

Legal 500

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France

Aviation Finance & Leasing

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This country-specific Q&A provides an overview of aviation finance & leasing laws and regulations applicable in France.

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France: Aviation Finance & Leasing

1. What international aviation conventions has your jurisdiction signed and/or ratified?

France has signed and ratified the Chicago Convention of 1944 on International Civil Aviation (the Chicago Convention); The 1948 Convention on International Recognition of Rights in Aircraft (the Geneva Convention); The 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention); France is not a party to the Convention on International Interests in Mobile Equipment and The Protocol to the Convention on Matters Specific to Aircraft Equipment (the Cape Town Convention); France is not a party to the 1933 Convention for the Unification of Certain Rules Relating to the Precautionary Arrest of Aircraft (the 1933 Rome Convention).

2. If your jurisdiction has signed and ratified the Cape Town Convention: a. Which qualifying declarations (opt-in and opt-out) has your jurisdiction made under the Cape Town Convention? b. Does the Cape Town Convention take priority over conflicting national law?

France is not a party to the Cape Town Convention.

3. Will a court uphold the choice of a foreign governing law in respect of the following contracts and if so, please also state any conditions or formality requirements to this recognition a. Lease and b. Security document (for example, mortgage)?

a. Lease

A French court will uphold the choice of a foreign governing law in respect of an aircraft sales and purchase agreement and in respect of an aircraft lease agreement, unless the choice of foreign law is contrary to the European regulations on law applicable to contractual obligations, or to international conventions and treaties to which France is a party, or to French public order rules.

b. Security document (for example, mortgage)

In order to be given a priority right in France, any

mortgage created on a French registered aircraft should be governed by the French transportation code and registered on the French aircraft register.

Subject to the above, mortgages on aircraft registered outside France will be recognized and enforced by the French courts if they are not contrary to French public policy rules or to any international treaty to which France is a party, such as the Geneva Convention, or to mandatory provisions of the 593/2008 European Regulation on law applicable to contractual obligations.

4. Please confirm whether it is (i) customary and (ii) necessary to also take a local law mortgage and if so, why?

It is customary in France for an aircraft lender to create and register an aircraft mortgage ("hypothèque") on a French registered aircraft in order to have priority over unsecured creditors.

5. Are foreign judgments recognized and enforceable by courts of your jurisdiction and if so, please also state any conditions or formality requirements to this recognition (for example, do you require a local court order confirming such recognition)?

Foreign judgments are recognized and enforceable in France by French courts unless they are tainted by fraud, contrary to French public order, or unless the court had no competent jurisdiction.

Judgments issued by courts of European member States are directly enforceable in France without a French court judgment in accordance with and subject to the provisions of the European Council Regulation 1215/2012.

6. Is your aircraft registry an owner-register (registering ownership interests) or an operator-register (registering interests as operator)? Please also state any conditions, procedural steps or formality requirements for such

registration and explain how this is evidenced (for example, the issuance of a Certificate of Registration)

The French aircraft registry is an owner register and does not register the interests of an aircraft operator.

The aircraft owner must be a national of a State member of the European Economic Space or must be a company whose registered office or main establishment is located in a member State of the European Economic Space.

Filing is made on a standard written form with the French aircraft registry.

Must be attached to the request, mainly :

- documents evidencing the identity and nationality of the aircraft owner,
- bill of sale,
- certificate of cancellation of the former registration outside France,
- import licence and proof of the payment of any import tax and duty.

The French ministry of aviation may also in certain cases authorise the registration of an aircraft whose owner does not comply with the above rule when such aircraft is operated by a French airline company.

The aircraft registration is evidenced by a Certificate of Registration issued by the French aircraft register.

7. Is there a security document register in your jurisdiction where a mortgagee's interests will be recorded? If so, please also state any conditions, procedural steps or formality requirements for such registration and explain how this is evidenced (for example, the issuance of a certificate or official stamp on the security document)

Aircraft mortgages ("hypothèques") governed by French law on French registered aircraft are registered on the French aircraft register after the mortgagee has completed a standard form and filed an original copy of the mortgage instrument. An election of domicile must be made by the mortgagee inside the territorial jurisdiction of the civil courts having territorial jurisdiction over the town of the aircraft register (currently the civil court of Evry).

8. What is the effect of registration of: a. Ownership interest (for example, proof of title to third parties of ownership) b. Lease (for example, perfects the status of the Lessor under the Lease) c. Security document (for example, secures priority over later registered security). If there are any interests that could rank prior to the security document please state these

a. Ownership interest (for example, proof of title to third parties of ownership)

The aircraft certificate of registration is prima facie evidence of the aircraft ownership.

b. Lease (for example, perfects the status of the Lessor under the Lease)

Registration of a lease by the aircraft owner will only protect the owner against its potential liability for damages caused by the aircraft while it is on lease.

c. Security document (for example, secures priority over later registered security)

A registered mortgage will prevail over any subsequently registered mortgage and over any privileged claims such as taxes or social security contributions when such privileged claims are originating after the registration date of the mortgage.

Claims which may rank prior to a registered mortgage are, mainly, judicial costs incurred for the judicial sale of the aircraft, costs incurred for the rescue of the aircraft, and necessary costs incurred for the conservation of the aircraft.

Some statutory liens may take preference over a registered mortgage, such as mechanics liens.

9. What types of lease are recognized in your jurisdiction?

An aircraft lease will have to be translated into French before it is produced before a French court.

10. What formalities are required to perfect Lessor's rights under a lease in your jurisdiction (for example, translation, notarization, apostille,

legalization etc.)?

There are no special formalities required to perfect Lessors' rights. However, it is advisable to register aircraft leases with the companies register of Lessees in order to protect Lessors' rights in case of Lessees' bankruptcies.

11. Are the ownership rights relating to engines recognized as separate and distinct from the ownership of the rest of the aircraft in your jurisdiction? Please highlight any separate registration, filing or additional formalities that are required to be completed to perfect Lessor's interest in the engines

There is no aircraft engines register in France. However, However, it is advisable to register aircraft engines leases with the companies register of Lessees in order to protect Lessors' rights in case of Lessees' bankruptcies.

12. What form does security over aircraft generally take in your jurisdiction?

In France, the typical security over French registered aircraft is a French aircraft Mortgage ("hypothèque").

13. Are there any particular terms or characteristics that such a security document must take (for instance, a cap on the secured liabilities)?

The mortgage document must indicate the amount of the secured debt, the contractual interest and the repayment terms.

14. Are there any perfection requirements for such security document? If so, please state any conditions, procedural steps, formality requirements or documentation (for example, corporates, list of directors etc.) required to effect this

When filing the request for registering the aircraft mortgage with the aircraft register, the mortgagee will have to provide the aircraft register with, inter alia, proof of its legal existence, and evidence that the signatory of the request is duly empowered.

15. Summarize any captive insurance regime in your jurisdiction as applicable to aviation.

Captive insurance companies governed by French law are almost ignored in practice.

16. Are cut-through clauses under the insurance and reinsurance documentation legally effective in your jurisdiction?

Cut-through clauses are legally effective in France.

17. Are there minimum requirements for the amount of third-party liability cover that must be in place in your jurisdiction?

The minimum requirements for the amount of third party liability cover are set at the European Union level and apply to all airlines of the European Union and also to all flights departing from or to the destination of a member State of the European Union.

The minimum coverage for damages suffered by passengers is currently 250,000 Special Drawing Rights (SDR), i.e. USD 350,000 at the rate of 1 SDR for USD 1.40.

18. Can a mortgagee (or equivalent security interest holder) or lessor following an event of default under a mortgage (or equivalent security document) or lease, respectively, take possession of the aircraft without judicial intervention in your jurisdiction? Please also state any conditions, procedural steps, formality requirements or documentation (for example, original, legalized, translated Lease/Mortgage, corporates etc.) required to effect this

In France, court orders are necessary for repossessing aircraft against the will of Lessees who are in default of payment. Summary proceedings are the quickest and usual way. The leases are generally required to be translated, and proof of Lessees' defaults and lease terminations must also be produced in court.

A mortgage governed by foreign law on a French registered aircraft will be given no priority in France.

Mortgages on aircraft registered in a State party to the Geneva Convention and created in accordance with the law of that State will be recognized and enforceable in France.

19. How can a mortgagee (or equivalent security interest holder), lessor under a lease or designee/beneficiary of an IDERA deregister the aircraft? Please also state any conditions, procedural steps, formality requirements or documentation (for example, original, legalized, translated Lease/Mortgage/IDERA etc.) required to effect this

Deregistration of an aircraft from the French aircraft register may be made only at the request of its owner upon filing a standard form indicating the reason for the deregistration. All mortgages and any other registered right must be released and all registered leases must be deregistered. In case the owner is not the registered owner, a bill of sale must be produced.

20. Can the government or the lessee lawfully prevent the repossession or deregistration and if so, in what circumstances

Repossession and deregistration could mainly be prevented by the government in case of fraud, crime, or violation of the provisions of the transportation code.

Repossession may be opposed by the lessee in case it can show that the lessor has breached its obligations under the lease agreement.

21. If judicial intervention is required, please describe the process? Please also state any procedural steps, length of time to complete and advise as to documentation required

In case repossession by a Lessor needs a court order, the summary proceedings may be very quick, and the documentation required is mainly the lease, proof of the lessee's default and of the lease termination. It should be noted that in case the French lessee is bankrupt, the trustee in bankruptcy may in certain cases oppose the repossession.

22. How is legal title transferred under the laws of your jurisdiction? Please also state any conditions, procedural steps, formality requirements or documentation (for example, corporates etc.) required to effect this

Legal title is transferred when the aircraft sales price has been agreed between the seller and the purchaser.

Registration of the owner with the aircraft register is prima facie evidence of ownership.

23. Are there any restrictions on the sale of an aircraft following enforcement (for example, the requirement to obtain a court order or conduct a public auction or other action in order to sell the aircraft upon enforcement)

Enforcement and foreclosures of registered aircraft mortgages are made through court proceedings. Upon a judgment of foreclosure, the aircraft is sold in a public auction.

24. Would lease rentals be subject to tax (for example, withholding or income tax)? Please also state if there are any conditions for such tax to be imposed and any steps usually taken to mitigate this

Enforcement and foreclosures of registered aircraft mortgages are made through court proceedings. Upon a judgment of foreclosure, the aircraft is sold in a public auction.

25. Would a sale of an aircraft in your jurisdiction incur sales tax? Please also provide details of amount or calculation and any steps usually taken to mitigate this

A 20% Value Added Tax is payable on the sales price of an aircraft sold in France, unless the sold aircraft is due to be immediately exported outside the European Union, or unless the sold aircraft is due to be used by an airline company which is flying at least 80% international flights.

26. Are there any restrictions on the import or export of aircraft in your jurisdiction and would such importation or exportation incur any liability as to customs or taxes? Please also state if any consents or approvals are required and the procedural steps taken to obtain these, and any procedural steps or formality requirements to mitigate any taxes

Value Added Tax and customs duties are generally payable upon import of an aircraft, subject to exemptions depending on the tax and customs regime of the aircraft and on the future use of the aircraft.

27. Are there any foreign exchange restrictions on transfers of funds

There are generally no restrictions on transfers of funds through the banking system.

28. How successful have foreign creditors and lessors been in enforcing their security and lessor rights over and successfully repossessing aircraft in a timely manner?

Foreign lessors may repossess their aircraft very quickly when there is no serious defense on the side of the lessee.

29. What government led reforms affecting creditor and lessor rights are currently underway in the aviation sector in your jurisdiction?

There are no reform currently in discussion in the aviation sector.

30. Please describe any interesting legal development in your jurisdiction (for instance, decided court cases or arbitral awards) which affect creditor and lessor rights?

It is interesting to note that in 2003 a judgment by the State Council ("Conseil d'Etat") has decided that ownership rights were guaranteed by the French constitution and that the Paris airports could not retain

aircraft for default of payment of airport charges due by the lessees when the aircraft leases had been terminated by the aircraft lessors. Judging the contrary would have unlawfully deprived aircraft owners of their rights to repossess their aircraft.

31. Please discuss any relevant governmental regulations implemented in your country to help alleviate the financial and other difficulties faced by airlines in your jurisdiction caused by CoVid 19 and whether that will impact rights of lessors (who lease aircraft to the airlines) and lenders (who finance such aircraft which are mortgaged in favour of the lenders)? Are such governmental regulations expected to be in place until the difficulties faced by airlines caused by the CoVid 19 subside or are they more long term?

The French government has decided to postpone the due date of certain taxes payable by the French airline companies, has granted to Air France a State guarantee for 4 billion euros banking loans and has decided to directly lend 3 billion euros to that company.

The State guaranteed loan has been fully reimbursed by Air France in March 2023.

The European Commission authorized France to compensate Air France for part of its losses due to Covid travel restrictions up to a maximum of 1.4 billion euros. The State aid authorised by the Commission under the recapitalisation plan has been fully reimbursed in April 2023.

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