

AIRCRAFT LIENS ONLINE



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HONDURAS

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PART 1

1. LIENS

What is a lien under Honduras law?

Honduran Law does not have a definition for the concept of a lien. However, from the content of the law, a lien may be defined as any encumbrance, security interest, pledge, mortgage, deed of trust, hypothecation, conditional sale, lease, embargo or similar burden, impediment or restriction on title, transfer of title, or rights to, a property.

HND 1

2. AIRCRAFT LIENS

What aircraft liens exist under Honduras law? What are their essential characteristics?

Pursuant to the General Law of Civil Aviation, Decree 55-2004 (LAC) and its By-Law (R-LAC), aircraft liens may comprise:

HND 2

- a mortgage over an aircraft (*hipoteca*) (LAC art.232);
- a pledge or security interest over an aircraft's engines or propellers or over other aircraft equipment (*prenda sin desplazamiento*) (LAC art.239);
- a lease (*arrendamiento*) (LAC art.222);
- a charter contract (*fletamento*) (LAC art.224). Charter Contracts made by Honduran companies must be approved by the Honduran Agency of Civil Aviation (AHAC) through resolution after a favourable technical and legal opinion and must not exceed five years. (LAC art.222, amended through Executive Agreement No.034-2020); and
- embargoes or restrictions on the title to an aircraft or any precautionary measures (*embargos, aseguramiento judicial o medidas precautorias*) (LAC art.242) as decreed by Honduran (or foreign) courts against an aircraft or an aircraft's engines.

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The essential characteristic of an aircraft lien is one of its being a burden, impediment or restriction against a property or against title to a property.

Mortgages, pledges, and any other right constituted through a contract will cease until that the minute of freedom from the lien or authorisation is issued by the holder of the respective right.

3. REGISTRATION OF AIRCRAFT LIENS

Can aircraft liens be registered in the Honduras Register of Civil Aircraft? Or in any other public register? What is the effect of registration?

HND 3 Yes, pursuant to LAC art.66 and R-LAC art.193, aircraft liens must be registered in the Honduran Register of Civil Aircraft (the RAN).

Their registration on other public registers in Honduras will depend on the nature of the lien in question, and for execution purposes.

An aircraft lien may also be registered in the Movable Assets Security Registry (*Registro de Garantías Mobiliarias*).

The main effect of the registration of an aircraft lien is that it will, thereby, become effective and enforceable against third parties. Further, registration will mean that the lien will become a priority right for the lienholder.

4. SELLER'S LIEN

What is a seller's lien? When will it arise in the case of aircraft?

HND 4 The Civil Aviation Law does not expressly provide for a "seller's lien" over an aircraft (such a lien being treated as the legal right of a seller to retain title to, and possession of, an aircraft being sold, until the purchase price is paid in full).

However, Honduran Commercial Law (CCom) and Honduran Property Law and its Regulations (LP and R-LP, respectively) do provide for the seller and buyer to agree in the context of a sales agreement for the seller to retain title to, and possession of, goods (a seller's lien) until the purchase price is paid in full.¹ This lien will also cover the situation where the goods comprise an aircraft.

5. SALVAGE LIEN

What is a salvage lien? When will it arise in the case of aircraft?

HND 5 Honduran Law does not contain any provisions on salvage liens.

6. POSSESSORY LIEN

What is a possessory lien? When will it arise in the case of aircraft?

HND 6 Honduran Law provides for security interests such as a mortgage over an aircraft and/or a pledge over an aircraft's engines, propellers and equipment.

A possessory lien (or regular lien) is one in which the creditor retains possession of the encumbered property until the relevant debt is satisfied.

In case of aircraft, the Civil Aviation Law refers to a mortgage as the applicable lien and, in such cases, the standard agreement is that of a non-possessory lien, where debtor retains possession of the encumbered aircraft (typically, the mortgage also contains insurance provisions etc). The mortgage also applies to an aircraft's

¹ CCom art.781; R-LP art.107.

engines and/or propellers (it may be noted that Honduran Law refers to a pledge rather than mortgage), and, as these are attached to the aircraft, they (typically) are treated as non-possessory liens.

For movable assets such as an aircraft’s engines, propellers or other aircraft equipment that remains attached to an aircraft or spare parts, Honduran Law¹ provides only for a non-possessory lien and not for a possessory lien where the creditor has a right to remain in possession of the property under the lien until the debtor has satisfied his, or her, debt (*prenda sin desplazamiento*).

A possessory lien will, likely, arise in respect of an aircraft’s engines or other aircraft equipment such as spare parts, where the goods can be physically handed to the creditor in order for him to retain to possession until the relevant debt is satisfied.

7. CONTRACTUAL LIEN

What is a contractual lien? When will it arise in the case of aircraft?

Pursuant to Honduran Law, the contracting parties can agree on a lien being placed over an aircraft as a form of security in accordance with their contractual terms—such that if the relevant party subsequently defaults on the agreed debt payments, then the aircraft serves as collateral for the debt (the LAC indicates that the applicable lien in this case is in the form of a mortgage, in the case of an aircraft). A mortgage should be registered within the RAN.

Other forms of contractual lien (as an additional means to encumber a property) are a lease (i.e. the grant of the right to use a property), a promise to sell an aircraft, an option to purchase an aircraft and a charter agreement in respect thereof.

HND 7

8. OTHER TYPES OF AIRCRAFT LIEN

Are there any other types of aircraft lien? Or similar rights that do not give rise to a lien?

As previously mentioned, other than a mortgage and a non-possessory pledge, additional types of lien over an aircraft or aircraft equipment may take the form of:

- a lease (*arrendamiento*);
- a sub-lease (*subarrendamiento*);
- a promise to sell (*promesa de compraventa*);
- an option to purchase (*opción de compra*);
- a charter contract (*fletamento*); and
- any embargo, restriction to title to an aircraft or any precautionary measure (*embargos, aseguramiento judicial o medidas precautorias*)

as decreed by any Honduran (or foreign) court against an aircraft or an aircraft’s engines.²

HND 8

¹ LAC art.239.

² LAC arts 66 and 242; R-LAC arts 69 and 193.

9. PRIORITY OF AIRCRAFT LIENS

What is the priority of aircraft liens under Honduran law?**HND 9**

Pursuant to the Honduran Civil Code (CC) art.2344 and the Property Law (LP) art.25 and the Regulation By-Law (RLP) arts 134–136, the first registration takes priority. That is, the rule is, “first in time, first in right” (*prior tempore, potior iure*).

The priority of successive aircraft lien will depend on the date, and time, of their registration. As indicated, the general rule in Honduran property law is that liens will have priority in the order in which they are filed in the records office (the RAN). Also, all registered liens will take priority over unregistered liens.

10. RIGHTS OF OWNER OR LESSOR V LIENHOLDER

What are the rights of the owner or a lessor of an aircraft against a lienholder?**HND 10**

In the case of the owner, or lessor, of an aircraft which has a lien against it (for example, a mortgage or an embargo) title to the aircraft (or right to use the aircraft) will remain with the owner (or lessor).

However, due to the nature of a mortgage lien, the aircraft will be subject to encumbrance of the lien—with its serving as security for the underlying debt (as well as the lien protecting the lienholder’s right to be paid).

11. RIGHTS OF MORTGAGEE V LIENHOLDER

What are the rights of the mortgagee of an aircraft against a lienholder?**HND 11**

As has been previously indicated, the general rule is that liens have priority in the order that they are filed in the records office (the RAN). Pursuant to the “first in time, first in right” rule (*prior tempore, potior iure*) if a mortgage has been registered prior to any other lien, the mortgagee will have a priority right against any other lienholder, and vice versa.

Also, pursuant to the LAC art.234, the right of a mortgagee takes priority over the rights of other creditors, except in the following cases:

- legal fees and expenses incurred in judicial proceedings—as well as maintenance expenses incurred in respect of the aircraft during such proceedings;
- indemnifications to cover the cost of any assistance which is necessary to save the aircraft—if an accident occurs during the period (term) of the mortgage;
- wages of the aircraft crew arising during the last flight of the aircraft;
- any government taxes and airport fees which are due.

12. RIGHTS OF LESSEE V LIENHOLDER

What are the rights of the lessee of an aircraft against a lienholder?**HND 12**

In the case of a lessor-lessee relation, title to the aircraft remains with the lessor. However, the lessor has the obligation to grant a right to the lessee to use the aircraft for the term of the lease.

As for the lessee’s rights in relation to other lienholders, pursuant to the “first in time, first in right” rule, if the lease has been registered prior to any other lien, then, the lienholder will have to respect the lessee’s rights for the term of the registered

lease.¹ On the contrary, such an obligation of the lienholder will not apply if its lien (mortgage) was registered prior to the lease.²

13. ENFORCEMENT OF AIRCRAFT LIENS

How does an aircraft lienholder enforce its lien under Honduran Law? What Honduran court will have jurisdiction?

Aircraft lienholders can enforce their liens via judicial orders/decisions of the Honduran courts, pursuant to an execution procedure that involves a foreclosure procedure and a public (or private) auction, in accordance with the contractual terms laid specified in the relevant lien (mortgage).

HND 13

The Honduran civil courts have jurisdiction for matters relating to aircraft liens.

14. RIGHTS IN REM AGAINST AIRCRAFT

Is there a right in rem against an aircraft under Honduran Law?

Yes, Honduran Law recognises rights in rem as those deriving from a filing and a record in a public register. Such are enforceable against third parties.

HND 14

This can be seen in the LAC arts 232–241, with reference to a mortgage over an aircraft (*hipoteca*) and a pledge over an aircraft’s movable assets (*prenda*), these comprising rights in rem.

Under Honduran Law, a right in rem—basically—has two characteristics:

- its direct and immediate relationship with the asset to which it relates, which relationship remains linked until the debt has been paid (without depending on the asset belonging to a person’s estate or on the relationship between the holder of the right in rem and another person); and
- the absolute nature of the allocation of the right to the holder.

To put it in other words, a person who has a right in rem can enforce it against anyone who interferes with such a right without his consent. Such rights are (typically) protected by an action to recover the property which is subject to the right in rem. The right in rem, for example, survives the transfer of the asset to a third party (thus, it can be claimed against a purchaser—unless that purchaser is acting in good faith).

15. INTERNATIONAL CONVENTIONS AND LIENS

Is Honduras party to any international Conventions that relate to aircraft liens? How do these Conventions apply?

Yes, Honduras is party to the following Conventions in respect of aircraft:

HND 15

- Chicago Convention of 1944 on International Civil Aviation (the Chicago Convention). Honduras ratified the Chicago Convention on 7 May 1953;
- 1948 Convention on the International Recognition of Rights in Aircraft (the Geneva Convention);
- 1933 Convention for the Unification of Certain Rules Relating to the Precautionary Arrest of Aircraft (the 1933 Rome Convention); and

¹ CC art.1728; LAC art.239.

² CC art.1728; LAC art.239.

- 2001 Cape Town Convention on International Interests in Mobile Equipment (the Cape Town Convention).

16. RECOGNITION AND PRIORITY OF FOREIGN AIRCRAFT LIENS

Would a Honduran court recognise foreign aircraft liens? What priority would it give them?

HND 16

A lien must be registered in the relevant Honduran registers to gain priority.

Hence, a Honduran court will recognise a foreign aircraft lien if it is registered in the local registry (the RAN).

A Honduran court will also respect priority according to rank of the lien, based on first registration and the before stated principle: “first in time, first in right” (*prior tempore, potior iure*). Further, registered liens take priority over unregistered liens.

In the case of an aircraft registered in the RAN (the Honduran Aircraft Registry), a registered lien will take precedence over any other lien registered at a later date as well as over any unregistered lien—including local or foreign liens—whether the latter are registered in another country or not.

PART 2

17. RIGHTS OF DETENTION AND SALE

What rights of detention and sale may be exercised against aircraft in Honduras?

HND 17

According to the LAC art.111, the authority may forcibly requisition aircrafts belonging to national companies in the case of war, emergency or public calamity (see HND 29).

Although the LAC does not regulate the sale of aircraft, it does regulate cases in which an aircraft can be declared to be “abandoned” and, therefore, subject to a special auction procedure.

Honduran Criminal Law also permits the detention of an aircraft in case these it is subject to criminal investigations (such as money laundering, terrorism financing, drug trafficking etc). In such cases, the competent court or judge may order the transfer of the aircraft’s property to the Seized Assets Management Office (in Spanish the *Oficina Administradora de Bienes Incautados*—OABI). It may use the assets or even submit them to public auction. See HND 28.

18. AIRPORT CHARGES

Under Honduras law, can an aircraft be detained and sold for unpaid airport charges? In what circumstances?

HND 18

Honduran law does not regulate detention, or sale, of an aircraft in such cases.

19. AIR NAVIGATION CHARGES

Under Honduras law, can an aircraft be detained and sold for the non-payment of air navigation charges? In what circumstances?

HND 19

Honduran law does not regulate detention, or sale, of an aircraft in such cases.

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20. INTERNATIONAL AIR NAVIGATION CHARGES, INCLUDING EUROCONTROL

Under Honduras law, can an aircraft be sold for the non-payment of international air navigation charges, such as Eurocontrol charges? In what circumstances?

Honduran law does not regulate detention, or sale, of an aircraft in such cases. **HND 20**

21. LICENSING CONTRAVENTIONS

Under Honduras law, can an aircraft be detained and sold for contraventions of English licensing requirements? In what circumstances?

Honduran law does not regulate detention, or sale, of an aircraft in such cases. **HND 21**

22. AIR NAVIGATION CONTRAVENTIONS

Under Honduras law, can an aircraft be detained and sold for contraventions of Air Navigation regulations? In what circumstances?

Honduran law does not regulate detention, or sale, of aircraft in such cases. **HND 22**

23. CUSTOMS CONTRAVENTIONS

Under Honduras law, can an aircraft be detained and sold for contraventions of Customs requirements? In what circumstances?

Honduran law does not regulate detention, or sale, of an aircraft in such cases. **HND 23**

24. NOISE AND EMISSIONS CONTRAVENTIONS

Under Honduras law, can an aircraft be detained and sold for contraventions of noise and emissions requirements? In what circumstances?

Honduran law does not regulate detention, or sale, of an aircraft in such cases. **HND 24**

25. PATENT INFRINGEMENTS

Under Honduras law, can an aircraft be detained and sold for patent infringements? In what circumstances?

Honduran law does not regulate detention, or sale, of an aircraft in such cases. **HND 25**

26. PUBLIC HEALTH REQUIREMENTS

Under Honduras law, can an aircraft be detained and sold for breaches of public health requirements? In what circumstances?

Honduran law does not regulate detention, or sale, of an aircraft in such cases. **HND 26**

27. TAX LAW CONTRAVENTIONS

Under Honduras law, can an aircraft be detained and sold for contravention of Honduras tax laws? In what circumstances?**HND 27**

Under the Honduran Tax Code (the CTrib), the failure of an aircraft owner to pay relevant Honduran taxes, enables the tax authorities to initiate a judicial process to request the judicial authorities to seize the aircraft, in order to secure the payment of unpaid tax.

The LAC art.234 states that the credits of the State in respect of taxes and charges for the use of an airport—or auxiliary services in connection with air navigation—for a term not exceeding 60 days, will have preference over any mortgage.

28. CRIMES

Under Honduras law can aircraft be detained and sold in connection with crimes? In particular, offences relating to terrorism and drug trafficking?**HND 28**

Yes. Honduran criminal law allows the detention of aircraft in the case where they are subject to criminal investigations (such as for money laundering, terrorism financing, drug trafficking etc). In such cases, the competent court (or judge) may order the transfer of the aircraft to the Seized Assets Management Office (in Spanish *Oficina Administradora de Bienes Incautados*—OABI). It may use the aircraft or even submit it to sale by way of public auction.

29. WAR OR NATIONAL EMERGENCY

Under Honduras law, can aircraft be detained and sold by reason of war or other national emergency? In what circumstances?**HND 29**

Pursuant to the LAC art.111, in case of war, emergency or public calamity, the State of Honduras, for as long as necessary, may detain the aircraft of national companies which have authorisations or certificates of Exploitation. That is, those which are authorised to operate in Honduras. They may also be required to place their flight (and ground crew) at the State's disposal at the request of the State.

The LAC does not regulate, however, the sale of aircraft in such cases.

30. OTHER AIRCRAFT DETENTION AND SALE RIGHTS

What other rights are there under Honduras law to detain and sell aircraft?**HND 30**

The following should also be noted:

- LAC art.236 states that any action (such as detention, expropriation etc) which is taken over a mortgaged aircraft will require the prior express consent of the creditor by way of a public deed;
- LAC art.238 states that the mortgagee must be summoned to any legal auction of an aircraft; and
- LAC art.240 provides that an aircraft lien must be recorded in the form of a public deed and that it must be registered in the National Aeronautical Registry (the RAN). As long as this registration remains, the lien shall not be affected by any transfer, or right, which is created over the encumbered aircraft.

31. PRIORITY OF AIRCRAFT DETENTION RIGHTS

What is the priority of aircraft detention rights? In particular, what is their priority over aircraft liens?

See above, including HND 30.

HND 31

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