

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

The “Agence Nationale de l’Aviation Civile” (“ANAC”)

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

An aircraft may only be registered in the Republic of Gabon if it is owned by a Gabonese company or individual. ANAC may authorise the registration of a foreign owned aircraft if the aircraft is going to be operated by a Gabonese company under a finance lease.

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 owners of the aircraft, a mortgagee and potentially some other creditors.

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

In principle any mortgage over assets located in the Republic of Gabon must be governed by Gabonese law. However as Gabon is a signatory to the Chicago Convention and to the Geneva Convention, a mortgage governed by the laws of a foreign contracting state can be recognized in Gabon if the relevant requirements are met, notably that (i) the mortgage was created under the terms of the law of the Contracting State where the aircraft was registered at the time (and before importation and registration in Gabon); (ii) the mortgage was duly registered in the public registry of the Contract State, and (iii) the certificate of deregistration expressly confirms the previous creation and registration of said mortgage.

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?

All documents to be submitted to the Gabon public authorities must be in French (or be translated into French by a certified translator). In principle, any foreign source documents submitted to a local public authority must also be legalized. Gabon is a member State of the Economic and Monetary Community of Central Africa (CEMAC) and CEMAC Regulations, including the Civil Aviation Code are applicable. The CEMAC Civil Aviation Code and the domestic legislation (which include the recently enacted Civil Aviation Code of the Gabonese Republic) establish special terms and formalities and registration requirements in respect of a lease or mortgage over aircraft and/or engines.

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 specific registry for aircraft engines in Gabon. A mortgage over an aircraft includes the engines, propellers, on-board equipment and all parts of the aircraft that are part of it or are only temporarily separated from it, provided that they belong to the same owner. An owner or mortgagee will not lose their rights if their engines are installed in an aircraft owned by other party provided there is evidence of their interest (such as a special reference in the registry, a nameplate fixed in the engine, etc.).

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 and the 1948 Geneva Conventions. Although Gabon tried to accede to the 2001 Cape Town Convention, no declarations have yet been made so the Convention is not currently in force in Gabon.

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 and a power of attorney is recommended but in practice the owner/lessor may have to obtain and enforce a judgment to recover possession of the aircraft. Extrajudicial remedies would also be limited in the event of insolvency and 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?

Yes to the extent this does not conflict with public policy. Gabonese courts have general jurisdiction over actions relating to moveable assets located in the country. However, neither the Code of Civil Procedure nor the Law on the Organization of the Judicial System contains any provision setting forth the exclusive nature of said jurisdiction.

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?

If the lease clearly provides for this, the lessor may take possession of an aircraft upon termination of the lease in accordance with the agreement without judicial intervention but there are limitations. Please contact us for further details in any given case.

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 following an event of default may be either the “simplified procedure for restitution of a specific moveable asset” (*“procédure simplifiée de restitution d’un bien meuble déterminé”*), or a legal action requesting the court to declare that an event of default under the lease occurred and order redelivery of the aircraft. 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. The granting of interim relief does not exempt the lessor from filing the abovementioned “simplified procedure” or legal action requesting definitive repossession of the aircraft; failure to do so within 1 month of the interim measures being granted causes the seizure ordered to be lifted.

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 typical procedure would be the above mentioned *“procédure simplifiée de restitution d’un bien meuble déterminé”*. The procedure is fairly straightforward: the mortgagee submits an application to the court of the mortgagor’s domicile, setting out the facts and legal grounds for repossession, supported by documentary evidence. If the judge grants the application, the ruling is notified to the mortgagor, who has 15 days to file its opposition/defence; if it fails to do so, the mortgagee may request the court to declare the restitution decision enforceable. If the application is refused, the mortgagee may initiate separate legal proceedings requesting the court to declare that an event of default under the mortgage occurred, and order the delivery of the relevant aircraft to the mortgagee. As an alternative, the mortgagee may also resort to a simplified procedure under the 1998 OHADA Uniform Act on Simplified Recovery and Enforcement Procedures noted above. Concurrently with any of the above procedures, the mortgagee may also apply for interim measures to arrest the aircraft (*“saisie mobilière conservatoire”*), either in anticipation or in aid of the “simplified procedure” or legal action against the mortgagor. These rights and remedies could be subject to limitations in the event that the possessor of the aircraft is subject to bankruptcy, insolvency, reorganization or similar proceedings.

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.

There are no reported court decisions on this. It is difficult to predict how long the court proceedings may take until a final decision. Court proceedings in the Republic of Gabon can be time-consuming. According to our experience, interim measure proceedings may be finalized in roughly one month, but the required legal action and the possibly necessary enforcement proceedings may be pending for more than one year, excluding appeals.

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 CEMAC Civil Aviation Code establishes rights of detention in favour of the civil aviation authority (or other administrative authority) at the place of landing and the following are privileged debts (ranking above a mortgage): (i) court fees due in case of judicial proceedings for sale of the aircraft, (ii) fees due in case of rescue of the aircraft, (iii) fees necessary for the preservation of the aircraft and (iv) navigation and airport fees.

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 lease 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 there are specific legal requirements. In general, all insurance policies must be taken out with local insurance companies. Notwithstanding, it is possible to reinsure 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) requirements of registration and registration procedure and (iii) enforceability of foreign awards and judgements obtained in foreign courts (being subject to mandatory recognition and confirmation proceedings).