

Vietnam's Adoption and Implementation of the Cape Town Treaty

On 24 June 2014, the National Assembly of Vietnam adopted the resolution on accession by Vietnam to (i) the Convention on International Interests in Mobile Equipment ("Cape Town Convention") and (ii) the Protocol thereto on Matters Specific to Aircraft Equipment ("Cape Town Protocol") (collectively, the "Cape Town Treaty"). The treaty has been effective and binding against Vietnam since 1 January 2015. With effect from 15 October 2015, the Government of Vietnam adopted domestic enforcement of the Cape Town Treaty under Decree 68 dated 18 August 2015 on registration of nationality and rights over aircraft.

Key considerations

While Vietnam has adopted the treaty's "Alternative A" creditor protection regime on the insolvency of a debtor, and its de-registration and export remedies (known as the IDERA provisions), certain other remedies under the Cape Town Treaty may only be exercised with leave of the court. In addition, there are domestic requirements for registration on the International Registry (established under the Cape Town Treaty) of international interests and other registrable interests over aircraft registered in Vietnam which involve the State's authorised entry point, the Civil Aviation Authority of Vietnam ("CAAV"). These include notarisation and consularisation of relevant agreements and submission of originals to the CAAV prior to any such registration being approved and made. The Cape Town Treaty is subject to the following declarations of the Government of Vietnam.

Declarations to the Cape Town Convention

Declarations to the Cape Town Convention are made under Official Notice No. 66/2014/TB-LPQT dated 29 September 2014 of the Ministry of Foreign Affairs of Vietnam ("MOFA") and include the following:

- Declaration made under Article 39(1)(a) of the Cape Town Convention: All categories of non-consensual right or interest which under the laws of Vietnam have priority over an interest in an object equivalent to that of the holder of a registered international interest shall have priority over a registered international interest, whether in or outside insolvency proceedings and regardless of whether such international interest is registered before or after the accession of Vietnam to the Cape Town Convention;
- Declaration made under Article 39(1)(b) of the Cape Town Convention: Nothing in the Cape Town Convention shall affect the right of Vietnam or the State entities of Vietnam,

intergovernmental organisations or other private providers of public services to arrest or detain an object under the laws of Vietnam for payment of amounts owed to such entity, organisation or provider directly relating to those services in respect of that object or another object;

- Declaration made under Article 40 of the Cape Town Convention: The following non-consensual rights and interests shall be registrable under the Cape Town Convention as regards any aircraft object as if such right or interest were an international interest and shall be regulated accordingly: the rights of a person who is allowed by the Court to detain partly or wholly the aircraft object in order to enforce the court's decision; and the right to detain or other right of a State entity with respect to unpaid tax or unpaid fees;
- Declaration made under Article 53 of the Cape Town Convention: The People's Court at provincial-

level of Vietnam shall be the appropriate court for the purposes of Article 1 and Chapter XII of the Cape Town Convention; and

- Declaration made under Article 54(2) of the Cape Town Convention: Any remedy available to the creditor under the Cape Town Convention which is not expressed to require application to the court may be exercised only with leave of the court.

Declarations to the Cape Town Protocol

Declarations to the Cape Town Protocol are made under Official Notice No. 67/2014/TB-LPQT dated 29 September 2014 of MOFA and include the following:

- Declaration regarding choice of law: Vietnam applies Article VIII of the Cape Town Protocol, in which (1) the parties to an agreement, or a contract of sale, or a related guarantee contract or subordination agreement may agree on the law to govern their contractual rights and obligations, wholly or in part; and (2) unless otherwise agreed, the law chosen as the governing law under item (1) should be the domestic law of Vietnam;
- Declaration regarding relief pending final determination: Vietnam applies the entire of Article X of the Cape Town Protocol, in which the time limit referred to under Article 13(1) of the Cape Town Convention is 10 days for the speedy limit applicable to Articles 13(1)(a), (b) and (c); and 30 days for the speedy limit applicable to Articles 13(1)(d) and (e);

- Declaration regarding remedies on insolvency: Vietnam applies Alternative A (under Article XI of the Cape Town Protocol) to all claims regarding insolvency; and the "waiting period" under Article XI(3) of the Cape Town Protocol shall be 60 days;
- Declaration regarding insolvency assistance: Vietnam applies Article XII of the Cape Town Protocol, in which the courts of Vietnam shall, in accordance with the law of Vietnam, co-operate to the maximum extent possible with foreign courts and foreign insolvency administrators in carrying out the provisions of Article XI of the Cape Town Protocol; and
- Declaration regarding designation of entry points: Vietnam designates the CAAV as the entry point to transmit to the International Registry information required for registration (other than information required for (i) registration of a notice of a national interest or a non-consensual right or interest under Article 40 of the Cape Town Convention which has arisen under the laws of another State, and (ii) registration of aircraft engines).

Enforcement of Cape Town Treaty in Vietnam

The Government of Vietnam issued Decree 68 dated 18 August 2015 on registration of nationality and rights over aircraft to enable the parties ("Decree 68/2015") to apply for, among other things, (i) Authorised Entry Point ("AEP") codes for registration of international interests in respect of aircraft registered in Vietnam with the International Registry, and (ii) acknowledgement of

the Irrevocable De-registration and Export Request Authorisation ("IDERA") for deregistration and export of aircraft out of Vietnam.

AEP codes

The AEP code issued by the CAAV is a pre-requisite for a party to register its international interest with the International Registry.

In Vietnam, Decree 68/2015 only regulates the issuance of AEP codes for registration of international interests in aircraft registered with the CAAV, which include the interests vested in the mortgagee (under a mortgage agreement), the lessor (under a lease agreement) and the conditional seller of the aircraft (under a conditional sale and purchase agreement)(subject to all other conditions being met). Decree 68/2015 however does not refer to the issuance of AEP codes for registration of "assignment of associated rights and related international interests". As a matter of practice, the CAAV may nevertheless issue AEP codes to the assignee for registration of the "assignment of associated rights and related international interests" in accordance with Chapter IX of the Cape Town Convention.

To obtain the AEP code, the party with a relevant interest needs to submit (i) a notarised and consularised certificate of incorporation, and (ii) notarised and consularised documents evidencing the relevant interest (e.g. lease agreement, security agreement, conditional sale agreement, as the case may be). The CAAV will issue an AEP code within 3 working days after receiving the valid application file.

IDERA acknowledgement

With effect from 15 October 2015 (i.e. the effective date of Decree 68/2015), the CAAV no longer acknowledges a de-registration power of attorney issued by the airline lessee in favour of the owner/lessor/security trustee. Instead, the CAAV will only acknowledge an IDERA granted in favour of a party with an international interest (e.g. the owner/lessor/security trustee). Accordingly, the CAAV will ensure the relevant party's exclusive right to de-register and export the aircraft pursuant to the terms of the IDERA. Although any de-registration power of attorney acknowledged by the CAAV for earlier transactions should remain effective and enforceable, the CAAV will also accept and acknowledge an IDERA issued relating to any transaction executed between 1 January and 15 October 2015.

Document formality

As specifically required under Decree 68/2015, with effect from 15 October 2015, documents evidencing the legal status of the applicant (e.g. certificate of registration) and documents evidencing the legal rights of the applicant (e.g. bills of sales, aircraft leases, security assignments, etc.) when submitted to the CAAV for registration of nationality or rights over aircraft, issue of AEP codes or recordation of any IDERA, respectively, must be (i) notarised and consularised; or (ii) provided in original form for the CAAV's review. Any original copies will be returned to the applicant by the CAAV following review.

If you have any questions on any of the issues raised in this briefing please contact the authors below.

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