

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

The National Agency of Civil Aviation is responsible for the regulation of aviation and aircraft registration is done under its authority.

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

An aircraft may be registered in Togo when its owner (person or company) is Togolese or a national of (or company incorporated in) one of the states in WAEMU / UEMOA (West African Economic and Monetary Union) states or ECOWAS (Economic Community of West African States). Exceptions to this requirement may be granted by the NACA but are rare.

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

No.

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

Every person who is entitled as owner to a legal interest in the aircraft or a share in it, including a lessor or a financier.

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

In principle, yes.

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?

Yes. These should be in writing and be in French or translated into French. A mortgage must be registered to be effective against third parties. A lease must contain the mandatory information specified by order of the Minister of Civil Aviation and any lease for a period longer than thirty (30) days must be registered.

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, the owner of the engine will not under Togolese law lose his property or find it subject to mortgage by installation on an aircraft. If title is disputed the owner will need to provide proof of ownership. In such case, a plate confirming ownership attached to the engine would be useful.

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 for the Chicago and Geneva Conventions; Togo deposited its instrument of accession under the Cape Town Convention (not the protocol) in 2010 and Unidroit confirmed deposit of the Protocol instrument on 1 December 2011.

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?

Yes, they should be recognised and could be issued under a foreign law. Would recommend the power be in French.

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, deregistration would not be allowed if/whilst there are outstanding duties, taxes or liens owed to the civil aviation authority on 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, we would expect the courts to uphold a choice of law and jurisdiction clause in an aircraft lease or loan document entered into between commercial parties. However the Togolese courts would have and so might exercise, jurisdiction when an aircraft is leased without crew to a person who has his principal place of business or his permanent residence in Togo

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 Lessor would need a court order; if granted that court decision would serve as authorization to repossess.

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?

In clear case of a lessee default, the lessor may apply for summary / urgent procedure that is usually brought before the President of the tribunal for prompt repossession of the aircraft. See further our answer to (16) below.

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 of realization of the mortgage is the forced sale. The mortgagee must seek court approval to sell. This does not prevent the parties from settling their dispute amicably.

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.

Aircraft cases would be very rare. Togolese Courts have handled cases involving repossession/foreclosure involving leases of equipment. Disputes arising under such agreements may be filed with the Tribunal of Lomé. Summary proceedings for repossession where the defendant has no defence may last up to six (6) months from the date of filing the action to enforcement of the judgment obtained. A contested case with complex merits would be expected to last several years

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?

No, a lessee cannot ordinarily by contract create a lien or an encumbrance over equipment it does not own without the consent (actual or ostensible) of the owner. Notice by ownership plates as to no authority to create liens may be helpful but claims against the airline should not prevent an owner or mortgagee from repossessing the aircraft. See answer to 11 above for deregistration.

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?

No.

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. All civil aircraft which use the airspace of Togo must be insured in respect of civil liability of the operator, damage to third parties, the body of the aircraft, passengers, baggage, mail and freight. Please contact us for specific details in particular cases.

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 except to note that the Cape Town Convention and Protocol take effect in Togo from April 2012.