

IBA Annual Conference Rome 2018

Litigation proceedings involving repossession of aircraft: enforcement of rights under the Cape Town Convention and conflict of laws between common and civil law systems

Anna Masutti

Litigation Proceedings Involving Repossession of Aircraft: an Italian perspective

Why Italy signed but did not ratify the Cape Town Convention?

The reluctance to ratify the Convention is probably due to the fact that it contains some mechanisms which may depart from principles traditionally applied in Italy for the enforcement of security interests.

Self-help remedies (like in other civil law jurisdictions) are not allowed under Italian law (*divieto di autotutela*, which could be sanctioned under criminal law Art. 392 c.p.).

The lessor cannot enforce the right to repossess by taking physical possession of the aircraft without the cooperation of the lessee.



Repossession enforcement (mortgage)

Any action aimed at enforcing the right of repossession must be brought before the Court.

The mortgagee must seek an order of sale of the aircraft by public auction, then seek the assignment of sale proceeds.

The parties cannot agree to automatically transfer title to the aircraft to the mortgagee if the mortgagor defaults its obligations: any such arrangement would be null and void (Art. 2744 Italian Civil Code, *divieto di patto commissorio*).

The same rule applies for pledge agreements.

Pledge “the Italian way”

Non-possessory pledges have been only very recently admitted in our system; however, they cannot be enforced for the moment since the model of register (provided by a law enacted in 2016) has not been adopted yet.

Legal instruments available

Owner/lessor are entitled to enforce a foreign judgment in Italy:

- EU judgments recognized pursuant to Regulation (EC) 1215/2012;
- extra-EU judgments recognized pursuant to Law 218/1995;
- arbitral awards recognized pursuant to NY Convention 1958.

Owner/lessor are entitled to act against the lessee before the Italian court seeking an injunction of delivery of the aircraft (Art. 633 Civil Procedure Code “*decreto ingiuntivo*”), which could be granted “*ex parte*” either immediately enforceable or subject to a term of up to 40 days for the appeal by the lessee.

Legal instruments available

- The lessor's acknowledgement of the lessee's right of repossession may allow to obtain an immediately enforceable order or to reduce the term for the appeal.
- Alternatively: "fast track" proceedings pursuant to Art. 702 bis c.p.c.
- Pursuant to a new provision of the Civil Procedure Code (Art. 614 bis) the Court may apply monetary sanctions in case of failure or delay in complying with a judicial order.
- Measures like the "*astreintes*" adopted for instance in the French or Belgian legal systems are no more considered '*punitive*' and contrary to public order (Italian Supreme Court 7613/2015).

Urgent remedies (but no so brutal....)

The lessor can request interim and/or precautionary measures to prevent the aircraft from taking off.

The Italian Civil Aviation Authority can prevent the aircraft from taking off in case of default in payment of taxes, duties or fees, including overflight or terminal charges (Art. 802, Italian Navigation Code).



