



Aviation in Southeast Asia – Beyond the Horizon

Focus on Cambodia 10 Key Q&As

A DFDL Aviation Q&As Publication Series

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NO.	QUESTIONS	ANSWERS
1.	<p>Has Cambodia signed and ratified the Cape Town Convention?</p>	<p>Cambodia has not yet ratified the 2001 Cape Town Convention and Aircraft Protocol although the Royal Government of Cambodia is planning to ratify it this year.</p>
2.	<p>Short description of the de-registration process of an aircraft in Cambodia?</p> <p>a) Who should apply for deregistration and is there any time period within which such application should be made?</p> <p>b) What are the fees payable?</p> <p>c) Is the consent of the lessee required for the de-registration?</p> <p>d) How long does it take for the de-registration to be completed?</p> <p>i. When the lessee collaborates with the lessor.</p> <p>ii. When the lessee does not collaborate with the lessor.</p>	<p>a) The Cambodian Civil Aviation Regulations (“CCAR”) contemplate various cases in which a leased aircraft may be de-registered from the National Civil Aircraft Register of Cambodia (“Register”) maintained by the Secretariat of State of Civil Aviation (“SSCA”). An aircraft is to be de-registered, on receipt of written notification in the prescribed form from the registered owner of the aircraft (which should be the airline/lessee in the case of an aircraft lease agreement), surrendering the certificate of registration for cancellation, for instance, if:</p> <ul style="list-style-type: none"> i. the aircraft has been destroyed, lost or permanently withdrawn from use; ii. the owner intends to register the aircraft in another country and requests the SSCA to notify the de-registration to the civil aviation authority of the country where it has applied for registration; or iii. the parties have terminated the aircraft lease agreement and the aircraft is being returned to the lessor. <p>b) According to Joint Prakas № 134 dated 29 January 2013 on the schedule of fees for public services of the SSCA between the Ministry of Economy and Finance and the SSCA, the following de-registration fees apply:</p> <ul style="list-style-type: none"> i. for an aircraft under 5,700 kilograms of maximum takeoff weight (“MTOW”), USD 100 (permanent validity); and ii. for an aircraft over 5,700 kilograms of MTOW, USD 1 for each additional 100 kilograms (permanent validity). <p>c) In the case of an amicable de-registration, for instance upon expiry of the aircraft lease agreement, the lessee’s consent is required (see also our response to question 10 below) and the lessee will be the one to liaise with the SSCA.</p> <p>d)</p> <ul style="list-style-type: none"> i. There is no formal procedure relating to de-registration of an aircraft from the Register (compared to registration of the same) in Cambodia and the CCAR do not provide a set timeframe. However, if the lessor and lessee collaborate, this is usually completed rather quickly. ii. The response to this question will entirely depend on the details of the case, for instance on whether judicial proceedings will be required. A contentious de-registration of a leased aircraft in Cambodia is likely to last several months.

NO.	QUESTIONS	ANSWERS
3.	Will the courts of Cambodia recognise a power of attorney in the form of an IDERA?	To the best of our knowledge there is no judicial precedent in this respect. See also our response to question 10 below.
4.	Should notices be served to a lessee in a specific way in Cambodia?	Subject to the relevant provisions of the aircraft lease agreement, in relation to notices served upon a party in Cambodia, the recommendation is generally for such notices to be served by a Cambodian attorney duly registered with the Bar Association of the Kingdom of Cambodia.
5.	Are foreign judgments recognised and enforced by the courts of Cambodia?	<p>While there is no restriction preventing the parties from submitting to the jurisdiction of a foreign court, the Cambodian Civil Procedure Code specifies that a final judgment of a foreign court is deemed valid and may be enforced by Cambodian courts without examining the merits of the matter only where all of the following conditions are fulfilled:</p> <ul style="list-style-type: none"> a) jurisdiction is properly conferred on the foreign court by law or by treaty; b) the losing defendant received service of summons or any other order necessary to commence the action, or responded without receiving such summons or order; c) the contents of the judgment and the procedures followed in the action do not violate the public order or morals of Cambodia; and d) there is a guarantee of reciprocity between Cambodia and the foreign country in which the court is based. <p>To the best of our knowledge to-date, the enforcement of a foreign court judgment has yet to be tested in Cambodia. Additionally, to our knowledge to-date, no agreement on reciprocity of court judgments is presently in force between Cambodia and any other country (other than with the Socialist Republic of Vietnam).</p>
6.	<p>Are foreign arbitration awards recognised and enforced by the courts of Cambodia?</p> <p>Is Cambodia a party to the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention)?</p>	<p>Cambodia is a party to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards and has enacted the Law on Commercial Arbitration dated 6 March 2006 and the Code of Civil Procedure of Cambodia dated 6 July 2006, which read together, require that arbitral awards be recognized, upheld and enforced by the courts of Cambodia without re-trying the case or otherwise examining the merits, except where:</p> <ul style="list-style-type: none"> a) the arbitration agreement is not valid under the law governing the underlying agreement; b) notice of arbitration is not properly served; c) the award is given in relation to disputes or matters falling outside the scope of the arbitration agreement;

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6.		<p>d) the composition of the arbitration tribunal is not in accordance with the arbitration agreement or alternatively, the laws of the country where the arbitration is held;</p> <p>e) the award is not final and binding under the laws of the country in which the award was given;</p> <p>f) the subject matter of the arbitral proceedings is not capable of being settled by arbitration; or</p> <p>g) recognition or enforcement of the award would be contrary to public policy.</p> <p>However, to-date, and to our knowledge, there has only been a very limited number of cases of enforcement of a foreign arbitral award in Cambodia.</p>
7.	<p>Short description of the bankruptcy/insolvency legal framework in Cambodia?</p> <p>a) Would a bankruptcy/insolvency of the lessee impact the repossession of a leased aircraft by the lessor?</p> <p>b) Could liens under the legislation of Cambodia impact the repossession of a leased aircraft by the lessor?</p>	<p>The Law on Insolvency is dated 8 December 2007 (“Insolvency Law”). A petition to commence insolvency proceedings may be filed by a creditor or interested parties if a debtor fails to meet one or more valid and mature obligations to pay an aggregate amount in excess of KHR 5 million (approximately USD 1,250) within 30 days (Article 7-1 of the Insolvency Law). This is the only form of insolvency proceedings in Cambodia – receivership and trustee appointment are not recognized.</p> <p>a) Under the Insolvency Law, if proceedings are commenced against the lessee of an aircraft, it is not possible for creditors (including any government/tax bodies) to bring any claim over an aircraft that is not an asset of the lessee. Once an administrator is appointed, the administrator will only have the same rights as the lessee, meaning they do not have recourse to assets that the lessee does not own. A creditor should not be allowed to have any access to assets that do not belong to the company, including any aircraft.</p> <p>b) Cambodian law does not provide for liens specific to aircraft. There are however various provisions under Cambodian legislation providing for liens or rights of retention over goods, for instance an airport operator has the right to detain any aircraft in parking for failure to pay airport charges and fees until such debts are paid. We consider that such situations could potentially impact the repossession process of a leased aircraft by a lessor. There is however, to the best of our knowledge, no judicial precedent in this respect.</p>
8.	<p>Would a deregistration power of attorney survive the liquidation of the lessee?</p>	<p>After insolvency proceedings are declared by the court, all agreements are automatically terminated, except where the administrator may decide to continue any specific contracts and, we believe, a power of attorney. Thus, a deregistration power of attorney (“DPOA”) – will be treated similarly.</p>

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9.	<p>In the event that the lessee were to become insolvent:</p> <p>a) Would the lessor’s claim for any outstanding sums rank equally with other creditors of the lessee?</p> <p>b) Would the lessor be permitted to use any cash deposit to offset monies owing from the lessee after bankruptcy/insolvency proceedings have commenced?</p> <p>c) Are there certain types of preferred creditors whose claims will rank above claims of the lessor?</p>	<p>a) In our understanding, the lessor’s claim would rank equal with admissible unsecured creditors as stated in item c. ii. below, except for validly secured interests over specific collaterals which are held by the lessor. Therefore, depending on whether the lessor has registered the lease agreement with the Secured Transaction Filing Office in Cambodia under the Law on Secured Transactions dated 24 May 2007 and thus perfected a security interest over the aircraft in Cambodia, the lease payments (to the extent they are outstanding up to the date of insolvency) will be treated as repayable in accordance with Article 57 of the Insolvency Law (see item c. below).</p> <p>b) There is, to the best of our knowledge, no specific mechanism under Cambodian law that could be implemented by a lessor to ensure that the security deposit paid by the lessee under an aircraft lease agreement would not be part of the lessee’s insolvency estate should insolvency proceedings occur in Cambodia against the lessee. On the one hand, if the security deposit is fully refundable to the lessee under the aircraft lease agreement, it is likely that Cambodian administrators/Cambodian courts would consider that the security deposit belongs to the lessee’s insolvency estate even if such security deposit is held by a third party (the lessor) at the start of the insolvency proceedings. On the other hand, subject to the provisions of the aircraft lease agreement and of the Insolvency Law, if a formal notice of default has been duly served by the lessor on the lessee in Cambodia and such notice has indicated that the security deposit has been forfeited to the lessor as a consequence or used by the lessor against the outstanding sums due by the lessee, the position may be different. There is however, to the best of our knowledge, no judicial precedent in this respect.</p> <p>c) In the event that a company leasing an aircraft goes into liquidation, the proceeds of the liquidation will be used to pay for (Article 57 of the Insolvency Law):</p> <ul style="list-style-type: none"> i. wages of employees, remuneration for provisional administrator, administrative fees and court fees; ii. secured claims up to the higher of the value of the secured portion of the claim as determined by the proposed administrator or the net proceeds from an effective sale of the encumbered asset (collateral); iii. state taxes for which a notice has not been filed; and iv. admissible unsecured claims and the amount of secured claims exceeding the limit specified in (ii.).

NO.	QUESTIONS	ANSWERS
10.	<p>Have there been any attempts to repossess aircraft in Cambodia? If so, please provide brief details of such matters.</p>	<p>To the best of our knowledge, there has been one unique case of contentious repossession of an aircraft in Cambodia to-date. For confidentiality reasons, we cannot disclose the specific and particular facts related to this case. However, we note that in spite of the fact that DPOAs are widely used in aircraft leasing transactions in Cambodia and despite the fact that it is commonly considered that they should be recognized by the authorities, including by the SSCA, in this case the SSCA did not proceed with de-registration of the aircraft by the lessor solely on the basis of the DPOA. Consequently, in practice, in cases of contentious repossession, the SSCA appears to require consent from the lessee prior to de-registering an aircraft from the Register, even if a duly executed DPOA has been granted to the lessor by the lessee (see also item c. of our response to question 2 above). To the best of our knowledge, no Cambodian court has provided a judgement or an interpretation on this issue.</p>

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