



the AVIATION lawyers

Aircraft Registration Guide





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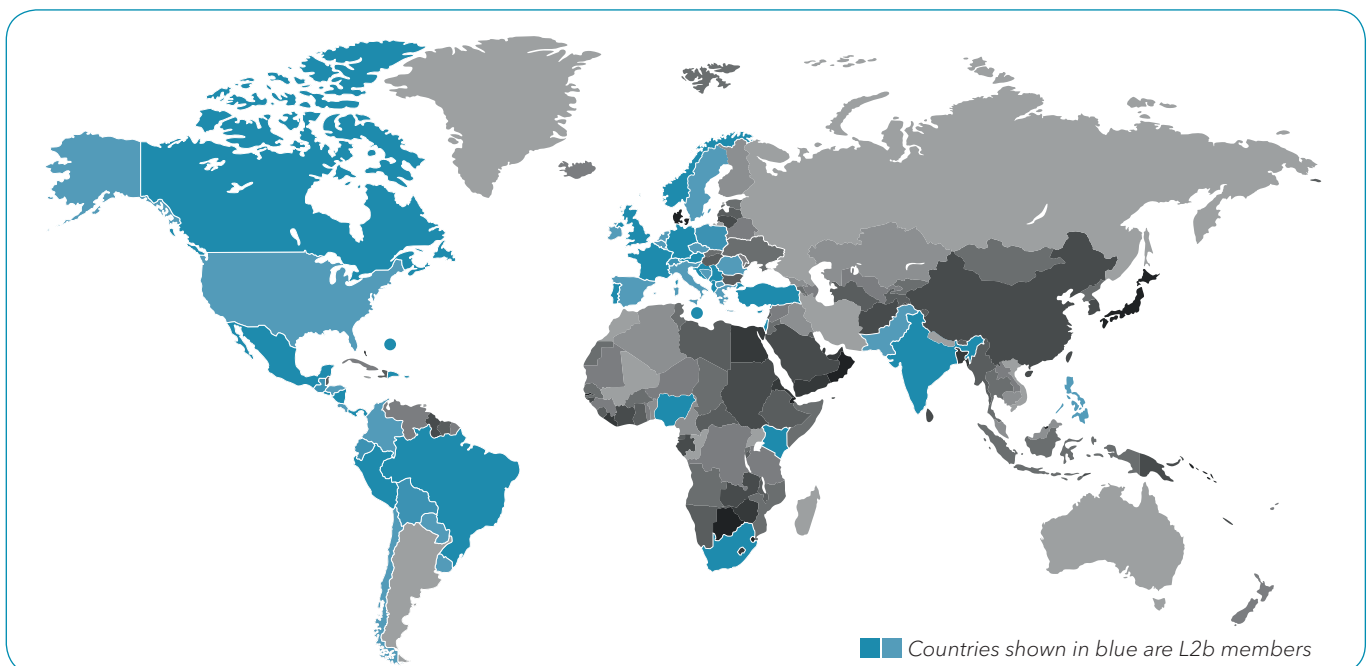
About L2b Aviation

L2b Aviation, the world’s premier network of independent aviation law firms, was created in order to solve a problem: how to obtain expert aviation legal advice in jurisdictions worldwide. The aviation industry is constantly growing and evolving; understanding the current set of regulations, authorities concerned, and market factors from country to country can be a challenge.

We are proud to be the solution. Our network of over 45 law firms around the globe specialises in aviation; successfully representing airlines, financiers, lessors, manufacturers, insurers, airports, and export credit agencies. Aviation transactions can become complicated quickly and members of L2b Aviation are well-equipped to provide the requisite expertise to successfully navigate the nuances of the industry. Clients can now gain access to member firms in over 45 countries and contacts throughout the rest of the world. Our constantly growing network covers Europe, the Americas and the Caribbean, Asia, the Middle East and Africa.

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Relationships matter. L2b Aviation members offer the required local contacts and expertise to the highest professional standard providing at the same time an exceptional platform for seamless legal multilingual services for cross-border cases and transactions.



Introduction

One of the most important issues in the aviation industry is the proper registration of an aircraft, and the many issues that arise during the purchase or financing of an aircraft. Each civil aviation administration has varying requirements in order to register an aircraft, including the types of documents that are required and whether there is a citizenship requirement, among other requirements. Some countries are operator registries (meaning that an aircraft is registered in the name of the operator), while other countries are owner registries (meaning that the aircraft is registered in the name of the owner). Registering an aircraft can be a complicated process, and having aviation counsel can certainly help you navigate through the many considerations and issues that can arise.

Other issues can arise during the registration process if you have a financing or lease structure involved in the transaction. You will need to determine how to perfect those interests in your respective jurisdiction. For example, in the United States, one of the types of structures that can greatly impact the registration of an aircraft are leases with purchase options. If the purchase option in the lease is considered the equivalent of a conditional sales contract (your aviation counsel will need to analyze the purchase option to see if it meets the requirements), then the registration of the aircraft is proper in the name of the lessee instead of the lessor. These types of scenarios need to be addressed and discussed at the outset of a transaction to avoid delays in the registration of the aircraft.

Another consideration during the registration process is determining whether your jurisdiction has ratified the Cape Town Convention on International Interests in Mobile Equipment and the related Aircraft Protocol (collectively the "Treaty"). If your jurisdiction has ratified the Treaty, then there are additional topics to consider, including whether your jurisdiction requires an Authorized Entry Point code in order to register interests on the International Registry, the types of registrations to be completed and the order of same, and if all parties involved in the transaction have Transacting User Entities accounts, among others.

The Treaty adds another layer of complexity to any transaction, and needs to be discussed prior to any transaction to ensure that all necessary requirements are completed ahead of a closing.

Given the litany of issues that may arise during the aircraft registration process, the L2B aviation expert lawyers have committed to summarising the most relevant information in each of the jurisdictions where L2B members are present. These summaries are only for reference purposes, and the facts of a particular transaction may change the documents needed or the registration process.

This publication should not be construed as legal advice on any specific facts or circumstances.

The contents are intended for general information purposes only.

Maria Gonzales
L2b Aviation



Austria



Austria

Submitted by: *Dr. Rudolf Pendl, Attorney at Law, Partner, PENDL MAIR Rechtsanwälte OG*

1. Which authority is in charge of the civil aviation registry in Austria? Does Austria use a single-registry system or is there a dual-registry system in place?

The authority in charge of the civil aviation registry in Austria is Austro Control Österreichische Gesellschaft für Zivilluftfahrt mbH ("Austro Control") having its seat in Vienna (www.austrocontrol.at).

It has a single-registry system.

2. Is the registry an operator registry or an owner registry (or both)?

It is an operator registry only.

3. What are the requirements and documentation to register an aircraft in Austria? Include references to formalities such as notarisation, legalization, etc.?

a. How does the aircraft registration process work?

The lessee has to apply for recording the aircraft in the Aircraft Register at the Austro Control. The consent of the owner of the aircraft is required. Furthermore, the following information and documents are required (Section 7 of the Austrian Civil Aircraft- and Aeronautical Equipment-Regulation - "Zivilluftfahrzeug- und Luftfahrzeuggerät-Verordnung"):

- name and seat of the holder/operator;
- name and seat of the owner;
- documents showing the title of ownership (e.g., bill of sale, purchase agreement);
- documents showing that the holder/operator is located in an EU member state or such state equated by bilateral agreement (excerpt of the respective commercial register required);
- documents showing that the holder/operator is entitled to register the aircraft, in case the holder/operator is not the owner of the aircraft (declaration of owner that the power of making dispositions in respect to the aircraft was transferred to holder/operator within the framework of the lease contract);
- documents showing the name and the corporate seat of the manufacturer; in case of a foreign aircraft, and the name and seat of its agent/representatives in Austria, if any;
- documents showing the type of aircraft, manufacturer's serial number;
- documents showing the customs clearance pursuant to the Austrian VAT Act in the case of an intracommunity acquisition of the aircraft. In case the request for registration is filed before the aircraft is brought into Austria, these documents have to be filed immediately after the importation of the aircraft;
- documents of the manufacturer showing that the aircraft was not registered before in any other country (attestation of non-registration), or documents of the last country of registration showing that the aircraft is not registered in that country anymore (confirmation of deregistration);
- documents showing that the aircraft complies with the Austrian Civil Aircraft Noise Permissibility Regulation.

In general, notarisation and legalization of the documents is not required, but original documents have to be submitted. It is

recommendable to discuss this issue with the competent official at Austro Control. Sometimes, certain documents (e.g., regarding aircraft manufacturers) are already in the files of Austro Control and do not need to be submitted again.

There is no specific form required for the application for registration. However, certain sample forms can be obtained from the website of Austro Control.

4. What fees are payable to register an aircraft in Austria?

The fees for the registration of the aircraft in the Aircraft Register are dependent on the weight of the aircraft ranging from EUR 89 (aircraft up to 1.200 kg) to EUR 2.957 (aircraft with more than 20.000 kg). The allocation of the registration mark triggers a fee of EUR 107.

Furthermore, the initial airworthiness certificate will trigger fees between EUR 177 and EUR 21.748. The following reviews of the airworthiness are between EUR 236 and EUR 7.564 (all fees are dependent on the weight of the aircraft).

a. How long does registration take?

Registration of an aircraft usually takes only a few days, provided, of course, the documentation is complete. In order to speed up the registration procedure, it is recommendable to contact the competent officials of the authority in order to clarify the requirements for the registration of the specific aircraft. It is also possible to reserve the registration marks for aircraft.

5. Are there any weight and/or maximum age restrictions to register an aircraft in Austria?

There are no weight and age restrictions to register an aircraft in Austria.

6. Does registration of an aircraft in the national registry constitute proof of ownership under the laws of Austria?

The registration of an aircraft in the national registry does not constitute proof of ownership. As the registry at Austro Control is an operator registry, it only shows the holder and not the owner.

However, upon request of the owner or holder/operator of the aircraft, Austro Control issues a Confirmation confirming who has been disclosed to the authority as the owner (in the legal sense of ownership of property) of the aircraft.

Furthermore, the aircraft registration is prima facie evidence of legal ownership. With the request to register the aircraft the holder/operator of the aircraft must submit documents showing that he is entitled to be the holder/operator of the aircraft, e.g., pursuant to a lease agreement. However, in court proceedings, the lessor's or holder's/operator's title should, in addition, be evidenced with the respective contracts and documents.

7. How is an aircraft title transfer effected in Austria? What are the formalities required to register such title transfer in the national registry of Austria (e.g., notarization, legalization etc.)? Please summarize the related costs and procedures.

Austria Continued...



An aircraft title transfer is basically effected in Austria by a respective agreement (the valid title - "titulus") and the physical delivery/transfer of the aircraft to the new owner ("modus").

The title transfer has to be notified to Austro Control in order to be registered in the registry. Together with this formal application, a document evidencing the title transfer has to be submitted to the authority. Such document can be e.g., a bill of sale or a purchase agreement.

In general, notarisation and legalization of the documents is not required but original documents have to be submitted.

The costs for the change of the registration in the registry amount to half of the fees for the registration of the aircraft in the registry (see Article 4. above) and amount to a range between EUR 44,50 - EUR 1.478,50.

8. What information and details are reflected in the Certificate of Registration of an aircraft?

The following information is reflected on the Certificate of Registration:

- nationality and registration marks;
- manufacturer and manufacturer's designation of aircraft;
- aircraft serial number;
- name and address of operator;
- registration number and kind of aircraft.

9. Are the entries in the aircraft registry of Austria made available to the public upon submission of a specific application to the competent authority? Are there any fees payable for this?

The entries on the Certificate of Registration are available to the public online. However, there is not information available for the public regarding the owner of the aircraft due to data protection reasons. However, upon request of the owner or holder/operator of aircraft Austro Control issues a Confirmation confirming who has been disclosed to the authority as owner (in the legal sense of ownership of property) of the aircraft. The fee payable are EUR 73.

10. What kind of aircraft operations can be conducted with aircraft registered in Austria (i.e., private use, commercial air transport or both)?

At Austro Control aircraft can be registered for conducting private and commercial aircraft operations, provided of course that all formal requirements are met.

11. Does the civil aviation authority in Austria authorise the operation of foreign registered aircraft? If so, with which countries has Austria entered into bilateral agreements on the basis of article 83-bis of the ICAO Chicago Convention for the delegation of regulatory oversight?

Austro Control authorizes the operation of foreign registered aircraft. Austria has entered into bilateral agreements on the basis of article 83-bis of the ICAO Chicago Convention for the delegation of regulatory oversight with Germany, Russia, Italy, Switzerland, Belgium, Spain and Denmark.

12. Is there a separate register of aircraft mortgages and/or leases and/or security interests in Austria?

The registry at Austro Control is an operator registry. Therefore, it is not possible to register aircraft mortgages and/or leases and/

or security interests in Austria.

13. What are the formalities required to register a mortgage / lease / security interest in the national registry of Austria (e.g., notarization, legalization, etc.)? Please summarize the related costs and procedures.

Such registrations are not possible in Austria.

14. Is a mortgage priority notice an available security instrument for aircraft financiers in Austria?

In Austria, a mortgage on a moveable asset can only be established by means of an actual transfer of possession of the mortgaged property to the mortgagee. This is naturally not feasible in practice for aircraft. Under Austrian law, the instrument on the basis of retention of title is usually used. In such a case, the title remains with the lessor until final payment.

It is not very common in Austria, but in order to fulfil the requirement of delivery of the mortgaged aircraft to the mortgagee, the parties sometimes instruct the operator to hold possession of the aircraft for the exclusive benefit of, on the instruction of and on behalf of the collateral agent and not to hold possession of the aircraft on behalf of the owner.

In addition, it is required to mark the aircraft as being subject to an Austrian law pledge by affixing plates to the airframe (and ideally also to each engine) to create external visibility of the pledge.

15. Does an aircraft mortgage duly registered in the national registry of Austria extend to engines and other parts of such aircraft (either installed or not on the airframe)?

Such registrations are not possible in Austria. Furthermore, please note that there is no specific engine registry in Austria.

16. What statutory liens (if any) would rank prior to an aircraft mortgage duly registered in the national registry of Austria?

Such registrations are not possible in Austria.

17. Do the laws of Austria provide for possessory rights and/or rights of detention over aircraft in favor of third parties (such as airport taxes, customs duties, air navigation charges, crew's wages, MRO's receivables)?

Basically, the laws of Austria provide for the right of a creditor to retain an aircraft as security in respect of unpaid airport taxes, customs duties and air navigation charges or other unpaid debts caused by the respective aircraft (detention right) in favour of third parties.

The respective creditor has to obtain an enforceable judgement with which it may initiate enforcement proceedings. The Austrian Enforcement Act contains provisions according to which a judicial pledge of the aircraft may be obtained. However, since the use of e.g., airport facilities and airport services are matters of private law, an airport may refuse to provide services to operators in case they have outstanding airport charges.

Please note that the Austrian state will not seize an aircraft if there is not a suspicion of a criminal act for which the aircraft was used (e.g., smuggling of drugs into Austria).

18. Are there any other taxes specific to aircraft (not already mentioned above) in the relevant jurisdiction?

Foreign law-governed security agreements are basically



Austria Continued...

recognized in Austria in order to validly create a security interest over an aircraft. A signed contract is required, but no legalization or notarization.

However, in regard to mortgages, the law of the state of the registration of the aircraft basically has to be applied, which might have different legal requirements to be effective (delivery of the mortgaged aircraft to the mortgagee).

19. Are foreign law-governed leases recognized in Austria in order to validly lease an aircraft registered in the national registry of Austria to a lessee incorporated in Austria? If so, are there any formalities/requirements to bear in mind?

Foreign law-governed leases are recognized in Austria in order to validly lease an aircraft registered in the national registry of Austria to a lessee incorporated in Austria. A signed contract is required, but no legalization or notarization.

20. Has Austria ratified the Cape Town Convention on International Interests in Mobile Equipment and the related Aircraft Protocol? Has Austria made any declarations in order to better determine the scope of application of the Convention / Protocol in Austria? If so, what is the impact of such declarations on aircraft registration issues? Are there any specific aspects relating to the enforcement of IDERA's to be considered?

Austria has not ratified the Cape Town Convention. Therefore, IDERA is not applicable in Austria. There are no specific aspects relating to the enforcement of IDERAs. However, please note that traditional deregistration powers of attorney suffice according to Austrian law and would be respected by Austro Control.

21. What are the requirements and documentation to deregister an aircraft from Austria? How does the aircraft deregistration process work?

No.

22. What fees are payable to deregister an aircraft from Austria?

The deregistration is basically applied for by the operator of the aircraft and the consent of the owner is required for the deregistration.

Together with the application for deregistration, the operator has to submit to Austro Control the written consent of the owner, the Certificate of Registration, the certificate of airworthiness, the periodic inspection certificate (if applicable), the qualification certificate (if applicable) and the noise certificate or noise exemption permit. Furthermore, the markings (license number), the sign and colours and the emblem of the Republic of Austria have to be removed from the aircraft.

Upon request, Austro Control has to issue a certificate confirming the deregistration of the aircraft.

23. Is the consent of the mortgagee / lessor (as the case may be) required in order to deregister an aircraft from Austria?

If the operator files the application for deregistration, the written consent of the owner is required.

24. What are the usual practical difficulties (if any) involved in deregistering aircraft from Austria?

Deregistration works very smoothly at Austro Control. We do

not foresee any difficulties provided that the deregistration application is filed with the complete required documentation to the authority.

25. How long does deregistration take, both where there is co-operation from the defaulted party (mortgagor / lessee / operator) and where there is no such co-operation from it?

Deregistration can be effected very promptly provided that the required documentation is submitted to the authority.

The owner, as well as lessors or finance providers, usually request to obtain a power of attorney (POA) from the operator in order to be authorized to deregister or arrange other changes to the registration of the aircraft and to avoid non-cooperation by the operator regarding registration or deregistration. In this respect, the lease, the operating agreement or the finance agreement regularly contain specific provisions in this respect.

26. Please outline the applicable repossession rules under the national laws of Austria (and the Cape Town Convention, if applicable) following an event of default under a mortgage or a lease, including registration issues with the national registry in Austria

In order to repossess an aircraft in the event of default, it would be required to obtain a respective court order. The use of self-help repossession is not possible in Austria.

The first instance procedure to repossess an aircraft may take between six months and one year.

The second instance procedure may take four to eight months. In such case, it would be advisable to obtain a preliminary decision first from the court enjoining the defendant from making any disposition in respect of the aircraft. Such preliminary decision can be obtained quickly and is immediately enforceable.

The costs for the proceedings would depend on the length of the proceedings. However, Austrian law provides for full reimbursement of law costs, including lawyers' fees from the losing party to the winning party. Usually, 70% to 80% of the actual costs will therefore be adjudicated. The court fees depend on the amount of litigation, so it is impossible to give you an abstract estimate in advance.

In order to prevent the aircraft to be flown out of Austria, it is recommendable to request the court grant an interim injunction. The injunction can be obtained within some days.

The court will most likely require the applicant to put up a security for any damages the lessee may suffer as a result of the injunction. The security can be in cash or a signature bond with a surety; the form of the security is at the discretion of the judge.

In addition, a deregistration power of attorney deregistration of the aircraft can be applied for at Austro Control.

DISCLAIMER: The above information should not be relied upon by the reader for legal advice as it is intended merely to serve as a preliminary guide to the laws and regulations governing the registration of aviation and aircraft in this country. The information intends to provide summary-level information about certain tax issues affecting general aviation and aircraft finance. Since these materials are general in nature, readers are encouraged to obtain legal and tax advice from their own professional legal and tax counsel based on specific facts and circumstances regarding their acquisition and/or use of aviation and aircraft.

Bahamas



The Bahamas

Submitted by: *Higgs & Johnson: Vivienne M. Gouthro, Zarina M. Fitzgerald, Keith O. Major, Jr., and Andre W. Hill*

1. Which authority is in charge of the civil aviation registry in The Bahamas? Does The Bahamas use a single-registry system or is there a dual-registry system in place?

The Bahamas has a single-registry system.

Section 3(1) of the Civil Aviation Authority Bahamas Act, 2021 (the "CAABA") provides that the Civil Aviation Authority Bahamas (the "Authority") is responsible for the functions to be carried out by the Civil Aviation Act, 2021 (the "CAA") and any convention to which the Commonwealth of The Bahamas ("The Bahamas") is party on matters of civil aviation. The Authority is mandated to keep and maintain, inter alia, a register of all civil aircraft registered in The Bahamas. Pursuant to Section 9 of the CAA, the civil aircraft registry must show each aircraft registered by The Bahamas and the information recorded in the Certificate of Registration.

2. Is the registry an operator registry or an owner registry (or both)?

The aircraft registry in The Bahamas is an owner registry.

3. What are the requirements and documentation to register an aircraft in The Bahamas? Include references to formalities such as notarisation, legalization, etc.

The CAA provides that an aircraft is eligible for registration if it is owned by:

1. a natural citizen of The Bahamas;
2. an individual citizen of a foreign State who is lawfully admitted for permanent residence in The Bahamas;
3. a company registered under the Companies Act lawfully incorporated in and doing business under the laws of The Bahamas, or a government entity of The Bahamas; or,
4. an individual citizen or a corporation of another State at the discretion of the Director General.

An aircraft will not be eligible for a Certificate of Registration if the aircraft is registered under the laws of any other State. With respect to documentation, to register an aircraft in The Bahamas, please see our response to question three.

3a. How does the aircraft registration process work?

The following items are required to enable the aircraft registration process to commence:

1. Applicants may request an out-of-sequence registration mark after prefix C6- followed by three letters, numbers, or a combination of letters and numbers, free of charge (notification of availability for the desired registration mark should be received prior to completing forms for registration).
2. Form REG 08 - Application for an ICAO Mode-S Code (On receipt of this form the Authority will issue an ICAO Mode-S Code for C6 registration).
3. FORM REG 01 - Application for Registration of Private Aircraft at the Director General discretion (This application must be signed by the aircraft owner, if an individual, company director or authorized representative holds a power of attorney).

4. For aircraft owned by:

- (a) a foreign company; a certificate of incorporation or equivalent document and a list of company directors not older than three months.
 - (b) a foreign individual; a copy of their passport will be required.
 - (c) a Bahamian company or an individual; the aircraft must be imported, and customs must be cleared.
5. A Power of Attorney/Evidence of Authority, if the application will be signed by a representative on behalf of the aircraft owner.
 6. If the aircraft owner chooses to nominate an entity to be the Operator; a certificate of incorporation or equivalent document will be required.
 7. Fees and Charges; The invoice presented in accordance with the current Scheme of Fees shall be paid at the time of application.

The following items are required prior to the issuance of a Certificate of Registration:

1. Proof of Ownership (Bill of Sale). The Authority will check for all transactions, so if there is more than one bill of sale all must be sent. When the aircraft owner is the same as Stated on the deregistration, a bill of sale is not required.
2. Deregistration or Certificate of Non-Registration. If the aircraft has been previously registered in another State, the Authority must receive from the previous State of Registry, confirmation of the aircraft's last owner. This can be in the form of the deregistration or a separate notification. If the aircraft is new and has not been previously registered in another State, then a Statement of non-registration is required from the State of Manufacturer. The Authority must receive notification directly from the previous State of Registry via email.
3. Form REG 09 - Application for Registration of a Mortgage, if applicable.

Please do not send original documents, except for the proof of ownership, as copies of the originals are sufficient to be sent to the Authority.

The registered owner or Operator should nominate a representative to be the main point of contact throughout the process. Owners, or their nominated representatives, are therefore advised that if the aircraft does not meet certification standards, then the registration exercise cannot be continued.

4. What fees are payable to register an aircraft in The Bahamas?

Fees are assessed based on a schedule relative to the type of aircraft and are available upon request from the Authority.

4a. How long does registration take?

The aircraft registration process typically takes between seven to 10 days. An airworthiness assessment is required before an aircraft can be added to The Bahamas registry.

The Bahamas

Continued...



5. Are there any weight and/or maximum age restrictions to register an aircraft in The Bahamas?

There are no weight and/or maximum age restrictions to register an aircraft in The Bahamas.

6. Does registration of an aircraft in the national registry constitute proof of ownership under the laws of The Bahamas?

Section 12 of the CAA provides that an aviation document, including a Certificate of Registration, issued under the CAA must not be considered evidence as to ownership in any proceeding under the laws of The Bahamas in which ownership of the aircraft by a particular person is or may be in issue.

7. How is an aircraft title transfer effected in The Bahamas? What are the formalities required to register such title transfer in the national registry of The Bahamas (e.g., notarization, legalization etc.)? Please summarize the related costs and procedures.

Legal title is transferred by way of, and effective at, the agreement of the parties to the transfer of legal title (whether for value or in the form of a gift). However, notice of the new owner of a registered aircraft is required to be provided to the Authority by the holder of the Certificate of Registration prior to the date of the acquisition. The owner is required to send to the Authority Form REG 014 | Change of Aircraft Details and submit supporting documents as outlined on the Appendix 1 of such form. The Certificate of Registration will be revoked if an application has not been submitted by the new owner at the date indicated in the notice.

8. What information and details are reflected in the Certificate of Registration of an aircraft?

The Certificate of Aircraft Registration, in wording and arrangement, must conform to the wording and content of the certificate shown in ICAO Annex 7. It must be in the English language and must contain the following information:

- (1) State - Commonwealth of The Bahamas,
- (2) title of the registering body - Civil Aviation Authority Bahamas,
- (3) nationality and registration mark issued to the aircraft,
- (4) name of the manufacturer,
- (5) manufacturer's designation of the aircraft,
- (6) aircraft Serial Number,
- (7) name of the aircraft owner,
- (8) address of the owner,
- (9) certification of entry on the registry,
- (10) signature of the registering official,
- (11) date of issue and
- (12) any other information required by the Authority.

Upon receiving an application for the registration of an aircraft in The Bahamas and being satisfied that the aircraft may properly be so registered, the Authority must register the aircraft, wherever it may be, and shall include in the register the following particulars:

- (1) the number of the certificate;
- (2) the nationality mark of the aircraft and the registration mark assigned to it;
- (3) the name of the constructor of the aircraft and its designation;
- (4) the manufacturer's serial number of the aircraft;

- (5) name of owner;
- (6) address of owner;
- (7) date of issue; and
- (8) any other information required by the Authority.

A Certificate of Registration expires three years after the last day of the month in which it was issued.

9. Are the entries in the aircraft registry of The Bahamas made available to the public upon submission of a specific application to the competent authority? Are there any fees payable for this?

Pursuant to Section 8(2) of the CAABA, the aircraft registry in The Bahamas is open to inspection by any member of the public at all reasonable times at the office of the Authority. There is no fee payable for this.

10. What kind of aircraft operations can be conducted with aircraft registered in The Bahamas (i.e., private use, commercial air transport or both)?

Bahamian registered aircraft may be operated under any of the following type of operations:

1. Commercial Air Transportation - Airplanes (Air Operator Certificate),
2. Private Airplanes or helicopter for general aviation,
3. Commercial Air Transportation - Helicopters (Operator Certificate),
4. Remotely Piloted Aircraft Systems (RPAS),
5. Aerial work activities or,
6. Commercial under a foreign Air Operator Certificate utilizing an ICAO 83bis Agreement.

11. Does the civil aviation authority in The Bahamas authorise the operation of foreign registered aircraft? If so, with which countries has The Bahamas entered into bilateral agreements based on article 83-bis of the ICAO Chicago Convention for the delegation of regulatory oversight?

The Authority does not authorise the operation of foreign registered aircraft.

12. Is there a separate register of aircraft mortgages and/or leases and/or security interests in The Bahamas?

At present, there is no separate register of aircraft mortgages and/or leases and/or security interests in The Bahamas. All security documents may be recorded at the Bahamian Registrar General's Department pursuant to the provisions of the Registration of Records Act (the "RRA"). Once the document is duly presented for recording, upon its being processed, it will bear an official stamp certifying its recording and a system reference for the same. To be clear, the RRA is the only Bahamian statute that deals with securing priorities in this jurisdiction. In particular, Section 10 of the RRA provides that where competing interests are involved, a document has priority from the date it is logged for record at the Registry of Records (not from the date of the execution of the document). However, this protection is afforded only in respect of a document which deals with land, goods, and effects situated in The Bahamas. If the assets provided as security are not situated in The Bahamas, then it will not be possible to secure priorities in this jurisdiction. Although we would note that recording the relevant security document may have the benefit of placing a third party on notice of the existence of the same.

The Bahamas Continued...



However, pursuant to Section nine of the CAABA which came into effect February 16 2021, the Authority must maintain records of all documents which affect title to, or any legal or beneficial interest in (a) any civil aircraft registered in The Bahamas; (b) any aircraft engine, propeller, rotor, appliance, or spare part intended for use on any aircraft registered in The Bahamas. No document affecting title to, or any interest in, such registered aircraft engines, propellers, rotors, appliances, or spare parts shall be valid, except between the parties thereto, unless it is recorded in that system. The validity of any document so recorded, unless otherwise specified by the parties thereto, shall be determined under the laws of The Bahamas.

13. What are the formalities required to register a mortgage / lease / security interest in the national registry of The Bahamas (e.g., notarization, legalization etc.)? Please summarize the related costs and procedures.

Please note our response to question twelve above. Once a security document is presented for recording at the local Registry of Records, the relevant fees for the same will be assessed as follows: \$4.50 USD for every page or part of a page.

14. Is a mortgage priority notice an available security instrument for aircraft financiers in The Bahamas?

At present, a mortgage priority notice is not an available security instrument for aircraft financiers in The Bahamas.

15. Does an aircraft mortgage duly registered in the national registry of The Bahamas extend to engines and other parts of such aircraft (either installed or not on the airframe)?

Please note our response to question 12 above. Should an aircraft mortgage be registered in the local general Registry of Records, the security provided thereby will extend to such property specifically referred to in the security document.

16. What statutory liens (if any) would rank prior to an aircraft mortgage duly registered in the national registry of The Bahamas?

Please note our response to question 12 above, regarding registration of aircraft mortgages as a security document in the local Registry of Records. Statutory liens regarding aircraft have recently been introduced by Section 23 of The Bahamas Air Navigation Services Authority Act ("BANSAs"). However, BANSAs is silent as to the priority of ranking of statutory liens vis a viz aircraft mortgages. Nevertheless, section 10 of the Registration of Records Act, prescribes priority where there are competing interests to instruments and interests in relation to their sequence of recording. Accordingly, to the extent that a statutory lien is entered and recorded in the national registry prior to an aircraft mortgage, such lien will rank in priority.

17. Do the laws of The Bahamas provide for possessory rights and/or rights of detention over aircraft in favor of third parties (such as airport taxes, customs duties, air navigation charges, crew's wages, MRO's receivables)?

The statutory right of detention over aircraft was recently repealed by the CAA, which repealed the Civil Aviation Act, 2016, which contained such provisions. Provisions providing for the statutory right of detention were not returned in the new Civil Aviation Act which came into effect 16th February 2021.

18. Are foreign law-governed security agreements (e.g., mortgages) recognized in The Bahamas in order to validly create a security interest over an aircraft registered in the national registry of The Bahamas? If so, are there any formalities/requirements to bear in mind?

A foreign law-governed security agreement will be recognized to validly create a security over an aircraft registered in The Bahamas. As Stated in the response to question 12 above, no document affecting title to, or any interest in, such registered aircraft engines, propellers, rotors, appliances, or spare parts shall be valid, except between the parties thereto, unless it is recorded in that system. A Bahamian Court, in deciding an issue with respect to a security document which provides for a foreign governing law, will uphold the choice of a foreign governing law.

19. Are foreign law-governed leases recognized in The Bahamas to validly lease an aircraft registered in the national registry of The Bahamas to a lessee incorporated in The Bahamas? If so, are there any formalities/requirements to bear in mind?

A foreign law-governed lease will be recognized to validly lease an aircraft registered in The Bahamas. As stated in the response to question 12, no document affecting title to, or any interest in, such registered aircraft engines, propellers, rotors, appliances, or spare parts shall be valid, except between the parties thereto, unless it is recorded in that system. A Bahamian Court, in deciding an issue with respect to a lease which provides for a foreign governing law will uphold the choice of a foreign governing law.

20. Has The Bahamas ratified the Cape Town Convention on International Interests in Mobile Equipment and the related Aircraft Protocol? Has The Bahamas made any declarations to better determine the scope of application of the Convention / Protocol in The Bahamas? If so, what is the impact of such declarations on aircraft registration issues? Are there any specific aspects relating to the enforcement of IDERA's to be considered?

The Bahamas has not signed or ratified the Cape Town Convention on International Interests in Mobile Equipment and the related Aircraft Protocol.

21. What are the requirements and documentation to deregister an aircraft from The Bahamas? How does the aircraft deregistration process work?

When transferring an aircraft registration to another State the applicant (owner or owner's representative) must inform the Authority by submitting Form REG 03 - Application for Deregistration. The Application for Deregistration is reviewed primarily as an administrative formality. Once the application is complete, a Certificate of Deregistration is issued to the applicant.

22. What fees are payable to deregister an aircraft from The Bahamas?

Such fees are assessed based on a schedule relative to the type of aircraft and available upon request from the Authority.

23. Is the consent of the mortgagee / lessor (as the case may be) required in order to deregister an aircraft from The Bahamas?

As The Bahamas registry is an owner registry; no consent is

The Bahamas

Continued...

required of the mortgagee or lessor to deregister an aircraft from The Bahamas.

24. What are the usual practical difficulties (if any) involved in deregistering aircraft from The Bahamas?

As mentioned in our response above, deregistration is primarily approached as an administrative function, so it does not present the usual difficulties.

25. How long does deregistration take, both where there is co-operation from the defaulted party (mortgagor / lessee / Operator) and where there is no such co-operation from it?

Deregistration of an aircraft is straightforward and typically can go into effect between 24 to 48 hours. As indicated above, no cooperation from mortgagee / lessor is required.

26. Please outline the applicable repossession rules under the national laws of The Bahamas (and the Cape Town Convention, if applicable) following an event of default under a mortgage or a lease, including registration issues with the national registry in The Bahamas.

Please note our responses to questions 18 and 19 above. The liberty of a mortgagee to take possession of this security is only limited by the provisions of the relevant mortgage document. Customarily, in The Bahamas the possession of a mobile asset due to an event of default is affected by way of judicial intervention. In order to effect possession of security by way of judicial intervention, the original mortgage will be required to support the application. For the government or the lessee to prevent the repossession, such an entity would be required to be joined to the relevant action for repossession and show cause why such steps should not be ordered.

Judicial Intervention is effected by the filing of an Originating Summons (in the main) or a Writ of Summons, setting out the particulars of the relationship between the parties and the event(s) of default which give rise to the request. The security document will need to be adduced and the relevant portions which empower the steps of the mortgagee identified. This process can range anywhere from three to 11 months if protracted. All of the relevant correspondence passing between the parties in relation to the security document will be required to support the application.



DISCLAIMER: The above information should not be relied upon by the reader for legal advice as it is intended merely to serve as a preliminary guide to the laws and regulations governing the registration of aviation and aircraft in this country. The information intends to provide summary-level information about certain tax issues affecting general aviation and aircraft finance. Since these materials are general in nature, readers are encouraged to obtain legal and tax advice from their own professional legal and tax counsel based on specific facts and circumstances regarding their acquisition and/or use of aviation and aircraft.

Colombia



Colombia

Submitted by: José Elías Del Hierro Hoyos, Daniela Ospina, Juliana Téllez and Esteba Jaramillo

1. Which authority is in charge of the civil aviation registry in Colombia? Does Colombia use a single-registry system or is there a dual-registry system in place?

In Colombia, the Colombian Civil Aviation Authority is in charge of the aviation registry, through its Register Office which studies, analyzes, and registers the aircraft in Colombia. There is one single registry called the "Aeronautical National Registry."

2. Is the registry an operator registry or an owner registry (or both)?

The Aeronautical National Registry works to register the operator and the owner. The registry shows who operates the aircraft, who owns the aircraft, and the different interest over the aircraft.

3. What are the requirements and documentation to register an aircraft in Colombia? Include references to formalities such as notarization, legalization, etc.

According to Colombian Aeronautical Regulations (RAC), numeral 20.7.9, the registration procedure for any document, title, or act consists of four stages: Initial filing, assessment, registration, and proof of registration. Before starting the registration procedure, the party needs to confirm which documents are required, as the process may change depending on the nature of the act or contract to be registered.

3a. How does the aircraft registration process work?

Once those requirements are fulfilled, the person registering the aircraft needs to file the registration application. The filing will be recorded daily on a ledger. Once the application is filed, the applicant will receive a certificate documenting the process. The application is then sent to a registry clerk, who starts the assessment stage. The clerk will evaluate the act for compliance with the requirements and if the information is sufficient, the registration process continues.

If the filed application is not complete or inadequate, the applicant will be required only one time to submit whatever information or documents the CAA is missing in order to achieve a successful registration procedure. Once the assessment is complete, the results are recorded in a document filled out by the clerk.

If the assessment concludes the act or contract shall be registered, it is passed on to the registry clerk who registers the act in an aircraft registration sheet. The procedure may take up to 15 business days. Once the act is registered, the Registry will issue and mail the proof of registration of said act to the applicant.

4. How does the aircraft registration process work?

To register an aircraft in Colombia, the following conditions must be fulfilled:

- (i) The aircraft must be a civil aircraft whose owner or operator is allowed by law to be the owner or the operator of a Colombian aircraft or must be a State aircraft authorized by law to be operated in commercial services.
- (ii) If it is a foreign aircraft, the aircraft must have a Certificate

of Deregistration from the previous country where it was registered and all legal requirements of its import to Colombia.

- (iii) Make the required payment to the CAA for the process.

Once these conditions are verified, the following requirements established by 20.5.3.2.3 of the Colombian Aeronautical Regulations (RAC) must be fulfilled:

- (i) complete details of the person or the company requesting the register;
- (ii) complete description of the aircraft;
- (iii) pictures of the aircraft once it has the granted fin;
- (iv) a completed form given by the CAA with all the registration information (the authority makes this form once they do an inspection of the aircraft);
- (v) verification of personal information;
- (vi) purchase agreement or Public deed;
- (vii) Certificate of the deregistration in other State;
- (viii) form with antidrug information required by Resolution 024 of 2006; and
- (ix) payment support.

General documents must be sent to the CAA, according to numeral 20.7.8 of Colombian Aeronautical Regulations (RAC), which include:

- (i) Two copies of the original, or authentic copy of the document, which will be registered with its annex.
- (ii) Payment support.
- (iii) Certificate of legal representative of the owner or the operator. This certificate in the cases where the register is to transfer the operator, or the transfer of the ownership must be issued for a maximum of two months before the filing.

5. What fees are payable to register an aircraft in Colombia?

The amount to be paid depends on the aircraft maximum gross weight according to Resolution 4338 of 2019 issued by Colombian CAA.

6. How long does registration take?

Colombian Aeronautical Regulations (RAC) numeral 20.7.9 has four stages in the registration process as explained below:

- (i) Initial Filing: The Register Office has eight business days to study the documents filed (RAC 20.7.9.1).
- (ii) Assessment: The CAA will evaluate if all the information is clear and complete. If there is something missing, or information is unclear, the authority will give a term of two months to complete the request.
- (iii) Registration: The CAA uploads the information within 15 business days.
- (iv) Proof of Registration: The CAA informs the aircraft owner or operator of the results.

7. Are there any weight and/or maximum age restrictions to register an aircraft in Colombia?

In Colombia there are no restrictions for weight or age of an aircraft.

Colombia
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8. Does registration of an aircraft in the national registry constitute proof of ownership under the laws of Colombia?

An aircraft must be registered in the national registry to constitute proof of ownership in Colombia. It is not only proof of ownership, but also required to become owner, the public deed itself is not proof enough until it is registered.

9. How is an aircraft title transfer effected in Colombia? What are the formalities required to register such title transfer in the national registry of Colombia (e.g., notarization, legalization etc.)? Please summarize the related costs and procedures.

The procedure is the same as described in question four. These four stages are for any document, title, or act, and could be summarized as: initial filing, assessment, registration, and proof of registration (RAC 20.7.9).

According to the Colombian Aeronautical Regulations (RAC) 20.7.7.5, the specific documents required for this process are:

- (i) certificate of legal representative (no older than two months before the registration day);
- (ii) verification of personal information;
- (iii) import certificate; and
- (iv) payment support.

10. What information and details are reflected in the Certificate of Registration of an aircraft?

Each certificate in the Aeronautical National Registry displays the following information:

- (i) identification of the aircraft such as nationality, brand, serial number, manufacturer's designation, etc.;
- (ii) owner name;
- (iii) operator name;
- (iv) legal aspects: mortgages, leases, warranties, liens, ownership restrictions, etc.; and
- (v) CAA's observations.

11. Are the entries in the aircraft registry of Colombia made available to the public upon submission of a specific application to the competent authority? Are there any fees payable for this?

Colombian Aeronautical National Registry is a public registry. However, a fee is required for anyone who wants to obtain the certificate up to approximately \$10 USD according to Resolution 4338 of 2019 issued by the Colombian CAA.

12. What kind of aircraft operations can be conducted with aircraft registered in Colombia (i.e., private use, commercial air transport or both)?

The Colombian Aeronautical Regulations, in its third part, foresees different types of operations that can be conducted by an aircraft. An aircraft registered in Colombia could be used for commercial, private, and what has been known as special services, which include a variety of operations such as aerial ambulance services or aerial spraying.

13. Does the civil aviation authority in Colombia authorize the operation of foreign registered aircraft? If so, with which countries has Colombia entered into bilateral agreements on the basis of article 83-bis of the ICAO Chicago Convention for the delegation of regulatory oversight?

According to article 1865 of Colombian Commercial Code, Colombian companies may provide international air services with foreign aircraft as a result of collaboration or integration agreements with foreign airlines or multinational air transport companies. The aeronautical authority will authorize such special forms of operation.

14. Is there a separate register of aircraft mortgages and/or leases and/or security interests in Colombia?

Ownership, mortgages, liens, leases, and security interests are all recorded in the Aeronautical National Registry.

15. What are the formalities required to register a mortgage / lease / security interest in the national registry of Colombia (e.g., notarization, legalization etc.)? Please summarize the related costs and procedures.

According to article 1904 of the Colombian Commercial Code, the mortgage and transfer of ownership must be in a public deed and comprise all the specifications required for registration in the Aeronautical National Registry. Liens shall come in a judicial decision, and the rest of the interests or rights can be in a private document, which is generally a contract.

As previously discussed in question 4, according to 20.7.9 of the Colombian Aeronautical Regulations (RAC), the registration procedure for any document, title, or act consists of four stages: initial filing, assessment, registration, and proof of registration.

Finally, the cost of registration depends on the aircraft maximum gross weight according to article one of Resolution 4338 of 2019 issued by Colombian CAA.

16. Is a mortgage priority notice an available security instrument for aircraft financiers in Colombia?

Due to its public nature, the mortgage registration in the Aeronautical National Registry gives anyone information about the priority of the financier's rights over the aircraft. Colombian legislation has given priority to other credits over the mortgage as explained in question 18.

17. Does an aircraft mortgage duly registered in the National Registry of Colombia extend to engines and other parts of such aircraft (either installed or not on the airframe)?

According to article X of Act 834 of 2003 and article 1904 of Colombian Commercial Code, the mortgage extends to spare parts, engines, electronic equipment, and other parts permanently incorporated and essential to the aircraft operation. Those mortgage particularities have to be registered in the same registration sheet of the aircraft issued by the National Aeronautic Registry of Colombia.

18. What statutory liens (if any) would rank prior to an aircraft mortgage duly registered in the National Registry of Colombia

According to the Colombian Commercial Code, there are several liens that are ranked prior to the mortgage. These credits listed in article 1905 are in order of priority below:

- (i) taxes owed to the government levied by aircraft;
- (ii) crew's last month wages;
- (iii) the compensation owed due to assistance during the lien;
- (iv) the expenses to preserve the aircraft in good shape while the process is going on; and



Colombia
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(v) compensation for damage caused by the aircraft in the last year and that is not covered by insurance.

19. Do the laws of Colombia provide for possessory rights and/or rights of detention over aircraft in favor of third parties (such as airport taxes, customs duties, air navigation charges, crew's wages, MRO's receivables)?

The Colombian Commerce Code has specific rules for aircraft repossession within articles 1904-1090. The order of the judge must be registered first in the Aeronautical National Registry and then repossession of the aircraft can take place. However, if the aircraft is a passenger commercial aircraft, it cannot be repossessed until either the decision is not subject to more appeals, or the aircraft has been out of service for more than a month.

20. Are foreign law-governed security agreements (e.g., mortgages) recognized in Colombia in order to validly create a security interest over an aircraft registered in the national registry of Colombia? If so, are there any formalities/requirements to bear in mind?

The Colombian legal system recognizes foreign security interests over an aircraft. Article 1798 of the Colombian Commerce Code states that contracts validly celebrated abroad shall have all its effects in Colombian territory. This disposition is limited to aircraft which are registered abroad.

In order to register the security interest in the Aeronautical National Registry, the document should be officially translated, if it comes in a language different than Spanish, and apostilled.

21. Are foreign law-governed leases recognized in Colombia in order to validly lease an aircraft registered in the national registry of Colombia to a lessee incorporated in Colombia? If so, are there any formalities/requirements to bear in mind?

The Colombian legal system recognizes foreign security interests over an aircraft. Article 1798 of the Colombian Commerce Code states that contracts validly celebrated abroad shall have all its effects in Colombian territory, although this disposition is limited to aircrafts which are registered abroad.

In order to register the security interest in the Aeronautical National Registry, the document should be officially translated, if it comes in a language different than Spanish, and apostilled.

22. Has Colombia ratified the Cape Town Convention on International Interests in Mobile Equipment and the related Aircraft Protocol? Has Colombia made any declarations in order to better determine the scope of application of the Convention / Protocol in Colombia? If so, what is the impact of such declarations on aircraft registration issues? Are there any specific aspects relating to the enforcement of IDERA's to be considered?

The Cape Town Convention on International Interests in Mobile Equipment and the related Aircraft Protocol were introduced to the Colombian legal system through the Act 967 of 2005 and declared in full accordance with Colombian constitution in the Colombian Constitutional Court's decision C-276 of 2006.

Colombian Aeronautical Regulations in 20 (RAC 20) distinguishes between the international registry and the Aeronautical National Registry.

23. What are the requirements and documentation to deregister an aircraft from Colombia? How does the aircraft deregistration process work?

It is possible to deregister an aircraft in any of the following situations:

- (i) If the Colombian CAA authorized registration of the aircraft in another country.
- (ii) When the Colombian CAA authorizes the export of the aircraft.
- (iii) When the aircraft, according to the current law, should be put out of service.
- (iv) If an aircraft is destroyed or disappears, both situations must be proved.
- (v) When the Colombian CAA determines that the registration was completed incorrectly.
- (vi) When the reasons that lead to the approval of the registration change in a way that the registration is not valid according to the current law.

The deregistration can start by a CAA's own decision or by the owner or operator's request. The CAA shall follow the general administrative procedures provided by the Act 1437 of 2011. During this process, the CAA is allowed to request additional evidence in order to motivate its decision, which could extend the process longer than initially expected.

24. What fees are payable to deregister an aircraft from Colombia?

To start the deregistration process, the CAA requests a fee previously established in a resolution issued by the same authority. Today, Resolution 4338 of 2019 states that the amount for deregistering an aircraft is up to approximately \$208 USD.

25. Is the consent of the mortgagee / lessor (as the case may be) required in order to deregister an aircraft from Colombia?

Numeral 20.5.3.3.2 of Colombian Aeronautical Regulations (RAC) states that the liens must be cancelled before the deregistration, but exemptions to the cancellation of those liens made by the creditors are allowed.

26. How long does deregistration take, both where there is co-operation from the defaulted party (mortgagor / lessee / operator) and where there is no such co-operation from it?

It will depend on each case. There is no way possible to give an exact time in this case.

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Germany



Germany

Submitted by: Uli Stepler and Christine Kranich

1. Which authority is in charge of the civil aviation registry in Germany? Does Germany use a single-registry system or is there a dual-registry system in place?

The Federal Aviation Authority (Luftfahrt-Bundesamt, or abbreviated LBA) is in charge of civil aircraft registry (Luftfahrzeugrolle). The LBA was established in 1954 and is located in Braunschweig as the supreme authority in civil aviation and, as such, is directly subordinated to the Federal Ministry of Transport and Digital Infrastructure (Bundesministerium für Verkehr und digitale Infrastruktur).

There is a separate register for aircraft mortgages located at the local court in Braunschweig.

2. Is the registry an operator registry or an owner registry (or both)?

Germany has an owner aircraft registry. However, if the operator is different from the owner, the operator is registered as well. Moreover, if the owner is not an "EU person" the aircraft needs to have an operator from an EU country, and in such case, the operator will be mentioned on the backside of the Certificate of Registration.

3. What are the requirements and documentation to register an aircraft in Germany? Include references to formalities such as notarisation, legalization, etc.

To register an aircraft in Germany the owner has to submit the following documents to the LBA (originals unless otherwise stated):

- completed and signed application form;
- power of attorney (POA) if a third party submits the documents for the owner;
- commercial register extract or company printout, or some other form of evidence of its corporate existence and registered address;
- section 3 Air Traffic Act declaration;
- declaration of German process agent for all communication between the aircraft owner and the LBA if the owner does not have its registered address in Germany;
- bill of sale (notarised and apostilled - if required - copy sufficient);
- lease agreement if the owner is not the operator (copy is sufficient);
- certificate of cancellation from previous registry or non-registration certificate;
- export certificate of airworthiness or airworthiness review certificate from previous State of registration (to obtain a certificate of airworthiness from the LBA);
- confirmation of insurance;
- CAMO and maintenance programme for the aircraft approved by the LBA; and
- customs certificate in case of import from a non-EU State.

3a. How does the aircraft registration process work?

All the required (original) documents should be submitted to the LBA at the same time. The LBA will review such documents, and if everything required has been submitted, the LBA will issue an original Certificate of Airworthiness, Noise Certificate, and Certificate of Registration for the Aircraft, and those originals must be kept at all times on board the aircraft.

4. What fees are payable to register an aircraft in Germany?

The registration fees are determined by the German Expenses Directive of Aviation Administration (Kostenverordnung der Luftfahrtverwaltung) and vary in regard to the weight of the aircraft. Currently (April 2021), the fees are as follows: up to 2,000 kg the fee is EUR 80; up to 20,000 kg the fee is EUR 350; up to 100,000 kg the fee is EUR 1,000; up to 150,000 kg the fee is EUR 2,500; and above 150,000 kg the fee is EUR 4,500.

4a. How long does registration take?

If everything is well prepared (i.e., all required documents are submitted together to the LBA) and in advance of sending those, correspondence has been made to the LBA that the required documents will be provided soon, the registration of the aircraft may be made within a few days.

5. Are there any weight and/or maximum age restrictions to register an aircraft in Germany?

No.

6. Does registration of an aircraft in the national registry constitute proof of ownership under the laws of Germany?

No. The registration in the aircraft register (Luftfahrzeugrolle) with the LBA is only a declaratory one. It does not have any constitutive effect on the ownership of the aircraft under German law. This is a consequence of the fact that the German Aircraft Register mainly aims at securing registered data for purposes under public law, i.e., airworthiness and identification of the owner/operator (as applicable), nationality of the same, etc. Regardless of the public law nature and character of the Register, it is common practice to obtain an extract of the Aircraft Register for transactions under civil law.

7. How is an aircraft title transfer effected in Germany? What are the formalities required to register such title transfer in the national registry of Germany (e.g., notarization, legalization etc.)? Please summarize the related costs and procedures.

The title of an aircraft is transferred pursuant to the general rules of German civil law on the transfer of ownership of movables. Thus, a bill of sale is neither needed, nor alone would it be sufficient, and a sale and purchase agreement only impose a contractual duty on the seller to transfer the ownership of the aircraft to the buyer (section 433(1) of the German Civil Code). To actually transfer title in an aircraft, the owner, in execution of the underlying contract of sale, usually must deliver possession of

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the aircraft to the buyer while both parties agree that the change of direct possession also results in a change of ownership (see section 929(1) of the German Civil Code). However, a transfer of title to an aircraft could be effected as well by any of the following: if at title transfer (i) the seller is in direct possession of the aircraft and wants to continue to use the aircraft, then seller and purchaser have to enter into a lease agreement (sale and lease back) pursuant to which the purchaser may demand repossession of the aircraft in accordance with its terms (thus the purchaser obtains indirect possession pursuant to section 930(1) of the German Civil Code); or (ii) a third party is in direct possession of the aircraft (e.g., a third-party lessee), then the seller, purchaser, and that third party must enter into an assignment or novation agreement in relation to the lease whereby the seller assigns to the purchaser, inter alia, its repossession right against the third-party lessee (section 931 of the German Civil Code).

Registration of an aircraft in the Aircraft Register does not have any legal impact on the transfer of title, it is governed by the general rules for transfer of ownership of movables (section 98(1)(1) of the Act on Rights in Aircraft). Thus, the registration of the aircraft on the German Aircraft Register does not in itself constitute such title to or interest in the aircraft but merely serves as some form of evidence that the person who is registered as the owner is in fact the owner of the aircraft. However, although there is no requirement for registration in order to effect transfer of title, there is a requirement that the owner of the aircraft has to notify the German Federal Aviation Authority of any change in ownership without undue delay (section 64(5) Air Traffic Act), and any owner who wants to be registered in the German Aircraft Register has to provide proof of ownership, usually done by providing the original or notarised (and apostilled – if required) copy of the bill of sale to the LBA (see question 3).

8. What information and details are reflected in the certificate of registration of an aircraft?

After registering an aircraft in the German Aircraft Register, the LBA issues a Certificate of Registration following international (International Civil Aviation Organization (ICAO)) usage (according to section 14 of the German Air Traffic Licensing Regulation). Such Certificate of Registration must be carried onboard the aircraft at all times. With nomenclature in German and English, it contains information on the register itself (volume, page), on the aircraft (class, nationality and registration mark, manufacturer, model, serial number) as well as name and address of the owner (if the owner is a non-EU entity the name and address of the operator is mentioned on the backside) and certifies that the aircraft has been duly registered in the Aircraft Register (date of issue and signature of issuing person as well as stamp of the LBA). As there is no register for engines, no separate engine Certificate of Registration is issued.

9. Are the entries in the aircraft registry of Germany made available to the public upon submission of a specific application to the competent authority? Are there any fees payable for this?

The entries in the Aircraft Register are generally not open to the public to be searched; however, data recorded in the Aircraft Register may be requested if that person provides prima facie evidence that it needs such information for the enforcement of a private claim (section 64(8) of the Air Traffic Act). Moreover, for data protection laws, only the registered owner may request a register extract from the LBA (with a current date). The LBA currently, as of April 2021, charges for such extract with a fee of EUR 40.

10. What kind of aircraft operations can be conducted with aircraft registered in Germany (i.e., private use, commercial air transport or both)?

Both private and commercial air transport however, commercial air transport may only be made if the aircraft is operated by an airline having an air operator certificate on which the respective aircraft is included.

11. Does the civil aviation authority in Germany authorise the operation of foreign registered aircraft? If so, with which countries has Germany entered into bilateral agreements on the basis of article 83-bis of the ICAO Chicago Convention for the delegation of regulatory oversight?

According to article 83-bis of the Chicago Convention in connection with section 3a (2 and 3) of the Air Traffic Act, it is possible that German-registered aircraft are used by foreign airlines and foreign registered aircraft may be used by German airlines whereby the Aviation Authority of the state of registration of the aircraft may, by agreement with the Aviation Authority from the other State, transfer certain functions and duties as state of registration in respect of the respective aircraft. For example, regarding its operation, airworthiness and the competency of its personnel as well as general 'rules of the air transportation'. Germany has so far closed five bilateral agreements in relation to article 83-bis: with Italy (18 July 2007), Austria (1 July 2016), Sweden (3 November 2010), Spain (17 December 2010) and Denmark (26 September 2012).

12. Is there a separate register of aircraft mortgages and/or leases and/or security interests in Germany?

There is not a separate register of leases or other security interests, except for the local court in Braunschweig, where mortgages (only on German registered aircraft) may be registered.

13. What are the formalities required to register a mortgage / lease / security interest in the national registry of Germany (e.g., notarization, legalization etc.)? Please summarize the related costs and procedures.

A German mortgage needs to be registered in the German Aircraft Mortgage Register as a condition to its effective creation and perfection against the debtor or aircraft owner and third parties. Registering an aircraft mortgage in Germany may take three to four weeks from filing the required documents with the German Aircraft Mortgage Register until having received an extract of the German Aircraft Mortgage Register showing the registration of the mortgage. Unlike the Aircraft Register is the Aircraft Mortgage Register maintained by the local court in Braunschweig (section 78 of the Act on Rights in Aircraft) (see question 12). Thus, in relation to the mortgage, all documents must be submitted to it and not to the LBA. For every aircraft registered, a new page is reserved, which is divided into two parts, one for the aircraft itself and one for any mortgages it might be encumbered with (section 81(1) of the Act on Rights in Aircraft, together with section 2 of the Aircraft Mortgage Register Regulation). Only the person or entity that is registered as owner in the Aircraft Register (with the LBA) is entitled to have an aircraft registered in the Aircraft Mortgage Register (section 79(2) of the Act on Rights in Aircraft). The mortgage application must contain the following (section 80 of the Act on Rights in Aircraft):

- page number of the Aircraft Register (if already known);
- manufacturer's serial number and registration mark of the aircraft;

Germany
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- make and model of the aircraft;
- name of the creditor, the amount of the secured claim, and the applicable interest rate and ancillary charge;
- name and address of the owner according to the Aircraft Register (the applicant must prove that the data to be recorded corresponds with the data from the Aircraft Register, therefore, an extract of the Aircraft Register from the LBA that is not older than four weeks needs to be submitted to the Aircraft Mortgage Register). It may be possible to file the 'mortgage documents' prior to registration of the owner in the Aircraft Register and submit the Aircraft Register extract later; however, it is a prerequisite to registration of the mortgage;
- in addition, prima facie evidence of ownership needs to be submitted (section 80 of Act on Rights in Aircraft), which is usually done by a notarised and apostilled affidavit of the aircraft owner; and
- the fees of the Aircraft Mortgage Register and the German notary vary in regard to the amount of the secured claim (see sections 34(1), 53(1) and 55(2) of the Act on Court and Notary Fees). After the 'mortgage documents' have been filed with the German Aircraft Mortgage Register, it will issue an invoice for its fee, and that invoice needs to be paid prior to the registration of the mortgage.

14. Is a mortgage priority notice an available security instrument for aircraft financiers in Germany?

No.

15. Does an aircraft mortgage duly registered in the national registry of Germany extend to engines and other parts of such aircraft (either installed or not on the airframe)?

The engines are not specifically mentioned in the register; however, the German aircraft mortgage actually extends to the engines and other parts (provided they are also owned by the airframe owner).

16. What statutory liens (if any) would rank prior to an aircraft mortgage duly registered in the national registry of Germany?

Any existing registered security interests because of salvage or inevitable maintenance measures by third parties will have priority (sections 75 and 76 of the Act on Rights in Aircraft). On the other hand, liens for repairs and comparable statutory pledges cannot be created on a German registered aircraft (section 9(1) on the German Act of Rights on Aircraft). An aircraft may be seized when enforcing a private claim with the result of creating an ordinary registered mortgage (section 99(2) of the Aircraft Mortgage Act). However, certain aircraft, such as aircraft used for public transportation, are protected from such seizure by specific provisions (section 1 of the Act on Inadmissibility of Seizure of Aircraft).

17. Do the laws of Germany provide for possessory rights and/or rights of detention over aircraft in favor of third parties (such as airport taxes, customs duties, air navigation charges, crew's wages, MRO's receivables)?

No. Even the mortgagee may not take possession when enforcing its mortgage but must get it detained by a bailiff through court proceedings and have it sold by public auction.

18. Are foreign law-governed security agreements (e.g., mortgages) recognized in Germany in order to validly create a security interest over an aircraft registered in the national registry of Germany? If so, are there any formalities/requirements to bear in mind?

No, a German registered aircraft may be levied only by a mortgage registered in the German Aircraft Mortgage Register.

19. Are foreign law-governed leases recognized in Germany in order to validly lease an aircraft registered in the national registry of Germany to a lessee incorporated in Germany? If so, are there any formalities/requirements to bear in mind?

Yes, foreign law-governed leases are recognized and no formalities/requirements exist.

19. Has Germany ratified the Cape Town Convention on International Interests in Mobile Equipment and the related Aircraft Protocol? Has Germany made any declarations in order to better determine the scope of application of the Convention / Protocol in Germany? If so, what is the impact of such declarations on aircraft registration issues? Are there any specific aspects relating to the enforcement of IDERA's to be considered?

The Cape Town Convention has not been ratified by Germany.

20. What are the requirements and documentation to de-register an aircraft from Germany? How does the aircraft de-registration process work?

In Germany, it is only the owner (and not the operator) who is entitled to deregister an aircraft. The owner of the aircraft must apply for deregistration and a certificate of airworthiness for export (if needed), at the LBA, using a standard form (LBA Form No. 11 that is available in German and English). As Germany is an 'owner register', the operator may not block deregistration or export. However, in order to have the aircraft actually deregistered in Germany, the original Certificate of Registration, certificate of airworthiness and noise certificate issued by the LBA (which have to be carried at all times on board the aircraft) (see question 3 a.) have to be returned to the LBA. Upon deregistration, the LBA will notify the Aviation Authority of the next State of registration if requested by the owner with the application.

21. What fees are payable to de-register an aircraft from Germany?

The deregistration fees are determined by the German Expenses Directive of Aviation Administration (Kostenverordnung der Luftfahrtverwaltung) and vary in regard to the weight of the aircraft. Currently (April 2021), the fees are as follows: up to 2,000 kg the fee is EUR 64; up to 20,000 kg the fee is EUR 280; up to 100,000 kg the fee is EUR 800; up to 150,000 kg the fee is EUR 2,000; and above 150,000 kg the fee is EUR 3,600.

22. Is the consent of the mortgagee / lessor (as the case may be) required in order to de-register an aircraft from Germany?

The mortgagee does not have to consent to the deregistration by the owner.

Germany

Continued...

23. What are the usual practical difficulties (if any) involved in de-registering aircraft from Germany?

The usual practical difficulties are that the operator needs to cooperate, and the original Certificate of Registration, Certificate of Airworthiness, and Noise Certificate (issued by the LBA) must be returned to the LBA to procure deregistration.

24. How long does deregistration take, both where there is co-operation from the defaulted party (mortgagor / lessee / operator) and where there is no such co-operation from it?

If the original application and the original documents mentioned in No. 23 have been provided, deregistration can be effected within one or two days. However, if the operator does not cooperate in relation to those documents, court proceedings need to be initiated which could take a longer time.

25. Please outline the applicable repossession rules under the national laws of Germany (and the Cape Town Convention, if applicable) following an event of default under a mortgage or a lease, including registration issues with the national registry in Germany.

There are no self-help remedies available to the owner. In order to repossess the aircraft, the owner must proceed in accordance with the German laws of debt enforcement. That necessitates obtaining an enforceable title (court order or judgement) for the repossession claim from the German civil court having jurisdiction. The title must contain the necessary enforcement clause and needs to be duly served on the debtor. The owner can then apply for the enforcement of the court order or judgement with a bailiff, who will put the owner in possession of the aircraft. Alternatively, confronting the pilot in the cockpit with a bailiff serving the termination notice of the lease has proven to be successful.

DISCLAIMER: The above information should not be relied upon by the reader for legal advice as it is intended merely to serve as a preliminary guide to the laws and regulations governing the registration of aviation and aircraft in this country. The information intends to provide summary-level information about certain tax issues affecting general aviation and aircraft finance. Since these materials are general in nature, readers are encouraged to obtain legal and tax advice from their own professional legal and tax counsel based on specific facts and circumstances regarding their acquisition and/or use of aviation and aircraft.

India



India

Submitted by: Ramesh K. Vaidyanathan, Managing Partner, Advaya Legal

1. Which authority is in charge of the civil aviation registry in India? Does India use a single-registry system or is there a dual-registry system in place?

The Directorate General of Civil Aviation (DGCA) is the governmental agency in charge of the civil aviation registry in India. India has a single-registry system.

2. Is the registry an operator registry or an owner registry (or both)?

The DGCA's aircraft register is an owner registry, although it also includes details of the operator, if different from the owner. There is no separate register for leases and aircraft engines maintained in India. Further, once registered with the DGCA, there is no requirement to have the aircraft ownership registered with any other registry in India.

3. What are the requirements and documentation to register an aircraft in India? Include references to formalities such as notarisation, legalization, etc.

Form CA-28 must be filed with the DGCA for the registration of the aircraft along with the following documents:

- Customs clearance certificate / bill of entry of the aircraft;
- Certificate of deregistration from the country of export;
- Evidence to the effect that the aircraft has been purchased or wholly owned by the applicant. For this purpose, a copy of invoice shall be accepted;
- For aircraft purchased from a previous owner, an affidavit as required;
- In case the aircraft is taken on dry lease, a copy of the lease agreement;
- In case the aircraft is owned by a company or corporation, a document of registration of the company and the names, addresses and nationalities of the directors;
- A copy of the import license issued by the Director General of Foreign Trade or permission for import issued by the Ministry of Civil Aviation/DGCA;
- In cases where the aircraft has been mortgaged/ hypothecated, the owner/operator must submit his consent for the same and the papers to this effect; and,
- Fee for registration as prescribed.

All documents that are required to be submitted to the DGCA must be notarized and apostilled.

3a. How does the aircraft registration process work?

The owner or his authorized representative may apply for registration of the aircraft in the prescribed Form CA-28 completed with the requisite documents at least five working days for aircraft on outright purchase and 10 working days for aircraft on lease, before the expected date of issue of Certificate of Registration. All aircraft registered in India must possess current and valid Certificate of Airworthiness (C of A) before they are flown.

4. What fees are payable to register an aircraft in India?

The following fee is payable in respect of a Certificate of Registration for an aircraft having maximum permissible take-off weight –

- of 15,000 kilograms or less: INR 20,000/- (approx. \$270 USD)
- exceeding 15,000 kilograms: INR 5,000/- (approx. \$67 USD) for every 1,000 kilograms or part thereof.

Note: For the purpose of registration of the aircraft, the maximum take-off weight is as indicated in the Flight Manual of the aircraft.

4a. How long does registration take?

DGCA recommends that the application for Certificate of Registration be made at least five working days in advance for aircraft on outright purchase and 10 working days in advance for aircraft on lease, before the expected date of issue of Certificate of Registration.

5. Are there any weight and/or maximum age restrictions to register an aircraft in India?

There is no weight restriction to register an aircraft in India. However, there are age restrictions on importing an aircraft into India.

Pressurized aircraft intended to be imported and used in passenger services (scheduled/non-scheduled) and general aviation operation, should not have completed 18 years of age or 65% of designed economic life in terms of pressurization cycle, whichever is earlier. In case of aircraft above 15 years of age, the aircraft must have flown at least for 100 hours during the last six months from the date of application for import. In case, the aircraft has undergone major maintenance within six months prior to the date of import, the requirement of having flown for 100 hours within the last six months shall not be applicable.

Aircraft intended to be imported for air cargo operations should not have completed 25 years in age or 75 percent of its design economic life in terms of pressurization cycles, whichever limitation is completed earlier.

Age restrictions are not applicable (i) for local acquisition of Indian registered aircraft maintained in accordance with DGCA approved procedures; and (ii) for import of aircraft exclusively for the purpose of aerial work operations.

6. Does registration of an aircraft in the national registry constitute proof of ownership under the laws of India?

Courts in India accept the Certificate of Registration issued by the DGCA as prima facie evidence of lessor, lender or owner interest in the aircraft. It would be difficult to defend a case in courts against third parties if the owner has no or defective title as per the records of the DGCA.

7. How is an aircraft title transfer effected in India? What are the formalities required to register such title transfer in the national registry of India (e.g., notarization, legalization etc.)? Please summarize the related costs and procedures.

Title in an aircraft can be transferred by execution of a sale agreement or a bill of sale between the seller and the buyer of an aircraft. If the sale agreement is executed outside India and is subsequently brought into India, whether by way of physical delivery or fax, email or any other electronic means for any purpose, the same will have to be stamped within the statutorily prescribed period in accordance with the stamp laws in force in the relevant state in which the transaction documents are



India

Continued...

brought. In addition to the stamp duty requirement, the transfer documents should be notarised and apostilled for submitting to governmental authorities such as the DGCA. The costs involved would be the stamp duty payable on the transaction documents and the registration fee that shall be payable to the DGCA if the aircraft is not already registered with the DGCA.

8. What information and details are reflected in the Certificate of Registration of an aircraft?

The DGCA issues the Certificate of Registration for the aircraft. The Certificate of Registration contains information about the type of aircraft, the manufacturer's serial number, year of manufacture, nationality and registration marks allotted, full name, nationality and address of the owner/lessor, usual station of aircraft, the date of registration and the period of validity of the registration. In the case of a leased aircraft, the Certificate of Registration also includes the validity of the lease and the name, nationality and address of the lessee.

9. Are the entries in the aircraft registry of India made available to the public upon submission of a specific application to the competent authority? Are there any fees payable for this?

The aircraft register is open for inspection to members of the public, both at the DGCA headquarters as well as on the DGCA website. The Inspection is free of charge.

10. What kind of aircraft operations can be conducted with aircraft registered in India (i.e., private use, commercial air transport or both)?

Certificate of Registration of an aircraft is not equivalent to an operator permit. For different types of operations, relevant approvals must be sought from the DGCA.

11. Does the civil aviation authority in India authorise the operation of foreign registered aircraft? If so, with which countries has India entered into bilateral agreements on the basis of article 83-bis of the ICAO Chicago Convention for the delegation of regulatory oversight?

Yes, DGCA does authorise the operation of foreign registered aircraft in India subject to various permissions and regulations.

Article 83 bis to the Chicago Convention provides for the transfer of certain safety oversight responsibilities from the State of Registry to the State of the Operator. DGCA only enters into an Article 83 bis agreement for a foreign registered aircraft to be operated within India under an Indian Air Operator Permit if:

- a) It is practical to do so;
- b) If there are no differences registered with International Civil Aviation Organisation (ICAO) by the foreign State of Registry against the Standards and Recommended Practices published in the Annexes which would directly affect the regulatory oversight of the aircraft;
- c) DGCA has confidence in the foreign regulatory authority, on whose register the aircraft is recorded, to meet all of the obligations and requirements to be undertaken as specified in the Article 83 bis agreement;
- d) DGCA has sufficient confidence in the Indian operator's competence to safely operate and maintain the foreign registered aircraft; and,
- e) DGCA has sufficient technical personnel available to undertake the regulatory oversight and reporting commitments specified in the Article 83 bis agreement.

12. Is there a separate register of aircraft mortgages and/or leases and/or security interests in India?

There is no separate registry for leases, mortgages or other rights over aircraft maintained in India. If the aircraft is owned by an Indian entity, the security created over the aircraft by way of hypothecation is required to be registered with the relevant Registrar of Companies within 30 days from the date of creation of the charge.

13. What are the formalities required to register a mortgage / lease / security interest in the national registry of India (e.g., notarization, legalization etc.)? Please summarize the related costs and procedures.

There is a fee for registration of an aircraft at the DGCA that is based on the weight of the aircraft. Apart from this fee, there is no other fee payable for registering a lease. The security created over the aircraft, owned by an Indian entity, by way of hypothecation is required to be registered with the relevant Registrar of Companies within 30 days from the date of creation of the charge. It is also recommended that the deed of hypothecation be filed and recorded with the DGCA. It ensures that the security interest along with the details of the hypothecation are endorsed on the Certificate of Registration of the aircraft. The stamp duty on the deed of hypothecation so executed will also be required to be paid in accordance with the stamp duty payable in the relevant state. Further, the details of security should also be registered on the International Registry maintained under the Cape Town Convention and Protocol.

14. Is a mortgage priority notice an available security instrument for aircraft financiers in India?

No, mortgage priority notices are not available in India.

15. Does an aircraft mortgage duly registered in in the national registry of India extend to engines and other parts of such aircraft (either installed or not on the airframe)?

DGCA is the only aircraft registry in India, and there is no separate registry for leases and aircraft engines maintained in India. Typically, engines are not considered distinct from the aircraft. The hypothecation agreement would specify whether the security interest extends to the engines. If the aircraft is owned by an Indian entity, the security created over the aircraft by way of hypothecation is required to be registered with the relevant Registrar of Companies within 30 days from the date of creation of the charge.

16. What statutory liens (if any) would rank prior to an aircraft mortgage duly registered in the national registry of India?

The following dues would rank prior to a registered aircraft mortgage, (i) unpaid wages of airline employees; (ii) dues of the repairers for repairs of aircraft in the repairers' possession; and (iii) governmental or other unpaid statutory dues.

17. Do the laws of India provide for possessory rights and/or rights of detention over aircraft in favour of third parties (such as airport taxes, customs duties, air navigation charges, crew's wages, MRO's receivables)?

Indian laws permit the Central Government to empower any authority to detain an aircraft if such detention is necessary to secure compliance with a domestic legislation or when such



India

Continued...

detention is necessary to prevent the contravention of any legislation or to implement any order made by any court. For instance, the Airports Authority of India has been authorised to detain an aircraft until all fees owed to it by the operator have been paid.

18. Are foreign law-governed security agreements (e.g., mortgages) recognized in India in order to validly create a security interest over an aircraft registered in the national registry of India? If so, are there any formalities/requirements to bear in mind?

Yes, foreign law-governed security agreements are recognized in India in order to validly create a security interest over an aircraft registered in India. Indian law, in general, recognizes the freedom of the parties from different jurisdictions to choose the proper law of contract.

19. Are foreign law-governed leases recognized in India in order to validly lease an aircraft registered in the national registry of India to a lessee incorporated in India? If so, are there any formalities/requirements to bear in mind?

Courts in India uphold foreign law as the governing law of leases if the lease agreement is with a foreign party and recognizes the parties' freedom to choose the proper law of contract. Indian courts will generally recognize foreign law-governed lease agreements in relation to aircraft and engines, and submission to a foreign jurisdiction, if it is not opposed to the public policy of India.

20. Has India ratified the Cape Town Convention on International Interests in Mobile Equipment and the related Aircraft Protocol? Has India made any declarations in order to better determine the scope of application of the Convention / Protocol in India? If so, what is the impact of such declarations on aircraft registration issues? Are there any specific aspects relating to the enforcement of IDERA's to be considered?

India acceded to the Cape Town Convention on International Interests in Mobile Equipment and the Protocol to the Cape Town Convention on International Interests in Mobile Equipment (Protocol) on March 31, 2008. However, only specific provisions of the Cape Town Convention and the Protocol became effective on July 1, 2008. From February 2015, the Indian Aircraft Rules were amended to give the Central Government of India the power to cancel the registration of an Indian-registered aircraft, to which the provisions of the Cape Town Convention or the Protocol apply, by way of an application from the irrevocable deregistration and export request authorisation (IDERA) holder. At the time of entering into a lease transaction, an IDERA can be filed with the DGCA and the acknowledgment of the DGCA can be obtained. While there is no requirement that the IDERA be countersigned by the DGCA, it is advisable that the acknowledgment of the DGCA be obtained as this ensures that the DGCA will note the fact of issuance of the IDERA by the operator and that the owner or lessor is entitled to exercise its rights under the IDERA.

21. What are the requirements and documentation to deregister an aircraft from India? How does the aircraft deregistration process work?

Under Indian law, deregistration of an aircraft can only be done by the owner or the owner's authorised representatives. The holder of an IDERA may apply to the DGCA for cancellation of

the registration of the aircraft at the end of the lease term or prior to the expiry of the aircraft lease after:

- a) providing the original or notarised copy of the IDERA; and
- b) ensuring that either: (i) all registered interests in respect of the aircraft have been discharged or; (ii) the holders of such registered interests have consented to the deregistration or export of the aircraft.

It is mandatory for the DGCA to deregister an aircraft within five working days of the submission of an application.

22. What fees are payable to deregister an aircraft from India?

No fees are payable for deregistration of an aircraft from India. The dues of the airport operator and other statutory authorities must be cleared prior to deregistration of the aircraft from India.

23. Is the consent of the mortgagee / lessor (as the case may be) required in order to deregister an aircraft from India?

Under Indian law, deregistration of an aircraft can only be done by the owner or the owner's authorised representatives. The holder of an IDERA may apply to the DGCA for cancellation of the registration of the aircraft at the end of the lease term or prior to the expiry of the aircraft lease after:

- a) providing the original or notarised copy of the IDERA; and, ensuring that either:
- b) all registered interests in respect of the aircraft have been discharged; or,
- c) the holders of such registered interests have consented to the deregistration or export of the aircraft.

It is mandatory for the DGCA to deregister an aircraft within five working days of the submission of an application as per the above-mentioned procedure.

24. What are the usual practical difficulties (if any) involved in deregistering aircraft from India?

Deregistration of an aircraft has become a fairly simple process in recent years. Courts in India have recognized the mandatory nature of IDERA based deregistration and upheld the duty cast upon the DGCA to deregister an aircraft within stipulated timelines on the basis of an IDERA, thereby ensuring speedier repossession of aircraft by lessors and owners.

25. How long does deregistration take, both where there is co-operation from the defaulted party (mortgagor / lessee / operator) and where there is no such co-operation from it?

The holder of an IDERA may apply to the DGCA for cancellation of the registration of the aircraft at the end of the lease term or prior to the expiry of the aircraft lease after (i) providing the original or notarised copy of the IDERA; and (ii), ensuring that either all registered interests in respect of the aircraft have been discharged; or the holders of such registered interests have consented to the deregistration or export of the aircraft. If the owner/lessor of an aircraft, in an event of default submits the IDERA to the DGCA, the DGCA is duty bound to deregister the aircraft, without the need for any co-operation/consent from the defaulted party (mortgagor/lessee/operator) or judicial intervention. It is mandatory for the DGCA to deregister an aircraft within five working days of the submission of an application as per the above-mentioned procedure.

India

Continued...

26. Please outline the applicable repossession rules under the national laws of India (and the Cape Town Convention, if applicable) following an event of default under a mortgage or a lease, including registration issues with the national registry in India.

The owner/lessor may repossess the aircraft on the basis of a duly stamped and notarised IDERA if such an instrument has been issued by the lessee in its favour. If the DGCA fails or refuses to deregister the aircraft, the owner/lessor may initiate legal action to repossess the aircraft. As the DGCA is a government body, the lessor can file a writ petition in the High Court, within whose jurisdiction the DGCA's order was passed, seeking to quash the DGCA's order and asking for a direction to be issued to the DGCA to rehear the application for deregistration and repossession.



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Israel

S.HOROWITZ & CO.

Israel

Submitted by: Eyal Doron, Partner, S. Horowitz & Co.

1. Which authority is in charge of the civil aviation registry in Israel? Does Israel use a single- registry system or is there a dual-registry system in place?

The Civil Aviation Authority of Israel (CAAI) is in charge of the civil aviation registry.

2. Is the registry an operator registry or an owner registry (or both)?

An owner registry.

3. What are the requirements and documentation to register an aircraft in Israel? Include references to formalities such as notarisation, legalization, etc.

In order to register an aircraft, the owner of the aircraft has to deliver to the Aircraft Registrar an original copy of a request to register the aircraft (in the form that appears on the CAAI website), a deed of sale signed by the seller or other documents evidencing the buyer's ownership and a receipt regarding payment of the registration fee (see question 4 below).

If the aircraft is owned by more than one person, the request will be signed by each of the owners.

If the applicant is the agent or representative of the aircraft's owner, the applicant shall: (a) indicate in the request the name of the aircraft owner; (b) sign his name and indicate that he is the owner's agent; and (c) attach to the request a notarized power of attorney from the aircraft's owner or a certified copy thereof.

3a. How does the aircraft registration process work?

The applicant for registering an aircraft has to fill out the request to register the aircraft (see question 3 above) in two copies and deliver the original copies to the Aircraft Registrar at the CAAI, together with the relevant documents listed in question 3 above. After submitting such a request, the applicant shall receive a registration certificate.

4. What fees are payable to register an aircraft in Israel?

When submitting the request for a registration certificate, an aircraft owner shall pay, in respect the registration of the aircraft, a fee in accordance with the weight of the aircraft as specified below:

Amount (NIS)	Aircraft weight (kg)
330	up to 200
440	over 200 and up to 700
550	over 700 and up to 2,000
660	over 2,000 and up to 5,700
1,970	over 5,700 and up to 45,000
4,380	over 45,000

4a. How long does registration take?

An aircraft, other than an aircraft that was recently registered in a foreign country, is considered to be registered in the register at the time the Aircraft Registrar receives all the documents required for registration. An aircraft that was recently registered in a foreign country is considered to be registered in the register at the time the Aircraft Registrar signs the registration certificate with respect to that aircraft, after all the documents have been received and were reviewed by it.

5. Are there any weight and/or maximum age restrictions to register an aircraft in Israel?

There is no restriction, but it should be noted that the amount of the fee applied in accordance with the Pilot Regulations (Registration, Licensing and Documentation fees), 2009, varies according to the weight.

6. Does registration of an aircraft in the national registry constitute proof of ownership under the laws of Israel?

Registration of an aircraft in the register shall not serve as proof of ownership of such aircraft. Registration of an aircraft in the register shall constitute conclusive evidence regarding the nationality of the aircraft for international purposes and prima facie evidence regarding the nationality of the aircraft in proceedings in accordance with Israeli law.

7. How is an aircraft title transfer effected in Israel? What are the formalities required to register such title transfer in the national registry of Israel (e.g., notarization, legalization, etc.)? Please summarize the related costs and procedures.

See questions 3 and 3(a) above. In addition, please note that the owner of an aircraft has to notify the Aircraft Registrar of any change to the registered address of the aircraft within 14 days of the date of the change. Once the Aircraft Registrar has been notified of the change of the registered address, it shall issue to the owner of the aircraft an updated Certificate of Registration.

8. What information and details are reflected in the Certificate of Registration of an aircraft?

Certificate number, aircraft serial number, manufacturer, name of owner, address of owner, registration date, events in which the registration certificate will expire (if applicable) and details of pledges (if applicable) [*We were recently informed through one of the Israeli airline companies that pledges are no longer listed on the Certificate].

9. Are the entries in the aircraft registry of Israel made available to the public upon submission of a specific application to the competent authority? Are there any fees payable for this?

Any person may, with the consent of the Aircraft Registrar, review the registration of an aircraft in the register and receive a certified copy of such registration after payment of a fee in the amount of NIS 200 (approximately \$62 USD).

Israel

Continued...

10. What kind of aircraft operations can be conducted with aircraft registered in Israel (i.e., private use, commercial air transport or both)?

Both, subject to the applicable legislation and holding the necessary licenses and certifications.

11. Does the civil aviation authority in Israel authorise the operation of foreign registered aircraft? If so, with which countries has Israel entered into bilateral agreements on the basis of article 83-bis of the ICAO Chicago Convention for the delegation of regulatory oversight?

A person may operate in Israel a foreign aircraft registered in a country that is a party to the ICAO Chicago Convention in the event he has a license and a certificate equivalent to a medical certificate, issued or approved by the competent authority in the country of registration of the aircraft, and in accordance with such license and medical certificate.

We are not aware of any country with which Israel has entered into bilateral agreements on the basis of article 83-bis.

12. Is there a separate register of aircraft mortgages and/or leases and/or security interests in Israel?

As aforesaid in question 8 above, until recently, aircraft mortgages and/or security interests were registered on the registration certificate of the aircraft and with the registry. It seems this has just been changed and currently, they are registered only with the aircraft registry.

Leases are not registered in the register.

13. What are the formalities required to register a mortgage / lease / security interest in the national registry of Israel (e.g., notarization, legalization etc.)? Please summarize the related costs and procedures.

With respect to registration of a mortgage or a security interest, a request to the Aircraft Registrar in the CAAI to register such mortgage should be submitted via courier or mail (usually made by the owner of the aircraft). There is no specific form for this request; it should include details of the relevant aircraft, the relevant pledge and mortgagee (including the date the mortgage was executed and the date it was registered in the Israeli Registrar of Companies or as applicable, the Israeli Registrar of Pledges). Attached to such request should be a Certificate of Registration of the mortgage with the Israeli Registrar of Companies or, as applicable, the Israeli Registrar of Pledges, certified electronically by the Israeli Registrar of Companies or, as applicable, the Israeli Registrar of Pledges, and a receipt evidencing payment of the required fee for registration of the pledge with the Aircraft Registrar.

In order to operate a leased aircraft, the lessee shall provide the manager of CAAI with a copy of the lease agreement which includes certain details as specified in the Israeli Aviation Law, 2011 and the regulations issued under it, within 72 hours of its execution, and a copy of such lease agreement shall be kept on the aircraft. In addition, the lessee or the registered owner of the aircraft, if the lessee is not an Israeli citizen or permanent resident of Israel, shall notify the manager of CAAI at least 48 hours before the first departure of the aircraft under the lease agreement, which shall include the airport from which the aircraft shall depart, the date of departure and the registration mark of the aircraft.

14. Is a mortgage priority notice an available security instrument for aircraft financiers in Israel?

Registration of a caveat over an aircraft is not an available security instrument in Israel.

15. Does an aircraft mortgage duly registered in the national registry of Israel extend to engines and other parts of such aircraft (either installed or not on the airframe)?

It could be extended to engines as well as other parts, as long as the document creating the mortgage includes such parts specifically and, accordingly, also the mortgage registered with the Israeli Registrar of Companies or, as applicable, the Israeli Registrar of Pledges specifies such pledges.

16. What statutory liens (if any) would rank prior to an aircraft mortgage duly registered in the national registry of Israel?

Please note that the following are not specific to aviation law.

There are three ranks of creditors that would rank prior to the mortgagee:

- a) Employees - wage debt, up to a certain amount.
- b) Withholding tax deductions - VAT and tax deductions that the debtor deducts from the salaries of his employees that have not yet been transferred to the tax authorities.
- c) All of the following creditors are in the same rank:
 - debts in respect of tax and property tax;
 - rent (of one year at most);
 - debt in respect of alimony.

The court may, if there are special reasons, not give priority to all or some of the debts above.

17. Do the laws of Israel provide for possessory rights and/or rights of detention over aircraft in favor of third parties (such as airport taxes, customs duties, air navigation charges, crew's wages, MRO's receivables)?

The Airports Authority (Fees) Regulations, 1991 stipulate that the Israel Airport Authority may refuse to permit the departure of an aircraft, if fees owed to the Authority have not been paid on time by the owner and/or the lessee and/or the captain of the aircraft. The Regulation practically allows the Authority to delay / ground the aircraft until the fee is paid.

18. Are foreign law-governed security agreements (e.g., mortgages) recognized in Israel in order to validly create a security interest over an aircraft registered in the national registry of Israel? If so, are there any formalities/requirements to bear in mind?

Yes. Such security agreements shall be registered in Israel in the same manner as a mortgage that is subject to the laws of the State of Israel will be registered (see question 13 above).

19. Are foreign law-governed leases recognized in Israel in order to validly lease an aircraft registered in the national registry of Israel to a lessee incorporated in Israel? If so, are there any formalities/requirements to bear in mind?

We have not found any explicit law or case law in this regard. It is possible that the same requirements that apply to the operation

Israel

Continued...

of a leased aircraft (as detailed in question 13 above), shall apply in this regard as well.

20. Has Israel ratified the Cape Town Convention on International Interests in Mobile Equipment and the related Aircraft Protocol? Has Israel made any declarations in order to better determine the scope of application of the Convention / Protocol in Israel? If so, what is the impact of such declarations on aircraft registration issues? Are there any specific aspects relating to the enforcement of IDERA's to be considered?

Israel ratified the Cape Town Convention on International Interests in Mobile Equipment and the related Aircraft Protocol in 2006. No declarations with respect to the scope of application of the Convention / Protocol have been made.

21. What are the requirements and documentation to deregister an aircraft from Israel? How does the aircraft deregistration process work?

The aircraft owner or its proxy may request the cancellation of the aircraft registration by submitting to the Aircraft Registrar a request for cancellation of the registration certificate containing a description of the aircraft according to the nationality and registration marks, the name of the manufacturer, the model and the serial number of the aircraft. The request will be delivered together with the original registration certificate of the aircraft. After checking the correctness of the documents, the aircraft will be canceled from the aircraft.

22. Is the consent of the mortgagee / lessor (as the case may be) required in order to deregister an aircraft from Israel?

It is not possible to deregister an aircraft that has a mortgage or any other restriction registered with respect to it. The restriction must be removed before submitting the request for deregistration.

23. What are the usual practical difficulties (if any) involved in deregistering aircraft from Israel?

See answer to question 23 above.

24. How long does deregistration take, both where there is co-operation from the defaulted party (mortgagor / lessee / operator) and where there is no such co-operation from it?

The time for processing the request for deregistration is up to 14 business days from the date of receipt of the documents at the Aircraft Registrar's office.

25. Please outline the applicable repossession rules under the national laws of Israel (and the Cape Town Convention, if applicable) following an event of default under a mortgage or a lease, including registration issues with the national registry in Israel.

The applicant for registration of a foreclosure in the register will pay the prescribed fee and issue the Aircraft Registrar the Certificate of Registration of the aircraft, if it is in his possession. The Aircraft Registrar will indicate on the Certificate of Registration the record of the foreclosure in the register.

An applicant for registration of a foreclosure in the register with respect to an aircraft shall deliver to the Aircraft Registrar, together with his request, a certified copy of one of the following:

- a) A notice of pledge of the aircraft in respect of which the provisions of the Israeli Pledge Regulations have been complied with.
- b) A certificate signed by the Israeli Registrar of Companies regarding the registration of mortgages or pledged over the aircraft, registered under the Israeli Companies Ordinance.
- c) A certificate signed by a registrar under law regarding the registration of mortgages or pledges over the aircraft under such law.
- d) An order by any court, tribunal or head of enforcement regarding the imposition of a pledge or foreclosure on their behalf.

DISCLAIMER: The above information should not be relied upon by the reader for legal advice as it is intended merely to serve as a preliminary guide to the laws and regulations governing the registration of aviation and aircraft in this country. The information intends to provide summary-level information about certain tax issues affecting general aviation and aircraft finance. Since these materials are general in nature, readers are encouraged to obtain legal and tax advice from their own professional legal and tax counsel based on specific facts and circumstances regarding their acquisition and/or use of aviation and aircraft.

Kenya



Kenya

Submitted by: Sonal Sejpal - Partner, Linda Ondimu - Principal Associate, Tony Areri - Associate, Anjarwalla & Khanna

1. Which authority is in charge of the civil aviation registry in Kenya? Does Kenya use a single-registry system or is there a dual-registry system in place?

Kenya operates a single registry system with the registration of aircraft being the responsibility of the Kenya Civil Aviation Authority (the KCAA). The KCAA is the body responsible for all civil aviation functions in Kenya and their functions cover, inter alia, the registration of aircraft in Kenya, licensing of air services, certification and registration of aerodromes, the provision of air services and the establishment, and maintenance of a system for the registration and marking of civil aircraft.

2. Is the registry an operator registry or an owner registry (or both)?

Kenya maintains both operator and owner registry systems. Under the Civil Aviation (Aircraft Nationality and Registration Marks) Regulations, 2018, an aircraft eligible for registration may be registered by either the owner or operator of the aircraft. An aircraft is eligible for registration in Kenya if the aircraft is either owned or leased by a citizen of Kenya, an individual citizen of a foreign State who is lawfully admitted for residency in Kenya, a corporation lawfully organized and doing business under the laws of Kenya, or a government entity of Kenya provided that the aircraft is not registered under the laws of any foreign country.

3. What are the requirements and documentation to register an aircraft in Kenya? Include references to formalities such as notarisation, legalization, etc.

To register an aircraft in Kenya, an application for aircraft registration must be submitted with the KCAA in the prescribed form. Each application must show the citizenship of the applicant and be accompanied by evidence relating to ownership of the aircraft and be signed in ink. The form is available on the KCAA website (available at <https://www.kcaa.or.ke/node/62>, or here).

The application is required to contain the proper description of the aircraft that identifies it by reference to the manufacturer and, if the aircraft has previously been registered in Kenya or anywhere else, particulars of the registration mark of the aircraft, the name and address of the owner, the name and address of each person who holds a proprietary interest, and a description of the person's proprietary interest (such as a financier or lessee), the physical location where the aircraft will be usually stationed and the name and signature of the applicant. An application for registration may be made by or on behalf of the owner provided that the applicant is legally entitled to the aircraft and a written notice is submitted to KCAA identifying the person making the application on behalf of the owner.

In practice the following are the documents/items that KCAA usually require to register an aircraft:

1. A completed application for the registration form AC-AWS001C (the form is available at <https://www.kcaa.or.ke/>, KCAA website);
2. A document to prove aircraft ownership i.e., a bill of sale;
3. Copy of certificate of incorporation or registration of the owner or operator of the aircraft if the aircraft is owned/operated by a company or a certified copy of identity card or passport (proof of nationality status) if aircraft is owned by an individual;
4. Letter from the operator of the aircraft (in the case where

the operator is different from the owner) giving authority to register the aircraft. The letter should also contain the names of the directors of the operator and their specimen signatures and indicate who among the directors has the mandate to transact/act on behalf of the operator on matters relating to registration and operation of the aircraft or give appropriate power of attorney;

5. A certified copy of the lease agreement if the aircraft is on lease (which lease should be approved by KCAA) together with a letter from the lessee indicating the names and the specimen signatures of the persons authorised to transact with respect to the aircraft on behalf of the lessee;
6. In the event that the aircraft is financed, a letter from the financier stating that it does not have any objection to the aircraft being registered in Kenya together with a certified copy of the document creating the security interest in the aircraft in favour of the financier;
7. A certified copy of the power of attorney from the owner/lessor and the lessee authorising the dealing of the registration of the aircraft on behalf of the owner/lessor and the lessee (in case the aircraft is not being registered by the owner or the lessor or the lessee);
8. Original Customs (Kenya Revenue Authority) Certificate of Clearance in respect to the aircraft;
9. Original clearance certificates from Kenya Airports Authority and KCAA confirming payment of air landing and air navigation fees together with other regulatory fees;
10. Certificate of Deregistration of the aircraft from the previous state of registry, or a letter from the manufacturer confirming type and serial number if the aircraft is direct from the factory and has never been registered in any other State (it should be noted that in practice proof of deregistration must be sent by the former registry direct to KCAA (State to State and not presented by the applicant));
11. Aircraft inspection acceptance for registration note (in case the aircraft is being registered in Kenya for the first time). Prior to registration, the aircraft will be subject to an inspection by the airworthiness section of KCAA to ascertain the aircraft is acceptable for registration;
12. A certified copy of the current insurance certificate;
13. Proof of payment of the prescribed fee; and
14. Letter from the owner of the aircraft to KCAA confirming ownership and stating that the owner does not have any objection to the aircraft being registered in Kenya.

3a. How does the aircraft registration process work?

To register an aircraft in Kenya, an application for aircraft registration must be lodged with the KCAA in the form prescribed by the KCAA. Each application must show the citizenship of the applicant, be accompanied by evidence relating to ownership of the aircraft and be signed in ink. The form is available on the KCAA website <https://www.kcaa.or.ke/node/62> (available here). The application should be supported by the documents set out above together with the requisite application fees (approx. \$150 USD).

The KCAA will review the application and register the aircraft if the requirements for the application are met. A Certificate of Registration will then be issued by the KCAA.

Kenya
Continued...

4. What fees are payable to register an aircraft in Kenya?

The following fees are paid to KCAA for the issuance of a Certificate of Registration or re-registration. Please note that these fees may be reviewed by KCAA from time to time.

No.	Type	Amount
	Registration of a glider	KES 6,000/= (approx. \$60 USD)
	Registration of a balloon	KES 10,000/= (approx. \$100 USD)
	Registration of aeroplanes, helicopters, or gyroplanes	KES 15,000/= (approx. \$150 USD)
	Additional charges for any special registration	KES 45,000/= (approx. \$450 USD)
	Reservation of Special Registration Mark Series	KES 20,000/= (approx. \$200 USD)
	Aircraft Certificate of Registration Cancellation	KES 10,000/= (approx. \$100 USD)
	Inspection and acceptance of an aircraft on the Kenyan Register	30% of fee for issuance of Certificate of Registration
	Obtaining copy of the Civil Aircraft Register	KES 3,000/= (approx. \$30 USD)

4a. How long does registration take?

The aircraft registration process typically takes up to 90 days but this may be longer if the KCAA requests for additional documents or clarifications.

5. Are there any weight and/or maximum age restrictions to register an aircraft in Kenya?

There are no weight and/or maximum age restrictions when registering an aircraft in Kenya.

6. Does registration of an aircraft in the national registry constitute proof of ownership under the laws of Kenya?

Registration of aircraft in the Kenya's national registry and the subsequent issuance of the Certificate of Registration by KCAA constitutes prima facie evidence of ownership of the aircraft. However, such evidence is not conclusive evidence of ownership given that the Register does not confirm legal title. It is worth noting that all certificates of registration issued by the KCAA are endorsed with the following note: "This Certificate is not proof of the Aircraft Ownership".

7. How is an aircraft title transfer effected in Kenya? What are the formalities required to register such title transfer in the national registry of Kenya? (e.g., notarization, legalization etc.)? Please summarize the related costs and procedures.

The transfer of aircraft in Kenya is effected by way of a bill of sale. The bill of sale documents the agreed terms between the transferor and transferee including the consideration for the sale of the aircraft.

In Kenya, every instrument chargeable to stamp duty is required to be stamped within 30 days after it is first executed or if executed outside Kenya, within 30 days after it is received in Kenya. No instrument or document chargeable to stamp duty can be admitted in evidence in any proceedings (other than criminal proceedings) unless it is duly stamped. A bill of sale is chargeable to nominal stamp duty (approximately \$2 USD) under the Stamp Duty Act (Chapter 480 of the Laws of Kenya). Therefore, once the bill of sale is duly executed by the relevant parties, stamp duty must be paid

to the Collector of Stamp Duty in Kenya. There is no requirement for the bill of sale to be notarized or legalised in Kenya.

If the aircraft is registered in Kenya, the transferee must then write to the KCAA and inform them of the change of ownership of the aircraft. If the aircraft is not registered in Kenya, the duly stamped aircraft bill of sale will be required as proof of aircraft ownership when submitting an application for registration.

8. What information and details are reflected in the Certificate of Registration of an aircraft?

The following particulars are reflected in the Certificate of Registration

1. the nationality mark of the aircraft, and the registration mark assigned to it by the KCAA;
2. the name of the manufacturer and the manufacturer's designation of the aircraft;
3. the serial number of the aircraft;
4. the name of the owner;
5. address of the owner;
6. name or logo of the Authority;
7. the number of the certificate;
8. the name and address of every person who is entitled as owner to a legal interest in the aircraft or a share therein, or, in the case of a lease agreement or financial arrangement, the names and addresses of lessee and lessor or as the case may be, the financier;
9. conditions with regard to which it is registered; and
10. date of issue.

9. Are the entries in the aircraft registry of Kenya made available to the public upon submission of a specific application to the competent authority? Are there any fees payable for this?

The entries are available upon a party making a formal request and paying the applicable fee of KES 3,000 (approx. \$30 USD) to the KCAA, which will then provide an extract of the register relating to the aircraft.

10. What kind of aircraft operations can be conducted with aircraft registered in Kenya (i.e., private use, commercial air transport or both)?

Both private and commercial air transport operations can be conducted with aircraft registered in Kenya. However, it is worth noting that commercial air transport operations are subject to heightened regulatory scrutiny. For example, no operator can engage in commercial air transport in Kenya unless the operator is issued with an air operator certificate by the KCAA.

11. Does the civil aviation authority in Kenya authorise the operation of foreign registered aircraft? If so, with which countries has Kenya entered into bilateral agreements on the basis of article 83-bis of the ICAO Chicago Convention for the delegation of regulatory oversight?

The KCAA does not generally authorise the operation of foreign registered aircraft. An operator in Kenya can lease a foreign registered aircraft but only for six months (as provided in the Civil Aviation (Air Operator Certification and Administration) Regulations, 2018), renewable only once. The aircraft, subject of the lease herein, will therefore eventually have to be registered in Kenya. Kenya is not party to any 83-bis bilateral agreements.

Kenya

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12. Is there a separate register of aircraft mortgages and/or leases and/or security interests in Kenya?

Kenya does not have a separate register of mortgages, rights over aircraft, or a law that specifically governs the same.

13. What are the formalities required to register a mortgage / lease / security interest in the national registry of Kenya (e.g., notarization, legalization etc.)? Please summarize the related costs and procedures.

While the KCAA does not maintain a separate register of security interests, the KCAA typically includes the financier's interests and other interests in aircrafts in the register of aircrafts and notes the interests of financiers/lessors/lessees in the Certificate of Registration. A certified copy of the mortgage or the document creating the financial arrangement together with a letter from the financier to the KCAA requesting for its interest to be registered must be produced to the KCAA for the KCAA to register the financier's interest. It is our understanding that the KCAA intends to introduce legislation in relation to the registration of mortgages, but this has still not been done.

Where an aircraft mortgage over an aircraft is created by a Kenyan company (as mortgagor), registration at the Companies Registry in accordance with section 878 of the Companies Act, 2015 is necessary. In order to perfect the charge under the Companies Act, the charge must be assessed for stamp duty at the rate of 0.1% of the secured amount. The stamped charge should then be presented to the Registrar of Companies together with the duly completed statutory form for registration. For charges created in Kenya, the stamped charge should be presented for registration within 30 days of the date of the charge. Where the charge is created outside Kenya, it should be presented for registration within 21 days of the date of its receipt in Kenya. Registration fees will vary between KES 2,000 (approx. \$20 USD) and KES 14,000 (approx. \$140 USD) depending on the amount secured by the charge.

It is noteworthy that failure by a Kenyan company to meet the above deadlines amounts to a criminal offence and upon conviction, each defaulting officer of the company will be liable to a fine not exceeding KES 1,000,000/= (approx. \$10,000 USD). On successful registration, a certificate will be issued by the Companies Registrar which shall constitute conclusive evidence that the requirements as to registration have been complied with.

14. Is a mortgage priority notice an available security instrument for aircraft financiers in Kenya?

A mortgage priority notice is not an available security instrument for aircraft financiers in Kenya.

15. Does an aircraft mortgage duly registered in in the national registry of Kenya extend to engines and other parts of such aircraft (either installed or not on the airframe)?

Kenya does not have a separate register of mortgages or rights over aircraft and does not maintain a specific register over parts of an aircraft.

16. What statutory liens (if any) would rank prior to an aircraft mortgage duly registered in the national registry of Kenya?

Under the Second Schedule to Kenya's Insolvency Act (No. 18 of 2015), money realised from the assets of an insolvent company is applied to meet the claims of creditors in the order of priority set out below. It should be noted that this ranking is after fixed charge security holders have been paid since secured assets would not form part of the insolvency estate.

Generally, the claims are settled in the following order:

1. First priority claims: Liquidators' and administrators' fees and expenses together with reasonable costs incurred during the court proceedings. Costs incurred by a creditor to preserve an insolvent company's assets are also included.
2. Second priority claims: Employee-related claims (such as unpaid wages and contributions to occupational pension schemes). Outstanding statutory deductions from employees' salaries that were not paid (for example, PAYE, NSSF (retirement benefits contribution), NHIF (statutory health insurance contributions)) are also due.
3. Third priority claims: Unpaid taxes, such as customs and excise duty.
4. Fourth priority claims: Holders of non-crystallised floating charges.
5. Unsecured creditors: These claims having the same priority rank equally among themselves and are payable on a pari passu basis.

In addition, Kenya has made the following declaration under Article 39(1)(a) of the Cape Town Convention relating to priority of a non-consensual right or interest and provides:

"Kenya declares that the following categories of non-consensual right or interest:

- (a) Liens of workers for payments due arising out of employment relations;
- (b) Liens created by repairmen on goods in their possession;
- (c) Liens created by bailees on goods in their possession; and
- (d) Taxes, duties and or levies due to the Government, have priority under its law over an interest in an object equivalent to that of the holder of a registered international interest and shall have priority over a registered international interest, whether in or outside insolvency proceedings."

17. Do the laws of Kenya provide for possessory rights and/or rights of detention over aircraft in favor of third parties (such as airport taxes, customs duties, air navigation charges, crew's wages, MRO's receivables)?

Section 35 (5) of the Civil Aviation Act gives the KCAA's Director General powers to seize and detain an aircraft where an operator has failed to pay any fees payable to the KCAA. The KCAA may also detain an aircraft if serious safety and security concerns are identified.

18. Are foreign law-governed security agreements (e.g., mortgages) recognized in Kenya in order to validly create a security interest over an aircraft registered in the national registry of Kenya? If so, are there any formalities/requirements to bear in mind?

Foreign law-governed security agreements are recognized in Kenya. Kenyan contract law is based on the fundamental principle of freedom to contract which gives the parties the right to agree on a choice of law that would govern the performance of the contract and dispute settlement that may arise from performance or non-performance of the contract. Where the parties to a contract expressly stipulate that the contract shall be governed by a particular law, that law will be the law of the contract. The courts of Kenya will observe the choice of the said foreign law as the governing law of the contract, provided that the choice of law was made in good faith and not for extraneous purposes or to perpetuate fraud or any other illegal purpose and that there is no objection on the grounds of public policy.

That said, it is important to note that in the case of *Blue Sky One Ltd v Mahan Air (the Blue Sky case)* which would have persuasive authority in Kenya, the English High Court confirmed that the

Kenya Continued...

validity of an English law aircraft mortgage is to be determined by the law of the place where the aircraft is situated (the *lex situs*) on the date the English law aircraft mortgage is executed. In addition, the court held that in determining whether the mortgage was valid, one has to look at the domestic law of the *lex situs* rather than the contractually agreed governing law of the mortgage. Kenya recognises an English law aircraft mortgage. The effect of the Blue Sky Case is that Kenyan law will be the law governing the validity of the mortgage if the aircraft is situated in Kenya at the time the aircraft mortgage is executed.

19. Are foreign law-governed leases recognized in Kenya in order to validly lease an aircraft registered in the national registry of Kenya to a lessee incorporated in Kenya? If so, are there any formalities/requirements to bear in mind?

Foreign law-governed leases are recognized in Kenya. As discussed above, Kenyan contract law is based on the fundamental principle of freedom to contract which gives the parties the right to agree on a choice of law that would govern the performance of the contract and dispute settlement that may arise from performance or non-performance of the contract.

20. Has Kenya ratified the Cape Town Convention on International Interests in Mobile Equipment and the related Aircraft Protocol? Has Kenya made any declarations in order to better determine the scope of application of the Convention / Protocol? If so, what is the impact of such declarations on aircraft registration issues? Are there any specific aspects relating to the enforcement of IDERA's to be considered?

Kenya ratified the Cape Town Convention and the related Aircraft Protocol on 13 October 2006. Kenya has also lodged several declarations relating to both the Cape Town Convention and the Aircraft Protocol. The declarations do not affect aircraft registration and do not affect the enforcement of IDERAs.

21. What are the requirements and documentation to deregister an aircraft from Kenya? How does the aircraft deregistration process work?

The KCAA may, deregister or cancel the registration of an aircraft upon application by the registered owner for the purposes of registering the aircraft in another State or for any other purpose; or upon the destruction of the aircraft or its permanent withdrawal from use.

Before deregistering an aircraft, KCAA will require the registered owner of the aircraft to return to KCAA the Certificate of Registration, settle all liens or encumbrances attached to the aircraft and remove all nationality and registration marks assigned to the aircraft.

The following documents are required when applying for deregistration:

1. The original and duly signed Certificate of Registration;
2. Proof of payment of the prescribed fees;
3. Landing and parking fees clearance;
4. Air Navigation charges clearance; and
5. Evidence of release from previous lease agreement or financier (if applicable).

In many financing transactions, financiers ask mortgagors to provide deregistration powers of attorney enabling the financier to deregister the aircraft in the event of a default under the terms of the loan agreement.

22. What fees are payable to deregister an aircraft from Kenya?

The fee payable is KES 10,000/= (approx. \$100 USD).

23. Is the consent of the mortgagee / lessor (as the case may be) required in order to deregister an aircraft from Kenya?

In Kenya, the KCAA requires the registered owner or a mortgagee whose interest has been noted on the aircraft's Certificate of Registration to consent to the deregistration of the aircraft.

24. What are the usual practical difficulties (if any) involved in deregistering aircraft from Kenya?

Deregistration of the aircraft may be difficult in the event the process involves an operator who impedes access to the removal of the aircraft from the jurisdiction. Administrative challenges such as further information requests at the KCAA may also delay the process.

In addition, the process may also be delayed where there is a financier or lessee who has not filed the requisite documents with the KCAA, such as the letters of consent to allow the deregistration to proceed. This is because the financier must file the relevant documents at the KCAA which are subject to further verification.

25. How long does deregistration take, both where there is co-operation from the defaulted party (mortgagor / lessee / operator) and where there is no such co-operation from it?

In leasing and financing transactions, the lessees and mortgagors are asked to provide deregistration powers of attorney enabling the seamless deregistration without the need for cooperation by the defaulted party. Following this, the timeline for the deregistration process varies on a case-by-case basis, but ordinarily takes five to 21 business days.

26. Please outline the applicable repossession rules under the national laws of Kenya (and the Cape Town Convention, if applicable) following an event of default under a mortgage or a lease, including registration issues with the national registry in Kenya.

Upon an event of default, the lessor may peacefully take possession of the aircraft provided that this is a stipulated term of the lease or the lessee otherwise agrees. The lessor will be required to write to KCAA to ground the aircraft to enable it to take possession of the aircraft. KCAA usually requires that all the charges that have accrued in respect of the aircraft to KCAA and any other government entity be paid first before it grounds the aircraft. The lessor must also have obtained an Irrevocable Deregistration and Export Request Authorisation (IDERA) signed by the lessee and recorded with KCAA for KCAA to agree to ground the aircraft.

A lessee can accede to a lessor's request to return or surrender the aircraft. Alternatively, if the lessor can gain access to the aircraft, the lessor can proceed with repossession. In the event that the lessee is not cooperative, the lessor can apply to the High Court for an order to repossess or sell the aircraft.

The lessor's rights to repossess can be impeded by a lessee by applying to the courts for injunctive orders to prevent repossession of the aircraft by a lessor or orders for the restoration of the repossessed aircraft.

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Malta



Malta

Submitted by: *Matthew Xerri, Ganado Advocates*

1. Which authority is in charge of the civil aviation registry in Malta? Does Malta use a single-registry system or is there a dual-registry system in place?

Transport Malta, the authority overseeing transport in Malta, is "in charge" of the National Aircraft Registry ("NAR") in Malta. The NAR uses a single registry system. Nonetheless, the NAR does implement, when requested, the Article 83 bis arrangements under the Chicago Convention.

2. Is the registry an operator registry or an owner registry (or both)?

The aircraft register in Malta is an operator's register. Nonetheless, an owner can register an aircraft in Malta in the event that the aircraft is not being temporarily operated or else the owner and the operator are the same entity.

3. What are the requirements and documentation to register an aircraft in Malta? Include references to formalities such as notarisation, legalization, etc.

It shall be lawful to register any aircraft which is under construction upon it becoming uniquely identifiable.

Basic Requirements

Prior to registration, it is a basic requirement that the airline/operator is eligible to register an aircraft in Malta. These persons/bodies are:

- (a) the Government of Malta;
- (b) a citizen of Malta or a citizen of a Member State of the European Union or of an EEA State, or Switzerland having a place of residence or business in Malta, the European Union, the European Economic Area or Switzerland, including a person sharing in the ownership of such aircraft by virtue of the community of acquests subsisting between such person and a citizen as described above in whose name the aircraft is registered;
- (c) an undertaking formed and existing in accordance with the laws of Malta, of a Member State of the European Union, of an EEA State or of Switzerland and having its registered office, central administration and principal place of business within Malta, or the European Union, or the European Economic Area or Switzerland whereof not less than fifty per cent of the undertaking is owned and effectively controlled by the Government of Malta, or by any Member State of the European Union, or by persons referred to in (b), whether directly or indirectly through one or more intermediate undertakings;
- (d) a natural person who is a citizen of, or an undertaking established in, an approved jurisdiction, other than those mentioned in (b) or (c) above, shall be qualified to register an aircraft in construction or one which is not used to provide air services if it;
 - (i) enjoys, to the satisfaction of the Director General responsible for civil aviation in Malta, legal capacity to own or operate an aircraft in terms of the law under which it has been established or registered;
 - (ii) complies with the requirements established under the

Aircraft Registration Act, 2010 ("ARA"), any regulations or guidelines issued pursuant thereto;

- (iii) satisfies the Director General that it can and will ensure due observance of the laws of Malta relating to civil aviation; and
- (iv) appoints a resident agent in Malta for the duration of the registration in accordance with the requirements of the ARA.

Under the ARA, a qualified person may apply to register an aircraft in the following capacities:

- (a) an owner of the aircraft who operates the said aircraft; or
- (b) an owner of an aircraft under construction or temporarily not being operated or managed; or
- (c) an operator of an aircraft under a temporary title (by virtue of a lease agreement) which satisfies the conditions which may be prescribed; or
- (d) a buyer of an aircraft under a conditional sale or title reservation or similar agreement which satisfies the conditions which may be prescribed and who is authorised to operate the aircraft.

Where the applicant for registration of an aircraft is a person enjoying a temporary title (by virtue of a lease agreement), whether or not an unqualified person holds any interest therein by way of ownership, the aircraft may be registered in the name of that person upon the Director General being satisfied that the aircraft may otherwise be properly registered, and the aircraft may remain registered for the duration of the temporary title.

Documents Required

To register an Aircraft in Malta, the operator/airline will have to furnish the Director General responsible for civil aviation with an application, along with the following documents:

- (i) Deregistration Certificate in the event the aircraft was previously registered in another state;
- (ii) documents pertaining to the owning entity of the aircraft, such as:
 - a. the Certificate of Registration,
 - b. memorandum and articles of association,
 - c. extract or certificate of good-standing;
- (iii) an application form signed by the operator;
- (iv) constitutional documents on the operator;
- (v) radio licence;
- (vi) insurance certificate;
- (vii) photo of registration marks and fire proof plates;
- (viii) lease agreement;
- (ix) proof of ownership - such as a bill of sale (and also a Power of Attorney); and
- (x) statement of no mortgages.

Notwithstanding, the Civil Aviation Directorate reserves the right to request further documentation from operator/airlines and therefore it is always suggested to first file the application form and then request a list of the documents required to register the aircraft.

The Civil Aviation Directorate requests that documents signed in the EU are notarised, while those executed outside of the EU are

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notarised and apostilled. However, the Civil Aviation Directorate can also waive these requirements.

3a. How does the aircraft registration process work?

The aircraft registration process is two-fold:

1. Firstly, the operator/airline wishing to register an aircraft in Malta must ensure it is compliant with the eligibility criteria to register an aircraft in Malta outlined in the Basic Requirements section above.
2. Secondly, and on the condition that Part 1 has been satisfied, the operator/airline shall provide the Director General with the aircraft application and the documents identified in the Documents Required section above. Upon receiving the aforementioned documents and after being satisfied that the aircraft may be registered, the Director General shall issue a Certificate of Registration, which is not transferable, against a fee as outlined in the ARA (fees payable on the registration of an aircraft are identified in Question 4).

4. What fees are payable to register an aircraft in Malta?

The First Schedule of the ARA identifies the fees that are payable to the Director General for the issue of Certificate of Registration in respect of an aircraft:

- (i) Aeroplanes having an empty weight not exceeding 150 kg, a wing area of not less than 10 square metres, and a wing loading not exceeding 10kg per square metre at empty weight and which are designed to carry not more than 2 persons..... €60

Any other aircraft whose maximum take-off mass:

- (ii) does not exceed 750 kg..... €80
- (iii) exceeds 750 kg but not 2730 kg€150
- (iv) exceeds 2730 kg but not 5700 kg €220
- (v) exceeds 5700 kg but not 15 tonnes.....€300
- (vi) exceeds 15 tonnes but not 50 tonnes.....€450
- (vii) exceeds 50 tonnes€750

On making an application for a revised Certificate of Registration, the following charges shall apply:

- (i) if due to change of address, or other technical details, a fee of €50 will be applicable.
- (ii) if due to change of legal ownership of the aircraft, a charge equal to 50% of the fee as would be payable for the issue of the initial Certificate of Registration.
- (iii) if for a replacement Certificate of Registration or aircraft Deregistration, the registered owner of the aircraft shall pay €50.

Other Fees

Fees have also been introduced for registration of Mortgages (€500) and for the registration of an IDERA (Euro 100 each IDERA). A fee of €250 is payable upon the registration of an amendment mortgage.

A charge of €250 is applicable, in addition to the registration fee, for making an application for the reservation of a customised out of sequence registration mark.

The registration fees (and any other fees mentioned above) will be payable when the aircraft is registered in Malta and are not related to the transactions contemplated or the financing.

4a. How long does registration take?

On the condition that the operator/airline seeking registration

provides documentation of a satisfactory standard in the eyes of the Director General, the duration of the registration process ranges between seven to 10 business days from when the documents start being filed. This may vary as the registry may request further documentation from operator/airlines, and thus lengthening the process.

5. Are there any weight and/or maximum age restrictions to register an aircraft in Malta?

Maltese law does not stipulate any weight or maximum restrictions to register an aircraft; however, it is necessary that the Director General is satisfied that all regulations relating to the safety or the operation or the airworthiness of the aircraft are being complied with.

6. Does registration of an aircraft in the national registry constitute proof of ownership under the laws of Malta?

The Certificate of Registry of the aircraft constitutes prima facie evidence of ownership of the aircraft under the laws of Malta. A bill of sale confirming the identity of the owner will constitute proof of ownership of an aircraft under Maltese Law. The Certificate of Registration confers rights to an aircraft to be subject to the laws of Malta and have all the rights and privileges of a Maltese aircraft.

7. How is an aircraft title transfer effected in Malta? What are the formalities required to register such title transfer in the national registry of Malta (e.g., notarization, legalization etc.)? Please summarize the related costs and procedures.

Any registrant of an aircraft shall inform the Director General in writing of a transfer of title of an aircraft. The Maltese Registry would usually request the following documents:

- (i) Certified true copy of the executed bill of sale (evidence of the transfer of title);
- (ii) Copy of the duly executed corporate authorities or power of attorney appointing the representatives who have signed the bill of sale;
- (iii) If there is a lease agreement in place, then a copy of the novation/amendment deed by which the lease has been novated to the new lessor;
- (iv) corporate documents of the new owner/lessor including the Certificate of Registration and memorandum/articles of association (or other equivalent statutory document); and
- (v) new IDERA/mortgage in favour of the new lessor, together with the relevant Power of Attorney/corporate authorities (where applicable). The Powers of Attorney appointing signatories to sign and submit any security documents (IDERA, mortgages or a deregistration power of attorney) to be registered over an aircraft registered in Malta will need to be notarised and apostilled.

A new certificate must be issued recording this change in title and a charge equal to 50% of the fee as would be payable.

Also, since Malta is party to the Cape Town Convention, we would usually recommend that the transfer of ownership is also registered in the international registry.

8. What information and details are reflected in the Certificate of Registration of an aircraft?

The Certificate of Registry shall include the following particulars:

- (a) The name and address of the registrant;

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- (b) The name, address and ownership interests or title of the owner (if different);
- (c) The date of issue of the Certificate of Registration;
- (d) the number of the Certificate of Registration;
- (e) the nationality marks of the aircraft, and the registration marks assigned to it by the Director General;
- (f) the name of the constructor of the aircraft and its designation;
- (g) the serial number of the aircraft; and
- (h) the manufacturer, the serial numbers, and physical details of the engines attached to the aircraft and any replacement engines to the extent they are designated for use on the aircraft.

9. Are the entries in the aircraft registry of Malta made available to the public upon submission of a specific application to the competent authority? Are there any fees payable for this?

Any registration of an aircraft in the NAR in Malta shall have its information made public once the registration of the aircraft has been completed. The information shall be considered to be within the knowledge of third parties. Any person can request a transcript to be issued on a specific aircraft - duly issued upon payment of the prescribed fee. Kindly note that the details of any lease agreement or mortgage will not be available to the public.

10. What kind of aircraft operations can be conducted with aircraft registered in Malta (i.e., private use, commercial air transport or both)?

An aircraft registered in Malta can use the aircraft for purposes relating to private use and commercial air transport.

11. Does the civil aviation authority in Malta authorise the operation of foreign registered aircraft? If so, with which countries has Malta entered into bilateral agreements on the basis of article 83-bis of the ICAO Chicago Convention for the delegation of regulatory oversight?

The National Aircraft Registry in Malta does authorise the operation of foreign registered aircrafts. Malta has entered into bilateral agreements on the basis of Article 83 bis of the ICAO Chicago Convention with Italy, Greece and Ireland. However, these are entered into on a per aircraft basis and if requested the Malta Civil Aviation Directorate would enter into an Article 83 bis agreement with other countries.

12. Is there a separate register of aircraft mortgages and/or leases and/or security interests in Malta?

No, there is one registry, the National Aircraft Registry, which caters for the registration of aircrafts, aircraft mortgages, aircraft leases and aircraft security interests.

13. What are the formalities required to register a mortgage / lease in the national registry of Malta (e.g., notarization, legalization etc.)? Please summarize the related costs and procedures.

Mortgage Registration

When a mortgage is lodged at the NAR, the form is to be prepared in accordance with the prescribed form, which shall indicate the following:

- (a) Details on the aircraft;
- (b) Details pertaining to the loan agreement;

- (c) Mortgagee details;
- (d) Borrowers details;
- (e) Mortgagor details;
- (f) Details pertaining to the aircraft mortgage agreement;
- (g) Any other details (prohibition against the creation of new mortgages and/or the transfer of the aircraft);

Once the mortgage form has been produced in the prescribed form, the Director General shall record it in the National Register.

Upon the registration of a mortgage in terms of the First Schedule of ARA, a charge of €500 shall be payable to the Director General. A charge of €250 shall be payable to the Director General upon registering an amendment mortgage.

Lease Registration

There is no particular form which a lease should be registered in; however, the Civil Aviation Directorate requires that the lease agreement complies with the following:

- (a) Such an agreement must be in English. If it is in any other language, then it must be accompanied by a certified translation;
- (b) The date as to when the agreement was made and the duration of the agreement;
- (c) The agreement must be a Certified True Copy. If the agreement is from outside Europe it should be legalised and apostilled;
- (d) The signatures on the agreement must be authenticated according to the list of signatories. This also applies to the initials on each page of the document;
- (e) Reference must only be made to the Maltese registration marks and not to the previous registration marks of the aircraft;
- (f) The agreement/s shall have clear delineation of responsibilities of the parties involved pursuant to the applicable laws and regulations;
- (g) The agreement/s shall contain clear suspension/termination clauses.

Furthermore, it is important to note that if the lease is intended to be registered as an international interest then it is required that the lease is compliant with the requirements under the Cape Town Convention for it to constitute an international interest.

No fees are payable upon the registration of a lease with the NAR.

14. Is a mortgage priority notice an available security instrument for aircraft financiers in Malta?

A mortgage priority notice is not an available security instrument for aircraft financiers in Malta. However, aircraft mortgages take priority according to the date and time at which they were registered - meaning that when a mortgage is registered on an aircraft, it will take priority over any mortgages registered at a later date and time.

15. Does an aircraft mortgage duly registered in in the national registry of Malta extend to engines and other parts of such aircraft (either installed or not on the airframe)?

The ARA states that where an engine has been attached to an airframe which is not also owned by the airframe owner, each of the owners shall retain the ownership of the thing and the engine shall not accede to the airframe. Article 26 (4) of the ARA states that any security over the aircraft shall not extend to any engine attached to the airframe when such engine does not belong to the owner of the airframe who has granted the security, notwithstanding that the engines may be specifically referred to in the instrument of mortgage, the National Aircraft Register or elsewhere.

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Furthermore, an aircraft shall comprise of any engines owned by the owner of the aircraft whether attached to the aircraft or not, as well as any replacement engines which are designated for use on the aircraft and owned by the owner of the aircraft but temporarily not attached to the aircraft.

16. What statutory liens (if any) would rank prior to an aircraft mortgage duly registered in the national registry of Malta?

Being a civil law jurisdiction, in Malta, liens are referred to as special privileges. Any debt secured by a mortgage registered in the NAR or a charge in the International Registry or secured by a foreign mortgage recognised under the ARA shall rank after the debts secured by possessory liens and, special privileges on aircraft (as specified below) and in preference to other hypothecary and privileged claims:

- (a) judicial costs incurred in respect of the sale of the aircraft and the distribution of the proceeds thereof pursuant to the enforcement of any mortgage or other executive title;
- (b) fees and other charges due to the Director General arising under applicable law of Malta in respect of the aircraft;
- (c) wages due to crew in respect of their employment on the aircraft;
- (d) debt due to the holder of a possessory lien for the repair, preservation of the aircraft to the extent of the service performed on and value added to the aircraft;
- (e) the expenses incurred for the repair, preservation of the aircraft to the extent of the service performed on and value added to the aircraft; and
- (f) wages and expenses for salvage in respect of the aircraft.

The debts listed above shall rank in the order set out and in preference to all other claims, on the condition that the person in possession of the aircraft enjoying a possessory lien shall not be constrained to release the aircraft until the sums due to him are unconditionally discharged or otherwise secured to his satisfaction, and in any such case shall rank first on such security.

17. Do the laws of Malta provide for possessory rights and/or rights of detention over aircraft in favor of third parties (such as airport taxes, customs duties, air navigation charges, crew's wages, MRO's receivables)?

Yes, for judicial costs, registration dues, crew wages, repairs and possessory lien holders and salvage (as set forth in Article 42(1) of the ARA).

Any debt secured by a mortgage registered in the NAR or a charge in the International Registry or secured by a foreign mortgage recognised under the ARA shall rank after the debts secured by possessory liens and, special privileges on aircraft (as specified above) and in preference to other hypothecary and privileged claims.

The debts mentioned below shall, on registration in the International Registry, rank after the debts referred to above (special privileges) but after all debts secured by mortgages and charges in the International Registry registered prior to the date of the registration of the relevant privilege.

The debts mentioned in the following paragraph are secured by a special privilege upon the aircraft, as well as any proceeds from any indemnity arising from any mishaps as well as any insurance proceeds, other than from a liability policy, if registered in the International Registry after the effective date:

- (a) taxes, duties and, or levies due to the Government of Malta in respect of the aircraft; and

- (b) wages and expenses for assistance or recovery in respect of the aircraft.

18. Are foreign law-governed security agreements (e.g., mortgages) recognized in Malta in order to validly create a security interest over an aircraft registered in the national registry of Malta? If so, are there any formalities/requirements to bear in mind?

Foreign law-governed security agreements are recognised in Malta to validly create a security interest over an aircraft registered in the national registry of Malta on the condition that such security interests are registered in accordance with the ARA. Any foreign security interests will be enforceable in Malta and shall have the status and all rights and powers specified in the ARA.

The choice of the laws of a foreign country to govern a security agreement would be recognised and given effect to as a valid choice of law in any action in the courts of Malta in accordance with the provisions of Regulation 593/2008/EC of the European Parliament and of the Council on the law applicable to contractual obligations (Rome I) of 17 June 2008 ("Rome I Regulation"). The Rome I Regulation applies to contracts concluded after 17 December 2009. It should be noted; however, that:

- (a) in terms of the said Regulation there are certain instances where other laws may prevail irrespective of the choice of governing law (including in the case of overriding mandatory provisions or the public policy of the forum). In particular (i) where all other elements relevant to the situation at the time of the choice are located in a country other than the country whose law has been chosen, the choice of the parties does not prejudice the application of provisions of the law of that other country which cannot be derogated from by agreement; and (ii) where all other elements relevant to the situation at the time of choice are located in one or more Member States of the European Communities, the parties' choice of applicable law other than that of a Member State shall not prejudice the application of provisions of Community law, where appropriate as implemented in the Member State of the forum, which cannot be derogated from by agreement;
- (b) in certain instances the Rome I Regulation also imposes limits on the autonomy of the will of the parties to select the applicable law in contract.

In the event of a default of any term or condition referred to in such security agreement, upon giving notice in writing to the debtor, the holder of a security interest shall:

- have the power to terminate the security agreement and take possession or control of the aircraft to which the security agreement relates; or
- apply to the court to authorise or direct either of the above acts.

We express no opinion as to the choice of a foreign law to govern obligations falling outside the scope of the Rome I Regulation.

Furthermore, the ARA holds that a foreign mortgage shall be recognised as a mortgage, notwithstanding that it is not entered on a registered aircraft if:

- (a) the mortgage in question was validly recorded in the registry of the aircraft's registry or any other registry of the country under whose laws the aircraft is documented;
- (b) such registry is a public registry;
- (c) the mortgage attached to the aircraft is granted an equivalent and preferential status as a mortgage registered under the ARA; and

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(d) the mortgage may be discovered upon a search of such registry.

19. Are foreign law-governed leases recognized in Malta in order to validly lease an aircraft registered in the national registry of Malta to a lessee incorporated in Malta? If so, are there any formalities/requirements to bear in mind?

Foreign law-governed lease agreements are recognised in Malta and such aircrafts may be registered in Malta on the condition that the Civil Aviation Directorate is satisfied that the lease agreement complies with the following:

- a) Such an agreement must be in English. If it is in any other language, then it must be accompanied by a certified translation;
- b) The date as to when the agreement was made and the duration of the agreement;
- c) The agreement must be a Certified True Copy. If the agreement is from outside Europe it should be legalised and apostilled.;
- d) The signatures on the agreement must be authenticated according to the list of signatories. This also applies to the initials on each page of the document;
- e) Reference must only be made to the Maltese registration marks and not to the previous registration marks of the aircraft;
- f) The agreement/s shall have clear delineation of responsibilities of the parties involved pursuant to the applicable laws and regulations.;
- g) The agreement/s shall contain clear suspension/termination clauses.

Furthermore, in terms of Maltese law, if the lease is to be registered as an international interest then it is important that it complies with the requirements under the Cape Town Convention on International Interests in Mobile Equipment and the related Aircraft Protocol ("Cape Town Convention and Protocol") in order to constitute an international interest.

20. Has Malta ratified the Cape Town Convention on International Interests in Mobile Equipment and the related Aircraft Protocol? Has Malta made any declarations in order to better determine the scope of application of the Convention / Protocol in Malta? If so, what is the impact of such declarations on aircraft registration issues? Are there any specific aspects relating to the enforcement of IDERA's to be considered?

The Cape Town Convention is in force in Malta and a consolidated text of the Cape Town Convention and Protocol has been reproduced in the First Schedule of the ARA and has force of law in Malta in relation to matters to which they apply and shall prevail over any other law, in a case of conflict.

- (1) Pursuant to Article 39 1(a) of the Convention, it is declared that the following categories of non-consensual right or interest;
 1. Judicial costs incurred in respect of the sale of the aircraft and the distribution of the proceeds thereof pursuant to the enforcement of any mortgage or other executive title;
 2. Fees and other charges due to the Director General arising under applicable law of Malta in respect of the aircraft;
 3. Wages due to crew in respect of their employment on the aircraft;
 4. Any debt due to the holder of a possessory lien for the repair, preservation of the aircraft to the extent of the service performed on and value added to the aircraft;
 5. The expenses incurred for the repair, preservation of the

aircraft to the extent of the service performed on and value added to the aircraft; and

6. Wages and expenses for salvage in respect of the aircraft, have priority under the laws of Malta over an interest in an object equivalent to that of the holder of certain registered international interests and shall have priority over such registered international interests whether in or outside insolvency.
- (2) Pursuant to Article 39 (4) of the Convention, it is declared that all categories of non-consensual rights or interests which under Maltese law constitute a special privilege on an aircraft shall have priority over an international interest registered prior to the date of its deposit of its instrument of accession.
- (3) Pursuant to Article 40 of the Convention, it is declared that the following categories of non-consensual right or interest;
 1. taxes, duties and/or levies due to the Government of Malta in respect of the aircraft; and
 2. wages and expenses for assistance or recovery in respect of the aircraft shall be registrable under the Convention as regards aircraft objects as if the right or interest were an international interest and shall be regulated accordingly.
- (4) Pursuant to Article 53 of the Convention, it is declared that the First Hall of the Civil Court is the relevant court for the purposes of Article 1 and Chapter XII of the Convention.
- (5) Pursuant to Article 54 (2) of the Convention, it is declared that all remedies available to the creditor under the Convention or Protocol which are not expressed under the provision thereof to require application to the court, may be exercised without leave of the court or other court action.
- (6) Pursuant to Article XXX (1) of the Aircraft Protocol, it is declared that Article XIII of that Protocol applies to and in respect of Malta.

21. What are the requirements and documentation to deregister an aircraft from Malta? How does the aircraft deregistration process work?

In order to deregister the aircraft, an application has to be filed by the registrant of the aircraft, which would be the operator. If the deregistration is taking place by the IDERA holder, then no application needs to be filed; however, the IDERA holder must inform the Civil Aviation Directorate about such deregistration and the latter should follow the instructions.

It is the registrant (i.e., the operator) who can apply for deregistration of the aircraft, unless there is an IDERA in place. If there is an event of default, then the IDERA holder can deregister the aircraft.

22. What fees are payable to deregister an aircraft from Malta?

There is an administrative fee of EUR 50 payable for the deregistration of an aircraft. However, registrants are required to settle all outstanding fees before an aircraft can be deregistered.

23. Is the consent of the mortgagee / lessor (as the case may be) required in order to deregister an aircraft from Malta?

Given that the aircraft is typically registered by a lessee (i.e., as operator), then it would be the lessee who would be permitted to deregister the aircraft, unless an IDERA would have been registered. In the event that an IDERA would have been registered, then the consent of the IDERA holder would be required in order to be able to deregister the aircraft - in the absence of which the aircraft would only be able to be deregistered by the said IDERA holder.

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Before an aircraft can be deregistered the consent of the mortgagee is also required or else the mortgage would need to be discharged before the aircraft can be deregistered.

24. What are the usual practical difficulties (if any) involved in deregistering aircraft from Malta?

It is difficult to earmark practical difficulties that may emerge upon deregistering an aircraft from Malta as this will depend on a case-by-case basis.

25. How long does deregistration take, both where there is co-operation from the defaulted party (mortgagor / lessee / operator) and where there is no such co-operation from it?

If there is cooperation from the registrant, then deregistration should not take long (probably one to two weeks) as long as arrangements are made for the aircraft to be registered in another registry.

If there is no cooperation from the registrant and an IDERA is being utilized then the same time frame should apply, though this may depend on the actual facts of the case at hand.

26. Please outline the applicable repossession rules under the national laws of Malta (and the Cape Town Convention, if applicable) following an event of default under a mortgage or a lease, including registration issues with the national registry in Malta.

In the event of default under a mortgage or a lease agreement, the holder of a security interest formally registered in Malta (and in the international registry) in terms of the First Schedule shall upon giving notice in writing to the debtor, have the power to terminate the agreement that stands between them and take possession of the aircraft to which the agreement relates. If faced with registration issues, this will be tantamount to an event of default under the agreement, thus should the deregistration not materialise, the creditor (holder of the security interest) shall be permitted to take possession of the aircraft identified in the agreement.

The Cape Town Convention has introduced self-help remedies to Maltese law, which remedies can be obtained by a Secured Party/Lessor without the need of judicial recourse.

Upon there being an event of default, the creditor may, inter alia, take possession or control of an aircraft (Article 12 Schedule 1 of the Aircraft Registration Act). Should the operator refuse to give possession of the aircraft to the owner, the owner can apply to the Court for the help of the authorities to obtain possession of the aircraft. An event of default can be constituted by virtue of an agreement in writing made between the debtor and the creditor; or if a creditor is substantially deprived of what he is entitled to expect under an agreement with the debtor (Article 17 Schedule 1 to the Aircraft Registration Act).

DISCLAIMER: The above information should not be relied upon by the reader for legal advice as it is intended merely to serve as a preliminary guide to the laws and regulations governing the registration of aviation and aircraft in this country. The information intends to provide summary-level information about certain tax issues affecting general aviation and aircraft finance. Since these materials are general in nature, readers are encouraged to obtain legal and tax advice from their own professional legal and tax counsel based on specific facts and circumstances regarding their acquisition and/or use of aviation and aircraft.

Mexico

Santamarina + Steta

Mexico

Submitted by: *Juan Carlos Machorro and Andrés Remis, Santamarina + Steta*

1. Which authority is in charge of the civil aviation registry in Mexico? Does Mexico use a single-registry system or is there a dual-registry system in place?

Mexico's authority in charge of the civil aviation registry is the Mexican Aeronautics Registry (Registro Aeronáutico Mexicano) of the Federal Civil Aviation Agency (Agencia Federal de Aviación Civil) ("AFAC"), a division of the Secretary of Communications and Transportation of Mexico (Secretaría de Comunicaciones y Transportes). It replaced the former Directorate General of Civil Aeronautics (Dirección General de Aeronáutica Civil) on October 16, 2019.

While all aviation-related interests must be registered with the Mexican Aeronautics Registry, there are certain interests that might need to be registered with the Sole Registry of Security Interests over Movable Assets (Registro Único de Garantías Mobiliarias) ("RUG") as well.

Registration of interests pursuant to The Convention on International Interests in Mobile Equipment and its Protocol on Matters Specific to Aircraft Equipment (the "Convention") is available as well, considering Mexico is a party to the Convention.

2. Is the registry an operator registry or an owner registry (or both)?

While the Mexican Aeronautics Registry is envisaged as an operator registry, interests of both the operator and the owner can be recorded.

3. What are the requirements and documentation to register an aircraft in Mexico? Include references to formalities such as notarization, legalization, etc.

The following documentation is required to register an aircraft in Mexico:

- Evidence of title in and to the aircraft (i.e., Bill of Sale) and/or evidence of the underlying agreement that grants possession to the operator (i.e., Lease Agreement), and
- Import authorization of the aircraft issued by the Mexican customs authority.

All interests to be recorded with the Mexican Aeronautics Registry must be duly notarized. If such document(s) were (i) issued abroad, they must be notarized and further apostilled or legalized (as applicable) and/or (ii) entered in any language other than Spanish, a Spanish certified translation thereof must be issued by a Mexican court approved expert translator.

3a. How does the aircraft registration process work?

Documents referenced in section 3 above must be physically filed with the Mexican Aeronautics Registry. After the documents are reviewed by the Mexican Aeronautics Registry and the relevant registration fees are paid according to section 4 below, a certificate of registration marks is issued.

4. What fees are payable to register an aircraft in Mexico?

Fees for the issuance of the certificate of registration marks will

need to be paid and are usually in the approximate range of \$100.00 USD and \$130.00 USD. Please bear in mind that AFAC's fees are adjusted every six months.

Additionally, recordation fees are also payable and depend on the number of pages of the documents to be recorded.

4a. How long does registration take?

Registration of an aircraft in Mexico usually takes about two weeks; however, the issuance of the definitive certificate of registration marks can take longer, up to several months.

5. Are there any weight and/or maximum age restrictions to register an aircraft in Mexico?

There are no weight and/or maximum age restrictions to register an aircraft in Mexico. Registration of aircraft in Mexico can be achieved as long as the aircraft is in airworthy condition according to Mexican applicable aviation laws and regulations.

6. Does registration of an aircraft in the national registry constitute proof of ownership under the laws of Mexico?

No. Registration of an aircraft in the Mexican Aeronautics Registry does not constitute proof of ownership under the laws of Mexico. It only constitutes public notice to third parties of the rights and interests in respect of the aircraft.

7. How is an aircraft title transfer affected in Mexico? What are the formalities required to register such title transfer in the national registry of Mexico (e.g., notarization, legalization etc.)? Please summarize the related costs and procedures.

In principle, aircraft title transfers in Mexico can be achieved by means of an aircraft purchase agreement, bill of sale or similar document. Such agreement or document underlying title transfer in and to the aircraft must be duly notarized for purposes of registering it with the Mexican Aeronautics Registry. If such document(s) were (i) issued abroad, they must be notarized and further apostilled or legalized (as applicable) and/or (ii) entered in any language other than Spanish, a Spanish certified translation thereof must be issued by a Mexican court approved expert translator.

Please bear in mind that for the sale and purchase of aircraft that are located in Mexican territory and/or that are bearing Mexican registration marks (regardless of the aircraft's physical location) value added tax will be triggered at a statutory rate of 16% over the purchase price of the aircraft.

Furthermore, the sale and purchase of aircraft imported into Mexico through a temporary import regime is expressly prohibited.

8. What information and details are reflected in the certificate of registration of an aircraft?

The following information is reflected in the Mexican certificate of registration marks:

- certificate of registration number,
- registration marks,

Mexico

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- c) type of service (i.e., commercial-public, non-commercial private, etc.),
- d) aircraft make and model,
- e) aircraft serial number,
- f) aircraft manufacturer,
- g) owner,
- h) owner address,
- i) Nationality,
- j) Title of ownership,
- k) aircraft operator / possessor,
- l) operator / possessor address,
- m) Tenancy title (i.e., lease agreement),
- n) operations base, and
- o) all other registrations and entries under the aircraft (i.e., liens, securities, etc.).

9. Are the entries in the aircraft registry of Mexico made available to the public upon submission of a specific application to the competent authority? Are there any fees payable for this?

Yes. Entries in the Mexican Aeronautics Registry are public and can be accessed upon submission of a specific search request. Fees in the amount of \$10.00 USD (approximately) must be paid.

10. What kind of aircraft operations can be conducted with aircraft registered in Mexico (i.e., private use, commercial air transport or both)?

The following aircraft operations can be conducted with aircraft registered in Mexico:

- a) domestic scheduled air transportation;
- b) international scheduled air transportation;
- c) domestic non-scheduled air transportation;
- d) international non-scheduled air transportation;
- e) private commercial air transportation, and
- f) private non-commercial air transportation.

11. Does the civil aviation authority in Mexico authorize the operation of foreign registered aircraft? If so, with which countries has Mexico entered into bilateral agreements on the basis of article 83-bis of the ICAO Chicago Convention for the delegation of regulatory oversight?

In principle, foreign registered aircraft can operate in Mexico pursuant to an international scheduled and non-schedule air transportation service; however, foreign registered aircraft are expressly prohibited from engaging in cabotage operations within Mexican territory, except from those performing private non-commercial operations.

12. Is there a separate register of aircraft mortgages and/or leases and/or security interests in Mexico?

Mortgages, leases and/or security interests can all be registered with the Mexican Aeronautics Registry; however, it may be the case that certain interests may also need to be registered with the RUG.

Santamarina + Steta

13. What are the formalities required to register a mortgage / lease / security interest in the national registry of Mexico (e.g., notarization, legalization etc.)? Please summarize the related costs and procedures.

All interests to be recorded with the Mexican Aeronautics Registry must be duly notarized. If such document(s) were (i) issued abroad, they must be notarized and further apostilled or legalized (as applicable) and/or (ii) entered in any language other than Spanish, a Spanish certified translation thereof must be issued by a Mexican court approved expert translator.

Costs will generally range depending on the type of document, number of pages, etc.

14. Is a mortgage priority notice an available security instrument for aircraft financiers in Mexico?

While Mexican law does not recognize priority notices as security instruments, they are recognized as a measure to block, on a temporary basis, all registrations under the aircraft records while the underlying document by virtue of which the aircraft records were blocked is made available and further registered with the Mexican Aeronautics Registry. Priority notices may include security interests, liens, and title transfers, among others.

15. Does an aircraft mortgage duly registered in the national registry of Mexico extend to engines and other parts of such aircraft (either installed or not on the airframe)?

In principle, mortgages extend to engines and other parts of the aircraft (accessorium sequitur principale); however, specific securities (i.e., pledges) over engines and/or other parts of the aircraft can also be recorded in Mexico.

16. What statutory liens (if any) would rank prior to an aircraft mortgage duly registered in the national registry of Mexico?

None - to the extent that an aircraft mortgage was duly registered as a first ranking priority mortgage, no other lien would take priority.

17. Do the laws of Mexico provide for possessory rights and/or rights of detention over aircraft in favor of third parties (such as airport taxes, customs duties, air navigation charges, crew's wages, MRO's receivables)?

No. Self-help remedies cannot be exercised and are not available in Mexico.

18. Are foreign law-governed security agreements (e.g., mortgages) recognized in Mexico in order to validly create a security interest over an aircraft registered in the national registry of Mexico? If so, are there any formalities/requirements to bear in mind?

To the extent that the laws of the relevant country allow the creation of security agreements over collateral located and further registered in Mexico, it would be possible for such security to be recognized in Mexico. However, this is not an advisable scenario since enforcement of such security might potentially be impractical or inapplicable as a consequence of practical registration issues and therefore it would lack public notice to third parties. In that sense, it is strongly advisable for securities to be created pursuant to Mexican laws over collateral located in Mexico in order to be valid and fully enforceable.

Mexico

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19. Are foreign law-governed leases recognized in Mexico in order to validly lease an aircraft registered in the national registry of Mexico to a lessee incorporated in Mexico? If so, are there any formalities/requirements to bear in mind?

Yes. Foreign law-governed leases are recognized in Mexico in order to validly lease an aircraft registered with the Mexican Aeronautics Registry to a lessee incorporated in Mexico. Such leases need to be duly notarized. If issued abroad, they must be notarized and further apostilled or legalized (as applicable). If the lease was entered in any language other than Spanish, a Spanish certified translation thereof must be issued by a Mexican court approved expert translator.

20. Has Mexico ratified the Cape Town Convention on International Interests in Mobile Equipment and the related Aircraft Protocol? Has Mexico made any declarations in order to better determine the scope of application of the Convention / Protocol in Mexico? If so, what is the impact of such declarations on aircraft registration issues? Are there any specific aspects relating to the enforcement of IDERA's to be considered?

Yes. Mexico has ratified the Cape Town Convention on International Interests in Mobile Equipment and the related Aircraft Protocol.

Mexico's Declarations have limited the scope of the Convention and made the enforcement of the remedies set out in the Convention potentially impractical or inapplicable as no remedies can be exercised without the leave of a court since "alternative B" was chosen under Article XI of the Protocol with regards to remedies on insolvency. IDERAs are therefore not enforceable in Mexico.

21. What are the requirements and documentation to de-register an aircraft from Mexico? How does the aircraft deregistration process work?

The Mexican Aeronautics Registry will only deregister an aircraft upon request of the aircraft's operator or by a court resolution. If a security interest is registered in the Mexican Aeronautics Registry, deregistration cannot take place without the consent of the creditor.

Mexican registration marks are granted in favor of the operator of the aircraft based on its legitimate right to have possession of the aircraft. Consequently, a lessor or aircraft owner can only apply for deregistration if it complies with the following requirements (provided that the lease was terminated and that title to the aircraft was duly registered in favor of the lessor):

- a) filing of a written application signed by the owner or its legally authorized representative;
- b) filing of the public deed or instrument evidencing the signatory powers of attorney and authority;
- c) filing of the original registration marks certificate; and
- d) payment of the applicable fees and duties.

Note should be taken that, in principle, a lessor or owner will in practice be unable to obtain deregistration of an aircraft without the consent or cooperation of the aircraft's lessee or operator (please refer to question 23 below).

Santamarina
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22. What fees are payable to deregister an aircraft from Mexico?

Fees to deregister an aircraft from Mexico may apply depending on whether the aircraft is being exported.

23. Is the consent of the mortgagee / lessor (as the case may be) required in order to deregister an aircraft from Mexico?

Yes. If a security interest (i.e., mortgage) is registered in the Mexican Aeronautics Registry, deregistration cannot take place without the consent of the creditor.

24. What are the usual practical difficulties (if any) involved in de-registering aircraft from Mexico?

In principle, a lessor or owner will in practice be unable to obtain deregistration of an aircraft without the consent or cooperation of the aircraft's lessee or operator since it cannot apply for the removal of the aircraft from the operator's operating certificates as it is only the operator who can apply for such removal.

Additionally, the original certificate of registration marks must be filed for deregistration. If the lessor or owner is not in possession of such certificate, which is issued and delivered by the Mexican Aeronautics Registry to the operator only, deregistration cannot occur.

25. How long does deregistration take, both where there is co-operation from the defaulted party (mortgagor / lessee / operator) and where there is no such co-operation from it?

With the cooperation of the lessee/operator, deregistration process can be completed in about five to 10 business days after the filing of the deregistration request.

Without the cooperation of the lessee/operator/defaulting party, deregistration can only occur upon termination of the lease by the parties or by means of a court resolution. To obtain a court resolution, lessor/owner/creditor will need to initiate legal proceedings and seek court action against lessee/operator/defaulting party, which can take approximately 18 months.

26. Please outline the applicable repossession rules under the national laws of Mexico (and the Cape Town Convention, if applicable) following an event of default under a mortgage or a lease, including registration issues with the national registry in Mexico.

Under Mexican laws, a mortgagee/creditor can request the repossession of the aircraft on the occurrence of an event of default or upon termination of the underlying agreement secured by the mortgage; however, if the debtor does not voluntarily return the aircraft, the mortgagee will need to seek court action in order to enforce its rights and to repossess the aircraft.

Self-help remedies cannot be exercised and are not available in Mexico. Therefore, the repossession of an aircraft requires an order from a competent court. It will be necessary to terminate the title under which a lessee has obtained possession of the aircraft.

In principle, there are two types of proceedings to obtain an order for repossession of an aircraft:

- a) The ordinary commercial proceeding (juicio ordinario mercantil).

Mexico

Continued...

b) The executive commercial proceeding (juicio ejecutivo mercantil).

The main difference between the two types of proceedings is that an executive commercial proceeding resolution is issued within shorter statutory periods and the creditor can obtain a cautionary order to guarantee the value of its claim from the commencement of the proceeding. In principle, this ensures that the debtor will meet its obligations in full on the issuance of a final judgment in favor of the creditor.

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DISCLAIMER: The above information should not be relied upon by the reader for legal advice as it is intended merely to serve as a preliminary guide to the laws and regulations governing the registration of aviation and aircraft in this country. The information intends to provide summary-level information about certain tax issues affecting general aviation and aircraft finance. Since these materials are general in nature, readers are encouraged to obtain legal and tax advice from their own professional legal and tax counsel based on specific facts and circumstances regarding their acquisition and/or use of aviation and aircraft.

Norway

RÆDER

Norway

Submitted by: Kyrre W. Kielland, Partner, Advokatfirmaet Ræder AS

1. Which authority is in charge of the civil aviation registry in Norway? Does Norway use a single-registry system or is there a dual-registry system in place?

The Norwegian Civil Aviation Authority ("Luftfartstilsynet") is the Norwegian authority in charge of the civil aviation in Norway, cf. Civil Aviation Act section 15-3.

"Luftfartstilsynet" is also in charge of the civil aviation registry, cf. Civil Aviation Act section 3-1 and Registration of Aviation (administrative regulation) section 4.

Norway uses a single-registry system – The Norwegian Civil Aircraft Register ("Luftfartøyregisteret"), cf. Civil Aviation Act section 3-1. The Norwegian Civil Aircraft Register does, however, recognize international interests registered in the International Registry.

2. Is the registry an operator registry or an owner registry (or both)?

The Norwegian Civil Aircraft Register is an owner registry, cf. Civil Aviation Act section 3-4 and 3-5.

3. What are the requirements and documentation to register an aircraft in Norway? Include references to formalities such as notarisation, legalization, etc.

The relevant rules are regulated by the section 3-2 to 3-21 of the Civil Aviation Act and Registration of Aviation (administrative regulation) section 7 to 23.

If the aircraft has been provisionally registered abroad, ordinary registration must be carried out so that a permanent nationality and registration certificate can be issued.

In most cases, the aircraft has not been provisionally registered and is registered directly according to the rules for ordinary registration.

Requirements for the aircraft:

The aircraft must be assigned registration letters, cf. Civil Aviation Act section 3-5.

Requirements for owner: (cf. Civil Aviation Act section 3-2)

- Norwegian citizen
- EEA citizen - Citizen of an EU / EEA country.
- Non-EEA citizen - A private person who is a citizen of a country outside the EU / EEA area can apply for a dispensation from the nationality requirement in the Civil Aviation Act § 3-2. Exemption will, for example, be granted if the owner is a resident of Norway.
- Norwegian company, enterprise, or association - The Norwegian Civil Aviation Authority collects information directly from the Brønnøysund Register Centre. Property co-ownership is only accepted as owner if the co-ownership is registered in the Brønnøysund Register Centre. If the co-ownership is not registered, each individual co-owner must be the owner in the aircraft register.
- EEA company, company, or association - The company must be effectively controlled by EU / EEA citizens. For example, more than 50% of voting shares are owned by EU / EEA citizens.
- Non-EEA company, enterprise or association - When the owner is domiciled outside the EEA area, the owner can apply for

a dispensation from the nationality requirement in the Civil Aviation Act § 3-2. Exemption is granted if there is a lease agreement in favor of a Norwegian operator.

Requirements for documentation: (Civil Aviation Act section 3-18 and Registration of Aviation (administrative regulation) section 17 to 23)

- Deed or another legal document in original showing the owner's title to the aircraft. The document must contain all the necessary information. The Norwegian Civil Aviation Authority has prepared a deed that can be used. The seller's signature on the deed must be confirmed. When the seller is a Norwegian private person or company, two people over the age of 18 who reside in Norway can confirm the correct signature. If the owner is already registered as the owner of the aircraft, and the aircraft is to be transferred from a foreign to a Norwegian register, a certificate from the aircraft register of the country in question, confirming that the aircraft has been deleted or has not been entered, must be attached.
- Documentation for Norwegian Identification Number (11 digits) when the buyer or seller is a private individual residing in Norway. Copy of passport, driver's license or bank card is valid documentation. When there are several sellers or buyers, everyone must document their Norwegian Identification Number. If the buyer or seller is a club that is not registered in the Brønnøysund Register Centre, a copy of club laws and protocols from the last ordinary general meeting must be submitted. If the club is the seller of the aircraft, a copy of the minutes from the previous general meetings must also be submitted, because this is necessary to assess who has the signature for the club. If the owner is an EEA company, enterprise or association, a self-declaration must be submitted confirming this; see form. The declaration must be confirmed by a Notary Public. Outside the Nordic countries, the notary's signature must be confirmed by an apostille or legalization.
- If the aircraft is to be registered for the first time and is an amateur-built aircraft, the builder must apply for registration of an amateur-built aircraft instead of a deed. Original receipts for the purchase of drawings and / or building kits must be attached to the application. These will be sent back after registration.

4. What fees are payable to register an aircraft in Norway?

In the Civil Aviation Act section 3-1 it is stated that a fee for registration must be paid. Furthermore, rules are given in the Fee to Civil Aviation Authority (administrative regulation).

For registration of aircraft, registration of change of ownership, registration of lease agreement and other liabilities, and registration of endorsement on all of the aforementioned documents, the following shall be paid (fee schedule per 2021):

- NOK 3,610 for gliders, motor gliders and balloons.
- NOK 4,780 for motor-powered aircraft up to and including 2,000 kg.
- NOK 7,160 for motor-powered aircraft from 2,001 to 5,700 kg.
- NOK 12,000 for motor-powered aircraft from 5,701 to 10,000 kg.
- NOK 16,030 for motor-powered aircraft from 10,001 kg

Norway

Continued...

4a. How long does registration take?

There is no information stipulated by law regarding the specific time for registration.

Since the Civil Aviation Authority is a Norwegian administrative body, the proceedings must be in accordance with the rules of the Public Administration Act ("Forvaltningsloven").

Section 11 of the Act gives rules about the processing time. The main rule is that the case must be settled without "undue delay" and for a simple registration it should typically take two to three days.

As mentioned by the Aircraft Inspection Authority itself (<https://luftfartstilsynet.no/om-oss/saksbehandling/>), the specific processing time depends on the application itself: The necessary information and documentation have to be submitted to minimize the processing time.

5. Are there any weight and/or maximum age restrictions to register an aircraft in Norway?

There are no specific weight or maximum age restriction to register an aircraft in Norway.

6. Does registration of an aircraft in the national registry constitute proof of ownership under the laws of Norway?

Registration proves who is the legal owner, and thus who has the right to administer the aircraft.

By registering the ownership and other rights, a legal protection (in Norwegian: "rettsvern") is established for what is registered. The licensee can thus be assured that the aircraft will not be handled in violation of his/her interests.

7. How is an aircraft title transfer effected in Norway? What are the formalities required to register such title transfer in the national registry of Norway (e.g., notarization, legalization etc.)? Please summarize the related costs and procedures.

As a general rule, ownership rights of an aircraft can be transferred in accordance with contractual rules under Norwegian law.

As for the Norwegian Civil Aircraft Register, the Civil Aviation Act section 3-6 imposes that any change in the information in the register, including changes in ownership, shall be reported.

Stipulated by section 3-6 of the Aviation Act, changes in the "property conditions of the aircraft or of the nationality of the owner" shall be reported "without delay". The message shall contain "necessary information and evidence". If the aircraft is sold, the message should generally be given by the buyer, but if the sale entails that the aircraft is no longer regarded as Norwegian, the notification shall be given by the seller.

As the registration of the right owner of an aircraft has major implications, strict requirements are placed on the documentation. In the event of insufficient documentation, documents may be returned without registration.

When the seller and buyer are Norwegian:

- The deed must be complete and correctly filled in.
- If the seller is a company or other type of organization, the signature of the person concerned must match what is registered in Brønnøysundregistret.
- Documentation of the Norwegian Identification Number (11 digits) is required if the buyer or seller are private residents of Norway. A copy of a passport, driver's license, or bank card is valid documentation. If there are several sellers or buyers, all of these must document their social security number.

- If an encumbrance has been registered on the aircraft, consent must be submitted from the licensee. The encumbrance should normally be deleted before the change of ownership is registered.

When the seller/ buyer is not Norwegian:

- If the buyer or seller is a company foreign state, identity and signature must be confirmed by the Notarius Publicus. Notarius Publicus must also confirm that the person who signs has the necessary authority to do so.
 - If the buyer or seller aren't from any of the Nordic countries, the signature of the Notarius must be verified with apostille or legalization.
- For private persons not from any of the Nordic countries, the Notarius Publicus must confirm the identity of the person concerned.
 - If the buyer or seller are not Nordic, the signature of the Notarius must be verified with apostille or legalization.

If the buyer is from an EEA (European Economic Area) country, the same procedure applies to foreign ones (see above), but in addition, the following requirements are made:

- a) Documentation must be provided on affiliation with an EEA-country (Declaration regarding ownership of the company). The signature on the documentation must be confirmed by the Notarius Publicus.

If the buyer is not from an EEA country, the same procedure applies as to foreign ones (see above), but in addition, the following requirements are made:

- b) The Norwegian Aircraft Register must have granted an exemption from the nationality requirement in section 3-2 of the Civil Aviation Act. Such an exemption is granted under the condition of a rental agreement for the benefit of a Norwegian operator, where this is approval by the Civil Aviation Authority.

Related costs:

Fee, stipulated by the administrative regulation regarding Fee to Civil Aviation Authority, is paid at the general rates for registration, cf. question 4 above.

8. What information and details are reflected in the Certificate of Registration of an aircraft?

The information and details reflected in the Certificate of Registration of an aircraft, is, in accordance with the Registration of Aviation (administrative regulation) section 9, the following:

- The nationality and registration mark of the aircraft
- Manufacturer, type and serial number
- Owner's name and address
- Date for registration in Norway's aircraft register
- Date of issue and signature from the registration authority

9. Are the entries in the aircraft registry of Norway made available to the public upon submission of a specific application to the competent authority? Are there any fees payable for this?

There is a general overview of registered aircraft on the website of the Civil Aviation Authority: <https://luftfartstilsynet.no/aktorer/norges-luftfartoyregister/registrerte-luftfartoy/>

The registry is available free of charge, but only provides information regarding the ownership of the aircraft.

Norway

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Every six months - 1 January and 1 July - the overview of all registered aircraft and their owners are published. A report is also published showing monthly changes.

However, the register also contains other information, cf. section 3-17 of the Aviation Act: A "journal shall be kept for documents that are required to be registered, and aircraft register with a separate document for each aircraft". The registration takes place by ensuring that an "excerpt of the document is entered into the journal and the aircraft register, and that the document is applied to a Certificate of Registration". The register is open to the public in the "way that the Ministry decides".

Anyone can "by agreement review" the register in the civil aviation authority's opening hours. Refer to the Registration of Aviation (administrative regulation) section 5.

Anyone can "obtain a print or copy of the journal, aircraft register (notarized registry printing) and archived duplicates", see section 3-20 of the Civil Aviation Act.

For notarized register printing, a fee shall be paid in accordance with Fee to Civil Aviation Authority (administrative regulation) section 2, cf. Registration of Aviation (administrative regulation) section 34. The same applies to notarized copy of registered document, duplicate and auxiliary document.

10. What kind of aircraft operations can be conducted with aircraft registered in Norway (i.e., private use, commercial air transport or both)?

The aircraft may be used both for private and commercial purposes. The register applies to all aircraft, regardless of their use. See the above definition of aviation and aircraft in the Norwegian legislation.

11. Does the civil aviation authority in Norway authorise the operation of foreign registered aircraft? If so, with which countries has Norway entered into bilateral agreements on the basis of article 83-bis of the ICAO Chicago Convention for the delegation of regulatory oversight?

You can, upon application to the Civil Aviation Authority, operate foreign-registered aircraft for six months with the possibility of extension for up to six months. Norway is party to the ICAO Chicago Convention and has entered into bilateral and multilateral treaties with most member states.

12. Is there a separate register of aircraft mortgages and/or leases and/or security interests in Norway?

No. Section 3-22 of the Civil Aviation Act lays down rules for the registration of encumbrances in aircraft registered in the Norwegian Aircraft Register.

13. What are the formalities required to register a mortgage / lease / security interest in the national registry of Norway (e.g., notarization, legalization etc.)? Please summarize the related costs and procedures.

1. The encumbrance document must be signed by the person or persons who have the right to sign on behalf of the owner (legal holder).
2. The signature must be documented. If the owner is a private individual resident in Norway, a copy of approved identification must be attached, such as a passport, driver's license or bank card. Companies or aviation clubs that are registered in the Brønnøysund Register Centre do not need to provide any documentation. If the owner is a foreign

company, enterprise or association, the owner's identity and signature must be confirmed by a Notary Public. The Notary Public must also confirm that the person signing on behalf of the owner has the necessary authority to do so. Outside the Nordic countries, the notary's signature must be confirmed with an apostille or legalization.

3. The encumbrance document and any copy of identification must be sent to the Norwegian Aircraft Register. Only original liability documents can be registered.
4. Invoice for fee sent after registration is completed.

The same fee schedule applies for registration of encumbrances as for registration of aircraft. See question 4 above.

14. Is a mortgage priority notice an available security instrument for aircraft financiers in Norway?

Yes. The registration in the aviation register makes it possible for external actors to take mortgage on aircraft. This makes it easier in terms of external financing. The priority of the claim depends on when the encumbrance was established. Under Norwegian law, a principle applies: "first in time, greater in right" (Latin: "prior tempore, potior iure"). See the Civil Aviation Act section 3-26.

15. Does an aircraft mortgage duly registered in the national registry of Norway extend to engines and other parts of such aircraft (either installed or not on the airframe)?

Section 3-23 of the Civil Aviation Act states that the person with right of ownership to the aircraft is also entitled to "engines, propellers, equipment, instruments and other things that belong to the aircraft when the register does not appoint another person as entitled to these." Furthermore, when a "right includes an aircraft with engines and other things mentioned in the second paragraph, the right to these things does not fall away if things are temporarily separated from the aircraft."

In the preparatory works (NOU 1991:18), it is assumed that this section rests on the principle that the aircraft and the other parts belonging to the aircraft constitute a "technical and economically operational entity" which one should initially be able to assume as one.

Example: If the mortgage applies to the aircraft in its entirety, and there are no other registered owners of the engine, the mortgage will apply to the aircraft and the engine.

16. What statutory liens (if any) would rank prior to an aircraft mortgage duly registered in the national registry of Norway?

In the event of a claim for salvage money or compensation for extraordinary expenses that were necessary in order to rescue or preserve an aircraft that has crashed or is in peril giving rise to a security interest in the aircraft in accordance with the law of the contracting state where the salvage or preservation work was terminated, this right shall be recognised in and shall take precedence over all other rights in the aircraft.

In case of bankruptcy, the bankruptcy estate may enforce a 5% lien which ranks superior to registered mortgages.

17. Do the laws of Norway provide for possessory rights and/or rights of detention over aircraft in favor of third parties (such as airport taxes, customs duties, air navigation charges, crew's wages, MRO's receivables)?

Yes, Norwegian law provides for detention rights for e.g., charges in connection with use of airports (see the Aviation Act section 13-2, and salvage claims, cf. section 12-5). Subject to legal proceedings

Norway

Continued...

and certain legal requirements, any creditor including the above-mentioned may additionally request a court order for seizure/arrest of the aircraft as security for a claim against the owner of the aircraft.

18. Are foreign law-governed security agreements (e.g., mortgages) recognized in Norway in order to validly create a security interest over an aircraft registered in the national registry of Norway? If so, are there any formalities/requirements to bear in mind?

As a general note, foreign law-governed security agreements are recognized and would be registered in the Norwegian Civil Aviation Registry as long as the mortgage fulfils the formality requirements more particularly described under question 13.

In accordance with section 3-43 of the Civil Aviation Act, such rights are recognised in Norway, if they are validly established in accordance with the law of a convention state where the aircraft was registered at the time the security agreement was agreed, and moreover, was published in a public register.

If the mortgage rights are established under foreign law and the aircraft was abroad, the rules apply to the country the aircraft was registered in at that time. If the mortgage rights are established under foreign law, while the aircraft was registered in Norway, Norwegian law applies. If so, the foreign agreement must meet the requirements set out in Norwegian law.

In regards to international security rights, Norway is at part of the Cape Town Convention (2001), see section 3-53 of the Civil Aviation Act.

19. Are foreign law-governed leases recognized in Norway in order to validly lease an aircraft registered in the national registry of Norway to a lessee incorporated in Norway? If so, are there any formalities/requirements to bear in mind?

In accordance with the above, rights to the possession of aircraft under leases of six months or more are recognised (refer to Civil Aviation Act section 3-43 no. 3).

20. Has Norway ratified the Cape Town Convention on International Interests in Mobile Equipment and the related Aircraft Protocol? Has Norway made any declarations in order to better determine the scope of application of the Convention / Protocol in Norway? If so, what is the impact of such declarations on aircraft registration issues? Are there any specific aspects relating to the enforcement of IDERA's to be considered?

Norway is a party to the Convention on International Security Rights in Mobile Property and the Protocol to the Convention on Special Conditions for Aircraft.

Norwegian ratification of the Cape Town Convention will not have any consequences for the Norwegian Aircraft Register. It will still be possible to register encumbrances in the Norwegian Aircraft Register. The ratification of the Cape Town Convention means that an option for the registration of security rights, including liens, has been established in the International Registry of Mobile Assets. It is up to the individual licensee to assess whether this should be done, instead of, or in addition to, registration in the Norwegian Aircraft Register, if the conditions for this are met.

Norway's aircraft register is an owner register. The regulations for registration are given in the Civil Aviation Act, Chapter 3, and Regulations of 5 February 2004 no. 393 on the registration of aircraft, etc. Aircraft must still be registered in the Norwegian Aircraft Register and thus must obtain a Norwegian registration mark, even

if it is not relevant to register encumbrances in the aircraft.

Norway has not declared that Article 60 of the Convention will apply. This means that Norwegian ratification of the Cape Town Convention has no significance for existing liens and other liabilities registered in the Norwegian Aircraft Register.

The Cape Town Convention allows for the appointment of national contact agency (Entry Points). No such agency has been appointed for Norway. This means that the individual licensee, bank, lawyer or similar agency must register as a direct user in the international register. The Norwegian Aircraft Register will not provide guidance on the procedure for registration etc. in the international register.

Norway has declared that Article XIII of the Protocol shall apply. This means that it is possible for the debtor to issue an irrevocable power of attorney to request deregistration and export permission, cf. Article XIII no. 2. Since the Norwegian Aircraft Register is an owner register, such a declaration must be given by the owner.

Such irrevocable Power of Attorney (IDERA - Irrevocable Deregistration and Export Request Authorization) must essentially be in a form that follows the Annex to the Protocol. Original IDERA, signed by the owner with a pen, must be sent to Norway's aircraft register in duplicate. The registered IDERA will be returned to the person who has received the authorization.

When an IDERA is received by the Norwegian Aircraft Register, this will be registered in the Aircraft Register in connection with the aircraft in question. There is a fee for the registration of IDERA (see the fee regulations § 12).

When IDERA has been issued, this means that only the authorized person can apply for an export permit and request that the aircraft be deleted from the Norwegian Aircraft Register. The requirements of the Civil Aviation Act and the Registration Regulations for the design of such a request for cancellation will apply as normal.

Revocation of registered IDERA can only take place on the basis of written consent from the authorized party, preferably on the authorized person's copy of the registered IDERA.

21. What are the requirements and documentation to deregister an aircraft from Norway? How does the aircraft deregistration process work?

The Civil Aviation Act § 3-7 and the Registration Regulations §§ 28 and 29 stipulates rules for when an aircraft is to be deleted from the register. An aircraft is deleted from the register on the basis of five different circumstances:

1. Deletion of aircraft at the request of the owner

Anyone who is registered as the owner / legal holder in the Norwegian Aircraft Register can request that the aircraft be deleted because the aircraft is to be transferred to another country's register. The application must be in writing and the owner's signature confirmed in accordance with the rules in the Registration Regulations § 20. If the owner is a Norwegian private person or company, two persons over 18 years of age residing in Norway can confirm the correct signature. If the owner is not a Norwegian private person or company, the owner's identity and signature must be confirmed by a Notary Public. The Notary Public must also confirm that the person signing has the necessary power of attorney for this. Outside the Nordic countries, the signature of the Notary must be confirmed by an apostille or legalization.

2. Deletion of aircraft that lack an air- and/or environmental certificate of competency

If an aircraft has been without an air- or environmental proficiency certificate for three years, the aircraft will be deleted from the Norwegian Aircraft Register. Norway's aircraft register will nevertheless normally send a notification to the registered

Norway

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owner three months before the deletion is planned to be completed, so the owner can obtain a new certificate of air- or environmental competence.

3. Deletion of aircraft due to owner's nationality

Exemption from the nationality requirement in the Civil Aviation Act § 3-2 is granted on the condition that there is a lease agreement in favor of a Norwegian operator. If this lease agreement expires or terminates, the condition for dispensation will no longer be present, and the aircraft will be deleted from the Norwegian Aircraft Register.

When a foreign enterprise that is a registered holder of an aircraft is no longer effectively controlled by EEA citizens, the nationality requirement in the Civil Aviation Act § 3-2 is no longer met. The aircraft will then be deleted from the Norwegian Aircraft Register, unless the owner applies for and receives a dispensation from the nationality requirement. Exemption from the nationality requirement in the Civil Aviation Act § 3-2 is granted on the condition that there is a lease agreement in favour of the Norwegian operator.

4. Deletion of condemned or wrecked aircraft

Aircraft that have been dismantled or completely wrecked must be deleted from the Norwegian Aircraft Register.

5. Deletion of missing aircraft

Aircraft that have disappeared shall be deleted from the Norwegian Aircraft Register. An aircraft will be regarded as having disappeared if three months have passed since it started its last flight, unless there is information that it is still intact.

22. What fees are payable to deregister an aircraft from Norway?

There are no fees for deregistration of an aircraft. Please note however, that there will be a fee charged for registering the IDERA.

23. Is the consent of the mortgagee / lessor (as the case may be) required in order to deregister an aircraft from Norway?

Yes, section 3-8 of the Civil Aviation Act prescribes the following: If an encumbrance is registered on the aircraft, it shall not be deleted in the register, without the consent of the right holder. Instead, annotation is made about the circumstances that should have resulted in the deregistration. Such annotation does not affect the encumbrance, but otherwise has the same effect as a deregistration.

24. What are the usual practical difficulties (if any) involved in deregistering aircraft from Norway?

None in particular.

25. How long does deregistration take, both where there is co-operation from the defaulted party (mortgagor / lessee / operator) and where there is no such co-operation from it?

There is no information about the specific time for deregistration. The same principles as stated above, regarding how long registration take (bullet point 4a), applies correspondingly here.

26. Please outline the applicable repossession rules under the national laws of Norway (and the Cape Town Convention, if applicable) following an event of default under a mortgage or a lease, including registration issues with the national registry in Norway.

According to the Enforcement Act § 11-1 (1) a creditor with a mortgage duly registered over an aircraft, has, in the event of

default, the right to demand compulsory sale or compulsory use of the aircraft if certain legal conditions are met. In essence: The creditor must have a valid mortgage and can only demand enforcement when he has a legal basis for enforcement, i.e., that the claim is due for payment and in default. Regarding repossession under a lease, the Norwegian Enforcement Act § 13-2 stipulates that if a valid written agreement on lease (of movable property such as an aircraft) contains a clause that gives the creditor the right to demand repossession if the rent is not paid, this constitutes legal basis for enforcement. In the case of default, the lessor will therefore have the right to demand repossession of the aircraft. However, the debtor has a right to be notified (see paragraph directly below) that repossession can be avoided if the rent, cost of recovery, legal expenses and rent due at the time of payment, with interest, is paid in full before the repossession is completed.

In addition to having a legal basis for enforcement, the creditor needs to send a written notice to the debtor at least 14 days before enforcement, cf. the Norwegian Enforcement Act § 4-18. Creditor must submit his claim to the relevant district court, cf. § 11-3.

However, according to the Enforcement Act § 11-1 (3) a creditor who has a registered security in accordance with the Cape Town Convention, can demand enforcement in accordance with the rules and regulations stipulated in the convention.

The Cape Town Convention contains enforcement provisions which deviates substantially from the procedures laid down in the Enforcement Act. The enforcement of international interests being security is facilitated, and the repossession of an aircraft is made considerably simpler for a financier or lessor.

Legal basis:

- Norwegian regulation of aviation:
 - "Civil Aviation Act": Lov om luftfart (luftfartsloven) (LOV-1993-06-11-101)
 - "Regulations on Registration of Aircraft" (administrative regulation): Forskrift om registrering av luftfartøy m.m. (FOR-2004-02-05-393).
 - "Regulations on Fees to the Civil Aviation Authority" (administrative regulation): Forskrift om gebyr til Luftfartstilsynet mv. (FOR-2020-12-21-3089).
- Other legislation of significance:
 - "Public Administration Act": Lov om behandlingsmåten i forvaltningssaker (forvaltningsloven) (LOV-1967-02-10)
 - "Mortgages and Pledges Act": Lov om pant (panteloven) (LOV-1980-02-08-2).
 - "Enforcement Act": Lov om tvangsfullbyrdelse (tvangsfullbyrdelsesloven) (LOV-1992-06-26-86).

DISCLAIMER: The above information should not be relied upon by the reader for legal advice as it is intended merely to serve as a preliminary guide to the laws and regulations governing the registration of aviation and aircraft in this country. The information intends to provide summary-level information about certain tax issues affecting general aviation and aircraft finance. Since these materials are general in nature, readers are encouraged to obtain legal and tax advice from their own professional legal and tax counsel based on specific facts and circumstances regarding their acquisition and/or use of aviation and aircraft.

Pakistan

Pakistan

Submitted by: Syed Ali Bin Maaz, Partner, Kabiraji & Talibuddin

1. Which authority is in charge of the civil aviation registry in Pakistan? Does Pakistan use a single-registry system or is there a dual-registry system in place?

The Pakistan Civil Aviation Authority (the "PCAA") is the authority in charge of the civil aviation registry in Pakistan and uses a single-registry system.

2. Is the registry an operator registry or an owner registry (or both)?

Details of both the aircraft operator and the owner are reflected in the register maintained by the PCAA (i.e., the Pakistan Aircraft Register).

3. What are the requirements and documentation to register an aircraft in Pakistan? Include references to formalities such as notarisation, legalization, etc.

An application for registration of the aircraft in the Pakistan Aircraft Register shall consist of the following information:

- the name of the manufacturer;
- the manufacturer's designation of the aircraft;
- the serial number of the aircraft;
- the name and addresses of all persons or organizations who have a legal interest as owners of the aircraft;
- if the aircraft is the subject of a hire purchase or leasing agreement, the name and address of the person or persons or organization purchasing or leasing the aircraft; and
- a declaration as to the truth of the statement set out in the application.

Additionally, pursuant to Airworthiness Notice Awnot-005-AWRG-6.0 dated 5 March 2021 (the "Airworthiness Notice"), the following documents need to be submitted to the PCAA for the inclusion of an aircraft in the Pakistan Aircraft Register and for the issuance of a Certificate of Registration ("COR"):

- form CAAF-128 AWRG duly signed by the owner or through a power of attorney, its authorized designee (in original);
- proof of ownership of the aircraft/bill of sale (original);
- Type Certificate (TC) issued by FAA/EASA/PCAA/NAA, as applicable (required only for first type of aircraft to be registered in Pakistan);
- Type Acceptance Certificate (TAC) issued by PCAA (required only for first type of aircraft to be registered in Pakistan);
- proof of deregistration/no registration from previous state of registration, in original (as applicable);
- aircraft lease agreement, in original (as applicable);
- Export Certificate of Airworthiness, in original (as applicable);
- approval of the Director General, PCAA to induct the aircraft in Pakistan;
- aircraft customs clearance documents (required, when the aircraft is in Pakistan);
- documentary evidence regarding legal existence of prospective owner and valid Air Operator Certificate held by prospective aircraft operator (if applicable);
- receipt/proof of payable registration fee; and

- any other document as deemed appropriate.

Please note that where original documents are being provided, a notarized and consularized copy of such documents (including any powers of attorney) are also required to be submitted to the PCAA. The PCAA will retain the notarized and consularized copies and return the originals. In certain cases, as a matter of practice, the PCAA may accept notarized and consularized copies without requiring the originals thereof.

3a. How does the aircraft registration process work?

The aircraft registration process is highlighted in the Airworthiness Notice and Section-1 of Part III of Civil Aviation Rules, 1994 (the "CAA Rules") which specifies the requirement by whom and how an aircraft can be registered in Pakistan. It is the responsibility of the owner of the aircraft or the person / organization acquiring an interest in the aircraft to apply to the Director Airworthiness, PCAA for registration of the aircraft. The application shall be submitted to Headquarter (HQ) Airworthiness Directorate, HQ, PCAA, Karachi, in hard format along with applicable documents and fee as mentioned in latest issue of Awnot-003-AWRG-7.0 dated 18 February 2020.

The application for registration of an aircraft can be made by one person holding interest as owner in the said aircraft; however, two or more persons or organizations, who hold joint interest as owner, hire purchaser or lessors, shall have to clearly nominate one of them as the person or organization to whom COR may be issued.

The COR will be issued and shall contain all information as prescribed in ICAO Annex-7. The aircraft shall be registered in the 'Pakistan Aircraft Register'.

4. What fees are payable to register an aircraft in Pakistan?

The fee payable in relation to the COR are as follows:

- Initial reservation of registration mark (60 days) - Rs. 9,300
- Each subsequent extension(s) in reservation (60 days) - Rs. 15,500
- Issue/ re-issue for Ultralight/LSA/ Airship/ Balloons/Amateur built aircraft - Rs. 6,975
- Issue/ re-issue for aircraft up to 5,700 kg - Rs. 13,175
- Issue/ re-issue for aircraft above 5,700 kg - Rs. 31,000
- Out of series/Special registration mark of applicant's choice - Rs. 775,000

4a. How long does registration take?

There is no time period set out under applicable law within which the PCAA is required to issue the COR. However, we understand from a representative at the PCAA that in practice, subject to the provision of the necessary documents required for registration, the COR is issued within a period of two to four weeks.

5. Are there any weight and/or maximum age restrictions to register an aircraft in Pakistan?

There are no specific restrictions as to the weight of an aircraft. In relation to the age of an aircraft, the eligibility for induction is given below (as per ANO-019-AWRG-1.0 dated 27 March 2019) against corresponding types of operation:

Pakistan
Continued...

Licence / category of Operations	Maximum Induction Age	Maximum Operation / Retirement Age
Regular Public Transport (RPT) domestic / international	18 years (with 35% operational life remaining)	25 years
RPT/non-RPT cargo domestic / international	35% of operational life remaining	OEM recommended age / cycles
charter pax / aerial work pax / private aircraft (pressurized) domestic / International	18 years (with 35% operational life remaining)	OEM recommended age / cycles
TPRI (domestic) - pressurized	18 years (with 35% operational life remaining)	OEM recommended age / cycles
TPRI / aerial work / charter / flying school (unpressurized)	25 years with 35% operational life remaining or 50% of operational life remaining	OEM recommended age / cycles
private aircraft (Unpressurized)	not defined	OEM recommended age / cycles

RPT: Calendar age of all aircraft, used as passenger transport for scheduled / non-scheduled passenger-carrying services, shall not be more than 18 years at the time of induction with minimum of 35% remaining operational life initially defined by OEM. Operational life expectancy shall be based on international standards considering limitations on maximum hours, flight cycles and age etc. Operations would be permissible up to a maximum calendar age of 25 years.

Pressurized non-RPT pax: For charter passenger, Tourism Promotion and Regional Initiative (TPRI), aerial work passenger and private aircraft operations, calendar age of all aircraft shall not be more than 18 years at the time of induction with minimum of 35% remaining operational life initially defined by OEM. Operations would be permissible up to a maximum calendar age/life cycles as defined by OEM subject to airworthiness.

RPT/non-RPT Cargo: For freighter/cargo aircraft, minimum of 35% remaining operational life would be required as initially given by OEM at the time of induction. Operations would be permissible up to a maximum calendar age/life cycles as prescribed by the manufacturer of the aircraft provided the aircraft is airworthy.

Unpressurized CH (Pax.) AW & FS: for unpressurized aircraft/helicopter being used for TPRI, charter (Pax.), aerial work and flying school operations, the calendar age at the time of induction, shall not be more than 25 years with 35% of operational life remaining or minimum of 50% remaining operational life would be required as initially given by the OEM, at the time of induction; operations would be permissible up to a maximum calendar age/life cycles as prescribed by the manufacturer of the aircraft provided the aircraft is airworthy.

6. Does registration of an aircraft in the national registry constitute proof of ownership under the laws of Pakistan?

Applicable law does not specifically state whether registration in the Pakistan Aircraft Register constitutes proof of ownership, but it would provide evidentiary basis to establish ownership in favour of the named owner. Furthermore, to have an aircraft registered in the Pakistan Aircraft Register, inter alia, documentation evidencing proof of ownership is required to be submitted to the PCAA.

7. How is an aircraft title transfer effected in Pakistan? What are the formalities required to register such title transfer in the national registry of [country] (e.g., notarization, legalization etc.)? Please summarize the related costs and procedures.

The title transfer may be effected by way of a duly executed, stamped, and witnessed transfer instrument between the parties. Permission from or notification to the PCAA is required in the cases set out below as per the Airworthiness Notice.

No Pakistan registered aircraft, whether its COR is in force or not, shall be leased outside Pakistan nor shall there be any change, partial or otherwise in the ownership, possession or use of the aircraft, otherwise transferred to any person, company or corporation, without the prior permission in writing of the Director General, PCAA. Any change in registration details that affects the contents of COR shall require the holder to apply for revised COR e.g., change of owner's / operator's title, address, etc .

Any transfer of ownership of an aircraft registered in Pakistan shall be notified to the Director Airworthiness, PCAA by the person or persons acquiring ownership within fourteen days of the transfer. In case of any change in aircraft lease agreement which is already submitted with PCAA, it is the responsibility of the holder of COR or its authorized designee to notify PCAA at the earliest, with aircraft operator on board.

In each case where change in the registration details affect the data/ information as appears on the COR, updated application form (CAAF-128-AWRG) shall be submitted to HQ Airworthiness Directorate along with associated documentary evidence and duly signed by new owner/ operator/ authorized designee, as the case may be. Former owner(s), his attorney, or his legal heir shall duly complete applicable section on 'COR' along with his signature and date. Upon receipt of such request and subject to fulfilment of all relevant requirement, a revised 'COR' will be issued with updated particulars as desired.

Documents required to be submitted for change in ownership are as follows:

- (a) Prior approval in writing of the Director Airworthiness, PCAA must be obtained.
- (b) A duly completed form CAAF-128-AWRG-3.0.
- (c) Original bill of sale evidencing the change of ownership of the aircraft. A notarized and consularized copy of the bill of sale is also required to be provided. The PCAA, as per practice, returns the original and keeps the notarized and consularized copy for their records. In certain cases, the CAA may accept a notarized and consularized copy without requiring the original.
- (d) The original COR in respect of the aircraft with Section I/II duly filled out. This is required to be executed by the authorized person of the former owner. Originals, notarized, and consularized corporate approvals of the former owner are also required to be submitted.
- (e) Corporate approvals authorizing the relevant person(s) to execute the application for change of ownership/registration. Originals of the corporate approvals along with a notarized and consularized copy are required to be provided.
- (f) Any other document/information that the PCAA may require.
- (g) Power of attorney/ authority letter if the application is signed by a person other than owner of aircraft.
- (h) Payment of fees of PKR 31,000.

Pakistan Continued...

The owner, or a duly authorized representative of the owner, may submit the application for the change in ownership. There is no time period set out under applicable law within which the PCAA is required to effect the change in ownership. On the basis that the necessary documents have been submitted and the PCAA does not request for any additional information/documents, we anticipate that it could take up to three to four weeks for the PCAA to issue the revised COR reflecting the change in ownership.

8. What information and details are reflected in the Certificate of Registration of an aircraft?

In practice, the COR contains:

- the nationality and registration mark of the aircraft;
- the manufacturer and manufacturer's designation of aircraft;
- the name and address of the owner;
- the aircraft serial number;
- the operator's details;
- date of issuance; and
- the registration certificate number.

9. Are the entries in the aircraft registry of Pakistan made available to the public upon submission of a specific application to the competent authority? Are there any fees payable for this?

The Pakistan Aircraft Register shall be made available for inspection at such times and subject to such conditions as the Director-General may specify. The fee payable for issuance of Aircraft Extract from Pakistan Aircraft Register is Rs. 11,625. As a matter of practice, the PCAA does not make entries in the Pakistan Aircraft Register public and issues an extract of the Pakistan Aircraft Register provided an application is submitted by or on behalf of the owner of the aircraft.

10. What kind of aircraft operations can be conducted with aircraft registered in Pakistan (i.e., private use, commercial air transport or both)?

Both private use and commercial air transport operations can be conducted with aircraft registered in Pakistan.

11. Does the civil aviation authority in Pakistan authorise the operation of foreign registered aircraft? If so, with which countries has Pakistan entered into bilateral agreements on the basis of article 83-bis of the ICAO Chicago Convention for the delegation of regulatory oversight?

A foreign aircraft may be operated in Pakistan upon the provision of a certificate of airworthiness issued or validated by the State of registry of such an aircraft. While the CAA Rules 1994 permit an aircraft registered in a Contracting State to fly in Pakistan, we understand from the PCAA that in practice, where an aircraft is on dry lease with a local operator in Pakistan, registration of the subject aircraft is required to be effected in Pakistan (following deregistration of the aircraft from the Contracting State) pursuant to ANO-016-FSXX-3.0 dated 15 March 2018. However, we also understand from the PCAA that aircrafts on wet leases (for short periods) with a local operator in Pakistan may operate without being required to be registered in the Pakistan Aircraft Register, provided, inter alia, they are duly registered in a Contracting State.

Pakistan has not entered into bilateral agreements on the basis of Article 83-bis of the ICAO Chicago Convention for the delegation of regulatory oversight. However, it has Air Services Agreements with the following countries

Countries	Last ASA Talks	Countries	Last ASA Talks
Afghanistan	16-01-2008	Macau	27-02-1995
Albania	01-07-1972	Malaysia	4-7-2007
Algeria	06-02-1976	Maldives	12-2-1981
Australia	02-08-2007	Malta	17-05-1974
Austria	27-09-2006	Mauritania	1-9-1979
Azerbaijan	9-4-2005	Mauritius	14-04-2007
Bahrain	13-08-2013	Morocco	11-12-1973
Bangladesh	26-05-2011	Myanmar	12-10-1995
Belgium	01-07-1958	Nepal	27-12-1995
Bosnia	22-03-2006	Netherlands	28-11-1998
Botswana	17-03-1989	Niger	27-07-1976
Brunei	8-4-1999	Nigeria	8-6-1993
Bulgaria	07-05-1993	Norway	31-01-2014
Canada	6-10-2011	Oman	25-11-2012
Chad	15-02-1975	Philippines	11-07-1969
China	15-04-2009	Poland	13-10-1970
Cyprus	9-10-2003	Portugal	7-6-1958
Czech	21-12-1967	Qatar	18-02-2014
Denmark	31-01-2014	Romania	28-01-1997
Egypt	06-08-2003	Russia	14-05-2011
Eritrea	20-09-2006	Saudi Arabia	29-03-2011
Ethiopia	6-12-2004	Seychelles	08-06-1979
France	17-04-2013	Sieraleone	21-04-1978
Georgia	01-10-2009	Singapore	11-11-2009
Germany	12-11-1998	Somalia	20-10-1976
Ghana	23-10-1975	South Africa	09-11-2011
Greece	14-12-2010	South Korea	20-02-2010
Hong Kong	11-4-2000	Spain	4-6-2008
Hungry	06-05-1976	Sri Lanka	8-4-2008
Iceland	19-10-2011	Sudan	19-02-1999
India	15-02-2008	Sweden	31-01-2014
Indonesia	25-05-1993	Switzerland	19-04-2000
Iran	15-01-2013	Syria	2-11-2006
Iraq	8-8-2009	Tajikistan	21-10-2009
Italy	24-03-2004	Tanzania	13-09-1982
Ivory Coast	26-11-1975	Thailand	15-11-2006
Japan	04-10-2010	Tunisia	29-09-1993
Jordan	26-07-2007	Turkey	17-09-2013
Kazakhstan	16-02-1993	Turkmenistan	25-04-2007
Kenya	25-02-1997	UAE	13-11-2012
Korea (DPR)	26-01-1975	Uganda	18-03-1978
Kuwait	17-02-2004	UK	25-01-2008
Kyrgyzstan	24-11-2006	Ukraine	11-7-1993
Latvia	11-10-2011	USA	16-08-1996
Lebanon	16-01-1971	Uzbekistan	27-06-2006
Liberia	16-04-1978	Yemen	25-07-2001
Libya	19-05-1973	Zimbabwe	15-03-1989
Luxembourg	14-10-1997		

12. Is there a separate register of aircraft mortgages and/or leases and/or security interests in Pakistan?

No, there is not a separate register of aircraft mortgages/ security interests. With respect to the interests of the secured parties, there is no separate register for the recordation of security interests, and there are no provisions in the law of Pakistan which would require a security in an aircraft to be perfected in Pakistan by entry in any

Pakistan Continued...

domestic register (either with the PCAA or any other government entity) unless the aircraft is owned by a company incorporated in Pakistan. However, it may be possible to avail a practice developed over time, if a notation is made in the remarks section of the Pakistan Aircraft Register to include a brief description of the security interest in the aircraft.

13. What are the formalities required to register a mortgage / lease / security interest in the national registry of [country] (e.g., notarization, legalization etc.)? Please summarize the related costs and procedures.

Please see the response to question 12 above.

14. Is a mortgage priority notice an available security instrument for aircraft financiers in Pakistan?

Not applicable.

15. Does an aircraft mortgage duly registered in in the national registry of Pakistan extend to engines and other parts of such aircraft (either installed or not on the airframe)?

There are no provisions in the law of Pakistan which would require an aircraft mortgage or any other security in an aircraft to be perfected in Pakistan by entry in any domestic register (either with the PCAA or any other government entity) unless the aircraft is owned by a company incorporated in Pakistan. However, Pakistan has implemented the Cape Town Convention by way of the Cape Town Convention and Aircraft Protocol (Implementation) Rules, 2004 (the "Implementation Rules"), of which Rule 3 recognizes 'aircraft objects (airframes, aircraft engines and helicopters) as an international interest and capable of being registered in the International Registry pursuant to the Cape Town Convention. As the Implementation Rules, 2004 are a part of local law, such interests can be enforced locally.

16. What statutory liens (if any) would rank prior to an aircraft mortgage duly registered in the national registry of Pakistan?

There are no provisions in the law of Pakistan which would require an aircraft mortgage or any other security in an aircraft to be perfected in Pakistan by entry in any domestic register (either with the PCAA or any other government entity) unless the aircraft is owned by a company incorporated in Pakistan.

Note that pursuant to the Implementation Rules, liens in favour of any state entity relating to unpaid taxes or other charges directly related to the use of that aircraft and owed by the owner of the aircraft have priority under the law over an interest in an object equivalent to that of the holder of a registered international interest and shall have priority over a registered international interest, whether in or outside insolvency proceedings.

17. Do the laws of [country] provide for possessory rights and/ or rights of detention over aircraft in favor of third parties (such as airport taxes, customs duties, air navigation charges, crew's wages, MRO's receivables)?

While the PCAA is required to cooperate and assist with the deregistration and export of an aircraft if and when requested by an authorized party under the IDERA, Rule 46 of the Implementation Rules appears to empower state entities, including the PCAA, to detain an aircraft object for violation of law, including safety-related or criminal law or for payment of any amounts owed to any such person and directly relating to the services provided

by it in respect of that aircraft object, and thereby impeding the enforcement of the IDERA by the authorized party, enabling it to deregister and physically export the aircraft from Pakistan.

Rule 46(1) of the Implementation Rules provides that "[a] priority nonconsensual right or interest, to the extent it had priority over an interest in an aircraft object equivalent to that of the holder of a registered international interest prior to the effective date of these Rules, shall retain that priority over a registered international interest hereunder, whether in or outside of insolvency proceedings".

Additionally, Rule 46(2) of the Implementation Rules, states that "[n]othing in these Rules shall affect the exercise by any person including any state entity of powers conferred by any other law for the time being in force, to arrest or detain an aircraft object for violation of law, including safety-related or criminal law or for payment of any amounts owed to any such person and directly relating to the services provided by it in respect of that aircraft object but no such arrest or detention shall adversely affect the priority of an international interest held by a party not violating such law".

[Emphasis Added]

The term 'priority non-consensual right or interest' is defined in Rule 2(xl) of the Implementation Rules to mean "a non-consensual right or interest relating to an aircraft object conferred under the law of Pakistan without any requirement for registration of the following types:

- (a) *a right or interest in respect of an aircraft which, if the aircraft had been a vessel, would have resulted in a maritime lien on the aircraft and its equipment for (A) salvage and (B) damage done by that aircraft;*
- (b) *liens in favour of any state entity relating to unpaid taxes or other charges directly related to the use of that aircraft and owed by the owner of the aircraft"*

[Emphasis Added]

In view of the foregoing provisions in the Implementation Rules, the issue that requires examination is whether the authorized party named under the IDERA who seeks to deregister and export the aircraft from Pakistan may be impeded by a state entity (e.g. the PCAA) through detention of the aircraft object on account of non-payment of any amounts owed to any such person and directly relating to the services provided by it in respect of that aircraft object despite a duly registered international interest held by the authorized party not violating applicable laws.

In this context, it is relevant to consider the specific declaration made by the Government of Pakistan pursuant to Article 39(1)(a) of the Cape Town Convention which states that:

Pakistan declares that the following categories of non-consensual right or interest:

- (a) *a right or interest in respect of an aircraft which, if the aircraft had been a vessel, would have resulted in a maritime lien on the aircraft and its equipment for (A) salvage and (B) damage done by that aircraft;*

liens in favour of any state entity relating to unpaid taxes or other charges directly related to the use of that aircraft and owed by the owner of the aircraft; have priority under its law over an interest in an object equivalent to that of the holder of a registered international interest and shall have priority over a registered international interest, whether in or outside insolvency proceedings.

Additionally, the Government of Pakistan has made the following declaration pursuant to Article 39(1)(b) of the Cape Town Convention:

Pakistan declares that nothing in the [Cape Town] Convention shall affect its rights or that of that State, any intergovernmental

Pakistan Continued...

Organization or other private provider of public services to arrest or detain an object under its laws for payment of amounts owed to Pakistan, any such entity, Organization or provider directly relating to the services provided by it in respect of that object or another object.

Given that any state entity exercising or purporting to exercise a right of detention or arrest of an aircraft may only do so if it has been conferred by the laws of Pakistan. It is important to consider the applicable laws to determine if the PCAA is empowered to detain an aircraft on account of non-payment of taxes and other charges relating to the use of that aircraft. It may be noted that the Civil Aviation Ordinance 1960 (the "CAA Ordinance") read with the CAA Rules empowers the PCAA to detain an aircraft for, inter alia, breach of the requirements of the CAA Ordinance read with the CAA Rules (which include non-payment of amounts owed to the PCAA (such as, but not limited to, airport landing charges)).

Therefore, it seems apparent that the priority non-consensual right or interest resulting in a lien in favour of the PCAA in respect of unpaid taxes or other charges directly related to the use of that aircraft and owed by the owner of the aircraft (or the right of the PCAA to detain the aircraft for non-payment of any amounts owed to it and directly relating to the services provided by it in respect of that aircraft object) shall rank above the registered international interest, albeit that the priority of an international interest held by a party not violating such law shall not be adversely affected pursuant to Rule 46(2) of the Implementation Rules.

However, to understand the practical application of Rule 46 of the Implementation Rules from the PCAA's perspective, we held a meeting with the relevant officials at the Airworthiness Department of the PCAA at their office to discuss this issue on a no-names basis. We understand from them that in an enforcement situation where the authorized party intends to enforce the IDERA to deregister and export the aircraft from Pakistan, the PCAA would assist the authorized party without requiring any payment of the dues owed by the local operator in respect of airport charges relating to that aircraft in line with the true spirit and objective of IDERA under the Cape Town Convention. However, this was revealed to us in an off-the-record discussion. Given that this issue has not been tested in our courts and the fact that the information was disclosed to us without context or reference to a specific case, it is unlikely that we will be able to get an opinion to the same effect in writing from the PCAA despite our request to them. Our past experience with officers of regulators in our jurisdiction reveals them to be extremely reluctant to offer a binding written response.

18. Are foreign law-governed security agreements (e.g., mortgages) recognized in Pakistan in order to validly create a security interest over an aircraft registered in the national registry of Pakistan? If so, are there any formalities/requirements to bear in mind?

Yes, foreign law-governed security agreements are recognized in Pakistan provided such international interests are duly registered with the international registry in compliance with the Cape Town Convention. If executed in Pakistan, such agreements are required to be stamped at the applicable stamp duty at or prior to execution and each party's signature to the agreement is required to be witnessed by two adult males or one adult male and two adult females.

19. Are foreign law-governed leases recognized in Pakistan in order to validly lease an aircraft registered in the national registry of [country] to a lessee incorporated in Pakistan? If so, are there any formalities/requirements to bear in mind?

Yes, foreign law-governed leases are recognized in Pakistan. If executed in Pakistan such agreements are required to be stamped

at the applicable stamp duty at or prior to execution and each party's signature to the agreement is required to be witnessed by two adult males or one adult male and two adult females.

20. Has Pakistan ratified the Cape Town Convention on International Interests in Mobile Equipment and the related Aircraft Protocol? Has Pakistan made any declarations in order to better determine the scope of application of the Convention / Protocol in Pakistan? If so, what is the impact of such declarations on aircraft registration issues? Are there any specific aspects relating to the enforcement of IDERA's to be considered?

Yes. Pakistan has implemented the Cape Town Convention and the related Aircraft Protocol by way of the Implementation Rules. These rules govern the scope of application of the Cape Town Convention. With respect to the enforcement of an IDERA in Pakistan, please note that an IDERA is fully recognized and enforceable under the laws of Pakistan.

Pakistan has lodged the following declarations under the Cape Town Convention at the time of the deposit of its accession instrument:

(i) Form No. 1 (Specific declaration under Article 39(1)(a))

Pakistan declares the following categories of non-consensual right or interest:

- (a) a right or interest in respect of an aircraft which, if the aircraft had been a vessel, would have resulted in a maritime lien on the aircraft and its equipment for (A) salvage and (B) damage done by that aircraft;
- (b) liens in favour of any state entity relating to unpaid taxes or other charges directly related to the use of that aircraft and owed by the owner of the aircraft; have priority under its law over an interest in an object equivalent to that of the holder of a registered international interest and shall have priority over a registered international interest, whether in or outside insolvency proceedings.

(ii) Form No. 4 (General declaration under Article 39(1)(b))

Pakistan declares that nothing in the Convention shall affect its right or that of any entity of that State, any intergovernmental Organization, or other private provider of public services to arrest or detain an object under its laws for payment of amounts owed to Pakistan, any such entity, Organization or provider directly relating to the services provided by it in respect of that object or another object.

(iii) Form No. 5 (General declaration under Article 39(4))

Pakistan declares that a right or interest of a category covered by a declaration made under Form No. 1 shall have priority over an international interest registered prior to the date of the deposit of its instrument of accession.

(iv) Form No. 6 (Declaration under Article (40))

Pakistan declares that the following categories of non-consensual right or interest:

- (a) rights of a person obtaining a court order permitting attachment of an aircraft object in partial or full satisfaction of a legal judgment; and,
- (b) liens or other rights of a state entity relating to taxes or other unpaid charges of any type whatsoever (which is not a priority non-consensual right or interest)

shall be registerable under the Convention as regards any category of object as if the right or interest were an international interest and shall be regulated accordingly.

(v) Form No. 10 (General declaration under Article 52)

Pakistan Continued...

Pakistan declares that the Convention is to apply to all its territorial units.

(vi) *Form No. 11 (Declaration under Article 53)*

Pakistan declares that the following court(s):

- The High Court of Balochistan,
- The Lahore High Court,
- The Peshawar High Court, and
- The High Court of Sindh.

Within their respective territorial jurisdiction, are the relevant court(s) for the purposes of Article 1 and Chapter XII of the Convention.

(vii) *Form No. 13 (Mandatory declaration under Article 54(2))*

Pakistan declares that any remedies available to the creditor under the Convention which are not expressed under the relevant provision thereof to require application to the court may be exercised without court action and without leave of the court.

Pakistan has also lodged the following declarations under the Aircraft Protocol at the time of the deposit of its accession instrument:

(i) *Form No. 19 (Declaration under Article XXX (1) in respect of Article VIII)*

Pakistan declares that it will apply Article VIII.

(ii) *Form No. 21 (Declaration under Article XXX (2) in respect of Article X providing for the application of the entirety of Article X)*

Pakistan declares that it will apply Article X in its entirety, and that the number of working days to be used for the purposes of the time limit laid down in Article X(2) shall be in respect of the remedies specified in Articles 13(1)(a), (b) and (c) of the Convention (preservation of the aircraft objects and their value; possession, control or custody of the aircraft objects; and immobilisation of the aircraft objects) not more than ten (10) calendar days and in respect of the remedies specified in Articles 13(1)(d) and (e) of the Convention (lease or management of the aircraft objects and the income thereof and sale and application of proceeds from the aircraft equipment) not more than thirty (30) calendar days.

(iii) *Form No. 23 (General declaration under Article XXX (3) in respect of Article XI providing for the application of Alternative A in its entirety to all types of insolvency proceeding)*

Pakistan declares that it applies Article XI, Alternative A in its entirety to all types of insolvency proceeding and that the waiting period for the purposes of Article XI (3) of that Alternative shall be sixty days.

(iv) *Form No. 26 (Declaration under Article XXX (1) in respect of Article XII)*

Pakistan declares that it will apply Article XII.

(v) *Form No. 27 (Declaration under Article XXX (1) in respect of Article XIII)*

Pakistan declares that it will apply Article XIII.

(vi) *Form No. 34 (General declaration under Article XXIX)*

Pakistan declares that the Aircraft Protocol applies to all its territorial units.

21. What are the requirements and documentation to deregister an aircraft from Pakistan? How does the aircraft deregistration process work?

Pursuant to the Airworthiness Notice, an aircraft is liable for deregistration from Pakistan aircraft register if:

- (a) The aircraft suffers destruction.
- (b) The aircraft is permanently withdrawn from use.

- (c) The aircraft is transferred to the aircraft register of another state.
- (d) The owner or the "Authorized Party" (as per IDERA) or his authorized designee requests deregistration of aircraft at any time.

In case any of the conditions listed in 1 through 3 prevail, the COR shall be deemed cancelled and if, it is in the possession of the owner(s)/ authorized designee of the owner, it shall be duly filled in for applicable section and forwarded to Director Airworthiness, PCAA along with application form CAAF-128-AWRG and requisite fee for deregistration.

Where cancellation/deregistration of an aircraft is being sought for which 'IDERA' is still in force with PCAA, an application is required to be filed which can only be initiated by the 'Authorized Party' as declared in IDERA (or his authorized designee) along with necessary enclosures.

Following documents are required for deregistration:

1. Duly filled out application for cancellation of registration CAAF-128-AWRG-4.0 which will require the following information:
 - a. Reason for cancellation of registration;
 - b. Confirmation of the capacity of the applicant i.e. registered owner, authorised party as per IDERA, authorised designee, or 'other';
 - c. Proof of ownership along with relevant power of attorney/ authority letter if the application is signed by a person other than the owner of the aircraft;
 - d. Section-III/IV of Original COR duly filled;
 - e. Duly filled out form CAAF-196-AWRG-1.0;
 - f. Return of the original IDERA.
2. Applicable deregistration fee (please refer to our answer to Question 21 below)

Pursuant to paragraph D5.3 of the Airworthiness Notice, it is to be noted that an original COR or any other on board documents shall not be required to be submitted together with the application for cancellation of registration of the aircraft, on which 'IDERA' is still in force with PCAA, in order to effect its deregistration. In all cases, where the aircraft is still operational, the applicant may choose to return original COR after confirmation of deregistration from Pakistan aircraft register or change of registration details as applicable. Moreover, in order to satisfy deregistration request, PCAA may ask for any additional document/letter from the applicant to support his request.

22. What fees are payable to deregister an aircraft from Pakistan?

The current fee/charges for the purposes of deregistration of an aircraft is PKR 10,850.

23. Is the consent of the mortgagee / lessor (as the case may be) required in order to deregister an aircraft from Pakistan?

Yes, provided the lessor/mortgagee is named as the Authorized Party under the IDERA. However, please note that pursuant to Rule 16(2) of the Implementation Rules, a creditor (i.e. a chargee under a security agreement, a conditional seller under a title reservation agreement, or a lessor under a leasing agreement) shall not procure the deregistration of an aircraft without the prior consent in writing of the holder of any registered interest ranking in priority to that of the creditor. In addition, pursuant to Rule 16(4) of the Implementation Rules, a chargee proposing to procure the deregistration of an aircraft otherwise than pursuant to a court order shall give reasonable prior notice in writing of the proposed deregistration and export to: (a) interested persons specified in

Pakistan

Continued...

sub-clauses (a) and (b) of clause (xxxi) of Rule 2 (i.e. a debtor or any guarantor); and (b) interested persons specified in sub-clauses (c) of clause (xxxi) of Rule 2 (i.e. any person having rights in or over the aircraft object) who have given notice of their rights to the chargee within a reasonable time prior to the deregistration and export.

24. What are the usual practical difficulties (if any) involved in deregistering aircraft from Pakistan?

The practical difficulties that may arise in procuring the deregistration of an aircraft from Pakistan are as follows:

- (i) Resistance from the lessee: the lessee may resist the deregistration of an aircraft by refusing to cooperate in delivering the aircraft back to the owner/lessor. Consequently, legal proceedings may have to be instituted against the lessee. The lessee may also employ tactics to delay and drag legal proceedings for as long as possible by seeking adjournments.
- (ii) Notwithstanding our response to question 17 (i.e., that based on our understanding from the PCAA, in an enforcement situation where the authorized party intends to enforce the IDERA to deregister and export the aircraft from Pakistan, the PCAA would assist the authorized party without requiring any payment of the dues owed by the local operator in respect of airport charges relating to that aircraft in line with the true spirit and objective of IDERA under the Cape Town Convention) the PCAA may nevertheless require the relevant dues to be cleared before the aircraft is deregistered from the Pakistan Aircraft Register. The authorized party may need to follow up with the PCAA diligently to ensure timely deregistration of the aircraft.

25. How long does deregistration take, both where there is co-operation from the defaulted party (mortgagor / lessee / operator) and where there is no such co-operation from it?

There is no time prescribed under law within which the deregistration request is required to be processed. However, in practice the PCAA has processed deregistration requests within three to four weeks provided the necessary documents have been submitted.

26. Please outline the applicable repossession rules under the national laws of Pakistan (and the Cape Town Convention, if applicable) following an event of default under a mortgage or a lease, including registration issues with the national registry in Pakistan.

The repossession remedies available are set out under Rules 13, 15 and 21 of the Implementation Rules. Pursuant to Rule 13(1) of the Implementation Rules, in the event of default as provided in Rule 18 of the Implementation Rules, the chargee may, inter alia, to the extent that the chargor has at any time so agreed, without the necessity of applying to a court for an order, take possession or control of any aircraft object charged to it and the chargor shall be under a legal duty to give such possession or control in the manner and within the time the chargor has so agreed. Additionally, Rule 15 of the Implementation Rules provides that in the event of default under a title reservation agreement or under a leasing agreement as provided in Rule 18, the conditional seller or the lessor, as the case may be, may: (a) terminate the agreement and take possession or control of any aircraft object to which the agreement relates; or (b) apply for a court order authorising or directing either of these acts. Further, under Rule 21 of the Implementation Rules a creditor who adduces evidence of default by the debtor shall, pending final determination of its claim and to the extent that the debtor has at any time so agreed, be entitled to obtain from a court speedy relief in the form of, inter alia, possession, control or custody of the aircraft object.

DISCLAIMER: The above information should not be relied upon by the reader for legal advice as it is intended merely to serve as a preliminary guide to the laws and regulations governing the registration of aviation and aircraft in this country. The information intends to provide summary-level information about certain tax issues affecting general aviation and aircraft finance. Since these materials are general in nature, readers are encouraged to obtain legal and tax advice from their own professional legal and tax counsel based on specific facts and circumstances regarding their acquisition and/or use of aviation and aircraft.

Panama



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Panama

Submitted by: *Maria de Lourdes Marengo, Partner, Patton, Moreno & Asvat*

1. Which authority is in charge of the civil aviation registry in the Republic of Panama? Does Panama use a single-registry system or is there a dual-registry system in place?

The Civil Aeronautics Authority (Autoridad Aeronáutica Civil, herein referred to as AAC), an autonomous government agency of the Republic of Panama, is required to maintain an administrative registry of aircraft in Panama by means of the National Aeronautical Registry. AAC's functions include, inter alia, the licensing and control of air crews and related administrative and technical personnel, the regulation of aircraft, airports and air services and the supervision of air traffic and auxiliary services.

In addition, there is an aeronautical section at the Public Registry Office, wherein all matters concerning the juridical status of aircraft are registered; namely proof of ownership, leases and encumbrances on aircraft, etc. in order to make them effective against third parties.³

2. Is the registry an operator registry or an owner registry (or both)?

Both registries are owner and operator registries. Title, leases, subleases and mortgages are registered with the Public Registry Office and filed with the AAC.

3. What are the requirements and documentation to register an aircraft in Panama? Include references to formalities such as notarisation, legalization, etc.

The interested party is required to file, along with the application:

- the contract of purchase or bill of sale;
- official evidence that the aircraft is not registered in another country (i.e. certificate of termination of previous registration); and,
- a certificate from the Public Registry showing that the interested party is a valid legal entity in existence together with the name of its legal representative in respect of companies organised in accordance with the laws of Panama. In this case, the registration of the aircraft must be effected by the legal representative.

Once the information provided by the applicant has been verified by AAC the aircraft will be assigned its registration marks. Thereafter, the interested party should complete various technical and legal requirements to obtain its certificate of enrolment.

Requirements to be observed in order to obtain the certificate of enrolment include registration of proof of ownership at the Public Registry, the issuance of a certificate of appraisal by AAC, and the issuance or validation of a Certificate of Airworthiness, as well as the payment of the relevant enrolment charges that will allow AAC to issue a tax clearance certificate for the aircraft.

In some cases, the AAC may issue a provisional certificate of enrolment if the owner of the aircraft demonstrates that proceedings have been initiated in order to conduct registration of ownership at the Public Registry Office, or when dealing with the purchase of foreign aircraft during their flight to Panama in order to be registered.

3a. How does the aircraft registration process work?

The interested party must file the Bill of Sale with the Public Registry in order for the transfer of title to become effective. Thereafter, evidence of title on the aircraft is filed with the AAC with the application for registration with the AAC as stated in the previous paragraph.

4. What fees are payable to register an aircraft in the Republic of Panama?

Public Registry Registration Fees:

Registration fees in respect of the Bill of Sale are \$100.00 USD for review by the Public Registry, plus \$250.00 USD for each \$100,000.00 USD, or fraction thereof, with a cap of \$4,200.00 USD.

Plus, \$50.00 USD for each document contained in the Public Deed which are the certificate of existence of the buyer, Power of Attorney of the buyer and Power of Attorney of the Seller.

Civil Aeronautics Authority registration fees:

Fees payable to the AAC for aircraft registration are the following:

Type of Aircraft Registration	Fee
Registration of an aircraft with up to 6 seats	\$50.00 USD
Registration of an aircraft with 7 to 50 seats	\$100.00 USD
Registration of aeroplanes, helicopters, or gyroplanes	\$250.00 USD
Additional charges for any special registration	\$200.00 USD
Reservation of Special Registration Mark Series	\$750.00 USD
Aircraft Certificate of Registration Cancellation	\$25.00 USD
Aircraft Certificate of Registration Cancellation	\$50.00 USD
Fee for a third temporary Certificate of Registration of aircraft (commercial or private)	\$100.00 USD
Permanent Certificate of Registration for private aircraft	\$100.00 USD
Permanent Certificate of Registration for commercial aircraft:	
- Aircraft with a PMD of 12,500 pounds or less	\$150.00 USD
- Aircraft with a PMD between 12,501 to 28,000 pounds	\$200.00 USD
- Aircraft with a PMD higher than 28,001 pounds	\$250.00 USD

AAC fees for issuance of the appraisal are as follows:

Value of the Aircraft	Cost of the Appraisal
\$0.01 USD - \$10,000.00 USD	\$0.0050 USD x each dollar or fraction.
\$10,000.01 USD - \$100,000.00 USD	\$0.0033 USD x each dollar or fraction.
\$100,000.01 USD - \$1,000,000.00 USD	\$0.0030 x each dollar or fraction.
\$1,000,000.01 USD - \$5,000,000.00 USD	\$3,500.00 USD
\$5,000,000.01 USD - \$10,000,000.00 USD	\$7,500.00 USD
\$10,000,000.00 USD - Onwards	\$10,000.00 USD



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4a. How long does registration take?

Registration of the title at the Public Registry can take from five to 10 working days. Prior to registration, an appraisal from the AAC is required. Issuance of the appraisal by the AAC can take several weeks.

5. Are there any weight and/or maximum age restrictions to register an aircraft in the Republic of Panama?

There are no weight and/or maximum age restrictions to register an aircraft in the Republic of Panama.

6. Does registration of an aircraft in the national registry constitute proof of ownership under the laws of the Republic of Panama?

Registration of the title on the aircraft at the Aircraft Section of the Public Registry of the Republic of Panama constitutes proof of ownership.

7. How is an aircraft title transfer effected in the Republic of Panama? What are the formalities required to register such title transfer in the national registry of the Republic of Panama (e.g., notarization, legalization, etc.)? Please summarize the related costs and procedures.

Transfer of title is achieved through the execution of a bill of sale and registration at the Public Registry Office. If the bill of sale is executed outside Panama, the signature of the parties must be certified by a Notary Public and the signature of the Notary Public must be certified by a Panamanian consul or the 1961 Hague Convention on the Apostille. If the bill of sale is in a foreign language it must be translated by an official translator in Panama.

8. What information and details are reflected in the Certificate of Registration of an aircraft?

The Certificate of Registration issued by the Civil Aeronautics Authority ("AAC"), ("Certificado de Matrícula"), lists the registration number, manufacturer, model, serial number, owner, operator, operator's address, date of assignment of operation license, date of issuance and signature of AAC authorized officer and AAC official seal.

9. Are the entries in the aircraft registry of the Republic of Panama made available to the public upon submission of a specific application to the competent authority? Are there any fees payable for this?

The entries of the aircraft at the Public Registry records are available to the public. No fees are charged for consultation. The information on the Public Registry is available to the general public.

10. What kind of aircraft operations can be conducted with aircraft registered in the Republic of Panama (i.e., private use, commercial air transport or both)?

Panamanian law allows private and commercial use of aircraft subject to compliance with regulations and obtention of the AAC license.

11. Does the civil aviation authority in the Republic of Panama authorise the operation of foreign registered aircraft? If so, with which countries has the Republic of Panama entered into bilateral agreements on the basis of article 83-bis of the ICAO Chicago Convention for the delegation of regulatory oversight?

The Civil Aeronautics Authority currently does not maintain any bilateral agreement to operate foreign registered aircraft on the basis of article 83-bis of the ICAO Chicago Convention for the delegation of regulatory oversight. Even though there is currently no outstanding agreement, Panama has previously undersigned in three of such agreements, them being:

- Operational Agreement undersigned between Panama and Costa Rica in 2003;
- Operational Agreement undersigned between Panama and Guatemala in 2006;
- Operational Agreement undersigned between Panama and Colombia in 2008; modified in 2016.

The article 83-bis of the ICAO Chicago Convention for the delegation or regulatory oversight has been enforceable in Panama since June 20, 1997, and there are currently no impediments or limitations for any State Party wishing to pursue this bilateral agreement.

12. Is there a separate register of aircraft mortgages and/or leases and/or security interests in the Republic of Panama?

Aircraft mortgages, leases and sublease are executed through a public deed and recorded at the Aircraft Section of the Public Registry of Panama, and thereafter, these are filed with the AAC. The mortgage becomes effective as of the date of registration at the Public Registry. Leases and Subleases are effective as of the time of execution. Their registration with the Public Registry is for third parties notice purposes.

13. What are the formalities required to register a mortgage / lease / security interest in the national registry of the Republic of Panama (e.g., notarization, legalization etc.)? Please summarize the related costs and procedures.

Mortgages, leases and subleases must be executed through a Public Deed and registered with the Public Registry of the Republic of Panama. If any of the parties is outside Panama, a Power of Attorney is issued to a representative in Panama to arrange for execution of the documents in Panama. The signatures on documents executed outside the Republic of Panama must be certified by a Notary Public and the signature of the Notary Public must be legalized by a Panamanian consul in the place of issuance or according to the 1961 Hague Convention on the Apostille. Documents in foreign language must be translated into Spanish by an official translator in the Republic of Panama.

Registration charges are:

Lease Agreement:

Registration fees in respect of the lease are \$100.00 USD for review by the Public Registry plus \$1.50 USD for each \$1,000.00 USD or fraction thereof.

Plus, \$50.00 USD for each document contained in the Public Deed which are the certificate of existence of the Lessor, Power of Attorney of Lessor and Power of Attorney of Lessee.

Sublease Agreement:

Registration fees in respect of the sublease are \$100.00 USD for review by the Public Registry plus \$1.50 USD for each \$1,000.00 USD or fraction thereof.

Plus, \$50.00 USD for each document contained in the Public Deed which are the certificate of existence of the Sublessor, Power of Attorney of Sublessor and Power of Attorney of Sublessee (COPA



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generally executes the documents through a Power of Attorney which is registered at the Public Registry and therefore there is no need to pay \$50.00 USD for COPA's POA).

Mortgage:

Registration fees in respect of a mortgage are \$100.00 USD for review by the Public Registry plus \$2.50 USD for each \$1000.00 USD or fraction with a cap of \$51,250.00 USD.

Fast Track registration fees:

Fast track registration fees in the amount of \$300.00 USD per document may be paid to guarantee registration in 48-72 hours.

14. Is a mortgage priority notice an available security instrument for aircraft financiers in the Republic of Panama?

The aircraft mortgage is an available security instrument for aircraft financiers in the Republic of Panama and is commonly used.

15. Does an aircraft mortgage duly registered in the national registry of the Republic of Panama extend to engines and other parts of such aircraft (either installed or not on the airframe)?

Generally, a mortgage on an aircraft will cover its accessories and improvements, such as parts and engines incorporated therein, whether they are present or future accessories and improvements. In addition, engines and other parts capable of individualisation and determination and able to be sufficiently described, could also be mortgaged separately from the aircraft.

16. What statutory liens (if any) would rank prior to an aircraft mortgage duly registered in the national registry of the Republic of Panama?

According to Law 21 of January 29, 2003 (the "Panamanian Aeronautical Law"), the following claims have priority over all other claims against the aircraft:

- i. National taxes over the aircraft
- ii. Aircraft Mortgage
- iii. The salaries and other social benefits due to the crew.
- iv. The amounts owed to the air transport sector on account of the operations of the aircraft in the last flight.

Furthermore, the Republic of Panama has made the following declaration in respect of article 39 of the Cape Town Convention:

"In respect of Article 39 of the Convention, the following non-consensual rights and interests shall prevail over an international interest registered in accordance with the Convention:

- d.1) any sums due from or capable of being demanded from the debtor by way of salaries, pensions and other social security benefits and employment allowances owed in respect of employees of that debtor;
- d.2) any sums due from or capable of being levied from the debtor by way of fiscal and parafiscal contributions owed in respect of employees of that debtor;
- d.3) any sums due or capable of being levied from the debtor, by way of taxes, duties or contributions payable to the Panamanian State or to the decentralized bodies that collect such revenue, in accordance with Panama's internal laws;
- d.4) the right of the Republic of Panama to arrest, attach or confiscate mobile equipment and aircraft equipment in the event of breach of the customs or criminal laws of the Republic of Panama; and,

- d.5) court costs in connection with the foreclosure of the Aircraft Mortgage, and national taxes over the Aircraft.

These different priorities may create a conflict of laws which will have to be resolved by the Panamanian Judicial Branch once a case of this nature is presented.

17. Do the laws of the Republic of Panama provide for possessory rights and/or rights of detention over aircraft in favor of third parties (such as airport taxes, customs duties, air navigation charges, crew's wages, MRO's receivables)?

Under Panamanian law, a possessory lien would be granted to the holder of a pledge (the pledgee) who maintains possession of the property handed to him as security for a debt or other obligation, until the debt or obligation is met. The pledge of an aircraft is possible under Panamanian law. However, it will be rare, given that the usual intention of the pledge is that the debtor (the owner of the aircraft) will retain possession of the aircraft and utilise it in order to pay off the debt.

A possessory lien is also granted to the person that has executed work over a movable, giving such person the right to retain such movable in pledge until he receives payment. Accordingly, a possessory lien will arise in favour of a repair and maintenance shop for unpaid services to the aircraft.

In the case of a mortgage, as opposed to a pledge, the property is not handed to the creditor. Instead, the debtor (or a third party designated by him) will maintain possession and control of the property. Therefore, in the case of an aircraft mortgage, the mortgagee will not acquire a possessory lien.

Although there is no express provision of Panamanian law affording airport and navigation fees the status of a lien, in practice, these are deemed to be a form of charge over the aircraft (and not a charge against its operator or owner as such). Thus, these will be charged against the aircraft regardless of who is its owner or operator.

18. Are foreign laws governed security agreements (e.g., mortgages) recognized in the Republic of Panama in order to validly create a security interest over an aircraft registered in the national registry of the Republic of Panama? If so, are there any formalities/requirements to bear in mind?

A mortgage on an aircraft would be deemed to be an act of commerce under the laws of the Republic of Panama, and the parties thereto may choose the applicable law to govern the terms thereof. The Aeronautical law states that all foreign acts and contracts relating to foreign aircraft undertaken in accordance with local laws will be valid in Panama. However, the laws of the Republic of Panama would govern the aircraft mortgage in respect of particular requirements which should appear therein, as well as its registration and the effect thereof.

The courts of the Republic of Panama will generally uphold a choice of law clause, save as stated above. However, a court may refuse to enforce any terms which are contrary to the public policy of the Republic of Panama.

19. Are foreign law governed leases recognized in the Republic of Panama in order to validly lease an aircraft registered in the national registry of the Republic of Panama to a lessee incorporated in the Republic of Panama? If so, are there any formalities/requirements to bear in mind?

A lease on an aircraft would be deemed to be an act of commerce under the laws of the Republic of Panama, and the parties thereto may choose the applicable law to govern



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the terms thereof. The Aeronautical law states that all foreign acts and contracts relating to foreign aircraft undertaken in accordance with local laws will be valid in the Republic of Panama. However, the laws of the Republic of Panama would govern the aircraft lease in respect of particular requirements which should appear therein, as well as its registration and the effect thereof.

The courts of the Republic of Panama will generally uphold a choice of law clause, save as stated above. However, a court may refuse to enforce any terms which are contrary to the public policy of the Republic of Panama.

20. Has the Republic of Panama ratified the Cape Town Convention on International Interests in Mobile Equipment and the related Aircraft Protocol? Has the Republic of Panama made any declarations in order to better determine the scope of application of the Convention / Protocol in Panama? If so, what is the impact of such declarations on aircraft registration issues? Are there any specific aspects relating to the enforcement of IDERA's to be considered?

The Republic of Panama has adopted the Cape Town Convention and the Cape Town Protocol by means of Law No.29 of 2003 and no other action needs to take place for the Convention to be in effect in the Republic of Panama. Pursuant to the Declaration made by the Republic of Panama under Article XXX, paragraph I, with respect to Article XIII of the Cape Town Protocol, the IDERAs, once registered with the AAC, will be fully effective to authorise the party named therein to act in accordance with the terms set out therein and procure the deregistration of the aircraft from the AAC and procure the export and physical transfer of the aircraft from the Republic of Panama, provided that the terms of Article IX of Cape Town Protocol are observed.

21. What are the requirements and documentation to deregister an aircraft from the Republic of Panama? How does the aircraft deregistration process work?

The registration of an aircraft will be deleted, upon request, by an interested party (i.e., the owner or operator) or as a matter of course by AAC whenever:

- a) it is required by the owner or operator of the aircraft;
- b) the AAC authorises registration of the aircraft in another country, which will occur whenever the aircraft is free of any limitation or encumbrance or given the consent of its registered creditors;
- c) it is required to set the aircraft out of services;
- d) the ownership of the aircraft is going to be transferred to a person who is not qualified to register an aircraft in Panama;
- e) there is a total loss of the aircraft or an assumed loss by operation of law (there is a presumption of loss 90 days after last notice in the event of an unexplained disappearance);
- f) the aircraft appears registered in another country.

22. What fees are payable to deregister an aircraft from the Republic of Panama?

In order to deregister an aircraft from the Republic of Panama, the interested party must pay fees to the Public Registry of Panama and the Civil Aeronautics Authority.

The fees payable to the Public Registry are \$100.00 USD for the review (qualifying rights) of each aircraft and \$100.00 USD for the aircraft's deregistry.

The fees payable to the AAC are \$100.00 USD for each deregistered aircraft.

23. Is the consent of the mortgagee / lessor (as the case may be) required in order to deregister an aircraft from the Republic of Panama?

The consent of the mortgagee /lessor is required in order to deregister and aircraft from the Republic of Panama.

24. What are the usual practical difficulties (if any) involved in deregistering aircraft from the Republic of Panama?

There are no difficulties in deregistering the aircraft from the AAC. The petition is filed by the interested party. Once the AAC has issued the certificate of deregistration, this is sent to the Aircraft Section of the Public Registry for cancellation. Difficulties will arise if the operator refuses to deliver the aircraft, in which case the owner will have to request judicial intervention. There are no self-help remedies in the Republic of Panama.

25. How long does deregistration take, both where there is co-operation from the defaulted party (mortgagor / lessee / operator) and where there is no such co-operation from it?

When there is co-operation of all parties involved for the deregistration process, this may take from two to four weeks. When there is no co-operation from any of the parties the process may take years.

26. Please outline the applicable repossession rules under the national laws of the Republic of Panama (and the Cape Town Convention, if applicable) following an event of default under a mortgage or a lease, including registration issues with the national registry in the Republic of Panama.

There are no self-help remedies under the laws of the Republic of Panama. Upon an event of default and failure of the operator to deliver the aircraft, the mortgagee or lessor would have to initiate judicial proceedings to repossess the aircraft and to recover damages.

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Peru



Peru

Submitted by: *Patricia Siles Alvarez*

1. Which authority is in charge of the civil aviation registry in Peru? Does Peru use a single-registry system or is there a dual-registry system in place?

In Perú the authority in charge of the aviation registry is the Public Registry.

There is one single registry called, "Aircraft Public Registry."

2. Is the registry an operator registry or an owner registry (or both)?

The Aircraft Public Registry registers the operator and the owner. The Registry shows who is operating the aircraft (Lessee or the operator), and who gives the aircraft in Lease (Lessor or the owner).

3. What are the requirements and documentation to register an aircraft in Peru? Include references to formalities such as notarization, legalization, etc.

According to Peruvian Aeronautical Legislation (Law 27261) and Public Registry Law, the registration procedure for any Agreement requires the following:

- The original Agreement signed by the representatives, with signatures legalized, and if the Agreement comes from abroad, the apostilled Spanish version or with official translation.
- Legalized copy of previous Certificate of Registration (if the aircraft changes registration to OB, it will be required for the aeronautical authority of the previous State registration to issue a cancellation of that registration certificate).
- Apostilled Bill of Sale, supporting title of ownership, and possession of the SubLessor Owner's Sublease Authorization (in case the aircraft Agreement was a Sub-Lease). Previously, it is required the Lessor/owner or his legal representative in Peru file their powers at the Public Registry.

3a. How does the aircraft registration process work?

Once the application is filed, the applicant receives a certificate. If the application is observed by the aircraft public register, the applicant will be required to submit the corresponding information or documents in order to achieve a successful registration procedure. Once the assessment is complete, the results will be recorded in a document that will be filled out by the register.

4. How does the aircraft registration process work?

Peruvian law establishes that Lessor/owner and Lessees register first at Peruvian Public Registry their powers, in order to sign the Lease or Purchase Agreement. The Agreement can be signed with legalized signatures. If the Agreement is signed in another country, it needs to be duly notarized and apostilled.

When the aircraft comes to Peru, it must also comply with customs legislation regarding its import or temporary import.

5. What fees are payable to register an aircraft in Peru?

The amount to be paid is flat and depends on the annual rate of the UIT (a Tax Unit), which increased its value to S / 4,400, and is

in force throughout 2021. For this year, the fee for registering an aircraft is S/ 449 (approx. \$120 USD).

6. How long does registration take?

Registration normally takes seven days but could be delayed for seven to 10 business days, if the information doesn't meet all requirements. Once the act is registered, the Registry issues proof of registration that is posted on the Public Registry web page.

7. Are there any weight and/or maximum age restrictions to register an aircraft in Peru?

No.

8. Does registration of an aircraft in the national registry constitute proof of ownership under the laws of Peru?

Yes, but only for Peruvian national owners, not for foreign owners.

9. How is an aircraft title transfer effected in Peru? What are the formalities required to register such title transfer in the national registry of Peru (e.g., notarization, legalization etc.)? Please summarize the related costs and procedures.

The purchase Agreement and transfer of an aircraft title must be done via a Public Deed. Previous parties who signed it need to register their Powers at the Public Registry.

Costs at the Public Notary vary. Normally they charge a percentage of the price. Costs at the Public Registry is a flat of approx. \$120 USD for 2021.

10. What information and details are reflected in the certificate of registration of an aircraft?

Each certificate in the Aeronautical National Registry displays the following information:

- identification of the aircraft: nationality, brand, serial number, manufacturer's designation, etc.;
- owner/Lessor name;
- operator/Lessee name;
- legal aspects: mortgages, leases, warranties, liens, ownership restrictions, etc.; and
- DGAC's (Dirección General de Aeronáutica Civil) observations.

11. Are the entries in the aircraft registry of Peru made available to the public upon submission of a specific application to the competent authority? Are there any fees payable for this?

Peruvian Public Registry is public, and anybody can access it; however, fees are applied, and vary depending on the request reason, such as just a consult or requesting copies in order to change it.

12. What kind of aircraft operations can be conducted with aircraft registered in Peru (i.e., private use, commercial air transport or both)?

In order to operate an aircraft, you need first certify the aircraft and



Peru
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include it in an Operation Specification with an air company. The aircraft registration and certificate in Peru can be used according to the permits the airline has.

13. Does the civil aviation authority in Peru authorize the operation of foreign registered aircraft? If so, with which countries has Peru entered into bilateral Agreements on the basis of article 83-bis of the ICAO Chicago Convention for the delegation of regulatory oversight?

The Peruvian Aeronautical Authority has not signed any Agreement with another authority based on the 83 BIS ICAO Conventions. However, Peruvian airlines may provide domestic or international air services with foreign registration because of collaboration or integration Agreements with the country in which the aircraft has their registration and airworthiness certificate.

14. Is there a separate register of aircraft mortgages and/or leases and/or security interests in Peru?

No, every Agreement is recorded at the Public Registry.

15. What are the formalities required to register a mortgage / lease / security interest in the national registry of Peru (e.g., notarization, legalization etc.)? Please summarize the related costs and procedures.

The formalities are the same as listed in questions three and four. The fees are the same as listed in the response to question five.

16. Is a mortgage priority notice an available security instrument for aircraft financiers in Peru?

The registration of a mortgage in the Peruvian Public Registry gives everyone information regarding the priority of the financier's rights over the aircraft.

17. Does an aircraft mortgage duly registered in the National Registry of Peru extend to engines and other parts of such aircraft (either installed or not on the airframe)?

According to Aeronautical Peruvian Law, the mortgage extends only to engines.

18. What statutory liens (if any) would rank prior to an aircraft mortgage duly registered in the National Registry of Peru?

According to Peruvian Law mortgage, the duly registered has priority over any lien.

19. Do the laws of Peru provide for possessory rights and/or rights of detention over aircraft in favor of third parties (such as airport taxes, customs duties, air navigation charges, crew's wages, MRO's receivables)?

According to Aeronautical Peruvian Law, Lessor/owner can repossess their property via a summary procedure at the Judicial Court. The order of the judge must be registered in the Public Registry and DGAC in order to proceed with repossessing the aircraft.

20. Are foreign law-governed security Agreements (e.g., mortgages) recognized in Peru in order to validly create a security interest over an aircraft registered in the national registry of Peru? If so, are there any formalities/requirements to bear in mind?

Yes, foreign law-governed security Agreements are valid if the parties have signed it and an aircraft Agreement is duly registered in Peru. Formalities are the same as listed in the answers to questions four and five.

21. Are foreign law-governed leases recognized in Peru in order to validly lease an aircraft registered in the national registry of Peru to a Lessee incorporated in Peru? If so, are there any formalities/requirements to bear in mind?

Yes, foreign law-governed leases are valid if the parties have signed it over and an aircraft Agreement is duly registered in Peru. Formalities are the same as listed in the answers to questions three, four and five.

22. Has Peru ratified the Cape Town Convention on International Interests in Mobile Equipment and the related Aircraft Protocol? Has Peru made any declarations in order to better determine the scope of application of the Convention / Protocol in Peru? If so, what is the impact of such declarations on aircraft registration issues? Are there any specific aspects relating to the enforcement of IDERA's to be considered?

No.

23. What are the requirements and documentation to deregister an aircraft from Peru? How does the aircraft deregistration process work?

It is possible to deregister an aircraft if the finalized Agreement or parties agree to finish it before the Term ends. In this second condition, it is required to register an Addendum. The formalities and costs for this are listed in the answers to questions four and five.

24. What fees are payable to deregister an aircraft from Peru?

Please see the answer to question five.

25. Is the consent of the mortgagee / Lessor (as the case may be) required in order to deregister an aircraft from Peru?

Yes, according to Peruvian law, liens must be cancelled before the deregistration or have the consent of the creditors.

26. How long does deregistration take, both where there is co-operation from the defaulted party (mortgagor / Lessee / operator) and where there is no such co-operation from it?

A deregistration procedure at the Peruvian Public Registry normally takes seven days but could be delayed seven to 10 days if there is no cooperation among the parties. In the opposite case, it could be delayed longer

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Philippines



Philippines

Submitted by: Kerwin Tan, Tan Hassani & Counsels

1. Which authority is in charge of the civil aviation registry in the Philippines? Does the Philippines use a single-registry system or is there a dual-registry system in place?

Aircraft shall be registered with the Civil Aviation Authority of the Philippines (hereinafter, the "CAAP"). CAAP is responsible for the following: (a) establish and maintain a system for the national registration of aircraft in the Philippines; (b) establish and maintain a system for the registration of liens, mortgages, or other interests in aircraft or aircraft engines; and (c) have sole authority to register aircraft and liens, mortgages or other interests in aircraft or aircraft engines.

2. Is the registry an operator registry or an owner registry (or both)?

It is an operator registry. The Philippine Civil Aviation Regulations (hereinafter, the "PCAR") provides that no person may operate a civil aircraft unless it has been registered by its owner or operator.

3. What are the requirements and documentation to register an aircraft in the Philippines? Include references to formalities such as notarisation, legalization, etc.

The PCAR provides that an aircraft is eligible for registration if it is:

- Owned by or leased to a citizen or citizens of the Philippines or corporations or associations organized under the laws of the Philippines at least sixty per centum (60%) of whose capital is owned by Filipino citizens (as referred in Section 44 of the Republic Act No. 9497), or a government entity of the Republic of the Philippines; and
- Not registered under the laws of any foreign country
- A foreign-owned or registered aircraft may be eligible for registration, if utilized by members of aero clubs organized for recreation, sport, or the development of flying skills as a prerequisite to any aeronautical activities of such clubs within the Philippine airspace, and if so, authorized by the Authority.

The following are the requirements for the registration of aircraft:

- A letter of approval on the assigned registration;
- Notarized Application for Aircraft Registration;
- Documentary Evidence of Ownership;
- Cancellation of registration from the country of origin (deregistration);
- Customs Clearance/Customs release/Custom Payment;
- Original or a certified true copy of registration certificate;
- Registration fee;
- Recording Fee (if applicable);
- Energy Tax Fee (if applicable);
- CAAP Accounting Clearance;
- Corporation Documents (Certificate of Registration from the Securities and Exchange Commission or Department of Trade and Industry, whichever is applicable);
- AAC & Operations Specification (if applicable);
- AOC & Operations Specification (if applicable);
- Civil Aeronautics Board List of Aircraft approval (if applicable);
- Notarized Certification from the Corporate Secretary (if applicable);

- Such other documentary-supporting documents that may be required.

All documents issued and/or signed outside the Philippines must be apostilled or consularized at the Philippine Consulate in that country.

3a. How does the aircraft registration process work?

The applicant shall submit a letter of intent expressing its aim to register an aircraft in the Republic of the Philippines. A request for the reservation of aircraft registration mark shall also be included.

Upon submission of the letter of intent and the application form and other necessary documents and payment of the required fees, the Director General or his representative shall evaluate/inspect/verify that the aircraft or aircraft engine is eligible for registration, such aircraft shall be registered, and the Certificate of Registration shall be issued to the owner/operator thereof.

4. What fees are payable to register an aircraft in the Philippines?

A registration fee shall be paid for the registration of aircraft. Such fees shall depend on the aircraft's weight, intended use, type of engine, and type of aircraft. An energy tax fee and a recording fee may also be paid.

4a. How long does registration take?

Once the documents are prepared by the registrant, the registration process may be completed in about fifteen days.

5. Are there any weight and/or maximum age restrictions to register an aircraft in the Philippines?

There are no weight or age restrictions to register an aircraft in the Philippines. However, in general, all aircraft would be subject to airworthiness evaluation by the CAAP.

6. Does registration of an aircraft in the national registry constitute proof of ownership under the laws of the Philippines?

Republic Act 9497 (hereinafter, the "CAAP Law") provides that the Certificate of Registration is conclusive evidence of ownership, except in a proceeding where such ownership is, or may be, at issue. However, since this is an operator registry, if the operator is registered as a "lessee," then the ownership can be annotated on the Certificate of Registration.

7. How is an aircraft title transfer effected in the Philippines? What are the formalities required to register such title transfer in the national registry of the Philippines (e.g., notarization, legalization etc.)? Please summarize the related costs and procedures.

The following are the requirements for the transfer of ownership of aircraft:

- Application form prescribed by CAAP;
- Previous copy of Certificate of Registration;

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- c. Documentary evidence of ownership (e.g. Bill of Sale);
- d. Copy of Accounting Clearance issued by the CAAP to the former and new owner of aircraft;
- e. Corporation document issued by the Securities and Exchange Commission/Department of Trade and Industry, if applicable;
- f. Secretary's Certificate (if applicable);
- g. CAAP prescribed fees (i.e., Registration fees, energy tax, recordation fee, etc.);
- h. Air Operator Certificate Specification (if applicable);
- i. Civil Aeronautics Board's list of aircraft approval (if applicable);
- j. Unless assumed by the new owner, all liens and encumbrances annotated at the back of the Certificate of Registration have been satisfied or complied with or declared by competent authorities as null and void or ineffective.

A new Certificate of Registration will be issued for the registration of an aircraft with the same nationality and registration mark. A new entry shall be made on the Philippine aircraft register. The process will be the same as the registration of an aircraft.

All conveyance recorded under the CAAP Law shall comply with the requirements for the registration of documents similar to the land registration process. The conveyance to be recorded shall also state:

- a. The interest in the aircraft of the person by whom such conveyance is made or executed or, in the case of a contract of conditional sale, the interest of the vendor;
- b. The conveyance of such interest.

All documents issued and/or signed outside the Philippines must be apostilled or consularized at the Philippine Consulate in that country.

8. What information and details are reflected in the Certificate of Registration of an aircraft?

The aircraft Certificate of Registration shall contain the following :

- a. Control Number;
- b. Nationality or registration marks assigned for the aircraft;
- c. Manufacturer and Manufacturer's designation of the aircraft;
- d. Aircraft Serial Number as found on the aircraft data plate affixed to the aircraft;
- e. Name of Owner or Operator;
- f. Address of Owner or Operator;
- g. Nil Action;
- h. Date of Issuance;
- i. Signature of the Director General;
- j. Remarks Section which must contain the date of expiration of the registration, the intended use (Commercial Air Transport, General Aviation, or Aerial Works), and record of payments;
- k. Conveyances connected to the aircraft must be entered at the back portion of the Certificate.

9. Are the entries in the aircraft registry of the Philippines made available to the public upon submission of a specific application to the competent authority? Are there any fees payable for this?

Any person may request access to information from CAAP, including the list of entries in the aircraft registry, if it does not fall within any of the exceptions under the Freedom of Information Manual of CAAP.

As a rule, no fees shall be payable for any request for access to information. However, a reasonable fee may be imposed for the reimbursement of necessary costs, including costs of reproduction,

and copying of the information required, subject to existing rules and regulations. In no case shall the applicable fees be so onerous as to defeat the purpose of the right to access information.

10. What kind of aircraft operations can be conducted with aircraft registered in the Philippines (i.e., private use, commercial air transport or both)?

PCAR Part 8 provides that Aircraft Operations that can be conducted with the registered aircraft are commercial air transport operations and general aviation operations.

Commercial air transport shall include operations involving the transport of passengers, cargo, or mail for remuneration or hire. General aviation operation refers to any other aircraft operations than a commercial air transport operation or an aerial work operation.

11. Does the civil aviation authority in the Philippines authorise the operation of foreign registered aircraft? If so, with which countries have the Philippines entered into bilateral agreements on the basis of article 83-bis of the ICAO Chicago Convention for the delegation of regulatory oversight?

As a rule, there is a nationality restriction when it comes to the registration and operation of aircraft in the Philippines. Only aircraft owned by or leased to a citizen or citizens of the Philippines, corporations or associations organized under the laws of the Philippines at least sixty per centum (60%) of whose capital is owned by Filipino citizens or a government entity of the Republic of the Philippines may be registered and operated in the Philippines.

However, the PCAR provides for an exception. A foreign-owned or registered aircraft may still be registered and operated within the Philippines, if utilized by members of aero clubs organized for recreation, sport, or the development of flying skills as a prerequisite to any aeronautical activities of such clubs within the Philippine airspace, and if so, authorized by CAAP. This means that foreign-owned aircraft may be registered and engage in operations of domestic air travel only. Foreign registered aircraft may still be authorized to operate in and to the Philippines. The PCAR allows foreign-registered aircrafts to perform commercial air transport operations in and to the Philippines upon issuance of a Validation of Air Operator Certificate. A Validation of Air Operator Certificate will be issued by the Director General upon satisfaction of the following:

- a. Has a valid Air Operator Certificate issued by a foreign Civil Aviation Authority;
- b. Has had its Aircraft Operator Security Program approved by its Civil Aviation Authority for the operations intended;
- c. Meet the applicable flight requirements and equipment requirements under the PCAR;
- d. Meets the standards contained in applicable Annexes to the Chicago Convention for the operations to be conducted; and,
- e. Philippine Civil Aeronautics Board (CAB) Approval.

12. Is there a separate register of aircraft mortgages and/or leases and/or security interests in the Philippines?

No. Section 43 of the CAAP Law provides that CAAP shall: (a) establish and maintain a system for the national registration of aircraft in the Philippines; (b) establish and maintain a system for the registration of liens, mortgages, or other interests in aircraft or aircraft engines; and (c) have sole authority to register aircraft and liens, mortgages or other interests in aircraft or aircraft engines.



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Continued...



13. What are the formalities required to register a mortgage / lease / security interest in the national registry of the Philippines (e.g., notarization, legalization etc.)? Please summarize the related costs and procedures.

No conveyance made or executed, which affects the title to, or interest in, any aircraft of Philippine registry, or any portion thereof, shall be valid in respect to such aircraft or portion thereof against any person, other than the person by whom the conveyance is made or executed, his heirs, assignees, executors, administrators, devisees, or successors in interest, and any person having actual notice thereof, until such conveyance is recorded in the CAAP and annotated at the CAAP original copy of the Certificate of Registration. Each conveyance so recorded shall be valid as against all persons.

No adverse claims may be recorded or annotated at the back of the Certificate of Registration unless originals of the documents are presented evidencing said claims and the payment of the corresponding fee.

After submission of a written letter from the owner requesting for the recordation of conveyances that affects the Certificate of Registration, the conveyance may be recorded only after the completeness of the submitted documents are verified. The following documents must be submitted:

1. Notarized conveyances; and,
2. Draft annotation to be signed by the parties involved.

Upon approval, the duplicate copy of the Certificate of Registration including all attached documents shall be forwarded to the Regulatory Standards Department for record keeping and updating of official database.

14. Is a mortgage priority notice an available security instrument for aircraft financiers in the Philippines?

Mortgage priority notice is not an available security instrument for aircraft financiers in the Philippines.

15. Does an aircraft mortgage duly registered in in the national registry of the Philippines extend to engines and other parts of such aircraft (either installed or not on the airframe)?

Yes. As mentioned in the previous questions, the CAAP is mandated to maintain a system for the registration of liens, mortgages, or other interests in aircraft or aircraft engines. CAAP Law provides that CAAP shall establish a national system for recording documents that affect title to or any interest in any aircraft registered and in any aircraft engine propeller, appliance, or spare parts intended for use on any such aircraft.

16. What statutory liens (if any) would rank prior to an aircraft mortgage duly registered in the national registry of the Philippines?

The Civil Code of the Philippines provides that for specific movable properties of the debtor, duties, taxes, and fees due thereon to the State or any subdivisions thereof shall be preferred. This shall include, but not limited to, unpaid taxes under the National Internal Revenue Code, as amended (hereinafter, the "Tax Code"), the Customs Modernization and Tariff Act (hereinafter, the "CMTA"), any liens imposed by the Director General under the CAAP Law.

The Tax Code further provides that an excise tax imposed on imported goods, products, machinery equipment, or other similar articles shall constitute a lien which shall be superior to all other charges or liens, irrespective of the possessor.

17. Do the laws of the Philippines provide for possessory rights and/or rights of detention over aircraft in favour of third parties (such as airport taxes, customs duties, air navigation charges, crew's wages, MRO's receivables)?

The CAAP Law provides that the Director General of CAAP shall have the power to impose a lien on personal and real properties, and other assets of persons, corporations, partnerships, and such other entities that shall be in default, or fail to perform their obligations, or fail to pay the fines, and other penalties imposed for violations of the law, rules, and regulations of CAAP.

Properties and assets levied upon may be sold and the proceeds applied to the satisfaction of the obligation after due notice and hearing.

The Civil Code provides that an unpaid seller of goods has a lien on the goods or right to retain them. It also recognizes possessory liens in respect of credits for the making, repair, safekeeping, or preservation of personal property.

The Tax Code also authorizes the distraint or the sale of personal property to pay any tax due within the time required.

The CMTA further provides that liability for duties, taxes, fees, and other charges attached to importation constitute a lien on the imported goods which may be enforced while such goods are under customs' custody.

In addition, Executive Order No. 903 provides for remedies for non-payment of any charges on the aircraft. It provides that the Manila International Airport Authority, in addition to any other remedy provided by law, detain, on its own, such aircraft equipment or furniture belonging to the owner or agent of the aircraft, until the amounts due have been paid.

18. Are foreign law-governed security agreements (e.g., mortgages) recognized in the Philippines in order to validly create a security interest over an aircraft registered in the national registry of the Philippines? If so, are there any formalities/requirements to bear in mind?

Yes. Philippine laws generally allow the parties to choose which law shall govern their agreement or their contracts provided that it is not contrary to law, morals, public policy, or public order. However, such agreements, to be registrable, must be authenticated either at the Philippine Consular Office or the Philippine Embassy where the agreement was executed. If the country where executed is also a signatory to the Hague Convention on the Apostille, an apostille should also suffice in lieu of consularization.

19. Are foreign law-governed leases recognized in the Philippines in order to validly lease an aircraft registered in the national registry of the Philippines to a lessee incorporated in the Philippines? If so, are there any formalities/requirements to bear in mind?

As mentioned in item 18, Philippine laws allow the parties to choose which law shall govern their agreement or their contracts provided that it is not contrary to law, morals, public policy, or public order.

In order for such contract of lease to be registered in the Philippines, the aircraft lease executed outside the Philippine territory must be authenticated either at the Philippine Consular Office or the Philippine Embassy where the said aircraft lease contract was executed. If the country where executed is also a signatory to the Hague Convention on the Apostille, an apostille should also suffice in lieu of consularization. Normally, the lease is also annotated on the aircraft's Certificate of Registration.



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20. Has the Philippines ratified the Cape Town Convention on International Interests in Mobile Equipment and the related Aircraft Protocol? Has the Philippines made any declarations in order to better determine the scope of application of the Convention / Protocol in the Philippines? If so, what is the impact of such declarations on aircraft registration issues? Are there any specific aspects relating to the enforcement of IDERA's to be considered?

The Philippines has not ratified the Cape Town Convention on International Interests in Mobile Equipment and the related Aircraft Protocol as of this writing.

21. What are the requirements and documentation to deregister an aircraft from the Philippines? How does the aircraft de-registration process work?

A letter of intention to deregister the aircraft in the Republic of the Philippines shall be prepared by the applicant. The Chief of the Aircraft Registration Section shall review the request to determine the validity and authenticity of the request.

The applicant must also submit the following:

1. Notarized application form for deregistration;
2. Original Certificate of Registration;
3. Original Certificate of Airworthiness;
4. Proof of Payment of CAAP prescribed fees;
5. CAAP Accounting Clearance of current aircraft owner;
6. Notarized Deed of Sale (if due to the sale of the aircraft);
7. Other documents as the CAAP may deem necessary.

If the aircraft has an annotation, the applicant shall be required to settle/clear all derogatory or liens/encumbrances, prior to deregistration. No aircraft registered pursuant to Philippine civil aviation regulations shall be deregistered until and unless all liens and encumbrances annotated on the Certificate of Registration have been complied with or declared by competent authorities as null and void or ineffective.

The usual process involves filing the application for deregistration at the Aircraft Registration Section, who will then forward it to the legal department for review, before finally forwarding it to the Director General's office for approval.

22. What fees are payable to deregister an aircraft from the Philippines?

A deregistration fee shall be paid for the deregistration of aircraft in the registry. If there are annotations to be cancelled, the Certificate of Registration shall be reissued with cancelled annotations which shall also have a fee payable.

In general, the deregistration fee is Php750 and reissuance fee of Certificate of Registration and recording fee for cancellation of annotation would have fees of Php400 each, respectively. These are Value Added Tax exclusive (which is 12% as of this writing).

23. Is the consent of the mortgagee / lessor (as the case may be) required in order to de-register an aircraft from the Philippines?

Consent is not required, per se. However, if a registered aircraft has an annotation (i.e., lease agreement, mortgage,

pending accounts with CAAP), the applicant shall be required to settle or clear all derogatory or liens/encumbrances, prior to deregistration of aircraft.

No aircraft registered pursuant to Philippine Civil Aviation Regulations shall be deregistered until and unless all liens and encumbrances annotated on the Certificate of Registration have been complied with or declared by competent authorities as null and void or ineffective.

24. What are the usual practical difficulties (if any) involved in deregistering aircraft from the Philippines?

The major factor to consider is whether the deregistration is voluntary or involuntary in nature. If the deregistration is voluntary in nature, the difficulty is more on the documentation involved, especially if executed outside the Philippines. If the deregistration is involuntary, a power of attorney for deregistration would be very helpful and has been recognized in the past by the CAAP as a valid instrument to effect deregistration.

25. How long does deregistration take, both where there is co-operation from the defaulted party (mortgagor / lessee / operator) and where there is no such co-operation from it?

It cannot be easily determined how long a deregistration process may take if there is without cooperation from the defaulted party. As mentioned in the previous question, difficulties may arise if the document involved was executed outside the Philippines. The CAAP may also require further information and documentation to assure itself of the facts and circumstances of the default.

On the other hand, if there is cooperation from the defaulted party, the process may be done faster and will depend on how fast the parties will be able to prepare and submit the required documents.

Once the necessary documents are complete and submitted, officially at least, the application for deregistration should take three (3) days to process. But based on actual experience, the average processing time is about two (2) weeks.

26. Please outline the applicable repossession rules under the national laws of the Philippines (and the Cape Town Convention, if applicable) following an event of default under a mortgage or a lease, including registration issues with the national registry in Philippines.

The rightful owner of the aircraft should file for an action in court to repossess the aircraft. Under Rule 60 of the Philippine Rules of Court, a party praying for the recovery of a personal property may, at the commencement of the action or at any time before answer, apply for an order for the delivery of the personal property. The applicant shall file an affidavit providing that (1) he is the owner of the property claimed, or entitled to possession thereof, particularly describing the property; (2) that the property is wrongfully detained by the adverse party, alleging the cause of detention thereof; (3) that the property has not been distrained or taken for a tax assessment or a fine pursuant to law, or seized under a writ of execution or preliminary attachment, otherwise placed under custodial egis, or if so seized, that it is exempt from such seizure or custody; and (4) the actual market value of the property.

A bond shall be posted by the applicant, executed to the adverse party amounting to double the value of the property as stated by the applicant in its affidavit, for the return of the property to the adverse party if that return be adjudged, and for the payment to

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the adverse party of such a sum as he or she may recover from the lessor in the action.

Once the affidavit is filed and the bond is approved, the court shall issue a writ of replevin and require the sheriff to take such property into his custody.



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Poland



Poland

Submitted by: *Wardyński & Partners*

1. Which authority is in charge of the civil aviation registry in Poland? Does Poland use a single-registry system or is there a dual-registry system in place?

The President of the Civil Aviation Authority (Prezes Urzędu Lotnictwa Cywilnego) is the government authority legally in charge of the civil aviation registry in Poland. On a practical level, there is a Civil Aircraft Registry Department at the Polish CAA which is devoted to this task and manages the registry on behalf (and under the supervision) of the President of the CAA.

Poland is a single-registry jurisdiction. An aircraft may be entered into the Polish register only if it has been deleted from all other national registers.

2. Is the registry an operator registry or an owner registry (or both)?

It is an owner registry, in the sense that the owner's decision and consent is always required to register and deregister aircraft, as well as to amend entries. Moreover, the owner is always entitled to deregister an aircraft even without the consent of the operator.

At the same time, the operator, if different from the owner, must be disclosed in the register as well. In practice, it is usually the operator who handles registration matters and, in this case, it does require express authorization to do so from the owner.

3. What are the requirements and documentation to register an aircraft in Poland? Include references to formalities such as notarisation, legalization, etc.

An aircraft may be registered in the Polish registry only if its owner or operator is a Polish-based entity. With the President of the CAA's approval other aircraft may be registered in Poland as well.

The documentation required to effect a registration includes:

- owner's written declaration that the aircraft is not registered in another country's aircraft registry;
- documents proving title to the aircraft (a bill of sale suffices);
- documents proving existence and perfection of other in rem rights to the aircraft, which includes collaterals in the form of aircraft mortgage, pledge, liens or similar;
- documents proving the operator's right to use the aircraft (such as a lease agreement);
- excerpts from the owner and operator's official registers (if companies or other legal entities), proving their incorporation and their rules of representation;
- power of attorney (if acting via an attorney-in-fact); and
- pictures (photographs) of the aircraft.

On 1 January 2021 the hitherto applicable ministerial regulation (a form of statutory instrument) setting out the details of the registration process, lost force and no replacement regulation has been issued. While this should not in theory ban registration of new aircraft, and the above list of documents will remain largely relevant, it is possible that additional or different requirements will be introduced.

3a. How does the aircraft registration process work?

The entire process of registration of an aircraft in the Polish registry involves three steps:

- reservation of registration marks for the aircraft at the CAA;
- obtaining a radio licence for the aircraft with reserved registration marks at the Electronic Communications Office; and
- registering the aircraft at the CAA based on the reservation, radio licence and other required documents.

At each stage, formal written application forms and the required documents need to be filed with either the CAA or the Electronic Communications Office. The authorities involved in each step are government (public) authorities who are bound by applicable laws and procedures.

4. What fees are payable to register an aircraft in Poland?

Aviation fees are updated each year, but the changes are usually negligible. As of 2021, aircraft registration fees for airplanes and helicopters depend on MTOW and are as follows:

- < 1000 kg - PLN 117,
- 1000 - 5 700 kg - PLN 347,
- 5 700 - 20 000 kg - PLN 919, and
- > 20 000 kg - PLN 2,295.

Apart from the registration fee, there are other compulsory, albeit minor administrative fees:

- for reservation of registration marks - PLN 37,
- for aircraft radio (frequency) licence - PLN 82, and
- for each PoA used in the registration proceedings - PLN 17.

4a. How long does registration take?

The entire process which includes reserving registration marks, obtaining a radio licence, and registering the aircraft takes five to 10 days, but can take longer if issues arise. However, please note that the act of registration itself can be done even on the day of filing and the earlier steps do not require the aircraft's physical presence in Poland. In a well-organized transaction without any issues, the aircraft may be registered on the date of delivery (ferry) to Poland or shortly after.

5. Are there any weight and/or maximum age restrictions to register an aircraft in Poland?

No.

6. Does registration of an aircraft in the national registry constitute proof of ownership under the laws of Poland?

Yes.

7. How is an aircraft title transfer effected in Poland? What are the formalities required to register such title transfer in the national registry of Poland (e.g., notarization, legalization etc.)? Please summarize the related costs and procedures.

Transfer of title requires an agreement (contract), such as a purchase/sale agreement, donation, or swap. The agreement

Poland *Continued...*

should be in writing for evidentiary reasons, but there is no requirement for any special form, such as a deed, notarization of signatures, etc., for its legalization. Therefore, there are no stamp duties or other public fees.

However, to be effective against third parties, not only the transferor and transferee, but the transfer of title also has to be recorded in the civil aircraft registry by updating the entry for the owner. The cost of updating the register is PLN 37.

8. What information and details are reflected in the Certificate of Registration of an aircraft?

The following information is disclosed:

- aircraft - make, type, manufacturer serial number and registration marks,
- owner - name, address and proxy,
- operator - name, address and proxy,
- pledges, liens, mortgages and other third-party rights in rem, and
- agreement between aviation authorities on handing over regulatory oversight for the aircraft (if any - rare in practice).

Technically, some additional information might be recorded, but this is rare in practice.

9. Are the entries in the aircraft registry of Poland made available to the public upon submission of a specific application to the competent authority? Are there any fees payable for this?

Yes, the register is made publicly available by law. A written excerpt from the register is subject to a fee of PLN 347. However, in practice, it is usually possible to informally check the basic information on an aircraft by calling the Civil Aircraft Registry Department at the CAA.

10. What kind of aircraft operations can be conducted with aircraft registered in Poland (i.e., private use, commercial air transport or both)?

There is no limit on the type of operations associated with the registration of a civil aircraft with the Polish registry of civil aircraft, or there are no separate registers for different aircraft uses. The only plausibly related exception is the separate register for state-owned aircraft, for the military, police, fire departments, etc.

Of course, the above is without prejudice to other regulations restricting the right to use aircraft for specific types of operations, including those associated with the aircraft's airworthiness, operator's licence, and any other permits that may be required.

11. Does the civil aviation authority in Poland authorise the operation of foreign registered aircraft? If so, with which countries has Poland entered into bilateral agreements on the basis of article 83-bis of the ICAO Chicago Convention for the delegation of regulatory oversight?

Yes. In accordance with the ICAO repository for article 83-bis agreements, Polish authorities have entered into delegation agreements with the authorities of the following countries (ICAO legal repository item no. in brackets):

- Ireland (4902-E, 5066-E),
- Austria (4907-E),
- Italy (4934-E),
- Spain (5597-E, 5678-E, 5729-E, 5748-E), and
- Malta (5871-E).

12. Is there a separate register of aircraft mortgages and/or leases and/or security interests in Poland?

Polish law does not have the concept of "aircraft mortgage". An ordinary mortgage does not apply to aircraft (only to real estate). The type of security closest in function to an aircraft mortgage proper is a so-called registered pledge which is registered not only in the aircraft registry but also in a separate register.

Another relevant security interest is a fiscal (tax) pledge which may be imposed on aircraft, as well as other chattels, by a tax authority. These fiscal pledges are recorded in a separate register kept by the tax offices.

13. What are the formalities required to register a mortgage / lease / security interest in the national registry of Poland (e.g., notarization, legalization etc.)? Please summarize the related costs and procedures.

Under Polish law, an aircraft cannot be subject to a "mortgage" proper (reference answer to question 12), and the role of that type of security is performed by a registered pledge. This is formed by a written, contractual arrangement (i.e., consent of the owner of the aircraft is required in order to establish such pledge) and then perfected by entry into the court register of pledges. It is also disclosed in the Polish Register of Civil Aircraft. The entire process normally takes two to three weeks.

14. Is a mortgage priority notice an available security instrument for aircraft financiers in Poland?

No.

15. Does an aircraft mortgage duly registered in the national registry of Poland extend to engines and other parts of such aircraft (either installed or not on the airframe)?

The legal status of aircraft engines is very contentious and ultimately unresolved in case law. Out of prudence, we normally advise our clients to obtain separate securities for the engines.

16. What statutory liens (if any) would rank prior to an aircraft mortgage duly registered in the national registry of Poland?

Only if other statutory liens were registered earlier.

17. Do the laws of Poland provide for possessory rights and/or rights of detention over aircraft in favor of third parties (such as airport taxes, customs duties, air navigation charges, crew's wages, MRO's receivables)?

Rules do exist concerning airport fees and air navigation charges but as Poland is a party to the Rome Convention on the Precautionary Arrest of Aircraft, it is unclear whether detention is allowable or enforceable on aircraft used for the regular transport of passengers.

18. Are foreign law-governed security agreements (e.g., mortgages) recognized in Poland in order to validly create a security interest over an aircraft registered in the national registry of Poland? If so, are there any formalities/requirements to bear in mind?

Yes, foreign law-governed security agreements are recognized, provided that those securities have been created in accordance with their applicable law before registering the aircraft in Poland and provided they are disclosed in the Polish aircraft registry.

Without prejudice to the generality of the foregoing, it must be stressed that, to our knowledge, there is no record of any instances or even attempts to enforce foreign-law securities on aircraft in

Poland *Continued...*

Poland. However, important, and often deep differences between national securities and enforcements regimes may raise a number of issues making enforcement of foreign-law securities more complicated, lengthy and, possibly, not effective. For this reason, we normally advise our clients to obtain local securities to ensure their practical enforceability in lieu of, or in addition to foreign collaterals, e.g., NY-law mortgages.

19. Are foreign law-governed leases recognized in [country] to validly lease an aircraft registered in the national registry of [country] to a lessee incorporated in [country]? If so, are there any formalities/requirements to bear in mind?

Yes, they are treated like any other foreign-law contracts and are enforceable subject to limited exceptions covering mandatory rules (lois de police) and public policy. Foreign-law leases, most often under English law, are commonplace on the Polish aviation market.

20. Has Poland ratified the Cape Town Convention on International Interests in Mobile Equipment and the related Aircraft Protocol? Has [country] made any declarations in order to better determine the scope of application of the Convention / Protocol in [country]? If so, what is the impact of such declarations on aircraft registration issues? Are there any specific aspects relating to the enforcement of IDERA's to be considered?

No, Poland has not ratified the Cape Town Convention on International Interests in Mobile Equipment and Aircraft Protocol. It should be assumed that protections offered by the Convention do not apply and will not be enforceable in Poland.

One significant consequence of this is that Polish law and authorities do not acknowledge IDERAs or export PoAs. However, this does not affect the rights of the owner (at least not significantly) because, under Polish law, the owner is always allowed to deregister and export the aircraft, even when the operator is against deregistration. This is subject to the operator's contractual rights under the lease. These do not affect the regulatory aspect of the situation and especially the right to deregister and process formalities concerning export.

21. What are the requirements and documentation to deregister an aircraft from Poland? How does the aircraft deregistration process work?

Deregistration requires an application from the owner, or owner-authorized operator, to the CAA and handing over the Certificate of Registration, and certificate of airworthiness, without prejudice for the possibility of issuing an export CofA. Normally, the process is quick. The only practical issue that may arise is the need to physically return the Certificate of Registration usually held by the operator onboard the aircraft.

22. What fees are payable to deregister an aircraft from Poland?

There are no fees.

23. Is the consent of the mortgagee / lessor (as the case may be) required to deregister an aircraft from Poland?

Only the consent of the owner is required (who may, of course, happen to be the lessor, but this status is irrelevant).

24. What are the usual practical difficulties (if any) involved in deregistering aircraft from Poland?

Usually the only difficulty, if any, lies in logistics. Deregistration requires physically handing over the Certificate of Registration

which is normally kept by the operator onboard the aircraft. This requires thoughtful organization and coordination of deregistration, return of aircraft (redelivery) and export (if planned post deregistration).

25. How long does deregistration take, both where there is co-operation from the defaulted party (mortgagor / lessee / operator) and where there is no such co-operation from it?

With good cooperation, deregistration may be done on the day of filing, or at most in a few days. We are not aware of any situations where the operator has refused to cooperate in deregistration, based on our overall experience with the CAA and regulatory matters. We are not aware of any situations where the operator has refused to cooperate in deregistration. Based on our overall experience with the CAA and regulatory matters, we estimate that it could take between one to three weeks if the main difficulty is persuading the CAA to accept a solution to deregister in the absence of the actual handover of the Certificate of Registration. There is a small but non-negligible risk that the process could take longer and/or could require engaging other authorities or the repossession of the COR from the operator.

26. Please outline the applicable repossession rules under the national laws of Poland (and the Cape Town Convention, if applicable) following an event of default under a mortgage or a lease, including registration issues with the national registry in Poland.

It must be stressed that with a few exceptions that are not relevant here, Polish law does not allow self-help enforcement of civil claims, including repossession. Of course, if the debtor (lessee/operator/mortgagor) willingly hands over the aircraft, or at least tacitly accepts the fact of repossession and no force is required, repossession may be carried out without the involvement of government authorities.

However, if enforcement proper is required (i.e., there is a dispute and/or lack of cooperation of the aircraft's possessor), it may be conducted only using the court enforcement system. Normally, this requires litigation until there is a final and enforceable judgment, which is then presented for enforcement to a court bailiff.

In order to expedite the process and forego the need for lengthy litigation, the lessee/operator/mortgagor may be asked to issue a security in the form of a so-called deed of voluntary submission to enforcement. This acts as an enforceable judgment once a writ of enforceability has been attached by a court in very short and purely formal proceedings.

DISCLAIMER: The above information should not be relied upon by the reader for legal advice as it is intended merely to serve as a preliminary guide to the laws and regulations governing the registration of aviation and aircraft in this country. The information intends to provide summary-level information about certain tax issues affecting general aviation and aircraft finance. Since these materials are general in nature, readers are encouraged to obtain legal and tax advice from their own professional legal and tax counsel based on specific facts and circumstances regarding their acquisition and/or use of aviation and aircraft.

Portugal

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Portugal

Submitted by: João Marques de Almeida, Alves Pereira & Teixeira de Sousa

1. Which authority is in charge of the civil aviation registry in Portugal? Does Portugal use a single-registry system or is there a dual-registry system in place?

The National Civil Aviation Authority (ANAC) is the official entity responsible for the National Aircraft Registry.

2. Is the registry an operator registry or an owner registry (or both)?

The National Aircraft Registry is an owner registry, although other parties with a relevant interest in the aircraft will also be included in said registry (i.e., lessee, mortgagee, etc). Aircraft operators must also be duly licensed by ANAC and each aircraft they use must be included in their respective Aircraft Operator Certificate (AOC).

3. What are the requirements and documentation to register an aircraft in Portugal? Include references to formalities such as notarisation, legalization, etc.

3a. How does the aircraft registration process work?

The following documents are necessary for the registration of an aircraft in Portugal:

- bill of sale or purchase and sale agreement;
- deregistration certificate from the country where the aircraft was previously registered or a non-registration certificate, if the aircraft was never registered in any other country;
- customs release certificate (only required when the aircraft is from a non-EU country);
- two photos of the aircraft – one of the front and one in profile, with the marks of nationality and registration painted, in 9cm x 12cm format, without margins and printed in natural colour; and
- registration application form (under the format of the official form of ANAC).

The aforementioned documents must be submitted by the new owner of the aircraft to ANAC together with the application for the aircraft registration.

ANAC only accepts original documents or certified true copies of the documents, and all signatures must be duly notarized. Any document issued in a foreign country must be legalised at a Portuguese Consulate or Embassy or have the apostille of the Hague Convention (for signatory countries only).

Documents are accepted in Portuguese or in English, and certificates are also issued by ANAC either in Portuguese or in English.

For the aircraft to be operated in Portugal the following documents and licenses must also be obtained with ANAC:

- airworthiness certificate (technical inspections to the aircraft may be required and the application to this certificate can be filed in advance to the registration application form in order to expedite the procedure),
- radio station licence,
- air navigation diary,

- noise certificate and
- aircraft logbooks.

4. What fees are payable to register an aircraft in Portugal?

If the aircraft has never been registered in Portugal, registration fees shall be of approximately 900.00 EUR for the registration of the aircraft, two engines, and Auxiliary Power Unit (APU).

4a. How long does registration take?

Once all documents are duly filed with ANAC it usually takes between two to five days to have the registration completed and a new aircraft registration certificate issued. However, it can take longer if the technical documents of the aircraft are not submitted to ANAC, particularly with airworthiness approvals, with sufficient time in advance.

The property rights over the aircraft are reported back to the date of application and all documents were initially filed with ANAC. This is duly recorded in the registration certificate.

5. Are there any weight and/or maximum age restrictions to register an aircraft in Portugal?

There are no weight or age limitations as long as the aircraft is EASA type approved and is in an airworthy condition (as per EASA standards). However, a local airport must be appointed as the main base of operation for the aircraft and said airport must also be duly certified for the operation of the aircraft.

6. Does registration of an aircraft in the national registry constitute proof of ownership under the laws of Portugal?

Yes, and reported back to the date the registration application and all required documents were initially filed with ANAC.

7. How is an aircraft title transfer effected in Portugal? What are the formalities required to register such title transfer in the national registry of Portugal (e.g., notarization, legalization, etc.)? Please summarize the related costs and procedures.

A bill of sale or a purchase and sale agreement, together with the original aircraft registration certificate (which shall be cancelled by ANAC), will be sufficient as long as the aircraft is already registered in Portugal. The aforementioned documents must be submitted by the new owner of the aircraft to ANAC with the application for the aircraft registration.

ANAC only accepts original documents or certified true copies of the documents, and all signatures must be duly notarized. Any document issued in a foreign country must be legalised at a Portuguese Consulate or Embassy or have the apostille of the Hague Convention (for signatory countries only).

Documents are accepted in Portuguese or English and certificates are also issued by ANAC in Portuguese or English.

The associated cost with the aircraft registration is 72.33 EUR (or fifty percent of this amount if the applicant is an aero club) only.

Portugal
Continued...

8. What information and details are reflected in the Certificate of Registration of an aircraft?

The Certificate of Registration includes information on the aircraft manufacturer, model, manufacturer serial number, Portuguese registration number, and title owner. However, ANAC also issues certified statements with all registry entries pertaining to the aircraft (see question nine below), including:

- aircraft owner and date of purchase;
- engine manufacturer, model and manufacturer serial number;
- Auxiliary Power Unit manufacturer, model, and manufacturer serial number;
- date of lease and identification of the lessee; and
- full details in respect to any other registered interest on the aircraft (co-ownership/fractional ownership, mortgages and other liens or incumbrances).

9. Are the entries in the aircraft registry of Portugal made available to the public upon submission of a specific application to the competent authority? Are there any fees payable for this?

Yes, ANAC provides certified and complete information on all aircraft registry entries upon request and at no charge. The information is provided in Portuguese or English.

10. What kind of aircraft operations can be conducted with aircraft registered in Portugal (i.e., private use, commercial air transport or both)?

Aircraft operations can be conducted in Portugal for private use, commercial air transport, and for aerial work, depending on the aircraft type and operator's license.

11. Does the civil aviation authority in Portugal authorise the operation of foreign registered aircraft? If so, with which countries has Portugal entered into bilateral agreements on the basis of article 83-bis of the ICAO Chicago Convention for the delegation of regulatory oversight?

Portugal has entered into bilateral agreements with Spain and Italy for the transfer of oversight responsibilities under article 83-bis of the Chicago Convention. Other ad hoc bilateral agreements for individual aircrafts have also been signed by Portugal (with Austria, Belgium, United Kingdom, and Romania). A full list is available at ICAO's website (<https://www.icao.int/secretariat/legal/83bis/forms/allitems.aspx>).

12. Is there a separate register of aircraft mortgages and/or leases and/or security interests in Portugal?

No, all security liens and other relevant interests on the aircraft are registered with the National Aircraft Registry.

13. What are the formalities required to register a mortgage / lease / security interest in the national registry of Portugal (e.g., notarization, legalization, etc.)? Please summarize the related costs and procedures.

ANAC only accepts original or certified true copies of the documents, and all signatures must be duly notarized. Any document issued in a foreign country must be legalised at a Portuguese Consulate or Embassy or have the apostille of the Hague Convention (for signatory countries only).

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Documents are accepted in Portuguese or English, and certificates are also issued by ANAC in Portuguese or English.

To apply for the registration of a mortgage, lease, or other security interest the following documents must be submitted to ANAC:

- the lease or security agreement or similar instrument or notarial deed containing a valid constitution of a mortgage; and
- The registration application form.

The registration fees (for mortgages only) must be paid upon submission of the aforementioned documents, which are calculated as following: full amount covered by the mortgage divided by 100,000. Please note that there is a minimum and a maximum amount for registration fees, which are €72.33 and €947.72, respectively.

14. Is a mortgage priority notice an available security instrument for aircraft financiers in Portugal?

No. Only fully binding mortgages can be registered.

15. Does an aircraft mortgage duly registered in the national registry of Portugal extend to engines and other parts of such aircraft (either installed or not on the airframe)?

Engines can be either registered as part of an aircraft or subject to a separate registry entry as autonomous equipment. Registered mortgages shall extend to the engines unless said engines are subject to a separate registry entry.

16. What statutory liens (if any) would rank prior to an aircraft mortgage duly registered in the national registry of Portugal?

The following rights will have precedence:

- tax debts over the aircraft,
- possessory liens (see question 17) and
- other previously registered security interest.

17. Do the laws of Portugal provide for possessory rights and/or rights of detention over aircraft in favor of third parties (such as airport taxes, customs duties, air navigation charges, crew's wages, MRO's receivables)?

For unpaid airport charges, the airport operator may detain any asset of the debtor located in the airport premises, including aircraft, to secure payment of the debt and accrued interest. The said airport Authority also has special security over the property of the said assets for the payment of the debt (i.e., the credit has priority over other debts).

Portugal is part of Eurocontrol and the Multilateral Agreement relating to Route Charges. As such, proceedings for recovery of the amount due to Eurocontrol could be instituted by Eurocontrol or at Eurocontrol's request by the Portuguese Air Navigation Authority.

MROs have the right to detain the aircraft and/or engines to secure payment for any work performed in those assets.

Portugal
Continued...

18. Are foreign law-governed security agreements (e.g., mortgages) recognized in Portugal in order to validly create a security interest over an aircraft registered in the national registry of Portugal? If so, are there any formalities/requirements to bear in mind?

Any mortgage on an aircraft registered in Portugal must be created and governed by Portuguese law. Said mortgage shall only be effectively constituted and enforceable upon registration with the National Aircraft Registry.

19. Are foreign law-governed leases recognized in Portugal in order to validly lease an aircraft registered in the national registry of Portugal to a lessee incorporated in Portugal? If so, are there any formalities/requirements to bear in mind?

Parties are generally free to choose the law governing the lease agreement as long as the general principles of Portuguese public order are duly respected. The validity of the lease agreement should be assessed on a case-by-case basis.

Lease agreements should be registered with the National Aircraft Registry. Whenever the lessee is an airline, the lease must be duly justified and preapproved by ANAC.

20. Has Portugal ratified the Cape Town Convention on International Interests in Mobile Equipment and the related Aircraft Protocol? Has Portugal made any declarations in order to better determine the scope of application of the Convention / Protocol in Portugal? If so, what is the impact of such declarations on aircraft registration issues? Are there any specific aspects relating to the enforcement of IDERA's to be considered?

Portugal is not a signatory party to the Cape Town Convention.

21. What are the requirements and documentation to deregister an aircraft from Portugal? How does the aircraft deregistration process work?

Any prior registered lien to the aircraft must be cancelled or the prior consent of the lessee and/or mortgagor must be duly obtained in writing. Subsequently, an application must be filed with the Portuguese Civil Aviation Authority (ANAC) requesting the deregistration of the aircraft.

The original aircraft registration certificate must be physically returned to ANAC, and all logbooks and other technical documents from the aircraft must be cancelled by ANAC. An Export Certificate of Airworthiness should be requested in advance (when applicable).

22. What fees are payable to deregister an aircraft from Portugal?

Fees are 38.91 EUR for the deregistration certificate to be issued. Additional 100.26 EUR shall be required if an Export Certificate of Airworthiness is also requested.

23. Is the consent of the mortgagee / lessor (as the case may be) required in order to deregister an aircraft from Portugal?

Yes, and said consent must be duly notarised and legalised.

24. What are the usual practical difficulties (if any) involved in deregistering aircraft from Portugal?

Cooperation from the lessee or a court repossession order

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(injunction proceedings are available) are generally required to regain physical access to the aircraft, logbooks, and other technical documents. Evidence on the rightful termination of the lease agreement must also be submitted to ANAC.

To facilitate the deregistration procedure, an irrevocable power of attorney is usually granted by the lessee in favour of the aircraft lessor/owner (similar to IDERA under the Capet Town convention).

25. How long does deregistration take, both where there is co-operation from the defaulted party (mortgagor / lessee / operator) and where there is no such co-operation from it?

The deregistration procedure is fairly quick if there is cooperation from the defaulted party. This should not take more than a few days. However, if the defaulted party denies access to the aircraft, logbooks, and other technical documents, court proceedings will have to be instituted to regain repossession of the aircraft. Urgent injunction proceedings are available. In this case, it will take more time to deregister the aircraft and these cases will be determined on a case-by-case basis.

26. Please outline the applicable repossession rules under the national laws of Portugal (and the Cape Town Convention, if applicable) following an event of default under a mortgage or a lease, including registration issues with the national registry in Portugal.

Self-remedies are generally not allowed under Portuguese law. However, the lessee is usually required to grant an irrevocable power of attorney to the lessor/owner as a precondition for the lease agreement. With said irrevocable power of attorney, the lessor shall be entitled to act on behalf of the lessee in order to have access to the aircraft, logbooks, and other technical documents and cancel the lease with the National Aircraft Registry and apply for the deregistration and export of the aircraft.

If the lessee does not cooperate and/or challenges the validity of the irrevocable power of attorney, repossession must be effected by order of the court. As mentioned in the answer to the previous question, urgent injunction proceedings are available to seek immediate repossession of the aircraft (provisional possession). The main court claim for effective possession must be filed within 30 days after provisional repossession is granted by the court in the prior injunction proceedings.

DISCLAIMER: The above information should not be relied upon by the reader for legal advice as it is intended merely to serve as a preliminary guide to the laws and regulations governing the registration of aviation and aircraft in this country. The information intends to provide summary-level information about certain tax issues affecting general aviation and aircraft finance. Since these materials are general in nature, readers are encouraged to obtain legal and tax advice from their own professional legal and tax counsel based on specific facts and circumstances regarding their acquisition and/or use of aviation and aircraft.

Romania



LEAUA DAMCALI DEACONU PAUNESCU

Attorneys & Counselors

Romania

Submitted by: Prof. Dr. Crenguta Leaua and Corina Tanase

1. Which authority is in charge of the civil aviation registry in Romania? Does Romania use a single-registry system or is there a dual-registry system in place?

The Romanian Civil Aeronautical Authority (hereinafter "RCAA") is the authority in charge of the civil aviation registry in Romania. In relation to aircraft registration, in accordance with the provisions of Subchapter 4:1.4 para (3) of the Romanian civil aeronautical regulations "Registration of civil aircraft" Edition 1/2016 approved by OMT no. 1.338/25.10.2016 as amended by OMT no. 165/2021 from 26 February 2021 of the Minister of Transport and Infrastructure regarding the approval of amendments for regulation related to certification and registration of UAV (hereinafter "Romanian Registration Regulation") RCAA manages the following registries:

- Unique registry for registration of civil aircraft (hereinafter "RUIAC");
- Registry of securities; and
- Registry of deregistration.

2. Is the registry an operator registry or an owner registry (or both)?

RUIAC registers both the owner and the operator of the aircraft.

3. What are the requirements and documentation to register an aircraft in Romania? Include references to formalities such as notarisation, legalization, etc.

In order to be registered in RUIAC the following requirements set out in Subsection 1:2.1 of the Romanian Registration Regulation must be met:

- the aircraft is not registered in another State;
- the aircraft complies with the requirements for the level of noise and toxic emissions;
- the aircraft is airworthy; and
- the owner or holder of the aircraft is a natural person with the domicile or permanent residence in an EU country or a legal person with headquarters in an EU country.

The documentation necessary to be submitted for the registration of an aircraft in RUIAC consists of:

- application for registration;
- the ownership title or the holder title;
- the written agreement of the owner if the aircraft is registered at the request of the holder, in original;
- documents regarding the previous situation of the aircraft as to its registration;
- the placement scheme of the registration marks;
- proof of the domicile/residence/headquarters of the owner or holder, as the case may be which consists of: (i) a copy of the Certificate of Registration and a full ascertaining certificate for the Romanian legal persons or the equivalent documentation issued by the competent authorities for foreign legal persons, or (ii) a copy of the identification card or of the proof of residency in Romania for Romanian natural persons or the equivalent documentation issued by the competent authorities for foreign natural persons;

- the confirmation of the reservation for the desired registration marks received from RCAA;
- the copy of the document attesting airworthiness valid at the date of registration application; and
- proof of payment of the RCAA fees.

The documents accompanying the application for registration must be submitted in original or as a notarized copy and, if they are in a foreign language, a notarized translation in Romanian language must also be submitted.

The documents issued by foreign institutions must bear an apostille or be superlegalized, as the case may be.

If the documentation is submitted by a proxy, the power of representation must be proved by means of power of attorney notarized, apostilled or superlegalized, as the case may be.

3a. How does the aircraft registration process work?

Usually, the applicant reserves the registration marks prior to the submittal of the application for registration. Following the receipt of the application and the related documentation, the RCAA proceeds with their analysis. Before deciding on the registration, RCAA may request any supplemental information and documents.

4. What fees are payable to register an aircraft in Romania?

The fees for the registration of the aircraft in Romania vary according to the maximum takeoff weight (MTOW):

- 90 euro per aircraft plus VAT if MTOW <= 5700 kg and
- 180 euro per aircraft plus VAT if MTOW > 5700 kg.

4a. How long does registration take?

In accordance with the provisions of the law, RCAA must answer an application for registration within 30 days calculated from the date all the information and documents are received. In practice, RCAA answers faster than this deadline.

5. Are there any weight and/or maximum age restrictions to register an aircraft in Romania?

The Romanian Registration Regulation provides for no weight or age restriction for an aircraft to be registered in RUIAC.

6. Does registration of an aircraft in the national registry constitute proof of ownership under the laws of Romania?

No, the registration in RUIAC of an aircraft and the issuance of the Certificate of Registration do not constitute proof of ownership, legal holding, or right of use in relation to the aircraft. This is expressly provided in the Romanian Aeronautical Code and Romanian Registration Regulation.

7. How is an aircraft title transfer effected in Romania? What are the formalities required to register such title transfer in the national registry of Romania (e.g., notarization, legalization etc.)? Please summarize the related costs and procedures.

In principle, the transfer of an aircraft title takes the form of a private deed that does not require any specific notarization or other certification procedures. The transfer of the title must be

Romania Continued...

recorded in writing bearing the signatures of the parties as proof of the deed itself. In order to register the title transfer in the national registry, it is sufficient to submit the original deed of the transfer or a notarized copy and, if the case, the notarized translation of the deed in Romanian language.

The transfer of a title represents an amendment to the data registered in RUIAC and, thus, the registration needs to be amended to reflect the new owner. The amendment of the data registered in RUIAC is made based on an application submitted by the owner of the aircraft or the holder, with the approval of the owner. The application contains data on the aircraft (type and model, manufacturer serial number, number and date of the registration certificate, registration marks), on the required amendment and the documentation enclosed to the application.

The fee for the amendment of the RUIAC data is 45 euro plus VAT per application and the proof of payment shall be filed together with the application for amendment.

8. What information and details are reflected in the Certificate of Registration of an aircraft?

The Certificate of Registration of an aircraft issued by RCAA reflects the following:

- number of the Certificate of Registration,
- the nationality and registration marks,
- the manufacturer and manufacturer's designation of aircraft,
- aircraft serial number,
- name and address of owner,
- name and address of holder (operator),
- statement that the aircraft was duly entered on RUIAC,
- statement that the Certificate of Registration does not prove the legal holding or ownership of the aircraft,
- statement that the Certificate of Registration must be carried on board of the aircraft during its operation,
- date of issue,
- Limitations/remarks, and
- signature

9. Are the entries in the aircraft registry of Romania made available to the public upon submission of a specific application to the competent authority? Are there any fees payable for this?

In 2020 a new Aeronautical Code was adopted in Romania. This Code provides expressly in article 22 para 3 that RUIAC is not public, while in the previous code there was no provision as to the character of RUIAC.

There is currently a discrepancy with the provisions of the Romanian Registration Regulation adapted in 2016 which provides that the data recorded in RUIAC and in the Registry for securities are public and are published on the RCAA website. It is to be mentioned that these are not actually published on the RCAA website. The data published regards the Romanian operators, the type of certificate they hold, its availability, and the aircrafts included in the operator's AOC or AOA (type and registration mark).

The Romanian Registration Regulation further provides that the data registered in RUIAC and in the Registry of securities may be provided in writing to the interested parties following the submission of an application to this end and the payment of the fee of 45 Euros per aircraft plus VAT. The application must contain the name and address of the applicant, the requested information,



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the reasons of the request and purpose for which the information shall be used.

The application is subject to the approval of the RCAA's general manager who may reject such a request if the following are affected: the public order, national security, privacy and integrity of the citizen, the commercial interests of natural and legal persons, court actions, legal certification, the pending inspections and investigations or other relevant aspects regarding a conflict of interests.

The Romanian Registration Regulation is a secondary legislation compared to the Aeronautical Code. Hence, if in discrepancy with the Aeronautical Regulation, the provisions of the Romanian Registration Regulation may be subject to annulment at the request of an interested party, or the authority may voluntarily repeal such provision.

10. What kind of aircraft operations can be conducted with aircraft registered in Romania (i.e., private use, commercial air transport or both)?

An aircraft registered in Romania may be operated for both commercial air transport and private use. The aircraft may also be used for specialised commercial operations (other than commercial air transport) performed in areas such as agriculture, construction, photography, surveillance, observation and patrol, and aerial advertising.

11. Does the civil aviation authority in Romania authorise the operation of foreign registered aircraft? If so, with which countries has Romania entered into bilateral agreements on the basis of article 83-bis of the ICAO Chicago Convention for the delegation of regulatory oversight?

In accordance with the Romanian Aeronautical Code, foreign registered aircrafts may be operated from/to Romania and within Romania subject to the provisions of specific European legislation and international treaties or, based on the traffic rights granted by the Romanian Ministry of Transportation and Infrastructure.

In regard to the application of article 83-bis of the ICAO Chicago Convention, to the best of our knowledge based on the information published on ICAO website, there are two agreements for the transfer of operational and technical surveillance duties from Romania as the state of registry to Portugal as the state of the operator, each regarding a specific aircraft. These agreements are between Romanian Civil Aeronautical Authority and Portuguese Civil Aviation Authority.

12. Is there a separate register of aircraft mortgages and/or leases and/or security interests in Romania?

In Romania the mortgages and other securities constituted by the owner as a guarantee of a debt on the civil aircraft (or its components) registered in RUIAC are recorded in the Registry of securities and mentioned in RUIAC.

It must be also mentioned that, in Romania, there are instances in which mortgagors and/or lessors register their aircraft mortgages and/or leases also in the Electronic archive for security interests in movable property in the section regarding "other goods". However, in accordance with the Romanian Aeronautical Code, article 23 letter d), the owner's right to institute a mortgage or other security over an aircraft registered in RUIAC is recognized under the condition that such mortgage or security is constituted in accordance with Romanian law (as the State where the aircraft is registered) and registered in the Romanian Registry of security.



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Romania Continued...

13. What are the formalities required to register a mortgage / lease / security interest in the national registry of Romania (e.g., notarization, legalization etc.)? Please summarize the related costs and procedures.

For the primary registration of a mortgage or other securities in the Registry of securities held by RCAA, the beneficiary of the mortgage/security or the debtor must submit the following documents:

- an application for the registration of the mortgage/security;
- the title for the constitution of the mortgage/security in original or notarized copy and, if the case may be, a notarized translation of the title in Romanian language; and
- proof of payment of the related fee of 180 Euros per aircraft plus VAT.

The primary registration may be amended at the request of the beneficiary that must file an application in this regard accompanied by justifying documents and proof of payment of the fee of 135 euros per change plus VAT.

The registrations in the Registry of securities are valid for five years, and the beneficiary or the debtor may renew the registration based on substantive documents prior to its expiry. If not extended, the primary registration and any substantive amendments become obsolete.

14. Is a mortgage priority notice an available security instrument for aircraft financiers in Romania?

In Romania, an intent of setting up a security mortgage (in Romanian "intenta de a ipoteca") is regulated expressly in relation with the registration of mortgages for immovable assets in the Land book and for movable assets in the Electronic archive for security interests in movable property. There is no express provision in relation to the registration of such intent in the Registry of securities held by RCAA.

15. Does an aircraft mortgage duly registered in the national registry of Romania extend to engines and other parts of such aircraft (either installed or not on the airframe)?

The Civil Aeronautical Code provides that a mortgage may be constituted on the aircraft or on its components (e.g., the engines).

Furthermore, the Romanian Registration Regulation provides that the mortgage title must contain provisions regarding the engines, equipment, subassemblies, spare parts etc. Thus, in the absence of such provisions, an aircraft mortgage is not presumed to include these components too.

16. What statutory liens (if any) would rank prior to an aircraft mortgage duly registered in the national registry of Romania?

The beneficiary of an aircraft mortgage duly registered in the national registry of Romania has the right to satisfy its claim out of the mortgaged aircraft. In case of enforcement, the claims that might have a rank prior to the respective aircraft mortgage are:

- judicial costs;
- costs for conservatory measures;
- costs for enforcement;
- costs for conservation of the aircraft;
- expenses made in the interest of all creditors;
- costs arisen against the debtor for the expenses made for the compliance of the conditions or formalities provided by the law for obtaining the right on the aircraft; and

- another aircraft mortgage or security that was registered prior to the respective aircraft mortgage.

17. Do the laws of Romania provide for possessory rights and/or rights of detention over aircraft in favor of third parties (such as airport taxes, customs duties, air navigation charges, crew's wages, MRO's receivables)?

Directly, or at the request of the air navigation services provider, the airport administrator has the right to detain a civil aircraft on the ground if the aircraft operator fails to pay, respectively, to guarantee, the airport charges and the air navigation services.

The detention remains in place until this debt is paid off or until sufficient guarantees concerning this debt are set up and accepted by the airport administrator, with due observance of the regulations in force. If the detention exceeds 30 calendar days, the airport administrator has the right to reposition the respective aircraft subject to five days prior notice to the aircraft operator.

18. Are foreign law-governed security agreements (e.g., mortgages) recognized in Romania in order to validly create a security interest over an aircraft registered in the national registry of Romania? If so, are there any formalities/requirements to bear in mind?

In accordance with the Romanian Aeronautical Code, a mortgage or a security over the aircraft must be constituted in accordance with the law of the state where the aircraft is registered and must be registered in the Registry of securities of the respective State. Thus, if the aircraft is registered in Romania, a mortgage or security shall be constituted in accordance with the Romanian law and shall be registered in the Registry for security held by RCAA.

19. Are foreign law-governed leases recognized in Romania in order to validly lease an aircraft registered in the national registry of Romania to a lessee incorporated in Romania? If so, are there any formalities/requirements to bear in mind?

In accordance with the provisions of art. 2637 of the Romanian Civil Code and art. 3 of the Regulation (EC) No 593/2008 on the law applicable to contractual obligations (Rome I), as a rule, the parties are free to choose any law to govern their agreements, Romanian or foreign. Foreign law-governed leases are recognized in Romania and may be registered in RUIAC. The same formalities and requirements described at points 3 and 3a) above must be observed for their registration.

20. Has Romania ratified the Cape Town Convention on International Interests in Mobile Equipment and the related Aircraft Protocol? Has Romania made any declarations in order to better determine the scope of application of the Convention / Protocol in Romania? If so, what is the impact of such declarations on aircraft registration issues? Are there any specific aspects relating to the enforcement of IDERA's to be considered?

Romania has ratified both the Cape Town Convention on International Interests in Mobile Equipment and the related Aircraft Protocol.

In relation with the Cape Town Convention on International Interests in Mobile Equipment Romania made two declarations:

- Nothing in the Convention shall affect the right of Romania, of a Romanian entity, of an intergovernmental organization, or other private provider of public services to arrest or detain an object under the laws of the Romanian state for payment of amounts owed to such entity, organization or provider directly relating to those services in respect of that object or another object;

Romania Continued...

- The remedies available to the creditor in accordance with the Convention for which their application is not expressly conditioned in the Convention by filing a court application, may be exercised only with the permission of the competent court of the Romanian State.

As regards the Aircraft Protocol, Romania made one declaration, namely that will apply article VIII from the Protocol regulating parties' freedom to choose the law applicable to an agreement, a sale contract, a guarantee contract or subordination agreement.

As regards IDERA, Article XIII from the Aircraft Protocol is not applicable in Romania.

21. What are the requirements and documentation to deregister an aircraft from Romania? How does the aircraft deregistration process work?

In order to deregister the aircraft from Romania the applicant must file the following documents:

- application for deregistration;
- the written agreement of the owner to deregister the aircraft, if the application for deregistration is filed by the holder;
- the documentation regarding the termination of the right to hold the aircraft, if applicable; and
- the agreement of the beneficiary of the mortgage or security over the aircraft;
- proof of payment of the fee.

Upon receipt of an express request for the deregistration of the aircraft filed by the owner or the holder, with owner approval, RCAA notifies the holder of the aircraft that it has 10 days for submitting the original Certificate of Registration of the aircraft and to confirm the removal of the registration marks.

The law expressly provides that if the applicant does not have access to the aircraft subject to deregistration, RCAA may allow the removal of the registration marks subsequent to the issuance of the certificate for deregistration.

Before deciding on deregistration, RCAA may request any supplemental information and documents.

RCAA's decision to deregister the aircraft or to refuse deregistration shall be rendered 30 days from the date when the request was received together with all the documents and information required. In practice, deregistration occurs faster than the legal term.

22. What fees are payable to deregister an aircraft from Romania?

The fee that needs to be paid in order for RCAA to analyze the application and issue the deregistration certificate is 90 euro per aircraft plus VAT.

23. Is the consent of the mortgagee / lessor (as the case may be) required in order to deregister an aircraft from Romania?

Yes, the express consent of the mortgagee / lessor is required for deregistration to be granted.

24. What are the usual practical difficulties (if any) involved in deregistering aircraft from Romania?

A practical difficulty arises in connection with the obligation to file the original Certificate of Registration of the aircraft. This becomes a problem usually if the holder is not the same as the owner and deregistration is requested by the owner. For deregistration, the original registration certificate is required, and the law does not provide RCAA with the means against the holder of the aircraft for



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recovering such certificate. The absence of such a certificate may impede deregistration of the aircraft.

25. How long does deregistration take, both where there is co-operation from the defaulted party (mortgagor / lessee / operator) and where there is no such co-operation from it?

If there is cooperation from the defaulted party, deregistration is granted in a matter of few days, although the law provides for 30 days calculated from the submission of the complete documentation.

If there is no cooperation from the defaulted party, then the procedure shall be prolonged, and the duration cannot be estimated.

26. Please outline the applicable repossession rules under the national laws of Romania (and the Cape Town Convention, if applicable) following an event of default under a mortgage or a lease, including registration issues with the national registry in Romania.

Under the Romanian Civil Code, the repossession of goods is expressly regulated for creditors with a mortgage constituted on the good, in this case the aircraft. The aircraft may be repossessed by the creditor through its own means or with the help of the bailiff.

The repossession by the creditor using its own means must be expressly provided for in the mortgage deed and must be preceded by a notice filed through the bailiff. When using its own means to repossess the good, the mortgagor cannot disturb the public order and is not allowed to use coercion, directly or indirectly. Basically, in the absence of the debtor's cooperation, the aircraft cannot be repossessed using own means.

The available alternative is the forced repossession through a bailiff. In this case the bailiff may take all the measures for repossessing the aircraft, including making an appeal to the law enforcement agents. The bailiff must repossess the aircraft and hand it over to the mortgagor within 48 hours from the receipt of mortgagor's request.

In regards to the lease contracts, there is no express provision as to repossession using one's own means in the Civil Code, but the lessor may use the enforcement procedure through the bailiff regulated by the Romanian Civil Procedure Code in order to take possession of the aircraft in accordance with the lease contract requirements. One of the obligations of a lessee is to return the good.

DISCLAIMER: The above information should not be relied upon by the reader for legal advice as it is intended merely to serve as a preliminary guide to the laws and regulations governing the registration of aviation and aircraft in this country. The information intends to provide summary-level information about certain tax issues affecting general aviation and aircraft finance. Since these materials are general in nature, readers are encouraged to obtain legal and tax advice from their own professional legal and tax counsel based on specific facts and circumstances regarding their acquisition and/or use of aviation and aircraft.

Serbia

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Serbia

Submitted by: *Marjan Poljak, Karanović & Partners*

1. Which authority is in charge of the civil aviation registry in Serbia? Does Serbia use a single-registry system or is there a dual-registry system in place?

The Civil Aviation Directorate of the Republic of Serbia (hereinafter: "Directorate") is the authority in charge of the civil aviation registry. Serbia uses a single-registry system.

2. Is the registry an operator registry or an owner registry (or both)?

The Serbian Aircraft Registry held by the Directorate ("Registry") is both an operator registry and owner registry. The data of both, the aircraft's owner and the aircraft operator (i.e., the lessee) should be registered in the Registry - the aircraft is registered in the name of its owner, but there is a specific field for registration of the operator's identity as well.

3. What are the requirements and documentation to register an aircraft in Serbia? Include references to formalities such as notarisation, legalization, etc.

In case it is intended to lease the aircraft to a local operator, the registration is performed in four steps as described below. Namely, in case of a lease, it would be necessary to obtain a prior approval of the lease agreement from the Directorate. If there is no lease, this step would not be applicable, and the registration would be performed in three steps (B, C, and D).

A. Directorate's approval on the Lease Agreement

The following documents are required:

1. Draft of the lease agreement (which is identical to the lease agreement which the parties will execute);
2. Proof of payment of the administrative fee in the amount of RSD 4,330.00 (approx. EUR 37); and
3. Written statement made by the lessor and the lessee stating that they acknowledge their rights and obligations under the lease agreement. The statement should be signed by the lessee (it is not necessary for the lessor to sign it as well).

B. Resolution of the Commercial Court

Prior to registration of an aircraft within the Directorate, a resolution approving the registration with the Directorate would have to be obtained from the Commercial Court in Belgrade, irrespective of the fact if the aircraft will be leased to a local operator or not.

The following documents are required:

1. Directorate's approval of the Lease Agreement (please see under A);
2. Lease Agreement (if it is intended to lease the aircraft to a local operator);
3. Certificate from the foreign register that the aircraft was previously registered in, stating that the aircraft is no longer registered in that registry;
4. Certificate from the (foreign) companies register in which the owner of the aircraft is registered;
5. Certificate of airworthiness issued by the foreign competent authority or the certificate of airworthiness issued by the Directorate;
6. Evidence on aircraft customs clearance;

7. Aircraft Sale and Purchase Agreement (or other proof of ownership);

8. Court administrative fee in the amount of RSD 400 (approx. EUR 3.5).

C. Airworthiness Certificate

The Directorate determines airworthiness of the aircraft in a separate administrative procedure. The necessary documents are as follows:

1. Application form for determining airworthiness;
2. Proof of payment of the administrative fee;
3. Proof of payment of the fee for the services rendered by the Directorate;
4. Photocopy of the ID card or passport of the person submitting the application;
5. Photocopy of the applicable insurance policy of the aircraft owner against liability for damage caused to third parties and passengers.

D. Registration with the Directorate

Upon the issuance of the Resolution of the Commercial Court and obtaining of the airworthiness certificate, the following documents are submitted to the Directorate:

1. Application form for the registration of the aircraft;
2. Resolution of the Commercial Court;
3. Photocopy of the valid ID card of the passport of the person submitting the request;
4. Proof of payment of the Directorate fee for the registration of the aircraft;
5. Certificate of airworthiness issued by the Directorate.

The documents must be submitted as either originals or certified copies, alongside translations made by a court-certified interpreter if the documents were issued in a foreign language (not Serbian). Related to step described under B. Please note that even if in practice the court often accepts documents that are not apostilled, our advice is to submit apostilled documents under B. Points 3, 4, and 5, keeping in mind the inconsistent practice of the Commercial Court in this matter.

3a. How does the aircraft registration process work?

In order to register an aircraft in the Registry, one must (i) firstly obtain the appropriate court's act by initiating the appropriate procedure before the Commercial Court in Belgrade, (ii) obtain the certificate of airworthiness by submitting the appropriate request to the Directorate, and finally (iii) submit the request for the registration of the aircraft, along with all required documents, to the Directorate. In case the aircraft should be leased to a local operator, it would be necessary to obtain the consent of the Directorate as pre-step (please see answer under question 3 above).

4. What fees are payable to register an aircraft in Serbia?

The fees that are payable to register an aircraft are:

1. Court administrative fees in the amount of RSD 400 (approx. EUR 3.5);
2. Administrative fees for registration of the aircraft; and

Serbia Continued...

3. Directorate fee.

The amount of administrative fees for registration of aircraft and Directorate fees (two different types of fees) on the type and weight of the aircraft or on the type of the certificates issued or service performed by the Directorate.

Generally, the administrative fees paid for registration of aircraft range from RSD 2,600 (approx. EUR 22) to RSD 17,220 (approx. EUR 146), while Directorate fees range from RSD 2,000 (approx. EUR 17) to RSD 100,000 (approx. EUR 850).

4a. How long does registration take?

Usually, the registration procedure takes a couple of weeks or up to one month (assuming all necessary documents are submitted), depending on the circumstances of each case. Note that the procedure involves both (i) the obtaining of the Commercial Court's decision permitting the registration, and (ii) the registration before the Registry maintained by the Directorate, and each of these authorities may prolong the procedure in case they ask for additional documents or information.

5. Are there any weight and/or maximum age restrictions to register an aircraft in Serbia?

There are no weight restrictions to register an aircraft in Serbia. However, depending on the weight of the aircraft, different fees may apply for the registration of the aircraft.

There are no maximum age restrictions to register an aircraft. Please note that if an aircraft has not been granted a certificate of airworthiness for over 10 years, the Directorate will ex officio delete it from the registry.

6. Does registration of an aircraft in the national registry constitute proof of ownership under the laws of Serbia?

Yes, it constitutes a proof of ownership under the laws of Serbia. Under Serbian Law, information contained in a public registry is considered true until proven otherwise.

7. How is an aircraft title transfer effected in Serbia? What are the formalities required to register such title transfer in the national registry of Serbia (e.g., notarization, legalization etc.)? Please summarize the related costs and procedures.

In order to transfer ownership over an aircraft under Serbian law, such transfer must be: i) approved by the Commercial Court and ii) registered with the Directorate.

To obtain the approval of the Commercial court, the following documents are required:

1. Excerpt from the Registry for the aircraft in question;
2. Certificate of airworthiness issued by the Directorate;
3. Agreement on the title transfer of the aircraft in question (no notarisation or apostille required, but agreement must be in written form);
4. Proof of payment of the court administrative fee in the amount of RSD 400 (approx. EUR 3,5).

Once the Court has rendered the resolution, the resolution should be submitted to the Directorate alongside the photocopy of the valid ID card or passport of the person submitting the request and the proof of payment of the administrative fee in the amount of RSD 4,330 (approx. EUR 37). The Directorate will register the title transfer within approx. five working days from submission of documents.

8. What information and details are reflected in the Certificate of Registration of an aircraft?

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The following information are reflected in the registration certificate:

1. Registration sheet:
 - Number of the Registration sheet;
 - Registration mark of the aircraft;
 - Type, model and the serial number of the aircraft;
 - Manufacturer of the aircraft;
2. Title sheet:
 - Name and address of the Owner(s) of the Aircraft;
 - Name and address of the Operator of the Aircraft;
 - Legal basis of the registration (Date and number of the Resolution of the Commercial Court in Belgrade on the basis of which the registration was performed);
3. Mortgage sheet:
 - Name and the address of the mortgagee;
 - Legal basis of the mortgage (Date and number of the Resolution of the Commercial Court in Belgrade on the basis of which the mortgage was registered).

9. Are the entries in the aircraft registry of Serbia made available to the public upon submission of a specific application to the competent authority? Are there any fees payable for this?

The following information is made available to the public on the website of the registry without payment of any fees and without submission any application:

- Registration mark of the aircraft;
- Type of the aircraft;
- Manufacturer of the aircraft;
- Manufacturer's mark (assigned to the aircraft by the Manufacturer);
- Serial number of the aircraft;
- Name of the Operator;

The information above is available on the Registry's website: <http://cad.gov.rs/strana/20841/Регистар-ваздухоплова>

10. What kind of aircraft operations can be conducted with aircraft registered in Serbia (i.e., private use, commercial air transport or both)?

Both, private use and commercial transport can be conducted with aircraft registered in Serbia. If the aircraft is to be used for commercial air transport, the operator must possess a Certificate of the air traffic operator issued by the Directorate.

11. Does the civil aviation authority in Serbia authorise the operation of foreign registered aircraft? If so, with which countries has Serbia entered into bilateral agreements on the basis of article 83-bis of the ICAO Chicago Convention for the delegation of regulatory oversight?

Yes, the Directorate authorises the operation of foreign registered aircraft, provided that Serbia has entered into a bilateral agreement on the basis of article 83-bis of the ICAO Chicago Convention. The only such agreement Serbia has entered at this moment is with the Republic of San Marino.

Serbia

Continued...

12. Is there a separate register of aircraft mortgages and/or leases and/or security interests in Serbia?

No, there is no separate mortgage registry. Information on mortgages, leases, security interests is contained in the Registry, which contains a separate mortgage sheet.

13. What are the formalities required to register a mortgage / lease / security interest in the national registry of Serbia (e.g., notarization, legalization etc.)? Please summarize the related costs and procedures.

In order to register a mortgage over an aircraft under Serbian law, such registration of mortgage must be: i) approved by the Commercial Court and ii) registered with the Directorate.

To obtain the approval of the Commercial Court, the following documents are required:

1. Proposal for registration of mortgage, (signed by the owner, operator, and mortgagee, no notarisation or apostille required);
2. Legal basis of the claim for which the mortgage is registered (no notarisation or apostille required);
3. Excerpt from the Registry for the aircraft in question;
4. Proof of payment of the administrative fee (approx. RSD 400, i.e., EUR 3.5) to the Commercial Court in Belgrade.

Documents should be provided in original or certified copy and submitted in Serbian language (translated by a sworn court translator).

Once the Court has issued a resolution, it should be submitted the Directorate, along with an excerpt from the Directorate's registry and the proof of payment of the administrative fee (RSD 4,330, i.e., approx. EUR 37).

14. Is a mortgage priority notice an available security instrument for aircraft financiers in Serbia?

If the mortgage was registered before an aircraft has acquired Serbian nationality (i.e., while it was registered abroad), the Air Traffic Property Law sets forth that such a mortgage will be provisionally registered in the Registry (provided that the mortgage is indicated in the certificate of deregistration from the foreign registry) and will also retain its initial order of priority as registered in the foreign registry. However, in order for this provisional registration to become final, the mortgagee must provide the Registry with the appropriate evidence of the mortgage (the court's act allowing the registration of the mortgage) within 30 days as of the registration of the provisional mortgage.

15. Does an aircraft mortgage duly registered in the national registry of Serbia extend to engines and other parts of such aircraft (either installed or not on the airframe)?

Yes, an aircraft mortgage duly registered in the Registry extends to engines and other parts of such aircraft provided that the mortgagor is entered in the register as the owner of engines and all parts of aircraft.

16. What statutory liens (if any) would rank prior to an aircraft mortgage duly registered in the national registry of Serbia?

The Air Traffic Property Law sets forth that claims secured by a statutory mortgage are to be settled prior to any other claim and are to be followed by claims for death or bodily injury caused by the aircraft in flight to third parties on the ground. According to the Air Traffic Property Law, the right of statutory mortgage exists

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on an aircraft with respect to: (i) court expenses made in the common interest of all the creditors during the enforcement or security proceedings for the purposes of guarding the aircraft or conducting the compulsory sale, (ii) claims relating to the payment owed on the basis of the search for the aircraft or its rescue, or (iii) claims relating to extraordinary costs necessary for the preservation of the aircraft. The person who acquires the statutory mortgage is authorized to register it in the Register.

17. Do the laws of Serbia provide for possessory rights and/or rights of detention over aircraft in favour of third parties (such as airport taxes, customs duties, air navigation charges, crew's wages, MRO's receivables)?

No, laws of Serbia do not provide possessory rights and/or rights of detention over aircraft in favour of third parties.

But please note that the Air traffic control in Serbia (Kontrola letenja Srbije i Crne Gore SMATSA d.o.o.) (hereinafter referred to as the „Air Traffic Control“) could ground the aircraft until payment of outstanding charges. According to the applicable regulations, the Air Traffic Control is authorized to deny further providing of its services towards the airline operator which failed to pay the outstanding charges after receipt of the payment instructions and after expiration of the additionally granted payment term. The Air Traffic Control could suspend its services towards the airline operator temporarily or permanently, partially or in total.

In any case, each third party is entitled to initiate an enforcement proceeding against the debtor in accordance with local regulations for the recovery of outstanding payments.

18. Are foreign law governed security agreements (e.g., mortgages) recognized in Serbia in order to validly create a security interest over an aircraft registered in the national registry of Serbia? If so are there any formalities/requirements to bear in mind?

Yes, foreign law governed security agreements (e.g., mortgages) are recognised in Serbia. It should be noted that any mortgage attached to an aircraft registered in Serbia may only be established in accordance with the Serbian procedural rules, irrespective of the law applicable to the mortgage agreement itself.

19. Are foreign law governed leases recognized in Serbia in order to validly lease an aircraft registered in the national registry of Serbia to a lessee incorporated in Serbia? If so, are there any formalities/requirements to bear in mind?

Yes, foreign law governed aircraft leases are recognised in Serbia, as long the lease agreement is concluded with a foreign lessor (two Serbian entities would not be allowed to choose foreign law). Also, an aircraft lease agreement needs to be concluded in a written form

Also, for a local operator, it is not allowed to enter into a lease agreement, i.e., to lease an aircraft from an entity, without prior obtained consent of the Directorate. In order to obtain the consent, the local air carrier must submit to the Directorate a non-executed draft of a lease agreement (no verification of any kind is needed). It is acceptable to redact sensitive commercial terms. In practice, the Civil Aviation Directorate issues its consent to the lease agreement within 15-30 days.

20. Has Serbia ratified the Cape Town Convention on International Interests in Mobile Equipment and the related Aircraft Protocol? Has Serbia made any declarations in order to better determine the scope of application of the

Serbia Continued...

Convention / Protocol in Serbia? If so, what is the impact of such declarations on aircraft registration issues? Are there any specific aspects relating to the enforcement of IDERA's to be considered?

No, Serbia has not ratified the Cape Town Convention, so IDERA deregistration process is not applicable in Serbia and IDERA is not recognised as an instrument established by the Cape Town Convention under Serbian law.

The aircraft deregistration procedure in Serbia is conducted by the Civil Aviation Directorate upon a request of either an aircraft's owner or an aircraft's operator (or, in certain cases, ex officio), while in both cases an applicant (owner or operator) should submit a written and notarized statement of consent to the aircraft's deregistration made by every person registered in the owner/operator sheet and mortgage sheet of the Aircraft Register. This means that the lessor/owner would not be able to deregister the aircraft from the Aircraft Register without the consent of the lessee. Such consent should be notarized and, depending on the country of its notarization (i.e., depending on the fact whether that country and Serbia are parties to an agreement or multilateral convention regulating the legalization of foreign decisions), could also be apostilled or fully legalized and translated into Serbian language by a sworn court translator.

21. What are the requirements and documentation to deregister an aircraft from Serbia? How does the aircraft deregistration process work?

The aircraft deregistration procedure in Serbia is conducted by the Directorate, upon a request of either the aircraft's owner or operator, while in both cases the applicant (owner or operator) should submit a written and notarized statement of consent to the aircraft's deregistration made by every person registered in the owner/operator sheet and mortgage sheet of the Registry. Therefore, the lessee's cooperation is necessary for this; in case it fails to cooperate, a complicated and time-consuming court procedure must be conducted in order to effectuate a decision replacing the missing consent.

Documentation required:

1. Deregistration application form;
2. Proof of payment of the administrative fee;
3. Photocopy of the valid ID card or passport of the person submitting the application;
4. Valid Certificate of Registration;
5. Valid Certificate of airworthiness;
6. Notarized (and depending of country of notarisation apostilled or legalised) written consent of each person registered in the Title sheet;
7. Notarized (and depending of country of notarisation apostilled or legalised) written statement of agreement with deregistration of the aircraft of each person registered in the Mortgage sheet;

All documents must be translated into Serbian language by a sworn court translator in not initially provided in Serbian language and submitted in original.

22. What fees are payable to deregister an aircraft from Serbia?

Fees payable to the Directorate to deregister an aircraft from the Registry amount to RSD 5,160 (approx. EUR 44).

23. Is the consent of the mortgagee / lessor (as the case may be) required in order to deregister an aircraft from Serbia?

Yes, the consent of the mortgagee / lessor (as the case may

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be), in fact the consent of each person registered in the owner/operator sheet or the mortgage sheet is necessary in order to deregister the aircraft from the Registry. Such consent should be notarized and, depending on the country of its notarization (i.e., depending on the fact whether that country and Serbia are parties to a bilateral agreement), possibly also apostilled or fully legalized, and translated into Serbian language by a sworn court translator.

24. What are the usual practical difficulties (if any) involved in deregistering aircraft from Serbia?

N/A

25. How long does deregistration take, both where there is co-operation from the defaulted party (mortgagor / lessee / operator) and where there is no such co-operation from it?

As mentioned above, since the consent from all persons entered into the Registry is necessary for deregistration, mortgagor's / lessee's / operator's cooperation is necessary for this; in case it fails to cooperate, a complicated and time-consuming court procedure must be conducted in order to effectuate a decision replacing the missing consent. Such court proceeding can last up to several years.

26. Please outline the applicable repossession rules under the national laws of Serbia (and the Cape Town Convention, if applicable) following an event of default under a mortgage or a lease, including registration issues with the national registry in Serbia.

Serbia didn't ratify the Cape Town Convention, and therefore repossession rules prescribed under the said convention are not applicable in Serbia.

Under Serbian national laws, the repossession of an aircraft can be conducted with the consent of the counterparty. Otherwise, if there is no such consent, the competent court should be addressed in regular judicial proceedings in order to repossess the aircraft.

A creditor can submit a request to the Commercial Court to sell the aircraft in a court sale in order to settle the claims secured with the mortgage.

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Slovenia

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Slovenia

Submitted by: *Marjan Poljak, Karanović & Partners*

1. Which authority is in charge of the civil aviation registry in Slovenia? Does Slovenia use a single-registry system or is there a dual-registry system in place?

Civil Aviation Agency of the Republic of Slovenia, Kotnikova ulica 19A, 1000 Ljubljana (hereinafter: "Agency") is the responsible authority of the civil aviation registry in Slovenia. Slovenia uses a single-registry system.

2. Is the registry an operator registry or an owner registry (or both)?

The registry is both an owner registry and an operator registry.

The registry consists of the general ledger and a collection of documents. The general ledger is public and consists of insets, which contain the Certificate of Registration, the ownership certificate and the load sheet. The Agency enters into the general ledger all necessary information on the aircraft, the owner and the method of acquisition of the aircraft, the user (operator) of the aircraft (if it is not the owner), and the mortgages associated with this aircraft, as well as other rights over the aircraft and all changes relating to the content of the registry.

The collection of documents is managed for each aircraft separately and is kept as a business secret.

3. What are the requirements and documentation to register an aircraft in Slovenia? Include references to formalities such as notarisation, legalization, etc.

The following requirements have to be met for the entry of the aircraft into the registry in Slovenia:

- the owner of the aircraft is a Slovenian citizen, a citizen of an EU member state, or legal entity majority owned and controlled by Slovenian citizen or citizen of an EU member state;
- the aircraft has a certificate of airworthiness which was issued by the Slovenian Ministry of Infrastructure, or which was issued by a foreign state body and was recognized by the Slovenian Ministry of Infrastructure;
- the aircraft is not registered in any other country;
- the aircraft fulfils requirements regarding the limitation of noise and other emissions, which was established by the Agency.

The following documentation shall be submitted to register an aircraft:

- application for the registration of an aircraft (AIR.OBR-108) and payment of the Tariff for the service implementation of the Agency;
- a final decision of a competent court in Slovenia on the change of owner and the operator of the aircraft;
- certificate of citizenship and/or an identity document or extract from the business register for legal entities;
- the original certificate of deregistration from the previous country or certificate of non-registration in the case of a new aircraft;
- filled out Form Part-ML Aircraft maintenance programme (AMP) - type of approval (AIR.OBR-194).

3a. How does the aircraft registration process work?

The client files application on a prescribed form with documentation for registration of aircraft to the Agency and pays the tariff in accordance with the Decision on costs. The Agency then decides on the registration and issues a certificate of decision in this regard.

As one of the prerequisites for the successful entry in the register is a final decision by the competent Slovenian court on the owner and the operator, which is the first step to obtain such a decision. The court requires evidence on the ownership (e.g., bill of sale) and on the operator (e.g., stipulated agreements). The documentation needs to be provided in originals or certified copies. Procedure may be conducted by a proxy (generally a qualified attorney at law).

4. What fees are payable to register an aircraft in Slovenia?

The tariff must be paid in accordance with the Decision on costs issued by the Agency upon the client's application. The amount of the tariff depends on the weight type of aircraft and can be up to EUR 184 for entry in the register. Additional fees are applicable for reservations of registration numbers and other services by the Agency. Court fee is EUR 35.

4a. How long does registration take?

The required time for registration is 15 days from the date of submitting the full set of required documentation. Please note that the court decision on the owner and operator is required for the registration. The latter process generally takes up to one month (if the right to appeal is waived).

5. Are there any weight and/or maximum age restrictions to register an aircraft in Slovenia?

There are no specific limitations; however, the aircraft must fulfil conditions regarding the limitation of noise and other emissions and be airworthy.

6. Does registration of an aircraft in the national registry constitute proof of ownership under the laws of Slovenia?

Yes, registration of an aircraft in the national registry constitutes a proof of ownership under the laws of Slovenia. Nevertheless, for a change of an owner or an operator as well as for the initial registration, a court decision must be obtained.

7. How is an aircraft title transfer effected in Slovenia? What are the formalities required to register such title transfer in the national registry of Slovenia (e.g., notarization, legalization etc.)? Please summarize the related costs and procedures.

The agreement by which the title on an aircraft is transferred must be concluded in written form. Title on the aircraft is transferred with the entry of the change in the register.

To change the owner/operator of the aircraft in the register, the following documentation is required:

- an application for the change of an owner/operator (AIR.OBR-109) and payment of the Tariff for the service implementation of the Agency;

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Slovenia

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- a final decision of a competent court on the change of owner and the operator of the aircraft (evidence of the ownership as well as in relation to the operator needs to be provided in originals or certified copies with Slovene certified translation);
- certificate of citizenship and/or an identity document or extract from the business register for legal entities;
- filled out Form Part-ML Aircraft maintenance programme (AMP) - type of approval (AIR.OBR-194);
- the original Certificate of Registration or permit to fly shall be returned.

8. What information and details are reflected in the Certificate of Registration of an aircraft?

Information regarding the aircraft (manufacturer, type, serial number, registration number, year of production), information regarding owner and information regarding operator.

9. Are the entries in the aircraft registry of Slovenia made available to the public upon submission of a specific application to the competent authority? Are there any fees payable for this?

Yes, the aircraft registry of Slovenia is public. The registry can be after registration on the web page accessed on the following link <https://register.caa.si/>.

10. What kind of aircraft operations can be conducted with aircraft registered in Slovenia (i.e., private use, commercial air transport or both)?

Both private use and commercial air transport can be conducted with aircraft registered in Slovenia.

11. Does the civil aviation authority in Slovenia authorise the operation of foreign registered aircraft? If so, with which countries has Slovenia entered into bilateral agreements on the basis of article 83-bis of the ICAO Chicago Convention for the delegation of regulatory oversight?

Yes, Slovenia ratified the Protocol Relating to an Amendment to the Convention on International Civil Aviation (Article 83 bis); however, the scope of cooperation is rather low. To our knowledge, only bilateral agreements with Slovak Republic and Italy were concluded.

12. Is there a separate register of aircraft mortgages and/or leases and/or security interests in Slovenia?

Even though the registry is generally one, it is separated into two sections; one is intended for ownership/operators and the second for mortgages/security interests.

13. What are the formalities required to register a mortgage / lease / security interest in the national registry of Slovenia (e.g., notarization, legalization etc.)? Please summarize the related costs and procedures.

For registration of a mortgage, the following documentation is required:

- application for registration of a mortgage (AIR.OBR-111) and payment of the tariff for the service implementation of the Agency;
- a final decision of a competent court of the registration of a mortgage;
- a copy of the notarized record of the creation of a mortgage.

14. Is a mortgage priority notice an available security instrument for aircraft financiers in Slovenia?

A mortgage entered in a foreign register on an aircraft which acquires Slovenian registration, and which is stated in the instrument of deletion of the aircraft from the foreign register may be entered in the Slovenian register as a pre-recorded mortgage. The pre-recorded mortgage is given the order of precedence according to the time fixed for its precedence in the foreign register.

The mortgagee in whose favour such a pre-recording is entered must justify the pre-recording within sixty days of service of the notice of entry; otherwise, such pre-recording is deleted from the register.

15. Does an aircraft mortgage duly registered in the national registry of Slovenia extend to engines and other parts of such aircraft (either installed or not on the airframe)?

Yes, a mortgage extends to all parts of the aircraft provided that the mortgagor is entered in the register as the owner of engines and all parts of aircraft.

16. What statutory liens (if any) would rank prior to an aircraft mortgage duly registered in the national registry of Slovenia?

Aircraft privilege ranks before aircraft mortgage. The following claims are protected by the aircraft privilege:

- legal costs necessary for the common interest of all creditors in enforcement or security proceedings for the storage of aircraft or for forced sale;
- claims relating to a particular reward for the search or rescue of an airplane;
- claims relating to extraordinary expenses necessary for the maintenance of the aircraft;
- costs to be paid to the service provider at the airport in connection with the services provided and the use of the infrastructure, in accordance with the provisions of the law governing aviation.

17. Do the laws of Slovenia provide for possessory rights and/or rights of detention over aircraft in favor of third parties (such as airport taxes, customs duties, air navigation charges, crew's wages, MRO's receivables)?

Yes, Slovenian law provides for aircraft privilege (as described above), holders of aircraft privilege may demand the sale of the aircraft.

18. Are foreign law governed security agreements (e.g., mortgages) recognized in Slovenia in order to validly create a security interest over an aircraft registered in the national registry of Slovenia? If so, are there any formalities/requirements to bear in mind?

This should be assessed on a case-by-case basis, matters relating to mortgages and international recognition of rights and security interests over an aircraft are assessed in accordance with the law governing the obligations and property relations in aviation and in accordance with an international treaty.

19. Are foreign law governed leases recognized in Slovenia in order to validly lease an aircraft registered in the national registry of Slovenia to a lessee incorporated in Slovenia? If so, are there any formalities/requirements to bear in mind?

Yes, parties are free to choose the law governing the lease agreement. The only formal requirement is that the lease

Slovenia

Continued...

agreement will have to be officially translated into the Slovenian language when submitted to the Agency (or the court) as all documents submitted to the Agency (or the court) must be in Slovenian language or official translation must be provided.

20. Has Slovenia ratified the Cape Town Convention on International Interests in Mobile Equipment and the related Aircraft Protocol? Has Slovenia made any declarations in order to better determine the scope of application of the Convention / Protocol in Slovenia? If so, what is the impact of such declarations on aircraft registration issues? Are there any specific aspects relating to the enforcement of IDERA's to be considered?

Slovenia did not ratify the Cape Town Convention on International Interests in Mobile Equipment and the related Aircraft Protocol.

21. What are the requirements and documentation to deregister an aircraft from Slovenia? How does the aircraft deregistration process work?

To deregister an aircraft, the following documentation is required:

- application for deregistration of aircraft (AIR.OBR-95) and payment of the tariff for the service implementation of the Agency;
- a statement that nationality and registration marks have been removed from the aircraft (registration mark and flag). The original documents, such as certificate of airworthiness, Certificate of Registration, and permit to fly shall be returned;
- in the case of lease agreement: the operator's statement on facts and circumstances relevant for the issuing of a decision;
- in the case of sale of an aircraft abroad: information on the prospective owner or information on prospective owner's country;
- if the aircraft is damaged or has become permanently unworthy: proof (statement by the applicant that the aircraft is damaged or statement by an aircraft accident investigator which is to be obtained by the Agency on its own behalf);
- in case of mortgage - consent of the creditor.

22. What fees are payable to deregister an aircraft from Slovenia?

The tariff must be paid in accordance with the Decision on costs issued by the Agency upon the client's application. The amount of the tariff depends on the type/weight of aircraft. The fee for the procedure before the Agency is generally up to EUR 160.

23. Is the consent of the mortgagee / lessor (as the case may be) required in order to deregister an aircraft from Slovenia?

Consent of mortgagee is required. In case the operator of the aircraft files the request for deregistration of the aircraft, consent of the owner is required.

24. What are the usual practical difficulties (if any) involved in deregistering aircraft from Slovenia?

We are not aware of any practical difficulties.

25. How long does deregistration take, both where there is co-operation from the defaulted party (mortgagor / lessee / operator) and where there is no such co-operation from it?

The required time for deregistration is 15 days from the date of submitting the full set of required documentation.

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26. Please outline the applicable repossession rules under the national laws of Slovenia (and the Cape Town Convention, if applicable) following an event of default under a mortgage or a lease, including registration issues with the national registry in Slovenia.

The repossession rules in the event of default are usually agreed upon in the mortgage or lease agreement.

The law does not prohibit taking physical possession of the aircraft in the event of default and termination of the lease agreement. However, if the opposite party is refusing to give the physical possession of the aircraft, a lawsuit must be filled. Owner can request the change of operator in the register, and a final decision of the competent court on the change of operator of aircraft must be submitted.

In case of a mortgage, the mortgagee is entitled to request the sale of the aircraft in the event of default. The mortgage agreement can also provide for the right of mortgagee to repay with the use of the aircraft.

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South Africa

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South Africa

Submitted by: Neerasha Singh, Partner Webber Wentzel

1. Which authority is in charge of the civil aviation registry in South Africa? Does South Africa use a single-registry system or is there a dual-registry system in place?

The South African Civil Aviation Authority ("SACAA") is in charge of the civil aviation registry in South Africa. South Africa uses a single-registry system.

2. Is the registry an operator registry or an owner registry (or both)?

The registry is an operator registry.

3. What are the requirements and documentation required to register an aircraft in South Africa? Include references to formalities such as notarisation, legalization, etc.

The application for registration of an aircraft is made by the registered operator on the prescribed SACAA form. The original application form and the prescribed registration fee must be submitted to the SACAA Director, together with certified supporting documents. The following information needs to be provided in the registration form including, amongst other things:

- Particulars of the aircraft;
- Aircraft type;
- Engine type and serial number; and
- Intended operation of the aircraft.

3a. How does the aircraft registration process work?

The original application form and the prescribed registration fee must be submitted to the Director of the SACAA, together with certified supporting documents. The SACAA will then process the document after having satisfied itself that the aircraft is type accepted in South Africa and will comply with the relevant customs and import requirements and formalities.

4. What fees are payable to register an aircraft in South Africa?

New registration of aircraft fees – R840.

4a. How long does registration take?

Registration usually takes 14 days. However, we have experienced delays due to the pandemic.

5. Are there any weight and/or maximum age restrictions to register an aircraft in South Africa?

There are no weight or age restrictions unless the aircraft have not been through the acceptance process in South Africa.

6. Does registration of an aircraft in the national registry constitute proof of ownership under the laws of South Africa?

No. The registration of an aircraft and the issuing of a Certificate of Registration does not confer or imply beneficial ownership of the aircraft.

7. How is an aircraft title transfer effected in South Africa? What are the formalities required to register such title transfer in the national registry of South Africa (e.g., notarization, legalization etc.)? Please summarize the related costs and procedures.

Title to an aircraft is transferred on delivery of a bill of sale by the seller to the purchaser. There are no notarisation or registration requirements applicable to bills of sale in South Africa. In instances where the purchaser is a SA individual or juristic person, SACAA records will need to be updated to reflect that the purchaser is the new owner.

8. What information and details are reflected in the Certificate of Registration of an aircraft?

- Nationality and registration marks;
- Manufacturer and manufacturer's designation of aircraft;
- Aircraft serial number;
- Owners Name;
- Owners Address;
- Date of issue of Certificate of Registration; and,
- The mortgagor and mortgagee's details as well as details of any applicable mortgage registered in South Africa.

9. Are the entries in the aircraft registry of South Africa made available to the public upon submission of a specific application to the competent authority? Are there any fees payable for this?

Entries in the registry are made available to parties that have a legitimate interest in the aircraft demonstrated by a letter of authority. Information provided to such parties exclude postal and physical addresses and other possible contact details (i.e., telephone and email) of the holder of the Certificate of Registration. The entries are accessed by application to the SACAA in terms of the Promotion of Access to Information Act. Nominal fees are payable to the SACAA, including for copies of the documents.

10. What kind of aircraft operations can be conducted with aircraft registered in South Africa (i.e. private use, commercial air transport or both)?

Both.

11. Does the civil aviation authority in South Africa authorise the operation of foreign registered aircraft? If so, with which countries has South Africa entered into bilateral agreements on the basis of article 83-bis of the ICAO Chicago Convention for the delegation of regulatory oversight?

The SACAA and South African Department of Transport ("DOT") authorises the operation of foreign registered aircraft. The DOT has entered into bilateral agreements with the following countries:

- Australia
- Austria
- Belgium

South Africa Continued...

- Botswana
- Brazil
- Bulgaria
- Burundi
- Cameroon
- China
- China (Hong Kong)
- China (Macao)
- Cuba
- Czech Republic
- Denmark
- Egypt
- Ethiopia
- France
- Germany
- Greece
- Hungary
- India
- Indonesia
- Iran
- Ireland
- Israel
- Italy
- Japan
- Lesotho
- Libya
- Luxembourg
- Madagascar
- Malaysia
- Mali
- Morocco
- Mozambique
- Netherlands
- New Zealand
- Norway
- Poland
- Portugal
- Republic of Korea
- Russian Federation
- Rwanda
- Saudi Arabia
- Senegal
- Seychelles
- Singapore
- South Sudan
- Sweden
- Switzerland
- Thailand
- Tunisia
- United Arab Emirates
- United Kingdom
- United States
- Yemen
- Zambia

12. Is there a separate register of aircraft mortgages and/or leases and/or security interests in South Africa?

Aircraft leases are not registered with the SACAA. However, there is a separate register of aircraft mortgages.

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13. What are the formalities required to register a mortgage / lease / security interest in the national registry of South Africa (e.g., notarization, legalization etc.)? Please summarize the related costs and procedures.

Aircraft leases are not registered with the SACAA. However, aircraft mortgages may be filed with the SACAA by the following process:

- The mortgagor to complete and execute the relevant SACAA form;
- Provide certified copies of forms, power of attorneys and resolutions; and,
- Payment of the prescribed fee.

14. Is a mortgage priority notice an available security instrument for aircraft financiers in South Africa?

No.

15. Does an aircraft mortgage duly registered in the national registry of South Africa extend to engines and other parts of such aircraft (either installed or not on the airframe)?

Aircraft mortgages duly registered with the SACAA extend to engines and parts for so long as the same are contained in the deed of mortgage.

16. What statutory liens (if any) would rank prior to an aircraft mortgage duly registered in the national registry of South Africa?

There are no statutory liens that would rank in priority to a mortgage registered with the SACAA.

17. Do the laws of South Africa provide for possessory rights and/or rights of detention over aircraft in favor of third parties (such as airport taxes, customs duties, air navigation charges, crew's wages, MRO's receivables)?

Yes, these are typically imposed in contract.

18. Are foreign law-governed security agreements (e.g., mortgages) recognized in South Africa in order to validly create a security interest over an aircraft registered in the national registry of South Africa? If so, are there any formalities/requirements to bear in mind?

Generally, yes. These are subject to conflict of laws principles. Foreign law-governed mortgages may be registered with the SACAA.

19. Are foreign law-governed leases recognized in South Africa in order to validly lease an aircraft registered in the national registry of South Africa to a lessee incorporated in South Africa? If so, are there any formalities/requirements to bear in mind?

Generally, yes. Leases are not filed with the SACAA.

20. Has South Africa ratified the Cape Town Convention on International Interests in Mobile Equipment and the related Aircraft Protocol? Has South Africa made any declarations in order to better determine the scope of application of the Convention / Protocol in South Africa? If so, what is the

South Africa

Continued...

**impact of such declarations on aircraft registration issues?
Are there any specific aspects relating to the enforcement
of IDERA's to be considered?**

Yes, South Africa has acceded to, ratified and incorporated the Cape Town Convention on International Interests in Mobile Equipment and the related Aircraft Protocol into South African law. Declarations have also been made by SA. Whilst the SACAA accepts the filing of IDERAs and Deregistration Powers of Attorney, in our experience, the SACAA will not act on an IDERA without an order of court in the event of a contested repossession.

21. What are the requirements and documentation to deregister an aircraft from South Africa? How does the aircraft deregistration process work?

The deregistration process is as follows:

- The operator / owner must complete and execute the relevant SACAA forms (together with the relevant corporate approvals);
- submit the necessary import, customs and exchange control documents; and,
- pay the prescribed fee.

Once processed, the SACAA will cancel the Certificate of Registration and issue a communication to the registry on which the aircraft will be registered.

22. What fees are payable to deregister an aircraft from South Africa?

The fee to deregister an aircraft in South Africa is R840.

23. Is the consent of the mortgagee / lessor (as the case may be) required in order to deregister an aircraft from South Africa?

Yes.

24. What are the usual practical difficulties (if any) involved in deregistering aircraft from South Africa?

Delays in processing documents due to the pandemic.

25. How long does deregistration take, both where there is co-operation from the defaulted party (mortgagor / lessee / operator) and where there is no such co-operation from it?

Deregistration can be effected within two to four weeks, depending on the availability of the required information to effect deregistration and workloads at the SACAA. Where there is no co-operation from the defaulting party, a court order is required and, depending on the urgency, this may take a few weeks to months.

26. Please outline the applicable repossession rules under the national laws of South Africa (and the Cape Town Convention, if applicable) following an event of default under a mortgage or a lease, including registration issues with the national registry in South Africa.

Generally, if the repossession is contested by the lessee, a court application will be required in order to deregister and export aircraft from South Africa. Currently, self-help clauses in leases are invalid in South Africa.

In a non-contested repossession, the South African lessee must follow the deregistration process in order to achieve the same.

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Sweden



Sweden

Submitted by: *Johan Cederberg, Associate, Astra Advokater*

1. Which authority is in charge of the civil aviation registry in Sweden? Does Sweden use a single-registry system or is there a dual-registry system?

The authority in charge of the aviation registry in Sweden is the Swedish Transport agency (Transportstyrelsen). The authority is a part of the Ministry of Infrastructure which in turn is a part of the executive branch of the Swedish government.

Technically, there is one aircraft registry and one supplemental registry in Sweden. However, the registry is to be viewed as single, as only Sweden has only one entry point and only one notice of registration can be filed regarding an aircraft. If a part of an aircraft is to be registered as collateral in accordance with the Cape Town Convention, such registration has to be filed in accordance with the convention and cannot be filed with the Swedish agency.

Please note that when below it is referred to the Registry of right, it infers another register which deals with rights of ownership/lease/mortgages and security interests.

2. Is the registry an operator registry or an owner registry (or both)?

In Sweden you are able to register both the owner of the aircraft and the operator separately in the Civil aviation registry.

3. What are the requirements and documentation to register an aircraft in Sweden? Include references to formalities such as notarisation, legalization, etc.

In order to properly register an aircraft in the Civil aviation registry, the seeking party would need to present the following before the Transport agency:

- A notice of registration (form L 1356, only available in Swedish) in original.
- A Bill of sale or a deed of ownership (form 1686 and 1691) in original or a certified true copy.
- If applicable, a certificate of deregistration from the authority of the exporting country.
 - If an aircraft is exported from Germany, a deed from Amtsgericht in Braunschweig stating that the aircraft is not charged with any recorded rights.
- Certificate of Insurance which shows the Swedish registration mark (original document or certified true copy). The insurance company must be approved by the Swedish financial Authority (Finansinspektionen).
- A distress beacon registration (ELT 406MHz) (form L 1796).
- A photo of the aircraft's manufacturing plate. The plate shall show, amongst other things, manufacturer, type designator and serial number.
- If applicable (only for companies or citizens domiciled outside the EEA), an application for exemption in original.

Further, if the party seeking registration is a company, the agency requires a certificate of the company's registration from a governmental national company registration office or an authentic incorporation document along with a statement issued by notarius publicus, confirming the existence and authorised signatories

of the Company. The documentation needs to be submitted in original and can not be older than six months.

If the party seeking registration is a natural-born citizen of another country the agency requires a birth certificate stating the person's citizenship. The document needs to be an original or a certified true copy no older than 12 months. Further, the agency requires a certified true copy of the seeking party's passport.

Any registration of an aircraft in the Civil aircraft registry from a legal or natural-born citizen of another country based outside the EEA, would require that the aircraft is being used within Sweden and has Sweden as its base of operations.

3a. How does the aircraft registration process work?

The documents are submitted to the agency by way of post (if documents are needed in original) to Transportstyrelsen, Luftfartygsregistret, 601 73 Norrköping. Any other documentation and/or inquiries can be submitted by e-mail to lfr@transportstyrelsen.se.

4. What fees are payable to register an aircraft in Sweden?

There is no fee for registering an aircraft in the Civil aircraft registry per se, but there is an annual fee of 600 SEK (approx. \$55 USD) for maintaining the registry. However, to receive the deed of registration there's a fee of 1500 SEK (approx. \$140 USD).

4a. How long does registration take?

Approximately two weeks.

5. Are there any weight and/or maximum age restrictions to register an aircraft in Sweden?

There are no such restrictions.

6. Does registration of an aircraft in the national registry constitute proof of ownership under the laws of Sweden?

No it does not. In order to secure the ownership of the aircraft it has to be registered in the Registry of rights.

7. How is an aircraft title transfer effected in Sweden? What are the formalities required to register such title transfer in the national registry of Sweden (e.g., notarization, legalization etc.)? Please summarize the related costs and procedures.

If the ownership of the aircraft is transferred, the new owner has to notify the Authority of the transfer in order to change the registration in the Civil aircraft register. The new owner shall submit to the authority the following documents:

- An application for change of ownership (form L 1457) in original.
- A Bill of sale or a deed of ownership (form 1686 and 1691) in original or a certified true copy.
- Certificate of Registration, original document
- Certificate of Insurance which shows the Swedish registration mark (original document or certified true copy). The insurance company must be approved by the FSA.

Sweden Continued...

- If applicable (only for companies or citizens domiciled outside the EEA), an application for exemption in original.
- Change of registered information regarding fixed distress beacon ELT406 (form L 1796).

Further, if the party seeking registration is a company, the agency requires a certificate of the company's registration from a governmental national company registration office or an authentic incorporation document along with a statement issued by notarius publicus, confirming the existence and authorised signatories of the Company. The documentation needs to be submitted in original and can not be older than six months.

If the party seeking registration is a natural-born citizen of another country the agency requires a birth certificate stating the person's citizenship. The document needs to be an original or a certified true copy no older than 12 months. Further, the agency requires a certified true copy of the seeking party's passport.

Further, to secure the ownership of the aircraft, the seeking party would also need to change the registration in the Registry of rights.

8. What information and details are reflected in the Certificate of Registration of an aircraft?

- Nationality and registration marks
- Manufacturer and manufacturer's designation of the aircraft
- Aircraft serial number
- Name of the owner
- Address of the owner
- An assurance by the Agency that the aircraft is duly entered into the Swedish aircraft registry.
- A notice that the record concerning the aircraft is maintained by the Agency.

9. Are the entries in the aircraft registry of Sweden made available to the public upon submission of a specific application to the competent authority? Are there any fees payable for this?

Rudimentary information about the entries in the Civil aircraft registry is available on the Authorities website (<https://sle-p.transportstyrelsen.se/extweb/sv-se/sokluftfartyg> Swedish only). This includes information such as aircraft type, serial number, manufacturing year, airworthiness expiration, date of registry and registered owner and operator (if applicable).

More information, such as historic information and any liens or rights regarding the aircraft, can be requested from the Authority. If there are any payable fees, it depends on the volume of requested documents, but usually it's a very small amount.

10. What kind of aircraft operations can be conducted with aircraft registered in Sweden (i.e. private use, commercial air transport or both)?

When an aircraft is registered it is automatically eligible for private use. However, in order to use the aircraft for commercial air transport, an Air Operating Certificate and an Operating License are required.

However, regardless of the use, the aircraft has to have an airworthiness certificate or a permit to fly issued by the Authority.



11. Does the civil aviation authority in Sweden authorise the operation of foreign registered aircraft? If so, with which countries has Sweden entered into bilateral agreements on the basis of article 83-bis of the ICAO Chicago Convention for the delegation of regulatory oversight?

Aircraft which operates in Sweden by way of executing transports in exchange for payment shall have a Swedish issued traffic permit or an equivalent issued by a recognized authority in another ICAO country if the operator is a foreign country which is a member of ICAO.

12. Is there a separate register of aircraft mortgages and/or leases and/or security interests in Sweden?

Yes, there is a separate registry for liens, leases and security interests. This is the registry referred to below and above as the Rights registry.

Please note; however, that a mortgage per se cannot be registered as a right. According to Swedish law, the mortgage does not come with any third-party obligations. It is a civil construction in force between the debtor and the creditor. However, the mortgage corresponding lien or security interest in the aircraft at hand are subject to possible registration. The answers below should be read with this in mind.

13. What are the formalities required to register a mortgage / lease / security interest in the national registry of Sweden (e.g., notarization, legalization etc.)? Please summarize the related costs and procedures.

Depending on what right is to be registered (ownership/lien/lease/security) the formalities and required documentations are different. A general requirement is that the party seeking registration of a right has to be the owner registered in the Civil aircraft registry. The rights which can be registered are the following:

- Right to ownership of registered aircraft or a part of a registered aircraft.
- Right to lease a registered aircraft or a part of a registered aircraft.
- Notice of possession of an aircraft.
- A lien regarding a registered aircraft.

14. Is a mortgage priority notice an available security instrument for aircraft financiers in Sweden?

No, priority and securitization (of a lien, please see above) are achieved by way of registering the right in the Rights registry. The person who first registered his or her right gets priority.

15. Does an aircraft mortgage duly registered in the national registry of Sweden extend to engines and other parts of such aircraft (either installed or not on the airframe)?

Yes, a lien encompasses the accessories even though not installed on the aircraft at the time of registration in the Rights registry.

16. What statutory liens (if any) would rank prior to an aircraft mortgage duly registered in the national registry of Sweden?

Please see the above notices that a mortgage cannot be subject to registration, only liens. However, a statutory lien which is a provisional attachment (freeze) issued by a court of law in litigation would rank prior to a mortgage lien (consensual lien) as the asset subject to the lien would be prohibited from realization.



Sweden
Continued...

17. Do the laws of Sweden provide for possessory rights and/or rights of detention over aircraft in favour of third parties (such as airport taxes, customs duties, air navigation charges, crew's wages, MRO's receivables)?

Regarding the first question, it depends on the lien. If the lien is registered in accordance with the Cape Town Convention and it is a right to repossess lien, a creditor can take possession of the aircraft. However, such a lien is not possible to register in Sweden, only liens which give the right to a part of the value of the aircraft can be subject to registration. If in that case the debtor defaults, the asset will be sold on auction and the creditor will receive a proportional amount against the creditor's outstanding amount. The aircraft can be detained by the decision of the Authority to secure a third party right.

18. Are foreign law-governed security agreements (e.g., mortgages) recognized in Sweden in order to validly create a security interest over an aircraft registered in the national registry of Sweden? If so are there any formalities/requirements to bear in mind?

Sweden does recognize foreign agreements and liens stemming from such agreement provided that they are registered in accordance with the Cape Town Convention as well as legally issued decisions of enforcement. Thus, if there's a lien registered internationally upon a Swedish registered aircraft, which in turn is subject to a lien registered in the Swedish Rights registry, the internationally registered lien will have priority provided that it has been registered before the right registered in the Swedish Rights registry. However, this is only true for rights registered in Sweden before Sweden's entry to the Cape Town Convention on March 1st, 2006. Rights that are registered in the Swedish Rights registry after that date is always subsequent to an international registration.

19. Are foreign law-governed leases recognized in Sweden in order to validly lease an aircraft registered in the national registry of Sweden to a lessee incorporated in Sweden? If so are there any formalities/requirements to bear in mind?

Yes, and the lease can be registered in the Rights registry. A form (L 1737) has to be submitted to the authorities along with the attached lease agreement in original and two certified copies, a document proving the incorporation of the lessee and proof of competence to act for the company.

20. Has Sweden ratified the Cape Town Convention on International Interests in Mobile Equipment and the related Aircraft Protocol? Has Sweden made any declarations in order to better determine the scope of application of the Convention / Protocol in Sweden? If so, what is the impact of such declarations on aircraft registration issues? Are there any specific aspects relating to the enforcement of IDERA's to be considered?

Yes, Sweden has ratified the Convention and the aircraft protocol. Minor declaration has been implemented but they are of formal and minor importance.

21. What are the requirements and documentation to deregister an aircraft from [country]? How does the aircraft deregistration process work?

There are no requirements beyond applying for a deregistration. The application is done by submitting a form (L 1684) and the Certificate of Registration, both in original.

22. What fees are payable to deregister an aircraft from Sweden?

There are no fees to deregister an aircraft.

23. Is the consent of the mortgagee / lessor (as the case may be) required in order to deregister an aircraft from Sweden?

Yes, the Authority will hold deregistration as pending until consent is present to protect the third party's rights to the aircraft.

24. What are the usual practical difficulties (if any) involved in deregistering aircraft from Sweden?

None which is known.

25. How long does deregistration take, both where there is co-operation from the defaulted party (mortgagor / lessee / operator) and where there is no such co-operation from it?

If there is co-operation, it takes approximately two weeks. If there is no co-operation the application for deregistration can be pending until co-operation and consent is present.

26. Please outline the applicable repossession rules under the national laws of Sweden (and the Cape Town Convention, if applicable) following an event of default under a mortgage or a lease, including registration issues with the national registry in Sweden.

The creditor would have to apply for enforcement (if re-possession) or sue the debtor in court in order to obtain the asset or otherwise provoke an auction of the asset. The application for enforcement is submitted to the Swedish enforcement authority (Kronofogden).

DISCLAIMER: The above information should not be relied upon by the reader for legal advice as it is intended merely to serve as a preliminary guide to the laws and regulations governing the registration of aviation and aircraft in this country. The information intends to provide summary-level information about certain tax issues affecting general aviation and aircraft finance. Since these materials are general in nature, readers are encouraged to obtain legal and tax advice from their own professional legal and tax counsel based on specific facts and circumstances regarding their acquisition and/or use of aviation and aircraft.

Switzerland



Switzerland

Submitted by: Philippe Wenker, Laurent Chassot and Marco Novoselac, gbf Attorneys-at-law, Ltd.

1. Which authority is in charge of the civil aviation registry in Switzerland? Does Switzerland use a single-registry system or is there a dual-registry system in place?

The Swiss Federal Office of Civil Aviation (FOCA) is in charge of regulating and monitoring civil aviation in Switzerland. Switzerland maintains a dual-registry system. There is the Swiss Aircraft Register, which is the Swiss aeronautical / nationality register, and there is the Swiss Aircraft Record, where rights in aircraft may be registered. Both the Swiss Aircraft Register and the Swiss Aircraft Record are kept by the FOCA.

2. Is the registry an operator registry or an owner registry (or both)?

The Swiss Aircraft Register is an owner registry. However, the operator may also be registered, besides the aircraft owner. If the operator holds a Swiss operating licence, this allows the registration of an aircraft which is not owned by a Swiss (or EU/EEA) national/resident/entity (see Section 3 hereinafter).

3. What are the requirements and documentation to register an aircraft in Switzerland? Include references to formalities such as notarisation, legalization, etc.

An aircraft is eligible for registration in the Swiss Aircraft Register if certain nationality requirements are met, i.e., if the aircraft is owned by:

- a Swiss citizen;
- foreign citizen's resident in Switzerland, with a permanent Swiss residence permit (category B or C) and provided that the aircraft operation is based in Switzerland;
- a Swiss-incorporated company;
- a Swiss public law entity or institution; or
- a Swiss association, provided that at least two-thirds of its members as well as the members of the board and the chairman are residents in Switzerland.

In assessing nationality requirements, it is the status of the beneficial owner which is relevant (and not that of possible nominees).

An aircraft owned by an individual or an entity not meeting the aforementioned nationality requirements may, subject to a special permission by the FOCA, be registered in the Swiss Aircraft Register, provided, however, that it will be operated by Swiss licensed air transport undertaking for a period, as a rule, of at least six months.

In addition to the above nationality requirements, the FOCA must be satisfied that the aircraft meets the specified airworthiness requirements, complies with the prerequisites for aircraft emissions, and that it has been properly maintained. The application (FOCA Form) to register an aircraft in the Swiss Aircraft Register needs to be accompanied by the following documentation:

- Evidence of Swiss citizenship or incorporation (depending on the applicant).
- Evidence of the applicant's title to the aircraft, i.e., a bill of sale or a declaration by the previous owner on the ad hoc FOCA form.
- Official confirmation that the aircraft has either never been entered in the aircraft register in the country of residence of

the predecessor (in title) of the applicant (certificate of non-registration), or that it has been struck off from the aircraft register in the country in which it was last registered (certificate of cancellation of registration).

- If applicable, evidence needs to be provided to the effect that the aircraft has either never been entered in the liens record in the country in which it was last registered, or that any such entry has been deleted (no-lien certificate).
- In the case of a used aircraft, evidence must be provided to show that it has been properly maintained (e.g., fresh ARC).

As a rule, no particular formalities, such as notarisation or legalization of application documents, are required.

3a. How does the aircraft registration process work?

Prospective aircraft owners/operators first apply for the reservation of Swiss aircraft markings (HB) for examination by the FOCA. Once reservation is confirmed by the FOCA, applicants will receive the Swiss registration mark, the forms for registering the aircraft, and a checklist of the required administrative and technical documentation. The actual application for registering an aircraft in the Swiss Aircraft Register must be accompanied by the documents as set forth in Section 3 above.

The procedures for obtaining a certificate of airworthiness or permit to fly that allows the aircraft to be operated is a separate certification procedure.

4. What fees are payable to register an aircraft in Switzerland?

For the reservation of a Swiss registration mark, a fee of CHF 110 applies. For processing the registration application, the fee varies between CHF 400 (up to 5.7 tonnes MTOW) and CHF 600 (more than 5.7 tonnes MTOW). In addition, an annual recurring supervision fee in the same amounts applies. For the airworthiness certification process, the fee is charged on a time spent basis and may vary, depending on the type and MTOW of the aircraft, between CHF 360 and CHF 30,000.

4a. How long does registration take?

The process of registering an aircraft in the Swiss Aircraft Register takes approximately two weeks upon filing of the complete application.

5. Are there any weight and/or maximum age restrictions to register an aircraft in Switzerland?

No, restrictions are subject to airworthiness requirements.

6. Does registration of an aircraft in the national registry constitute proof of ownership under the laws of Switzerland?

No, the registration in the Swiss Aircraft Register does not constitute proof of ownership (but a registration in the Swiss Aircraft Record has certain effects in this regard; see Section 12 hereinafter).

7. How is an aircraft title transfer effected in Switzerland? What are the formalities required to register such title transfer in the national registry of Switzerland (e.g., notarization, legalization etc.)? Please summarize the related costs and procedures.

Switzerland Continued...

Swiss registered aircraft, unless registered in the Swiss Aircraft Record (see section 12 hereinafter), are, as a matter of Swiss property law, considered as movable assets. As such, a transfer of ownership requires a valid underlying cause (e.g., a purchase agreement) and the transfer of possession. However, if registered in the Swiss Aircraft Record, transfer of title to such an aircraft can only be effected by recordation of the change of ownership in the Swiss Aircraft Record and on the basis of a written agreement between the seller and the buyer.

8. What information and details are reflected in the Certificate of Registration of an aircraft?

A Swiss Certificate of Registration states, besides registration mark, manufacturer, type, and serial number of the aircraft, the registered owner and, if different, the operator of the aircraft.

9. Are the entries in the aircraft registry of Switzerland made available to the public upon submission of a specific application to the competent authority? Are there any fees payable for this?

Although the Swiss Aircraft Register is not a public register, the FOCA maintains a database of Swiss registered aircraft which is freely accessible online:

(<https://app02.bazl.admin.ch/web/bazl/en/#/lfr/search>). The Swiss Aircraft Record is, as a matter of law, public and entries are furnished upon application to the FOCA. For a transcript from the Swiss Aircraft Record a fee of CHF 50 applies (CHF 85 for a certified extract).

10. What kind of aircraft operations can be conducted with aircraft registered in Switzerland (i.e., private use, commercial air transport or both)?

The operation of Swiss-registered aircraft is, like in the EU, governed by the Regulation (EU) No. 965/2012 and, subject to the conditions set out in that regulation, aircraft can be used for commercial, non-commercial, and specialised operations.

11. Does the civil aviation authority in Switzerland authorise the operation of foreign registered aircraft? If so, with which countries has Switzerland entered into bilateral agreements on the basis of article 83-bis of the ICAO Chicago Convention for the delegation of regulatory oversight?

In accordance with Art. 12 of Regulation (EU) No. 1008/2008, a Swiss operator may operate aircraft registered in a Member State of the EU/EEA. Besides, Switzerland allows delegation of surveillance (in and outbound) within the scope of ICAO Convention Art. 83bis, where a Swiss registered aircraft is supplied to a foreign operator (dry-lease out) or where a foreign registered aircraft is supplied to a Swiss operator (dry-lease-in). Such delegation is subject to an agreement between the FOCA and the relevant foreign civil aviation authority. However, under certain circumstances, the completion of an agreement for delegation of the surveillance may take several months and the arising costs will be charged to the Swiss applicant according to expenditure. The FOCA has entered into such delegation agreements on an ad hoc basis for specific aircraft (such as, for example, with Austria).

12. Is there a separate register of aircraft mortgages and/or leases and/or security interests in?

Besides the Swiss Aircraft Register (being the Swiss nationality/aeronautical register), the FOCA maintains the Swiss Aircraft Record where rights (ownership, mortgage, or lease interest) in aircraft are

recorded. A registration of the aircraft is not mandatory unless a mortgage or is to be registered (as, unless so registered, Swiss law does not permit consensual non-possessory liens on aircraft).

13. What are the formalities required to register a mortgage / lease / security interest in the national registry of Switzerland (e.g., notarization, legalization etc.)? Please summarize the related costs and procedures.

The registration of an interest (ownership, mortgage, lease) of a Swiss aircraft in the Swiss Aircraft Record is twofold: to register such an interest, it is required that first the aircraft be recorded in the Swiss Aircraft Record, following which the interest will be registered as an encumbrance on the Aircraft. Recordation of an aircraft is subject to a statutory 30-days objection period, which means that the application for recordation of an aircraft in the Swiss Aircraft Record will be published in the Swiss Official Gazette allowing third parties to notify the FOCA of their objection within 30 days upon publication. In case no objections are raised or, if raised, are set aside, the recordation of the aircraft will become effective (retroactively as of the date of receipt of the application by the FOCA).

The application for registration of an aircraft in the Swiss Aircraft record must be accompanied by:

- Application for registration of the aircraft (FOCA Form).
- Proof of ownership: such as a bill of sale, or similar (in original form), evidencing unconditional transfer of ownership to the applicant.
- In case of a Swiss applicant: extract from the competent Swiss register of retention of titles at the domicile of the applicant.
- Evidence of signing authority, such as extract from the competent commercial register, or notarized signatures (confirming such authority).

In addition, thereto, the application for registration of a mortgage must be accompanied by:

- The mortgage agreement (which must be in writing and provide for maximum amount secured by the mortgage expressed in Swiss Francs).
- Where the mortgagee is a non-Swiss entity, such mortgagee must appoint a Swiss representative and provide evidence of its corporate existence.

The fee for registration of an aircraft in the Swiss Aircraft Record is calculated on the basis of the MTOW of the aircraft (CHF 9 per 100kg) and ranges from a minimum of CHF 195 up to a maximum of CHF 10,320. In addition to that, the fee for registration of a mortgage is calculated on the basis of the value secured thereby (0.2 % up to a secured value of CHF 2 million and 0.1% of the value exceeding CHF 2 million) and ranges from a minimum of CHF 385 up to a maximum of CHF 17,200.

14. Is a mortgage priority notice an available security instrument for aircraft financiers in Switzerland?

No, there is no priority notice available in Switzerland.

15. Does an aircraft mortgage duly registered in the national registry of Switzerland extend to engines and other parts of such aircraft (either installed or not on the airframe)?

Aircraft engines may (along with the aircraft) be registered in the Swiss Aircraft Record. If so registered, they form part of the aircraft irrespective of whether they are on or off the aircraft. A mortgage on the aircraft extends to them. A mortgage may, subject an inventory and further conditions, be extended to spare parts.

Switzerland Continued...

16. What statutory liens (if any) would rank prior to an aircraft mortgage duly registered in the national registry of Switzerland?

The following claims rank prior to a registered mortgage as a matter of law:

- Claims arising from action taken to save or rescue aircraft; and
- Claims arising from extraordinary expenditure which was essential to maintain the existence of the aircraft or to secure claims against third parties who would otherwise have to pay damages for loss caused if the aircraft was confiscated or destroyed (whether partially or in total).

17. Do the laws of Switzerland provide for possessory rights and/or rights of detention over aircraft in favor of third parties (such as airport taxes, customs duties, air navigation charges, crew's wages, MRO's receivables)?

Other than the claims specified in Section 16 above, Swiss law does not recognise any other preferred interest that ranks in priority to mortgages on aircraft recorded in the Swiss Aircraft Record.

18. Are foreign law-governed security agreements (e.g., mortgages) recognized in Switzerland in order to validly create a security interest over an aircraft registered in the national registry of Switzerland? If so, are there any formalities/requirements to bear in mind?

Mortgages on a Swiss registered aircraft must be governed by Swiss law, be in writing, and must state the maximum amount in Swiss Francs secured thereby. However, a mortgage agreement may also contain other contractual terms which, in theory, could be governed by another law.

19. Are foreign law-governed leases recognized in Switzerland in order to validly lease an aircraft registered in the national registry of Switzerland to a lessee incorporated in Switzerland? If so, are there any formalities/requirements to bear in mind?

Generally, foreign law-governed leases in relation to Swiss registered aircraft are recognised in Switzerland and there are no particular formalities that apply.

20. Has Switzerland ratified the Cape Town Convention on International Interests in Mobile Equipment and the related Aircraft Protocol? Has Switzerland made any declarations in order to better determine the scope of application of the Convention / Protocol in Switzerland? If so, what is the impact of such declarations on aircraft registration issues? Are there any specific aspects relating to the enforcement of IDERA's to be considered?

Although signed, the Cape Town Convention has not been ratified by Switzerland yet.

21. What are the requirements and documentation to deregister an aircraft from Switzerland? How does the aircraft deregistration process work?

It is the owner who must apply for deregistration of the aircraft from the Swiss Aircraft Register and the Swiss Aircraft Record (if applicable, with the consent of any registered mortgagee or lessee), if recorded therein. Upon request, the FOCA issues a deregistration certificate. For this purpose, a deregistration application form along with evidence of the signing authority

of the persons executing such deregistration application on behalf of the owner has to be submitted. As a rule, the FOCA only cancels the aircraft from the Swiss Aircraft Register upon return of the originals of the Swiss Certificate of Registration and the airworthiness certificate / permit to fly. Upon request, the FOCA issues a deregistration certificate and/or (subject a conformity inspection) an export certificate of airworthiness (CofA for Export).

22. What fees are payable to deregister an aircraft from Switzerland?

The fee for deregistration of an aircraft from the Swiss Aircraft Register varies between CHF 200 to CHF 300 (depending on MTOW of the aircraft). The fee for cancellation of an aircraft from the Swiss Aircraft Record is 20% of the fee that applied for the aircraft's registration therein (see Section 13 above). For inspection and certification of export airworthiness of the aircraft the fees are charged on time spent basis and may vary, depending on the type and MTOW of the aircraft, between CHF 360 and CHF 30,000.

23. Is the consent of the mortgagee / lessor (as the case may be) required in order to deregister an aircraft from Switzerland?

Yes, deletion of the aircraft in the Swiss Aircraft Record requires the written consent of any registered mortgagee or lessee.

24. What are the usual practical difficulties (if any) involved in deregistering aircraft from Switzerland?

Usually, if well prepared, there are no specific practical difficulties for deregistering an aircraft in Switzerland.

25. How long does deregistration take, both where there is co-operation from the defaulted party (mortgagor / lessee / operator) and where there is no such co-operation from it?

If well prepared and with co-operation of the parties involved, a deregistration should not take more than one to three working days. In case of no such co-operation from the defaulting party, such deregistration may take substantially longer and, in case of a mortgage, usually is part of the foreclosure procedure (see section 26 below). For completion's sake, deregistration powers of attorney are valid and in principle accepted by the FOCA. However, as a matter of Swiss law, powers of attorneys are revocable by the grantor at any time, notwithstanding anything stated to the contrary therein.

26. Please outline the applicable repossession rules under the national laws of Switzerland (and the Cape Town Convention, if applicable) following an event of default under a mortgage or a lease, including registration issues with the national registry in Switzerland.

As mentioned above, Switzerland is not a contracting state to the Cape Town Convention. In case of a default under a lease, the lessor may file a claim for repossession of the aircraft under the agreement or the relevant provisions of the Swiss Civil Code at the place of the location of the aircraft in Switzerland. The proceedings are governed by the Swiss Code of Civil Procedure and may be conducted under summary proceedings and, in the event of urgency, by preliminary ex parte injunctions.

In case of a mortgage, the mortgage must be enforced at the place of the domicile of the owner/mortgagor as recorded in the Swiss Aircraft Record. Foreclosure is governed by the Swiss Federal Act on Aircraft Record (and implementing ordinances)

Switzerland

Continued...

which, to a large extent, refers to the enforcement procedures applicable to real estate.

For completion's sake the Swiss Aviation Act, in line with the Rome Convention of 1933, excludes seizure of aircraft currently in service on a regular line of public transportation. Also, self-help remedies are, as a rule, not permissible in Switzerland but enforcement requires intervention by courts or competent authorities.



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United States



The United States - Miami

Submitted by: James M. Meyer, Harper Meyer

1. Which authority oversees the civil aviation registry in the United States? Does the United States use a single-registry system or is there a dual-registry system in place?

The United States Federal Aviation Administration Aircraft Registration Branch oversees the civil aviation registry in the United States. The United States uses a single-registry system.

2. Is the registry an operator registry or an owner registry (or both)?

An aircraft may be registered in the United States only by, and in the legal name of, its owner.

3. What are the requirements and documentation to register an aircraft in the United States? Include references to formalities such as notarisation, legalization, etc.

Owner Citizenship Requirements

An aircraft is eligible for U.S. registration if it is not registered in another country, and it is owned by either:

- 1) (i) an individual who is a U.S. citizen;
- 2) (ii) a partnership where each partner is a U.S. Citizen;
- 3) (iii) a U.S. corporation of which the president and at least two-thirds of the board of directors and other managing officers are U.S. citizens, and in which at least 75% of the voting interest is owned or controlled by persons that are U.S. citizens;
- 4) (iv) an individual citizen of a foreign country lawfully admitted for permanent residence in the U.S.;
- 5) (v) a U.S. governmental unit or subdivision; or
- 6) (vi) a non-U.S. citizen corporation organized and doing business under the laws of the U.S. or one of the States as long as the aircraft is based and primarily used in the U.S. (60% of all flight hours must be from flights starting and ending within the U.S.).

Documentation and Payments Required

To register an aircraft, the following must be sent to the Aircraft Registration Branch:

1. An Aircraft Registration Application (AC Form 8050-1)
 - Except for signatures, all data must be typewritten or printed. The name of the applicant should be identical to the name of the purchaser shown on the applicant's evidence of ownership. The FAA requires the applicant to provide an original ink signed Registration Application or a Registration Application with appropriate digital signatures. If the applicant is using a digital signature, the applicant should ensure that the application is digitally signed, and not merely electronically signed. Additionally, the FAA has specific requirements as to which titles it will accept from a signatory without further documentation to support the authority of the person executing for the company. For example, the FAA Aircraft Registry will accept documents signed by a person with a title such as officer, manager, or director, but it will not accept

documents signed by an attorney in fact or authorized signatory without supporting documentation.

2. Evidence of ownership that meets the requirements prescribed in 14 CFR 47.
 - An applicant may use Aircraft Bill of Sale (AC Form 8050-2), or its equivalent as evidence of ownership. If the aircraft being registered is not purchased from the last registered owner, the applicant must submit conveyances completing the chain of ownership from the last registered owner to the applicant.
3. The \$5.00 USD registration fee made payable to the Federal Aviation Administration.
4. If the applicant for registration is a limited liability company, then a Statement in Support of Registration must be submitted with the Application for Registration.
5. If the applicant is using a Non-Citizen Trust Structure or a Voting Trust Structure (as further discussed below) additional documentation will be required.

Options Available for Applicants who do not Meet the U.S. Citizenship Requirements:

Non-Citizen Trust: If applicant does not meet the U.S. citizenship requirements, the non-citizen applicant may use a non-citizen trust structure. This is an authorized trust arrangement where a U.S. citizen trustee holds title to the aircraft in trust for the benefit of the non-U.S. citizen beneficiary for FAA registration purposes pursuant to a Trust Agreement.

An applicant using a non-citizen trust structure must submit the following with the documentation and payments discussed above to the FAA Aircraft Registry: (i) a copy of each document legally affecting a relationship under the trust (i.e. Trust Agreement and Operating Agreements); (ii) if each beneficiary under the trust, including each person whose security interest in the aircraft is incorporated in the trust, is either a U.S. citizen or a resident alien, an affidavit by the applicant to that effect; and (iii) if any beneficiary under the trust, including any person whose security interest in the aircraft is incorporated in the trust, is not a U.S. citizen or resident alien, an affidavit from each trustee stating that the trustee is not aware of any reason, situation, or relationship (involving beneficiaries or other persons who are not U.S. citizens or resident aliens) as a result of which those persons together would have more than 25 percent of the aggregate power to influence or limit the exercise of the trustee's authority.

Voting Trust: A corporation that fails the voting-interest test described above but meets all the other elements of the citizenship test, may use a voting trust. The voting trust is entered into among the applicant corporation owning the aircraft, an independent voting trustee and the non-U.S. Citizen shareholder holding the voting stock in the applicant corporation. In a voting trust, the voting trustee will hold the non-citizen's voting interest in the corporation.

If a voting trust is used to qualify a domestic corporation as a U.S. citizen, the corporate applicant must submit the following with the documentation and payments discussed above to the FAA Aircraft Registry: (i) A true copy of the fully executed voting trust agreement, which must identify each voting interest of the applicant, and which must be binding upon each voting trustee,

The United States - Miami

Continued...



the applicant corporation, all foreign stockholders, and each other party to the transaction; and (ii) An affidavit executed by each person designated as voting trustee in the voting trust agreement, in which each affiant represents: (a) That each voting trustee is a citizen of the United States within the meaning of 49 U.S.C. 40102(a)(15); (b) That each voting trustee is not a past, present, or prospective director, officer, employee, attorney, or agent of any other party to the trust agreement; (c) That each voting trustee is not a present or prospective beneficiary, creditor, debtor, supplier or contractor of any other party to the trust agreement; (d) That each voting trustee is not aware of any reason, situation, or relationship under which any other party to the agreement might influence the exercise of the voting trustee's totally independent judgment under the voting trust agreement.

4. What fees are payable to register an aircraft in the United States?

The initial cost to register an Aircraft is \$5.00 USD. Effective October 1, 2020, aircraft owners are required to re-register their aircraft every three years. Accordingly, the cost for aircraft registration is \$5.00 USD every three years.

4a. How long does registration take?

The average time needed to register an aircraft largely depends on whether the applicant uses the services of a title agent for the filing of the registration documents with the FAA Registration Branch or whether the applicant decides to mail the registration documents to the FAA Registration Branch. If the applicant uses a title agent, the title agent will generally present the registration documents to the FAA Registration Branch in one day and provide copies of the filed documents to the applicant. In this case, the applicant will be eligible to fly the aircraft domestically on the day of filing with a copy of the Aircraft Registration Application onboard the aircraft, so long as an appropriate current airworthiness certificate or a special flight permit is onboard the aircraft. Documents may be filed on federal workdays from 7:30 a.m. until 4:00 p.m. CDT.

If the applicant decides to mail the registration documents to the FAA Registration Branch, the applicant will have to wait until the FAA Registration Branch confirms receipt of the registration documents. The applicant can check the document index to see if recently mailed registration documents have arrived (<https://registry.faa.gov/aircraftinquiry/Search/DocumentIndexInquiry>) at the Aircraft Registration Branch. The applicant will be eligible to fly the Aircraft domestically with a copy of the Aircraft Registration Application once the aircraft owner confirms that the registration documents have been received by the FAA Registration Branch. Processing registration documents related to a change in aircraft ownership averages sixteen working days after their receipt.

If the aircraft is going to be operated internationally, the applicant may submit a Declaration of International Operations with the registration documents asking the FAA to expedite the registration of the aircraft. In addition, the FAA automatically expedites registration for aircraft that are being imported onto the U.S. registry after cancellation from a foreign registry. If expedited, the FAA often processes the documentation and issues a temporary Certificate of Registration within one to three working days. If the aircraft is operated domestically and is not an import, it may take the FAA several weeks to process the documents and register the aircraft.

5. Are there any weight and/or maximum age restrictions to register an aircraft in the United States?

No.

6. Does registration of an aircraft on the national registry constitute proof of ownership under the laws of the United States?

49 U.S.C. 44103(c) provides that registration is not evidence of ownership of an aircraft in any proceeding in which ownership by a particular person is in issue. The FAA does not issue any certificate of ownership or endorse any information with respect to ownership on a Certificate of Aircraft Registration (AC Form 8050-3). The FAA issues a Certificate of Aircraft Registration to the person who appears to be the owner on the basis of the evidence of ownership submitted with the Aircraft Registration Application or recorded at the Aircraft Registry.

7. How is an aircraft title transfer effected in the United States?

FAA Bill of Sale (Form 8050-2) or its equivalent. The FAA Bill of Sale is available for download on the FAA's website <https://www.faa.gov/documentLibrary/media/Form/ac8050-2.pdf>.

8. What information and details are reflected in the Certificate of Registration of an aircraft?

Registration mark, aircraft serial number, manufacturer's name, manufacturer's designation of aircraft, owner's name, and date of issuance.

9. Are the entries in the aircraft registry of United States made available to the public upon submission of a specific application to the competent authority? Are there any fees payable for this?

A person can check if an aircraft is properly registered for operation in the National Airspace System by performing a free aircraft inquiry on the FAA website: <https://registry.faa.gov/aircraftinquiry>

10. What kind of aircraft operations can be conducted with aircraft registered in United States (i.e., private use, commercial air transport or both)?

Both.

11. Is there a separate register of aircraft mortgages and/or leases and/or security interests in the United States?

The Aircraft Registration Branch of the FAA is the central location where civil aircraft of the United States are registered, and it is also the central location for the recording of any conveyance, bill of sale, contract of conditional sale, mortgage, lease, equipment trust, assignment, notice of tax lien or of other lien (other than Federal tax lien), or other instrument which affects title to, or any interest in, the following: (i) any U.S. registered aircraft; (ii) a specifically identified engine of 550 horsepower or more rated takeoff horsepower or the equivalent; (iii) a specifically identified propeller capable of absorbing 750 or more rated takeoff shaft horsepower; (iv) an aircraft engine, propeller, or appliance maintained for installation or use in an aircraft, aircraft engine or propeller, by or for an air carrier, certificated in the United States under Section 44705 of the Act ("U.S. Air Carrier"); or (v) spare parts maintained at a designated location or locations by or for a U.S. Air Carrier.

The United States - Miami

Continued...

12. What are the formalities required to register a mortgage / lease / security interest in the national registry of the United States (e.g., notarization, legalization etc.)? Please summarize the related costs and procedures.

Security interests in aircraft may only be perfected in the United States if the aircraft is registered with the FAA in the name of the debtor at the time the mortgage is filed, or if the mortgage, when filed, is accompanied by the Aircraft Registration Application and evidence of ownership of the debtor.

In order for the FAA to record a mortgage relating to aircraft registered in the United States, the instrument must meet the following requirements:

1. The mortgage must contain a complete description of the aircraft, including (a) manufacturer; (b) model; (c) manufacturer's serial number; and (d) U.S. Registration Number;
2. The grantor or mortgagor must be the registered owner of the aircraft;
3. The FAA only requires the debtor's signature on a mortgage. A contract of conditional sale, however, must be signed by all parties to the contract;
4. The instrument being filed with the FAA must, in most cases, be an original, signed in ink by each party whose signature is required by the FAA;
5. The individual signing for a corporation must indicate his/her title;
6. The instrument being filed must be accompanied by the appropriate filing fee (\$5.00 USD);
7. The mortgage must contain sufficient words of conveyance of the security interests; and
8. Definitions must be either contained in the text of the mortgage or security agreement or included as an attachment thereto.

AC Form 8050-98 Aircraft Security Agreement is a sample security form that parties can use if it meets the needs of the parties and the requirements of the state or other local law having jurisdiction over the transaction.

13. Is a mortgage priority notice an available security instrument for aircraft financiers in the United States?

An agreement concerning a security interest against a U.S.-registered aircraft must be registered with the FAA to be valid against third parties without notice. Once the FAA has recorded the security agreement, the secured party will receive a Conveyance Recordation Notice (AC Form 8058-41) which describes the aircraft (or other collateral), lists the parties and date of the security agreement, and includes the FAA recording number and date of recordation. An agreement is deemed filed for recordation on the date it is received by the FAA Aircraft Registry.

14. Does an aircraft mortgage duly registered in the national registry of United States extend to engines and other parts of such aircraft (either installed or not on the airframe)?

It can. A lien instrument which affects interest in: (i) a specifically identified aircraft engine of 550 or more rated take-off horsepower, or (ii) a specifically identified aircraft propeller capable of absorbing 750 or more take-off horsepower may be recorded with the FAA. A recording fee of \$5.00 USD is required for each engine or propeller described. The manufacturer, model, serial number,

and horsepower (or its equivalent) of each engine and propeller must be shown on the security agreement. A security agreement which affects title to, or interest in, an aircraft engine, propeller, or appliance maintained by, or on behalf of, an air carrier for installation or use in aircraft, in aircraft engines or propellers, or any spare parts maintained at a designated location by, or on behalf of, such an air carrier, may also be recorded. However, the air carrier must have been certificated under Title 49 United States Code 44705. Additionally, the instrument must contain the statement that the spare parts are being maintained by, or for, an air carrier certificated under 49 USC 44705, the specific location or locations of the spare parts, and the name of the carrier.

15. What statutory liens (if any) would rank prior to an aircraft mortgage duly registered in the national registry of United States?

The following liens or rights could have priority over a security interest created under an aircraft security agreement:

- 1) U.S. federal tax liens, which are filed with the relevant state and cannot be filed with the FAA Registry or registered with the International Registry;
- 2) The right of U.S. Customs to seize aircraft for transporting drugs (except for airlines involved in common carriage);
- 3) possessory mechanics and warehouse liens to the extent provided under applicable state law;
- 4) non-possessory mechanics liens to the extent provided under applicable state law, although these may be subordinate to any perfected security interest and may need to be filed for recordation with the FAA Registry;
- 5) purchase money security interests, which may be filed up to 20 days after the grantor receives possession and will take priority over any intervening security interests; and
- 6) buyers purchasing goods in the ordinary course from persons in the business of selling that type of goods.

16. Do the laws of the United States provide for possessory rights and/or rights of detention over aircraft in favor of third parties (such as airport taxes, customs duties, air navigation charges, crew's wages, MRO's receivables)?

This depends on State law. Due to the great variance in the state laws that control the creation, enforceability, perfection and priority of such liens, we recommend discussing this directly with qualified aviation counsel.

17. Are foreign law-governed security agreements (e.g., mortgages) recognized in the United States in order to validly create a security interest over an aircraft registered in the national registry of the United States? If so, are there any formalities/requirements to bear in mind?

FAA will record security agreements governed by non-US law.

18. Has the United States ratified the Cape Town Convention on International Interests in Mobile Equipment and the related Aircraft Protocol? Has United States made any declarations in order to better determine the scope of application of the Convention / Protocol in United States? If so, what is the impact of such declarations on aircraft registration issues? Are there any specific aspects relating to the enforcement of IDERA's to be considered?

Yes. The U.S. recognizes the International Registry as an additional

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place for filing of interests, including prospective interests, in certain airframes, helicopters, and aircraft engines. The U.S. lodged declarations under Sections 39(1)(a) -(b), 54(2) of the Convention and Sections XIX, XXX (1) (including Articles VIII, XII and XIII) of the Aircraft Protocol.

The protocol specifically provides for the issuance by a debtor of an IDERA and explains that the person designated in an IDERA is the only person entitled to exercise the remedies including the deregistration and export of an aircraft. IDERAs must be in the form attached to the Protocol to the Cape Town Convention. The IDERA must be signed by the owner that holds the Certificate of Registration and filed for recording with the FAA Registry. The IDERA must be executed in connection with a security instrument that is filed for recording with the FAA Registry.

19. What are the requirements and documentation to deregister an aircraft from the United States? How does the aircraft deregistration process work?

A request to cancel an aircraft's registration due to its export from the United States must be made by the last registered owner, the last owner of record, the foreign purchaser when supported by evidence of ownership, or by the authorized party under an Irrevocable Deregistration and Export Request Authorization. The FAA requires that any request for deregistration include: (i) A complete description of the aircraft, (ii) the reason for deregistration and the country to which the aircraft is being exported, and (iii) the signature of the party requesting the deregistration.

In the case of aircraft that have an outstanding security instruments and unexpired leases with a term of six months or more that were executed on or before February 28, 2006, the party seeking to deregister the aircraft must also submit a release or consent to export.

In the case of aircraft that have outstanding interests that were executed on or after March 1, 2006, the following information must also be submitted as part of the deregistration process:

- 1) If the aircraft is subject to the Cape Town Treaty and there is an IDERA on file, then the IDERA authorized party must include with its request:
 - a. a copy of the International Registry Search Certificate;
 - b. a written certification, "that all registered interests ranking in priority to that of the requestor have been discharged or that the holders of such interests have consented to the cancellation for export purposes" (This specific wording from 14 C.F.R. Part 47 §§47.47(a)(3) must be used in its entirety); and
 - c. evidence of the discharge of interest or consent to export from the holders of interests ranking in priority to the interest of the requestor.
- 2) If the aircraft is subject to the Cape Town Treaty and there is no IDERA on file, then the aircraft owner must include with its request:
 - a. a written certification that all outstanding interests recorded with the FAA Aircraft Registration Branch have been discharged or that the holders of the interests have consented to the cancellation for export purposes; and
 - b. evidence that the holders of these outstanding interests have discharged their interest or consented to the export.
- 3) If the aircraft is not subject to the Cape Town Treaty, the aircraft owner must include with its request a release or consent to

export for all outstanding security instruments and unexpired leases with a term of six months or more.

20. What fees are payable to deregister an aircraft from the United States?

None.

21. Is the consent of the mortgagee / lessor (as the case may be) required in order to deregister an aircraft from the United States?

In order to deregister an aircraft, the FAA will require evidence satisfactory to the FAA that each outstanding financial interest recorded against a registered aircraft has been released or that its holder has consented to the export.

22. How long does deregistration take, both where there is co-operation from the defaulted party (mortgagor / lessee / operator) and where there is no such co-operation from it?

The FAA handles deregistration on a priority basis. To expedite processing, the word "export" should be included in RED on the request and the envelope. Deregistration process typically takes one to two business days from the date of receipt by the FAA.

23. Please outline the applicable repossession rules under the national laws of the United States (and the Cape Town Convention, if applicable) following an event of default under a mortgage or a lease, including registration issues with the national registry in [country].

Whether a secured party can take physical possession of the aircraft to enforce a security agreement without the operator's consent will depend on state law and whether the lease or operating agreement is subject and subordinate to the security agreement. If the lease or operating agreement is subject and subordinate to the security agreement, then the secured party will generally be able to do so, subject to applicable state laws in relation to "self-help". As a general matter, under Article 9 of the UCC, a secured party may repossess an aircraft without a court order if it may do so without breach of the peace. If an operator physically challenges the repossession, then the secured party, if it nonetheless proceeds with its efforts to repossess the aircraft, will typically be considered to have breached the peace. In a scenario where the operator does not consent to the repossession, the secured party often; therefore, must seek a court order from the state or federal courts located in the state in which the aircraft is physically located.

DISCLAIMER: The above information should not be relied upon by the reader for legal advice as it is intended merely to serve as a preliminary guide to the laws and regulations governing the registration of aviation and aircraft in this country. The information intends to provide summary-level information about certain tax issues affecting general aviation and aircraft finance. Since these materials are general in nature, readers are encouraged to obtain legal and tax advice from their own professional legal and tax counsel based on specific facts and circumstances regarding their acquisition and/or use of aviation and aircraft.

United States

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Submitted by: Erin M. Van Laanen, Attorney, McAfee & Taft

1. Which authority is in charge of the civil aviation registry in the United States of America ("U.S." or "U.S.A.")? Does the U.S. use a single-registry system or is there a dual-registry system in place?

The United States Federal Aviation Administration ("FAA") is in charge of the civil aviation registry. The FAA uses a single-registry system, with ownership and registration records maintained on the same registry as the records of liens and encumbrances.

2. Is the registry an operator registry or an owner registry (or both)?

A US-registered aircraft is registered with the FAA registry in the name of its owner. The aircraft owner is normally the holder of legal title, but under certain circumstances the registered owner may be considered the vendee under a contract of conditional sale or the lessee under a lease with a nominal purchase option. The FAA does not allow for registration in the name of a nominee.

3. What are the requirements and documentation to register an aircraft in the U.S.? Include references to formalities such as notarisation, legalization, etc.

In order to register aircraft with the FAA, every applicant for registration must submit evidence of the applicant's ownership of the aircraft (e.g., a bill of sale) and an FAA AC Form 8050-1 Aircraft Registration Application. If the applicant is a limited liability company, the applicant must also submit a Statement in Support of Registration of United States Aircraft in the Name of a Limited Liability Company ("LLC Statement") setting forth the membership and management of the applicant entity. If the applicant is the trustee under a trust agreement, the applicant must submit the trust agreement, a notarized affidavit of citizenship, and any operating agreement between the trustee and beneficial owner. Except for any LLC Statement (which may be a scanned photocopy/PDF), the foregoing documents must be wet ink originals or digitally executed documents that comply with the FAA's requirements for digital signatures.

If an international flight is scheduled soon after title to the aircraft transfers, the applicant should also submit a declaration of international operations ("DIO"), which will prompt the FAA registry to issue a "fly wire" temporary registration.

3a. How does the aircraft registration process work?

The documents required to register the aircraft (as discussed above) and the registration fee must be submitted to the FAA either (i) in person at the FAA registry's facility in Oklahoma City, Oklahoma, or (ii) via the U.S. Postal Service or priority courier (such as FedEx or UPS). If all documents are executed using FAA-compliant digital signatures, the documents may be submitted to the FAA via email with proof of online payment.

When the FAA registry receives the documents and registration fee, registry personnel will timestamp the documents and begin processing them. After the documents have been processed, the FAA will register the aircraft in the name of the applicant and issue an FAA AC Form 8050-3 Certificate of Aircraft Registration ("COR") reflecting the applicant as the registered owner.

4. What fees are payable to register an aircraft in the U.S.?

The current registration fee is \$5.00 USD per aircraft. This does not include any recording fees for liens or encumbrances filed contemporaneously with the registration documents. This also does not include any fees for the reservation or assignment of United States Registration Numbers.

4a. How long does registration take?

The FAA registry processes registration documents for imports (i.e., aircraft most recently registered in another country) and aircraft with upcoming international flights (as evidenced by the filing of a DIO) on an expedited basis. The FAA's stated turnaround time for expedited processing is 72 hours (not including weekends or federal holidays). Once the expedited review process is completed, the FAA registry will issue a "fly wire" temporary registration followed by issuance of the COR a day or two later.

Registration documents for all other aircraft are processed in the FAA's normal course of business. This process usually takes several weeks, but the timing can vary based on the FAA's workload as documents are processed in the order received.

Before the COR is issued, the aircraft may be operated within the contiguous United States pursuant to the temporary authority under the FAA AC Form 8050-1 Aircraft Registration Application filed with the FAA (a signed and dated copy of which must be placed on board the aircraft). This temporary authority lasts for 90 days (unless an extension is granted). Operations outside the contiguous United States prior to issuance of the COR require a "fly wire" as noted above.

5. Are there any weight and/or maximum age restrictions to register an aircraft in the U.S.?

No.

6. Does registration of an aircraft in the national registry constitute proof of ownership under the laws of the U.S.?

Registration of an aircraft with the FAA is not conclusive proof that the registered owner holds legal title to the aircraft. The FAA does not issue certificates of title or endorse ownership information on a COR. The registered owner might not hold legal title, such as when an aircraft is registered in the name of a vendee under a conditional sale contract. Additionally, the FAA's publicly available record of the registered owner might not reflect documents recently filed with or submitted to the FAA to transfer title and register the aircraft in the name of a new owner. Importantly, once a title transfer has occurred the registration of the aircraft in the previous owner's name is no longer valid, even if no documents have been filed with the FAA to reflect the transfer.

7. How is an aircraft title transfer effected in the U.S.? What are the formalities required to register such title transfer in the national registry of the U.S. (e.g., notarization, legalization etc.)? Please summarize the related costs and procedures.

As noted in item #3 above, an applicant for registration must file with the FAA written evidence of the applicant's ownership of the aircraft, such as a bill of sale. The bill of sale or other title conveyance is recorded with the FAA, provided that it meets the FAA's requirements for recording. Following submission and

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processing of acceptable title transfer and registration documents, the FAA registry will update the registration records for the aircraft and issue the COR to the new owner. The same \$5.00 USD registration fee noted above applies. The FAA generally does not require notarization or legalization of title transfer instruments, but local (e.g., state) law may require notarization or legalization.

8. What information and details are reflected in the Certificate of Registration of an aircraft?

The FAA AC Form 8050-3 Certificate of Aircraft Registration includes the following information:

- The manufacturer, model, serial number, and United States Registration Number of the aircraft
- The name and address of the registered owner of the aircraft (which may not be a P.O. Box number)
- The type of registration (based on the registered owner's entity type)
- The ICAO Aircraft Address Code
- The date the FAA AC Form 8050-3 Certificate of Aircraft Registration was issued
- The date the FAA AC Form 8050-3 Certificate of Aircraft Registration expires

9. Are the entries in the aircraft registry of the U.S. made available to the public upon submission of a specific application to the competent authority? Are there any fees payable for this?

Title, registration, security, lease, trust, and other documents filed with the FAA registry are maintained in the FAA's public records. Members of the public may obtain copies of aircraft records from the FAA for a fee. Limited information regarding an aircraft's registered owner and registration status is available free of charge on the FAA's website. However, this information may not account for title or registration documents filed with the FAA but not yet processed.

10. What kind of aircraft operations can be conducted with aircraft registered in the U.S. (i.e., private use, commercial air transport or both)?

Aircraft registered in the U.S. may be operated for both private use and commercial air transport. The aircraft owner and operator should consult with appropriate counsel to ensure that the aircraft is operated in accordance with applicable FAA regulations.

11. Does the civil aviation authority in the U.S. authorise the operation of foreign registered aircraft? If so, with which countries has the U.S. entered into bilateral agreements on the basis of article 83-bis of the ICAO Chicago Convention for the delegation of regulatory oversight?

The FAA authorizes the operation of certain foreign-registered aircraft in United States airspace. The U.S. has not entered into any bilateral agreements on the basis of article 83-bis of the ICAO Chicago Convention for the delegation of regulatory oversight.

12. Is there a separate register of aircraft mortgages and/or leases and/or security interests in the U.S.?

There is no separate register of aircraft mortgages and/or leases and/or security interests. Records of such conveyances are maintained by the FAA in the same registry as records of ownership and registration.

13. What are the formalities required to register a mortgage / lease / security interest in the national registry of the U.S. (e.g., notarization, legalization etc.)? Please summarize the related costs and procedures.

To record a mortgage, lease, or other security instrument with the FAA against a US-registered airframe, eligible engine, or eligible propeller, the parties must file a wet ink original counterpart (or a digitally executed counterpart in compliance with the FAA's requirements for digital signatures) of the instrument with the FAA registry. The instrument must conform to the FAA's requirements for recording, including but not limited to proper equipment descriptions and signatory titles. The parties should consult with appropriate counsel prior to filing to ensure the instrument conforms to the FAA's requirements and avoid rejection. The FAA generally does not require such instruments to be notarized or legalized; however, local (e.g., state) law may require notarization or legalization.

The recording fee is \$5.00 USD for each US-registered airframe, eligible engine, and eligible propeller covered by the instrument (with a separate fee for each instrument). See item #15 below for more information regarding the eligibility of aircraft engines and propellers for recording with the FAA.

14. Is a mortgage priority notice an available security instrument for aircraft financiers in the U.S.?

No. Only present conveyances are recordable with the FAA.

15. Does an aircraft mortgage duly registered in the national registry of the U.S. extend to engines and other parts of such aircraft (either installed or not on the airframe)?

A mortgage, lease, or other security instrument covering aircraft engines and propellers of sufficient size/power is recorded separately against the airframe, each engine, and each propeller. This is true regardless of whether the engine or propeller is currently installed on the relevant airframe. Additionally, parties may record a mortgage or other security instrument against any aircraft engine, propeller, or appliance maintained by or for an air carrier certificated under 49 U.S.C. 44705, for installation or use in an aircraft, aircraft engine, or propeller, or any spare part, maintained at a designated location or locations by or for such an air carrier.

Aircraft engines capable of producing 550 or more rated take-off horsepower, or the equivalent of that horsepower, are eligible for recording with the FAA. Propellers capable of absorbing 750 or more rated take-off shaft horsepower are eligible for recording with the FAA. The instrument must specifically describe the engine or propeller (including the manufacturer, model, and serial number) and indicate whether its horsepower or thrust rating meets the minimum threshold.

Please note that the FAA does not maintain registration or ownership records for engines or propellers.

16. What statutory liens (if any) would rank prior to an aircraft mortgage duly registered in the national registry of the U.S.?

The creation, validity, perfection, and priority of statutory liens is governed by state law. Accordingly, whether any statutory lien would rank prior to an aircraft mortgage duly registered with the FAA registry varies from state to state. Statutory liens are not recordable with the FAA registry unless state law provides for such recording.

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17. Do the laws of the U.S. provide for possessory rights and/or rights of detention over aircraft in favor of third parties (such as airport taxes, customs duties, air navigation charges, crew's wages, MRO's receivables)?

As a general matter, non-consensual liens are a matter of local (e.g., state) law. Subject to state recording requirements, non-consensual liens may be eligible for recording with the FAA.

18. Are foreign law-governed security agreements (e.g., mortgages) recognized in the U.S. in order to validly create a security interest over an aircraft registered in the national registry of the U.S.? If so, are there any formalities/requirements to bear in mind?

Yes, foreign law-governed security agreements are recognized in the U.S. The creation, validity, and priority of a security interest is governed by local law. Perfection of a security interest in a U.S.-registered airframe requires that the instrument creating the security interest be filed for recordation with the FAA registry, even if the instrument is governed by foreign law. A foreign law-governed security instrument must comply with the FAA's recording requirements (as discussed above).

The FAA may also record a foreign law-governed security instrument against eligible engines and propellers so long as the instrument has a U.S. "nexus." The U.S. nexus requirement may be satisfied in a number of ways, including the involvement of a U.S. debtor or creditor.

19. Are foreign law-governed leases recognized in the U.S. in order to validly lease an aircraft registered in the national registry of the U.S. to a lessee incorporated in the U.S.? If so, are there any formalities/requirements to bear in mind?

Yes, foreign law-governed leases are recognized in the U.S. The discussion in item #18 above regarding foreign law-governed security agreements is also applicable to foreign law-governed leases.

20. Has the U.S. ratified the Cape Town Convention on International Interests in Mobile Equipment and the related Aircraft Protocol? Has the U.S. made any declarations in order to better determine the scope of application of the Convention / Protocol in the U.S.? If so, what is the impact of such declarations on aircraft registration issues? Are there any specific aspects relating to the enforcement of IDERA's to be considered?

The U.S. has ratified the Cape Town Convention on International Interests in Mobile Equipment and the related Aircraft Protocol. The U.S. lodged declarations under Sections 39(1)(a)-(b), 54(2) of the Convention and Sections XIX, XXX(1) (including Articles VIII, XII and XIII) of the Aircraft Protocol.

Registration of interests on the International Registry is necessary under U.S. law to perfect the parties' interests in airframes, helicopters, and engines which are covered by the Cape Town Convention. The U.S. established the FAA registry as an authorising entry point to the International Registry with respect to civil aircraft of the U.S. or an aircraft for which a U.S. identification number has been assigned. In order for a registration with the International Registry to be valid as to such aircraft or helicopter, the parties must request and obtain a unique authorisation code from the FAA registry by filing (i) a completed FAA AC Form 8050-135, and (ii) any documents representing the transaction that are recordable with the FAA (such as the mortgage, lease, or bill of sale). The code is used when making registrations with the International Registry.

For prospective international interests, the documents must be filed with the FAA within 60 days of the date of the filing of the FAA AC Form 8050-135.

The FAA will accept an IDERA filed against a U.S.-registered airframe in connection with a security agreement or lease which qualifies as a conditional sale contract. The FAA will not accept an IDERA filed in connection with a true, operating lease. The FAA will deregister the airframe at the request of an IDERA holder, provided that the IDERA holder provides certain written certifications regarding prior interests.

21. What are the requirements and documentation to deregister an aircraft from the U.S.? How does the aircraft deregistration process work?

Deregistration may be made at the request of the last registered owner of the aircraft, the last owner of record (if a title transfer instrument is filed with the FAA but the aircraft is not registered to the new owner prior to deregistration), or the holder of an IDERA. The request for deregistration must state the reason for deregistration (e.g., export, retirement from service) and certify that all registered interests ranking in priority to that of the party requesting deregistration have been discharged or the holders of such interests have consented to the deregistration of the Aircraft. If the aircraft is being exported, the request for deregistration must state the country of export.

If an IDERA is on file with the FAA and has not been released, only the IDERA holder may request deregistration for export. If the owner requests deregistration for export, the parties must file a release of the IDERA executed in ink (or digitally executed in compliance with the FAA's requirements for digital signatures) by the IDERA holder. The FAA deems an IDERA to have expired when the related security instrument has been released. The FAA also deems an IDERA to be ineffective for FAA registry purposes when the related security instrument has been assigned. If the request for deregistration is made by an IDERA holder, the request must be accompanied by a Priority Search Certificate from the International Registry and copies of the consent(s) to export or discharge(s) of lien(s) by the holders of any registered interest ranking in priority to that of the IDERA holder (as evidenced by the Priority Search Certificate).

If any unreleased security instruments or leases exist at the time deregistration is requested, the parties must then file releases or terminations of such instruments or consents to deregistration for export by the relevant parties. Such releases, terminations, or consents must be wet ink originals or digitally executed documents that comply with the FAA's requirements for digital signatures.

Once the deregistration request and any required releases, terminations, or consents have been filed with the FAA, the FAA will process the documents on an expedited basis (if deregistration is requested for export purposes) and issue a notice of deregistration. If deregistration is requested for a purpose other than export, the FAA will process the documents and deregister the aircraft in its normal course of business.

22. What fees are payable to deregister an aircraft from the U.S.?

There are no fees payable to the FAA registry to deregister an aircraft from the U.S. The parties should engage appropriate counsel or other experts to advise on any fees related to customs or import/export issues.

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Continued...

23. Is the consent of the mortgagee / lessor (as the case may be) required in order to deregister an aircraft from the U.S.?

Yes. See discussion in item #20 above.

24. What are the usual practical difficulties (if any) involved in deregistering aircraft from the U.S.?

From an FAA registry perspective, the deregistration process is as outlined herein. To avoid delay, the parties should obtain FAA and International Registry searches in advance to identify any encumbrances requiring discharge or consent prior to requesting deregistration. The parties should also engage appropriate counsel or other experts to advise on any customs or import/export issues.

25. How long does deregistration take, both where there is co-operation from the defaulted party (mortgagor / lessee / operator) and where there is no such co-operation from it?

The FAA will typically process the deregistration documents and issue the notice of deregistration within 72 hours of filing (not including weekends or federal holidays).

If the defaulted party is uncooperative, an IDERA holder (if any) may request deregistration. If the secured party does not hold an IDERA, then the secured party should engage appropriate counsel to determine alternative courses of action (e.g., repossession).

If the parties do not file releases or consents by all lienholders, then the FAA registry will delay deregistration until the necessary releases or consents are filed. If a release or consent is not obtainable, then the parties should engage appropriate counsel to explore alternatives with the FAA.

26. Please outline the applicable repossession rules under the national laws of the U.S. (and the Cape Town Convention, if applicable) following an event of default under a mortgage or a lease, including registration issues with the national registry in the U.S.

In the U.S., the laws governing repossession and foreclosure vary from state to state. The repossessing party should engage appropriate local counsel to ensure that the repossession or foreclosure is conducted in accordance with applicable local law.

Upon completion of repossession or foreclosure, the repossessing party may file documents with the FAA to register the aircraft in its name or evidence of the transfer of title to a subsequent buyer. The repossessing party should engage appropriate counsel to ensure that the proper documentation is filed with the FAA.

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