

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

The “*Agência de Aviação Civil*” (“AAC”). AAC is an independent administrative authority created by law (Decree Law 28/2004, 12 July 2004) entrusted with the task of regulating the civil aviation sector and responsible for aircraft registration in Cape Verde.

- 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 may be temporarily registered in Cape Verde under a sale and purchase agreement with ownership reservation or a lease, provided that some requirements are met (for example, the aircraft must be operated by licensed Cape Verdean air carriers).

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

No, there are no specific limitations in this respect.

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

The Cape Verdean State, individuals habitually residing in Cape Verde and companies incorporated under the laws of Cape Verde are entitled to register ownership/usufruct interest over an aircraft, as well as a mortgage and other interests subject to registration. Creditors are also allowed to apply for registration of some interests over an aircraft registered in the country.

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

The Cape Verdean conflict of law rules determine that the creation, assignment and cancellation of rights of ownership and *in rem* forms of security over an aircraft and/or engines (including mortgages) are governed by the law of the State where the aircraft is registered at the time of their creation/assignment/cancellation. Therefore, if the transaction falls outside the scope of The Cape Town Convention and Protocol (to which Cape Verde is a party), Cape Verde law will be deemed applicable. This said, the mortgage over aircraft and/or engines would have to be created and perfected in accordance with the Cape Verdean domestic legislation to be recognised in the country. However, if the mortgage is created and perfected under the laws of the State where the aircraft and/or engines are registered (before registration in Cape Verde), or under The Cape Town Convention and Protocol, such mortgage would be recognised even if governed by a foreign law.

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?**

In general, any document subject to registration or to be presented before a public entity (including Courts) must be duly translated into Portuguese and such translation prevails over any other version. In particular in respect of a lease of a mortgage over an aircraft and/or engines, the Civil Aviation Code requires notarization before a notary public for any contracts executed abroad. Apostillation / legalisation requirements may also apply.

Furthermore, domestic legislation establishes special terms and formalities and registration requirements in respect of a lease or mortgage over aircraft and/or engines. Also if the lease/ mortgage are created under the Cape Town Convention and Protocol, specific legal requirements will apply.

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?**

Engines are subject to registration under domestic legislation. A registered owner or mortgagee will not lose its rights even if the engines are installed in an aircraft owned by other party.

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.

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)?**

From a strict legal standpoint, yes. However, in practice some difficulties may arise. To minimize any practical difficulties, the issuance of an irrevocable power of attorney may be advisable.

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?**

A power of attorney granting powers to be exercised in Cape Verde is mandatorily governed by Cape Verdean law. Pursuant to the relevant legal provisions, an irrevocable power of attorney must be executed by means of an instrument drawn up by a Notary Public and duly recorded with such Notary. The delivery of the irrevocable power of attorney should be cumulative to the delivery of the IDERA.

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.

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?

Pursuant to the Cape Verdean Civil Code, contracts are governed by the law chosen by the parties, provided that such election has a nexus with a relevant element of the contract or is otherwise supported by a *bona fide* interest of the parties. However, a foreign law elected in accordance with those rules will not be acceptable if it involves a violation of a fundamental principle of Cape Verdean public policy. Under The Cape Town Convention and Protocol the parties are also free to choose the applicable governing law.

The consent to jurisdiction provision contained in an aircraft lease or loan is valid and binding, provided that the following requirements are met: (i) acceptance by the law of the chosen court; (ii) the choice of the jurisdiction is supported by serious interest of the parties, or by one of them; (iii) the agreement conferring the jurisdiction be executed in the same form than the underlying obligation, indicating the causes subject to the court.

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?

Under the Cape Town Convention and Protocol, yes. Under domestic legislation, some restrictions may apply.

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. Security will be required for repossession.

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?

In the event of default, a creditor whose debt is secured by a mortgage only has the right to be paid from the proceeds of a forced sale of the asset. In order to repossess an aircraft the Secured Party is required to obtain a court ruling ordering such repossession. The same is applicable to foreclosure. If the aircraft has liens, and the owner has no means to pay the debts, the aircraft must be sold in a judicial auction and creditors are paid from the proceeds of the sale with a specific priority. In addition, it is expressly prohibited any agreement whereby a creditor (a lender, for example) would take ownership or possession of the mortgaged asset in the event of default by the debtor. This said, typically, creditors are granted irrevocable power of attorney that, in practice, may allow the extra judicial sale or disposal of the aircraft.

If the mortgage is created and registered under the terms of The Cape Town Convention and Protocol, the Cape Verdean law would not apply. In the event of default, a creditor may (i) take possession of the aircraft, (ii) sell or lease the aircraft, and (iii) collect the proceeds of such sale/lease. The Protocol further provides that creditors are entitled to de-register the aircraft and export it out of the country where it is located.

- 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.**

Yes, the Cape Verde courts have experience in similar cases. Unfortunately, it is very difficult to predict how much time the above court proceedings may take until a final decision is made. Typically, the Cape Verde courts take between 1 to 2 months to finalize interim measure proceedings, but the subsequent lawsuit, enforcement proceedings – appeals to the Court of Appeals and Supreme Court included –, may easily take between 2 to 4 years to be completed.

- 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?**

Pursuant to domestic legislation, some creditors in respect of certain privileged credits have preferred claims over aircrafts. Such privileged rights are subject to registration and rank ahead a mortgage. Please note that this would not entitle such creditors to retain the aircraft (extrajudicially) until their credits are fully paid. However, such creditors would have the right to request court the payment of their credits through the selling of the aircraft in a judicial auction. Also in some cases it may be ordered the seizure of the aircraft which prevents the aircraft leaving the country.

- 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, the owner may be strictly liable for damages, if the aircraft is not duly registered.

- 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?**

Yes. Under the Aviation laws and regulations there are specific legal requirements. In general, all insurance policies must be taken out with local insurance companies. Notwithstanding, it is possible to reinsure the aircraft with a foreign company.

- 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?**

Other specific issues to be aware of: (i) foreign exchange controls; (ii) enforceability of foreign awards and judgements obtained in foreign courts (subject to mandatory recognition and confirmation proceedings).