

AIRCRAFT LIENS ONLINE



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LATVIA

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PART 1

1. LIENS

What is a lien under Latvian law?

In Latvian law, the legal framework governing liens is generally provided by the Civil Law and the Commercial Law. Latvian law understands a lien as one of the principal means of protecting obligation rights generally without the intervention of a court.²

According to the Civil Law, on the basis of a lien, a person that has a hold of any property may retain it as long as a claim of such person is not settled.³ However, the Civil Law sets some restrictions for liens. First, liens can be used only in the cases set by the law, specifically, in renting, leasing and lending.⁴ Secondly, there has to be an interconnection between the lienholder's claim and the property to be retained under the lien.⁵ Furthermore, the lienholder has no right to set off the claim by expropriating or otherwise disposing of the property.⁶

The Commercial Law establishes the legal framework for liens in relationships solely between legal persons. According to the Commercial Law, a business entity is entitled to retain in its possession movable property and securities that are owned by another business entity, which, upon volition of such other business entity, have come into the possession of the lienholder, and retain such property and securities as long as the monetary claim of the lienholder towards the other business entity, which arises from a business transaction closed by and between them, is not satisfied.

The lien vests a right in a business entity to sell the property items retained under lien in action through a court.⁷ The business entity may exercise the right of lien in respect to all business transactions, except that the business entity is not to retain the

LVA 1

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The law in this chapter is up to date as of July 2020.

² Civil Law of the Republic of Latvia (the Civil Law) art.1733.

³ Civil Law art.1734.

⁴ Civil Law arts 1735, 1736 and 1967.

⁵ Civil Law art.1737.

⁶ Civil Law art.1739.

⁷ Commercial Law of the Republic of Latvia (the Commercial Law) art.400.

property items in respect of which it has an obligation to act in a certain manner based on a commitment undertaken by such business entity before another business entity.¹

Pursuant to the Commercial Law, the right of lien is not valid in respect of a third party which has acquired the right of a commercial pledge over the retained property, as well as in respect of a third party which, before the lien is enforced, has lawfully acquired another right in rem over the retained property.² The legal framework governing locally registered aircraft mortgages/pledges are provided by the Commercial Pledge Law (see LVA 11, and LVA 13).

2. AIRCRAFT LIENS

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

LVA 2 Latvian law does not provide any specific regulations regarding aircraft liens; therefore, they are treated according to the regulation of liens prescribed by the Civil Law, the Commercial Law and the Commercial Pledge Law (see LVA 1).

3. REGISTRATION OF AIRCRAFT LIENS

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

LVA 3 The main registry of encumbrances registered on aircraft is the Commercial Pledge Register; however, these and any additional encumbrances, including judgments, tax and mechanics' liens, normally are registered with the Civil Aviation Agency of the Republic of Latvia (the CAA), in the Civil Aircraft Register.

A mortgaged aircraft shall be registered in the Civil Aviation Aircraft Register of the Republic of Latvia, and amendments shall be made in the registration data only with the written consent of the creditor (creditors). The same procedure is applicable in order to delete the aircraft from the Civil Aviation Aircraft Register.

According to the Aviation Law, the owner of an aircraft is required to notify the CAA regarding creditor rights or any changes of property rights to the registered aircraft, or any other changes to the information provided to the CAA within five days of the moment when such changes have occurred.³

4. SELLER'S LIEN

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

LVA 4 Latvian law does not lay down any specific regulations regarding seller's liens. See LVA 1 regarding the general lien legal framework.

5. SALVAGE LIEN

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

LVA 5 Latvian law does not provide any specific regulations regarding salvage liens. See LVA 1 regarding the general lien legal framework.

¹ Commercial Law art.399(4).

² Commercial Law art.399(3).

³ Aviation Law of the Republic of Latvia (the Aviation Law) art.12.

6. POSSESSORY LIEN

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

Latvian law does not provide any specific regulations regarding possessory liens of aircraft. See LVA 1 regarding the general lien legal framework.

LVA 6

7. CONTRACTUAL LIEN

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

See LVA 1 regarding the legal framework for liens in civil and commercial contracts. See LVA 11, LVA 13 regarding the legal framework for locally registered aircraft mortgages/pledges.

LVA 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?

Latvian law sets a specific framework for mechanics' liens. According to the Civil Law, if a lessee or tenant has made legally justified expenditures for the benefit of the property, then it may retain the property until it receives compensation for such expenditures.¹

LVA 8

9. PRIORITY OF AIRCRAFT LIENS

What is the priority of aircraft liens under Latvian law?

In regard to rankings between liens, Latvian law does not prioritise some liens over others. The rights of a lienholder rank ahead of the owner or lessee, but below the mortgagee. See LVA 10–LVA 12.

LVA 9

10. RIGHTS OF OWNER OR LESSOR V LIENHOLDER

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

Under the applicable laws and regulations, in Latvia the rights of the lienholder rank ahead of the owner.

LVA 10

11. RIGHTS OF MORTGAGEE V LIENHOLDER

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

It has been established that pursuant to the Commercial Law and Commercial Pledge Law, in Latvia the rights of the mortgagee/pledgee rank ahead of the lienholder.²

LVA 11

¹ Civil Law art.2155.

² Commercial Pledge Law of the Republic of Latvia (the Commercial Pledge Law) art.40; Commercial Law art.399(3).

12. RIGHTS OF LESSEE V LIENHOLDER

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

LVA 12 Applicable stipulations of the Civil Law regulate that in Latvia, the rights of the lienholder rank ahead of the rights of the lessee.¹

13. ENFORCEMENT OF AIRCRAFT LIENS

How does an aircraft lienholder enforce its lien under Latvian law? What Latvian court will have jurisdiction?

LVA 13 According to the Commercial Law, if the lienholder and another business entity have not definitely agreed that the lienholder has the right to sell the retained object under lien for any price, the lienholder is entitled to satisfy its claim against another business entity only by selling the property items retained under lien in auction through a court. The provisions of the Civil Law regarding the right of a possessory pledge are applicable accordingly for satisfaction of the lienholder's claim.² However, such a framework is applicable only between parties where both are business entities. See LVA 1.

The general framework of the Civil Law also states that, in a case where the possessor surrenders possession of the property without exercising the lienholder rights, the possessor does not thereby lose its right to claim.³

14. RIGHTS IN REM AGAINST AIRCRAFT

Is there a right in rem against an aircraft under Latvian law?

LVA 14 There is a right in rem against an aircraft under Latvian law. Latvian law does not provide any specific rights in rem against an aircraft; therefore, the general rights in rem provided by the Civil Law are applied.

The Civil Law defines possession as rights in rem against any property. Possession is a factual control over the object, provided that the controlling person shows the will to treat the object as if it was the owner.⁴ Possession ranks above property rights until the moment when the rightful owner proves its rights.⁵

Latvian law regulates a pledge as a right in rem for movable property.⁶ The Commercial Pledge Law explicitly provides the right to encumber an aircraft with a commercial pledge.⁷

15. INTERNATIONAL CONVENTIONS AND LIENS

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

LVA 15 With respect to the main international Conventions in this field, Latvia has ratified the Chicago Convention on International Civil Aviation, which has been in force in Latvia from 12 August 1992. However, Latvia is not a party to the Conven-

¹ Civil Law art.1735.

² Commercial Law art.400(1).

³ Civil Law art.1740.

⁴ Civil Law art.876.

⁵ Civil Law arts 912, 918.

⁶ Civil Law art.1279.

⁷ Commercial Pledge Law art.1(3).

tion on damage caused by foreign aircraft to third parties on the surface signed in Rome on 7 October 1952, nor to the 1948 Geneva Convention.

More detailed information regarding the status of Latvia with regard to international air law instruments can be found at the website of the ICAO at: https://www.icao.int/secretariat/legal/Status%20of%20individual%20States/latvia_en.pdf#search=latvia [Accessed July 2020].

Latvia acceded to the Cape Town Convention and its Protocol on 8 February 2011; the Convention and its Protocol entered into force with respect to Latvia on 1 June 2011. In addition, on 18 February 2021 Latvia has made declarations in respect to IDERA under Cape Town Convention and these declarations took effect on 1 September 2021 (please see- <https://www.unidroit.org/cape-town-convention-and-aircraft-protocol-subsequent-declarations-latvia/>).

16. RECOGNITION AND PRIORITY OF FOREIGN AIRCRAFT LIENS

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

According to the Civil Law, where there is a change in the location of a movable property, the property rights of the third person acquired pursuant to the laws of the place where such movable property was previously located, must not be affected.¹ Therefore, Latvian law respects the property rights of foreign lienholders.

LVA 16

Note that Latvian courts have general rights to declare a contract void, if its subject is an impermissible or indecent action, the purpose of which is contrary to religion, laws or moral principles, or which is intended to circumvent the law, or it may not be the subject-matter of a lawful transaction.²

Latvian law does not prioritise liens by their origin, thus there is neither priority nor subsidiarity for foreign liens.

PART 2

17. RIGHTS OF DETENTION AND SALE

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

See LVA 18–LVA 30.

LVA 17

18. AIRPORT CHARGES

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

According to the Aviation Law, if payments for airport charges are not made within the applicable period, the Latvian authority or its authorised person may delay the aircraft's departure until such payments are made or guarantees for the payment of such charges are put in place.³ Although such events are rare in Latvia, there has been at least one event involving a troubled air carrier, which had not paid

LVA 18

¹ Civil Law art.18(2).

² Civil Law art.1415.

³ Aviation Law art.51.

for civil airport services, and such carrier's aircraft was detained until such charges were settled. However, it should be noted that the detained aircraft may not be sold for unpaid airport charges.

19. AIR NAVIGATION CHARGES

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

LVA 19 In respect to air navigation charges the same rules and regulations are applicable as for unpaid airport charges. See LVA 18 for a more detailed information.¹

20. INTERNATIONAL AIR NAVIGATION CHARGES, INCLUDING EUROCONTROL

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

LVA 20 According to the Aviation Law and the applicable regulations, payments for air navigation charges are made to the State joint stock company "Latvijas gaisa satiksme" or, as applicable, to Eurocontrol. See LVA 19 regarding detention rights in case of unpaid air navigation charges.

21. LICENSING CONTRAVENTIONS

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

LVA 21 The CAA has the right to prohibit activities related to the use of airspace or operation of civil aircraft, aerodromes and other civil aviation objects and equipment of the Republic of Latvia if the provisions of the Aviation Law and other laws and regulations issued on the basis thereof are violated, as well as activities that endanger the safety of aircraft flights.²

The CAA may issue administrative acts regarding application of prohibitions or restrictions to the operations related to certification of civil aviation personnel, use of the airspace of the Republic of Latvia or operating of civil aviation aircraft, aerodromes and other civil aviation objects and devices in order to ensure the implementation of the civil aviation safety and aircraft flight safety requirements laid down in the legislation of the EU.³

However, under Latvian law, the detained aircraft in such cases may not be sold for such contraventions.

22. AIR NAVIGATION CONTRAVENTIONS

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

LVA 22 See LVA 21.

¹ Aviation Law art.51.

² Aviation Law art.6(2) (3).

³ Aviation Law art.6(5).

23. CUSTOMS CONTRAVENTIONS

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

A general principle is that the Latvian customs authorities will not release goods (aircraft) into free circulation until customs formalities have been completed. The fact that an aircraft is undergoing customs formalities and the customs duty has not yet been paid is not the basis for placing a lien on payments to, e.g. a lessor. Regarding custom contraventions that constitute a criminal offence, see LVA 28.

LVA 23

24. NOISE AND EMISSIONS CONTRAVENTIONS

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

See LVA 21.

LVA 24

25. PATENT INFRINGEMENTS

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

Latvia has joined to the 1944 Chicago Convention. Therefore according to Chicago Convention art.27, any authorised entry of aircraft of a contracting State into the territory of Latvia or authorised transit across the territory of Latvia with or without landings shall not entail any seizure or detention of the aircraft or any claim against the owner or operator thereof or any other interference therewith by or on behalf of Latvia or any person therein, on the ground that the construction, mechanism, parts, accessories or operation of the aircraft is an infringement of any patent, design, or model duly granted or registered in Latvia.

LVA 25

26. PUBLIC HEALTH REQUIREMENTS

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

See LVA 21.

LVA 26

27. TAX LAW CONTRAVENTIONS

Under Latvian law, can an aircraft be detained and sold for contravention of Latvian tax laws? In what circumstances?

If contraventions of Latvian tax laws constitute a criminal offence according to the Criminal Law,¹ the property of the offender may be subject to confiscation.

LVA 27

In case of unsettled tax debts, the tax administration may take a decision to recover late tax payments and perform recovery on an uncontested basis.² Such recovery is applied to the property of the taxpayer (moveable and immovable property, including property located with third parties). The recovery of the property is commenced if the tax administration has been unable to cover the late tax pay-

¹ Criminal Law of the Republic of Latvia art.218.

² Law on Taxes and Fees of the Republic of Latvia (Law on Taxes and Fees) art.26(1).

ments and the costs incidental to the recovery thereof on an uncontested basis from tax overpayments, collection orders and cash seizures.¹

28. CRIMES

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

LVA 28

An aircraft might be arrested or detained due to its involvement in a criminal case (drug trafficking, terrorism or similar), if the investigators deem it necessary. Such decision is taken by the lead prosecutor or by a court order.²

The state can seize the collateral, if the collateral is illegally (criminally) acquired property.³ Illegally acquired property shall be confiscated pursuant to a court ruling for the benefit of the State, if the further storage of such property is not necessary for the achievement of the purpose of criminal proceedings and if such property does not need to be returned to the owner or lawful possessor. Confiscated financial resources shall be included in the State budget.

Illegally acquired property may be confiscated for the benefit of the State also by a decision of a public prosecutor to terminate criminal proceedings, except in cases where property rights which are registered in a public register are recognised as criminally acquired.

A public prosecutor or a judge, in cases specified in the Criminal Law, may replace confiscated property with financial resources of an equivalent value to the value of such property, if a person against whom such confiscation has been applied has, within three working days after entering into effect of a ruling, submitted a justified request to replace the property and if the person has compensated the harm caused to a victim. The matter on replacement of property is decided according to a written procedure within a period of 30 working days for voluntary payment of the financial resources.⁴

29. WAR OR NATIONAL EMERGENCY

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

LVA 29

In order to overcome a threat to national security, the State may (temporarily) take over property (movable and immovable) of natural and legal persons in possession, if it is necessary for national security and national defence.⁵

The terms and conditions for the return of the aircraft—and for compensation after the state of emergency ends—will be determined by the Government.⁶

30. OTHER AIRCRAFT DETENTION AND SALE RIGHTS

What other rights are there under Latvian law to detain, and sell, aircraft?

LVA 30

Property rights are constitutional rights in Latvia. Deprivation or limitation of property rights may only occur in accordance with law and for fair compensation.

¹ Law on Taxes and Fees art.26(3) (3).

² Criminal Procedure Law of the Republic of Latvia (the Criminal Procedure Law) art.361(3).

³ Criminal Procedure Law art.358.

⁴ Criminal Procedure Law art.358.

⁵ Law on Emergency and State of Emergency of the Republic of Latvia art.18(5).

⁶ Law on Emergency and State of Emergency of the Republic of Latvia art.19(7).

Furthermore, Latvia has entered into several foreign investment protection treaties in order to afford greater assurance to foreign investors.

There are very few instances where a person may lose its property rights under Latvian law. In all cases, it would require a court ruling (either in a civil, criminal or administrative case). The most common scenarios are unsettled debts (contractual, taxes, fines etc) for collection of which the creditor asks to sell (auction) the properties of the debtor.

Property might be nationalised for public interest by the Government, however, only against fair compensation. We are not aware of any other situation where actions of the government, a lessee or third parties could lead to the losing of title to an aircraft by its rightful owner.

31. PRIORITY OF AIRCRAFT DETENTION RIGHTS

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

Under Latvian Law, generally, detention rights do not create priority over each other.

LVA 31

However, regarding illegally (criminally) acquired property, according to the Criminal Procedure Law, the arrest of such property creates priority over pledges (including prior pledges).¹

¹ Criminal Procedure Law art.361(7).

