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## Aircraft Deregistration in Thailand: New Clarity by the Administrative Court

Thailand's strong travel and tourism industry has resulted in ever-growing numbers of air passengers. One consequence has been a corresponding rise in Thai low-cost charter airlines to service tourists. These airlines mainly supply their fleets with aircraft leased from abroad, as Thailand does not have a domestic aircraft leasing industry.

But for a variety of reasons—not least because running an airline is a difficult and expensive business—many Thai charter airlines have found themselves in dire financial circumstances. Over the last few years, this has caused large numbers to default on lease payments. To cut their losses, lessors have sought to repossess their valuable aircraft assets, as is their contractual right under the lease agreements. The repossession process in Thailand can be a lengthy and sometimes arduous process, but a recent Administrative Court decision on aircraft deregistration will hopefully provide more predictability.

### Deregistration

Aircraft are required by Thai and international law to be registered with a governmental civil aviation authority. In Thailand, this is the Civil Aviation Authority of Thailand (CAAT) (formerly the Department of Civil Aviation). So, for a lessor to repossess an aircraft, it must obtain the aircraft's deregistration from the CAAT. This is where it usually gets complicated—and frustrating—for lessors.

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Historically, the Thai civil aviation authority would only deregister an aircraft with the clear consent of the lessee-airline, or, absent that, a court order. This meant that when facing a hostile repossession (as most are), a lessor would have to sue the airline in a Thai civil court and litigate until final judgment. This takes time, and a lessee-airline's delay tactics may further extend the process.

Part of the repossession challenge is due to an ambiguity in Thai law. The Air Navigation Act B.E. 2497 (1953) states that an aircraft's registration is invalid when a lessee no longer has possessory rights. As such, the previous approach

followed by the civil aviation authority was that only a court could determine whether a lessee no longer had possessory rights. In other words, the authority's view was that cancellation of possessory rights was a strictly legal determination that was outside of its expertise and jurisdiction.

However, in a number of recent cases that Tilleke & Gibbins has assisted on, the CAAT agreed to deregister lessors' aircraft without a court order. In each of these cases the CAAT made its determination after hearing from both sides and concluding that the lessee defaulted, and the lessor validly terminated the lease agreement, thus cancelling the lessee's possessory rights. As a result, repossession time was significantly reduced.

### Challenge to the CAAT

While the CAAT's willingness to deregister without a court order was great for lessors, whether the CAAT actually had the authority to do so was left in question. One airline put that question to the test when it filed a case against the CAAT in Thailand's Administrative Court, a specialized court for suing Thai government agencies. The Administrative Court decided that the CAAT indeed had the authority to deregister.

In that case, the airline had previously defaulted on its lease payments for two aircraft. Our firm assisted the lessor to deregister the aircraft with the CAAT. Just before the aircraft were to leave Thailand, the airline asked the Administrative Court to issue an injunction to ground the aircraft in Thailand and dismiss the CAAT's deregistration order on the grounds that it was invalid under Thai law. The court granted the injunction and proceeded to hear the case from all sides. Our firm helped the lessor join the CAAT as a second defendant.

At the end of the case, the Administrative Court ruled in favor of the CAAT and the lessor. The CAAT's deregistration order was declared valid. The court concluded that the lease agreement clearly stated that non-payment of rent constitutes an event of default and a material breach. The lease agreement further stated that the lessor can terminate the contract by giving the lessee notice, and that the lessor can repossess under a variety of circumstances. In short, the facts showed that the lessor validly terminated the lease and therefore that the possessory rights to the aircraft had shifted to the lessor. The lessor was therefore entitled to repossess the aircraft.

In addition, the court concluded that, under Thai law, the CAAT has the power to register and deregister aircraft. Moreover, the court stated that the registration of the aircraft is made in accordance with not only Thai law under the Air Navigation Act, but also the Convention of International Civil Aviation (1944) (also known as the Chicago Convention). The court decided that if the CAAT did not deregister the aircraft, it would cause difficulties to the CAAT as a regulator for Thai civil aviation operations.

In sum, the court validated the CAAT's practice of deregistering aircraft without a court order. As a result, in the future the CAAT is expected to continue to deregister without a court order, so long as the lessor can prove the lessee was in clear default and the lease agreement was validly terminated. If a lessee does challenge the deregistration, a lessor can point to the Administrative Court case discussed above as a persuasive precedent. Lessors may be able to significantly cut down the amount of time it takes to deregister and repossess, which will hopefully provide flexibility and better leasing options for Thai airlines. 🏆