



The Legal 500 Country Comparative Guides

Bahamas: Aviation Finance & Leasing

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

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

The Bahamas has ratified the following international aviation conventions:

1. The 1929 Convention for the Unification of Certain Rules Relating to International Carriage by Air (the Warsaw Convention) [ratified on 23/5/1975]
2. The 1944 Convention on International Civil Aviation (Chicago Convention) [ratified on 27/5/1975]
3. The 1944 International Air Services Transit Agreement [ratified on 27/5/1975]
4. The 1947 Convention on the Privileges and Immunities of the Specialized Agencies [ratified on 17/3/1977]
5. The 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention) [ratified on 20/12/2006]
6. The 1961 Convention Supplementary to the Warsaw Convention for the Unification of Certain Rules Relating to International Carriage by Air Performed by a Person other than the Contracting Carrier (the Guadalajara Convention) [ratified on 15/5/1975]
7. The 1963 Convention on Offences and Certain Other Acts Committed on Board (the Tokyo Convention) [ratified on 12/6/1975]
8. The 1970 Convention for the Suppression of Unlawful Seizure of Aircraft (the Hague Convention) [ratified on 11/8/1976]
9. The 1971 Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (the Montreal Convention) [ratified on 27/12/1994]
10. The 1991 Convention on the Marking of Plastic Explosives (the Montreal Convention) [ratified on 21/5/2008]

The Bahamas has signed the following international aviation convention on the 28th May 1999 but has not ratified the same:

1. The 1999 Convention for the Unification of Certain Rules for International Carriage by Air (the Montreal 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?

The Cape Town Convention has not been signed or ratified by The Bahamas.

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 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.

b. Security document (for example, mortgage)

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.

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

As, the Bahamian Supreme Court is placed with unlimited original jurisdiction in civil cases, it is not necessary for a local mortgage to be taken for a matter to be adjudicated by it. So long as the object or factual focus of the complaint, and the terms of the security document provide for or support the jurisdiction of The Bahamas as the seat for litigation / arbitration (or other form of alternate dispute resolution), such a complaint can be commenced in The Bahamas.

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)?

The Bahamas is not a party to the 1971 Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters. Additionally, despite its being signed on the 2nd July 2019 at the Hague, the Convention of 2 July 2019 on the Recognition and Enforcement for Foreign Judgments in Civil and Commercial Matters is currently not in force. However, there is a piece of legislation in The Bahamas entitled the Reciprocal Enforcement of Judgments Act, 1924 CH. 24 (the "REJA") which allows for the recognition of foreign judgments from prescribed jurisdictions. If a judgment is obtained in one of the prescribed jurisdictions, application needs to be made for its registration so that it may be enforced.

Additionally, for foreign judgment from jurisdictions not prescribed in REJA, Bahamian Courts have the power to recognize foreign judgments at common law. For the purposes of recognition under common law, the foreign judgment must be made by a Court of competent jurisdiction and be final as to the issues as between the parties.

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 Bahamian aircraft registry is owner-register.

An aircraft may be registered in the Bahamas domestic aircraft register if it is:

a. 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 corporation lawfully organised and doing business under Bahamian law; or
4. a government entity of the Bahamas; and

b. not registered under the laws of any foreign country.

Registration in The Bahamas is evidenced by a Certificate of Registration

- 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)**

Security documents may be recorded at the Bahamian Registrar General's Department pursuant to the provisions of the Registration of Records Act. 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.

- 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**

The effect of registration of Ownership interest in The Bahamas is proof of title to third parties of ownership.

The effect of registration of a Lease in The Bahamas is proof to third parties of leasehold interest.

The effect of registration of a Security document in The Bahamas is to establish priority over later registered security.

- 9. What types of lease are recognized in your jurisdiction (for example, translation, notarization, apostille, legalization etc.)?**

Legal documents for use in The Bahamas must be authenticated by the Embassy or a Bahamian Consulate, or by means of an Apostille issued by the Secretary of State. (This only applies to countries which have signed the Hague Convention on Documents). In the absence of an Apostille, the document requires notarization by a Consular Officer. These documents must have a notarial certificate issued by the County or Circuit Court Clerk of the administering county. The signature of the County or Circuit Court Clerk certifies the signature of the Notary Public who notarizes the document.

10. What formalities are required to perfect Lessor's rights under a lease in your jurisdiction?

The perfection of rights held by a lessor is subject to the terms of the Lease which govern the Lessor's liberty to invoke specific rights. If not specifically provided for, the Lessor's may invoke its rights pursuant to the Lease.

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

The ownership rights relating to engines are not recognized as separate and distinct from the ownership of the rest of the aircraft in The Bahamas.

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

Aircraft Mortgages or Pledge of Shares Agreements

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

There are no particular terms or characteristics a security document must take.

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 corporate entities are parties to the security document, it must be executed by the person or persons designated to act on behalf of the entity.

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

The Bahamas has supported captive insurance industry for over 50 years.

The insurance legislative framework in The Bahamas vests regulatory oversight of captives in the Insurance Commission of The Bahamas, a body which is known to be pragmatic in its approach.

Additionally, the Commercial Enterprises Act (“CEA”), came into effect in 2018, with the purpose of fast tracking of specified business including captive insurance, and is applicable to Bahamians and Non-Bahamians alike. The minimum investment for non-Bahamians is \$250,000.00, while there is no minimum investment for Bahamian or joint ventures with Bahamians. Certified commercial enterprises are afforded access to special economic zones and accelerated granting of work permits.

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

These clauses are not unlawful in The Bahamas.

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

There are no specified mandatory insurance requirements for third-party liability cover that must be in place in The Bahamas.

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

The liberty of a mortgagee to take possession of his 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 effected 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.

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 would be effected by way of obtaining a Court Order which mandates the de-registration of the aircraft.

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

For the government or the lessee to prevent the repossession or deregistration such an entity would be required to be joined to the relevant action for repossession or deregistration and show cause why such steps should not be ordered.

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

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 (3) to eleven (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.

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 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, the new owner of a registered aircraft is required to inform the Minister of the change in ownership in writing within 28 days. Failure to do so may result in a cancellation of the aircraft's registration.

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)

While there are no restrictions on the sale of an aircraft following enforcement, customarily a court order is obtained to provide for a public auction or sale through other means.

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

Lease Rentals in The Bahamas would trigger Value added tax chargeable at twelve percent.

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

The sale of an aircraft in The Bahamas would trigger Value added tax chargeable at twelve percent.

- 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**

There are no restrictions on the import or export of aircraft in The Bahamas and such import does not incur any customs liability in The Bahamas.

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

In The Bahamas resident individuals and companies need consent from the Central Bank to conduct operations in foreign currencies. The permission is typically granted and entails the purchase of the foreign currency at a premium. Similarly, non-resident or offshore companies, require Central Bank consent to deal in Bahamian dollars.

Licensed businesses operating inside The Bahamas, no longer require Central Bank permission to establish and maintain foreign currency deposit accounts of up to \$100,000 balance to facilitate payments for trade. Only revenues earned in foreign currency may be retained on the accounts, and the accounts can only be used to pay for trade related expenses outside the Bahamas.

- 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?**

Due to the sensitivity of Bahamian Courts to the need to move in real time in matters of commerce, foreign creditors are successful in enforcing their security in a timely manner.

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

The Government of The Bahamas has expressed an interest in becoming a party to the Cape Town Convention.

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

N/A

- 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?**

There are no specific governmental regulations implemented in The Bahamas for airlines. However, many are taking advantage of the redundancy payout holiday which the government has introduced for all employers. The redundancy payouts which would ordinarily be payable after an employee has been placed on furlough for 12 weeks has been extended to 16 weeks after the current declared state of emergency is lifted. Such measures are unlikely to impact the rights of lessors and lenders and are likely to be enforce so long as the health conditions require them.