

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

The authority responsible is the Ministry in charge of Transportation; the Civil Aviation and Airports Authority "CAA" deals with the certification and regulation.

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

Under Tunisian legislation, an aircraft can be registered in the Aircraft Registry only if owned for at least 51% by a Tunisian national, either a person or a corporate entity. Then a foreign-owned aircraft will not be registered in Tunisia, unless derogation is filed with the Ministry of Transportation pursuant to Article 4 of the Code. (The Ministry has always granted such derogation).

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

Under the Code's provisions the age of the aircraft cannot exceed 15 years and an aircraft will be subject to a technical examination by the CAA prior to registration on the national register.

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

If the aircraft is registered in Tunisia, the interests of its owner, lessor(s) and any financing bank can be recorded.

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

Yes, a valid mortgage created, or governed, by a foreign law over a Tunisian registered aircraft is recognised and would give a priority right in Tunisia provided it is validly registered in the Aircraft Register

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?

The applicant must complete a standard written application form to submit together with the lease and / or mortgage (in original form notarised by a public notary and translated into French by a local sworn translator) for registration with the Finance authority.

Please note that non-contractual mortgages are not recognised in Tunisia, consequently judicial and legal (statutory) mortgages are not registerable in the Aircraft register.

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?

This could cause practical and legal difficulties so it is recommended practice that the lease and mortgage should contain details of the identification numbers of the engines so that they can be traced and clearly identified for repossession in the event of default. It is also beneficial to fix a plate to the engines indicating the names of the owner and any mortgagee and the date of the lease / mortgage.

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)?

Tunisia has ratified the 1944 and 1948 Conventions but is not party to 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. Tunisia is not party to the Cape Town Convention

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?

Under Tunisian Law a Power of attorney can be irrevocable and enforceable. However as the owner rather than the lessee is the party with power to deregister in Tunisia, the usefulness of a deregistration power of attorney from lessee may be doubtful. A power of attorney can be governed by a foreign law – in any case the power of attorney should be in writing and notarised to help ensure its validity and recognition in Tunisia.

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)?

Receipt of payment of airport charges must be provided to the CAA before deregistration. Please note that as the aircraft is not owned by the lessee, the lessee cannot create a lien over the aircraft (airport charges are debts of the Lessee) but as a practical matter, deregistration may not be possible to effect unless the airport charges on that aircraft are first paid.

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

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?

Yes. Upon a termination of the agreement for any reason, Lessor is entitled to repossess the aircraft and export it without any consent, approval or license, provided the airport fees and taxes are fully paid. A clause stating the possibility to re-export the aircraft in case of an Event of Default without recourse to courts on the merits of the Event of Default should be included in the lease agreement though (see below).

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. Where the Lease specifies that Lessor is entitled to immediately repossess the aircraft following a termination, Lessor can seek to exercise self-help remedies (such as physically seizing the Aircraft) without first pursuing a claim through judicial proceedings. If this proves impracticable then Tunisian courts have power to grant an owner/lessor / mortgagee interim attachment and repossession orders.

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 lender needs to send a formal notification of default giving the borrower 8 days to remedy. If not remedied in that time, the lender can apply to the court for the aircraft to be sold by court organised auction.

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.

Not that I am aware of.

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?

Tunisian law is very respectful of the ownership rights and no lien can be created on Third Party property. If a debt is claimed against Lessee, no lien can be created for the payment of Lessee debt. For airport charges see 10 above; not so much a repossession issue as a potential deregistration complication.

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?

In general, a person would only be liable if the damage is caused directly by him; if he is not at fault in any way then generally that person will not be liable. The question of whether there is fault may not be straightforward and is very fact sensitive..

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. An insurance policy must be subscribed with a local insurance company to cover the risks deriving from the transportation of people and / or goods.

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.