

Aviation

Aircraft Deregistration in Thailand

Thailand is not a signatory to the Cape Town Convention. This means that upon an airline-lessee's default, a lessor cannot present an Irrevocable Deregistration and Export Authorization (IDERA) document to easily repossess an aircraft. However, Thai law does allow for lessors to obtain aircraft deregistration without the need to go to court.

Pursuant to Clause 12 of the Civil Aviation Authority of Thailand (CAAT) Regulation No. 23 (Reg. 23), the Director General of CAAT has the authority to deregister an aircraft when the possessory right to the aircraft under a lease agreement has expired for any of the following reasons:

- The lease agreement has expired due to the lease term;
- The lease agreement has been terminated by either the lessor or the lessee in accordance with its termination clause;
- The lessor and lessee agree to terminate the lease agreement;
- The lessor notifies the termination of the lease agreement and submits an irrevocable deregistration power of attorney together with an application requesting the exportation of the aircraft, and the lessor or its agent submits an application for deregistration of the aircraft to the Director General.

Under Reg. 23, a lessor can submit a deregistration application to CAAT asking CAAT to deregister. The deregistration application consists of evidence of the lease termination, a deregistration power of attorney (DPOA), the applicant's certificate of incorporation, and the aircraft's certificate of airworthiness and Certificate of Registration. CAAT will review the application and ask the lessee if it consents to the deregistration. If the lessee does not consent, CAAT may invite the lessor and lessee to one or more administrative hearings to give evidence on the dispute. If CAAT concludes that the lease has been validly terminated and the lessee no longer has possessory rights, CAAT will deregister the aircraft.

Under Thai law, a lessor can terminate its aircraft lease agreement in accordance with its termination clause. The aircraft does not need to be physically located in Thailand at the time of termination. The notice period specified in the lease agreement must be complied with by the lessor. With



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that in mind, if the rent is due monthly and the notice period specified is less than 15 days, the lessor should provide 15 days' notice before termination, which is the notice period specified under Thai law.

A DPOA is recognized and can be a form of security, but is effective only when it is irrevocable and submitted under Reg. 23. Thai law does not require any specific form of DPOA. The law also does not require the DPOA to be certified, notarized, legalized and translated. From experience, the deregistration applicant should submit an original DPOA to CAAT. As such, the lessor should obtain and keep original versions of the executed DPOA.

Once CAAT issues a deregistration order, the lessor can show the order to the relevant airport authority (i.e. Airports of Thailand PCL) and take physical control of the aircraft. If the lessee owes debts to any government agency or its employees, CAAT will not allow the lessor to export the aircraft until the debts are paid. The lessor should expect to pay these debts in order to export the aircraft.



Practice Area News

Thai Air Asia X under Bankruptcy Protection in Thailand. On May 17, 2022, Thai AirAsia X (TAAX) submitted a petition for business rehabilitation with the Thai Bankruptcy Court. On May 18, 2022, the Court accepted the petition, triggering a moratorium on debt claims. On September 14, 2022, the Bankruptcy Court granted TAAX's petition for business rehabilitation and appointed TAAX to prepare its restructuring plan. A creditors' meeting is scheduled for June 21, 2023 to vote on the restructuring plan.

In the Firm

ABLJ Recognizes Tilleke & Gibbins for Aviation and 10 Other Practice Areas

Tilleke & Gibbins has been named a winner in 11 categories of the 2023 Thailand Law Firm Awards from *Asia Business Law Journal* —including the aviation practice area.

Tilleke & Gibbins Named Diversity and Inclusion Firm of the Year

Tilleke & Gibbins has been recognized for its commitment to diversity and inclusion at the ALB Women in Law Awards 2023, organized by *Asian Legal Business* (ALB).

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