



## **Aviation in Southeast Asia – Beyond the Horizon**

### Focus on Bangladesh 10 Key Q&As

*A DFDL Aviation Q&As Publication Series*

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NO.	QUESTIONS	ANSWERS
1.	<p><b>Has Bangladesh signed and ratified the Cape Town Convention?</b></p>	<p>Yes, Bangladesh has signed and ratified the Cape Town Convention. However, there are doubts about whether the Convention is currently enforceable because it is yet to be incorporated into the laws of Bangladesh, as required under Article 145A of the Bangladesh Constitution.</p>
2.	<p><b>Short description of the de-registration process of an aircraft in Bangladesh?</b></p> <p>a) <b>Who should apply for deregistration and is there any time period within which such application should be made?</b></p> <p>b) <b>What are the fees payable?</b></p> <p>c) <b>Is the consent of the lessee required for the de-registration?</b></p> <p>d) <b>How long does it take for the de-registration to be completed?</b></p> <p>i. <b>When the lessee collaborates with the lessor.</b></p> <p>ii. <b>When the lessee does not collaborate with the lessor.</b></p>	<p>a) Both the lessor and the lessee can initiate the application for deregistration with the Civil Aviation Authority of Bangladesh (“CAAB”). There is no specific timeframe within which to make such an application;</p> <p>b) The fees are very nominal;</p> <p>c) If the lessor applies for de-registration, the lessee’s consent is generally not required. However, the CAAB may request the lessee’s opinion before issuing the de-registration certificate. Also, the CAAB may require the lessee to pay all dues in respect of the aircraft before de-registration;</p> <p>d) When the lessee cooperates, it may take a few weeks to a few months. If the lessee does not cooperate, the timeframe will depend on each individual case. If the lessee obtains an injunction from a court in Bangladesh restricting the repossession, it may take the lessor years to contest the case and obtain a judgment.</p>
3.	<p><b>Will the courts of Bangladesh recognise a power of attorney in the form of an IDERA?</b></p>	<p>As discussed above, the Cape Town Convention is yet to be incorporated into the laws of Bangladesh. Therefore, the CAAB is not legally bound to recognize the IDERA. However, as a matter of industry practice, the CAAB does recognize it. We understand that the CAAB would generally respect the rights of the lessor in the IDERA to de-register and export the aircraft from Bangladesh until and unless there is a court order in favour of the lessee awarding it injunctive or other relief in regard to the aircraft.</p>

NO.	QUESTIONS	ANSWERS
4.	<b>Should notices be served to a lessee in a specific way in Bangladesh?</b>	No, there is no specific set of rules for serving notices.
5.	<b>Are foreign judgments recognized and enforced by the courts of Bangladesh?</b>	Foreign judgments are not directly enforceable in Bangladesh. The relevant party has to institute a suit in the district level courts to enforce the judgment. However, foreign judgments are regarded as “public documents” pursuant to the Evidence Act 1872 and therefore admissible as evidence. Therefore, the courts usually do not delve into the merits of the suit unless in certain exceptional circumstances.
6.	<b>Are foreign arbitration awards recognized and enforced by the courts of Bangladesh?</b>  <b>Is the Bangladesh party to the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention)?</b>	<p>Yes, foreign arbitral awards are much easier to enforce in Bangladesh than foreign judgments given that the parties get better and faster protection under the arbitration laws in Bangladesh. After initiating the foreign arbitration, the interested party or parties may apply to the Supreme Court of Bangladesh pursuant to Section 7A of the Arbitration Act 2001 to obtain an injunction on the Bangladeshi parties, if applicable, until the arbitration proceedings are settled.</p> <p>Yes, Bangladesh is a party to the New York Convention.</p>
7.	<b>Short description of the bankruptcy/insolvency legal framework in Bangladesh?</b>  <b>a) Would a bankruptcy/insolvency of the lessee impact the repossession of a leased aircraft by the lessor?</b>  <b>b) Could liens under the legislation of Cambodia impact the repossession of a leased aircraft by the lessor?</b>	<p>a) In the event of bankruptcy or insolvency of the lessee, the lessee may apply to the court for an injunction prohibiting the lessor from repossessing the aircraft until the proceedings are concluded. However, the aircraft is unlikely to be deemed as among the lessee’s assets since the lessor is the owner of the aircraft. In any event, the de-registration process might get delayed because of such bankruptcy or insolvency proceedings.</p> <p>b) If any airport charges are due in respect of the aircraft, the CAAB may have liens on the same. However, the liability to pay airport charges is on the lessee. It is thus very unlikely that the CAAB will seize a leased aircraft which is owned by a third party (the lessor). In any event, given the lack of precedents, we cannot comment on what may actually transpire during an actual repossession scenario.</p>

NO.	QUESTIONS	ANSWERS
8.	<p><b>Would a deregistration power of attorney survive the liquidation of the lessee?</b></p>	<p>Pursuant to the Power of Attorney Act 2012, a power of attorney will expire upon the lessee being declared insolvent or upon the winding up of the lessee.</p>
9.	<p><b>In the event that the lessee were to become insolvent:</b></p> <p>a) <b>Would the lessor’s claim for any outstanding sums rank equally with other creditors of the lessee?</b></p> <p>b) <b>Would the lessor be permitted to use any cash deposit to offset monies owing from the lessee after bankruptcy/insolvency proceedings have commenced?</b></p> <p>c) <b>Are there certain types of preferred creditors whose claims will rank above claims of the lessor?</b></p>	<p>a) Unless otherwise agreed between the parties, the lessor’s claim generally ranks at least equally and rateably (<i>pari passu</i>) with the other unsecured creditors. However, secured creditors’ claims rank above those of the unsecured creditors. Further, government claims and employee- related dues will rank above the secured creditors’ claims in insolvency proceedings.</p> <p>b) Based on our experience, the court may consider the security deposit as the lessee’s property. Therefore, the lessor may not be allowed to use any cash deposit to offset funds owed by the lessee after bankruptcy/insolvency proceedings have commenced.</p> <p>c) Yes, pursuant to the laws, secured creditors have priority over unsecured creditors.</p>
10.	<p><b>Have there been any attempts to repossess aircraft in the Bangladesh? If so, please provide brief details of such matters.</b></p>	<p>We have not come across any such cases of repossession.</p>

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