

Abstract

In regard to the process of aircraft acquiring, an airline business has a difficulty in using an aircraft, high value asset, as security due to the limitation of Thai laws concerning a secured-based transaction. To remove such obstacle, several agreements have been applied in secured finance transactions such Conditional Sale Agreement, Leasing Agreement, and Hire-Purchase Agreement.

The study reveals that as to security-based transaction regarding aircraft acquiring, Thai laws only acknowledge the right of the creditor under the pledge in which creditor's possession of secured assets is required. Such requirement is considered as a hindrance of secured finance transactions since it is inappropriate for an airline business. Furthermore, the laws governing secured finance transactions which are Conditional Sale Agreement and Leasing Agreement do not consider the creditors under such contracts as the secured creditors who are entitled to directly enforce the secured aircrafts. In the case of defaults on loan payments, the creditors have to bring a legal action to the court to enforce their claims; however, such process takes time and absolutely does not suit the employment of aircrafts. Additionally, the concept of acknowledgement of the court decisions in other jurisdictions has not been taken into account. By virtue of Bankruptcy law, the creditors under Conditional Sale Agreement and Leasing Agreement are not recognized as the secured creditors; therefore, the parties in such contracts agree to insert some other additional terms to fulfill the creditors' rights, and significantly to assure that the creditor will receive a full repayment. However, practically speaking such terms do not provide sufficient protection to the creditor.

Recently Convention on International Interests in Mobile Equipment 2001 and Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment have been compiled in order to remove the obstacles in using the high value assets including an aircraft as a security precaution. The principles of such Convention and Protocol allow the parties of secured finance transactions to

hold the attached rights on the benefits of secured assets as security of a principle credit agreement. In addition to such advantage, the Convention acknowledges the international interests regarding such benefits, international registration, priority and Default remedies.

The critical notions under The Convention and Aircraft Equipment Protocol which could appropriately adapt into Thai legal system are including, firstly, to constitute of International Interests in Aircraft Equipment and to define credit and leasing transaction under Security Agreement, Conditional Sale Agreement, and Leasing Agreement so as to acknowledge the creditors in security-based transactions, which are Security Agreement, Conditional Sale Agreement, and Leasing Agreement, as the secured creditors. Secondly, the principles imposing the details of aircrafts and claims which are able to be held as security, to facilitate security-based transactions, is inevitably required. Thirdly, to assure that a debtor is able to satisfy his obligation under a loan agreement, the conceptions of a registered interest has priority over a subsequently registered interest and over unregistered interest should be recognized. Fourthly, in the case of defaults on loan payments, to affirm the creditors' right, the thoughts of default remedies, relief pending final determination and effects of insolvency are also necessary. Finally, it is needed to adapt the system of international registration and set up the organization responsible for interconnecting the domestic registration system with the international registration system. The above-mentioned system is significantly useful as the place where all aircraft-related rights registered could be accessible. The possible government agency may be the Department of Civil Aviation which directly regulates civil aviation activities of Thailand.

In order to advance the legal framework on promoting secured finance transactions in Thailand, the thesis proposes that the adoption of key principles under The Convention and Aircraft Equipment Protocol is necessary as they will remove the obstacles on using an aircraft as security. This project also suggests that though being a member of The Convention and Aircraft Equipment Protocol is not required, doing so may modernize Thai regulatory framework and standard of secured finance system,

particularly using an aircraft as security; in addition, such progression may encourage using other mobile assets such as trains, aerospace assets, and further high value assets as security in the future.