

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

The regulation of aviation and the registration of aircraft are under the authority of the National Agency of Civil Aviation (ANAC), especially the “*Direction de l’Aviation Civile*”. The presence of this authority is compulsory for every members of the WAEMU (West African Economic and Monetary Union).

- 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 aircraft can be registered on the Niger national aircraft register in such case provided not registered in another country. Also article 9 of the Community Code of the Civil Aviation of the WAEMU allows any person or entity member of that Union to register his aircraft on a member State’s register.

- 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 nor restrictions on the age of the aircraft that may be registered or operated in Niger. However, the National Agency of Civil Aviation (ANAC) would need to issue a certificate of airworthiness for the aircraft.

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

The owner is entitled to have his interests recorded on Niger aircraft register. This determines the identity of the aircraft and constitutes the proof of the ownership of the aircraft.

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

Yes, Niger would generally recognise a mortgage governed by a foreign law over aircraft and/or engines. Niger has ratified the Geneva Convention of 1948 (see below) 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?**

A mortgage must be in writing. The constitutive deed may be authentic or in private deed, in an approved format by the administration of civil aviation. It must mention each of the elements covered by the mortgage. Any mortgage must be registered at the aeronautic register. It is effective against third parties from time of its registration.

- 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?**

We do not believe this is an issue in Niger. If the engine does not belong to the owner of the aircraft, he has no right to transfer ownership of it to someone else or create a mortgage over it. Evidence might be required in case of dispute to prove and confirm the engine's different ownership. Article 19 of Community Code of Civil Aviation of the member states of the WAEMU allows a mortgage over all or individual parts of the aircraft belonging to the same owner (whether installed on the airframe or not).

- 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, the 1944 Chicago Convention and 1948 Geneva Convention have been ratified and brought into force by Niger. However, based on our information, Niger has not ratified the 2001 Cape Town Convention (or 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)?**

No, we are not aware of such assurances

- 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?**

We do not believe this has been tested in Niger as a power of attorney is not needed for the owner or mortgagee to deregister the aircraft.

- 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 deregistered from the national register in Niger aeronautical fees and crew wages will need to have been paid. In applicable cases there may also be for example claims made for salvage costs and charges incurred to preserve the aircraft.

- 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. However, if they do not do so, the competent jurisdiction would be the court in the state where the aircraft is registered.

- 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?**

The repossession (by taking physical possession) of the relevant aircraft or engine is possible in the event of termination of the lease agreement. If the Lessee does not comply with its obligations, it must return the property to its owner in the same state as before the contract. The lessor can take back his property. However to terminate the agreement it would need to apply to the court.

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, the “référé” procedure is an interim relief available in Niger courts to obtain repossession of the aircraft. Provision of security would 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?

The mortgagee could seek to recover its money through a sale of the aircraft. This involves an application to court for the sale of the aircraft by public auction under notice from a bailiff. The mortgagee cannot take possession and arrange a sale itself.

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 Niger 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 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 position is unclear as to whether a lessee can create such liens over an aircraft it does not own but if it can, the existence of any such liens should not 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?

Yes in some circumstances, though registration of the lease should help mitigate this where there is no fault. Please contact us for specific advice on this, case by case.

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?

Article 256 of Community Code of Civil Aviation of the member states of the WAEMU states that operators and service providers are required to take out insurance covering their activities in the field of air transport. Under article 257 of the Code the local civil aviation authority is in charge of the control and the verification of the validity of such insurance.

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?



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There are restrictions on the arrest of aircraft for security. For example commercial passenger aircraft in service can only be arrested for claims relating to the amounts owed by the owner due to the acquisition of such aircraft or spare parts, training contracts or operational maintenance. See Article 40 of Community Code of Civil Aviation of the member states of the WAEMU states for further detail.

