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## Aviation Finance & Leasing in Panama

Panama | June 10 2019



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### Overview

#### *Conventions*

#### **To which major air law treaties is your state a party?**

Panama is not a signatory to the Rome Convention on the Unification of Certain Rules relating to the Precautionary Arrest of Aircraft.

Panama has ratified the Chicago Convention on International Civil Aviation (1944), the Geneva Convention on International Recognition of Rights in Aircraft (1948), the Cape Town Convention (2001) and the New York Convention of 1958 (the Convention on the Recognition and Enforcement of Foreign Arbitral Awards).

#### *Domestic legislation*

#### **What is the principal domestic legislation applicable to aviation finance and leasing?**

Aircraft finance and leasing are governed by the following:

- Decree Law 2 (1955), which regulates mortgages on chattel property;
- Law 129 (2013), which modernises the law of mortgages on chattel property;
- Law 21 (2003) on Civil Aviation;
- Law 29 (2003), which adopts the Cape Town Convention;
- the provisions of the Civil Code and the Commerce Code of the Republic of Panama; and
- the administrative practices observed by the Civil Aeronautics Authority (AAC).

## *Governing law*

**Are there any restrictions on choice-of-law clauses in contracts to the transfer of interests in or creation of security over aircraft? If parties are not free to specify the applicable law, is the law of the place where the aircraft is located or where it is registered the relevant applicable law?**

Purchase contracts and aircraft mortgages would be deemed acts of commerce and the parties thereto may choose the applicable law to govern the terms thereof. However, the laws of Panama govern the title and mortgage with respect to particular requirements that should appear therein, as well as their registration and the effect thereof. The courts of Panama generally uphold choice of law clauses, but may refuse to enforce terms that are contrary to public policy in Panama.

## **Title transfer**

### *Transfer of aircraft*

**How is title in an aircraft transferred?**

Title is transferred by execution of a purchase agreement or a bill of sale between seller and buyer. However, such transfer does not affect third parties until the corresponding document is translated into Spanish by a Panamanian-certified public translator if executed in another language, protocolised and filed with the Public Registry in Panama.

### *Transfer document requirements*

**What are the formalities for creating an enforceable transfer document for an aircraft?**

The purchase contract or the bill of sale, and acceptance thereof as applicable, should be translated into Spanish if executed in another language, protocolised and registered at the Public Registry together with a certificate of appraisal issued by the AAC.

Thereafter the following documents must be filed with the AAC:

- evidence of registration of the purchase contract or bill of sale with the Public Registry;
- a certificate of cancellation from the previous registry;
- a certificate from the Public Registry showing that the interested party is a valid legal entity in existence, together with the name of its legal representative in respect of companies organised in accordance with the laws of Panama. If the owner is a foreign entity, it must file an official certificate of existence from its place of incorporation; and
- a power of attorney in favour of a law firm in Panama to execute the required documents and complete registration proceedings.

All documents coming from abroad must be certified by a notary public. The notary must state that the signature is authentic and that, pursuant to sufficient evidence provided to him or her, the party signing is duly authorised to sign on behalf of the company. Thereafter, the signature of the notary must be certified according to the 1961 Hague Convention on the apostille or by a Panamanian consul in the place of issuance.

Once the information provided by the applicant has been verified by the AAC, the aircraft will be assigned its registration marks. Thereafter, the interested party should complete various technical and legal requirements to obtain its certificate of registration, such as the issuance or validation of a certificate of airworthiness, as well as the payment of the relevant registration fees.

The AAC may issue a provisional certificate of registration if the owner of the aircraft demonstrates that proceedings have been initiated in order to conduct registration of ownership at the Public Registry.

### **Registration of aircraft ownership and lease interests**

#### *Aircraft registry*

#### **Identify and describe the aircraft registry.**

The AAC is responsible for directing and regulating air transportation services in Panama. It maintains a National Aeronautical Registry where all aircraft with Panamanian registration marks are recorded. Such Registry maintains records of both owners and operators.

In addition, the Public Registry of the Republic of Panama has an Aeronautical Section where titles, leases and mortgages on aircraft must be registered in order to make them effective against third parties.

There are 83-bis arrangements in place between Panama and other jurisdictions.

There is no specific engine register. However, there is a section of mortgages on chattel property at the Public Registry, where mortgages on engines are registered together with the corresponding title.

#### *Registrability of ownership of aircraft and lease interests*

**Can an ownership or lease interest in, or lease agreement over, aircraft be registered with the aircraft registry? Are there limitations on who can be recorded as owner? Can an ownership interest be registered with any other registry? Can owners', operators' and lessees' interests in aircraft engines be registered?**

Titles and leases over aircraft must be registered at the Public Registry and filed with the AAC. Title and lease agreements must be translated into Spanish by a Panamanian certified public translator if executed in another language, protocolised and registered at the Public Registry. Only the person who holds the title can be registered as owner. Once the title and lease are recorded with the Public Registry, these must be filed with the AAC for issuance of the definite registration certificate that will show the title holder as owner and the lessee as operator.

There is no engine registry, but it is possible to register title on engines when registering a mortgage on engines at the section of mortgage on chattel property of the Public Registry.

#### *Registration of ownership interests*

#### **Summarise the process to register an ownership interest.**

Generally, a mortgage on an aircraft will cover the parts and engines incorporated therein, whether they are present or future accessories or improvements. Ownership on engines capable of individualisation and determination can be mortgaged separately. The title and the mortgage over the engine must be translated into Spanish if executed in another language, processed and filed with the Public Registry for registration. If the documents are issued abroad, the notarisation and legalisation requirements stated in question 5 apply.

The registration fees are US\$100 for review by the Public Registry, plus US\$250 for each US\$100,000 or fraction thereof with a cap of US\$4,200. Additionally, notarial fees in the amount of US\$14 per page and translation fees based on the length of the document apply.

#### *Title and third parties*

**What is the effect of registration of an ownership interest as to proof of title and third parties?**

Registration constitutes proof of title. Third parties may rely on the public records, as according to the Aviation Law, title, leases and mortgages become effective against third parties as of the time these are filed with the Public Registry. Law 129 of 2013, which modernises the mortgages on chattel property, provides that the mortgage is effective against third parties as of the date of registration. Regulation of Law 129 is pending and will hopefully clarify whether the mortgage will affect third parties as of the date of filing or the date of registration at the Public Registry.

#### *Registration of lease interests*

#### **Summarise the process to register a lease interest.**

Lease interests can be recorded with the Public Registry. The lease agreement, evidence of the existence of lessee and lessor, and the corresponding corporate authorities must be translated into Spanish if executed in another language, and processed and filed with the Public Registry.

Documents executed abroad must comply with the notarisation and legalisation requirements stated in question 5.

The registration fees are US\$100 for review by the Public Registry, plus US\$1.50 for each US\$1,000 or fraction thereof. Additionally, the previously mentioned notarial and translation fees apply.

#### *Certificate of registration*

#### **What is the regime for certification of registered aviation interests in your jurisdiction?**

Records at the Public Registry and the AAC reveal complete details in respect of the ownership of the aircraft, mortgages, leases and any judicial measures against the aircraft and a complete description of the aircraft, its marks and registration details.

Public Registry certificates are issued to any interested party, and contain at least the above-mentioned information.

Upon registration, the AAC issues a certificate of registration to the owner or operator showing the registration number, owner, operator and type of service.

When the mortgage on an engine is recorded at the Public Registry, it is possible to obtain a Public Registry certificate stating ownership and mortgage details.

#### *Deregistration and export*

#### **Is an owner or mortgagee required to consent to any deregistration or export of the aircraft? Must the aviation authority give notice? Can the operator block any proposed deregistration or export by an owner or mortgagee?**

The registration of an aircraft will be deleted, upon request, by an interested party (ie, the owner or operator) or as a matter of course by the AAC whenever:

- it is requested by the owner or operator of the aircraft;
- the AAC authorises registration of the aircraft in another country, which will occur whenever the aircraft is free of any limitation or encumbrance or given the consent of its registered creditors;
- it is necessary to designate the aircraft out of service;
- the ownership of the aircraft is going to be transferred to a person who is not qualified to register an aircraft in Panama;

- there is a total loss of the aircraft;
- the aircraft appears registered in another country; or
- in other cases as provided in the regulations.

Generally deregistration powers of attorney are issued in favour of owner and mortgagee, and filed with the AAC in order to facilitate deregistration. Accordingly, in principle the lessee or operator should not be able to block deregistration.

### *Powers of attorney*

#### **What are the principal characteristics of deregistration and export powers of attorney?**

Deregistration powers of attorney enable the owner or mortgagee to freely deregister and export the aircraft. Panamanian commercial and aviation law do not expressly regulate whether powers of attorney may be irrevocable. Panamanian shipping law expressly recognises irrevocable powers of attorney. In practice, irrevocable powers of attorney are widely used in aviation.

Powers of attorney may be issued to more than one attorney.

### *Cape Town Convention and IDERA*

#### **If the Cape Town Convention is in effect in the jurisdiction, describe any notable features of the irrevocable deregistration and export request authorisation (IDERA) process.**

IDERAs are filed with the AAC. The form of IDERA used in Panama is not countersigned by the AAC. The IDERA is not recorded with the Public Registry but filed with the AAC. The AAC has no preferred way of dealing with financiers.

### **Security**

#### *Security document (mortgage) form and content*

#### **What is the typical form of a security document over the aircraft and what must it contain?**

The typical form of security over an aircraft is a mortgage. The mortgagor maintains the use and possession of the aircraft while mortgaged. It is possible to constitute several mortgages over an aircraft, provided that written notice is given to all prior mortgagees. There is no specific form. The mortgage must be translated into Spanish if executed in another language, and must include the following:

- the full names and details of the parties and their representatives;
- the economic terms including the maximum amount secured;
- the interest agreed;
- the manner in which payments will be made;
- a complete description of the mortgaged aircraft indicating its value;
- the place where the aircraft will be located; and
- any other lawful conditions agreed to by the parties.

### *Security documentary requirements and costs*

#### **What are the documentary formalities for creation of an enforceable security over an aircraft? What are the documentary costs?**

The mortgage, evidence of the existence of mortgagor and mortgagee, and the corresponding corporate authorities must be translated into Spanish if executed in another language, and processed and registered with the Public Registry.

Documents executed abroad must comply with the notarisation and legalisation requirements stated in question 5.

The registration fees are US\$100 for review by the Public Registry, plus US\$2.50 for each US\$1,000 or fraction thereof with a cap of US\$51,250. Additionally, the previously mentioned notarial and translation fees apply.

### *Security registration requirements*

#### **Must the security document be filed with the aviation authority or any other registry as a condition to its effective creation or perfection against the debtor and third parties? Summarise the process to register a mortgage interest.**

According to the Aeronautical Law, the mortgage is valid between the parties as of the time of execution but must be recorded with the Public Registry in order to be effective against third parties. The law of Mortgages on Chattel Property provides that the mortgage will be effective against third parties as of the date of registration with the Public Registry. This discrepancy must be resolved in pending regulations. Registration can be achieved within five to 10 days. Registration may be expedited if fast-track registration fees in the amount of US\$300 are paid. The mortgage will remain valid throughout the term of the mortgage.

### *Registration of security*

#### **How is registration of a security interest certified?**

Public Registry certificates and AAC certificates confirming title, leases, mortgages and operators can be obtained as stated in question 11. Other security interests cannot be registered in Panama.

### *Effect of registration of a security interest*

#### **What is the effect of registration as to third parties?**

It is not possible to register other security interests in Panama.

### *Security structure and alteration*

#### **How is security over aircraft and leases typically structured? What are the consequences of changes to the security or its beneficiaries?**

Security over an aircraft is constituted through mortgages. Any changes to the mortgage must be filed with the Public Registry in order to be effective against third parties. The aircraft mortgage creates a right in rem.

Trusts are recognised and regulated in Panama as contractual arrangements and are commonly used in finance transactions. Generally a trust is created and the security trustee acts as mortgagee. The trust does not need to be registered and accordingly changes to the beneficiaries of the trust do not require registration.

### *Security over spare engines*

## **What form does security over spare engines typically take and how does it operate?**

Generally, a mortgage on an aircraft will cover its accessories and improvements, such as spare parts and engines incorporated therein, whether they are present or future accessories or improvements. Engines and other spare parts capable of individualisation and determination and able of being sufficiently identified can be mortgaged separately from the aircraft.

### **Enforcement measures**

#### *Repossession following lease termination*

### **Outline the basic repossession procedures following lease termination. How may the lessee lawfully impede the owner's rights to exercise default remedies?**

Upon an event of default under the lease, the lessor would have to initiate either ordinary or special judicial proceedings to repossess the aircraft. Panamanian law does not recognise self-help remedies.

The termination of the lease must be recorded with the Public Registry and filed with the AAC, and the certificate of operation of the aircraft with lessee as operator must be cancelled. There are no other non-contractual procedures or requirements that apply to lease termination.

#### *Enforcement of security*

### **Outline the basic measures to enforce a security interest. How may the owner lawfully impede the mortgagee's right to enforce?**

The mortgage may be executed judicially or extrajudicially when the parties have agreed to the latter form of enforcement in the contract.

The mortgagee may pursue either executive or special judicial proceedings for the enforcement of its rights under the mortgage.

If the debtor has repaid at least one-half of the loan, the court will decree the sale of the aircraft in accordance with the terms of executive proceedings, save that there will only be one auction and the base amount will be the sum owed plus costs and expenses. If there is no bidder willing to pay the price, the aircraft will be adjudicated to the mortgagee. The obligations arising under the mortgage are extinguished by the judicial sale.

If the debtor has paid less than one-half of the amount owed, the aircraft will be adjudicated to the mortgagee and the obligation secured will be extinguished. The debtor may, within 10 days of being notified of the sale, request the sale of the aircraft to a party other than the mortgagee, provided that it deposits with the court an amount sufficient to cover the expenses of the sale, and satisfies the court that it will pay the balance owed in the event that the sale price does not cover the amount owed. If the mortgage allows the mortgagee to take possession and administer the aircraft, the court may allow the mortgagee to take over the administration of the aircraft pending its judicial sale.

When the parties agree in the contract to an extrajudicial execution, they must appoint a legal representative who must take the necessary steps to notify the execution to the mortgagor. Once the mortgagor receives the notice of execution, he or she may deliver the aircraft to the mortgagee or file an opposition to the execution process.

In the case of extrajudicial execution, the value of the aircraft will be fixed by an expert appraiser appointed jointly by both parties in the contract or in a later agreement.

The aircraft may be detained by way of an ex parte application.

The mortgage has priority over other creditors' rights except for those listed in question 24.

*Priority liens and rights*

**Which liens and rights will have priority over aircraft ownership or an aircraft security interest? If an aircraft can be taken, seized or detained, is any form of compensation available to an owner or mortgagee?**

According to the Aeronautical Law the following claims have priority over all other claims:

- national taxes over the aircraft;
- aircraft mortgage;
- the salaries and other social benefits due to the crew; and
- the amounts owed to the air transport sector on account of the operations of the aircraft in its last flight.

The priority among several mortgages on the aircraft will be determined by the date of registration at the Public Registry.

Furthermore, Panama has made the following declaration in respect of article 39 of the Cape Town Convention:

In respect of article 39 of the Convention, the following non-consensual rights and interests shall prevail over an international interest registered in accordance with the Convention:

- a) any sums due from or capable of being demanded from the debtor by way of salaries, pensions and other social security benefits and employment allowances owed in respect of employees of that debtor;
- b) any sums due from or capable of being levied from the debtor by way of fiscal and parafiscal contributions owed in respect of employees of that debtor;
- c) any sums due or capable of being levied from the debtor, by way of taxes, duties or contributions payable to the Panamanian state or to the decentralised bodies that collect such revenue, in accordance with Panama's internal laws;
- d) the right of Panama to arrest, attach or confiscate mobile equipment and aircraft equipment in the event of breach of the customs or criminal laws of Panama; and
- e) courts' costs in connection with the foreclosure of the mortgage, and national taxes over the aircraft.

These different priorities may create a conflict of laws that would have to be resolved by the Panamanian Judicial Branch once a case of this nature is presented.

Executive interference concerning expropriation or requisition of aircraft (or other property) is rare in Panama. The Panamanian Constitution expressly provides for the confiscation, or expropriation, of private property in the event of war, national catastrophe or suspension of constitutional rights. The government could decree the requisition of an aircraft upon payment of compensation.

In the event that an aircraft is mortgaged or attached, the amount of compensation for the expropriation thereof would be deposited with the National Bank and creditors would be notified of the proper action to be taken in respect thereof.

## *Enforcement of foreign judgments and arbitral awards*

### **How are judgments of foreign courts enforced? Is your jurisdiction party to the 1958 New York Convention?**

A final conclusive judgment of a foreign court of competent jurisdiction would be recognised and enforced in the courts of Panama without retrial of the originating action by instituting exequatur proceedings in the courts of Panama and upon determination by such tribunal that:

- the courts of the judgment country would in similar circumstances recognise a final and conclusive judgment of the courts of the Republic of Panama;
- the judgment has been issued as a consequence of an action in personam;
- the judgment was rendered after personal service on the defendant (including service on a process agent of the defendant);
- the cause of action upon which the judgment was based does not contravene the public policy of Panama;
- the documents evidencing the judgment are in authentic form according to the law of the relevant foreign court and have been duly legalised by a Consul of Panama or pursuant to the 1961 Hague Convention on the legalisation of documents; and
- a copy of the final judgment has been translated into Spanish by a licensed translator in Panama.

Panama is a signatory of the 1958 New York Convention.

A final conclusive judgment of a foreign arbitration award issued by a foreign arbitration tribunal would be recognised and enforced in the courts of Panama and may only be refused if one of the following circumstances occurs:

- at the request of the party against whom it is invoked, if the said party proves before the General Business Court of the Supreme Court of Justice that:
  - one of the parties to the arbitration agreement was under some incapacity under the law applicable to it, or the said agreement is not valid pursuant to the law to which the parties subjected it or, if no provision was made in this regard, pursuant to the law of the country in which the award was rendered;
  - the party against whom the award is invoked was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was unable, for whatever reason, to present its defence;
  - the award refers to a dispute that was not contemplated by the arbitration agreement or that did not fall within the terms of the submission to arbitration or contains decisions that go beyond the scope of the arbitration clause or the submission to arbitration. However, if the provisions of the award that refer to the matters submitted to arbitration can be separated from those that have not been submitted to arbitration, the former may be recognised and enforced;
  - the constitution of the arbitral tribunal or the arbitral proceedings did not conform to the agreement entered into between the parties or, if there is none, it did not conform to the law of the country in which the arbitration was held; or
  - the award has not yet become binding on the parties or has been set aside or stayed by a court of the country in which it was made or pursuant to whose law it was made. If a court has been asked to set aside the award pursuant to the applicable law, the competent court to whom the application for

recognition and enforcement is addressed may, if it considers it appropriate to do so, defer its decision and at the request of the party seeking recognition and enforcement it may also order the other party to provide appropriate and adequate guarantees.

- If the court finds:
  - that pursuant to the Arbitration Law the subject matter of the dispute may not be resolved through arbitration; and
  - that the recognition or enforcement of the award would be contrary to Panamanian international public policy.
- If the following documents are not provided with the enforcement petition:
  - duly authenticated original or certified copy of the arbitration award;
  - duly authenticated original or certified copy of the arbitration agreement; and
  - official translation to Spanish if the language of the arbitration proceedings is other than Spanish.

### **Taxes and payment restrictions**

#### *Taxes*

#### **What taxes may apply to aviation-related lease payments, loan repayments and transfers of aircraft? How may tax liability be lawfully minimised?**

##### ITBMS tax

Panamanian tax laws provide for a specific tax for transfer of chattel property and services (ITBMS), which is applied to those assets transferred or services provided in the territory of Panama. This is regardless of the place where the contract has been entered into or the place where payment is made. ITBMS tax would apply for the sale of aircraft located within the territory of Panama.

Under general tax provisions, lease contracts are considered a service rendered by lessor and thus are subject to the ITBMS tax.

Currently, the applicable ITBMS rate is 7 per cent.

##### Income tax

Payments made by the lessee to the lessor and payments made by mortgagor to the mortgagee are subject to income tax. The applicable corporate tax rate is 25 per cent of net taxable income.

##### Withholding tax

Payments made by the lessee or mortgagor to a non-domiciled lessor or mortgagee pursuant to a lease or a mortgage of an aircraft economically used within Panama, or by a local operator for international transportation, are subject to a withholding tax of 50 per cent of the applicable tax rate on 100 per cent of the amounts credited to the non-domiciled lessor, unless reciprocity agreements are in effect between Panama and the country of the lessor. The United States has a tax reciprocity agreement (exchange of notes) with Panama, whereas the gross income derived from lease or mortgage payments of aircraft engaged in international transportation is exempt from income tax.

##### Import tax

Aircraft operators engaged in public transportation services or aviation-related business are exempt from import taxes on aircraft and spare parts, including engines.

Gross-up provisions are not enforceable.

Tax liability may be minimised when double taxation treaties are in effect between the countries of the parties.

#### *Exchange control*

#### **Are there any restrictions on international payments and exchange controls in effect in your jurisdiction?**

There are no restrictions on the remittance of funds abroad from Panama or exchange controls. No central bank or official consents are required.

#### *Default interest*

#### **Are there any limitations on the amount of default interest that can be charged on lease or loan payments?**

There are no limitations on the amount of default interest that can be charged on a lease or loan.

#### *Customs, import and export*

#### **Are there any costs to bring the aircraft into the jurisdiction or take it out of the jurisdiction? Does the liability attach to the owner or mortgagee?**

For import taxes refer to question 26. There are no restrictions on exports of aircraft from Panama.

Under Panamanian law an aircraft may be detained, and in some cases sold, by public authorities for liens created by the operator, or for failure to comply with legal requirements, or when the aircraft is used in illegal activities, or in the case of war, national catastrophe or suspension of constitutional rights.

### **Insurance and reinsurance**

#### *Captive insurance*

#### **Summarise any captive insurance regime in your jurisdiction as applicable to aviation.**

International aircraft carriers and airport concessionaires are obliged to obtain insurance coverage for damages to third parties on the ground, crew members, passengers and any other parties that may suffer harm as a result of their operations.

Maritime insurance regulations are also applicable to aviation insurance, to the extent that they are pertinent and compatible.

Pursuant to article 153 of Law 12 on Insurance (2012), it is mandatory for entities, companies and persons domiciled in Panama to enter into contracts with insurance companies authorised to do business in Panama with respect to all insurance on assets and persons located in Panama. Foreign insurers may not cover assets or persons located in Panama, unless there is a fronting arrangement with a local insurance company or if any of the following exceptions apply:

- there is a breach of any treaties or international agreements entered into by the Republic of Panama;
- the insurance coverage does not exist in the Republic of Panama; or
- it is impossible to obtain insurance owing to rejection of coverage by the licensed insurers in Panama.

The superintendency, prior to verification that it is not possible to obtain such insurance in Panama, may authorise its contracting abroad if all legal requirements, among which the withholding and payment of income tax as provided by the Fiscal Code, are fulfilled. The companies, entities or persons must register the authorisations granted in this connection with the Superintendent.

Reinsurance may be placed with local or foreign licensed reinsurers.

Under Panamanian law, captive insurance may apply to any foreign risks, including aviation-related risks. Captive insurance activities undertaken in Panama may not cover risks located in Panama.

#### *Cut-through clauses*

#### **Are cut-through clauses under the insurance and reinsurance documentation legally effective?**

Cut-through clauses are permitted under freedom of contracting principles of Panamanian law.

#### *Reinsurance*

#### **Are assignments of reinsurance (by domestic or captive insurers) legally effective? Are assignments of reinsurance typically provided on aviation leasing and finance transactions?**

Assignments of reinsurance are legally effective and are typically provided on aviation leasing and finance transactions.

#### *Liability*

#### **Can an owner, lessor or financier be liable for the operation of the aircraft or the activities of the operator?**

An owner lessor is not liable for the operation of the aircraft or the activities of the operator. However, the aircraft may be detained for enforcement of liens or for acts of the operator.

#### *Strict liability*

#### **Does the jurisdiction adopt a regime of strict liability for owners, lessors, financiers or others with no operational interest in the aircraft?**

Panama does not create a regime of strict liability for owners, lessors or financiers with no operational interest.

#### *Third-party liability insurance*

#### **Are there minimum requirements for the amount of third-party liability cover that must be in place?**

According to the Aviation Law the indemnification that the carrier must pay is as follows:

- for damages to passengers: 25,000 balboas;
- for loss, damage or destruction of hand luggage: up to 33.20 balboas; and
- for loss, destruction or breakdown of cargo or paid luggage: up to 24.75 balboas.

If the cargo or paid luggage is transported according to the declared value, and the interested party has paid the additional fees according to the company's fee, the limit of indemnification will be the value declared.

These limits of liability are not payable if it is proved that the damage is the result of an action or omission of the carrier or the operator or their dependants, with the intention of causing the damage, or being reckless or knowing that the damage would be caused; however, in the case of an action or omission of the dependants, it is necessary to

prove that these were acting in their duties as such.

The amount of compensation, subject to the preceding article, shall not exceed the following per aircraft event:

- 16,600 balboas for aircraft whose weight does not exceed 1,000kg;
- 16,600 balboas plus 13.25 balboas per kilogram over 1,000kg for aircraft weighing between 1,000kg and 6,000kg;
- 82,850 balboas plus 8.3 balboas per kilogram over 6,000kg for aircraft weighing between 6,000 kg and 20,000 kg;
- 199,000.50 balboas plus 5 balboas per kilogram over 20,000kg for aircraft weighing more than 20,000 kg; and
- 349,000.50 balboas plus 3,325 balboas per kilogram over 50,000kg for aircraft weighing more than 50,000kg.

Indemnification in case of death or injuries shall not exceed 25,000 balboas per death or injured person.

For the purposes of these provisions, weight means the maximum weight of aircraft authorised by the airworthiness certificate for take-off.

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