



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

The South African Civil Aviation Authority (SACAA) (established in terms of the Civil Aviation Act, 2009 (Act No. 13 of 2009)) (plus the International Air Services Licensing Council and the Air Service Licensing Council).

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

Yes, in the case of a natural person applying for a registration certificate that individual must be a resident of South Africa. If the applicant is a juristic person (such as a company) the latter must have its principal place of business in South Africa. Therefore, a foreign owned aircraft may only be registered in South Africa if there is a local South African agent of the foreign owner or lessee who is either a resident of South Africa or whose principal place of business is in South Africa.

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 South Africa.

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

In terms of the Convention on the International Recognition of Rights in Aircraft Act 59 of 1993 (Rights in Aircraft Act), other than the owner (or agent of the owner), only a mortgagee may register an aircraft mortgage over an aircraft or share in an aircraft. An aircraft can be registered on the South African Aircraft Register by a person other than the true owner, such as a lessee. Registration on the South African Aircraft Register, therefore, does not indicate true ownership. The Rights in Aircraft Act does not make provision for any other interest or security to be registered over an aircraft on the South African Aircraft Register.

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

South African courts will generally uphold a choice of law clause that determines foreign law as the governing law of the mortgage in so far as it relates to substantive aspects of the mortgage. However, if the court has to make a decision which relates to procedural law then the laws of South Africa will apply. For instance, priority ranking upon insolvency of the mortgagor will be governed by South African 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?

For an aircraft to be mortgaged under the laws of South Africa, a Deed of Mortgage, in the form prescribed by The Mortgaging of Aircraft Regulations, 1997, must be registered in the Register of Aircraft Mortgages established in terms of The Rights in Aircraft Act. The Deed of Mortgage must include particulars of the mortgagor, mortgagee and the aircraft, details of the transaction and an acknowledgement of indebtedness.

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. Article 2 of The Cape Town Convention read together with Article VI of the Protocol to the Cape Town Convention (Aircraft Equipment Protocol) allows various rights in various aircraft

objects (such as engines) to be registered separate from the rest of the aircraft. Article V of the Aircraft Equipment Protocol provides that such registration remains effective indefinitely and Article XIV provides that the ownership of the engine is not affected by installation on 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)?

South Africa has ratified and brought into force the Chicago Convention, 1944, the Geneva Convention, 1948 and the Cape Town Convention (with its Aircraft Equipment Protocol), 2001. (For the Cape Town Convention legislation, see the Convention on International Interests in Mobile Equipment Act, 2007 and Schedule 5 of the Civil Aviation Act, 2009)..

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)?

From our experience it appears as though the SACAA has yet to utilise the IDERA (or other such mechanism) in order to deregister aircraft. Currently the SACAA is still applying its established local procedures and formalities. However, it is not unlikely that, pursuant to discussions with the SACAA, it could be made to adopt such simplified mechanisms, especially since South Africa has ratified the Cape Town Convention and the Aircraft Equipment Protocol, and has made declarations in respect of both..

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 Civil Aviation Regulations, 1997 prescribe a form that needs to be completed in order to deregister an aircraft from the South African Aircraft Register. This prescribed form can only be completed and signed by the registered owner or a person authorised by the registered owner in the prescribed form. Seeing as the prescribed form requires the authorisation to be given on the form, it is unlikely that the SACAA will accept any other document evidencing a power of attorney if it is not contained in the prescribed form.

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)?

There is a deregistration fee of R515 prescribed by the Civil Aviation Regulations, 1997.

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 with a few exceptions. See answer 5 above on the different approach in respect of substantive and procedural law.

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?

Article 10 of the Cape Town Convention, which, pursuant to the necessary declarations having been made, is applicable in South Africa, provides that where an event of default has occurred a lessor may terminate the Lease Agreement and take control or possession of the aircraft without prior permission or court order.

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. Aside from the procedure set out under question 13, Article 13 of the Cape Town Convention, provides that where a creditor presents evidence of a debtor's default, the creditor may, pending final determination by a court, apply for interim relief in the form of, preservation of the aircraft and its value, possession, control and custody of the aircraft, immobilisation of the aircraft and the right to any income derived from managing the aircraft. Alternatively, South African common law also allows the lessor to apply for an interim interdict preventing the aircraft from being removed from its location by the lessee pending a final determination by a court.

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?

Article 8 of the Cape Town Convention provides that where an event of default has occurred, a charge under a security arrangement may, subject to the chargor having agreed thereto at any time,

- i) take possession or control of the aircraft;
- ii) sell or grant a lease of the aircraft; or
- iii) collect any income from the use of the aircraft.

Alternatively, if the mortgagor has not consented to the procedure under Article 8, the mortgagee would have to issue summons against the lessee. As this is a liquidated debt, if the lessee enters an appearance to defend, the mortgagor would be entitled to apply for summary judgment on the basis that the lessee has no bona fide defence. If no appearance to defend is filed, the mortgagor can apply for default judgment. If the lessee is unable to pay the judgment amount, a writ of execution will be issued by the court. This will instruct the sheriff to sell the assets of the lessee, including the aircraft, to satisfy the debt. The mortgagor will rank ahead of other creditor except for salvage liens or liens for extraordinary expenses indispensable for the preservation of the aircraft. It is important to note that unless the mortgagor voluntarily transfers possession of the aircraft to the mortgagee, the mortgagor must apply to court to obtain a judgment and subsequent writ of execution instructing the sheriff to sell the aircraft.

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.

In view of the fact that the Cape Town Convention has only been recently incorporated into South African law, the courts in South Africa do not have much experience in aircraft repossession. It is difficult to predict the length of such proceedings. However, aside from the procedure set out in the Cape Town Convention, there are procedures in South African law intended to fast-track court proceedings (such as provisional sentence, summary judgment and urgent applications). Therefore, it is possible to shorten the length of court proceedings.

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?

Yes.

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 Section 8 of the Civil Aviation Act, 2009 makes the registered owner of an aircraft strictly (without fault) liable for certain matters. Where the damage or loss was caused by the wrongful or negligent actions of another person, the registered owner is entitled to recover damages paid from that other person (this is a right of recovery / recourse rather than a defence to the claim). Note though that the registered owner or operator of an aircraft is obliged to carry insurance for this type of damage or loss and provided certain conditions are met, indemnities contained in agreements are upheld in South Africa.

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?

Yes. See answer 18 above. Minimum insurance coverage for certain operators is prescribed in the International Air Services Regulations, 1994 (promulgated in terms of the International Air Services Act, 1993 (Act No. 60 of 1993)) and the Domestic Air Services Regulations, 1991 (promulgated in terms of the Air Services Licensing Act, 1990 (Act No. 115 of 1990)). Obligations to carry insurance coverage wherein the amount is not prescribed appear in the Civil Aviation Act, 2009 (Act No. 13 of 2009).

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?

A plaintiff or applicant who is not domiciled or resident in South Africa (i.e. a peregrine) can be called upon to provide security for costs

For a list of declarations made by South Africa under the Cape Town Convention and Protocol:
www.unidroit.org/english/conventions/mobile-equipment/depositaryfunction/declarations/bycountry/southafrica.htm

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