



Aviation in Southeast Asia – Beyond the Horizon Focus on Myanmar 10 Key Q&As

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NO.	QUESTIONS	ANSWERS
1.	Has Myanmar signed and ratified the Cape Town Convention?	Yes. Myanmar ratified the Cape Town Convention on 3 December 2012.
2.	<p>Short description of the de-registration process of an aircraft in Myanmar?</p> <p>a) Who should apply for de-registration 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 style="padding-left: 20px;">i. When the lessee collaborates with the lessor.</p> <p style="padding-left: 20px;">i. When the lessee does not collaborate with the lessor.</p>	<p>a) The lessor should apply for de-registration of the aircraft with the Department of Civil Aviation (“DCA”) and there is no timeframe or limitation within which the lessor should apply.</p> <p>b) The fees payable are approximately USD 150.</p> <p>c) Upon filing the Irrevocable De-Registration and Export Request Authorization (“IDERA”) with the DCA, no consents are required.</p> <p>d) Since there is no directive under Myanmar law to govern de-registration and export of the aircraft, as a generic guideline, the entire process would mostly be guided by the Cape Town Convention. Considering the lack of precedents for de-registration and repossession in Myanmar, the time required to complete this process is difficult to estimate. However, in keeping with the Cape Town Convention, the de-registration process may be completed within 30 days from the date of applying for de-registration to the DCA. However, this timeframe may be a bit delayed considering procedural delays from the DCA to approve the de-registration application.</p> <p>For the de-registration process to take place, the lessor will need to provide the following details/documents:</p> <ol style="list-style-type: none"> 1) A formal letter addressed to the Director General of the DCA, detailing the reasons of de-registration, this letter should be signed by the lessor’s authorized representative; 2) Proof that the aircraft identification plate has been removed from the aircraft (for this, co-operation from the lessee is likely to be required); 3) Proof that the aircraft Mode S Code has been negated, if applicable; 4) Proof that the aircraft Emergency Locator Transmitter code has been negated, if applicable; 5) If the aircraft is under an Air Operator Certificate (“AOC”), it must be removed from the AOC, if applicable; 6) Payment receipt for de-registration; 7) Copy of aircraft lease agreement; 8) Certificate of airworthiness; 9) IDERA; 10) A copy of the default notice issued to the lessee.

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2.		<p>The lessor will also have to apply to the DCA for issuance of the Export Certificate of Airworthiness along with the application for de-registration. The lessor will have to provide the following details/documents as per the specific form:</p> <ol style="list-style-type: none"> 1) Contact information of the exporter and foreign purchaser as well as the destination country; 2) Type of product; 3) Make and model; 4) Identification number; 5) Serial number; 6) Operating time in hours since overhaul and total operation time; 7) If the product is new, used (for aircraft) or newly overhauled; and 8) Valid current Certificate of Airworthiness.
3.	<p>Will the courts of Myanmar recognise a power of attorney in the form of an IDERA?</p>	<p>Yes, Myanmar courts recognize a power of attorney in the form of an IDERA.</p>
4.	<p>Should notices be served to a lessee in a specific way in Myanmar?</p>	<p>Notices may be served in writing by letter or e-mail and should be in legible form. There is no particular way in which a notice may be served on a lessee.</p>
5.	<p>Are foreign judgments recognized and enforced by the courts of Myanmar?</p>	<p>Myanmar courts give effect to a contractual choice of governing law, and enforce foreign court judgments as conclusive as to any matter thereby directly adjudicated upon, except:</p> <ol style="list-style-type: none"> a) where such a judgment has not been pronounced by a court of competent jurisdiction; b) where such a judgment has not been given on the merits of the case; c) where such a judgment appears on the face of the proceedings to be founded on an incorrect view of international law or a refusal to recognize the laws of Myanmar in cases in which such laws are applicable; d) where the proceedings in which the judgment was obtained are opposed to natural justice; e) where such a judgment has been obtained by fraud; or f) where such a judgment sustains a claim founded on a breach of any law in force in Myanmar. <p>The Myanmar courts would consider the merits of the case before enforcing the judgment.</p>

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6.	<p>Are foreign arbitration awards recognised and enforced by the courts of Myanmar?</p> <p>Is the Myanmar party to the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention)?</p>	<p>Myanmar, which acceded to the New York Convention, enforces the Arbitration Law 2016. Therefore, Myanmar courts will recognize and enforce foreign arbitration awards. However:</p> <p>a) The courts in Myanmar may refuse to recognize the foreign arbitral award if the party against which it is invoked furnishes proof to the court that:</p> <ol style="list-style-type: none"> 1) One of the parties to the arbitration agreement was under some incapacity; or 2) the agreement is not valid under the law to which the parties have subjected it to or, failing any indication thereon, under the laws of the country where the award was made; 3) the party against which the award is invoked was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present its case; or 4) the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration; or 5) the composition of the arbitral tribunal or the arbitral procedures were not in accordance with the agreement of the parties or, failing such an agreement, was not in accordance with the laws of the country where the arbitration took place; or 6) the award has not yet become binding on the parties or has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made; <p>b) Enforcement of the foreign arbitral award may be refused if the court finds that:</p> <ol style="list-style-type: none"> 1) the subject-matter of the dispute is not capable of settlement by arbitration under the laws of the Republic of the Union of Myanmar; or 2) the enforcement of the award would be contrary to the national interest (public policy) of the Republic of the Union of Myanmar.

NO.	QUESTIONS	ANSWERS
7.	<p>Short description of the bankruptcy/insolvency legal framework in Myanmar?</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 Myanmar impact the repossession of a leased aircraft by the lessor?</p>	<p>The primary legislation dealing with corporate insolvency is the Insolvency Law (“Insolvency Law”) and its implementing rules (“Rules”). The Insolvency Law and the Rules both entered into force recently in 2020. With due enforcement of the Insolvency Law, the winding up of companies, incorporated and unincorporated micro, small and medium scale enterprises and partnerships must be carried out as per the Insolvency Law.</p> <p>The lessor’s insolvency proceedings will thus be carried out under the Insolvency Law.</p> <p>a) Insolvency of the lessee will not affect the lessor’s right of repossession. This is because the lessor’s registered interests shall have priority over all others pursuant to the Cape Town Convention where these are registered as international interests. This excludes interests which are stipulated under the Qualifying Declarations made by Myanmar for Articles 39 and 40 of the Cape Town Convention.</p> <p>b) In relation to liens, Articles 39 and 40 of the Cape Town Convention read as follows:</p> <p>(i) Form No. 1 (Specific declaration under Article 39(1) (a))</p> <p>Myanmar declares that the following categories of non-consensual rights or interests:</p> <ol style="list-style-type: none"> 1) liens in favor of employees for unpaid wages relating to work associated with an aircraft arising since the time of a declared default under a contract to finance or lease that aircraft; 2) liens in favor of repairers of an aircraft in their possession to the extent of services performed on and value added to that aircraft, <p>have priority under the law over an interest in an aircraft equivalent to that of the holder of a certain registered international interest and, to that extent but without expanding any such priority, shall have priority over such an international interest, whether in or outside insolvency proceedings.</p> <p>Upon satisfying these liens, repossession of the aircraft may be made by the lessor.</p>
8.	<p>Would a deregistration power of attorney survive the liquidation of the lessee?</p>	<p>Yes. A de-registration power of attorney survives liquidation of the lessee.</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) Registered interests of the lessor shall have priority over all other interests pursuant to the Cape Town Convention where these are registered as international interests. This excludes interests which are stipulated under the Qualifying Declarations made by Myanmar for Articles 39 and 40 of the Cape Town Convention:</p> <p>(i) Form No. 1 (Specific declaration under Article 39(1) (a))</p> <p>Myanmar declares that the following categories of non-consensual rights or interests:</p> <ol style="list-style-type: none"> 1) liens in favor of employees for unpaid wages relating to work associated with an aircraft arising since the time of a declared default under a contract to finance or lease that aircraft; 2) liens in favor of repairers of an aircraft in their possession to the extent of services performed on and value added to that aircraft, <p>have priority under its law over an interest in an aircraft equivalent to that of the holder of a certain registered international interest and, to that extent but without expanding any such priority, shall have priority over such an international interest, whether in or outside insolvency proceedings.</p> <p>a) Yes. The lessor shall be permitted to use any cash deposit to offset funds owed by the lessee after insolvency proceedings have commenced.</p> <p>b) No. Registered interests of the lessor shall have priority over all other interests pursuant to the Cape Town Convention where these interests are registered as international interests except for the interests which are provided for under the Qualifying Declarations made by Myanmar for Articles 39 and 40 of the Cape Town Convention as provided above.</p>
10.	<p>Have there been any attempts to repossess aircraft in the Myanmar? If so, please provide brief details of such matters.</p>	<p>While there is no public record of this, in our experience, we have not come across any attempt to repossess aircraft in Myanmar.</p>

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