



AERIAL

| Equatorial Guinea

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

The Aeronautic Authority of Equatorial Guinea (“Autoridad Aeronautica de Guinea Ecuatorial”) (AAGE) regulates civil aviation and is responsible for management of the National Aircraft Registry (“Registro Nacional de Aeronaves”) (NAR).

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

Generally aircraft may only be registered in Equatorial Guinea (“EG”) if owned by a EG company or individual but AAGE may authorise registration of an aircraft owned by a foreign entity if the aircraft is going to be operated by a EG company under a lease agreement.

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

To the best of our knowledge, there are no specific limitations in this respect.

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

The owner and mortgage holder. 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 EG conflict of law rules are not entirely clear in respect of a mortgage over aircraft. However, pursuant to Article 62 of the EG Civil Aviation Law, the creation, assignment and cancellation of rights of ownership and *in rem* forms of security over an aircraft (including mortgages) are governed by the law of the State where the aircraft is registered at the time of their creation/assignment/cancellation. Accordingly, an aircraft mortgage in EG would have to be created and perfected in accordance with the EG legislation to be recognised in the country. However, if the mortgage is created and perfected under the laws of the state where the aircraft is registered (before registration in EG), it would be expected that 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?

EG is a member State of the Economic and Monetary Community of Central Africa (CEMAC) and the CEMAC Civil Aviation Code applies. This Code and domestic legislation provide specific terms, formalities and registration requirements in respect of a lease or mortgage over aircraft and/or engines. As well as mandatory registration with NAR, it is advisable for the lease / mortgage to be registered in the Mercantile Property Registry. In practice EG courts and some authorities (e.g. Notary) only accept documents executed abroad if they are filed with a Spanish translation and legalized by an EG consulate. In practice if the English and Spanish versions conflict, before EG public authorities, the Spanish version would prevail.



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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?

Under the CEMAC Aviation Civil Code, a mortgage over an aircraft covers the airframe, engines, propellers, on-board equipment and all parts of the aircraft including those temporarily removed from it, provided they belong to the same owner. There is no specific registry for engines in EG. A registered owner or mortgagee will not lose its rights if the engines are installed on an aircraft owned by another provided there is evidence of separate ownership (e.g. a specific reference in the registry or a nameplate fixed to the engine).

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)?

EG has ratified the 1944 Chicago Convention but is not a party to either 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.

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?

Yes, we strongly recommend a lessor or mortgagee obtain a separate irrevocable power of attorney. Despite the foregoing it must be stressed that in practice, a court judgment may be required to obtain return of the aircraft in a contested situation. We further note that extrajudicial remedies would be limited in the event of insolvency, bankruptcy, restructuring procedures and other similar procedures.

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?

Choice of law: There is no conflict of law provision in the Civil Code specifically dealing with contracts and/or contractual rights or duties. CC Article 1255 allows parties freedom of contract, subject to no conflict with the law, good morals or public policy. Parties to an aircraft lease or loan could choose a foreign law to govern their agreement to the extent this does not conflict with EG law or public policy. Note CC Article 10 provides that personal property is subject to the laws of the owner's nationality and this applies to assets of foreign nationals in EG. However, in our view, Article 10 merely covers the rights inherent in the ownership of personal property. Other restrictions may arise from the rules in force in EG governing the registration and operation of aircraft in the country, which may restrict or condition the rights of the parties arising from a foreign law aircraft lease or loan.

Jurisdiction: Contractual clauses of this nature are valid and enforceable in EG if: (i) the contract is entered into with a foreign party, (ii) outside of EG (iii) the dispute is not related to real estate located in EG and (iv) does not arise from obligations to be performed in whole or in part in EG. Yet, local courts will hear a dispute if one of the parties is an EG national and the contracting parties failed to expressly waive their right to have the dispute settled by a jurisdiction other than the jurisdiction selected in their contract.

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 OHADA Uniform Act on Securities, the lessor may take possession of an aircraft upon termination of the lease agreement without judicial intervention, provided that the value of the aircraft is evaluated by an expert (who can be designated mutually by the parties or designated by the court). However, all such rights and remedies must be properly provided for in the lease agreement. Despite the foregoing, as noted in 10 above, a court judgment may be required to obtain return of the aircraft in a contested situation.

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. The procedure for the lessor to obtain possession of the aircraft after an event of default under the lease may be either a “simplified procedure for restitution of a specific moveable asset” or a legal action requesting the court to declare that an event of default under the lease has occurred and order the restitution of the aircraft to the lessor. Alternatively, the lessor may file a simplified procedure aimed at requiring the lessee to pay the amounts due under the lease, as provided for in the 1998 OHADA Uniform Act on Simplified Recovery and Enforcement Procedures. The lessor may also apply for interim measures specifically for the purposes of seizing the aircraft (“saisie mobilière conservatoire”), either in anticipation or in aid of the “simplified procedure” or legal action against the lessee.

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?

Similar to 14 above but note 16 below on the lack of previous cases.

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.

No. As there are no available court decisions on this matter it is very difficult to predict how long court proceedings may take. Court proceedings here can be lengthy and unpredictable.

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?

Under the CEMAC Civil Aviation Code, the following have the nature of privileged credits, ranking above the mortgage: (i) court fees due in case of judicial proceedings for sale of the aircraft, (ii) the fees due in case of rescue of the aircraft, (iii) the fees necessary for the maintenance of the aircraft, and (iv) navigation and airport fees. The CEMAC Civil Aviation Code also establishes a right of retention in favor of the civil aviation authority (or other administrative authority) of the place of landing in case of surface damages or breach of the Code regulations. The CEMAC Civil Aviation Code also recognizes any claims for surface damages under Article VII-5 of the Geneva Convention.

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 if the lease of 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. 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. As a rule, reinsurances covering more than 75% of the risk directly insured by a local insurer can only be taken out abroad with a prior authorisation from the EG Minister with jurisdiction over insurance matters. Please note that this requirement does not apply to reinsurances to cover (i) damages to aircraft or (ii) third party civil liability for the usage of aircraft.

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) requirements of registration and registration procedure and (iii) enforceability of foreign awards and judgements obtained in foreign courts (subject to mandatory recognition and confirmation proceedings).