



AERIAL

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

Regulation of aviation in Malawi is the responsibility of the Department of Civil Aviation which falls under the Ministry responsible for transport. Under Regulation 4(1) of the Aviation (Air Navigation) Regulations ('**Regulations**') made under the Aviation Act (Cap 70:01) of the laws of Malawi registration of aircraft is the responsibility of the Chief Civil Aviation Officer

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

Under Regulation 4(4) of the Regulations a foreign-owned aircraft can be registered in Malawi if it is chartered by demise to a person qualified to be an owner of Malawi aircraft. Persons qualified to be owners of Malawi aircraft are persons ordinarily resident in Malawi, bodies corporate established or deemed to be established under and subject to the laws of Malawi and Malawi Government.

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/restrictions on the age of the aircraft that may be registered or operated in Malawi. The requirement is that an aircraft shall not fly in Malawi unless there is in force in respect of that aircraft a certificate of airworthiness duly issued in Malawi or duly issued or rendered valid under the law of the country in which the aircraft is registered.

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

Generally, anybody with interests in an aircraft can have them recorded on the national aircraft register. These include the owner, charterer, hirer, mortgagee.

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

In our opinion, a mortgage governed by a foreign law over aircraft and/or engines would be recognized in Malawi so long as its provisions do not contravene Malawi law. It is worth noting that Malawi has no specific laws dealing with mortgage of 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?

There is no prescribed form for a lease or mortgage of an aircraft. The mortgage should be in English. There are no special terms which the mortgage must contain. The mortgage must be registered at the Civil Aviation Registry. If it is issued by a limited liability company incorporated in Malawi, it should also be registered at the Companies Registry.



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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?

If an engine owned by a third party is installed on an aircraft, it is essential that a nameplate be fixed on the engine stating its separate ownership. The laws of Malawi have no specific provisions regarding treating an engine owned by a third party installed on an aircraft as being subject to the same ownership as the aircraft itself. The general laws therefore apply (other than cases subject to the Cape Town Convention). As such, to avoid the risk of the engine, by physical installation, being treated as part of the aircraft, it is essential that its ownership be clearly marked.

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)?

Malawi is a party to the 1944 Chicago Convention (to which Malawi has adhered by notification dated 11th September 1964). Malawi ratified the Cape Town Convention & Aircraft Equipment Protocol effective May 2014 though its provisions have not been tested yet in Malawi as far as we are aware and there is currently no Act of Parliament providing that the Convention shall form part of the laws of Malawi.

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 in its prior practice though Malawi is now party to the Cape Town Convention and made the Irrevocable deregistration and export request authority (IDERA) declaration under the Protocol.

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?

Powers of attorney from a local airline in favour of a lessor or mortgagee are likely to be effective to allow the lessor or mortgagee to deregister the aircraft. Such powers can be irrevocable and can be governed by a foreign law so long as they do not contravene Malawi law. There is no particular form for local recognition.

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)?

The Aviation Act, and regulations made thereunder, do not provide for charges payable for deregistration of an aircraft. No fees are payable before deregistration of an aircraft.



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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?

Courts in Malawi would generally uphold a choice of law and jurisdiction clause in an aircraft lease or loan document entered into between commercial parties. It should be pointed out, however, that in determining the applicable law to a lease or loan document, the courts of Malawi will also consider the law with which the document has the most connection.

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?

Whether a lessor would be entitled to repossess (by taking physical possession) of the relevant aircraft or engine if the lease is terminated for lessee default will mostly depend on the terms of the lease, that is, whether it unequivocally gives the lessor the right to repossess in the event of default by the lessee. A court order would, however, ensure orderly repossession. Note too Malawi's Cape Town declarations as to self-help and respecting parties' choice of law.

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 rules of procedure in Malawi provide for a summary process which allows a plaintiff to apply to court for summary judgment on the ground that the defendant has no defence to the claim or part of the claim, immediately after the statement of claim is served on the defendant and the defendant has given notice of intention to defend. Speedy judicial relief: e.g. 10 calendar days for immobilisation is also provided for by Malawi's Cape Town declarations.

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?

As stated above, Malawi has no specific laws dealing with mortgage of an aircraft. The procedures to be followed for enforcement of a mortgage will therefore depend on the terms of the mortgage. Where necessary, the mortgagee can resort to the court. Even in such cases, it is very unlikely that the court can order sale by the court. An order for sale would likely empower the mortgagee to conduct the sale, on its own or through agents.

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.

As far as we are aware, the courts in Malawi do not have experience of repossession/foreclosure action involving aircraft.

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



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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?

As stated above, Malawi has no specific laws dealing with mortgages, liens or encumbrances of aircraft. In our view, the general principles of law applicable to leases and mortgages would apply in this case. Whether the lessee can create liens or encumbrances over the aircraft for example if it fails to pay suppliers, airport charges or maintenance providers will depend on the terms of the lease. In any event, the lessee can only encumber that which he has, which is the leasehold interest in the aircraft. The lease is, in itself, an encumbrance on the ownership of 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?

Malawi has no statutory provisions prescribing circumstances where a non-operating lessor, owner or a mortgagee could be held liable for damage caused by the aircraft whilst operated by an airline, if there is no fault on the part of the lessor, owner or mortgagee.

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?

Malawi has no statutory requirements in relation to insurance and/or reinsurance of an aircraft registered in or operated to/from/within Malawi. However, as stated above, the requirement is that an aircraft shall not fly in Malawi unless there is in force in respect of that aircraft a certificate of airworthiness duly issued in Malawi or duly issued or rendered valid under the law of the country in which the aircraft is registered. We are informed by the Civil Aviation Department that before issuing a certificate of airworthiness to a passenger carrier, the Chief Civil Aviation Officer requires that the aircraft be insured in relation to injury to or death of the passengers.

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.