

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

The Ministry of Transport and Equipment. Under the authority of this Ministry, the Civil Aviation Directorate is in charge of registration of Aircraft

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

Yes but permission from the Ministry of Transport and equipment would be required. Please note that to the best of our knowledge there is, for the moment, no aircraft registered on the Djibouti Aircraft Register.

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

Not that we are aware of.

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

The owner, a buyer, lessor and mortgage creditor.

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

In principle yes, it should be recognised in Djibouti.

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?

The lease or mortgage has to be in writing (notarisation is not required) and be registered (if relevant) in the aircraft register in the country where the aircraft is registered.

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?

If an engine owned by a third party is installed on an aircraft, it should not be subject to any mortgage which exists over the aircraft only: but it is necessary that the engine owner is able to evidence that the engine was not included in the mortgage (provisions in the mortgage agreement or in the engine sale agreement). It is advisable to fix a nameplate on the engine confirming its ownership. Djibouti Law provides that the seller or the borrower of any movable asset can register a pledge on the equipment (valid 10 years) and fix a nameplate on this equipment to inform third parties of this pledge (cf. Law n°55-990 dated 27 July 1955). So fixation of a nameplate on an engine should be recognised by Djibouti Court, even if sale of the engine (or pledge) is governed by another law.

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 the 1944 Chicago Convention and 1948 Geneva Convention (Djibouti was, at the relevant times, a French territory and those conventions were ratified by France and then made enforceable in overseas territories). To the best of our knowledge, Djibouti has not ratified 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)?

We are not aware of this assurance having been sought previously.

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 from a local airline in favour of a lessor or mortgage allowing the lessor or mortgage to deregister the aircraft are likely to be effective in Djibouti. Irrevocable powers of attorney are problematic though and a power of attorney cannot be given for an unlimited time (perpetual obligations are void); it is important to provide that power of attorney will stay valid until reimbursement of all dues. Powers of attorney can be governed by a foreign law but cannot be contrary to public order provisions of Djibouti Law (for example prohibition on perpetual obligation). No particular form is required for local recognition but documents have to be translated into, or be in, French if used in litigation before a Djibouti Court.

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)?

Given the lack of aircraft on the register, we are not aware of this issue having arisen in Djibouti but see answer 17 below on airport charges.

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?

A choice of a foreign law to govern an aircraft lease or loan document entered into between commercial parties should generally be upheld as a valid choice of law in the Courts of Djibouti. Similarly an agreement to a foreign jurisdiction clause in this context; as long as the Djiboutian party has agreed to such a jurisdiction clause, it cannot ask to benefit from the “Djiboutian jurisdiction privilege” provided by article 14 of the Civil Code, which allows a Djiboutian party to sue a foreign party before Djibouti court. Note that a judgment obtained in an agreed foreign court should be recognized and enforced by the Djibouti courts without re- examination of the merits of the case but will need “exequatur” proceedings before Djibouti courts.

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?

Judicial proceedings to repossess the Aircraft or Engine may not be required if the Agreement provides that the Agreement is terminated for specific defaults. But if the Lessee does not allow the Lessor to repossess, Lessor will need a court order. It is advisable to provide in the Agreement that in such occurrence, an emergency Djibouti judge (“juge des référés”) will be competent to record that the Lease Agreement is terminated according to its provisions and order repossession.

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. There are expedited proceedings available in the courts of Djibouti called “référé”. The “référé” proceedings are the most quick and efficient proceedings to obtain repossession of the Aircraft but if the Lessee submits “serious” claim or legal issues, the “référé” judge may consider that he is not competent and that the case has to be referred to normal proceedings. There is generally no requirement to provide any bond or security to obtain a court order of repossession of the Aircraft if allowed under the Agreement but note (see further 20 below) that a foreign party can be required to provide a bond or security to take part in proceedings before the Djibouti court.

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 mortgagee will seek the arrest of the aircraft – either a *saisie conservatoire* or *saisie-exécution* depending on the circumstances. Ultimately the process may lead to a sale of the aircraft by the court (the court can also order that the sale will be made by a bailiff or a public notary). The court may authorise an arrest even if it is not competent to judge on the merits of the claim (for example due to a foreign jurisdiction clause or arbitration clause) but in such a case, the Djibouti court will stay its decision on the validation of arrest until the competent court or arbitrator has decided on the merits of the case.

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 are not aware of any aircraft repossession proceedings in Djibouti. We have been involved in arrest of aircraft for unpaid airport charges. Order of arrest was obtained in 48 hours and judgment validating the arrest obtained in 9 months (with provisional enforcement). More generally, international arbitration awards exequatur proceedings are rare in Djibouti and can take several years if the Counterparty raises many proceedings objections or uses all possible appeals (to the Court of Appeal, to the Supreme Court and then back to the first judge or court of Appeal if the Supreme Courts annuls the decision of the Court of Appeal). But in other cases, exequatur judgment has been obtained in few months.

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?

The airline operating a leased aircraft cannot create contractual liens or encumbrances over the aircraft. Whilst an airport authority does not have a lien on an aircraft for unpaid debts it does have the right to detain an aircraft at Djibouti airport for unpaid landing fees. In practice the Airport Authority is unlikely to detain an aircraft without giving prior warnings. According to court precedents, this detention right is applicable even if the Aircraft is on lease (*Djibouti Court – Judgment 26 October 2010 Airport v/ Aquiline – Djibouti Airlines*).

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?

Not that we are aware of.

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. It is prohibited for an insurer based outside Djibouti and who has not obtained a special agreement from Djibouti Authorities to cover risks in Djibouti, even if the conclusion of the contract and its administration takes place outside Djibouti and even if the foreign insurer enters into a contract with a company outside Djibouti.

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 Djibouti entity can require security from a foreign claimant in proceedings before the Djibouti court. A foreign lender or lessor should include in its agreements with a Djibouti party a clause that the foreign party will not have to pay such a "*caution judicatum solvi*". In our opinion, a Djibouti court should give effect to such a clause.