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Aircraft repossession in Thailand

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For aircraft leasing companies, having to repossess an aircraft from an airline that misses its rental payments is usually an option of last resort. The repossession process in Thailand can be time-consuming and costly, and often precludes future earnings.

However, as a number of Thai airlines have defaulted on payments in recent years, lessors have been left with no choice but to seek recovery of their valuable assets. This article provides an overview of the practical and legal considerations of aircraft repossession in Thailand.

Thai law allows for repossession and re-export of an aircraft from Thailand for private and state-owned airlines. When a lessor terminates an aircraft lease agreement, the lessee's legal right to possess that aircraft ("possessory right") ends.

Thai law requires all civil aircraft to be registered with the Civil Aviation Authority of Thailand (the CAAT) in the name of the person with possessory rights. As terminating the lease changes those rights, it also invalidates the aircraft's registration under the Air Navigation Act BE 2497 (1954).

After terminating the lease agreement, a lessor can therefore submit a request for deregistration of the aircraft to the CAAT. In practice, the CAAT will normally ask the lessee (the airline) for confirmation of the termination and the change of possessory rights. In other words, the CAAT will ask if the airline "consents" to the deregistration.

The best-case scenario for lessors is for the airline to give its consent -- but this rarely happens. More often, the airline will refuse to give consent and will challenge the validity of the lease termination.

The CAAT must then use its discretion to decide whether the lease has been terminated validly, and whether the possessory right has shifted from the airline to the lessor. If the CAAT considers the airline to no longer have a possessory right, it can deregister the aircraft.

If the CAAT decides not to deregister, a lessor must initiate a court action or arbitration to compel deregistration. Even if the CAAT deregisters the aircraft, the lessor must still file a lawsuit to collect the usually significant debt that the airline owes, as the CAAT does not have the power to order the airline to pay any monetary damages.

Depending on the circumstances, a lessor may want to keep the aircraft on the ground during the repossession process. A court order is needed to accomplish this. In practice, it is difficult for lessors to obtain an emergency injunction from a Thai court to ground an aircraft. The lessor must prove that the grounding is needed because of a risk to public safety or national security. The court will usually reject emergency requests to ground an aircraft based strictly on economic issues.

Even for non-emergency injunction requests, the lessor must present strong evidence that the airline is about to remove the aircraft from Thailand -- and may not return. Such evidence is difficult to obtain. Moreover, courts are reluctant to ground aircraft for fear that the grounding would inconvenience passengers and generally interfere with an airline's business operations.

After the lessor files its case in court, the parties will litigate and hold a trial. If the lessor is successful, the court will order the airline to deregister the aircraft. The court will usually issue the judgement two to three months from the end of trial. Both parties are entitled to appeal within one month. Including the time it takes for appeals to be made, it may take a lessor two or more years to recover the aircraft.

Lessors attempting repossession should note how Thai courts consider rulings from foreign jurisdictions. Thailand is not a party to the 2001 Cape Town Convention on International Interests in Mobile Equipment, so a party attempting to legally repossess an aircraft cannot rely on international standards as a legal authority.

Thai courts do not enforce foreign court judgements ordering airlines to surrender or ground aircraft. The lessor is required to submit a new claim to the court for repossession. However, the lessor can present a foreign court judgement to the Thai courts as evidence in such a claim.

After the lessor gains possession of the aircraft, it will need to export the aircraft from Thailand. It can apply for customs clearance in its own name and does not need cooperation from the airline. The lessor will also need additional permission to ferry the aircraft. After the CAAT deregisters the aircraft in Thailand, the lessor needs to register it in another country.

The lessor can then submit a request for a flight permit to the CAAT, which, once granted, will allow the lessor to fly the aircraft from Thailand to a different location, successfully completing the repossession process.

Thailand provides a unique aviation market due to its status as a travel destination -- and the resultant high number of airline operators. But many operators are inexperienced and defaults on aircraft payments are inevitable. Aircraft leasing companies should have a clear understanding of the legal hurdles and practical challenges related to repossession from the beginning of any transaction.

This article was prepared by John Frangos, consultant, and Nuanchun Somboonvinij, attorney-at-law, from the Dispute Resolution Department of Tilleke & Gibbins. The authors would like to thank Creighton Franz for his valuable contribution. Please send any comments or questions to Andrew Stoutley at andrew.s@tilleke.com

About the author

Writer: Tilleke & Gibbins