

## AIRCRAFT REPOSSESSION IN VIETNAM



### 1

---

#### **Does Vietnamese law allow for aircraft repossession and re-exportation from Vietnam?**

Yes. By law, upon the termination of the lease, the lessor has the right to repossess the leased aircraft by itself or with help from a third party or a government authority. Such authorities include the Civil Aviation Authority of Vietnam (CAAV) and customs officials.

### 2

---

#### **Is the lessee's cooperation required for a lessor to repossess the aircraft?**

No. In practice, however, the lessee's cooperation is required for any self-help remedies to work. If the lessee does not cooperate, the lessor must repossess the aircraft through court action.

### 3

---

#### **Is repossession from a Vietnamese airline possible without litigation or arbitration?**

Yes, but only if the lessee cooperates in the repossession and the lessor is recorded in an irrevocable de-registration and export request authorization (IDERA) under the Cape Town Convention as the party entitled to request the de-registration and exportation of the aircraft.

### 4

---

#### **Is Vietnam a party to the Protocol to the 2001 Cape Town Convention on International Interests in Mobile Equipment?**

Yes. The Cape Town Convention and the Protocol became effective on January 1, 2015.

## 5

---

### **Will a foreign arbitral award that awards the lessor the right to repossess the aircraft be enforced in Vietnam?**

Yes, in principle. Vietnam is a party to the New York Convention on Recognition and Enforcement of Foreign Arbitral Awards and has implemented it through the Civil Procedure Code. For a foreign arbitral award to be enforced in Vietnam, the award must be recognized and held enforceable by a Vietnamese court. In practice, however, the recognition and enforcement of a foreign arbitration award is uncommon. Lessors should not rely on foreign arbitral awards to repossess an aircraft in Vietnam.

## 6

---

### **Will a foreign court judgment that orders the lessee to surrender the aircraft be enforced in Vietnam?**

Yes, under certain circumstances. Under Vietnamese law, a competent Vietnamese court will recognize and enforce a judgment rendered by a foreign court: (i) where the judgment was issued by a court of a country which is a party to an international treaty of which Vietnam is a participant or signatory; (ii) where the judgment is permitted to be recognized and enforced under Vietnamese law; or (iii) on a reciprocal basis without the condition that Vietnam and the relevant country are signatories or participants of a relevant international treaty.

Judgments issued by foreign courts are not recognized and enforced in Vietnam where the Vietnamese court determines that the foreign judgment is contrary to “the fundamental principles” of Vietnamese laws. There is, however, no further clarification of “the fundamental principles.”

## 7

---

### **Is it possible to repossess an aircraft leased to a state-owned airline?**

Yes. There is no discrimination between a state-owned lessee and a non-state-owned lessee.

## 8

---

### **Can a lessor seek protective interim measures in Vietnam, such as grounding an aircraft?**

Vietnamese law recognizes detention of an aircraft by the creditors, owner, victims, or other interested persons if the aircraft caused damages to third persons while flying. The creditors, owner, victims, or other interested persons cannot detain the aircraft directly but must request the court of the province/city where the aircraft is grounded to detain the aircraft. The court can order detention by not permitting the movement of the aircraft from a terminal or an airport.

## 9

---

### **How can a lessor seek a court order to repossess the aircraft?**

The lessor must first file a petition with a competent Vietnamese court, together with evidence to demand the repossession of the leased aircraft. The court will likely conduct mediation to encourage the parties to settle. If no settlement is reached, the court will schedule hearings, after which it will issue a judgment.

If the judgment is not appealed within 15 days after being issued, it will be considered final and legally enforceable. The lessor must then lodge a request to the official enforcement agency to enforce the judgment. The lessor and enforcement agency will then work together to seek repossession of the aircraft.

## 10

---

### **To export the aircraft, can a lessor apply for customs clearance in its own name, or does it need the lessee to cooperate?**

The lessee's cooperation is generally required. Under customs regulations, a leased aircraft is considered to be a good that has been temporarily imported into Vietnam for re-exportation. Thus, the exportation of the aircraft after the lease is terminated is subject to the customs procedures applicable to goods temporarily imported for re-exportation. If the lessee carries out the customs procedures for the temporary importation, it must also carry out the customs procedures for re-exportation.

In a court action, the lessor should ask the competent court to order the lessee's cooperation with regard to exporting the aircraft.

## 11

---

### **What permissions are needed to ferry the aircraft from Vietnam?**

The main permissions needed to be obtained are: (i) the Nationality Deregistration Certificate for the aircraft; and (ii) the Mortgage Deregistration Certificate (if the leased aircraft is a mortgaged asset) granted by the CAAV. In addition, the CAAV must be formally notified of the lease's termination and when the repossession is complete.

#### **Contact**

**Chuyen Huu Hong Le**  
chuyen.l@tilleke.com

**John Frangos**  
john.fr@tilleke.com

[www.tilleke.com](http://www.tilleke.com)