

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

Under the Civil Aviation Regulations 2007 (CAR 2007), the authority is the Director of Civil Aviation.

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

Yes, it can be registered by the owner, lessor, lessee or sub lessee provided one of these is a citizen of Mauritius or a body corporate registered in Mauritius.

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

No, there are no limitations on the age of aircraft that may be registered in Mauritius but the aircraft would need a certificate of airworthiness.

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

Under Section 7(7)(a)(viii) of CAR 2007, the Director of Civil Aviation shall enter in the register the name and address of any person who has an interest or a share in the aircraft .

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

Yes generally a mortgage governed by foreign law would be recognized in Mauritius. However, as far as public policy and procedural law are concerned, then the laws of Mauritius will apply. For instance, priority ranking upon insolvency of the mortgagor will be governed by Mauritian law.

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?

Pursuant to article 486 of the Code de Commerce of Mauritius, every lease or mortgage over an aircraft must be inscribed in a special register compiled by the Conservator of Mortgages. Please note that the inscription is valid only for a period of ten years and should be renewed accordingly. The particulars of the mortgage should be furnished containing the mortgagee and the parts of the aircraft which are subject to the mortgage. If the lease or mortgage has been created abroad, it must be apostilled or legalized as the case may be.

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?

No, it shall not be treated as being the same ownership. There may however be a presumption 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 to rebut the presumption.

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)?

Mauritius acceded to the Chicago Convention on 30th January 30, 1970 and to the Geneva Convention on July 23, 1962. It has not ratified the 2001 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)?

No.

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 Director of Civil Aviation will deregister an aircraft at the request of the Lessor if the Lessee has issued an irrevocable power of attorney in favour of the Lessor and duly deposited and formally served it by way of notice (*mise en demeure*) on the Director of Civil Aviation at the time of registration.

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)?

When an aircraft is deregistered from the Mauritius Civil Aircraft register, the aircraft will have to be issued with an Export Certificate of Airworthiness to the importing country against payment of the appropriate fee as detailed in the Civil Aviation Amendment Regulations 2010. The owner or operator as per the lease agreement will have to bear such cost.

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 provided the applicable law does not contravene public policy.

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?

A lessor cannot take such repossession of the aircraft without judicial intervention. An application will have to be made to the Supreme Court for an order. The default clause has to be properly worded in compliance with the laws of Mauritius for the lessor to benefit of same.

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 lessor may serve a notice (*mise en demeure*) and address itself to a Judge of the Supreme Court sitting in Chambers. Security for costs may be required.

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?

In the event of default, a Lender cannot take possession of the aircraft or engine without judicial intervention. The procedure, when the aircraft is in the possession of the mortgagor would be to seek a Court attachment order (*saisie conservatoire*) so the aircraft cannot be transferred nor can its ownership be granted to a third party. Subsequently, the Court will order the sale of the aircraft where the mortgagee has obtained a court order in its favour. The mortgagee is not permitted, under the laws of Mauritius, to sell the aircraft pending an order of the Court. The sale of the aircraft will be performed at the Master's Court of the Supreme Court of Mauritius and the Court will then distribute the proceeds of the sale according to the ranking of the creditors.

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.

No reported cases are known. A procedure starting before the Judge in Chambers or the Commercial Court may take one year to be completed and then be subject to appeal.

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 airline, not being the owner, cannot create any liens or encumbrances over the aircraft. However, there are a number of statutory fees and charges that need to be paid by the airline. In case of default in payment, there is a statutory power of seizure and detention.

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?

None that we can foresee.

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?

No specific local 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?

No