

# Securing Your Assets: Navigating Aircraft Repossession Under Indian Law



## Introduction

The Indian aviation sector has witnessed a high growth rate over the recent years due to reasons such as overall economic growth, increase in passenger traffic, infrastructure upgrade and policy initiatives. Majority of the aircraft being operated in India are held by airlines on leasehold basis. Due to this reason, repossession rights of the lessor in the event of default by lessee assumes utmost importance. In this article, we have analysed the regulatory aspects and practical issues relating to repossession of aircraft in India.

## Regulatory framework

### Cape Town Convention

India became a signatory to the Convention on International Interests in Mobile Equipment and the Protocol on Matters Specific to Aircraft Equipment (hereinafter referred to as '**Cape Town Convention**') in 2008. The Cape Town Convention provides for recording of lessors' interests in the international registry and contains provisions enabling lessors to repossess the aircraft without delay in the event of default by lessees.

India is yet to enact a domestic legislation which specifically incorporates the provisions of the Cape Town Convention into its domestic law. Certain amendments have, however, been made to aviation & insolvency laws over the last few years to align the same with the provisions of the Cape Town Convention. These amendments have been discussed in the following paragraphs.

## Amendments to Aviation Law

In 2017, the Aircraft Rules, 1937 ('Aircraft Rules') was amended by the Government of India to provide for the following matters:

### A. Introduction of Rule 30(7)

Rule 30(7) provides that the Director General of Civil Aviation ('DGCA') should cancel the registration of an aircraft (to which the provisions of Cape Town Convention apply) within 5 working days if an application is received from the person holding the Irrevocable Deregistration and Export Request Authorisation ('IDERA') along with the following:

- Original or notarized copy of the IDERA, and
- Certificate that all registered interests ranking in priority have been discharged or the holders of such interests have consented to deregistration and export.

### B. Introduction of Rule 32A

Rule 32A provides that once an application is received for export of aircraft pursuant to cancellation of registration, the DGCA should take steps to facilitate export and physical transfer of the aircraft (along with spare engine, if any) subject to payment of all dues and compliance with applicable regulations relating to safety.

In order to further streamline the process of deregistration of aircraft & export of the same out of India and to reduce the time gap between the aforesaid two steps, the DGCA issued a Standard Operating Procedure ('SOP') on November 16, 2018.

The SOP contains the following main provisions for deregistration & export of aircraft which are covered by Cape Town Convention:

(i) All airport operators should designate an officer for dealing with matters relating to export (pursuant to deregistration) and communicate the name & contact details of the said officer to the DGCA.

(ii) Once deregistration request is filed with DGCA, the details of the same should be posted on DGCA's website. Details of the deregistration request should also be emailed by DGCA to the aircraft operator.

(iii) DGCA should take necessary steps for deregistration in accordance with Rule 30(7) of the Aircraft Rules and inform the same to the aircraft operator.

(iv) The aircraft operator should calculate the outstanding dues related to the aircraft for a period of 3 months prior to the date on which request for deregistration was received by DGCA. Bills for the same should be raised within 5 working days from the date of receipt of email from DGCA as per point (ii) above. The bill should be sent to the IDERA holder with a copy to DGCA.

(v) If any other organization has outstanding dues with respect to the aircraft, the steps outlined in point (iv) above should be followed for the same as well.

(vi) The IDERA holder may pay the aforesaid dues (without prejudice to its claims against the airline). Upon receipt of the payment, the airport operator (and any other person receiving payment) should issue a certificate to the IDERA holder within 2 working days. A copy of such a certificate should also be emailed to DGCA.

(vii) The IDERA holder should submit the said certificate to DGCA along with request for export. Upon receipt of such a request, DGCA will issue permission for export.

(viii) Once the permission for export is received, the IDERA holder should forward the same to the airport operator and indicate the date of flight out of India. A bill for up-to-date dues will be raised by the airport operator within 1 working day. After the said dues are also cleared, the aircraft can depart from India.

As can be seen from the above, the objective of the SOP is to ensure better coordination between the DGCA and airport operators in the matter of deregistration and export.

### **Amendment to insolvency regulations**

As per Section 14 of the Insolvency and Bankruptcy Code, 2016 ('IBC'), once the insolvency process commences, there will be a moratorium which would prevent a lessor from repossessing its assets which are held by the corporate debtor (lessee). Many lessees, which were subject to insolvency proceedings (either voluntary or those initiated by creditors), started taking advantage of the aforesaid provision to prevent the lessors from repossessing the aircraft. The aforesaid Section 14 conflicted with the provisions of the Cape Town Convention and caused many issues for foreign lessors.

To address this issue, on October 3, 2023, the Ministry of Corporate Affairs, Government of India issued a Notification [S.O. 4321(E)]. This Notification provided that the moratorium under IBC will not apply to transactions involving aircraft and aircraft engines. This was a welcome development since it directly addressed a key aspect of conflict between Indian domestic law and the Cape Town Convention.

## Approach taken by Courts

Over the last few years, several airline operators such as Kingfisher Airlines, Jet Airways, SpiceJet and Go Air have been the subject of repossession proceedings. The jurisprudence relating to aircraft repossession has been evolving with each such matter and the Courts have started taking note of India's obligations under international conventions.

In the Go Air case, the Delhi High Court recently directed DGCA to deregister the aircraft leased by Go Air and thus provided much awaited relief to the lessor. In this case, the Court upheld the primacy of the Cape Town Convention and held that repossession of aircraft will not be impacted by insolvency proceedings.

## Issues

The regulatory changes discussed above and the recent ruling in Go Air Case are significant steps towards securing and upholding the rights of lessors, in line with India's obligations under Cape Town Convention.

However, the lessors continue to face many few challenges in enforcing their rights due to the complex legal landscape in India and multiplicity of proceedings. Many a time, the DGCA does not take prompt action based on the IDERA, and the lessors are constrained to approach the Courts. Further, there could be statutory/other claims on the aircraft as also pending insolvency proceedings, which could impact the lessor's repossession efforts. It is also possible that the lessee initiates counter legal proceedings with the objective of delaying/preventing the deregistration and subsequent export of aircraft out of India.

## Recommendation

In our view, the solution lies in enactment of a specific statute ('Act') for fully incorporating India's obligations under the Cape Town Convention into domestic law. As per news reports, a draft of the said Act has already been prepared under the name, '*Protection and Enforcement of Interests in Aircraft Objects Bill, 2022*'. It is understood that the said draft is still being reviewed by the concerned officials and will shortly be sent to the union cabinet for consideration. Once the cabinet approves the draft, it will be placed before the parliament for consideration and further approval.

Further, lessors should ensure that adequate contractual safeguards are in place and the IDERA is clearly and unambiguously worded. It should also be ensured that the requisite filings are done with the DGCA and with the concerned authorities under the Cape Town Convention.

by



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