



1. Which government authority in your country has primary responsibility for the regulation of aviation and the registration of aircraft?
Kenyan Civil Aviation Authority ("KCAA").
2. Can foreign-owned aircraft be registered on your national aircraft register, for example when leased to an airline based in your country?
Yes.
3. Are there any limits/restrictions on the age of the aircraft that may be registered or operated in your country?
No. The Kenya Civil Aviation Act and Regulations do not specify an age limit for aircraft to be registered or operated in Kenya.
4. Who is entitled to have their interests recorded on your national aircraft register?
The owner, lessor, financiers and security holders.
5. Would a mortgage governed by a foreign law over aircraft and/or engines be recognised in your country?
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 lease or mortgage can follow the normal form used internationally and must be in writing in the English language and duly executed by both the parties.
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?
A presumption will arise that the engine is subject to the same ownership as the aircraft. The presumption is however rebuttable by actual proof of ownership in the form of an engine sale agreement, a bill of sale or a lease agreement which proves its true ownership. A nameplate fixed to an engine will afford additional evidence of its 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.
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.
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 such powers of attorney from a local airline in favour of a lessor or mortgagee would be effective to allow the lessor or mortgagee to deregister the aircraft. They can be irrevocable. They must be governed by Kenya law and they must bear the seal of the company attested by two directors or one director and the company secretary of that company and they must be stamped.
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. Unpaid local navigation and landing, parking and take off fees.
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?
If the lease agreement specifically provides that the lessor can take possession on default by the lessee, the lessor may repossess by taking physical possession if the lease is terminated for lessee default. Where lessor is denied access by the lessee, an order of a court would 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?
The interim reliefs covered in Article 13 of the Cape Town Convention would be available to the lessor. The lessor would be required to provide a security for potential damages as a condition to the granting of an interim injunction pending the outcome of an application for an order confirming that the lessor is entitled to repossess the aircraft.
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 lender can take possession and arrange a sale when the borrower is in default. In the event of any resistance by the borrower, a court order would be required.
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.
Courts in Kenya have limited experience in repossession/foreclosure actions involving aircraft. It is not possible to indicate with any degree of certainty the time such proceedings will take as different cases have different factual complexities.
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?
Common law possessory liens are automatically created over the aircraft in favour of repairers or parties carrying out maintenance of the aircraft so long as the aircraft remains in their possession. KCAA and Kenya Airports Authority ("KAA") will also be able to exercise statutory liens over the aircraft for any unpaid navigation, landing, parking and take off fees. These liens can prevent an owner or mortgagee from repossessing the aircraft.
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?
The lessor only becomes liable if it provides crew to operate the aircraft.
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?
Unless a written exemption is issued to the lessee by the Kenya Commissioner of Insurance, insurance against third party risks, passenger liability, cargo, baggage and mail risks in a minimum sum of Kenya Shillings sixty million must be placed with local insurers who will reinsure in the international market through international brokers. The aircraft hull and engines can be insured in the international market.
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?
Article 2(6) of the Kenya Constitution 2010 states that any treaty or convention ratified by Kenya shall form part of the law of Kenya. The Constitution however does not state whether this provision has retrospective effect.