

**CTC COMPLIANCE INDEX
WATCHLIST NOTICE UPDATE No. 2****24 April 2023****Contracting State:** Vietnam**On watch** since 7 March 2023**Prior updates:** Watchlist Notice Update No. 1 dated 3 April 2023**Category:** Medium (current score: 62.5)¹**Variable(s) under assessment:** Variable B (current score: 2)²**Outlook:** [Confirmatory](#)**Facts:**

In October 2022, a lessor terminated the leases of four aircraft formerly on lease to a Vietnamese air operator (the 'lessee') following defaults thereunder by the lessee. The aircraft are subject to international interests under the Cape Town Convention ('CTC') in favor of the lessor and registered on the International Registry. IDERAs were granted by the lessee for each aircraft, and registered with the Civil Aviation Authority of Vietnam ('CAAV'), at the commencement of each lease.

On 16 November 2022, an English court issued an order (the 'English Order') pursuant to Convention, Article 13 granting the lessor possession of the four aircraft, with the consent of the parties. The lessee complied with the English Order and redelivered the aircraft to the lessor in Vietnam on 15 December 2022.

On each of 18 November 2022, 4 January 2023 and 15 January 2023, respectively, the lessor submitted applications to deregister the aircraft pursuant to the IDERAs. CAAV deregistered the aircraft, issuing deregistration certificates in respect of two of the aircraft on 16 December 2022 and in respect of the other two on 16 January 2023. CAAV provided prior notice of the deregistration applications to the lessee, where required and in accordance with CAAV regulations on IDERA enforcement.

On 17 February 2023, a shareholder of the lessee filed an administrative lawsuit with the Hanoi People's Court ('HPC') requesting revocation of the deregistration certificates, and a preliminary injunction against CAAV suspending enforcement of the deregistration certificates and allowing the lessee to continue management and operation of the aircraft.

On 23 February 2023, the HPC granted the requested preliminary injunction. On appeal by CAAV, the Chief Justice of the HPC upheld the preliminary injunction in a judgement dated 1 March 2023 (the 'appeals judgement'). In its reasoning, the appeals judgement notes that (i) the

¹ This category and current score reflects the updated Vietnam score pursuant to the semi-annual compliance index update issued on 3 April 2023.

² This variable B score reflects the updated Vietnam score pursuant to the semi-annual compliance index update issued on 3 April 2023.

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English Order is not a final judgement, and (ii) without the preliminary injunction, deregistration and export of the aircraft would proceed and seriously affect the legitimate rights and interests of the lessee's shareholders.

The initial shareholder lawsuit has been withdrawn; however, the preliminary injunction remains in place as three additional identical shareholder lawsuits have subsequently been filed. Prior to its withdrawal, there were no further avenues available for appeal in the initial shareholder lawsuit for the preliminary injunction and the parties were proceeding to a trial on the merits.

At the request of the three additional shareholder plaintiffs, the preliminary injunction has been cancelled. CAAV and other interested parties have filed defences in the substantive proceedings seeking revocation of the deregistration certificates.

As of the date hereof, the aircraft have not been exported from Vietnam.

CTC Analysis:

The English court has jurisdiction pursuant to Convention, Articles 42 and 43 as the chosen forum under the leases.

Vietnam has made a declaration under Protocol, Article XXX(1) applying the provisions of Protocol, Article XIII (the 'IDERA declaration') in connection with, and facilitating and effecting, the remedies of de-registration and export under Protocol, Article IX(1). That declaration requires CAAV to honor an IDERA under Protocol, Article IX(5). In deregistering the aircraft pursuant to an exercise of the IDERA, CAAV's actions are compliant with its obligations under CTC. The HPC's preliminary injunction and subsequent appeals judgement suspending such compliant CAAV action are inconsistent with CTC.

As the lessor's exercise of its remedy of deregistration of the aircraft was based on valid IDERAs, the requirement for a court order for Article 13 relief in order to exercise the remedy of deregistration under Protocol, Article X(6) is not applicable to this case. Thus, the appeals judgement's examination of the English Order granting repossession is not necessary to the direct CTC compliance analysis.

The appeals judgement reasoning with respect to the English Order is also inconsistent with CTC. The remedy of repossession is available to the lessor pending final determination on the merits pursuant to Convention, Article 13(1), so long as the lessor adduces evidence of default by the lessee. Once such evidence is provided, 'the court is concerned only with the evidence of default, not with considerations such as whether the creditor's need for the order outweighs the debtor's interest in preserving its own rights until the final determination or whether it is likely or unlikely that the debtor would be able to satisfy a final judgment.' (See *Official Commentary to the Cape Town Convention* (5th ed UNIDROIT 2022) (the 'Official Commentary'), para. 2.137). Thus, the appeals judgement's suggestion that a final judgement by the English court is required and its examination of the rights and interest of the lessee's shareholders is non-compliant with the requirements of CTC.

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Scoring outlook:

The IDERA exercises by the lessor and the decisions of the HPC are material developments that implicate CTC compliance in Vietnam. While CAAV's issuance of the deregistration certificates following an exercise of the IDERAs by the lessor was compliant with its obligations under CTC, the preliminary injunction, and the appeals judgement upholding it, are inconsistent with the requirements of Protocol, Articles IX and XIII. The appeals judgement also contains reasoning inconsistent with Convention, Article 13. As such, the appeals judgement upholding the preliminary injunction is non-compliant with Vietnam's obligations under CTC and results in a [confirmatory](#) outlook for Vietnam's scoring for variable B under the compliance index formula (currently: 2) which addresses whether CTC requirements are met in practice.

Notices will be issued every two weeks with updates on further developments until a scoring determination is made.

While the country remains on the CTC Compliance Watchlist (the 'watchlist'), its scorecard should be viewed with caution as it does not yet reflect the potential impact of ongoing material developments that has resulted in the watchlist placement.

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