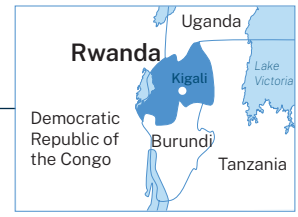
RWANDA

Law and Practice



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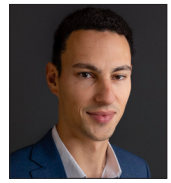
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Liederkerke Great Lakes is a business law firm located in Kigali in Rwanda and is the second subsidiary of Liedekerke in Central Africa. It is a premium Belgian full-service business law firm with offices in Brussels, London, Kinshasa and Kigali. It has a strong advisory practice based on sector expertise and an in-depth knowledge of Belgian/European law, Rwandan law, Burundian law and Congolese/OHADA law. Drawing on over 40 years of experience working on Africa-related matters and the expertise of more than 130 lawyers, the firm offers unparalleled experience and support in Rwanda and Burundi. It advises clients on all aspects of cross-border and domestic transactions (corporate, data protection, employment, finance, international dispute resolution, IP/IT, real estate, regulatory, and transport).

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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

Upon execution of an aircraft or engine sale agreement, the following taxes and fees will be payable.

- VAT at the rate of 18% is payable as a consequence of the execution of a sale agreement of an aircraft or an engine located in Rwanda at the time of transfer of title. VAT is invoiced by the seller to the buyer and is due by the seller to the Rwanda Revenue Authority.
- Registration or re-registration (applicable in the event of a change of ownership of an aircraft already registered in Rwanda) in the Rwanda aircraft register (the "Aircraft Register") is subject to a fee ranging from USD250 to USD5,000.

1.1.2 Enforceability Against Domestic Parties

Because a change in ownership is registered in the Aircraft Register (see **1.1.1 Taxes/Duties Payable Upon Execution of the Sales Agreement**), a sale agreement does not need to be translated, certified, notarised or legalised to be enforceable against a domestic party.

However, all documents submitted to the Rwanda Civil Aviation Authority (RCAA) must be certified (ie, notarised) copied, and translated into English. In addition, a (partial) translation could be required by the Rwandan courts if the agreement is not written in Kinyarwanda.

1.2 Transfer of Ownership

1.2.1 Transferring Title

Formalities Applicable to the Transferring Title

Transfer of ownership of an aircraft or engine registered in Rwanda is valid if the sale agreement meets the following criteria:

- it is in writing;
- it relates to an aircraft or engine which the seller has the power to dispose of; and
- it enables the aircraft or engine to be identified.

As the transfer of ownership is made in accordance with the terms of the sale agreement, it is advisable to explicitly state that the transfer extends to all installed parts, including the Auxiliary Power Unit (APU).

Registration of the Transfer

Registration of the transfer of ownership in the Aircraft Register is the only mean of establishing a priority of a right in an aircraft.

Sale of the Ownership Interest in an Entity

The sale of the ownership interest in an entity that owns an aircraft or engine will not be effectively recognised as a sale of the aircraft or engine itself, provided that entity remains the owner of the aircraft or engine.

1.2.2 Sales Governed by English or New York Law

The transfer of title to an aircraft or engine physically delivered in Rwanda will be recognised if the bill of sale is governed by English or New York Law.

To be recognised in Rwanda, the bill of sale must however include the following information:

- name of the manufacturer;
- manufacturer's serial number (MSN); and
- model designation necessary and sufficient to identify the aircraft.

1.2.3 Enforceability Against Domestic Parties

A bill of sale does not need to be translated, certified, notarised or legalised to be enforceable against a domestic party.

1.2.4 Registration, Filing and/or Consent From Government Entities

The person who becomes the owner of an aircraft in Rwanda must register it with the RCAA. The following applies to the registration process.

- The new owner must be either a citizen or a bona fide resident of Rwanda (or an East African Community partner state), a Rwandan legal entity or the government of Rwanda.
- The aircraft cannot be registered under the laws of any foreign country.
- The new owner must file an application to the RCAA including proof of ownership (eg, bill of sale).

Re-registration Process

The person who becomes the owner of an aircraft already registered in Rwanda must inform the RCAA in writing within five days after becoming the owner. The re-registration process is identical to the registration process.

No Consent From Government Entities

Government consent is not required as a prerequisite to the execution and delivery of a bill of sale in relation to an aircraft or engine registered in Rwanda.

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

Transfer of Ownership of the Aircraft

Value added tax at the rate of 18% is payable as a consequence of the execution of a sale agreement of an aircraft or an engine located in Rwanda, even in transit, at the time of transfer of title. In addition, a fee ranging from USD250 to USD5,000 applies to the re-registration of the aircraft.

Transfer of the Ownership Interest in an Entity That Owns an Aircraft

The sale of the ownership interest in an entity that owns an aircraft or engine will not be effectively recognised as a sale of the aircraft or engine itself, provided that entity remains the owner of the aircraft or engine. No tax or duty will therefore be due.

2. Aircraft and Engine Leasing

2.1 Overview

2.1.1 Non-permissible Leases

All types of operating/wet/finance leases or leases concerning only engines or parts are permissible and recognised under Rwandan law.

2.1.2 Application of Foreign Laws

A lease involving either a domestic party or an asset situated in Rwanda can be governed by a foreign law.

2.1.3 Restrictions Concerning Payments in US Dollars

Under Regulation 42 of 2022 governing foreign exchange operations and Directive 0520/2023-00041 on transaction in foreign currencies by non-licensed persons issued by the National Bank of Rwanda (BNR), all transfers of funds, regardless of the currency, to non-residents and by Rwandan residents to or from a foreign country must be made through authorised intermediaries (eg, all banks licensed by the BNR).

In addition, if the payments are made in a foreign currency – ie, one other than the Rwandan franc – the domestic lessee must apply to the BNR for authorisation to transact in a foreign currency, unless it has already been authorised to do so (such an authorisation is general – ie, it is not granted for a specific transaction or operation).

2.1.4 Exchange Controls

There are no foreign exchange controls that could prevent rent payments under a lease, or any repatriation of realisation proceeds if the lease is enforced by a foreign lessor.

2.1.5 Taxes/Duties Payable for Physical Execution of a Lease

There are no taxes or fees payable for executing a lease physically in Rwanda and/or regarding a domestic party or as a consequence of an original or copy of a lease being brought into Rwanda either physically or electronically.

2.1.6 Licensing/Qualification of Lessors

The lessor does not have to be licensed or otherwise qualified in Rwanda to do business with a Rwandan lessee.

2.2 Lease Terms

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

There are no specific mandatory terms required to be in a lease that would not typically already be included in a lease governed by English or New York law.

Mandatory terms required to be in a lease include:

- the official names and addresses of the parties;
- the duration of the lease;
- detailed information on each aircraft involved in the agreement (make, model, series and registration numbers);
- an explanation of the type of operations that will be conducted by the lessee; and
- an explanation of which party has the responsibility and authority for operational control, maintenance, insurance, etc.

2.2.2 Tax and Withholding Gross-Up Provisions

Tax and withholding gross-up provisions are permissible and enforceable.

2.2.3 Parts Installed or Replaced After a Lease's Execution

A lease can cover parts that are installed or replaced on an aircraft or engine after its execution. All that is required is that this is clearly stated in the lease agreement.

2.2.4 Risk of Title Annexation

There is a risk of title annexation in respect of aircraft engines installed on an airframe if the aircraft engines are not clearly indicated as separate parts from the aircraft itself.

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 are recognised under Rwandan law.

2.3 Lease Registration

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

Interests of the owner or the lessor of an aircraft are not noted in the Aircraft Register. They can be noted either in the national system for recording interest in any aircraft or aircraft engine register in Rwanda (the "National Register for Interests in Aircraft") or in the International Registry pursuant to the Cape Town Convention (the "International Registry").

In practice, it is advisable to register the interests in the National Register for Interests in Aircraft. However, if the owner or the lessor so wishes, RCAA can be used as a conduit for transmitting the required information to the International Registry. Registration of interests establishes the priority of right or interest in an aircraft or an aircraft engine.

2.3.2 Registration If the Owner Is Different From the Operator

An operator can register an interest only if they are an owner whereas an owner does not also have to be an operator to register an interest.

2.3.3 Aircraft/Engine-Specific Registers

Leased aircraft are registered in the Aircraft Register. However, the lease agreement and the lessor's interests are registered in the National Register for Interests in Aircraft and/or in the International Registry.

2.3.4 Registration of Leases With the Domestic Aircraft Registry

Registration of Leases

A lease, and a lessor's interest therein, can be registered and will be registered in the National Register for Interests in Aircraft and/or in the International Registry.

The parties must provide the RCAA with at least:

- a complete certified copy of the lease agreement; and
- an operator analysis showing how the lease agreement conforms with the Rwanda Civil Aviation Regulations (RCAR). Depending on the type of lease other documents must also be submitted.

Estimated Period for Completion

Once the required documentation has been submitted, the RCAA will issue its decision within two to 45 working days, depending on the type of lease.

Consequence of the Registration

Registration of the lease establishes the priority of interest in the aircraft or engine.

Prior Authorisation From Government Entities

All lease agreements must be submitted to the Flight Safety Services (FSS) for approval. Approval is a prerequisite to the execution and delivery of an aircraft in Rwanda.

2.3.5 Requirements for a Lease to Be Valid and Registrable

The lease needs to be certified to be valid and registrable. If the lease is not in English, an English translation will be required.

2.3.6 Taxes/Duties Payable for Registering a Lease

The registration of a lease is subject to a fee ranging from USD500 to USD10,000 for the registration of an interest in an aircraft or a fee of USD3,000 for the registration of an interest in an engine or any other components.

2.3.7 Registration of Aircraft in Alternative Countries

There is currently one aircraft registered in Turkey which is habitually based in Rwanda.

2.3.8 Requirements for Documents Concerning Registration

The RCAA requires that all documents submitted to it be certified (ie, notarised) copies. While it is not always mandatory, it is strongly recommended to provide an English translation of documents submitted to the RCAA.

2.4 Lessor's Liabilities

2.4.1 Tax Requirements for a Foreign Lessor

A foreign lessor will not be required to pay any taxes as it is not operating in Rwanda. The lessee is solely responsible for paying all relevant taxes and withholding applicable taxes in accordance with the tax legislation.

2.4.2 Effects of Leasing on the Residence of a Foreign Lessor

A foreign lessor will not be deemed to be resident, domiciled or carrying on business in Rwanda as a result of being a party to, or enforcing, a lease.

2.4.3 Engine Maintenance and Operations

If all obligations relating to operation, maintenance and insurance of an aircraft or engine rely on the aircraft operator (ie, the lessee) as per the lease agreement, there is generally no liability imposed on a foreign lessor in that respect.

2.4.4 Damage or Loss Caused by an Asset

If all obligations relating to operation, maintenance and insurance of an aircraft rely on the aircraft operator (ie, the lessee) as per the lease agreement, there is generally no liability imposed on a foreign lessor as a result of damage or loss caused by the aircraft.

2.4.5 Attachment by Creditors

Creditors of a domestic lessee generally have no rights under Rwandan law to attach an aircraft leased to it as the lessee is not the legal/registered owner of the aircraft.

2.4.6 Priority of Third Parties' Rights

Rwanda declared under Article 39(1) of the Cape Town Convention that:

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

will have priority under its law over an interest in an object equivalent to that of the holder of

a registered international interest and will have priority over a registered international interest, whether in or outside insolvency proceedings.

2.5 Insurance and Reinsurance

2.5.1 Requirement to Engage Domestic Insurance Companies

According to the law governing the organisation of insurance business, a foreign insurer may be authorised by the BNR to cover a risk in the territory of Rwanda where:

- no Rwandan insurer is able to cover that risk; or
- the class of insurance required is not found in Rwanda.

In all other cases, it is mandatory that either all or part of the insurances be placed with Rwandan insurance companies.

2.5.2 Mandatory Insurance Coverage Requirements

No licensee will operate a domestic or an international air service unless, for every accident or incident related to the operation of that service, it has:

- liability insurance covering risks of injury to or death of passengers, damage to or loss of luggage and cargo; and
- insurance covering third-party liability risks.

2.5.3 Placement of Insurance Outside of Jurisdiction

Foreign reinsurers are required by the BNR to establish a representative office in Rwanda and to obtain authorisation before starting operations.

2.5.4 Enforceability of "Cut-Through" Clauses

Cut-through clauses that are in line with insolvency laws and regulations are enforceable in Rwanda.

2.5.5 Assignment of Insurance/Reinsurance

Assignments of insurance and reinsurance are generally permitted in Rwanda.

2.6 Lease Enforcement

2.6.1 Restrictions on Lessors' Abilities

There are no restrictions on the lessor's abilities to:

- terminate an aircraft lease;
- re-export the aircraft; and/or
- sell the aircraft, provided that the operation is compliant with:
  - (a) the terms of the lease; and
  - (b) requirements for irrevocable deregistration and export authorisation.

2.6.2 Lessor Taking Possession of the Aircraft

In the event of default, the lessor may take physical possession of the aircraft provided that the lessee has at any time so agreed – ie, if it is clearly stated in the lease agreement. The lessor may alternatively apply for a court order authorising it to take possession of the aircraft.

2.6.3 Specific Courts for Aviation Disputes

There is no specific court for aviation disputes in Rwanda. These disputes are referred to the commercial courts unless the parties have agreed to arbitration.

2.6.4 Summary Judgment or Other Relief

A lessor can obtain an interim order pending final resolution of judicial proceedings if the matter is urgent. The order is issued between four and 17 days from the date of the registration of the application.

2.6.5 Domestic Courts' Approach to Foreign Laws and Judgments

Parties are generally free to choose a foreign law as the governing law of an aircraft lease and to submit any disputes arising out of the lease to a foreign jurisdiction. The Rwandan courts will generally uphold the parties' choice.

2.6.6 Domestic Courts' Recognition of Foreign Judgments/Awards

Recognition and Enforcement of Foreign Judgments

Subject to specific international agreements, foreign judgments are only enforceable in Rwanda after they have been granted exequatur. As a rule, a foreign judgment will be granted exequatur provided that:

- the judgment is not contrary to Rwandan public policy;
- the judgment has acquired res judicata in accordance with the laws of the country of origin;
- the applicant provides a copy of the judgment that fulfils all the conditions necessary for its authenticity in accordance with the laws of the country of origin; and
- the rights of defence have been respected.

Recognition and Enforcement of Foreign Awards

Rwanda recognises and enforces foreign arbitral awards on the basis of reciprocity and therefore only recognises awards issued in countries that themselves recognise awards issued in Rwanda, which is the case for all countries party to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the "New York Convention").

2.6.7 Judgments in Foreign Currencies

A lessor can obtain a judgment in a foreign currency, as the judgment should refer to the currency agreed upon by parties in the lease agreement.

2.6.8 Limitations on Lessors' Actions Following Termination

Damages for breach of the contract may be provided for in the contract, but only at a reasonable amount based on the actual loss or potential loss that could occur in the case of a breach of the contract.

A clause fixing excessive damages will be deemed contrary to public policy and therefore will not be enforced by Rwandan courts.

2.6.9 Lessor's Requirement to Pay Taxes/Fees

The lessor will not be required to pay taxes or fees in a significant amount (ie, non-nominal) in connection with the enforcement of a lease in Rwanda.

2.6.10 Mandatory Notice Periods

In principle, the lessor will be required to comply with a mandatory notice period of at least ten working days. However, it is highly advisable to give the lessee a reasonable notice period depending on the specific circumstances of the case.

2.6.11 Lessees' Entitlement to Claim Immunity

The lessee is in principle not entitled to claim sovereign or other immunity from suit. In any event, this immunity can be waived.

2.6.12 Enforcement of Foreign Arbitral Decisions

Rwanda has adopted the New York Convention. Rwanda recognises and enforces foreign arbitral awards on the basis of reciprocity, and therefore only recognises awards issued in countries that themselves recognise awards issued in Rwanda, which is the case for all countries party to the New York Convention.

2.6.13 Other Relevant Issues

There are no other relevant issues that a lessor should be aware of in relation to the enforcement of its rights.

2.7 Lease Assignment/Novation

2.7.1 Recognition of the Concepts of Contractual Assignment and Novation

The concepts of contractual assignment and novation are generally recognised in Rwanda.

2.7.2 Assignment/Novation of Leases Under Foreign Laws

Assuming that a lessor transferring its rights under an aircraft lease is assigning or novating its rights under the lease to a new lessor pursuant to a New York or English law-governed assignment and assumption agreement or novation agreement, the agreement will be held valid by Rwandan courts provided that:

- the lessee has been given notice in writing;
- the notice identifies the associated rights; and
- the new lessor has consented in writing.

There are no mandatory terms that Rwandan law requires to be included in the agreement. The agreement must only be in writing and enable the associated rights to be identified.

2.7.3 Enforceability of Lease Assignments/Novations

It is not required that an aircraft and/or engine lease assignment and assumption/novation be translated, certified, notarised or legalised to be enforceable against a domestic party.

However, if the case goes to court, a (partial) translation will be required if the agreement is not written in Kinyarwanda.

2.7.4 Filing/Registration of Lease Assignments/Novations

Filing or Registration of Lease Assignment/Novations

A lease assignment or novation can be registered. If so, it will be registered in the National Register for Interests in Aircraft and/or the International Registry.

The parties must, inter alia, provide the RCAA with a complete certified copy of the lease assignment or novation agreement.

Estimated Period for Completion

Once the required documentation has been submitted, the RCAA should issue its decision within a few weeks.

Consequence of the Registration

Registration establishes the priority of interest in the aircraft or engine.

Prior Authorisation From Government Entities

All lease assignment or novation agreements must be submitted to the FSS for approval. This approval is a prerequisite to the execution and delivery of an aircraft in Rwanda.

2.7.5 Taxes/Duties Payable on Assignment/Novation

Provided that the operation does not entail any transfer of ownership, there are no taxes or duties payable in respect of the assignment or novation agreement, or as a consequence of an original or copy of it being brought into Rwanda physically or electronically.

2.7.6 Recognition of Transfer of Ownership Interests

Assuming that the ownership interest of the entity owning an aircraft is transferred with the legal title to the asset remaining with that entity, the transfer will not be effectively recognised as a transfer of ownership of the aircraft itself. Therefore, it is not required to notify the RCAA.

2.8 Aircraft Deregistration and Export

2.8.1 Deregistering Aircraft in This Jurisdiction

The RCAA can deregister an aircraft in the following circumstances.

- Upon application by the registered owner (or the lessor) for purposes of registering the aircraft in another state or for any other purpose.
- Upon the destruction of the aircraft or its permanent withdrawal from use.

To achieve this registration, the registered owner or lessor is required to:

- return the certificate of aircraft registration to the RCAA;
- settle any liens or encumbrances attached to the aircraft; and
- remove all nationality and registration marks assigned to the aircraft.

The RCAA may refuse to deregister the aircraft if the deregistration is inexpedient or not in the public interest.

2.8.2 Lessee's/Operator's Consent

The aircraft owner, mortgagee or lessor can in principle apply for deregistration without the lessee's or operator's consent.

2.8.3 Required Documentation

To deregister an aircraft, the registered owner or lessor is required to:

- return the certificate of aircraft registration to the RCAA;
- settle any liens or encumbrances attached to the aircraft; and
- remove all nationality and registration marks assigned to the aircraft.

2.8.4 Duration of Deregistration Process

Relevant regulations do not provide a specific timeframe for the deregistration process.

2.8.5 Aviation Authority's Assurances

The authority does not give any advance assurance as to the prompt deregistration of the aircraft. Deregistration must be carried out in line with the relevant procedures specified by regulations.

2.8.6 Costs, Fees and Taxes Relating to Deregistration

As a general rule, deregistration fees apply only to the deregistration of unmanned aircraft systems (UAS). In the authors' experience, no fees are charged for the deregistration of an aircraft.

2.8.7 Deregistration Power of Attorney

A deregistration power of attorney will be recognised by the RCAA. This power of attorney must:

(i) identify the person authorised to make the application; (ii) be in English; and (iii) be certified.

2.8.8 Documents Required to Enforce Deregistration Power of Attorney

In the case of a corporate body, the following additional documents are required.

- A certified copy of the certificate of incorporation.
- A certified copy of a document identifying the names of the directors of the company owning or leasing the aircraft and their specimen signatures giving authority to deregister the aircraft.

2.8.9 Choice of Laws Governing Deregistration Power of Attorney

A deregistration power of attorney does not have to be governed by Rwandan law.

2.8.10 Revocation of a Deregistration Power of Attorney

In principle, the grantor (ie, the lessor) should be able to revoke a deregistration power of attorney even if it is expressed to be irrevocable.

2.8.11 Owner's/Lessor's Consent

The aircraft owner, mortgagee or lessor can in principle export the aircraft without the lessee's or operator's written consent. However, the aircraft owner, mortgagee or lessor must give reasonable prior notice (at least ten working days) in writing to the lessee or operator.

To increase the likelihood that it will be able to export the aircraft without the lessee's consent, the owner, mortgagee or lessor may want to include a specific clause to this effect in the lease or mortgage (as applicable).

2.8.12 Aircraft Export Permits/Licences

An application for an export certificate must be made in a form prescribed by the RCAA at least 14 days before the intended date of export of the aircraft out of Rwanda.

The RCAA will issue an export certificate within a few weeks upon submission of the required documentation.

2.8.13 Costs, Fees and Taxes Concerning Export of Aircraft

Fees ranging from approximately USD500 to USD3,500 are charged in respect of the export of an aircraft.

2.8.14 Practical Issues Related to Deregistration of Aircraft

Proof of removal of registration marks from the aircraft must be made before deregistration is granted.

In addition, the RCAA may refuse to deregister the aircraft if the deregistration is inexpedient or not in the public interest.

2.9 Insolvency Proceedings

2.9.1 Overview of Relevant Laws and Statutory Regimes Governing Restructurings, Reorganisations, Insolvencies and Liquidations

The relevant statutory provisions for insolvency of a lessee domiciled in Rwanda are the following:

- Law 075 of 2021 of 06/12/2021 relating to insolvency (the "Rwanda Insolvency Act");
- Law 34 of 2013 of 24/05/2013 on security interests in movable property; and
- Ministerial Order No 01/CAB.M/019 of 06/02/2019 amending Ministerial Order No

04/CAB.M/08 of 24/07/2018 establishing civil aviation regulations.

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

Under the Rwanda Insolvency Act, insolvency proceedings start when the lessee is unable to pay its debts when they fall due in the normal course of business, or when its assets are less than its liabilities plus its stated capital.

The following persons may file an application with the commercial courts to start insolvency proceedings:

- the creditor (ie, the lessor);
- the debtor (ie, the lessee);
- the directors or shareholders of one of them;
- the Registrar General; or
- the regulatory authority.

Insolvency proceedings will usually be followed by either:

- judicial reorganisation proceedings, when there is a reasonable prospect for rescuing the company and it is clear that the company will likely meet its future financial obligations as they become due and payable; or
- judicial liquidation proceedings when it is clear that the company is unable to pay its debts.

It is also possible to immediately file for judicial reorganisation or judicial liquidation.

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

Cross-border Insolvency Regime

The Rwanda Insolvency Act establishes a cross-border insolvency regime, which applies notably when:

- assistance is sought in Rwanda in connection with a foreign proceeding;
- foreign and domestic proceedings in respect of the same debtor are taking place concurrently; or
- where foreign creditors have interest in initiating, or participating in, insolvency proceedings in Rwanda.

In these circumstances, a foreign authority, representative or creditor may apply to initiate, or to participate in, insolvency proceedings in Rwanda.

Co-ordination Principles

The Rwanda Insolvency Act states that co-operation "may be implemented by any appropriate means", and therefore does not prevent the parties from adopting certain co-ordination principles such as the American Law Institute and International Insolvency Institute Guidelines Applicable to Court-to-Court Communications in Cross-Border Cases 2001, and the INSOL International (International Association of Restructuring, Insolvency and Bankruptcy Professionals).

Recognition of Foreign Proceedings

A foreign representative may apply to the competent court in Rwanda for recognition of a foreign proceeding in which it has been appointed. In doing so, the foreign representative must provide the competent court with the required documentation, including a certified copy of the decision commencing foreign proceedings and appointing the foreign representative.

Once an application for recognition of the foreign proceedings is made, it will cause an automatic stay over the debtor's property.

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

Assuming that a lessee has granted a deregistration power of attorney or an irrevocable deregistration and export request authorisation (IDERA) to a lessor, owner or mortgagee of an aircraft, the power of attorney should not be void or terminated as a consequence of the liquidation of the lessee.

2.9.5 Other Effects of a Lessee's Insolvency

Assuming that a lessee has possession of the aircraft and is put into liquidation or administration or similar process, the following applies.

- The liquidator may decide to terminate the lease agreement.
- The lessor will not be prevented or delayed from repossessing the aircraft, in accordance with the relevant provisions of the Cape Town Convention, which Rwanda has ratified.
- The aircraft will not be deemed to be part of the lessee's property.
- The liquidator will not impose the rights of other creditors in priority to those of the lessor. However, it is important that the lessor diligently requests the return of the aircraft.

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

The main risks for a lender would be the inability to obtain payment from the borrower if the borrower becomes insolvent.

2.9.7 Imposition of Moratoria in Connection With Insolvency Proceedings

Moratorium/Stay

As a rule, the rights of secured creditors are not stayed by the commencement of insolvency proceedings. However, where the debtor shows the intention to submit a reorganisation plan along with the application for insolvency proceedings, all claims including secured claims and rights of retention are stayed effective from the date of application.

Duration

The debtor must submit a reorganisation plan to the court within a period not exceeding three months from the date of initiating the proceedings. The period of stay cannot exceed six months (including the three months allowed for submitting the reorganisation plan).

2.9.8 Liquidation of Domestic Lessees

In accordance with the Rwanda Insolvency Act, a company is put into liquidation by the appointment of a liquidator, who must be an insolvency practitioner. The liquidator is appointed following an application made by a special resolution of the shareholders, an application made by the directors or any other person if the company's incorporation document so requires or permits, or an order made directly by the court.

There are three main stages in a company's liquidation:

- appointment of a liquidator, by the company itself ("voluntary liquidation") or by the court ("compulsory liquidation");
- collection and realisation of the company's assets; and
- payment to the creditors, with respect to their legal priority.

2.9.9 Ipso Facto Defaults

Performance defaults should be required to repossess an aircraft during a lessee insolvency proceeding.

2.9.10 Impact of Domestic Lessees' Winding-Up

If a domestic lessee is wound up by a court or administration proceedings, the following generally occurs.

- The aircraft may be repossessed by the lessor if the lease is terminated for default of payments or if the liquidator decides not to continue the lease.
- The lease rentals will be due and must be claimed to the liquidator – if the lease rentals cannot be paid, the lessor may terminate the lease agreement.
- The lease security deposit and maintenance will be returned to the lessor upon termination of the lease agreement.
- The maintenance reserves (whether classified as reserves or supplemental rent) held by the lessor and not used, should be returned to the lessee, unless the lease agreement provides otherwise.

2.10 Cape Town Convention and Others

2.10.1 Conventions in Force

Rwanda ratified the Convention on International Interests in Mobile Equipment (the "Convention") and the related Protocol on Matters specific to Aircraft Equipment (the "Protocol") in 2010.

Registration of interests establishes the priority of right or interest in an aircraft. In practice, the Aircraft Register is used as a conduit for transmitting the required information to the International Registry.

2.10.2 Declarations Made Concerning Conventions

Rwanda has made the following declarations under the Convention.

Article 39(1)

The following have priority under its law over an interest in an object equivalent to that of the holder of a registered international interest and will have priority over a registered international interest, whether in or outside insolvency proceedings:

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

Article 40

The following will be registerable under the Convention as regards any category of object as if the right or interest were an international interest and will be regulated accordingly:

- 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 of any type whatsoever (which is not covered by the declaration under Article 39(1)(a) of the Convention); and
- any other non-consensual right or interest which is not covered by the declaration under Article 39(1)(a) of the Convention.

Other Declarations

In addition, Rwanda has declared that:

- under Article 52 the Convention will apply to all its territorial units;
- under Article 53 the Commercial Court and the Commercial High Court are the relevant court(s) for the purposes of Article 1 and Chapter XII of the Convention; and
- under Article 54(2) any remedies available to the creditor under the Convention which are not expressed under the relevant provision thereof to require application to the court may be exercised without leave of the court or other court action.

Rwanda has also made declarations under Articles XXIX and XXX(1), (2), and (3) of the Protocol.

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

Article XIII of the Protocol applies in Rwanda. An IDERA can be submitted to the Aircraft Register. It must be in the form shown in RCATS 35.125.

2.10.4 Enforcement of Conventions

The authors are not aware of any case law regarding the enforcement of the Convention or the Protocol.

2.10.5 Other Conventions

Rwanda has not ratified the 1948 Geneva Convention on the International Recognition of Rights in Aircraft on 17 May 1971, nor 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 and borrowers are subject to Rwandan law. As a general rule, there are no restrictions on foreign lenders financing an aircraft locally or on borrowers using the loan proceeds.

3.1.2 Effect of Exchange Controls or Government Consents

Specific Exchange Controls or Government Consents

There are no specific exchange controls or government consents that would be material to any financing or repatriation of realisation proceeds under a loan, guarantee or security document.

General Exchange Controls

Nonetheless, the general exchange control framework will apply to the financing or repatriation of any realisation proceeds (eg, using an authorised bank, see **2.1.3. Restrictions Concerning Payments in US Dollars**).

Prior Government Consents

In addition, prior to any financing or repatriation of the proceeds, the realisation itself will require government consents in the case of a security document (eg, obtaining a certificate from the Office of the Registrar General (ORG) authorising the possession of the collateral).

3.1.3 Granting of Security to Foreign Lenders

Borrowers are permitted to grant security to foreign lenders, which must comply with the general requirements for securities under Rwandan law.

3.1.4 Downstream, Upstream and Cross-Stream Guarantees

Downstream, upstream and cross-stream guarantees are permitted in favour of lenders when made in accordance with Rwandan contract law.

3.1.5 Lenders' Share in Security Over Domestic SPVs

It is possible for a lender to take share security over a domestic special purpose vehicle that owns the financed aircraft. A pledge of shares is recognised under Rwandan law.

3.1.6 Negative Pledges

Negative pledges are recognised under Rwandan law as enforceable contractual obligations when made in accordance with Rwandan contract law.

3.1.7 Intercreditor Arrangements

There are no material restrictions or requirements imposed on intercreditor arrangements.

3.1.8 Syndicated Loans

The concept and role of agent and agency under a syndicated loan is recognised in Rwanda.

3.1.9 Debt Subordination

Contractual or structural debt subordination are recognised in Rwanda if they comply with Rwandan contract and company law.

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-governed loan is permissible and recognised under Rwandan law, to the extent the transfer or assignment is not precluded by the contract, does not materially change the obligations of the debtor, and does not violate Rwandan law or public order.

3.1.11 Usury/Interest Limitation Laws

There are no usury or interest limitation laws as such in Rwanda. However, there are other consumer, competition, and banking-related obligations regarding rates and fees, such as publication, disclosure and display obligations.

3.2 Security

3.2.1 Typical Forms of Security and Recourse

The typical form of security and recourse granted in an aviation finance transaction in Rwanda is a mortgage.

3.2.2 Types of Security Not Available

There are no types of security that cannot be taken over an aircraft or related collateral.

3.2.3 Trust/Trustee Concepts

The concept of a trust and the role of a security trustee are recognised in Rwanda.

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

A borrower can assign its rights to the aircraft or under an aircraft lease (including in relation to insurances) to a security trustee pursuant to a security assignment or a mortgage.

3.2.5 Assignment of Rights and Benefits Without Attendant Obligations

It is possible to assign the rights and benefits of the lessor under an aircraft lease only, without also assigning its attendant obligations.

3.2.6 Choice of Foreign Law

A security assignment or a guarantee can be governed by English or New York law and does not necessarily have to be governed by Rwandan law to be fully enforceable, as long as it does not violate Rwandan public policy.

3.2.7 Formalities/Mandatory Terms to Create and Perfect Security Assignments

Registration

To perfect the security assignment, it should be registered in the National Register for Interests in Aircraft Registry and/or, if applicable, in the International Registry.

Other Formalities

It is not required that the security assignment is translated, certified, notarised or legalised to be enforceable against a domestic party.

However, if the case goes to court, a translation will be required if the assignment is not written in Kinyarwanda.

3.2.8 Domestic Law Security Instruments

If an English or New York law-governed security assignment were to be taken in respect of an aircraft registered domestically, an additional domestic law security instrument would not be required. Domestic law security instruments or local law filings are not required in order to make Cape Town filings. In the event of a domestic law security instrument and local law filings, the average costs of execution would be subject to a fee ranging from USD500 to USD10,000 for the registration of an interest in an aircraft or a fee of USD3,000 for the registration of an interest in an engine or any other components.

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 can be registered in Rwanda.

3.2.10 Transfer of Security Interests Over Aircraft/Engines

The transfer of security over an aircraft and/or an engine is recognised in Rwanda.

3.2.11 Effect of Changes in the Identity of Secured Parties

If the identity of the secured parties under a security assignment changes after its execution, the security interest will not be jeopardised, although the appropriate filings and registrations must be made.

3.2.12 "Parallel Debt" Structures

The authors are not aware of parallel debt structures in aviation financing in Rwanda. The role of security trustee is recognised in Rwanda and, as such, parallel debt structures are not per se necessary (see **3.2.3 Trust/Trustee Concepts**).

3.2.13 Effect of Security Assignments on Residence of Secured Parties

A secured party under a security assignment would generally not be deemed to be resident, domiciled, carrying on business or subject to any taxes, solely as a result of its being a party to, or its enforcement of, such a security assignment.

3.2.14 Perfection of Domestic Law Mortgages

A domestic law mortgage over an aircraft or engine can be perfected by registration in the National Register for Interests in Aircraft.

3.2.15 Differences Between Security Over Aircraft and Spare Engines

There are no differences between the forms of security or perfection taken over an aircraft and those taken over spare engines.

3.2.16 Form and Perfection of Security Over Bank Accounts

The form of security typically used to take security over a bank account would be a pledge over the bank account. The pledge can be perfected by registration with the securities registry of the Office of the Registrar General (ORG).

3.3 Liens

3.3.1 Third-Party Liens

Permissible Third-Party Liens

As per Rwanda's declaration under Article 39(1)(a) of the Convention, a third party can take and register a lien over an aircraft or engine for certain non-consensual liens. Unpaid airport fees, navigation charges, customs duties and repairers' costs are all permissible non-consensual liens.

Remedies in Enforcing the Lien

To enforce their lien, third parties can seize and detain the aircraft until the due amount gets paid in full.

If airport fees or navigation charges are not paid, the RCAA will initiate court proceedings to attach any aircraft operated or owned by the debtor.

In contrast, a repairer can, without a court order, retain physical possession of an aircraft or engine until it has been paid for its services.

3.3.2 Timeframe to Discharge a Lien or Mortgage

The discharge of a lien or mortgage over an aircraft may take two to three months.

3.3.3 Register of Mortgages and Charges

The interests of an aircraft mortgagee or security trustee can be registered in the National Register for Interests in Aircraft. Registration establishes the priority of interest in the aircraft or engine. These interests cannot be noted or registered in the Aircraft Register.

3.3.4 Statutory Rights of Detention or Non-consensual Preferential Liens

Statutory rights of detention and non-consensual preferential liens can arise over an aircraft and/or on a "fleet-wide" basis.

3.3.5 Verification of an Aircraft's Freedom From Encumbrances

A third party, such as a potential purchaser of an aircraft, may access the content of the National Register for Interests in Aircraft by filing a request with the RCAA.

3.4 Enforcement

3.4.1 Differences Between Enforcing Security Assignments, Loans and Guarantees

There are no relevant differences in enforcing a security assignment as opposed to a loan or a guarantee in Rwanda.

3.4.2 Security Trustees' Enforcement of Their Rights

If, under a security assignment, security is granted to a security trustee by a lessor in respect of its rights under an aircraft lease, that security trustee can enforce its rights under the security assignment pursuant to a notice and acknowledgement executed by that lessor and the relevant lessee respectively in connection with the security assignment.

3.4.3 Application of Foreign Laws

Rwandan courts will generally uphold a foreign law as the governing law of a finance or security document, and the submission to a foreign jurisdiction.

3.4.4 Recognition and Enforcement of Foreign Judgments and Arbitral Awards

Rwandan courts will recognise and enforce a final judgment of a foreign court or an arbitral award without reviewing the merits of the matter.

3.4.5 Secured Parties' Right to Take Possession of Aircraft

A secured party can take physical possession of the aircraft in execution of a security or lease

agreement without further consent required from the lessee.

3.4.6 Domestic Courts Competent to Decide on Enforcement Actions

The commercial courts are competent to decide enforcement action in commercial aviation matters.

3.4.7 Summary Judgments or Other Relief

A secured party can obtain an interim order pending final resolution of judicial proceedings if the matter is urgent. The order is generally issued between four and 17 days from the date of the registration of the application.

The court may order the secured party to post a bond or provide a guarantee if it decides that the circumstances so require.

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.

3.4.9 Taxes/Fees Payable

There are no taxes or fees required from the secured party in connection with the enforcement of a security agreement or aircraft mortgage.

3.4.10 Other Relevant Issues

There are no relevant or notable issues in relation to the enforcement of its rights.

4. Other Issues of Note

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

Rwanda has recently implemented Article 83 bis of the Chicago Convention on International Civil Aviation of 1944 in its domestic legislation. As a result, the RCAA can now enter into agreements with the relevant foreign aviation authorities for the transfer of certain oversight responsibilities from the state of registry to the state of the operator.

4.2 Current Legislative Proposals

Law 20 of 2018 of 29/04/2018 establishing regulations governing civil aviation and the RCAR are currently under review and should be slightly amended in the next few months. However, the proposals are not expected to alter many of the existing provisions discussed in this chapter.

Trends and Developments

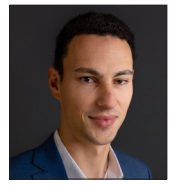
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Liederkerke Great Lakes is a business law firm located in Kigali in Rwanda and is the second subsidiary of Liedekerke in Central Africa. It is a premium Belgian full-service business law firm with offices in Brussels, London, Kinshasa and Kigali. It has a strong advisory practice based on sector expertise and an in-depth knowledge of Belgian/European law, Rwandan law, Burundian law and Congolese/OHADA law. Drawing on over 40 years of experience working on Africa-related matters and the expertise of more than 130 lawyers, the firm offers unparalleled experience and support in Rwanda and Burundi. It advises clients on all aspects of cross-border and domestic transactions (corporate, data protection, employment, finance, international dispute resolution, IP/IT, real estate, regulatory, and transport).

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Rwanda Aims to Become a Key Player in the Aviation Sector in Africa

The Republic of Rwanda is a landlocked country situated in the heart of Africa, the world's second largest and second most populous continent. With a modest land mass of 26,338 km² and an estimated population of 13.2 million, it is the most densely populated country in Africa. Current projections estimate that the population will reach approximately 21 million in 2050. It is therefore hardly surprising that Rwanda is highly import-dependent.

Rwanda has long understood that improving the quality and reliability of transport infrastructure is key to economic development. However, Rwanda has to cope with a challenging geography. The country's topography is very hilly, earning it the nickname of the "land of a thousand hills". The nearest seaports (Mombasa in Kenya and Dar es Salaam in Tanzania) are 1,500 km and two days away by road. As a result, travel, whether within Rwanda or to and from neighbouring countries, is often long and costly.

Over recent decades, Rwanda has significantly increased the capacity of its domestic road network through infrastructure construction, rehabilitation, upgrading and maintenance. Rwanda is now poised to improve regional and international connectivity with the aim of facilitating international trade and reducing transport costs. In doing so, the Rwandan government is pursuing two avenues.

Firstly, the government has been planning for years to connect Kigali (the nation's capital) to the Indian Ocean and the nearest seaports by extending two existing railroads: the so-called "Northern Corridor" connecting Kigali to Mombasa in Kenya, via Kampala in Uganda and Nairobi in Kenya and the "Central Corridor" connecting Kigali with Dar es Salaam in Tanzania. However, both projects are still under discussion and no official schedule has been announced.

Secondly, the government has embarked on the construction of the new Bugesera International Airport situated 40 km south of Kigali. This USD2 billion project lies at the heart of Rwanda's current development strategy and could also be part of the solution to Africa's lack of connectivity.

With railway extension projects somewhat stalled, Rwanda will have to rely on its new airport to pursue further economic development. The country also intends to take advantage of a number of continental initiatives and to expand the activities of its national airline, RwandAir, in

order to become a key player in the aviation sector in Africa.

The Bugesera International Airport in a Nutshell

The initial project was launched in 2017 and called for the construction of a relatively small airport to complement the existing Kigali International Airport and develop RwandAir's activities. At the time, the project was overseen entirely by Aviation Travel and Logistics Holdings Limited (ATL), a public holding company set up in 2015 to manage aviation activities such as travel, logistics, freight and cargo handling.

In 2018, Qatar Airways, which was negotiating with RwandAir to acquire a stake in the Rwandan company, expressed its interest in the project because of Rwanda's central location in Africa. Aiming to make the new airport its first hub in Africa, Qatar Airways offered to make a significant investment in the project, subject to the implementation of a more ambitious design and the construction of a bigger airport with greater capacity.

In 2019, negotiations between ATL and Qatar Airways came to fruition. They agreed to finance the construction and run the future airport jointly through their new joint venture company, Bugesera Airport Company (BAC).

According to the new design, the facility will boast a 130,000 square metre main terminal building with a capacity of eight million passengers a year for the first ten years. It will later be expanded to a capacity of 14 million passengers a year, making it one of the largest airports on the continent.

The first phase of construction which included works on the main horizontal infrastructure such as runways, drainage concrete works, earthwork platforms, aircraft parking, and internal service roads has been completed by a Portuguese company called Mota Engil. The next phase mainly concerns vertical works (vertical building constructions, testing and commissioning), and should begin shortly as Qatar Airways is set to finalise the awarding of contracts to one of the five consortiums remaining in the race. This phase is expected to be completed in 2028.

The facility will also feature a dedicated cargo terminal, capable of accommodating 150,000 tonnes of cargo a year.

A Remedy to Africa's Lack of Connectivity

Rwanda's ambitions with this project extend far beyond its borders. The construction of the new airport not only aims to strengthen connections between Rwanda and the rest of the world, but also to strengthen connections between African countries, which are currently insufficient.

Despite boasting 20% of the world's land area and 17% of the world's population, Africa captures less than 4% of the global aviation market. This discrepancy is mainly due to high operating costs and the lack of connections between African countries, which means that passengers often have to travel via Europe or the Middle East when flying between two African countries. Flight tickets are often very expensive and even prohibitive for many as a result.

To tackle this problem, the African Union (AU) is counting on two flagship projects within its Agenda 2063. These are the Single Aircraft Transport Market (SAATM) and the African Continental Free Trade Area (AfCFTA). With its new airport, Rwanda is positioning itself as a key player in the changes to come.

SAATM

In 1999, 44 African countries signed the Yamoussoukro Decision, whose main objective was to liberalise air transport in Africa. In 2015, after more than 15 years without any tangible progress, the AU Assembly of the Heads of State and Government reaffirmed its commitment to realise the objectives of the Yamoussoukro Decision. Among them, 11 African countries, including Rwanda, called for the immediate implementation of the Yamoussoukro Decision towards the establishment of a single African air transport market by 2017.

In 2018, the AU eventually launched the SAATM. The SAATM aims to create a single, unified air transport market in Africa to connect African countries better with each other, which in turn will play a pivotal role in enhancing social, political and economic integration across the continent. According to a 2014 survey of the International Air Transport Association (IATA), if just 12 key Africa countries opened their markets and increased connectivity, an extra 155,000 jobs and USD1.3 billion in annual GDP would be created in those countries. To date, 35 countries, including Rwanda, have signed up to the SAATM.

AfCFTA

In March 2018, 44 AU member states signed the African Continental Free Trade Area Agreement (AfCFTA Agreement) in Kigali, Rwanda. The purpose of this agreement was to create a single market for goods and services across Africa, to allow the free movement of people and investment and to create a continental customs union. The AfCTA Agreement entered into force on 30 May 2019.

In October 2022, the AfCFTA successfully launched the Guided Trade Initiative (GTI), which establishes preferential trade among eight member states (Cameroon, Egypt, Ghana, Kenya, Mauritius, Rwanda, Tanzania and Tunisia) for 96 identified commodities, including ceramic tiles, tea, coffee, processed meat products, corn, sugar and pasta. The first shipments under the GTI to benefit from AfCFTA Certificate of Origin included Rwanda's instant coffee and Kenya's batteries, which were destined for Ghana.

The AfCFTA Agreement has so far been signed by 54 countries and ratified by 46, including Rwanda. However, full implementation of the AfCFTA Agreement will not be easy as all parties will need to agree on reducing tariffs and harmonising national legislation to support trade facilitation.

Rwanda's pivotal role

With its strategic location in the heart of Africa and its new airport, Rwanda can rapidly become a true air transport hub and help Africa solve its connectivity issues. That is no mean feat for a continent where air transport is sometimes the only way to get from one place to another.

It is no surprise, then, that Rwanda is at the forefront of AU initiatives aimed at boosting connections and trade between African countries. It knows that it is well-equipped to be a catalyst for change but also that its own development depends on it. It is not a coincidence either that Qatar Airways has decided to join forces with the Rwandan government and RwandAir to make Kigali its African hub.

RwandAir

For several years, Qatar Airways has been in talks with the Rwandan government to acquire a 49% stake in the State-owned airline, RwandAir. According to recent statements by both parties, negotiations are still ongoing but are expected

to conclude soon. This deal will allow Qatar Airways to expand its global reach to the African continent, with new destinations such as Bujumbura, Libreville and Douala.

For its part, RwandAir plans to double its fleet in the next few years from the 14 aircraft it operates today (including one freighter). The airline recently added an Airbus A330-200 to its fleet and launched direct flights between London and Kigali in November 2022 and between Paris and Kigali in June 2023 in response to growing customer demand. Since May 2024, RwandAir has operated daily direct flights between London and Kigali. It also intends to develop cargo services and acquired its first dedicated freighter, a B737-800(SF) in late 2022.

RwandAir also became the latest African airline to sign the IATA Safety Leadership Charter, aimed at bolstering organisational safety culture.

Revamped Legal Framework

Rwanda has recently updated its legal framework to regulate its flourishing aviation industry better. In 2018, the Rwandan Parliament adopted a law establishing the core principles governing civil aviation in Rwanda. The year after, it recreated the Rwanda Civil Aviation Authority (RCAA), whose mission is to develop, implement and maintain a safe, secure and efficient civil aviation industry in Rwanda. The RCAA has, inter alia, the following responsibilities:

- to promote the development of air transport of people and goods and supervise the operations of persons and companies authorised to operate in the area of civil aviation;
- to monitor the compliance of the civil aviation industry with international legal instruments, laws and regulations; and
- to issue permits, authorisations and licences required in civil aviation.

A Future Key Player in the Aviation Sector in Africa?

The future of aviation in Rwanda seems bright. Rwanda has already joined forces with Qatar Airways, a major stakeholder in the industry, to build a first-class international airport and expand RwandAir's activities and reach.

Rwanda will also continue to advocate for greater integration and trade on the African continent and already boasts a modern and investor-friendly legal framework. These positive factors, alongside Rwanda's central location, will undoubtedly contribute to increasing Rwanda's strategic role in the aviation sector in Africa.