



## HIGH COURT OF AUSTRALIA

5 June 2024

GREYLAG GOOSE LEASING 1410 DESIGNATED ACTIVITY  
COMPANY & ANOR v PT GARUDA INDONESIA LTD  
[2024] HCA 21

Today, the High Court dismissed an appeal from a decision of the Court of Appeal of the Supreme Court of New South Wales. The appeal concerned the immunity from the jurisdiction of an Australian court conferred on a separate entity of a foreign State by ss 9 and 22 of the *Foreign States Immunities Act 1985* (Cth) ("the Immunities Act"). The question in the appeal was whether the exception from immunity in s 14(3)(a), read with s 22 of the Immunities Act, applies to a proceeding for the winding up under Pt 5.7 of the *Corporations Act 2001* (Cth) ("the Corporations Act") of a separate entity of a foreign State that is a body corporate registered as a foreign company under the Corporations Act. Section 14(3)(a) of the Immunities Act provides that "[a] foreign State is not immune in a proceeding in so far as the proceeding concerns ... bankruptcy, insolvency or the winding up of a body corporate". Through the operation of s 22 of the Immunities Act, s 14(3)(a) applies "in relation to a separate entity of a foreign State" as the provision applies "in relation to the foreign State".

PT Garuda Indonesia Ltd ("Garuda") is a company incorporated in the Republic of Indonesia and is the national airline of the Republic of Indonesia. Garuda is registered as a foreign company under the Corporations Act. The appellants in the appeal (together "Greylag Goose") are companies incorporated in the Republic of Ireland, which lease aircraft to Garuda. Greylag Goose made demands on Garuda for the payment of amounts said to be owed by Garuda. By originating process filed in the Supreme Court of New South Wales, Greylag Goose sought orders that Garuda be wound up "on the basis that [Garuda] is unable to pay its debts or otherwise that it is just and equitable to do so".

By notice of motion, Garuda sought an order that the originating process be set aside on the basis that the Supreme Court lacked jurisdiction by operation of ss 9 and 22 of the Immunities Act. It was common ground that Garuda is an agency or instrumentality of the Republic of Indonesia and, on that basis, is a separate entity within the meaning of the Immunities Act. Hence, Garuda was entitled to the immunity conferred by ss 9 and 22 of the Immunities Act in the winding up proceeding unless an exception from immunity applied. Greylag Goose relied on the exception in s 14(3)(a) read with s 22 of the Immunities Act. The primary judge rejected the argument of Greylag Goose and set aside the originating process. The decision of the primary judge was upheld on appeal to the Court of Appeal.

Before the High Court, Greylag Goose argued that, in its application through s 22 in relation to a separate entity, s 14(3)(a) is to be read as providing that "[a separate entity] is not immune in a proceeding in so far as the proceeding concerns ... bankruptcy, insolvency or the winding up of a body corporate" and given that "separate entity" is defined to include "a body corporate", there is no reason why the "separate entity" to which s 14(3)(a) refers must be an entity different from the "body corporate" to which s 14(3)(a) refers. Rejecting Greylag Goose's argument, a majority of the High Court concluded that, as s 14(3)(a) applies through the operation of s 22 in relation to a separate entity of a foreign State: the separate entity (like the foreign State itself) is the object of the exception from immunity; the "body corporate" is an entity other than the separate entity (just as it is an entity other than the foreign State itself); and the winding up of that other entity is the subject-matter of the exception. Accordingly, the exception applies to a proceeding under Pt 5.7 of the Corporations Act only if and in so far as the proceeding concerns the winding up of a body corporate that is not the same body as the separate entity.

*This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*