

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

The Ghana Civil Aviation Authority (GCAA)

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

Yes a foreign-owned aircraft may be registered in the Aircraft Registry in Ghana if the aircraft is demise chartered by a body corporate registered in Ghana and it is not registered under the laws of any foreign country.

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?

The register should include the name and address of every person who is entitled as owner to a legal interest in the aircraft or a share in it including a lessor or a financier.

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

In principle, yes.

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 documents should be in English and the requisite stamp duty paid. There is no particular form involved. For a lease to be enforceable under Ghanaian law it must contain the name and address of the Lessor and Lessee or the persons authorised to sign on their behalf, the rent or consideration for which the lease is granted and the term of the lease. It is necessary that a stamped copy of the agreement is filed and noted in the Civil Aircraft Register so that there is notice of the respective interests of the parties. In a mortgage arrangement where a collateral or charge has been created in respect of the aircraft or parts of it, the collateral or charge must be registered at the Companies Registry and the Collateral Registry.

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?

Physical installation alone of an identifiable, third-party-owned and separable object like an engine would not, we believe, cause the engine owner to lose its title to the engine or subject it to a mortgage created by the operator of the airframe. There may be a presumption in the absence of contrary evidence that an installed engine is subject to the same ownership as the aircraft. The presumption would be rebuttable by proof of separate ownership and an ownership plate fixed to an engine would be useful if the engine and airframe are in separate ownership.

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 to both the Chicago and Geneva Conventions. Ghana has signed but not yet ratified the 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)?

Yes a letter of comfort from the GCAA should be obtainable though unless/until Ghana ratifies the Cape Town Convention and Protocol such would be in the nature of comfort rather than binding obligations.

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. They could be issued under a foreign law (e.g. English Law) and they can be irrevocable as a matter of Ghanaian law. Note that a power of attorney requires nominal stamp duty to be paid on it. Also note that to deregister an aircraft, its original certificate of registration must also be presented, appropriately endorsed by the operator.

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. Deregistration would not be allowed if/while there are outstanding duties, taxes or liens owed to the GCAA on the aircraft.

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.

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?

Yes. A lessor may repossess by taking physical possession of the relevant equipment after a default without any judicial intervention provided this is expressly stated in the lease agreement, and is done peaceably. Otherwise a court order will in practice 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. The Lessor may apply for summary judgment to recover any outstanding payments and to retrieve the aircraft. It may also apply for an interim injunction. A Ghanaian court may order a claimant to give security particularly if that party is not ordinarily resident in Ghana and where circumstances raise doubts as to its ability to pay the costs or damages, or if the claimant wants to remove the subject-matter of the proceedings out of the jurisdiction.



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?

Please see comments on mortgages under point 6, above. Where a collateral or charge created by the mortgage is registered at the Collateral Registry and Companies Registry, then, in the event of default, the lender may, subject to a 30-day notice to the borrower, and without the need for a court order, take possession of the aircraft or any part of it, and sell it either by public or private auction. The registration at the Collateral Registry and Companies Registry must be done within 28 days of the creation of the charge or collateral. The registration may be done by any person who has an interest in the charge or collateral. Where a lender is unable to enforce a right of possession in a peaceable manner, the lender may use the services of the police to evict the borrower or the person in possession pursuant to a warrant issued by a court.

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.

The Courts have not often dealt with cases involving aircraft arrest, repossession or foreclosure but have experience or repossession/foreclosure involving leases of equipment to resident companies by foreign financiers. Disputes arising under such agreements may be filed either with the Commercial Courts or the Fast Track High Courts. Summary proceedings of repossession where the defendant has no defence may last up to six (6) months from the date of filing the action to enforcement of the judgment obtained. A strongly contested matter with complex merits would be expected to last a couple of years.

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?

A lessee cannot ordinarily by contract create a lien or an encumbrance over equipment it does not own without the consent of the lessor. Notice by ownership plates as to no authority to create liens may be helpful therefore to negate creation of contractual liens or encumbrance. However, there are some liens that are implied by law, including claims for cost of repairs carried out on the aircraft. See also answer 11 above as to charges due to the GCAA.

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?

No.

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. For example, section 27 of the Ghana Civil Aviation Act, 2004, makes it unlawful for a person to fly or cause or permit another person to fly an aircraft in or out of the Republic unless that aircraft is covered by a valid certificate of insurance issued by an authorised insurer. Subject to the approval of the National Insurance Commission, an insurance cover can only be taken offshore after available local capacity is utilised. The said section 27 defines "authorised insurer" to mean a person or body of persons carrying on a marine, aviation or transit insurance business approved by the Ghana Civil Aviation Authority.



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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?

No.

