

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

The Ministry of Transportation and Communications with specific responsibility for aviation (registration and operation of aircraft) being with the Regulatory Body of Civil Aviation of Mozambique (“IACM”).

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 is common to have a foreign owned aircraft registered in Mozambique leased to a local carrier operating it under a lease agreement.

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

To the best of our knowledge there are no limits/restrictions on the age of the aircraft that may be registered or operated in Mozambique.

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

Anyone who has a real and legitimate interest on aircraft, namely the owner, operator, lessor, holder of a mortgage or other security, is entitled to record such interests with the IACM.

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

It will depend on where the aircraft and/or engines are registered. Mozambique is not a party to the 1948 Geneva Convention. In general under our laws, more specifically the Civil Code, the incorporation of rights over means of transport which are themselves subject to registration, is regulated by law of the country of registration. So if an aircraft is registered in a foreign country, a mortgage governed by the laws of such country ought to be recognised by our courts. If an aircraft is registered in Mozambique, then the mortgage should be constituted under Mozambican laws and registered with the IACM in order to be both recognized and enforceable in Mozambique. See further answer 12 below.

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?

In accordance with article 459° of the Mozambican Commercial Code, all commercial agreements and titles are valid irrespectively of the language in which they are signed. When signed in a foreign language all agreements and other documents that are to be filed or submitted to a court of law, public department or governmental entity must be translated by an official translator into Portuguese for purposes of having the document registered, enforced, or otherwise. The only requirement is, as referred, that it is an official translation, certified before a Notary that it is a faithful translation of the original document.



AERIAL

# | Mozambique

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?

An agreement is advisable with the aircraft owner recognizing the ownership, title and interest of the lessee/owner of the engines mounted on the airframe but loss of engine rights should not be an issue under Mozambican law, Mozambique having ratified the Cape Town Convention with its Aircraft Equipment Protocol (Article XIV(3) of which expressly prevents ownership and other interests in engines being affected by installation or removal from an aircraft). A name plate is advisable in order to notify third parties more generally as to the ownership, title and interests in the engines mounted in the airframe.

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)?

Mozambique has ratified the 1944 Chicago Convention and the 2001 Cape Town Convention (with its Aircraft Equipment Protocol).

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. IACM provides assurances to lessors and financiers as to prompt deregistration of the aircraft and have confirmed with IACM that they are recording IDERAs.

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. 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. However, please note that in order for the power of attorney to be valid in Mozambique it must be issued in terms of the Mozambican Law and follow all formalities of the Mozambican Law. Alternatively, if the power of attorney is issued in terms of a foreign law, then such power of attorney should be certified by the Mozambican Consulate or Embassy at the place of issuance of the said power of attorney. Irrevocable powers of attorneys are permissible under Mozambican law.

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. Before an aircraft can be registered from our national register there are charges that should be paid that can go up to the amount of MT 3.000,00.

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 – for example article 41° of our Civil Code provides that the parties may determine the law that they intend that should govern the contract, provided that the chosen law has connection with either of the parties or with the object of the Agreement. Please note that this is not the case for property rights, in which case the provisions of article 46° of the Civil Code will prevail: *“The regime of possession, ownership and other real rights is regulated and the constitution of rights over means of transportation subject to registration are regulated by the laws of the country where the registration has taken place”*.

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?

Generally (with limited exceptions) self-help measures are not allowed so in principle, if the lessee does not voluntarily relinquish possession of the equipment a court order will be required for lessor/lender to obtain possession of the equipment.

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 Interim or urgent judgements (such as the attachment or repossession of the equipment) should be available in appropriate cases. A lessor or financier would not usually be required to provide any bond or security to avail such process, unless it wishes to take possession and fly the aircraft away before the dispute is fully adjudicated, in which case the court may require a bond for a significant amount.

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 procedure may vary and specific advice should be sought in the circumstances prevailing but a lender could apply to court for an interim relief measure (e.g. to seize/ground the aircraft) and begin an action to obtain final judgement on the merits from the competent court as provided for in the mortgage. Our laws on mortgage do not allow for extra-judicial sale of the mortgage asset unless the court specifically orders and article 694<sup>o</sup> of the Civil Code of Mozambique provides that any clause providing for the creditor to acquire a mortgaged asset in case of the debtor's default is invalid.

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.

To the best of our knowledge our courts have no experience of repossession / foreclosure action involving aircraft. From our experience with other movable asset enforcement cases, straightforward cases should be concluded somewhere between 6 months to 1 year on the main action (interim relief much faster, maximum 30 days); the less straightforward, more hotly contested cases can take up to 6 years (if appealed to the Supreme Court).

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?

Mozambique does not have a law that specifically constitutes liens over the aircraft for obligations contracted during operation. The operator is responsible for outstanding debts it incurs (such as unpaid airport charges). However, in practise, if the operator does not satisfy the airport charges, the aircraft may be refused permission to take off or fly by the airport authorities until such time as these charges are paid and so even if not a lien as such will be a complication the owner or mortgagee may have to deal with if it wishes to repossess 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?

This would be unusual. According to the general conditions contained in our Civil Code, the liability for damages resulting from use of a movable asset rests sole with the operator as the party with effective control of that asset. A lessor would only be liable if the claim succeeds based on an action or omission of the lessor.

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?

Under article 43 of the Civil Aviation Law, it is mandatory for operators to hold civil liability insurance for third parties and passengers, cargo and mail. To register the aircraft with IACM, proof of such insurance is required. Insurance must be contracted in Mozambique with a duly licensed insurance company (re-insurance may be placed outside of Mozambique by the local insurance company) unless special authorization from the entity supervising the insurance activity in Mozambique grants special permission for placing the insurance directly outside of Mozambique.

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 but please do contact us for any specific queries.