

1. Which government authority in your country has primary responsibility for the regulation of aviation and the registration of aircraft?

The Civil Aviation Authority of Botswana.

For contact details please refer to: <http://www.caab.co.bw/index.php>

2. Can foreign-owned aircraft be registered on your national aircraft register, for example when leased to an airline based in your country?

Yes – under the Air Navigation Regulations, if an aircraft is chartered by demise to an entity in Botswana, the CAAB may register the aircraft in Botswana in the name of the charterer. Evidence of ownership will need to be produced to the CAAB at time of application for registration and reasons for registration in Botswana will be required to be set out in the application.

4. Are there any limits/restrictions on the age of the aircraft that may be registered or operated in your country?

No – not on age grounds but the Air Navigation Regulations contain requirements relating to the airworthiness, maintenance and equipment of Aircraft which need to be met.

5. Who is entitled to have their interests recorded on your national aircraft register?

The register will record the name and address of every person who is entitled as owner to a legal interest in the aircraft or a share therein, or, in the case of an aircraft which is the subject of a charter by demise (see 2 above), the name and address of the charterer by demise [when the “registered owner” would be the charterer not the legal owner].

6. Would a mortgage governed by a foreign law over aircraft and/or engines be recognised in your country?

We do not believe so. A mortgage under the law of Botswana would give a right in rem against the aircraft. Note: The Civil Aviation laws in Botswana do not provide for a separate aircraft mortgage registry.

7. To be recognised under your laws, must a lease or mortgage over an aircraft and/or engines be in a particular form or language, are there any special terms that it must contain and/or must it be registered or filed anywhere?

The laws of Botswana are based on a mixture of Roman-Dutch and English common law. The concepts of a lease and mortgage are recognised. The lease does not have to be in a particular form, language or be notarised.

8. If an engine owned by a third party is installed on an aircraft, would your country’s law treat that engine as being subject to the same ownership as the aircraft itself? In other words is there a risk that by physical installation, the engine owner loses its title to the engine or that the engine becomes subject to any mortgage which exists over the aircraft on which it is installed? Would a nameplate fixed on the engine, confirming its separate ownership, make any difference?

The Air Navigation Regulations do not require registration of ownership of an engine separate from that of the aircraft and we are not aware of this merger of title issue having arisen here in Botswana. Where the engine remains identifiable this should not be an issue and name plates should help in practice. Also the Air Navigation Regulations require a separate log book to be maintained for engine fitted in the aircraft including details of the manufacturer, engine type and serial number.

9. Has your country ratified and brought into force any of the following aviation related conventions: 1944 Chicago Convention, 1948 Geneva Convention and 2001 Cape Town Convention (with its Aircraft Equipment Protocol)?

Botswana has ratified the 1944 Chicago Convention. It has not ratified or become party to the 1948 Geneva Convention or the 2001 Cape Town Convention.

9. Does the local civil aviation authority provide assurances to lessors and financiers as to prompt deregistration of the aircraft (for example the IDERA under the Cape Town Convention)?

Not that we are aware of. Botswana is not a party to the Cape Town Convention so the IDERA is not applicable.

10. Are powers of attorney from a local airline in favour of a lessor or mortgagee likely to be effective to allow the lessor or mortgagee to deregister the aircraft? Can such powers be irrevocable, be governed by a foreign law and/or do they need to be in any particular form for local recognition?

The question has not arisen in practice to date as far as we can ascertain. We would expect such a power to be recognised. There are neither regulations nor law in Botswana which prescribe how such power of attorney should be executed nor is there a government agency that these would be filed with for record purposes. We consider it prudent to have a power of attorney governed by a foreign law notarised in that jurisdiction and apostilled for use in Botswana.

11. Are there any charges which would have to be paid before an aircraft can be deregistered from your national register (e.g. local air navigation fees)?

Yes – see 17 below.

12. Would courts in your country generally uphold a choice of law and jurisdiction clause in an aircraft lease or loan document entered into between commercial parties?

Yes, with only a few exceptions (on public policy grounds) Botswana courts do generally recognise and uphold choices of governing law and jurisdiction in commercial agreements.

13. If the lease is terminated for lessee default, would the lessor be entitled to repossess (by taking physical possession) of the relevant aircraft or engine or does it need the prior permission or order of a local court or agency?

“Self help” remedies should not be pursued in a contested situation even if the lease provides for this. If there is a default and repossession is sought, legal proceedings should be brought and application made to court for an order to repossess/foreclose on the equipment.

14. In clear cases of a lessee default is there an effective summary procedure or interim relief available in your courts allowing lessor prompt repossession of the aircraft? Would security be required to avail of such process?

In that sort of case, the lessor/lender could seek summary judgment to allow the case to be disposed of without the cost and delay of a full trial. This procedure is modeled on the rules of the English Supreme Court. There is no precedent aircraft related case for this but we estimate that the process would take approximately 2 months from start to finish – assuming there really is no defence to the claim.

15. What is the procedure for a lender to enforce a mortgage over the aircraft or engine in your country when the borrower is in default? For example must the aircraft be sold by the court or can the lender itself take possession and arrange a sale?

Application to court for judgment and sale would be necessary. Summary judgment as noted above might be available.

16. Do the courts in your country have experience of repossession / foreclosure action involving aircraft? If so, please provide some details and indicate the time such proceedings generally would be expected to take from start to finish.

Not that we are aware of. Assuming there is no defence to the claim, our experience in other equipment repossession cases would suggest that in clear cases the process would take approximately 2 months from start to finish. If the case is not straightforward, it could take several years.

17. Where an aircraft is leased to (i.e. not owned by) the airline operating it, can that airline create liens or encumbrances over the aircraft for example if it fails to pay suppliers, airport charges or maintenance providers? If so, would the existence of any such liens (e.g. in respect of unpaid airport charges) prevent an owner or mortgagee from repossessing the aircraft?

If the Lessee is not the owner of the aircraft, it cannot create liens or encumbrances over the aircraft. Nameplates affixed to the aircraft giving notice that no liens are permitted, would be useful and afford good protection to the owner against those claiming liens.

There are specific regulations for en route charges and fees due to the Civil Aviation Authority. Where charges are not paid, there is a statutory power of seizure and detention (and ultimately sale). Whilst the operator of an aircraft is primarily responsible for en route charges (unless the CAAB is unable to ascertain who the operator is, when the owner can be charged) once charges are overdue for more than 90 days, aircraft can be detained (the actual aircraft which incurred the charge or another aircraft operated by the person in default). The power of detention and sale extends to the equipment and stores of the aircraft whether or not the equipment or stores belong to the operator.

18. Are there any circumstances under your country's laws where a non-operating lessor, owner or a mortgagee could be held liable for damage caused by the aircraft whilst operated by an airline, even if there is no fault on the part of lessor, owner or mortgagee?

Strict and vicarious liability are concepts known to the law but unless the lessor or mortgagee is actually at fault in some way for the damage, we consider it unlikely that the lessor or mortgagee would be held liable.

19. Are there any legal requirements in relation to insurance and/or reinsurance of an Aircraft registered in or operated to/from/within your country? For example is there a minimum liability insurance amount required and must some or all of the cover be taken out with local insurers?

No though we note that the CAAB has indicated that Air Transport Service regulations will be issued under which the CAAB will license operators subject to them meeting certain minimum requirements, including having adequate insurance.

20. Are there any other specific issues arising under your country's laws that you feel a lessor or financier of aircraft or engines ought to be aware of when considering whether to lease or finance an aircraft to be based or registered in your country?

A lessor will be deemed to be doing business in Botswana (by providing a service) in leasing to a Botswana entity. It will therefore need to register for VAT and there may be income tax liability. A Lender does not have to be registered for income tax or VAT.

Our Civil Aviation Laws do not have provisions in respect of commercial aircraft leasing so we would recommend the lessor and owners communicate with the Civil Aircraft Authority of Botswana ahead of time to discuss what may or may not be allowed in specific cases. We are happy to assist with that process.