

# SWITZERLAND

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## Introduction

Switzerland is a small nation with a population of just above eight million, but do not judge a book by its cover. Its aviation market is flourishing and it has one of the European continent's busiest business aviation airports, Geneva Cointrin.

The Swiss Federal Office of Civil Aviation (FOCA) is responsible for the aviation sector's development and the supervision of civil aviation activities in Switzerland. In this respect, it holds two aircraft registers:

- The Swiss Aircraft Register in which all Swiss aircraft have to be registered. This register contains the names of the owner as well as of the operator of the aircraft.
- The Swiss Aircraft Record in which a Swiss aircraft already registered with the Swiss Aircraft Register can be registered on request of its owner. Ownership and security interests are registered with the Swiss Aircraft Record.

## Aircraft considerations

### Is there a weight restriction?

No (Article 10 of the Ordinance of the DETEC on the navigability of aircraft)

### Which aircraft type certificates are accepted?

EASA (art. 9 para. 5 of the Ordinance of the DETEC on the navigability of aircrafts)

### Is there an age restriction?

None (but subject to airworthiness requirements) (art. 58 para. 1 of the Act of the Aviation and art. 10b of the Ordinance of the DETEC on the navigability of aircrafts)

## Structuring requirements

### Are there nationality requirements?

According to the Swiss Federal Act on Aviation and its ordinance (SFAA and OAA), an aircraft might only be registered in the Swiss Aircraft Register if the owner is (art. 52 para. 2 let. c SFAA and art. 4 OAA):

A Swiss citizen;

- A Foreign citizen "assimilated" to a Swiss citizen under international conventions, if he has his domicile in Switzerland and is authorised to stay there for a certain period of time;
- A Foreign citizen resident in Switzerland, with a permanent Swiss residence permit (type B or C), provided that the aircraft's operation (home base) is based in Switzerland;
- A Swiss company (i.e. companies with domicile in Switzerland and registered in a Swiss commercial register);
- A Swiss public-law entity and institutions.
- A Swiss association ("Verein") provided that at least

two thirds of its members and of the members of the board (including its president) are Swiss citizens resident in Switzerland.

As part of the above requirements, Swiss nominees do not fulfil the nationality requirement (art. 5 OAA).

An aircraft owned either by a foreign entity or individual cannot be registered in the Swiss Aircraft Register. That being said, there is an exception according to which such an aircraft might be registered in the Swiss Aircraft Register provided that it is operated by a Swiss commercial aircraft operator (with Swiss AOC), for a sufficient period of time, and for commercial operations on the basis of a lease or operating management agreement (art. 3 para. 2 OAA).

### What are the typical structures used ?

In practice, a Company Limited by Shares (art. 620 Swiss Code of Obligations ("SCO")) or a Limited Liability Company (art. 772 SCO) are commonly used.

Foreign special-purpose companies might also be used as owner companies where Swiss aircraft registration is made on the basis of a lease to or management by a Swiss aircraft operator (with Swiss AOC) for commercial operations (as described above).

### Is there a requirement to have local directors or shareholders?

There are no requirements to have local shareholders (except of a Swiss association ("Verein")).

There is, however, a requirement that at least one person (either a member of the board or a member of the management) authorized to represent the company must be a Swiss resident (but there is no requirement with respect to the nationality of such person).

### **Do you need to have a local office or physical presence?**

Swiss companies must have a physical presence in Switzerland. With respect to foreign entities which desire to be registered as an owner in the Swiss Aircraft Register, they must declare to the FOCA a domicile in Switzerland for notification purposes (which can be maintained at the Swiss AOC operator) (art. 9 para. 1 of the implementation regulation of the Federal Aircraft Register).

### **What continuing requirements are there to keep an aircraft registered?**

According to art. 11 para. 1 let. b OAA, an aircraft is automatically deregistered from the Swiss Aircraft Register if a condition of the inscription is no longer met (including the ownership requirements described above) or if the owner has not paid any fees which is due to the FOCA (see below).

### **Use and operation of aircraft**

#### **Which of the following are possible:**

Private use	-Yes
Corporate use	-Yes
Commercial air transport / aircraft charter	-Yes
Aerial work	-Yes

### **What are the requirements for a Certificate of Airworthiness?**

To obtain a Certificate of Airworthiness, the aircraft must first be registered with the Swiss Aircraft Register. In accordance with art. 4 of the FOCA ordinance on the aircraft examination, the FOCA can decide to perform a physical inspection of the aircraft. The FOCA delivers the Certificate of Airworthiness on satisfactory completion of the documentation review and of the physical inspection (if any).

### **What is the inspection interval for a Certificate of Airworthiness?**

Aircraft registered in the Swiss Aircraft Register must either undergo an annual airworthiness review (EASA aircraft) or a review every two years (Annex II aircraft). If the airworthiness review for an aircraft is due, ideally a review should be carried out in the 90-day period before the expiry date of the airworthiness review certificate or the confirmation of review. Aircraft without a valid airworthiness review certificate or a valid confirmation of review may no longer be operated. Infringements of this rule may lead to criminal prosecution.

### **What operation requirements are there?**

Commercial aviation companies are required to hold an Air Operator Certificate (AOC) and, as a rule, also have to possess an operating license in order to fly in Switzerland. In order to obtain these documents they have to comply with the legal, operational and economic conditions that are specified in Swiss and European legislation.

### **Registration costs and service**

#### **Are aircraft registered in the name of the aircraft operator or the aircraft owner?**

The Swiss Aircraft Register contains the names of the owner as well as of the aircraft operator.

#### **What is the initial cost to register an aircraft?**

In order to register an aircraft in the Swiss Aircraft Register, the applicant must pay CHF 110 to reserve the aircraft markings. The fees due to the FOCA for the registration itself vary depending on the type of aircraft (between CHF 300 to CHF 600).

There is an additional fee due in case the approval of a maintenance programme is required which is calculated according to the time spent for such exam (up to CHF 7,000).

For the registration in the Swiss Aircraft Record, the fees vary between CHF 195 and CHF 10,230 depending on the take-off weight of the aircraft (CHF 9 per 100 kg).

#### **What are the annual costs for aircraft registration?**

FOCA's fees for the renewal of Certificate of Airworthiness amount to CHF 110, plus inspection costs (see below), if applicable.

In addition, there is a general fee ranging between CHF 200 and 600 (depending on the type of aircraft) which is invoiced by the FOCA on a yearly basis for the act of routine surveillance of the aircrafts.

Regarding the navigability exam, the costs vary depending on the time spent by the FOCA (up to a maximal amount of CHF 30,000 (depending on the type of aircraft)).

#### **What is the average time needed to register an aircraft?**

The process to have an aircraft registered in the Swiss Aircraft Register takes approximately two weeks.

#### **How much does it cost to register a mortgage?**

The fees perceived by the FOCA for the registration of a mortgage depend on the value of the secured amount:

- 2‰ up to CHF 2,000,000;
- 1‰ up to CHF 1,000,000.

In any case, the fees charged by the FOCA for the registration of a mortgage in the Swiss Aircraft Record shall not be below CHF 385 and shall not exceed CHF 17,200.

#### **Is there a cost to register a priority notice?**

Priority notices are not available.

### **Financing and deregistration**

#### **Is there a requirement for a governing law of mortgage?**

The mortgage agreement must be governed by Swiss law. That being said, the mortgage agreement can be drafted in English and is generally similar to international

standards.

**Can financiers file a priority notice of their interests?**

Priority notices are not available.

**Can financiers file a Deregistration Power of Attorney/ Irrevocable Deregistration Power of Attorney (IDERA)?**

Deregistration powers of attorney can be filed with the FOCA.

**Is there a public mortgage registry?**

In Switzerland, mortgages are recorded in the Swiss Aircraft Record, which is public, together with ownership title and other interests and not in a separate mortgage register.

**Is it easy for financiers to perfect a mortgage?**

It is simple to apply for the registration and perfection of the mortgage. The mortgage agreement must be filed together with the application for recordation which must be approved by the FOCA.

**In the case of bankruptcy or insolvency are aircraft typically deemed to be part of the lessee's property?**

In the event of the lessee's bankruptcy, the aircraft shall not be included in the lessee's property.

**What are the requirements for deregistration of an aircraft?**

The owner must complete a deregistration request (indicating, as the case may be, the country in which the aircraft is anticipated to be re-registered), irrespective of whether the aircraft is registered only with the Swiss Aircraft Register, or also with the Swiss Aircraft Record. In the latter instance, the aircraft will not be deregistered without the prior written consent of a mortgagee (if any).

**What are the requirements for deregistration of mortgage?**

The owner must complete a deregistration request and the mortgagee must also provide his prior written consent.



The application for recordation of the aircraft in the Swiss Aircraft Record is published in the Swiss Official Gazette which allows any objecting parties to notify the FOCA of their objection within 30 days from the date of publication.

**How long is the period during which a moratorium be imposed in the event of a lessee or borrower insolvency?**

A mortgagee cannot take possession of the aircraft (no self-help). Under Swiss law, an aircraft mortgage must be enforced through an enforcement procedure under the control of the debt-enforcement office of the domicile of the owner of the aircraft (for Swiss aircraft) or of the place where the aircraft is located (for foreign aircraft). If the outcome of the proceedings is successful, the mortgagee may require the auction sale of the aircraft. A private sale may only be considered if all parties involved agree.

**Cape Town**

**Has the jurisdiction ratified the Cape Town Convention?**

Switzerland has signed but not yet ratified the Cape Town Convention.

**Importing and exporting aircraft**

**Are there significant taxes or fees involved in importing an aircraft?**

Swiss import duties apply at the rate of 7.7 % when the aircraft is not in Switzerland at the time of transfer but is subsequently customs cleared in Switzerland (which is generally the case for HB-registered aircraft). Swiss import duties paid by the owner upon customs clearance of the aircraft may be recovered if the owner is registered as a Swiss VAT payer, which implies that the aircraft must be used for entrepreneurial purposes. This condition is denied if the aircraft is essentially or only used by its beneficial owner for his or her private needs. Also, an aircraft may not need to be imported depending on the aircraft's effective operations (e.g. number of



landings/take offs in Switzerland, parking time, performance of work in Switzerland) and the ownership structure (e.g. residence of the ultimate owner).

**Is an Export Certificate of Airworthiness, license or permit required to export an aircraft?**

Yes.

**How much does it cost and how long does it take to get one?**

The cost for the Export Certificate of Airworthiness itself is calculated based on the same basis as for a Certificate of Airworthiness (see above). It can be issued quite quickly.

**Are there significant taxes or fees involved in exporting aircraft?**

There are no export taxes.

**Judgements and arbitration**

**Will a court in this country recognise and enforce a judgement rendered by a New York State Court or a US federal judge?**

Such judgment can be recognised and/or enforced through a dedicated procedure (recognition can also be requested as a preliminary issue). The reasons for which a judgment may not be recognised are limited and similar to those under the Lugano Convention (see below), except that they also include any lack of jurisdiction (jurisdiction is systematically checked) and the violation of


fundamental principles relating to Swiss procedural law. A foreign judgment cannot be reviewed on its merits.

**Will a court in your jurisdiction recognise and enforce a judgement rendered by an English court?**

A judgment rendered by an English court will be recognised in Switzerland without any special procedure being required. The reasons for which the judgment may not be recognised are limited and include the cases in which the judgement (i) is manifestly contrary to public policy in Switzerland; (ii) is irreconcilable with a final judgment involving the same dispute between the same parties; (iii) is infringing certain mandatory rules on jurisdiction and; (iv) the defendant was not served with the document that instituted the proceedings. The substance of the judgment cannot be reviewed.

**Are there any planned legislation or regulatory changes planned?**

The Cape Town Convention ratification process is still on hold and is unlikely to be completed within the next few years.



Business Aviation

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