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CHAMBERS GLOBAL PRACTICE GUIDES

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# Aviation: Finance & Leasing 2024

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**Nigeria: Law and Practice**

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Streamsowers & Köhn



# NIGERIA



## Law and Practice

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## 1. Aircraft and Engine Purchase and Sale

### 1.1 Sales Agreements

#### 1.1.1 Taxes/Duties Payable Upon Execution of the Sales Agreement

In Nigeria, the execution of an aircraft or engine sale agreement will attract stamp duties at an ad valorem rate of 1.5%.

The gains realised from the sale will be subject to capital gains tax. Capital gains tax at the rate of 10% arises on gains accruing to domestic parties upon the sale of an aircraft or engine. This tax also arises from the sale of ownership interests in Nigerian companies for proceeds in excess of NGN100 million. A rollover relief exists where the proceeds from the sale of the aircraft or engine are used to purchase a new aircraft or engine within 12 months before or after the sale.

For foreign sellers spending an aggregate of 183 days or more in Nigeria in the year of assessment, and foreign companies managed and controlled from outside Nigeria during the year of assessment, capital gains tax shall arise solely on any sums received or brought into Nigeria.

Where the aircraft or engine or other part is imported following a sale, it shall be imported duty free. Notwithstanding the foregoing, the Finance Act 2023 imposes an additional 0.5% charge on goods (including aircrafts) imported into Nigeria from outside the region. The Finance Act 2023 also mandates operators and lessors with income derived from Nigeria to file tax returns as a condition of continued operation.

VAT is applicable on goods physically present in or imported. Further, VAT will not arise where the aircraft or engine is for commercial purposes. These incentives will not apply to private aircrafts.

#### 1.1.2 Enforceability Against Domestic Parties

It is advisable for a sale agreement to be professionally translated to English (the official language of Nigeria) where the sale agreement is not in English. The sale agreement as translated should then be certified and/or notarised in a manner for certifying and notarising such documents in that country. Nigerian courts will not enforce an agreement made in a foreign language.

## 1.2 Transfer of Ownership

### 1.2.1 Transferring Title

The transfer of title of an aircraft or engine must be effected through a written agreement, and the parties to the agreement will specify the terms and conditions that must be met for title to pass to the buyer. This position also applies to all installed parts, such as an auxiliary power unit (APU).

The sale of ownership interests in an entity that owns an aircraft or engine will be recognised as a sale of such aircraft or engine once it is agreed in the sale instrument that the entirety of the interests in such entity is being acquired.

### 1.2.2 Sales Governed by English or New York Law

Transfer instruments such as a bill of sale may specify that it is governed by English or New York law. Such clauses are recognised and enforced by Nigerian courts, provided that the terms and basis of the agreement are not contrary to public policy, tainted with fraud or involving illegality.

The minimum substantive requirement for such a bill of sale will be akin to minimum requirements for a valid contract. These will include:

- the correct identification of the parties (ie, the seller and the buyer);
- the consideration for the sale;
- a precise description of the aircraft or engine or other part being sold;
- the date of the transaction; and
- the signatures of the parties.

### 1.2.3 Enforceability Against Domestic Parties

A bill of sale, if executed in a language other than the Nigerian official language (which is English), should be translated into English. It should be

certified or notarised, particularly if the document is to be tendered in a court proceeding.

### 1.2.4 Registration, Filing and/or Consent From Government Entities

A bill of sale showing evidence of ownership of the aircraft should be registered and filed with the Nigeria Civil Aviation Authority (NCAA). It is one of the documents that the NCAA requests at the time of registration of the aircraft.

Where the bill of sale is being registered and filed along with the aircraft, the formalities include the submission of an application to the NCAA in a form and manner acceptable to the NCAA. The application must:

- certify that the aircraft meets the eligibility criteria set out in Part 4 of the Nigeria Civil Aviation Regulations (Nig.CARs);
- provide evidence of ownership; and
- be signed.

Where the bill of sale is being registered as an interest, the NCAA has not stipulated any formalities but Part 4 of the Nig.CARs states that the requirements for the registration of legal interests in an aircraft must be as prescribed by the NCAA.

To be eligible for registration, an aircraft should be owned by any of the following persons:

- a Nigerian citizen;
- an individual citizen of another state who is lawfully admitted for permanent residence in Nigeria;
- a corporation lawfully organised and doing business under the laws of Nigeria and the aircraft is based and primarily used in Nigeria;
- a government entity of Nigeria or political subdivision thereof; or

- a foreign person who has leased the aircraft to one of the above-mentioned persons described above – a leased aircraft:
  - (a) may remain on the Nigeria registry only for as long as the lease remains in effect and the certificate of registration includes the names and addresses of the lessee and, if different, the operator of the aircraft; and
  - (b) should also not be registered under the laws of any other state and not be more than 25 years old for commercial air transport (cargo) and not be more than 22 years old for commercial air transport (passenger).

There is no period stipulated by law for completion of registration of a bill of sale or other instrument creating an interest in an aircraft.

No government applications or consents are required as a prerequisite to the execution and delivery of a bill of sale in relation to an aircraft or engine registered in Nigeria.

### 1.2.5 Taxes/Duties Payable Upon Execution of a Bill of Sale

Stamp duties arise ad valorem on the execution of a bill of sale instruments. The documents may be in written or electronic form. The law provides that no bill of sale shall be registered until the document has been duly stamped.

The obligation to pay duties arises on the bill of sale irrespective of the location of the aircraft or engine as long as the place of performance is Nigeria.

## 2. Aircraft and Engine Leasing

### 2.1 Overview

#### 2.1.1 Non-permissible Leases

Operating, wet and finance leases are permissible and recognised in Nigeria. Leases concerning only engines or aircraft parts are also permissible.

#### 2.1.2 Application of Foreign Laws

A lease involving a domestic party, or an asset situated in Nigeria, can be governed by foreign law. Nigerian courts are inclined to respect the sanctity of contracts and uphold a foreign jurisdiction clause. However, Nigerian courts may assume jurisdiction over any matter subject to such a foreign law clause in certain instances and have held that upholding such a clause is discretionary. Circumstances that the courts will take into consideration when faced with an application to stay an action filed in breach of a foreign jurisdiction clause include the following:

- where the evidence on the issue of fact is situated or more readily available, and the effect of that on the relative convenience and expense of a trial as between the courts of each jurisdiction;
- whether the law of the foreign court applies and, if so, whether it differs from Nigerian law in any material respects; and
- what country either party is connected to and how closely, and whether the defendants genuinely desire trial in the foreign country or are only seeking procedural advantages – examples of such instances include:
  - (a) where the defendant is resident within the jurisdiction of the court;
  - (b) if the subject matter of the suit is located within jurisdiction; or
  - (c) if the contract was entered into in Nigeria.

## 2.1.3 Restrictions Concerning Payments in US Dollars

There are no material restrictions imposed on domestic lessees making rent payments to foreign lessors in US dollars, so long as the domestic lessees fully comply with – inter alia – foreign exchange control rules, as well as tax and AML laws/regulations.

## 2.1.4 Exchange Controls

Nigerian laws permit the repatriation of proceeds of valid transactions in any convertible currency, provided that the necessary documentation is duly completed and submitted to an authorised dealer. Authorised dealers are banks licensed by the Central Bank of Nigeria to operate in the foreign exchange market.

## 2.1.5 Taxes/Duties Payable for Physical Execution of a Lease

Stamp duties arising from the execution of a lease are applicable to both physical and electronic documents and would arise once performance is within the jurisdiction.

Lease payments are subject to withholding taxes at the rate of 10%. For non-resident companies, the taxes withheld are treated as their final tax. Importantly, taxable persons in countries with whom Nigeria has a double tax arrangement (DTA) will be taxed based on the provisions of the DTA.

## 2.1.6 Licensing/Qualification of Lessors

Foreign lessors need not be licensed or qualified in Nigeria to do business with domestic lessees.

## 2.2 Lease Terms

### 2.2.1 Mandatory Terms for Leases Governed by English or New York Law

Most lease contracts in Nigeria with foreign governing law clauses include typical clauses that

are contained in lease contracts for aircraft and aircraft parts. Nigerian law does not stipulate that certain lease terms be excluded in a lease agreement, as parties are free to stipulate the terms that will govern the lease agreement.

### 2.2.2 Tax and Withholding Gross-Up Provisions

Gross-up provisions are usual clauses and have been enforced by superior courts of record in Nigeria. However, sums representing taxes or penalties borne by companies on behalf of another person or company are disallowed as a deductible expense.

### 2.2.3 Parts Installed or Replaced After a Lease's Execution

Parties are open to agree in their lease agreement terms in relation to engines and spares installed or replaced on an aircraft after the execution of the lease.

### 2.2.4 Risk of Title Annexation

If the interest in an engine installed in an airframe is held by a person other than that who holds an interest in the airframe, the risk of title annexation will exist. The realisation of the interest in the aircraft engines is, however, subject to the registration of such an interest with the NCAA at the time it is created.

### 2.2.5 Recognition of the Concepts of Trust/Trustee

The concept of a trust and the role of an owner trustee under a lease is recognised in Nigeria. The legal framework for trusts in Nigeria is the received common law of England. There is currently no specific statute governing private trusts in Nigeria.

## 2.3 Lease Registration

### 2.3.1 Notation of Owner's/Lessor's Interests on Aircraft Register

The interests of an owner (legal or beneficial) or a lessor of an aircraft, including aircraft engine and propellers intended for use in Nigeria, are noted in the aircraft register maintained by the NCAA.

The notation of an owner or lessor's interest in the register establishes the priority of such interest in the aircraft in the event of any disputes or insolvency proceedings. The Civil Aviation Act (CAA) 2022 states that, upon the registration of such interest, no document affecting title to or any interest in such aircraft or engine or any other part shall be valid – except between the parties to it – unless it is contained in the register.

Such notation also alerts potential buyers or other interested parties about the existing security interest, which can impact their decisions regarding the aircraft.

### 2.3.2 Registration If the Owner Is Different From the Operator

An aircraft can be registered in Nigeria in the name of the operator or owner. Under the Nig. CARs' General Policies, Procedures and Definitions, an "operator" is defined as "the person, organisation or enterprise engaged in or offering to engage in an aircraft operation (ICAO)" and "the person who causes or authorises the operation of an aircraft, such as the owner, lessee or bailee of an aircraft, or the PIC [pilot in command]". Thus, an owner is subsumed within the definition of an operator. It is usual to have the names of the operator and owner included on the Certificate of Registration if they are distinct entities.

### 2.3.3 Aircraft/Engine-Specific Registers

There is no specific register for leases concerning aircraft or engines. Such leases are noted in the aircraft register maintained by the NCAA. The NCAA is required to record in the national civil aircraft register any title to or any interest in any civil aircraft registered in Nigeria and in any aircraft engine, propeller or appliance intended for use on any aircraft registered in Nigeria.

### 2.3.4 Registration of Leases With the Domestic Aircraft Registry

A lease and a lessor's interest must be registered and filed in the aircraft register maintained by the NCAA. Consequences for failing to do so are similar to the consequences noted for failure to register the title to an aircraft. Leases are not subject to consent from any government entity.

In many cases, a lease is registered at the time of registration of the aircraft. The formalities required for such a process include:

- an application in the prescribed form;
- a certificate or notice of deregistration from the previous state of registry (which is received by the NCAA directly from the state of registry) – if the aircraft is new, a letter from the state of manufacture confirming that the aircraft has not been registered in any other state;
- a document showing proof of aircraft ownership (eg, a bill of sale);
- if the aircraft is owned by a company, the names of the directors of the company owning or leasing the aircraft and their specimen signatures;
- if the aircraft is on lease, a certified copy of the lease agreement with evidence of stamp duty payment;
- a certified copy of a current aircraft insurance certificate; and

- proof of payment of the prescribed fees.

There is no statutory estimated period for completion of the registration of an aircraft/engine lease.

In Nigeria, there are no government applications or consents required as a prerequisite to the execution and delivery of an aircraft and/or engine lease.

### 2.3.5 Requirements for a Lease to Be Valid and Registrable

A lease need not be in a specific form to be valid and registrable in the aircraft register. However, where the lease or document transferring title is written in a language other than English, such document must be translated into English for it to be acceptable by the NCAA. The translated document must be certified, notarised or legalised in the manner legally recognised in the country where the transaction was conducted.

### 2.3.6 Taxes/Duties Payable for Registering a Lease

No taxes or duties are payable for registering a lease with the NCAA. However, registration of a lease will attract statutory fees/charges as prescribed by the NCAA.

### 2.3.7 Registration of Aircraft in Alternative Countries

For private jets and charter aircrafts that are habitually based in Nigeria, popular alternative countries for registration included San Marino and Bermuda. However, commercial aircraft habitually based in Nigeria must be registered in Nigeria.

### 2.3.8 Requirements for Documents Concerning Registration

The Nig.CARs do not specifically stipulate that any document be in its original form. However, if any relevant document is in a language other than English, such document must be translated and in line with the process for authentication of documents in the jurisdiction from which it was issued and/or notarised.

## 2.4 Lessor's Liabilities

### 2.4.1 Tax Requirements for a Foreign Lessor

Foreign lessors are subject to withholding taxes at the rate of 10% on lease payments. Where the lessor is from a country that has a DTA with Nigeria, the withholding tax payable will be subject to the terms of the DTA. DTAs do not exempt the payee from the payment of withholding tax in its entirety; rather, they adjust the applicable withholding tax on each transaction based on the agreed maximum rate prescribed in the DTA. Therefore, where the domestic withholding tax rate is lower than the one prescribed in the DTA, the domestic rate will apply. However, where the domestic rate is higher than the rate in the DTA, the DTA rate will apply.

The tax withheld represents the final tax for non-resident lessors and the obligation and liability to withhold and remit lies with the local lessee.

### 2.4.2 Effects of Leasing on the Residence of a Foreign Lessor

The act of leasing an aircraft solely will not create tax residency in Nigeria. Tax residency arises for individuals on the basis of the length of time spent in Nigeria within a period of assessment and, for companies, arises upon incorporation.

Foreign lessors may become liable to tax where such a lessor is a non-resident company and

derives income attributable to its Nigerian operation.

### 2.4.3 Engine Maintenance and Operations

There are no laws in Nigeria that impose liability on a foreign lessor in respect of aircraft or engine maintenance solely on the basis of such lessor being a party to the lease agreement. It is also usual for the parties to specify in their lease agreements the extent of the liabilities of each party.

### 2.4.4 Damage or Loss Caused by an Asset

The doctrine of strict liability does not apply to a foreign aircraft, engine owner or lessor under a lease or financier financing an asset on lease based on the fact that they hold such an interest. The Montreal Convention and the rules of that convention govern damage or loss occasioned by an asset in circumstances covered by the Montreal Convention. For other claims, the general law of tort will apply.

### 2.4.5 Attachment by Creditors

Only properties owned by the lessee may be attached in satisfaction of a debt. Creditors of a domestic lessee cannot therefore attach a leased aircraft owned by a different entity in satisfaction of the debt. It is, however, important that an owner registers its interest with the NCAA as notice to third parties that the aircraft is not owned by the lessee.

### 2.4.6 Priority of Third Parties' Rights

Nigeria made declarations under Article 39(1) of the Cape Town Convention to the effect that certain non-consensual rights will have priority over registered interests. These rights include:

- liens in favour of workers for unpaid wages arising since the time of a declared default under a contract to finance or lease the sub-

ject object for services performed relating to that object; and

- liens in favour of repairers of an object in their possession to the extent of services performed on and value added to that object.

These third-party rights will have priority whether or not the lease/lessor is registered in the Nigerian aircraft register.

## 2.5 Insurance and Reinsurance

### 2.5.1 Requirement to Engage Domestic Insurance Companies

In Nigeria, even though it is mandatory for carriers operating air transport services to and from Nigeria to maintain relevant insurance, it is not mandatory for all or part of the insurance coverage to be obtained from a domestic insurance company.

### 2.5.2 Mandatory Insurance Coverage Requirements

The CAA 2022 imposes mandatory insurance coverage requirements. The specific range of insurance that should be maintained is set out in Part 18 of the Nig.CARs, which sets out the minimum insurance sums based on the maximum take-off weight (MTOW) of a fixed-wing aircraft or a rotary wings aircraft.

### 2.5.3 Placement of Insurance Outside of Jurisdiction

Section 72(1) of the Insurance Act 2003, which is applicable to the aviation industry, prohibits the insurance or reinsurance of a risk of a property in a Nigerian business except with a Nigerian insurance or reinsurance company. This provision is interpreted and enforced by the National Insurance Commission (NAICOM) to bar the insurance or reinsurance of aircraft or aircraft equipment with a foreign company. The Insurance Act 2003 does not provide a percentage of

the risk that is required to be mandatorily insured or reinsured in Nigeria.

However, there are circumstances whereby the NAICOM may permit a risk to be insured or reinsured with a foreign insurer or reinsurer, following an application by a person seeking to maintain foreign insurance or reinsurance. In such circumstances, the applicant must satisfy NAICOM that as a result of the exceptional nature of the risk, the risk cannot be placed with an insurer or reinsurer in Nigeria.

The Insurance Act 2003 does not restrict the insurance or reinsurance risk in Nigeria to any particular insurance or reinsurance company or group of companies. Thus, a person seeking to obtain insurance or reinsurance is at liberty to spread the risk among different insurance or reinsurance companies. In practice, a percentage of aviation risk is retained in the Nigerian market and is spread among insurance companies, while the bulk of the risk is reinsured with foreign reinsurance companies.

**2.5.4 Enforceability of “Cut-Through” Clauses**  
Cut-through clauses in insurance/reinsurance agreements are enforceable in Nigeria.

**2.5.5 Assignment of Insurance/Reinsurance**  
Assignment of insurance and reinsurance is permitted subject to the terms of the contract.

## **2.6 Lease Enforcement**

### **2.6.1 Restrictions on Lessors’ Abilities**

There are no restrictions on a lessor’s ability to terminate an aircraft lease or re-export the aircraft and/or sell the aircraft following such termination. Once the lessor terminates in line with the lease agreement, an application can be made to the NCAA for the deregistration of the aircraft and subsequent export.

There is also no requirement under the law that the aircraft must be physically located in Nigeria at the time of such action by the lessor.

### **2.6.2 Lessor Taking Possession of the Aircraft**

Where the lease is constituted as an international interest under the Cape Town Convention and the lessee has executed an irrevocable deregistration and export request authorisation (IDERA), a court order is not required for the lessor to take physical possession of an aircraft subject to a lease. The lessor can take physical possession of the aircraft by presenting the IDERA to the NCAA and deregistering and exporting the aircraft out of Nigeria.

A lessor who has a deregistration Power of Attorney (DPoA) may also take physical possession of an aircraft without the lessee’s consent and a court order. Where these instruments do not exist, a lessor must obtain a court order to take physical possession of an aircraft without the lessee’s consent.

### **2.6.3 Specific Courts for Aviation Disputes**

Aviation and the safety of aircraft form part of the matters which, by virtue of Section 251 of the Constitution of the Federal Republic of Nigeria 1999 (as amended), fall within the exclusive jurisdiction of the Federal High Court. Aviation matters that have been held to fall within the jurisdiction of the Federal High Court include matters falling within the Montreal Convention (ie, liability for the carriage by air of passengers and cargo as governed by that convention), as well as contractual disputes involving aircraft and/or interests in aircraft and aircraft parts.

### **2.6.4 Summary Judgment or Other Relief**

A lessor may obtain equitable or other injunctive relief pending the final resolution of judicial proceedings to enforce an aircraft lease.

With regard to summary judgment, the lessor may be required to prove – inter alia – that there is no genuine dispute of material facts regarding outstanding debt. Summary judgments in Nigeria are applicable to monetary claims.

Temporary restraining orders and injunctions are available to a lessor to prevent the lessee from removing the aircraft from a particular jurisdiction or to allow the lessor to recover possession of the aircraft. In order to grant injunctions, courts usually require the lessor to prove that there is risk of irreparable loss and to give an undertaking in the event that the court finds that the application for temporary restraining orders was frivolously made.

Applications for summary judgments that are not contested could take a period of between nine and 12 months to determine. Contested applications could last for 18 months.

Injunctions, particularly those for interim relief, could be applied for and obtained in a month.

### 2.6.5 Domestic Courts' Approach to Foreign Laws and Judgments

Nigerian courts recognise parties' choice of foreign (non-Nigerian) law and jurisdiction and will, as a general rule, give effect to the parties' choice of a foreign governing law. However, Nigerian courts may assume jurisdiction over any matter subject to such a foreign law clause in certain instances and have held that upholding such a clause is discretionary.

Circumstances that a court will consider in deciding whether to uphold a foreign jurisdiction clause are listed in **2.1.2 Application of Foreign Laws**.

A waiver of immunity by parties to a lease can be waived and such a waiver will be recognised by the courts.

### 2.6.6 Domestic Courts' Recognition of Foreign Judgments/Awards

Nigerian courts recognise and enforce a final judgment of a foreign court as well as foreign arbitral awards without examining the merits of the matter, except where a party is contesting an application to recognise and enforce on grounds such as the judgment or award being contrary to public policy.

### 2.6.7 Judgments in Foreign Currencies

A lessor under an aircraft lease, where the consideration is denominated in foreign currency, can obtain judgment in the foreign currency.

### 2.6.8 Limitations on Lessors' Actions Following Termination

Default interest is a matter of contract and is therefore subject to the agreement of the parties. However, any clause in a lease pertaining to default interest should be reasonable, as Nigerian courts generally do not enforce clauses that appear to be punitive to the extent that they could be regarded as a penalty.

### 2.6.9 Lessor's Requirement to Pay Taxes/Fees

No taxes arise from actions to enforce aircraft leases. However, the lessor must pay filing fees to the court if enforcement involves an application to the courts. Where the relief is monetary, filing fees will depend on the sum claimed up to the maximum limit where a claim exceeds the stipulated threshold.

### 2.6.10 Mandatory Notice Periods

There are no mandatory notice periods for the lessor to comply with if it terminates the lease,

except as may be provided in the lease agreement. A reasonable notice period is, however, advisable.

### 2.6.11 Lessees' Entitlement to Claim Immunity

In general, private business entities do not have the privilege of claiming immunity from legal actions. However, a lessee that enjoys sovereign or other immunity is entitled to claim immunity from suit except where such immunity has been waived. It is important that such a waiver of immunity by the sovereign entity is clearly stated.

### 2.6.12 Enforcement of Foreign Arbitral Decisions

Nigeria became a signatory to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (the "New York Convention") on 17 March 1970. The New York Convention has been domesticated in Nigeria and has now been incorporated into local law by Section 60 of the Arbitration and Mediation Act 2023.

Nigerian courts will recognise and enforce an arbitral award.

### 2.6.13 Other Relevant Issues

It is possible that a lessee may approach the courts to obtain an injunction to stop the deregistration and export of an aircraft when an event of default occurs under the lease agreement. The lessor should therefore ensure that adequate records are being kept on the performance of the lessee's obligations under the lease agreement. This is to ensure that evidence of a breach is not contestable.

## 2.7 Lease Assignment/Novation

### 2.7.1 Recognition of the Concepts of Contractual Assignment and Novation

Contractual assignment and novation are both recognised under Nigerian law.

### 2.7.2 Assignment/Novation of Leases Under Foreign Laws

An assignment or novation of an aircraft lease governed by New York or English law will be considered valid under Nigerian law. The need for lessee's consent will be subject to the terms of the aircraft lease agreement as there are no laws in Nigeria that specifically require that a lessee's consent should be obtained for an assignment or novation. Generally, there are also no mandatory terms required under Nigerian law to be included in such agreements or deeds.

### 2.7.3 Enforceability of Lease Assignments/Novations

If the lease agreement and the assumption/novation is in a language other than English, it is advisable that they be translated into English, certified and notarised if it is to be submitted before a court in Nigeria in respect of an enforcement proceeding.

### 2.7.4 Filing/Registration of Lease Assignments/Novations

An aircraft or engine lease assignment and assumption/novation must be filed at the NCAA as required by the Nig.CARs. The assignment or novation is not subject to consent from any government entity.

The formalities required for registration are as follows:

- completion of application form;
- where the aircraft is new with no prior registration, there is the need for a letter from the

state of manufacture – however, where there has been a prior registration, a certificate or notice of deregistration is required from the previous state of registration;

- proof of aircraft ownership (eg, a bill of sale);
- names of directors of the company owning or leasing the aircraft and their specimen signatures giving authority to register or operate the aircraft in Nigeria and indicating who among them has the mandate to transact on their behalf on matters relating to aircraft registration or operation;
- means of identification (eg, a copy of a government-issued identification, or passport if owned by an individual or any other identification card approved by the NCAA, or a certified copy of the certificate of incorporation if owned by a company);
- certified copy of the lease agreement if the aircraft is on lease with stamp duties paid;
- certified copy of the power of attorney from the owner or lessor and the lessee (or both) (if applicable);
- certified copy of a current aircraft insurance certificate;
- proof of payment of the prescribed fees; and
- certified copy of the air transport licence, air operating permit or permit for non-commercial flight.

There is no legal estimated period for completion. However, where all the required documents are submitted, the process should be completed within a two-to-three month period.

Government consent is not a prerequisite to the execution and/or delivery of an aircraft and/or engine lease assignment and assumption/novation.

## 2.7.5 Taxes/Duties Payable on Assignment/Novation

Stamp duties will be assessable on an assignment agreement if an original or copy of it is brought into Nigeria physically or electronically.

## 2.7.6 Recognition of Transfer of Ownership Interests

Assuming that the ownership interest of the entity (or the beneficial interest in the trust) owning an aircraft is transferred with the legal title to the asset remaining with that entity, such instance would not be considered as a transfer of title to the aircraft and there will be no requirement to notify the NCAA.

## 2.8 Aircraft Deregistration and Export

### 2.8.1 Deregistering Aircraft in This

#### Jurisdiction

The holder of a certificate of registration, owner or lessor or their duly authorised attorney, the holder of a valid deregistration power of attorney or an irrevocable deregistration and export request authorisation (IDERA) can apply to the NCAA to deregister an aircraft. The NCAA on its own, under certain conditions, may deregister an aircraft.

Generally, to deregister an aircraft, the applicant will complete the appropriate application form, which will be submitted to the NCAA along with a cover letter addressed to the director general of the NCAA requesting the deregistration of the aircraft, the original certificate of registration of the aircraft and other relevant documents. Where an applicant is seeking to deregister based on an IDERA, the authorised party or certified designee of an IDERA can request the deregistration of an aircraft by submitting a formal application letter stating the reason for the exercise of the IDERA, the official application form for deregistration, a

copy of the IDERA, and evidence of payment of statutory charges.

## 2.8.2 Lessee's/Operator's Consent

An aircraft owner, mortgagee or lessor can apply for the deregistration of the aircraft and does not require consent from the operator to deregister except where consent is required in the relevant agreements.

## 2.8.3 Required Documentation

The requirements for deregistration of an aircraft are as follows:

- a formal application letter addressed to the director general of the NCAA requesting the deregistration of the aircraft and the official application form for deregistration;
- the operator's/lessor's/owner's copy of the current certificate of registration;
- evidence of payment of statutory charges;
- a notarised deregistration power of attorney duly executed by the owner if the applicant is not the owner or authorised operator;
- a statement of the reason for deregistration; and
- evidence of the sale (if sold).

To discharge a security interest that has been registered at the International Registry, the applicant will be required to obtain the written consent of the mortgagee (if different from the applicant). The applicant will also be required to present an Irrevocable Deregistration and Export Request Authorisation granted by the debtor, mortgagee or lessee.

## 2.8.4 Duration of Deregistration Process

The timeline for deregistration at the NCAA can vary but for simple uncontested cases, a timeline of circa three weeks from the date of submission can be expected.

For the International Registry, it is typically 48 to 72 hours upon submission of the application.

## 2.8.5 Aviation Authority's Assurances

The NCAA does not provide advance assurances to an aircraft owner, mortgagee or lessor as to the prompt deregistration of the aircraft.

## 2.8.6 Costs, Fees and Taxes Relating to Deregistration

The fees applicable to the deregistration of an aircraft at the NCAA depends on the type of aircraft and the MTOW of the aircraft. For a fixed-wing aircraft, the cost of deregistration would range from NGN45,000 to NGN450,000, depending on the MTOW of the aircraft – whereas for a rotary aircraft, the cost of the deregistration ranges from NGN135,000 to NGN180,000, depending on the MTOW.

## 2.8.7 Deregistration Power of Attorney

The NCAA will recognise a DPoA. An irrevocable DPOA will be stamped ad valorem with the Federal Inland Revenue Service at the rate of 1.5%, whereas a revocable DPOA is stamped at the flat rate of NGN500.

A DPoA is usually registered at the NCAA along with other documents required for the registration of a security interest in an aircraft. Where the DPoA is in a language other than English, it is advisable that the DPoA be translated and notarised in the manner required under the law of the jurisdiction from which it is issued and filed with the NCAA to be enforceable against a domestic party.

## 2.8.8 Documents Required to Enforce Deregistration Power of Attorney

Part 4 of the Nig.CARs, which contains provisions for deregistration, does not specify the documents to be submitted when applying for

deregistration. However, it absolves the NCAA from any liability (and also requests an indemnity) that may arise from defects in documents, records and depositions submitted to it in support of an application for deregistration. Supporting corporate documentation will therefore include similar (updated) documentation required for registration of the aircraft.

### 2.8.9 Choice of Laws Governing Deregistration Power of Attorney

A DPoA does not have to be governed by Nigerian law.

### 2.8.10 Revocation of a Deregistration Power of Attorney

Generally, an irrevocable power given for valuable consideration or for a fixed period not exceeding 12 months cannot be revoked by the grantor and will remain irrevocable until the consideration and/or interest is satisfied or until the term expires.

### 2.8.11 Owner's/Lessor's Consent

There is no legal requirement that prohibits an aircraft owner, mortgagee or lessor from exporting an aircraft without the lessee's consent.

Where an aircraft is sought to be deregistered and exported out of Nigeria, an owner may indicate its willingness for the aircraft to remain on the Nigerian registry. It is therefore necessary, where applicable, for a mortgagee to seek the consent of the owner or lessor to export the aircraft.

An owner, mortgagee or lessor should ensure that clear terms permitting it to export the aircraft without the lessee's consent are included in the lease agreement. The aircraft need not be physically present in Nigeria before it is dereg-

istered. For export, the aircraft need to be in Nigeria.

### 2.8.12 Aircraft Export Permits/Licences

The NCAA issues an Export Certificate of Airworthiness for an aircraft registered in Nigeria upon being satisfied of the existence of certain conditions.

An application for an Export Certificate of Airworthiness is made in the required form and manner acceptable to the NCAA. Part 5 of the Nig.CARs sets out the information and references required when making an application for Export Certificate of Airworthiness. There is no provision permitting the Export Certificate of Airworthiness to be obtained in advance.

### 2.8.13 Costs, Fees and Taxes Concerning Export of Aircraft

There are no taxes charged in respect of the export of an aircraft but there are fees payable to the NCAA. The export fee varies based on the type, features and MTOW of the aircraft. Fees for a fixed-wing aircraft range from NGN54,000 to NGN2.88 million, whereas the fees for a rotary aircraft range from NGN360,000 to NGN1.08 million.

### 2.8.14 Practical Issues Related to Deregistration of Aircraft

It is usual for the NCAA to request a statement on the reason for the deregistration of the aircraft. The NCAA does not require the removal of registration marks from an aircraft before deregistration is granted.

## 2.9 Insolvency Proceedings

### 2.9.1 Overview of Relevant Laws and Statutory Regimes Governing Restructurings,

## Reorganisations, Insolvencies and Liquidations

In Nigeria, the statutes that govern restructuring and insolvency include:

- the Companies and Allied Matters Act 2020 (CAMA);
- the Insolvency Regulations 2022;
- the Companies Winding Up Rules 2012;
- the Federal Competition and Consumer Protection Act 2019;
- the Investment and Securities Act 2007 (as amended in 2015);
- the Securities and Exchange Commission Rules 2013 (as amended in 2019); and
- the Asset Management Corporation of Nigeria Act 2010 (as amended in 2015).

### 2.9.2 Overview of Relevant Types of Voluntary and Involuntary Restructurings, Reorganisations, Insolvencies and Receivership

The voluntary and involuntary restructuring, reorganisation and insolvency processes available in Nigeria include:

- members voluntary winding-up;
- court ordered winding-up;
- administration and company voluntary arrangement;
- arrangement and compromise;
- management buyout;
- M&A; and
- takeover.

A company may be wound up by the court if:

- the company has by special resolution resolved that the company be wound up by the court;
- default is made in delivering the statutory report to the Corporate Affairs Commission

(the agency responsible for company oversight in Nigeria) or in holding the statutory meetings;

- the number of members is reduced below two in the case of companies with more than one shareholder;
- the company is unable to pay its debts;
- the condition precedent to the operation of the company has ceased to exist; or
- the court is of the opinion that it is just and equitable that the company should be wound up.

### 2.9.3 Co-ordination, Recognition or Relief in Connection With Overseas Proceedings

Nigeria is yet to adopt the UNCITRAL Model Law on Cross-Border Insolvency 1997 or any other law or convention that mandates cross-border co-operation or provides for judicial assistance for overseas insolvency proceedings. There are also no laws that specifically provide for the recognition and enforcement of cross-border insolvencies or reliefs sought thereof.

The Nigerian courts under the Foreign Judgments (Recognition and Enforcement) Act may recognise and enforce a foreign judgment, provided that the judgment is final and conclusive, not appealed against and there is reciprocity.

### 2.9.4 Effect of Lessee's Insolvency on a Deregistration Power of Attorney

An irrevocable DPoA or an IDERA granted by a lessee to a lessor, owner or mortgagee of an aircraft should not be voided by the liquidation of the lessee. The IDERA will cease to operate where the lessee is dissolved.

### 2.9.5 Other Effects of a Lessee's Insolvency

A lease will not be set aside upon the lessee being put in liquidation – although it may be terminated by the liquidator. The lessor is entitled,

under the lease agreement, to terminate the said lease and repossess the aircraft from the lessee. However, the lease may be set aside if there is evidence to show that it was made for the purpose of avoiding obligations due from the lessee.

On termination of the lease, the lessor is permitted to submit the DPoA or the IDERA for the purpose of repossessing the aircraft. The liquidator may apply to restrain the lessor from repossessing, but such applications must be made with clear evidence that the aircraft is an asset of the lessee.

The aircraft will not be deemed to be the lessee's property.

Nigerian courts recognise the rules of priority. The liquidator/administrator cannot impose the right of any other creditor in priority over the lessor's right because the aircraft asset does not belong to the lessee and the lessee could not have validly created an interest in the aircraft. In addition, registration of the lease with the NCAA gives the lessor priority over the aircraft above any other interest holder.

### 2.9.6 Risks for a Lender if a Borrower, Guarantor or Security Provider Becomes Insolvent

When a borrower or guarantor becomes insolvent, the main risks for a lender are potential loss or delays in recovering debts owed, and possible challenges to the validity of security arrangements.

### 2.9.7 Imposition of Moratoria in Connection With Insolvency Proceedings

Generally, the rights of secured creditors are not stayed by the commencement of insolvency proceedings. However, the CAMA imposes various

moratoriums for different actions that may be taken at the initiation of or during administration proceedings or a scheme of arrangements. The moratorium period is six months for a scheme of arrangement, whereas an administration moratorium imposed to restrict the institution of proceedings to enforce security over company properties, repossess goods under hire purchase agreement, or exercise a landlord's right to peaceful re-entry has no period fixed and any action taken will be subject to the consent of the administrator.

### 2.9.8 Liquidation of Domestic Lessees

Under Nigerian law, a domestic lessee can be liquidated by the appointment of a liquidator or placed under administration or receivership through the appointment of an administrator or receiver respectively in accordance with insolvency laws.

The liquidator is appointed following an application made by a special resolution of the shareholders, an application made by the directors or the creditors of the company. An administrator may be appointed by the courts or out of court by holders of a floating charge or by the company's directors.

### 2.9.9 Ipso Facto Defaults

Defaults such as insolvency and liquidation are recognised as the basis for termination and repossession of aircraft. A lessor or mortgagee need not show performance defaults to be entitled to repossession of a leased aircraft.

### 2.9.10 Impact of Domestic Lessees' Winding-Up

If a domestic lessee is wound-up through court or administration proceedings, it can have the following impacts.

- On the aircraft – the fate of the aircraft is largely dependent on the terms of the lease. The lessor’s rights will usually include the right to terminate and repossess the aircraft if the lessee is wound up and this right will be exercised by the lessor, resulting in possession reverting to the lessor.
- On lease rentals – the lessee’s obligation to pay lease rentals ceases. Any due lease payments will form part of the lessee’s debt obligations.
- On the lease security deposit – the impact on the lease security deposit will be dependent on the terms of the lease agreement. If the deposit is agreed as payment towards lease rentals, then the lessor is entitled to apply the deposit towards any pending rent liability of the lessee.
- On the maintenance reserves – the treatment of maintenance reserve also depends on the lease agreement. If classified as reserves, they might be held in a separate account; if treated as supplemental rent, they could be affected similarly to lease rentals.

## 2.10 Cape Town Convention and Others

### 2.10.1 Conventions in Force

Nigeria is a signatory to the Cape Town Convention and the Aircraft Protocol. By virtue of Section 50(2) of the CAA 2002, the Cape Town Convention and the Aircraft Protocol are in force in Nigeria.

It is not necessary to obtain authorised entry point codes (AEP) for registering international interests. In Nigeria, it is not a requirement for local entities to apply for AEP codes before they can make Cape Town Convention filings. Local entities can directly make Cape Town Convention filings on behalf of lessors.

### 2.10.2 Declarations Made Concerning Conventions

Nigeria has made the following declarations under the following Articles of the Cape Town Convention.

Under Article 39(1), in relation to non-consensual rights or interest:

- liens in favour of workers for unpaid wages arising since the time of a declared default under a contract to finance or lease the subject object for services performed relating to that object; and
- liens in favour of repairers of an object in their possession to the extent of services performed on and value added to that object.

These 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.

Under Article 40, in relation to non-consensual right or interest:

- rights of a person obtaining a court order permitting attachment of an aircraft object in partial or full satisfaction of a legal judgment;
- liens or other rights of a state entity relating to taxes or other unpaid charges;
- liens of a salvor for unpaid charges in respect of salvage services provided to an aircraft object when it is water-borne;
- liens of a person providing towage services to an aircraft object when it is water-borne in respect of unpaid charges; and
- liens of a bailee of an aircraft object in respect of unpaid charges for the bailment of the said aircraft object.

These are to be registerable under the Cape Town Convention as regards any category of object as though the right or interest were an international interest and will be regulated accordingly.

Article 53 stipulates that that the Federal High Court is the relevant court for the purposes of Article 1 and Chapter XII of the Convention.

Under Article 54(2), a declaration that any remedies available to the creditor under the Cape Town Convention that 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.

### 2.10.3 Application of Article XIII of the Protocol on Matters Specific to Aircraft Equipment

The provision of the CAA 2006 (and 2022) incorporated the Cape Town Convention and the Aircraft Protocol into Nigerian law. Section 50(2) of the CAA 2022 provides that from the commencement of the Act, the provisions of the Cape Town Convention and the Aircraft Protocol will have the force of law in Nigeria subject to the provisions of the Constitution of the Federal Republic of Nigeria. Incorporation into local law of an international convention such as the Cape Town Convention is a constitutional requirement necessary to make the convention enforceable.

An IDERA (as with a DPoA) can be submitted over an internal transaction and can be recorded like any other interest in the aircraft register.

### 2.10.4 Enforcement of Conventions

In most cases involving the Cape Town Convention and the Aircraft Protocol, the issue revolves around the request by a lessor/mortgagee seeking to deregister and export the aircraft.

The Federal High Court (which is the court with jurisdiction) rarely hear actions in relation to the several other aspects of the Cape Town Convention and the Aircraft Protocol.

### 2.10.5 Other Conventions

Nigeria is signatory to the Geneva Convention on the International Recognition of Rights in Aircraft (1948), ratifying it on 10 June 2002. Section 50(1) of the CAA 2022 has incorporated the provisions of this convention into law in line with Nigerian constitutional requirements.

Nigeria is not party to the 1933 Rome Convention on the Unification of Certain Rules relating to the Precautionary Arrest of Aircraft.

## 3. Aircraft Debt Finance

### 3.1 Structuring

#### 3.1.1 Restrictions on Lending and Borrowing

Foreign lenders can provide financing and borrowers can use loan proceeds to purchase aircraft.

#### 3.1.2 Effect of Exchange Controls or Government Consents

There are no specific exchange controls or government consents that are peculiar to the aviation sector and applicable exchange controls or government consents on financing or repatriation of proceeds will apply to an aviation-related transaction. It should be noted that foreign investors are allowed to take out their earnings and investment-related funds without facing significant obstacles according to the provisions of Section 24 of the Nigeria Investment Promotion Commission Act.

### 3.1.3 Granting of Security to Foreign Lenders

Nigeria is a signatory to the Cape Town Convention, which allows for the creation of international interests in aircraft equipment, including granting security to foreign lenders. Thus, borrowers can use aircraft as collateral to secure loans from foreign lenders.

### 3.1.4 Downstream, Upstream and Cross-Stream Guarantees

Downstream, upstream and cross-stream guarantees are permitted in favour of lenders in Nigeria. Although there is no specific registration requirement for guarantees under Nigerian law, Section 197 of the CAMA does require the registration of charges, which may include guarantees. Failure to register a charge within 90 days of its creation may render it void against liquidators and creditors.

### 3.1.5 Lenders' Share in Security Over Domestic SPVs

A lender can take a share in security over a domestic special purpose vehicle (SPV) that owns the financed aircraft. This involves using ownership shares of the SPV as collateral for the financing provided. A pledge of shares is a recognised method of security in Nigeria and its registration has been provided for under Section 197 of the CAMA.

### 3.1.6 Negative Pledges

Negative pledges are recognised under Nigerian law and it is advisable for a lender to register the negative pledge with the Corporate Affairs Commission to prevent future security interests that could undermine the existing security.

### 3.1.7 Intercreditor Arrangements

There are no laws in Nigeria with any material restrictions or requirements on inter-creditor arrangements.

### 3.1.8 Syndicated Loans

The concept of agency and the role of an agent (facility/syndicate agent) is recognised and utilised in syndicated loan arrangements in Nigeria.

### 3.1.9 Debt Subordination

Contractual subordination among creditors is legally recognised in Nigeria, enabling the modification of priority orders, the waiver of rights or the subordination of security interests. However, its enforceability in insolvency proceedings may be limited, owing to bankruptcy laws treating unsecured creditors equally and granting secured creditors the right to enforce their security even during liquidation.

### 3.1.10 Transfer/Assignment of Debts Under Foreign Laws

The transfer or assignment of all or part of an outstanding debt under an English or New York law-governed loan is generally permissible and recognised under Nigerian law. However, the terms of the loan agreement and any applicable legal requirements as to notice need to be considered.

### 3.1.11 Usury/Interest Limitation Laws

Interest rate limits are typically governed by various laws and regulations, including Sections 15 and 16 of the Moneylenders Laws, the Central Bank of Nigeria Act 2007, and other relevant financial regulations. These laws aim to protect borrowers from unfair lending practices and ensure that interest rates remain reasonable.

## 3.2 Security

### 3.2.1 Typical Forms of Security and Recourse

In a domestic aviation finance transaction, typical forms of security and recourse will include aircraft mortgages, charges and guarantees.

### 3.2.2 Types of Security Not Available

There are certain types of security that may be challenging or not feasible to take over aircraft or related collateral, such as security solely on warranties and insurances, due to their nature. Although traditional forms of security often focus on tangible assets such as the aircraft itself, taking securities solely over warranties and insurances might be complex, owing to their intangible nature.

### 3.2.3 Trust/Trustee Concepts

The concept of a trust and security trustee role is recognised in Nigeria and quite popular in structured finance in Nigeria. A parallel debt structure can be used, creating separate obligations between borrower and lenders and achieving similar security outcomes.

### 3.2.4 Assignment of Rights to an Aircraft by a Borrower to a Security Trustee

A borrower can assign to a security trustee its rights to the aircraft or under an aircraft lease (including rights related to insurances), pursuant to a security assignment or mortgage. This assignment allows the security trustee to hold and enforce those rights on behalf of the lender in the event of default.

### 3.2.5 Assignment of Rights and Benefits Without Attendant Obligations

A lessor may assign the rights and benefits only without also assigning the attendant obligations under an aircraft lease. This type of arrangement is known as an “assignment of rights” or “assignment of benefits”. However, it is essential to ensure that the assignment does not conflict with the terms of the lease agreement and that any required consent is obtained from relevant parties.

### 3.2.6 Choice of Foreign Law

Security assignments or guarantees can be governed by English or New York law.

### 3.2.7 Formalities/Mandatory Terms to Create and Perfect Security Assignments

There are no unique formalities necessary for the creation and perfection of a security assignment outside the recognised requirements for such agreements – for example, the fact that the assignment must be in writing, clearly identify the collateral and state the intention to create a security interest. The security assignment must also be registered by the NCAA. Failure to comply with these formalities might render the security assignment unenforceable against third parties. Where such an agreement is to be tendered before a Nigerian court, it is necessary for it to be translated and certified/notarised.

### 3.2.8 Domestic Law Security Instruments

It is advisable to consider taking a domestic law security instrument to cover any additional requirements under Nigerian law, if an English or New York law-governed security assignment is taken in respect of an aircraft registered domestically in Nigeria. Domestic law security instruments and local law filings are required for Cape Town Convention filings. The cost for such filings varies and has been set out in the schedule of fees and charges issued by the NCAA.

### 3.2.9 Domestic Registration of Security Assignments Governed by Foreign Laws

An English or New York law-governed security assignment or a domestic law security instrument may be registered domestically. It is recommended to consider domestic registration to maximise the protection of the security interest in Nigeria where the aircraft is registered.

### 3.2.10 Transfer of Security Interests Over Aircraft/Engines

The transfer of security interests, including mortgages, charges and assignments, over an aircraft and/or engines is recognised under Nigerian law.

### 3.2.11 Effect of Changes in the Identity of Secured Parties

The change in the identity of secured parties under a security assignment does not usually jeopardise security interests if the assignment is properly documented and registered with the relevant authorities.

### 3.2.12 “Parallel Debt” Structures

Parallel debt structures can be used domestically in Nigeria, allowing the security trustee to have an independent right to the secured debt and enabling separate enforcement of the security.

### 3.2.13 Effect of Security Assignments on Residence of Secured Parties

Becoming a secured party under a security assignment does not automatically result in residency, domicile, business presence or tax obligations. However, seeking tax advice is recommended based on the specific circumstances and Nigerian tax regulations.

### 3.2.14 Perfection of Domestic Law Mortgages

A domestic law mortgage can be perfected by drafting a mortgage agreement outlining the terms of the mortgage, including the amount secured, the parties involved, and the details of the aircraft or engine. Both the borrower and the lender should sign the mortgage agreement. It is advisable to notarise the agreement to give it legal validity. The mortgage must be registered with the NCAA, and the necessary fees and charges for registration must be paid.

If the mortgagor is a company registered in Nigeria, the charge created over the aircraft or engine (or both) as one of the assets of the company would also be registered at the Corporate Affairs Commission by filing a Form CAC 9 (Particulars of Charge) – with additional information setting out a high-level description of the asset being charged, including details such as the manufacturer’s serial number and the NCAA registration number of the charged asset.

The costs associated with the foregoing are calculated as follows:

- stamping – 0.375% of the mortgage value;
- registration at the Corporate Affairs Commission – 0.35% of the mortgage value;
- registration with the NCAA –
  - (a) on the first NGN100,000 of the secured sum, for each complete 10,000 – NGN1,000;
  - (b) on the next NGN900,000, for each NGN100,000 or part thereof – NGN1,000; and
  - (c) thereafter, for each NGN1 million or part thereof – NGN50,000.

However, the maximum charge for registration with the NCAA is capped at NGN250,000.

Upon successful registration, the NCAA will issue a Perfection Certificate, confirming the mortgage’s registration. In addition, if the aircraft or engine is covered by the Cape Town Convention, the necessary international interest registration will be filed with the International Registry in compliance with the convention’s requirements. The cost for registering an international interest with the International Registry is USD100.

### 3.2.15 Differences Between Security Over Aircraft and Spare Engines

There are no differences in the form of security (or perfection) taken over an aircraft and spare engines in Nigeria.

### 3.2.16 Form and Perfection of Security Over Bank Accounts

A “fixed charge” or “fixed security interest” is commonly used to secure a bank account such as a lease receivables account. To perfect the security interest over the bank account, a written security agreement is established between the debtor and creditor, outlining terms and details. Notice is also given to the bank where the account is held, informing them of the security interest. Restrictions may also be placed on the account’s use and registration with government authorities can occur for public notice.

## 3.3 Liens

### 3.3.1 Third-Party Liens

In Nigeria, third parties such as repairers, airports, and customs authorities can potentially take or register liens over an aircraft or engine for unpaid fees or charges.

- Repairers’ liens cover work done on the actual secured asset for the value of the work performed, rather than the contract price. They may cover work done on other assets.
- Fleet liens, allowing third parties to detain an aircraft, have not been considered in Nigeria.

### 3.3.2 Timeframe to Discharge a Lien or Mortgage

There is no stipulated average timeframe to discharge a lien or mortgage over an aircraft. Where there are no contentions, a reasonable timeframe will be three months.

### 3.3.3 Register of Mortgages and Charges

There is no specific register of mortgages and charges maintained by the NCAA. The interests of an aircraft mortgagee or security trustee is noted in the aircraft register maintained by the NCAA. The NCAA is yet to establish the legal interest registry stipulated under the Nig.CARs.

The notation of the mortgage/charge interest on the aircraft register helps establish the priority of the mortgagee’s or chargee’s claim over the aircraft in case of any disputes or insolvency proceedings. It also alerts potential buyers or other interested parties about the existing security interest, which can impact their decisions regarding the aircraft.

### 3.3.4 Statutory Rights of Detention or Non-consensual Preferential Liens

Statutory rights of detention and non-consensual rights can arise over an aircraft and/or on a fleet-wide basis. There is no specific law prohibiting an application on a fleet-wide basis.

### 3.3.5 Verification of an Aircraft’s Freedom From Encumbrances

To verify if an aircraft is free of encumbrances, a potential purchaser of an aircraft in Nigeria could search the aircraft register maintained by the NCAA. The aircraft register includes information on all the interests that have been created over a specific aircraft.

A potential purchaser could also conduct a search at the Corporate Affairs Commission, the body that regulates corporate entities in Nigeria. Companies are enjoined to file notices of charges created over their assets.

## 3.4 Enforcement

### 3.4.1 Differences Between Enforcing Security Assignments, Loans and Guarantees

The key difference lies in the nature of the underlying assets and the mechanisms for recovery. Enforcing a security assignment is focused on the recovery of the specific collateral, which in many cases is the aircraft, whereas enforcing a loan or guarantee involves the recovery of debt and may – if the debt is of a certain amount – require application for summary judgment and, where summary judgment is given, garnishee proceedings to attach monies belonging to the debtor or guarantor.

### 3.4.2 Security Trustees' Enforcement of Their Rights

A security trustee may enforce its rights under a security assignment pursuant to a notice and acknowledgement executed by the lessor and lessee.

### 3.4.3 Application of Foreign Laws

Domestic courts will uphold foreign law as the governing law of a finance or security document if the parties have validly chosen that law to govern their agreement. Similarly, submission to a foreign jurisdiction is respected if the parties have agreed to it in their contract. A court in Nigeria will, however, take certain factors into consideration when faced with a challenge of a suit filed in breach of a foreign jurisdiction clause. Such factors are listed in **2.1.2 Application of Foreign Laws**.

### 3.4.4 Recognition and Enforcement of Foreign Judgments and Arbitral Awards

Domestic courts in Nigeria recognise and enforce foreign court judgments and arbitral awards without re-examining the matter.

### 3.4.5 Secured Parties' Right to Take Possession of Aircraft

To the extent that the right to take physical possession of the aircraft is one agreed by the parties to be exercisable without the lessee's or operator's consent, a secured party can take physical possession of the aircraft to enforce the security agreement.

### 3.4.6 Domestic Courts Competent to Decide on Enforcement Actions

The Federal High Court in Nigeria is competent to determine enforcement actions under a security agreement/aircraft mortgage.

### 3.4.7 Summary Judgments or Other Relief

In Nigeria, a secured party can seek equitable or other injunctive relief pending final resolution of judicial proceedings. The facts necessary for the grant of such reliefs include showing that irreparable harm that may not be compensated by monetary relief will result if such a relief is not granted. It is also important for the applicant for such a case to provide an undertaking as to damages – ie, to show that the applicant will be willing to pay damages if in the end such an order ought not to have been made. It is not mandatory that the applicant post a bond or provide a guarantee – although a court may make an order that such a bond or guarantee be provided.

A secured party can also obtain summary judgments where the claim is for a sum certain and the facts in support of the claim are not less likely to be contested.

### 3.4.8 Judgments in Foreign Currencies

A secured party under a security agreement or aircraft mortgage can obtain a judgment in a foreign currency in Nigeria. The sum secured by the security agreement and to be recovered in the

claim should, however, be denominated in the foreign currency.

### 3.4.9 Taxes/Fees Payable

Fees may be applicable in connection with the enforcement of a security agreement or aircraft mortgage. These fees could include court filing fees or administrative fees.

### 3.4.10 Other Relevant Issues

Lenders should consider potential challenges in enforcement, such as potential insolvency proceedings by the borrower.

## 4. Other Issues of Note

### 4.1 Issues Relevant to Domestic Purchase, Sale, Lease or Debt Finance of Aircraft

Currently, there are no material court judgments that impact the purchase, sale, lease or debt finance of an aircraft registered domestically and/or involving a domestic party.

### 4.2 Current Legislative Proposals

There are currently no proposals pending before the legislature in Nigeria that may alter the law or introduce new items on any of the foregoing items. However, the establishment of the Equipment Leasing Registration Authority (ELRA) is likely to result in an increase in the registration obligations for lessors and lessees within Nigeria's aviation sector.

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