

**CTC COMPLIANCE INDEX
WATCHLIST NOTICE UPDATE No. 3****24 April 2023****Contracting State:** China**On watch** since 24 June 2022**Prior updates:** Watchlist Notice Update No. 1 dated 19 July 2022; Watchlist Notice Update No. 2 dated 3 October 2022**Category:** Low (current score: 54)¹**Variable(s) under assessment:** Variable B (current score: 2)²**Outlook:** **Negative** – SEE PARAMETERS BELOW**Facts:**

Applications for repossession under Convention, Article 13(1) have been filed by lessors with Beijing 3rd Intermediate People's Court in respect of four aircraft formerly on lease to a Chinese airline (the 'lessee') following termination of the underlying leases. Applications for deregistration under Protocol, Article XIII have also been filed with the Civil Aviation Administration of China ('CAAC') in respect of the same aircraft. The earliest of such applications were in December 2021, with the most recent applications being filed in April 2022. IDERAs had been granted by the lessee at the commencement of each lease for each aircraft, three of which were recorded with CAAC, with the relevant lessor as 'authorized party'.

Two of the aircraft have since been voluntarily returned to the lessor by the lessee (the 'Possessed Aircraft'), while two others remain in the lessee's possession (the 'Unpossessed Aircraft'). Three aircraft have since been redelivered, deregistered and exported through commercial agreement, and cooperation, with the lessee. The remaining aircraft is a Possessed Aircraft for which the lessor is the authorized party under an IDERA.

To date, none of the remedies requested in the applications have been granted by either (1) the court, or (2) CAAC, which as a condition to the remedy of deregistration is requiring a court order for all four aircraft despite the voluntary return of the Possessed Aircraft by lessee.

CTC Analysis:

The remedy of repossession under Convention, Article 13(1)(b) must be made available to a lessor by a court within the speedy relief timeframe prescribed by China's declaration under Protocol, Article XXX(2) – that is, within 10 calendar days of receipt of the application for such remedy. Repossession was not granted by the court within such speedy relief timeframe for any of the aircraft, and, in the case of the Unpossessed Aircraft, the remedy remains unavailable to the lessors over 6 weeks after the application was made.

China 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 CAAC to honor an IDERA under Protocol, Article IX(5).

¹ This category and current score reflects the updated China score pursuant to the semi-annual compliance index update issued on 3 October 2022.

² This variable B score reflects the updated China score pursuant to the semi-annual compliance index update issued on 3 October 2022.

Despite the IDERA declaration, the exclusion of non-judicial remedies under China's Convention, Article 54(1) declaration requires the authorized party under an IDERA to present a court order confirming that the authorized party is entitled to possession of the aircraft. Thus, if possession is disputed, then the time-bound (10 calendar days) court process (under the specific and binding terms of Convention, Article 13 and Protocol, Article X) is a condition to de-registration and export. There are, therefore, two scenarios:

1. In cases where repossession is disputed by the lessee, China's IDERA regulation requires that (time-bound) court order granting such remedy to the lessor. In that case, such court order needs to be presented to CAAC to complete the deregistration application.
2. In cases where repossession is not disputed by the lessee, no such court order applies. A requirement for a court order in this scenario undermines lessor's substantive remedy of deregistration under CTC as there is no dispute that would require judicial participation or determination.

In the case of the Possessed Aircraft, by voluntarily returning the Possessed Aircraft to the lessor's possession, the lessee is conclusively not disputing the lessor's entitlement to possession of the aircraft. As such, there is no controversy that warrants judicial involvement and determination in connection with de-registration and export under the IDERA regulations. Accordingly, as long as the lessor has satisfied the other requirements for de-registration under China's IDERA regulations, the treaty and Chinese law require CAAC to de-register the aircraft within 5 business days of the authorized party's application to de-register. As that time period has already been exceeded, CAAC is obligated under both the Cape Town Convention and the IDERA regulations to complete deregistration of both Possessed Aircraft promptly.

In the case of the Unpossessed Aircraft, where the lessee has not voluntarily returned possession of the aircraft to lessor and where possession is potentially in dispute, CAAC is required to de-register the aircraft within 5 business days of receipt of a court order confirming the lessor's entitlement to possession of the aircraft and satisfaction of requirements under China's IDERA regulations. That court order, in turn, is bound by China's speedy relief timeframe declaration of 10 calendar days.

Scoring outlook:

The applications for repossession and deregistration of aircraft are material developments that implicate CTC compliance in China. The delay by the court in making such remedies available to the lessor within the timeframes committed to by China in its declarations is inconsistent with the requirements of CTC. CAAC's requirement for a court order as a condition to deregistering the Possessed Aircraft pursuant to an IDERA exercise undermines lessor's substantive remedy of deregistration under CTC. As such, as of the date hereof, the applications for relief and deregistration, and delays and court order requirement for deregistration of the Possessed Aircraft related thereto, result in a **negative** outlook for China's scoring for variable B under the compliance index formula, which addresses whether CTC requirements are met in practice.

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Notices will be issued 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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