

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

The Civil Aviation Authority of Madagascar (ACM), especially the ACM's directorate for the safety and use of Aircraft (DSEA).

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

Yes, foreign-owned aircraft can be registered on Malagasy national aircraft register, if it is not registered in another State. However, leases of foreign aircraft are not registered on the national aeronautical register except in the case of agreements for transfer of responsibility between the country of registration and the country of the user.

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

There are no limits or restrictions on the age of the aircraft that may be registered or operated in Madagascar. Nevertheless, the Civil Aviation Authority of Madagascar must be satisfied as to the condition of the aircraft to issue a certificate of airworthiness.

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

The owner of the aircraft; leases and mortgage interests should also be recorded.

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

Madagascar would recognise a mortgage governed by a foreign law over aircraft and/or engines. On 19th June 2008, Madagascar signed the Geneva Convention of 1948 on the international recognition of rights in aircraft which recognizes mortgages and similar rights in aircraft created contractually to guarantee payment of a debt (Article I-1-d of Geneva Convention of 1948 on the international recognition of rights in aircraft).

- 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?**

Leases and mortgages of aircraft should be in writing and registered / noted on the national aviation register.

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?

Our view is that this is not an issue under Malagasy law. There is no law here which transfers ownership of the engine on installation to the airframe owner. Article L 3.4.2-4 of Malagasy civil aviation code states that mortgages on aircraft extend to any object, which, without forming an

integral part of the aircraft, is "destined to be attached to it". In that sense, an engine installed on the airframe could be the object of the mortgage but if the engine does not belong to the mortgagor, he has no right to create a mortgage over it (a view supported by Article 194 of law no. 2003-041 on security and see too Cape Town Convention Aircraft Equipment Protocol XIV(3) "Ownership of or another right or interest in an aircraft engine shall not be affected by its installation on or removal from an aircraft").

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 all three.

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 - IDERA

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?

The aircraft owner has the power to deregister the aircraft (so a power of attorney from the lessee is not required; a mortgagee may require a mandate of some sort from the owner). Note form ACM. IMM 006 allows the person duly mandated by the aircraft owner to carry out the deregistration process but deregistration can only take place if the aircraft is not subject to registered encumbrances.

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, there is a standard fixed fee charged by the Civil Aviation Authority of Madagascar for the deregistration of an aircraft from the aircraft register.

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?

Self-help remedies are in theory allowed under the Cape Town Convention. Repossession (by taking physical possession) of the leased aircraft or engine by the lessor is possible in event of termination of lease for lessee default but the lessor would need to demonstrate a serious breach of obligations of lessee to terminate 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, by “référé” procedures, lessor could obtain from Malagasy courts, repossession of the aircraft in case of lessee default. It must be submitted to the interim relief judge who pronounces a summary judgement immediately enforceable. Foreign claimants would be required to provide a guarantee to pay expenses, damages and interest.

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?

This needs to be done by the court. A demand for payment must first be given to borrower by a bailiff and a procedure follows for seizure of the aircraft as authorised by court, notice to the borrower’s other creditors and ultimately to a sale by order of the court (which will also cover conditions of the sale and approval of the price).

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 Cape Town Protocol declarations provide for speedy judicial relief: e.g. 10 calendar days for immobilisation / repossession but we are not aware of any case of repossession or foreclosure action involving aircraft in Malagasy jurisdiction.

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 should not be able to create liens or encumbrances over an aircraft it does not own.

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 owner and operator (lessee) of the Aircraft are jointly liable for any damage or injury caused to a third party by the aircraft but if the liability is transferred to the lessee by the terms of the lease and the lease is duly recorded in the Civil Aviation Registry, third parties will have to prove fault on the part of the Owner in order to hold Owner liable. A mortgagee would not be liable absent fault on its part.



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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? 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 an aircraft operated in Madagascar is subject to mandatory insurance cover. Local companies would place cover with local insurers who would reinsure internationally. Please contact us case by case for advice on the applicable requirements.

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?

There are no other specific issues arising under Madagascar law save the right for an airport to prevent an aircraft departing the airport until charges it is owed related to that aircraft are paid.