

De-registration of Aircrafts – what’s missing in the law

Introduction

While India is one of the fastest growing markets in the aviation sector, the Indian aviation industry, particularly the scheduled airlines are facing huge losses primarily due to increasing fuel prices and the inability to raise airfares. Since purchasing aircrafts is an expensive proposition, airlines usually take aircrafts on lease to increase their fleet size and provisions for registration and de-registration of aircrafts on lease are provided for under the Aircraft Rules, 1937 (“**the Rules**”) as well as the Civil Aviation Requirements (“**CAR**”). Due to the severity of the cash crunch, there are growing apprehensions of aircraft owners and lessors are apprehensive of whether airlines will be able to meet the lease payments and, in case of continuing defaults in lease payments, whether they will be able to secure their aircrafts if the airline is no longer capable of carrying out its operations. In this light it becomes important for aircraft owners and lessors to look at the legal provisions in India for de-registration.

Under the Rules, all aircraft operators are required to register their aircraft, whether leased or owned, with the DGCA and obtain a registration mark, failing which the aircraft is not allowed to fly. In case of leased aircrafts, while the process of registration is relatively simple, the process provided for de-registration is also simple and does not contemplate many contingencies that may arise. This newsletter examines the existent provisions for de-registration of aircrafts under the Rules and the CAR and the contingencies that the law does not provide for.

1. Legislative provisions for de-registration

Under the Rules, an airline is required to register the aircraft with the Director General of Civil Aviation (“**DGCA**”) in order to lawfully operate and fly the aircraft.¹ Rule 30 provides the pre-requisites for registration of an aircraft and also provides the conditions on which the registration can be cancelled, i.e. deregistration can be done. Under sub-rule (6) of rule 30, an aircraft’s registration can be cancelled on the following grounds:

- i. the registration of the aircraft is not in conformity with sub-rule 2 of rule 30;² or
- ii. the registration has been obtained by furnishing false information; or
- iii. if in the opinion of the DGCA, it is suitable to register the aircraft in some other country; or
- iv. the aircraft has been destroyed or permanently withdrawn from use; or
- v. according to the DGCA, it is not in public interest to keep the aircraft on the Indian registry.

¹ Rule 5 provides that in order to fly or operate an aircraft, the aircraft must be registered and bear the registered mark and nationality of the registration.

² Rule 30(2) provides the categories under which an aircraft may be registered in India, for example if the aircraft is owned or has been taken on lease by an Indian individual or company or if it is owned by foreign nationals or companies carrying out business in India.

In addition to the above, the CAR prescribe additional conditions under paragraph 9 wherein a registration can be cancelled, namely when the lease in respect of the aircraft has (a) expired, (b) has been terminated mutually by the lessor and the lessee or (c) the lease has been terminated under any of the provisions of the lease. The CAR also provides that the registration can be cancelled where the certificate of airworthiness has expired and has remained expired for a period of 5 years.

In addition to this, the technical procedures for de-registration of aircrafts to be implemented by the DGCA have been provided under the Airworthiness Procedures Manual³ (“APM”). It is noteworthy that under the preface to the APM, it mentions that the protocols under the APM are guidelines and provides the officers with ample discretionary powers to act and decide the course of action where the APM is silent. Herein, the process simply involves an application in the prescribed format by the registered owner to the DGCA. While it does not specify this, in case the aircraft is on lease by an airline, then the DGCA requires an application or consent to de-register from the owner/lessor and the airlines. With this background, it is essential to consider the several gaps under the law.

2. The gap in the law

While the procedures and protocols have been put in place for registration and de-registration of aircrafts under the Rules, the CAR and the APM, a few scenarios are still not contemplated under these. For example, there is no guidance under the legislative provisions for addressing a conflict in case of a leased aircraft where only one party wishes to de-register the aircraft. The legislation is silent in case an airline wishes to de-register an aircraft on its own and terminate the lease, whereas the foreign lessor of the aircraft does not want the same. Another instance where there is no direction under the above mentioned legislations is in case an airline’s license to ply or operate gets cancelled for whatsoever reason does that automatically imply de-registration of the aircrafts?

Further, in case an airline has defaulted in making lease rent payments to the lessor or has not maintained the aircraft in terms of the lease,⁴ and in case the lessor wants to re-posses the aircraft, there is no recourse available under the Rules or the APM. In addition to this, usually when an airline defaults in making lease rent payments, the foreign lessor wants to terminate the lease and then move on for re-possession of the aircraft, as by doing so, the right of the airline to use the aircraft further gets extinguished. In such a case as well, there is no clarity under the provisions on whether the aircraft can remain on the registry or will be de-registered.⁵ In case the aircraft does get de-registered in such a case, it will become counter-productive since the lessor will have to re-register it before the aircraft can be re-possessed and flown out of India.

³ Part II – Technical Procedures, Chapter 1 of the APM.

⁴ Ordinarily the aircraft carries the manufacturer’s maintenance manual with the time lines for maintenance checks for each specific aircraft, adherence to which is made mandatory under the lease of the aircraft.

⁵ Under Rule 30 (6)(iv) the registration of an aircraft is liable to be cancelled where the lease has expired or has been terminated.

The issue with the lacuna under the legal provisions is that with airlines in India facing huge losses, foreign lessors are becoming apprehensive of how they can proceed to secure their asset in India. With the above mentioned gaps in the law, only the prudent use of discretionary powers by the DGCA can offer some reprieve to foreign lessors. On many of the issues mentioned above, the DGCA has clarified the process that needs to be followed for de-registration, in prudent exercise of its discretionary powers.

3. DGCA's prudent use of discretionary power

The DGCA, has clarified that de-registration of an aircraft will only take place once it has received a consent and application to de-register from all parties mentioned on the CofR.⁶ This implies that while it is open to an airline to *suo motu* apply for de-register an aircraft by terminating its obligations under the lease and leaving the lessor to recover the aircraft at its expense, the DGCA would still require the consent from the lessor for de-registration. The protocol adopted in such a circumstance by the DGCA would require the owner/lessor's consent for effecting de-registration.⁷ However, where the lease of an aircraft is terminated by the foreign owner/lessor, and a de-registration request is made by the Indian airline, the DGCA may be inclined to de-register the aircraft. This is considering the fact that the lessor would have signified its consent to de-register by terminating the lease as this is a ground for cancellation of the registration of the aircraft (*Rule 30(6)(iv)*).

Further, in case the lessor wishes to de-register the aircraft once it has successfully reclaimed possession of the aircraft, it can *suo motu* apply to the DGCA for de-registration. In such a case, while there is a natural apprehension of objection from the airline, in case the airline does not submit an objection, the DGCA would give the airline a notice to respond within a specified period, failing which, the aircraft will be de-registered. In case an objection is received, then the DGCA will take a call based on the facts of each case. It would also appear that cancellation of the airlines operating license for scheduled or non-scheduled flights has no impact on de-registration, since the DGCA requires consent from all the parties i.e. the owner/lessor and the lessee, to process de-registration. The DGCA has, in prudent exercise of its discretionary powers, separated the licensing requirements with that of an aircraft registry.

Conclusion

While it is evident that the officers at the DGCA act prudently and logically, there is still a lot of scope of subjectivity since many situations are not provided for under the law, leaving it open to interpretation. At present, since the Indian airlines are facing huge losses with one airline being on the brink of closure, foreign owners/lessors are quite apprehensive of the gap in the law. From interaction with the DGCA it is evident that the regulator is co-operative and acts in a prudent and logical manner; however, for owners/lessors several thousand miles away in foreign jurisdictions, there is little solace found in independent clarifications sought from the DGCA.

⁶ This is a clarification that has been sought in a specific instance and is not documented by the DGCA.

⁷ In case the aircraft is hypothecated, then the DGCA would require the consent of the charge holders as well.

This could have an adverse impact on the Indian aviation sector, as, if there is one instance of where a foreign lessor's aircraft is de-registered on the insistence of the airline, or cannot be de-registered due to non-cooperation by the DGCA or the airline, the other foreign owners/lessors would be inclined to pull their aircrafts from airlines in India prematurely. This in turn will impact airline schedules and passengers and will further deteriorate the scenario of the Indian aviation industry. The DGCA must actively consider the contingent scenarios that may arise and establish protocols for the same so that the element of subjectivity is greatly reduced.

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