

Aircraft Registration in Austria – Legal aspects and benefits for a foreign Lessor

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General remarks	
Nationality requirements of the aircraft owner	None
Nationality requirements of the aircraft operator (“Halter”)	<p>If the operator is a legal entity, it must have been established under the laws of an EC member state <u>and</u> have a company seat, administration or principal place of business within an EC member state. Further, a process agent in Austria has to be nominated, in case there is no authorized person in Austria to accept delivery of official documents. If these national requirements can’t be met, a third country operator could make an agreement with an Austrian/European operator fulfilling the requirements, according to which the operatorship will be transferred (“<i>Halterschaftsübertragung</i>”).</p> <p>Exemption (Article 83 bis – ICAO Convention): Austria has entered into Agreements under Article 83 bis with Germany and Russia. As a consequence, an aircraft operated by a Russian or German operator in accordance with its air operator certificate (AOC) can be registered in Austria, although the operator does not comply with the nationality requirements described above. In this case, the state of the operator assumes responsibility for the safety oversight of the aircraft. The benefit for a foreign lessor is that while the aircraft is registered in the Austrian aircraft register, it can be operated by operators from Russia and Germany.</p> <p>Austria is fully aware of the benefits of such Agreements for Austria as an attractive location for aviation business and therefore intends to conclude further Agreements if required so from interested parties. At the moment an Agreement with Italy is also concluded, but not yet entered into force.</p>
Public access to the aircraft register and its registrations	<p>Basic information about aircraft registrations is available to the public through the website of the Austro Control GmbH: http://www.austrocontrol.at/content/atm/AIS/Products/OeNFL/LFZR/EG/lfzreg.shtml.</p>
Competent authority	<p>The competent authority for aircraft registrations is the Austro Control GmbH. It is a comparatively small authority and therefore a very flexible organization with specialized and cooperative staff. Austro Control is working under the oversight of the Ministry of Transport, Infrastructure and Technology: www.bmvit.gv.at</p>

<p>Registration fees</p>	<p>Fees associated with the registration of an aircraft are determined in an official regulation issued by the competent Ministry (<i>Austro Control-Gebührenverordnung – ACGV</i>).</p> <p>The fees for the registration of an aircraft will depend on the weight of an aircraft and will range between € 152 and € 2.528. The fees for deregistration of an aircraft will range between € 91 and € 1.213.</p> <p>The fees for the issuance of a Certificate of Airworthiness will range between € 303 and € 18.602. Fees for the issuance of Airworthiness Review Certificate will range between € 202 and € 6.470.</p>
<p>Exemption for VAT on importation</p>	<p>According to the Austrian VAT Code, the supply, modification, repair, maintenance, chartering and hiring of aircraft that are determined to be used by airlines operating for reward mainly on international routes or outside of Austria is exempt from Austrian VAT on importation.</p>
<p>Compliance with special ownership interests</p>	
<p>Legal qualification of an Austrian registration</p>	<p>The entry of an aircraft in the Austrian register does not constitute ownership in the legal sense. The registration of an aircraft in the Austrian register is only an administrative requirement and does not have an impact on the ownership of an aircraft. The consequences of an Austrian registration are:</p> <ul style="list-style-type: none"> Entitlement to operate the aircraft Austrian nationality of an aircraft <p>No bona fide acquisition of the aircraft, if the aircraft is acquired from any other entity than the owner</p> <p>A further consequence of an Austrian registration is that according to § 33 of the Austrian International Private Law, “rights in rem” (e.g. ownership rights, pledges) are to be constituted in compliance with the laws of the state of registration of an aircraft. While the title for the transfer of ownership of an aircraft (e.g. the purchase agreement) can be made subject to any law, the mode (i.e. the delivery) has to be carried out in accordance with mandatory provisions of Austrian law.</p>
<p>Mandatory involvement of lessor (as owner) in the registration and deregistration process</p>	<p>The responsible entity for arranging the registration and deregistration of an aircraft is the operator. He can do this only with the cooperation of the aircraft owner; its signature is required on any application submitted to the aircraft register.</p> <p>On the other hand the owner needs the cooperation of the operator, if he wishes to have changes registered in the aircraft register. In practice, the owner of an aircraft demands from the operator at the execution of a lease agreement a power of attorney for deregistration of an aircraft. With such a power of attorney the deregistration process will not be delayed if the operator of the aircraft does not comply with contractual provisions.</p>
<p>No public disclosure of the aircraft owner</p>	<p>The aircraft owner neither appears on the certificate of registration nor in the public available part of the aircraft register.</p>

Legal rights of third parties to the aircraft (e.g. retention rights, liens)	<p>There are no rights in Austria that allow the detention of an aircraft in respect of unpaid airport charges, air navigation charges or other unpaid debts. Austria is a signatory to the 1933 Rome Convention on Precautionary Arrest of Aircraft, which in most cases prevents precautionary attachment or detention of aircraft.</p> <p>In such cases the respective creditor has to obtain a judgment that can be enforced against the aircraft.</p> <p>Rights of liens on an aircraft in favor of a third party (e.g. MRO fees) only exist to secure claims against the owner of an aircraft, but not against the operator.</p>
Continuing airworthiness and Austrian registration	
Mandatory application of the EASA regulatory framework	<p><i>Regulation (EC) No 2042/2003 of 20 November 2003 on the continuing airworthiness of aircraft and aeronautical products, parts and appliances, and on the approval of organizations and personnel involved in these tasks</i> is applicable to all aircraft registered in an EC member state.</p> <p>According to the relevant Austrian regulation (§ 58 ZLLV 2010) all EC regulations regarding airworthiness shall be binding also in Austria (in its latest applicable version).</p>
Operator (“Halter”) as responsible entity for the compliance with law	<p>The basic regulation in Austria regarding airworthiness is the ZLLV 2010. The operator of the aircraft is the responsible entity to comply with the law.</p> <p>Operator has to apply for Airworthiness Certificate</p> <p>Operator has to keep the relevant documents</p> <p>Operator has to arrange for the maintenance according to a maintenance programme</p>
Oversight of operations by the Austro Control GmbH	<p>The competent authority for the oversight of continuing airworthiness of an individual aircraft and the issuance of Airworthiness Review Certificates is the Austro Control GmbH.</p>
Instruction of a CAMO to secure the fulfillment of the obligations	<p>In order to secure the compliance with all airworthiness rules an Austrian (or EASA) Continuing Airworthiness Management Organisation (“CAMO”) could be instructed to control the maintenance programme for the aircraft, ensure that the maintenance is carried out, ensure that the airworthiness directives are carried out etc.</p>
Repossession of the Aircraft	
Deregistration requirements	<p>As mentioned above, deregistration can only be arranged in cooperation of operator and owner of an aircraft. In order to avoid a delay by inactive operators, the owner usually is provided with an irrevocable power of attorney for deregistration of an aircraft at the time of execution of a lease agreement.</p>

<p>Enforcement of judgments and arbitral awards</p>	<p>Judgments rendered by any court in an EC member state are recognized in other EC member states without any special procedure being required under the applicable law regime of the EC (<i>Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters</i>).</p> <p>Further Austria is a party to the 1958 - Convention on the Recognition and Enforcement of Foreign Arbitral Awards - the "New York" Convention. This Convention applies to the recognition and enforcement of arbitral awards made in the territory of a State other than the state where the recognition and enforcement of such awards are sought.</p>
<p>Title for repossession of an aircraft</p>	<p>If the aircraft is not redelivered on a voluntary basis in accordance with the lease agreement, the owner has to sue the operator for redelivery of the aircraft.</p> <p>In order to avoid lengthy legal proceedings, it is recommended to agree on the redelivery of the aircraft in a special notarial deed (<i>"vollstreckbarer Notariatsakt"</i>) in advance. Such notarial deed will have the same effect like a judgment of an official court. It will be considered as a document which has been formally drawn up under Regulation (EC) No 44/2001 and will be enforced in other EC member states like any other judgment.</p> <p>Enforcement has to be made according to the Austrian Rules of legal enforcement. Measures of self enforcement are not permitted under Austrian law.</p>
<p>Insolvency of an Austrian Lessee</p>	<p>In the event of an insolvency of an Austrian lessee, the owner of the aircraft will have a segregation right, if he can prove that he is the legal owner of the aircraft. The aircraft is not part of the insolvency estate.</p> <p>If the repossession of the aircraft would lead to an economic exposure for the continuation of the business operation of the lessee, the insolvency trustee can refuse the repossession of the aircraft for up to 6 months. In practice, such a delay shall only take place if the respective aircraft is actually required since otherwise the business can not be continued and the aircraft is dedicated to the company. [In case of an insolvency the court appoints an insolvency trustee who liquidates the estate of the debtor and distributes the proceeds among the creditors.]</p>
<p>Further information</p>	<p>Please contact Martina Flitsch at Jarolim Flitsch Rechtsanwälte GmbH under Tel ++43 1 253 7000 Email martina.flitsch@jarolim.at</p>

Please note that the information described above serves as preliminary information and does not constitute or replace a specific legal advice.