a mortgage upon default of the mortgagor, including seizure and sale of any property over which the mortgage was granted (subject to any statutory requirements governing the effect and/or priority of a mortgage)—see PNG 2.1(b).

What documents and consents are required for registration?

PNG 2.2 See PNG 2.1.

What are the opening hours and registration fees?

Civil Aviation Act

PNG 2.3 See PNG 1.5.

Personal Property Security Act

The Companies Office is open from 8.00am to 3.00pm weekdays (excluding public holidays).

The fee for registering a "Notice" of security interest is K20 per notification.

Can the Register be amended?

Civil Aviation Act

PNG 2.4 There is no specific power conferred by the Civil Aviation Act on the Director or any other person to amend the Register of PNG Aircraft. The Director does however have the power to amend or revoke a registration upon written request from the holder of the relevant registration.[15]

---

[13] PPS Act ss.23 and 25.

[14] PPS Act s.75.

[15] Civil Aviation Act s.56.

As a matter of practice, however, the Director will amend the Register of PNG Aircraft if it is established to the Director's reasonable satisfaction that information contained in the Register is incorrect or misleading.

Personal Property Security Act

Yes.

The initial notice registered on the electronic PPS Register can be amended by filing an amended notice in the PPS Registry.

The amended notice must identify the initial notice registration number, the identity of the authorising secured party, clearly indicate that this is an amendment to the initial notice and finally must provide all information required of an initial notice.

Will registration secure priority for the mortgagee?

Civil Aviation Act

PNG 2.5 Including details of a security over aircraft in the Register of PNG Aircraft may affect the priority of the security vis a vis security interests in the same aircraft that are notified under the PPS Act. As stated above a security interest under the PPS Act, whether or not it is perfected, is subordinate to a mortgage, charge, lien or other interest registered with respect to an aircraft under the Civil Aviation Act without regard to the time of attachment or perfection of the security interest under the PPS Act or the time of registration of a notice under the PPS Act.[16] However, as also stated above at PNG 2.1, the Director does not maintain a register of mortgages over PNG Aircraft but retains a discretion to record in the Register of PNG Aircraft a note of any security or other financial interest held by a person in an aircraft

Personal Property Security Act

A security interest in an aircraft under the PPS Act, whether or not it is perfected is subordinate to a mortgage, charge, lien or other interest registered with respect to aircraft under the Civil Aviation Act 2000 despite the time of attachment, perfection or the time of registration of the security interest under the PPS Act. Priority between conflicting perfected security interests in the same aircraft will be determined by the earlier of:

- registration of a notice that describes the secured property (collateral), without regard to the date of attachment of a security interest; or
- perfection of the security interest.[17]

A perfected security interest in an aircraft will have priority over an unperfected security interest.[18]

Priority between conflicting unperfected security interests in an aircraft will be determined by the order of attachment of the security interests.[19]

What is the effect of registration?

PNG 2.6 See PNG 2.1 and PNG 2.5

[16] PPS Act s.75.

[17] PPS Act s.33(2).

[18] PPS Act s.33(3).

[19] PPS Act s.33(4).

How is deregistration effected?

Civil Aviation Act

PNG 2.7 An aircraft remains registered under the Register of PNG Aircraft until the Director revokes the Certificate of Registration. Among other reasons, the Director may revoke a Certificate of Registration.[20] In addition, note that the Director may deregister an Aircraft in the following circumstances:

- upon the request of the holder of a Certificate of Registration;
- if the Director is satisfied that:
  - the aircraft is destroyed, lost or stolen;
  - the aircraft is permanently withdrawn from use;
  - a person lawfully entitled to possession of the aircraft for 28 days or longer has applied to register the aircraft in another State; or
  - the aircraft is registered in any State (other than PNG).
- the Director otherwise revokes the Certificate of Registration in accordance with the Civil Aviation Act; or
- the Director is satisfied that an outstanding amount secured by an aircraft lien is unpaid at the end of the earlier of six months after the day on which it became an outstanding amount or the day on which the aircraft lien was registered; or
- the Director is satisfied that the certificate of registration has expired and has not received an application within 14 days after the date on which the Director was satisfied the certificate so expired.

In practice, a lessor or mortgagee seeking to deregister an aircraft, will need (i) the registered operator to apply for deregistration; or (ii) to provide evidence to the Director that the entity indicated as the operator of the aircraft on the Register is no longer lawfully entitled to possession of the aircraft. Upon application or presentation of such evidence, the Director should proceed to deregister the Aircraft.

Although a power of attorney in relation to deregistration of an aircraft in PNG is not expressly recognised in aviation law, the Director has previously accepted that a power of attorney granted by a lessee of an aircraft was effective to allow the lessor of the aircraft and grantee of the power of attorney to take all necessary actions on behalf of the lessee to deregister an aircraft and export it out of PNG.

The Director may take a similar approach in relation to a power of attorney granted to a mortgagee in connection with an aircraft registered on the Register of PNG Aircraft.

Personal Property Security Act

Under the PPS Act s.88(2), a secured party, within 14 days after receiving a written demand by the debtor must register a termination statement if:

- there is no outstanding secured obligation and no commitment to make an advance, incur an obligation or otherwise give value; or
- the debtor did not authorise the registration of the initial notice; or
- the notice covers accounts of chattel paper that have been sold but as to which the account debtor or other person obligated has discharged its obligation.

A termination statement terminates the effectiveness of a notice with respect to the secured party on the notice only if the termination statement is authorised in writing signed by that secured party.[21]

---

[20] Civil Aviation Rules Pt 47.69.

[21] PPS Act s.88(3).

Upon the registration of an effective termination statement, the notice to which the termination statement relates becomes ineffective with respect to the authorising secured party.[22]

Aircraft Mortgages

3. Types of Aircraft Mortgage

What types of aircraft mortgage are possible under the laws of PNG? What are their essential characteristics? What are their respective advantages and disadvantages?

PNG 3 A mortgage of aircraft normally takes the form of an equitable mortgage creating a fixed charge over the aircraft.

A floating charge over an aircraft normally is only used where the chargor is in the business of buying and selling aircraft as distinct from operating or managing aircraft.

Technically, a mortgage over an aircraft could be structured as a legal mortgage pursuant to which title to the aircraft is transferred to the mortgagee subject to a right in the mortgagor to request a re-transfer of title to the aircraft on payment of the secured moneys (an equity of redemption). This form of security has certain obvious drawbacks from the mortgagee's perspective. The aircraft would need to be insured, repaired and maintained by the mortgagee and the mortgagee as legal owner of the aircraft would be liable for any loss or damage to or caused by the aircraft. For these reasons it is most unlikely that a lender would ever choose to structure a security over an aircraft as a legal mortgage of the aircraft.

4. Law Governing the Mortgage

What law will govern the validity of the mortgage?

PNG 4 There are no statutory restrictions under PNG law as to the governing law of a mortgage. The governing law of a mortgage (whether PNG law or foreign law) may be agreed by the parties under contract.

From an enforcement perspective however, it is generally preferable for the governing law of a security document (including an aircraft mortgage) to be the same as the law of the jurisdiction where the secured property is located. In the case of an aircraft, this will generally be the law of the jurisdiction in which the aircraft is registered but see PNG 5

5. Mortgage Governed by Foreign Law

If the parties to the mortgage stipulate that the mortgage will be governed by the laws of a foreign country, would a PNG court uphold such a clause?

PNG 5 Yes, provided that there is a logical connection between the choice of governing law and the mortgage in question.

The courts will uphold the choice by the parties of foreign law as the governing law of a mortgage. However, when determining issues relating to a mortgage governed by foreign law, expert evidence as to the applicable law may be required by the court.

Also note that, under the Reciprocal Enforcement of Judgments Act (Ch.50) (the REJ Act), certain judgments of certain foreign courts are recognised and will be enforced in PNG by a process of registration (see PNG 21). The REJ Act establishes a system of reciprocity of recognition and enforcement of foreign judgments of designated courts within prescribed countries including Australia, the US, the UK, New Zealand, Australia and Singapore.

---

[22] PPS Act s.88(4).

Even if a foreign money judgment is not from a designated court, it may still be recognised and enforced in PNG by commencing a separate action in the National Court to sue on the judgment under the local rules of private international law.

6. Mortgage Terms

What are the general terms of an aircraft mortgage under the laws of PNG? Are there any special terms such a mortgage should contain?

PNG 6 There are no restrictions under PNG law as to the terms of an aircraft mortgage. As a general comment, the provisions that would be regarded as normal in other common law jurisdictions should also appear in a mortgage over a PNG based aircraft. The mortgage should make reference to the lessee being required to assist the lessor to obtain registration under the PPS Act. Subject to the home jurisdiction and other operations of the mortgagee, consideration may also need to be given to Goods and Services Tax and tax gross up provisions.

See PNG 2.1.

7. Spare Parts

Under the laws of PNG can spare parts, including future parts, be subject to the mortgage? Are any special formalities required? If such parts cannot be mortgaged what other forms of security are available to the mortgagee in relation to them?

PNG 7 Yes.

Subject to agreement by the parties under contract, spare parts may be included in a mortgage, and the mortgagee may claim a security interest in such items in its PPS Act registraion

See PNG 2.1 and PNG 6.

8. Perfection of Mortgages

What additional formalities are required to perfect the status of the mortgage?

PNG 8 None other than those detailed in PNG 2.1 above.

9. Statutory Fees, Charges, Taxes

Are there any fees, charges or taxes payable in respect of the creation of the mortgage?

PNG 9 No.

Formerly, mortgages were subject to ad valorem stamp duty in accordance with the Stamp Duties Act 1952 (Ch.117) at a rate of K10 or 0.1% of the principal amount secured by the mortgage, whichever was greater.

Pursuant to the Stamp Duties (2008 Budget Amendment) Act 2007, stamp duty was abolished on all security instruments executed on or after 1 January 2008. However, if a security instrument deals with a dutiable matter other than the creation of a security interest to secure the repayment of money or the performance of an obligation the instrument may still be liable to duty under another head of duty. Leases of aircraft remain subject to ad valorem stamp duty. Subject to what is noted above, mortgage instruments are no longer subject to stamp duty in PNG.

10. Renewal of Registration

Will the registrations in respect of the mortgage remain valid throughout the tenure of the mortgage or will they require renewing? If so, what will be the cost of renewal?

Civil Aviation Act

PNG 10 Yes. If the Director exercises the discretion to record a note of a security or other financial interest held in an aircraft that note does not require renewal.

Personal Property Security Act

A registered notice will be effective for a period measured in years that is designated by the person who registers the notice and will lapse at the end of the designated period unless, before the lapse, a continuation statement is registered.[23]

Upon lapse of a registered notice, the notice becomes ineffective and a security interest that was perfected by the notice becomes unperfected unless the security interest is perfected without registration (for example, by the creditor having taken possession of the property over which the security interest is claimed).[24]

If a security interest becomes unperfected upon lapse of a registered notice, it is deemed never to have been perfected against a purchaser of the collateral for value.[25]

11. Conventions

Has PNG ratified:

PNG 11

(a) Chicago Convention of 1944 on International Civil Aviation (Chicago Convention)?

Yes.

The Chicago Convention (signed on 7 December 1944) was ratified by PNG on 15 December 1975.

The Chicago Convention, and its various amendments, has been given the force of law under the Civil Aviation Act.

(b) 1948 Convention on the International Recognition of Rights in Aircraft (Geneva Convention)?

No.

In accordance with the Constitution, notwithstanding the consent of PNG to be bound as a party to a treaty, no treaty forms part of the municipal law of PNG unless, and then only to the extent that, it is given the status of municipal law by or under a Constitutional Law or an Act of the Parliament.[26]

After independence, PNG deposited with the International Civil Aviation Organisation a declaration stating its intention to be treated as a party in its own right to certain aviation conventions (for example, the Convention on Damage Caused by Foreign Aircraft to Third Parties on the Surface). To date the PNG Government has not made such a declaration in relation to the Geneva Convention on the International Recognition of Rights in Aircraft and nor has the PNG Government enacted any legislation which gives effect to that convention.

(c) 1933 Convention for the Unification of Certain Rules Relating to the Precautionary Arrest of Aircraft (1933 Rome Convention)?

---

[23] PPS Act s.85(1).

[24] PPS Act s.85(2).

[25] PPS Act s.85(3).

[26] Constitution s.117.

No.

(d) Convention on International Interest in Mobile Equipment 2001 (Cape Town Convention)?

No. PNG is moving towards such ratification but at the time of writing it is not possible to predict when that may occur.

12. Possession by the Mortgagee

On the occurrence of an event of default under the mortgage, can the mortgagee take possession of the aircraft without judicial intervention?

PNG 12 Yes, provided the mortgage permits this and the mortgagor co-operates.

See PNG 1.8 and PNG 2.7.

13. Jurisdiction

In what circumstances would a PNG court have jurisdiction over an action brought by the mortgagee to obtain possession of the aircraft and secure payment of the mortgage debt?

PNG 13 Pursuant to the PNG Constitution s.166, the National Court has unlimited jurisdiction on all matters in PNG, including civil matters.

There are no statutory provisions relating specifically to the jurisdiction of the courts over matters relating to aircraft mortgages. However, the general jurisdiction of the National Court under s.166 of the Constitution enables the Court to hear disputes in relation to an aircraft mortgage (provided the parties agree under contract to submit to the jurisdiction of the courts in PNG or a relevant nexus to PNG, such as presence of the aircraft in PNG, is demonstrated).

14. Judicial Procedure for Possession

In the event of default under the mortgage, what is the judicial procedure for the mortgagee to obtain possession of the aircraft both before and subsequent to judgment? What will be the cost of initiating proceedings? Will a bond or other security be required?

PNG 14 There are no PNG laws relating specifically to judicial procedures for taking possession of an aircraft. Normal rules for the commencement of civil proceedings would apply, broadly similar to those in other common law jurisdictions involving the filing and service of a claim and particulars of the claim, a response to the claim, defence, a discovery process and ultimately a trial. There is then the potential for appeals from a judgment.

Substantially the usual process for enforcement of an order would apply, requiring service of the order on the defendant lessee and a demand for compliance within a specified time (if a time for compliance is not specified in the order itself). As with any action for the recovery of a physical item, the assistance of the Sheriff Division of the National Court would need to be sought if the lessee refuses or otherwise fails to comply with the order for delivery of the aircraft within the time specified.

In the case of recovery of possession of an aircraft, it will additionally be necessary to serve a copy of the Court order for repossession on the Director of Civil Aviation requesting a grounding order under the Civil Aviation Act (if the defendant lessee does not comply with the order) and as part of the process of exporting the aircraft from PNG and deregistering it from the PNG Register of Aircraft.

Fees to commence proceedings are nominal. A bond by way of security for costs will be required in relation to such proceedings if the entity commencing the proceedings is a non-resident of PNG. The amount of the bond is at the Court's discretion, dependent upon the perceived complexity of the dispute and the estimated duration of the proceedings. At January

2024, bonds are usually set in the range of K20,000.00 to K50,000.00 (approximately USD 5,500.00 to USD 13,500.00 at January 2024).

See PNG 1.8, PNG 2.7, PNG 5 and PNG 13.

15. Length of Trial

How long will the trial of the action take?

PNG 15 All matters are dealt with by the courts on a case-by-case basis. The length of time it takes to litigate a matter depends on the nature of the matter, its complexity, the issues for determination and the willingness of both parties to pursue the matter through the courts to achieve redress in a timely matter or to seek settlement of the dispute.

Court proceedings may take several months to many years depending on the matters detailed in the immediately preceding paragraph.

16. Documents for Possession and Sale

What documents will the court require for:

PNG 16

(a) The taking of possession of the aircraft?

(b) The sale of the aircraft?

See PNG 1.8 and PNG 2.7. At a minimum the Court will require to see the mortgage document and evidence, in affidavit form, of breach of covenants under the mortgage entitling possession/exercise of a power of sale and of the satisfaction of all procedural steps required under the mortgage as conditions of exercising such powers.

17. Sale of the Aircraft

May the mortgagee sell the aircraft prior to judgment being given and, if so, what is the procedure?

PNG 17 This will depend on the terms and conditions of the mortgage agreed between the parties to that document. If the mortgage provides a power of sale to the mortgagee, this power could be exercised.

However, once legal enforcement proceedings are commenced, it is unlikely that a mortgagee would be permitted to sell an aircraft prior to determination of the proceedings. Accordingly, if in a position to practically do so a mortgagee should consider selling the aircraft prior to issuing proceedings. Thereafter, proceedings may be commenced to seek recovery of any residual debt, provided that the mortgage allows for recovery of the same.

The sale of an aircraft by a mortgagee is not regulated by the Civil Aviation Act or the Companies Act. However, under the PPS Act, the mortgagee must (if the PPS Act applies to that security) comply with Pt VIII (Enforcement of Security Interests) of the PPS Act when selling the aircraft. This includes a duty to act in a commercially reasonable manner[27] and an obligation to give notice of disposition of the aircraft to the mortgagor and, if a different entity, to the debtor.[28] Any surplus on the sale of the aircraft will be required to be accounted for and paid in the order detailed in the PPS Act.[29]

---

[27] PPS Act s.100.
[28] PPS Act s.101.
[29] PPS Act s.105.

What claims would rank prior to the mortgage?

PNG 18 Under the PPS Act, priority between conflicting perfected security interests in the same aircraft will be determined by the earliest of the following occurrences[30] :

- registration of a notice that describes the secured property (collateral), without regard to the date of attachment of a security interest; or
- perfection of the security interest.

A perfected security interest in an aircraft will have priority over an unperfected security interest.[31]

Priority between conflicting unperfected security interests in an aircraft will be determined by the order of attachment of the security interests.[32]

A security interest under the PPS Act, whether or not it is perfected, is subordinate to a mortgage, charge, lien or other interest registered with respect to aircraft under the Civil Aviation Act without regard to the time of attachment or perfection of the security interest under the PPS Act or the time of registration of a notice under the PPS Act.[33]

It is also important to note that PNG law recognises aircraft liens however there is no specific law which confers recognition and priority of liens in PNG. PNG case law is also silent on the priority of aircraft liens in PNG. However, it is believed that the priority of aircraft liens and detention rights will be as follows:

- statutory lien and detention rights (including airport charges liens arising under the Civil Aviation Act);
- salvage lien;
- possessory lien;
- security interest;
- unperfected security interest; and
- foreign aircraft lien.

Where a person in the ordinary course of business furnishes materials or services with respect to goods that are subject to a security interest, a lien that that person has with respect to those materials or services has priority over a perfected security interest while the goods are in that person's possession, unless the lien is given by an Act which provides that that lien does not have priority.[34]

A receiver of the property of a company, other than a company in liquidation at the time of the receiver's appointment, and who is appointed under:

- a floating charge; or
- a fixed or specific charge that conferred a floating security at the time it was created,

must apply property (including any aircraft) that is subject to the charge:

- first, to reimburse the receiver for the receiver's expenses and remuneration; and
- second, to pay preferential claims (Preferential Claims) to the extent and in the order of priority specified in Companies Act Sch.9, before paying any claim of the person entitled to the security.[35]

---

[30] PPS Act s.33(2).
[31] PPS Act s.33(3).
[32] PPS Act s.33(4).
[33] PPS Act s.75.
[34] PPS Act s.53.
[35] Companies Act s.279(1).

Preferential Claims include the costs, fees and expenses of the liquidation, employee claims up to a maximum of K20,000 per employee (or such higher amount as may be prescribed at the time liquidation commences), costs incurred in organising and conducting a meeting of creditors for the purpose of voting on a proposed compromise and finally certain rates, taxes and government charges.[36]

19. Judgment Currency

In the event of the judicial sale of the aircraft, will judgment be given in the currency of the debt if that currency differs from legal tender in PNG?

PNG 19 Yes.

Provided that the terms of the mortgage are pleaded, judgment in the currency of the contract may be awarded at the court's discretion. The prayer for relief should ask for the sum owing in the foreign currency or alternatively for the PNG Kina equivalent of the sum.

20. Remittance of Proceeds Abroad

In the event of the mortgagor recovering the debt, whether through court process or by means of private sale, can the proceeds be freely remitted abroad?

PNG 20 Remittance of monies from PNG is subject to foreign exchange control regulations and requires a tax clearance certificate.

See below.

---

[36] The Preferential Claims are more particularly described in Companies Act Sch.9 and include Costs Fees & Expenses (defined below), Employee Claims (defined below), Compromise Costs (defined below) and Government Charges (defined below) as follows.

> "The liquidator must first pay, in the order of priority in which they are listed below the following costs, fees and expenses (Costs Fees & Expenses):
>
> (a) the fees and expenses properly incurred by the liquidator in carrying out the duties and exercising the powers of the liquidator and the remuneration of the liquidator; and
> (b) the reasonable costs of a person who applied to the court for an order that the company be put into liquidation, including the reasonable costs of a person appearing on the application whose costs are allowed by the court; and
> (c) the actual out-of-pocket expenses necessarily incurred by a liquidation committee.
> (d) after paying the Costs Fees & Expenses, the liquidator must next pay the following claims (Employee Claims) subject to a cap of K20,000 per employee (or such greater amount as may be prescribed at the time the liquidation commences):
>
> (a) all wages or salary of any employee, whether or not earned wholly or in part by way of commission, and whether payable for time or for piece work, in respect of services rendered to the company during the four months preceding the commencement of the liquidation;
> (b) all amounts due in respect of workers compensation under any law relating to workers compensation that accrued before the commencement of the liquidation;
> (c) all remuneration becoming payable to an employee in respect of annual leave or long service leave (or where the employee has died, to any other person in the employees right) on the termination of the employment before or by reason of the commencement of the liquida-tion; amounts deducted by the company from the wages or salary of an employee in order to satisfy obligations of the employee;
> (d) amounts that are preferential claims under Companies Act s.313(2);
> (e) (e) all mandatory and voluntary employee and employer contributions made, or which should have been made, in accordance with the provisions of the Superannuation (General Provisions) Act 2000.
>
> After paying Employee Claims, the liquidator must next pay the costs (Compromise Costs) incurred in organising and conducting a meeting of creditors for the purpose of voting on a proposed compromise.
> After paying any and all Compromise Costs, the liquidator must next pay the amount of (Government Charges) comprising:
>
> (a) all rates that are or are in the nature of municipal or other local rates, due from the company at the date of the commencement of the liquidation and having become due and payable within the one year before that date; and
> (b) assessed income tax, or income tax and social services contribution, being tax or tax and contribu-tion assessed under any Act before the date of commencement of the liquidation and not exceeding in the whole one year's assessment; and
> (c) any amount due and payable by way of repayment of any advance made to the company, or in pay-ment of any amount owing by the company for goods supplied or services rendered to it, under any Act, relating to or providing for the improvement, development, or settlement of land or the aid, development, or encouragement of mining.
>
> In a company liquidation, PAYE Tax and contractors withholding tax where not yet paid by the company to the Internal Revenue Commission (IRC) are payable to the IRC out of the company's assets and in priority to all other claims on the company's assets including Preferential Claims."

Is any foreign exchange control, central bank or other official consent required?

Yes.

The remittance of funds from PNG does not require government approval as such. However, a person may be required to produce a tax clearance certificate to remit monies in excess of K500,000 (approximately USD 134,000 at January 2024). Where the funds are being remitted to a designated tax haven, a tax clearance certificate is required irrespective of the amount of the remittance.

Additionally, PNG is currently experiencing a shortage of foreign exchange and available foreign exchange is being rationed. This means that while there may be no legal restriction on the outward remittance of funds, at a commercial level, the foreign currency required for a particular remittance may not be available with the result that the remittance will be delayed until the foreign currency becomes available. This could take weeks or even months.

An overview of the law in PNG in relation to foreign exchange control is set out below.

Central Banking (Foreign Exchange and Gold) Regulations

The Central Banking Act 2000 (the Central Banking Act) and the Central Banking (Foreign Exchange and Gold) Regulation 2000 (Ch.138) (the Central Banking Regulation) established the Bank of Papua New Guinea (the Central Bank) as PNG's central bank and regulates banking and credit, as well as dealings in foreign exchange, securities and gold.

With effect from 3 September 2007, various exemptions were made by the Central Bank to the operation of the Central Banking Regulation as published in National Gazette Notice number G137 (the Exemption Notice). As a result of the exemptions, most transactions do not require Central Bank approval, other than:

- a resident of PNG that opens and maintains a bank account outside PNG; and
- a resident of PNG that enters into a guarantee or grants a security over assets in PNG in favour of a non-resident (or enters into a transaction having a similar effect) where such guarantee or security is part of a transaction which is not for the direct benefit of a person or business in PNG.

All other persons are exempted from obtaining the Central Bank's approval. Note that regulations not covered by the Exemption Notice' still require Central Bank approval for certain transactions. These exemptions are subject to compliance with certain conditions set out in the Exemption Notice, including:

- the provision of information or documents to the Central Bank on request;
- compliance with the Foreign Exchange Manual issued by the Central Bank;
- conducting foreign currency transactions only through Authorised Dealers (see below); and
- where necessary, to obtain a tax clearance certificate (see below).

A failure by a person to comply with the conditions imposed by the Central Bank:

- will result in the exemptions granted under the Exemption Notice not applying with respect to that person in relation to the relevant transaction; and
- will constitute a breach of the Central Banking Regulation.

Authorised Dealers

Under Central Banking Regulation s.2(1), the Central Bank may appoint a person to be an authorised dealer for the purposes of the Regulation. The authorised dealers appointed by the Central Bank under Central Banking Regulation s.2 are the major commercial banks in PNG, namely:

- Australia and New Zealand Banking Group (PNG) Ltd;

- Bank South Pacific Ltd;
- Westpac Bank (PNG) Ltd; and
- Kina Bank Ltd.

Authorised dealers are permitted to:

- deal in all foreign currencies, and for this purpose open and maintain accounts in these currencies;
- authorise the purchase and sale of foreign currency; and
- authorise the transfer of PNG Kina to the accounts of non-residents.

However, authorised dealers must ensure that tax clearance certificates are produced in respect of all transactions where required by law.

Tax Surveillance

Section 81 of the Central Banking Act and Division 2 of Pt IX of the Income Tax Act 1959 (the Income Tax Act) form the legal basis for taxation surveillance in PNG.

Central Banking Act s.81 provides that where Central Bank authority is required under the Central Banking Regulation for a specific act, and that act is specified in a Gazette notice in force, then the Central Bank must not grant authority unless a tax clearance certificate issued under Income Tax Act Division IX.2 is produced to the Central Bank.

The most recent notice is the National Gazette (G88, 29 April 2010) (G88 Notice), which provides that tax clearance is required for the following transactions that bring about the transfer of any money from PNG to any of the Bahamas, Bermuda, British Channel Islands, British Virgin Islands, Cook Islands, Gibraltar, Grenada, Hong Kong, Isle of Man, Liberia, Liechtenstein, Luxembourg, Nauru, Netherlands Antilles, Norfolk Island, Panama, Switzerland, Tonga and Vanuatu:

- where those funds have the nature of capital in the hands of the person in PNG from whom it is transferred;
- where the funds result from the borrowing or lending of money or the assignment of a debt;
- where the funds result from the sale, purchase (including the option to purchase), acquisition or disposition of securities, land or other property, including the transfer of shares of a PNG register;
- where the funds comprise a royalty (as defined in Income Tax Act s.4), licence or management fee or similar payment;
- where the funds are transferred to a trust fund created or established in a place outside PNG;
- where the funds consist of a dividend declared in favour of a person (or group of persons) who is in, or is a resident of, a place outside PNG;
- where the funds are payable pursuant to a court order to a person who is in, or is a resident of, a place outside PNG;
- where the funds comprise interest on borrowings payable to a person who is in, or is a resident of, a place outside PNG; and
- where the funds are not trade related and involve the physical movement of goods.

Where any of the above transactions involve the transfer of money from PNG to any other country, a tax clearance certificate will be required if there is a transfer of more than K500,000 (approximately USD 134,000 at 31 January 2024) in any calendar year.

If there is, under what circumstances would this be withheld?

See above. Subject to compliance with the conditions imposed by the Central Bank under the Exemption Notice and the requirement to obtain a tax clearance certificate where necessary, Central Bank approval is not required to remit moneys from PNG.

How long would such consent take to obtain?

Where the prior consent of the Central Bank is required, the applicant should allow a minimum of ten working days to obtain the necessary consent.

The Central Bank will not grant consent retrospectively and, accordingly, if the consent of the Central Bank is required, that consent must be obtained before transaction takes place.

Will there be any export restrictions on the export of the aircraft?

Yes.

Under the Customs Act 1951 (Ch.101) (the Customs Act), the exporting party will need to:

- have Customs inspect the aircraft and any goods that the aircraft contains[37] (goods proposed to be exported on an aircraft must be inspected for export within three days before export); and
- obtain a certificate of clearance from the Collector of Customs[38] (the Collector).

Before a Certificate of Clearance is granted in relation to an aircraft, the pilot must:

- deliver to the Collector an outward manifest in duplicate;
- answer any questions asked by the Collector relating to the aircraft and its cargo, crew, passengers, stores and flight plan; and
- produce all documents relating to the aircraft and its cargo.

A Certificate of Clearance will not be granted for an aircraft unless all inward cargo and stores have been accounted for to the satisfaction of the Collector and all the other requirements of the law in regard to the aircraft and to inward and outward cargo have been complied with.

21. Recognition of Foreign Judgment

Were the mortgage to be subject to the jurisdiction of a foreign court and were judgment to be given by that court, would the judgment be recognised and enforced by the courts of PNG?

PNG 21 Yes.

Subject to the REJ Act, a final judgment of a superior court of certain prescribed foreign jurisdictions may be registered and enforced in PNG.

See PNG 5.

Are there any prerequisites to such enforcement? Would the PNG courts enforce such judgment without a rehearing of the issues?

Yes.

A person who is a "judgment creditor" under a judgment to which the REJ Act applies may apply to the National Court:

- at any time within six years after the date of judgment; or

[37] Customs Act s.42.

[38] Customs Act s.47.

- where there have been proceedings by way of appeal against the judgment, after the date of the last judgment given in those proceedings,

to have the judgment registered in the National Court.

A judgment will not be registered if, at the date of the application, it has been wholly satisfied or it could not be enforced by execution in the State of the original court.

Registration of a foreign judgment may be set aside by a PNG court where the PNG court is satisfied that:

- the judgment is not a judgment to which Pt II of the REJ Act applies or was registered in contravention of Pt II (i.e. if the judgment is not from a designated court or country which accords judgments of the PNG courts reciprocity);
- the courts of the State of the original court had no jurisdiction in the circumstances of the case;
- the judgment debtor, being the defendant in the proceedings in the original court, did not (notwithstanding that process may have been duly served on the judgment debtor in accordance with the law of the State of the original court) received notice of those proceedings in sufficient time to enable the judgment debtor to defend the proceedings and did not appear;
- the judgment was obtained by fraud;
- the enforcement of the judgment would be contrary to public policy in the State of the registering court;
- the rights under the judgment are not vested in the person by whom the application for registration was made; or
- the matter in dispute in the proceedings in the original court had at some time before the date of the judgment in the original court been the subject of a final and conclusive judgment by a court having jurisdiction in the matter.

Would a PNG court enforce a foreign decree or other executive act confiscating the aircraft regardless of the mortgagee's security interest in it?

No.

It is unlikely that a PNG court would permit a foreign State, government agency or instrumentality to confiscate an aircraft in PNG in interference with a mortgagee's security interest.

However, provided that the decree or executive act was first enforced in a court within a jurisdiction with which PNG has reciprocal arrangements under the REJ Act, an application may be made to register the foreign judgment in PNG in accordance with the REJ Act (see PNG 5 and PNG 21 above). Even though it is registered, enforcement of that judgement may still be challenged on the basis that doing so would interfere with the mortgagee's security interest.

22. Government Interference

In what circumstances would the executive organs of government seize the aircraft or otherwise exercise a power of expropriation so as to defeat or substantially impede the mortgagee's entitlement?

PNG 22 Under the Civil Aviation Act, where the Director of Civil Aviation believes, on reasonable grounds, that the operation or use of an aircraft or aeronautical product or a class of aircraft or aeronautical products may endanger persons or property the Director may, where authorised by a warrant given by a judicial officer[39] :

- detain the aircraft or any aircraft of that class;

[39] Civil Aviation Act s.57.

- seize the aeronautical product or any aeronautical products of that class;
- destroy any aeronautical product or any products of that class; or
- prohibit or impose conditions on the operation of the aircraft or aircraft of that class or on the use of any aeronautical product or any aeronautical products of that class.

For the purposes of the Civil Aviation Act, “aeronautical product” means anything that comprises or is intended to comprise any part of an aircraft or that is intended to be installed in or fitted or supplied to an aircraft, and includes fuel and other similar consumable items necessary for the operation of the aircraft. or a class of aircraft or aeronautical products may endanger persons or property).

Where the Director believes on reasonable grounds that the operation or use of an aircraft or aeronautical product or a class of aircraft or aeronautical product may endanger persons or property and that prompt action is necessary to prevent the danger, the Director may also do all or any of the following without the need for a warrant given by a judicial officer:

- prohibit or impose conditions on the operation of the aircraft or all aircraft of that class;
- prohibit or impose conditions on the use of the aeronautical product or aeronautical products of that class; and
- detain particular aircraft or seize particular aeronautical products where necessary in order to prevent their operation or use.[40]

Any detention or seizure of an aircraft may only be maintained for such time as is necessary in the interest of safety unless the continued detention or seizure is required for the purpose of evidence in any prosecution under the Civil Aviation Act.

The Civil Aviation Act also provides for liens in favour of certain prescribed third parties for outstanding charges (such as airport taxes, customs duties, air navigation charges, landing charges, crews wages, repairers charges or salvage) incurred in respect of an aircraft. In particular, where a default is made by an owner or operator of an aircraft in the payment to the claimant of any charge, the claimant may, subject to the provisions of the Civil Aviation Act Pt VII, take such steps as are necessary to detain, pending payment, either:

- the aircraft in respect of which the charge was incurred (whether or not it was incurred by the person who is the owner or operator of the aircraft at the time when the detention begins); or
- any other aircraft of which the person in default is the owner or operator at the time when the detention begins.[41]

For the purposes of the Civil Aviation Act Pt VII Division 6 (Liens):

- The claimant must not detain, or continue to detain, an aircraft under Pt VII Division 6 by reason of any alleged default in the payment of any charge payable to the claimant under s.109 where the owner or operator of the aircraft or any other person claiming an interest therein:
    - disputes that the charge is due or, where the aircraft is detained under subs.(1)(a), that the charge was incurred in respect of that aircraft; and
    - gives to the claimant, pending the determination of the dispute, sufficient security for the payment of the charge which is alleged to be due.[42]
- Where the claimant under s.109 detains an aircraft pursuant to the Civil Aviation Act Pt 6, the claimant must notify the Director and the Director must forthwith thereafter make an entry in the Register of PNG Aircraft in the manner prescribed under s.111

[40] Civil Aviation Act s.57(2).
[41] Civil Aviation Act s.109(1).
[42] Civil Aviation Act s.109(2).

and take all reasonable steps to give notice of detention to each of the following persons namely:

- owner;
- operator;
- lessee;
- hirer; and
- charterer or pilot-in-command,

of the aircraft; and such persons as, in the opinion of the Director, have a security interest in the aircraft.[43]

The Director must enter in the Register of PNG Aircraft in relation to each aircraft:

- the description and amount of the charge due to the claimant and the name of the debtor;
- the name and address for service of the claimant;
- the date and time at which the aircraft was detained by the claimant; and
- the date and time at which the entry in the Register of PNG Aircraft was made.[44]

An aircraft lien recorded by the Director in the Register of PNG Aircraft is vested in the claimant and the claimant may keep possession of the aircraft until all outstanding amounts are paid. Such lien will secure the unpaid charge, any penalty that is or becomes payable in respect of the unpaid charge and any further outstanding amounts in respect of the aircraft.[45]

In the case of a Papua New Guinea aircraft, where an outstanding amount secured by an aircraft lien is unpaid:

- at the end of six months after the day on which it became an outstanding amount; or
- on the day on which the aircraft lien was registered,

whichever is the later, the Director may, having regard to all the circumstances, including the steps, if any, taken by a person to pay the whole or part of the outstanding amounts secured by the aircraft lien, cancel the certificate of registration of the aircraft in the Register of PNG Aircraft. Where a certificate is so cancelled, the aircraft may not be re-registered until the aircraft lien ceases to have effect.[46]

Where an outstanding amount secured by an aircraft lien is unpaid at the end of one month after the date on which the aircraft lien was registered, the claimant may at any time, with the leave of the National Court, sell the aircraft.[47] Before applying to the National Court for leave to sell an aircraft, the claimant must take certain steps to bring the proposed application to the notice of interested persons and afford such interested persons an opportunity to become a party to the proceedings.[48]

Rights of detention (and in some cases rights of disposal or destruction) exist in PNG in relation to illegal activities carried out on an aircraft (e.g. Peace and Good Order Act 1991 (the Peace and Good Order Act)[49] and Customs Act.[50]

A member of the Police Force may, without warrant and using such force and assistance as is reasonably necessary, stop, detain and search a vessel, vehicle or aircraft if that officer suspects on reasonable grounds:

---

[43] Civil Aviation Act s.110.
[44] Civil Aviation Act s.111.
[45] Civil Aviation Act s.112.
[46] Civil Aviation Act s.113.
[47] Civil Aviation Act ss.114 and 116.
[48] Civil Aviation Act s.115.
[49] Peace and Good Order Act s.16.
[50] Customs Act ss.125–134.

- that the aircraft, or anything contained in it, has been used, is being used or is likely to be used for or in connection with a breach of the peace; or
- the evidence of the commission of an offence against this Act is likely to be found on the aircraft,

and may seize any such evidence, weapon or thing so found.[51]

The power to search an aircraft includes the power to search a person who is in or on aircraft at the time when it is stopped, searched or detained and to seize any evidence, weapon or thing on that person which might have been seized if it had been found in or on aircraft.

A search of a female may only be carried out in private and with due regard to decency.

A customs officer may, on reasonable suspicion, stop and search any aircraft for the purpose of ascertaining whether any dutiable or excisable goods or any goods subject to restriction or prohibition under this Act or other customs-related law are in it.[52]

For this purpose an officer may direct the person in charge of the aircraft to remove it to a customs controlled area, police station or other place to enable the search to be conducted.

A person who fails to stop, permit a search or remove an aircraft to a place when directed to do so is guilty of an offence, punishable on conviction by a fine of not less than K1,500 and not exceeding K5,000.[53]

In what circumstances would the executive order or refuse to permit the deregistration of the aircraft from the Register or refuse to permit the registration of the mortgage in the aircraft mortgage register?

The Director may refuse to deregister an aircraft where the applicant fails to satisfy the Director that the entity indicated as the operator of the aircraft on the Register of PNG Aircraft is not lawfully entitled to possession of the aircraft.

See PNG 2.7.

Aircraft Leasing

23. Leasing of Aircraft

Is there a Register in which leases may be registered? May only certain types of lease be registered?

PNG 23.1 No. There is no separate register of aircraft leases in PNG.

The interest of a lessor under a lease of an aircraft for a term of more than one year may constitute a "security interest" for the purposes of the PPS Act and accordingly it is generally advisable to register the interest of a lessor under an aircraft lease as a security interest on the PPS Registry.

CASA PNG is usually willing to receive and keep on its files copies of aircraft leases as part of its record of interests held in the aircraft on the Register of PNG Aircraft (see PNG 1.1).

As already noted a security interest under the PPS Act, whether or not it is perfected, is subordinate to a mortgage, charge, lien or other interest registered with respect to aircraft under the Civil Aviation Act without regard to the time of attachment or perfection of the security interest under the PPS Act or the time of registration of a notice under the PPS Act.[54] Accordingly, it is important to seek to have details of an aircraft mortgage recorded in the Register of PNG Aircraft as soon as possible.

---

[51] Peace and Good Order Act s.16.

[52] Customs Act s.124.

[53] Customs Act s.124.

[54] PPS Act s.75.

What documentation and consents are required for registration?

PNG 23.2 None.

Aircraft leases are not required to be in a particular form nor are they required to be registered under PNG law.

As stated above, the interest of a lessor under an aircraft lease or sublease for a term of more than 12 months as well as the interest of the mortgagee, chargee or grantee of a mortgage, charge or bill of sale over an aircraft is a security interest which may be the subject of a notice registered in the PPS Register.

Details of the relevant security interest are set out in the notice which is delivered to the PPS Register for registration.

A security interest can be perfected in a number of different ways. Where the interest is held in an asset such as an aircraft, that would in the vast majority of cases be effected by registering a notice in the PPS Register in respect of that interest.[55]

Where a party (generally the operator) requests the Director of Civil Aviation to record details of a security interest in the PNG Register of Aircraft, the Director will usually require a copy of the relevant security instrument to be provided. As noted above, the Director may, but is not obliged to, comply with a request to record details of a security interest in the PNG Register of Aircraft.

What are the opening hours and registration fees?

PNG 23.3 See above PNG 1.5.

Can the Register be amended?

PNG 23.4 See PNG 1.6 and PNG 2.4.

What is the effect of registration?

PNG 23.5 See PNG 1.7 and PNG 2.1.

How is deregistration effected?

PNG 23.6 See PNG 1.8.

24. Types of Aircraft Leases

What types of Aircraft Lease are possible under the laws of PNG? What are the essential characteristics?

PNG 24 PNG law recognises the concept of a lease over goods or chattels, including aircraft. There is no legal distinction between different types of aircraft leases in PNG. Finance or operating leases are possible. A lease will provide the lessee with a right to exclusive possession and quite enjoyment subject to the terms of the lease agreement.

25. Law Governing the Lease

What law will govern the validity of the lease?

PNG 25 The validity of the lease will be determined by the governing law of the lease, generally being the law which the parties to the lease select for this purpose.

See PNG 4.

[55] PPS Act s.24.

If the parties to the lease stipulate that the lease will be governed by the laws of a foreign country, would a PNG court uphold such a clause?

Yes.

See PNG 5 and PNG 21.

26. LEASE TERMS

Are there any special lease terms that an aircraft lease governed by the laws of PNG should contain?

PNG 26 No, although similar comments to those made in PNG 6 regarding mortgages apply here also. The normal provision requiring the lessee to bear the cost of stamp duty assessed on or in connection with the lease will be needed

27. SPARE PARTS

Under the laws of PNG can spare parts, including future parts, be subject to the lease? Are any special formalities required?

PNG 27 Yes. See PNG 7.

28. PERFECTION OF LEASES

What additional formalities are required to perfect the status of a lease?

PNG 28 Currently, there are no formal or other requirements necessary to perfect the status of a lease. A lease will need to be duly stamped before it can be enforced before the Courts.

The interest of a lessor under a lease of an aircraft which constitutes a security interest in respect of that aircraft will need to be perfected in accordance with the requirements of the PPS Act s.23 and s.25.

29. CHARGES AND TAXES

Are there any fees, charges or taxes payable in respect of the creation of an aircraft lease or its registration? What is the tax effect of different types of lease?

Fees

PNG 29 There are no fees or charges applicable in respect of the creation of an aircraft lease.

Taxes

Stamp duty

The Stamp Duties Act imposes stamp duty on leases of goods (including aircraft and aircraft spare parts) as follows:

- in the case of a lease for a definite term of less than 12 months, stamp duty in an amount equal to the sum of K5 for the first K240 of the rent for the lease period plus an amount equal to 0.4% of so much of the rent for the lease period as exceeds K240;
- in the case of a lease for a definite term of 12 months but less than five years, stamp duty in an amount equal to the sum of K5 plus an amount equal to 0.4% of so much of the rent for the lease period as exceeds K240; and
- in the case of a lease for a term of five years or more, duty of K10 for the first K240 of rent and thereafter an amount equal to 1% of so much of the rent for lease period as exceeds K240.

Concerning aircraft lease documents held outside PNG, the Stamp Duties Act provides that duty is chargeable in respect of an instrument that is outside PNG if the instrument (irrespective of whether it was executed in PNG or otherwise) relates to property situated, or any matter or thing done or to be done in PNG.[56] This would catch lease documentation for an aircraft registered and operating in PNG even though the lease documents for that aircraft are held outside PNG.

Income and other taxes

The lessee, the operator or any other party to an aircraft lease transaction making payment under the lease and from a source in PNG could be required by the Commissioner General of Internal Revenue in PNG pursuant to the Income Tax Act 1959 s.272 or 356 to deduct from moneys otherwise payable under the lease documentation as much as is sufficient to pay any PNG income tax which is or will become due by the person to whom the payment is to be made.

A lessor resident or having a permanent establishment in PNG would be taxable in PNG on receipt of such payments as income.

30. Renewal of Registration

Will any registration in respect of the lease remain valid throughout the lease term or will they require renewal? If so, what will be the approximate cost of renewal?

PNG 30 See PNG 2 and PNG 10.

31. Possession by the Lessor

On the occurrence of an event of default under the lease, can the lessor take possession of the aircraft without judicial intervention?

PNG 31 Yes.

Subject to giving prior notice, on default of a security agreement:

(a) the secured party (lessor), unless otherwise agreed, has the right to take possession of the collateral, or otherwise enforce the security agreement by any method permitted by law;

(b) where the collateral is goods of a kind that cannot be readily moved from the debtor's premises or of a kind for which adequate storage facilities are readily available, the secured party (lessor) may seize or repossess the collateral without removing it from the debtors premises in any manner by which an execution officer acting under a writ of execution may seize without removal, if the secured party's interest is perfected by registration; and

(c) where (b) applies, the secured party may dispose of collateral on the debtor's premises, but shall not cause the person in possession of the premises any greater inconvenience and cost than is necessarily incidental to the disposal.[57]

See also PNG 1.8, PNG 2.7 and PNG 12.

32. Jurisdiction

In what circumstances would a PNG court have jurisdiction over an action brought by the lessor to obtain possession of the aircraft?

PNG 32 See PNG 13.

---

[56] Stamp Duties Act s.5A.

[57] PPS Act s.98(1)(a), (b) and (c).

33. Judicial Procedure for Possession

In the event of default under the lease, what is the judicial procedure for the lessor to obtain possession of the aircraft both before and subsequent to judgment? What will be the cost of initiating proceedings? Will a bond or other security be required?

PNG 33 See PNG 14.

34. Length of Trial

How long will trial of the action take?

PNG 34 See PNG 15.

35. Documents for Possession

What documents will the court require for the taking of possession of the aircraft?

PNG 35 See PNG 16.

36. Claims Ranking Prior to the Lessor

What claims would rank prior to the lease?

PNG 36 See PNG 18.

37. Judgment Currency

In the event of damages being sought by the lessor under the lease, will judgment be given in the currency of the lease if that currency differs from legal tender in PNG?

PNG 37 See PNG 19.

38. Remittal of Proceeds Abroad

In the event of the lessor recovering any debt under the lease, can the proceeds be freely remitted abroad? Is any foreign exchange control, central bank or other official consent required? If there is, under what circumstances would this be withheld? How long would such consent take to obtain? Will there be any export restrictions on the export of the aircraft?

PNG 38 See PNG 20.

39. Recognition of Foreign Judgment

Were the lease to be subject to the jurisdiction of a foreign court and were judgment to be given by that court, would the judgment be recognised and enforced by the courts of PNG? Are there any prerequisites to such enforcement? Would PNG courts enforce such a judgment without a rehearing of the issues? Would a PNG court enforce a foreign decree or other executive act confiscating the aircraft regardless of the lessor's ownership of it?

PNG 39 See PNG 21.

40. Government Interference

In what circumstances would the executive organs of government seize the aircraft, or otherwise exercise a power of expropriation so as to defeat or substantially impede

the lessor's ownership of it? In what circumstances would the executive order or refuse to permit the deregistration of the aircraft from the PNG Register of Aircraft?

PNG 40 See PNG 22.