

ITALY

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ITALY

REGISTRATION OF AIRCRAFT

1

Is there a Register of Aircraft?

1.1

Yes. In Italy, aircraft are registered in the National Aeronautic Register (the "Aircraft Register" or "RAN") maintained by *Ente Nazionale per l'Aviazione Civile* "ENAC".

What aircraft can be registered?

1.2

According to art.750 of the Italian Navigation Code ("INC"):

"Aircraft can be registered under the Aircraft Register held by ENAC provided that nationality requirements set forth in article 756 of the INC are met."

Pursuant to art.756 of the INC the owner of the aircraft must be:

- (a) the Italian State, the regions, the municipalities or any other Italian or EU public or private entity;
- (b) an Italian or EU citizen; or
- (c) a company incorporated, or having its registered office, in Italy or in any other EU State whose share capital is wholly, or in the majority part, owned by Italian or EU citizens, or Italian or other EU companies with the same characteristics of shareholding, and whose President and the majority of directors (including the managing director and the CEO) are Italian or EU citizens.

Article 756 para.II, of the INC governing registration in the name of the operator, states as follows:

"ENAC may, derogating the provisions of paragraph above, by grounded rulings, allow the registration in the Aircraft Register of aircraft which are effectively used by, but not property of, companies holding an air carrier license. In such case, the title different from property, based upon which the registration is made, shall result from the Aircraft Register and the certificate of registration."

As at the date hereof, EU Member States are: Austria, Bulgaria, Belgium, Czech Republic, Cyprus, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, and the United Kingdom.

Aircraft registered in a foreign aircraft register cannot be registered in the Aircraft Register at the same time.¹

1.3 What documentation and consents are required for registration?

The following documentation is required for registration:

- (i) an application for reserving the Italian registration marks for the aircraft;
- (ii) an application for the registration in the RAN, pointing out name, date and place of birth, nationality and domicile of the owner in case of natural person, and any details of the company in case of legal person, as well as the airport in Italy in which the aircraft will be based;
- (iii) two pictures of the aircraft where the registration marks must be readable;
- (iv) a statement that the aircraft is not registered in a foreign aircraft register;
- (v) documentary evidence that requirements of point 1.2(c) above are satisfied. The applicant can give evidence of the nationality requirements also by means of a notarised affidavit;
- (vi) a notarised document giving evidence of title to the aircraft;
- (vii) aircraft and engine log books; and
- (viii) receipt of the payment of the stamp duties.²

1.4 What particulars are recorded in the Register?

Once the application has been filed, the aircraft is registered in the Aircraft Register and a certificate of registration (so called "*certificato di immatricolazione*") (the "Certificate of Registration") will be issued by ENAC (see point 1.1 above). Both Aircraft Register and Certificate of Registration will contain the following details:

- (a) The date of aircraft's registration.
- (b) The registration certificate's serial number.
- (c) The use to be made of the aircraft (i.e. for commercial flight or private purposes).
- (d) A brief description of the aircraft.
- (e) The manufacturer's serial number and other identification marks ("*contrassegni di identificazione*").
- (f) The registration mark of the aircraft.
- (g) Name, date, place of birth, nationality and domicile of the aircraft's owner in case of natural person, and details of the company in case of legal person.
- (h) A list of previous transfers of title concerning the aircraft since its registration in the RAN.

- (i) A description of the property rights affecting the aircraft (i.e. ownership, mortgages, usufruct, etc.).
- (j) Any major changes and repairs made on the aircraft which are capable of materially altering its type and value.
- (k) Any other documentation and matters which may be required by the ENAC.³

What are the opening hours and registration fees?

1.5

RAN is open to the public on Tuesday and Thursday, 8:30am to 12:30 pm, except for public holidays. Appointment may be arranged upon request in the other business days.

A fixed tax of negligible amount (presently amounting to EUR 14,62) has to be paid on the aircraft's registration.

Can the Register be amended?

1.6

Yes, it can. Amendments must be requested by the interested party on the occurrence of one of the following events:

- (a) Any transfers of ownership in the aircraft.
- (b) The creation of mortgages or any other registrable security interests over the aircraft.
- (c) Any major changes and repairs made to the aircraft, which are capable of materially altering its type and value.⁴

What is the effect of registration?

1.7

Upon registration, aircraft acquires Italian nationality together with nationality and registration marks.⁵ Ownership and other rights resulting from the RAN are validly enforceable against any third party.

How is deregistration effected?

1.8

The deregistration of an aircraft from the RAN is governed by art.760 of the INC which states as follows:

“The Aircraft is de-registered from the register:

- (a) upon occurrence, or assumption, of an event of loss;
- (b) after being dismantled;
- (c) for the loss of nationality requirements provided under art.756;
- (d) when registered under an aircraft register of another State;
- (e) after being re-delivered to the owner in the cases set forth in art.756 second para;
- (f) if the owner files an application in order to register the Aircraft under the register of another EU State.”

In the cases under (c) and (d) above, ENAC, after being provided with the deregistration application, shall publish in its peripheral office having jurisdiction on the district where the aircraft is normally located when grounded, as well as in the RAN, a notice of the deregistration, inviting interested people to claim any outstanding credit or right within a term of 60 days. Upon expiration of the 60 day period, the aircraft can be deregistered, provided that no creditor of the owner has made objection against the deregistration or, if made, this has been defined according to art.759, of the INC paras 3 and 5. In case of urgency, the aircraft can be deregistered prior to the expiration of the 60 day period, provided that a bank guarantee be deposited with RAN, as a security for the value of the aircraft, as appraised by the competent technicians of ENAC.

In order to provide RAN with evidence that the aircraft has been redelivered to the owner in the cases set forth in art.756 para.2, of the INC a certificate of redelivery executed and notarised before an Italian Notary Public by the duly empowered representatives of both owner and lessee is usually requested by RAN.

The fees payable are the stamp duties on the application and on any other documents filed (e.g. redelivery certificate, or termination deed, or, in case of controversy, the judgment which resolved on the same). Moreover a flat duty of EUR 159,85 shall be payable.

Pursuant to art.760 of the INC the request of deregistration must be filed by the owner, or by the lessee under the circumstances of art.756 of the INC para.2, concurrently with returning to RAN the original Certificate of Registration and Certificate of Airworthiness of the aircraft. According to new art.758 of the INC the term for filing is eight days when:

- the owner is death and the relevant heir or beneficiary (legatee) does not meet the nationality requirements provided under art.756 of the INC; and
- the purchaser of the aircraft does not meet the nationality requirements provided under art.756 of the INC.

1.9 Can a Deregistration Certificate be obtained on registration?

A permit or certificate of deregistration cannot be obtained on registration. Deregistration must be effected in accordance with the terms illustrated under point 1.8 above.

2 REGISTRATION OF AIRCRAFT MORTGAGES

2.1 Is there a register of mortgages or rights over aircraft?

Yes. There is a register of mortgages, which is the RAN.

Mortgage is the only lien which can be registered with the Aircraft

Register pursuant to art.1030 of the INC and it takes effects since the relevant registration. Failing the registration, the mortgage is null and void, as never come into existence.

A mortgage can also be granted over an aircraft under construction. In this case, it can be registered in the special construction register (which is maintained separately from the Aircraft Register) as soon as the construction of the aircraft is noted in such a register.⁷

Unlike mortgages, privileges cannot be registered with the Aircraft Register. There is no other public register in Italy where privileges can be registered.

What documentation and consents are required for registration?

2.2

In order to obtain the registration of a mortgage in the Aircraft Register, the applicant must file with ENAC the mortgage deed and a note (so called "*nota di trascrizione*") executed in duplicate, containing:

- (a) the name, date and place of birth, nationality, domicile, or place of residence, and the profession of both the mortgagee and mortgagor;
- (b) the domicile of choice of the mortgagee in the place where the aircraft is registered;
- (c) details and date of the mortgage deed and the name of the public officer (usually a notary public) who certified the name;
- (d) the sums secured by the mortgage;
- (e) interest and fixed sum payable on the mortgage debt;
- (f) the terms for the repayment of the mortgage debt; and
- (g) the identification marks of the aircraft.⁹

What are the opening hours and registration fees?

2.3

For opening hours see point 1.5 above. A registration fee, which is of a negligible amount, must be paid on the registration of the mortgage. There is a mortgage flat tax of, approximately, EUR 129,00, provided that the mortgage is granted by the debtor in favour of the creditor, while the mortgage tax is fixed in the percentage of 0.5 per cent of the secured amounts if the guarantee is issued in favour of third parties.

Furthermore, there is a variable tax to be paid to ENAC starting from EUR 107,17 up to EUR 1.266,10 according to the amount of the credit secured by the mortgage.

Can the Register be amended?

2.4

In case of any variation of the mortgage, a new registration must be made with the same formalities (public deed, registration) as illustrated above.

2.5 Will registration secure priority for the mortgagee?

Yes. The mortgage takes priority from the time it is registered in the Aircraft Register. Should there be discrepancies between details of the mortgage contained in the Aircraft Register and those contained in the annotation on the Certificate of Registration, the former shall prevail.¹⁰

A registered mortgage takes priority over all subsequent registered, and unregistered, mortgages and over the liens provided by the Italian Civil Code ("ICC"). Article 2761 of the ICC provides a number of liens. Most of these liens are not applicable to aircraft, and it is believed that only the liens for judicial expenses and costs, and for the conservation and upgrading costs apply. However, also the other liens can have impact on the business of the airline.

A registered mortgage does not have priority over the following liens provided by art.1023 of the INC:

- (a) Judicial expenses due to the State, or incurred in the common interest of the creditors for the precautionary arrest of the aircraft, or for costs and expenses of enforcement proceedings brought against the aircraft.
- (b) Airport duties or similar duties and taxes.
- (c) Expenses incurred for custody and maintenance of the aircraft after its arrival on its final flight.
- (d) Costs and expenses arising from the unpaid salaries of the crew.
- (e) Costs and expenses arising from amounts advanced by the Aeronautic Administration, or the Italian Consular Authorities, for the support and repatriation of the crew.
- (f) Costs and expenses arising from mandatory contributions due for social welfare and assistance for the crew.
- (g) Indemnities and rewards for the giving of assistance to, and the salvage of, the aircraft.
- (h) Indemnities arising from damages to third parties on the surface by the aircraft, for collision of the aircraft, for death of (or personal injuries incurred by) passengers and crew and for loss of (or damages to) cargo.
- (i) Costs and expenses arising from contracts executed and transactions carried out by the captain of the aircraft for aircraft's preservation or continuance of its flight.¹¹

2.6 What is the effect of registration?

The principal effects of registration are:

- (a) the mortgage becomes effective from its registration. Prior to this, the debt is unsecured and the mortgage does not create any rights in rem over the aircraft.
- (b) It grants to the mortgagee the right to obtain the judicial sale of the

aircraft and to be paid from the sale proceeds (or insurance proceeds in the event that the aircraft is lost or damaged). Any payment made by the insurer prejudicing the mortgagee's rights will be deemed as null and void. An aircraft mortgage, however, does not transfer *possession* of the aircraft to the mortgagee.

- (c) Once recorded, a mortgage has priority over all subsequent mortgages (unless an assignment of rank has been granted). See 2.5.
- (d) Once registered, the mortgage is assumed to be true and effective for any legal purposes, as long as it is not amended or judicially declared ineffective, null or void.
- (e) All persons are deemed to have public notice of the mortgage.
- (f) No modifications to the essential features of the aircraft can be made without the mortgagee's express consent.
- (g) Deregistration of the aircraft cannot be effected without prior cancellation of the mortgage.

Under the Italian law, an aircraft mortgage covers:

- (a) the principal debt obligation;
- (b) interest thereon (with the limits mentioned in 6);
- (c) legal expenses incurred by the mortgagee for enforcing the mortgage; and
- (d) expenses relating to the deed establishing the mortgage and to the registration, and renewal, of the mortgage.

How is deregistration effected?

2.7

Cancellation of the aircraft mortgage, whether as a result of waiver by the mortgagee,¹² or pursuant to the consent of interested parties,¹³ or to a judicial order,¹⁴ must be registered in the Aircraft Register. An annotation of the cancellation is made on the margin of the Certificate of Registration, together with the indication of the deed upon which it is based or by which it was ordered, and of the date of cancellation. Cancellation must be accompanied by the signature of the Registrar of the Aircraft Register.¹⁵

AIRCRAFT MORTGAGES

TYPES OF AIRCRAFT MORTGAGES

3

What types of aircraft mortgages are possible under the laws of Italy? What are their essential characteristics? What are their respective advantages and disadvantages?

Under the Italian law, only aircraft mortgages voluntarily created by

unilateral or bilateral public deeds are possible. Thus, it is not possible to create judicial or statutory aircraft mortgages, nor it is possible to create mortgages by way of testamentary disposition.¹⁶ Furthermore, the document creating the mortgage must contain an adequate description of the aircraft sufficient to identify it.

As indicated above (see point 2.1), a mortgage can also be granted on an aircraft under construction. In such cases, many legal scholars assert that is the mortgage is not actually granted on the aircraft itself, but on the component parts which make up its construction.

Mortgages should be distinguished from other liens and, in particular, pledges (so called "*pegno*") and privileges (so called "*privilegi*").

4 LAW GOVERNING THE MORTGAGE

What law will govern the validity of the mortgage?

As far as the governing law, contractual and property aspects of an aircraft mortgage must be distinguished.

The contractual aspects of the mortgage

For the law governing the contractual aspects of the mortgage, such as the interpretation of its terms, see point 5 below.

The property aspects of the mortgage

Under the Italian law, both the formal and substantive requirements related to the creation, transfer and extinction of aircraft mortgages are governed by the law of the aircraft's nationality (i.e. the country where the aircraft is registered) As a result, the property aspects of mortgages over aircraft registered in the Aircraft Register will be governed by Italian law.¹⁷

According to art.756 of the INC Italian law also applies to aircraft mortgages on aircraft registered in RAN as operated by a carrier satisfying the nationality requirements.

5 MORTGAGE GOVERNED BY FOREIGN LAW

If the parties to the mortgage stipulate that the mortgage will be governed by the laws of foreign country, would an Italian court uphold such a clause?

The contractual aspects of the mortgage can be governed by a foreign law, and an Italian court will uphold such a choice of law unless its application be in conflict with the mandatory rules of a country to which all other aspects of the mortgage (except for the choice of law) are linked, or with mandatory provisions of Italian law or with Italian legal concepts of public policy.¹⁸

MORTGAGE TERMS

What all the general terms of an aircraft mortgage under the laws of England? Are there any special terms that a mortgage should contain?

Statutory requirements

Italian law provides various statutory requirements related to the aircraft mortgage. The mortgage must be voluntarily created by way of a public deed and must contain clear reference to the aircraft's registration marks and serial number.¹⁹ There must also be a full description of the aircraft together with the exact amount of the indebtedness secured by the mortgage²⁰ and within which term it has to be repaid.

General terms

The general terms of an aircraft mortgage contain, inter alia, the following:

(a) Acknowledgement of the debt

An acknowledgement of the debt secured by the mortgage and the obligation to repay it must be included. Should the aircraft be damaged or destroyed, the mortgagee will be statutorily subrogated to the mortgagor in respect of the insurance proceeds.²¹

(b) Term of the mortgage

The obligation to repay the mortgage debt will be statutorily secured for a period of 20 years from the date when the mortgage is registered in the Aircraft Register,²² and this period can be extended. That said, the mortgage is normally given for a period equal to the term of the loan which the mortgage secures.

(c) Interest

Registration of the mortgage in the Aircraft Register also secures the payment of interests. Interests, however, can only be secured for a period of two years (the year in which the aircraft is seized by the mortgagee for default under the mortgage, and the year prior to that), although this may be extended for a further year by agreement between the mortgagor and mortgagee.²³

(d) Currency of the debt

Although the amount of the debt shall be expressed (or converted) in Euro, repayment can be made in a foreign currency by inserting a currency provision in the mortgage.

(e) Covenants

If the mortgage is stated to be governed by a law of other than Italian law, then the covenants referred to in the Chapter on England and Wales (6) will commonly be encountered in such a mortgage. However, where the mortgage is stated to be governed by Italian law many of such covenants will be implied by law and, therefore, need not be expressly stated.

Examples of such implied covenants are that the mortgage will cover any accessions or improvements to the aircraft or, when the aircraft is lost or damaged to such an extent as to become insufficient security for the mortgagee, the mortgagee can demand that additional security be provided and, in the absence thereof, can demand immediate repayment of his/her claim.²⁴

(f) Priority of the mortgage

Although the mortgage usually states that it takes a certain rank ("grado") or priority as regards other mortgages over the same aircraft, priority will date from the time of the registration of the mortgage in the Aircraft Register. It is possible for mortgagees to agree to a change in ranking between themselves, providing that any other parties, which would otherwise be affected, agree.

Special conditions

(a) Choice of jurisdiction

Italy is signatory of, and has ratified, the 1968 Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters (the "Brussels Convention").²⁵

The countries having ratified the Brussels Convention are: Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, Netherlands, Portugal, Spain, Sweden and the United Kingdom. Pursuant to the terms of that Convention, the contracting parties, if domiciled in a state which has ratified this Convention, may generally select the jurisdiction of the court to try any litigation arising from the mortgage.²⁶ Thus, for example, an Italian mortgagor may agree with a German mortgagee to submit all matters relating to the mortgage to the Italian courts. However, care should be taken in making a selection of the governing jurisdiction, since the courts will generally hold the parties to their choice.

The Brussels Convention provides, in certain instances, for the mandatory jurisdiction of a stipulated court, in which case the choice of the contracting parties will not be observed if they have chosen otherwise.²⁷ In the case of aircraft mortgages, an example of this is that the question of whether or not the mortgage has been properly registered

