



AERIAL

# | Burkina Faso

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

The Direction Générale de l'Aviation Civile et de la Météorologie ("DGAC")

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

A foreign-owned aircraft can be registered on our national aircraft register when leased to an airline based in Burkina Faso and if the lease term is for more than 6 months. (A foreign registered aircraft may be operated in/from Burkina Faso and not registered on the aircraft register if leased to a local company but only if the total lease period does not exceed six (6) months). A foreign-owned aircraft cannot be registered in Burkina Faso until the owner has proved that the aircraft is not registered in another country and that the aircraft main base is in Burkina Faso.

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

No

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

Registration would be in the name of the owner. A lessor's and/or lender's interest can be recorded as well.

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

There is no requirement to have a mortgage only governed by the laws of Burkina Faso so a foreign law mortgage could be registered in the aircraft registry though in practice it would be advisable for protection and enforcement for a local law mortgage to be taken and registered instead or as well. Note there is no separate register for engines.

6. 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?

Leases do not have to take a particular form but should be in French, the term of the lease must be clearly stated and the following element should be specify: the term of the lease, the identity of the parties, description of the aircraft and certain declarations as indicated in the standard lease agreement provided in the applicable regulation. Aircraft leases or mortgages have no effect against third parties until they are registered with the DGAC. For ease of speedy enforcement if needed later on, the agreements should be notarised.

7. 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?

There is no separate registration here for engine ownership and the question of whether title to an engine is transferred to the owner of the airframe has not we believe arisen for determination. Affixing ownership plates is a good practical step; another is to obtain the agreement of the airframe owner that title to the engine does not transfer by virtue of installation on the aircraft.

Summary contributed to AERIAL by Bobson Coulibaly Kere Avocats

8. 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)?

Yes for Chicago; no for the Geneva and Cape Town Conventions.

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.

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?

Powers of attorney need to be in French and notarised. If the grantor becomes insolvent the power of attorney will lapse and if the validity of the power of attorney or the actions to be taken under it were to be contested by the grantor, we doubt a power of attorney would be of much practical use locally.

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 answer to 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. Our courts generally uphold choices of law and jurisdiction in an agreement between commercial parties (international arbitration clauses tend to be the preferred choice for foreign parties contracting with local enterprises or the state).

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 are not allowed. Unless the equipment is returned voluntarily a court order would be required.

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?

Yes. If the lease was drawn up by a notary, after recording the default, the notary will deliver an executory title which should be readily enforceable by a bailiff with the help of the public force, if need be.

If an event of default leads to the automatic termination of the lease, the lessor can ask the President of the Tribunal to take notice of the termination of the lease and order the Lessee to hand over the aircraft (*Article 464 Civil Procedure Code*).



Alternatively if Lessee refuses to hand back the aircraft after the procedure provided for in the lease has been followed, the Lessor can pursue its claim through judicial proceedings (*Article 218 Uniform Act organizing Simplified Recovery Procedures and Measures of Execution*).

The Lessor/ Lender might also seek to arrest / seize the aircraft under a court order providing for that. See answer to 20 below as to security. The aircraft would be released if countersecurity, sufficient to cover the debt and related fees, is provided by the debtor.

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?

The mortgage laws of Burkina Faso do not allow a right in rem against the aircraft. A mortgage gives a right in the proceeds of sale of the aircraft, unless the creditor makes a specific request to the court for the transfer of ownership to him. The sale would be done by a bailiff.

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.

We have handled an aircraft arrest case but courts in Burkina Faso do not have deep experience of repossession or foreclosure involving aircraft. Where the lease has been duly notarised and a clear default occurs which terminates the lease, repossession ought to be fairly swift. Bear in mind though that a determined defendant can seek to delay matters by appealing every court decision.

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?

Yes this can be an issue. A creditor of the operator with possession of the aircraft/engine may retain possession until the debt has been paid in full where the debt is certain and due and there is a relationship between the debt and the equipment retained. However, the creditor should release the good if adequate security is provided for the debt.

Local air authorities will also expect their charges to be paid before the aircraft is repossessed and exported from the country. They can seek court authority to arrest the aircraft for non-payment of airport charges. Such action would prevent repossession by the owner unless and until the charges are paid or secured.

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?

Yes. If an aircraft is leased, the lessor and the lessee will jointly and severally be liable for damages caused by the aircraft to third parties. However, if the lease is mentioned on the registration certificate, the lessor would be liable only if its fault can be proven.

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?

The operator will need to prove evidence of insurance. There is no legal requirement for insurances to be placed or reinsured by the operator only with local insurers.



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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?

Before starting any legal action in Burkina Faso, a party which is not resident here will be required to give security for the costs (court related-fees and damages) which may be incurred in consequence of the proceedings.

A new aviation code came into force in May 2010 but various decrees relating to that code have not yet been adopted. They are under revision and are expected to be submitted for examination by the National Assembly towards the end of 2011. Therefore some of the answers in this outline may need to be changed in the near future.

