

NIGERIA

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PART 1

1. LIENS

What is a lien under Nigerian law?

A lien² is a claim, encumbrance or charge on a property for the payment of some debt, obligation or duty. It is a legal right to retain possession of a property until a claim has been settled. A lien creates an unassailable right in the person in whose favour it is created (called the “lienholder” or “lienee”) to arrest and detain a chattel in order to enforce its claim for payment against the debtor (called the “lienor”).

Liens can be legal, equitable,³ contractual, statutory,⁴ general⁵ or particular⁶ in nature. They should be distinguished from:

- pledges⁷;
- charges⁸; and
- mortgages.⁹

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The law in this chapter is up to date to March 2023.

² A lien is defined as a right of retention in the Sale of Goods Act, 1893 which Act is a statute of general application in Nigeria. See generally, Halsbury Vol.28 paras 501.

³ An equitable lien is an equitable right to a charge and it arises irrespective of a contract or possession of the chattel. Its enforcement requires the aid of the court.

⁴ An example of a statutory lien is the seller’s lien under the Sale of Goods Act.

⁵ A general lien entitles the lienholder to retain the chattel of the lienor until all its claims or accounts against the lienor are satisfied.

⁶ A particular lien gives the lienholder the right to retain the lienor’s chattel only until all its claims and accounts in respect of that chattel in question are satisfied.

⁷ See generally Halsbury Vol.36 para.101 and Vol.4 para.646. A pledge differs from a mortgage in that a chattel is delivered into the possession of the lender as security for money advanced. The pledgee retains a special right in the chattel, such as the power to sell it on default of repayment of the money lent.

⁸ A charge on personal property does not confer a general or special right in the property that constitutes the subject matter of the charge. The enforcement of a charge will require the aid of the courts. See Halsbury Vol.4 para.649.

⁹ See generally Halsbury Vol.32 para.401 and Vol.4 para.647 “A mortgage is a conveyance of land or an assignment of chattels as security for the payment of a debt or the discharge of some other obligation for which it is given” (per Lindley MR in *Santley v Wilde* [1899] 2 Ch. 474).

In considering the nature, and extent, of liens under Nigerian law, it is likely that a Nigerian court may have regard to the position under the common law.

2. AIRCRAFT LIENS

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

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The most common occurrences of liens where aircraft¹ are, concerned are with regard to work performed on them, which enhances their value (i.e. possessory liens). Statutory liens (which, more accurately should be called statutory detention rights) arise in relation to unpaid airport charges and unpaid air navigation charges.

It should be noted that liens have mainly arisen out of historical anomaly and custom. Liens generally take precedence over other security interests.²

3. REGISTRATION OF AIRCRAFT LIENS

Can aircraft liens be registered in Nigeria's register of Aircraft? Or in any other public register? What is the effect of registration?

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The Nigerian Civil Aviation Authority (NCAA) is responsible among other things, for the establishment and maintenance of a system or register for recording the title to or any interest in any aircraft registered in Nigeria.³ The Nigerian Civil Aviation Regulations 2015 ("Regulations 2015") makes it mandatory for the NCAA to maintain a Legal Interest in Aircraft Register (LIAR) in which proprietary rights, interests, liens and other dealings on an aircraft would be registered in Nigeria.⁴ Therefore, liens should be registered in the LIAR. Although it is the function of the NCAA to maintain a LIAR, in practice liens are only noted on the Aircraft Register. The information contained in the Aircraft Register would serve as notice to any third party conducting a search in respect of the aircraft.

A lien in the form of a charge can be created by a company over its assets. This must be registered in the Companies Registry at the Corporate Affairs Commission (CAC) in Abuja within ninety (90) days of its creation or such extended time as the Nigerian court may allow,⁵ regardless of where the charge is created and as long as it affects property within Nigeria.⁶ Failure to do this shall, so far as any security on the company's property or undertaking is conferred, render such a charge void as against the liquidator and any creditor of the company.⁷

¹ 2015 Regulations reg.1.5(57) provides the definition of an aircraft as "any machine that can derive support in the atmosphere from the reactions of the air other than the reactions of the air against the earth's surface".

² Due to the paucity of Nigerian case law in this area, it is not possible to be more exact. It is likely that Nigerian courts would be persuaded by the decisions of English courts on this matter.

³ See Civil Aviation Authority Act, 2022 s.8(b).

⁴ See 2015 Regulations reg.2.1.6 Pt 4—Aircraft Registration and Marking.

⁵ CAMA, s.222(3).

⁶ CAMA s.222(1) and s.222(5). In a situation where the charge is one created outside of Nigeria, the law makes provision for the delivery of a verified copy of the prescribed particulars to the Corporate Affairs Commission (CAC).

⁷ CAMA s.222(2)(h). The prescribed particulars of the charge and the instrument, by which it was created, if any, must be delivered to the CAC within 90 days after the date of its creation. Where it is a charge created within Nigeria but affecting property outside Nigeria, the instrument may be sent for registration notwithstanding the fact that further proceedings may be necessary to make the charge valid or effectual according to the law of the country in which the property is situated—CAMA s.222(6).

The effect of an aircraft lien being recorded in the Aircraft Register, and its subsequent registration at the CAC, constitutes notice to a third party of an existing right of the lienholder over that aircraft. It also ensures that any security on the company's property or undertaking that has been conferred will not be void against any subsequent liquidator or creditor of the company.¹

4. SELLER'S LIEN

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

A seller's lien is the right an unpaid seller has to retain the goods for the sale price while it still remains in possession of such goods.² The general law relating to the sale of goods, being the Sale of Goods Act 1893, will govern the sale of an aircraft. "Goods" has been defined in Sale of Goods Act s.62 to include:

"All chattels personal other than things in action and money and all corporeal movables except money. The term includes emblements, industrial growing crops and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale."

In the case of an aircraft, a seller's lien will arise where the whole of the purchase price has not been paid or tendered. By implication of law, an unpaid seller has a lien on the aircraft for its price where the property (that is "title") to the aircraft has passed to the buyer while the seller is still in possession of it.³

Where the buyer becomes insolvent before full payment of the purchase price has been made in respect of the aircraft⁴ and the seller is no longer in possession, the seller has a right of stoppage *in transitu*.⁵

5. SALVAGE LIEN

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

A salvage lien is the compensation paid to persons ("salvors") for services rendered by them in saving life from an aircraft or in preserving its cargo, apparel or wreck from danger or loss. It gives rise to an entitlement to a reward for those who render voluntary assistance to an aircraft in distress. The salvors have a lien for their remuneration, which is secured on the property recovered.

The lien arises on the provision or rendering of the service to the aircraft and applies to foreign aircraft irrespective of whether the salvage operation is rendered beyond the limits of the territorial waters of Nigeria.⁶ The service rendered must be such as would be deemed to be a salvage service had it been rendered in relation to a

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¹ CAMA s.222(1).

² Sale of Goods Act s.41(1). It may be noted that the English Sale of Goods Act 1893 is the primary source of the Nigerian legislation on the sale of goods. It has been held to be a statute of general application and, thus, applicable in Nigeria.

³ See generally, Uvieghara pp.113–117. A seller who sells the goods on credit will have waived his lien.

⁴ The unpaid seller also has the right to resell in such a situation where the buyer has become insolvent. There is no requirement of good faith for this section to come into play.

⁵ See Sale of Goods Act s.39(1): An unpaid seller is able to exercise its right of lien or retention or stoppage in transitu (which arises after he has parted with possession); whenever the buyer becomes insolvent—Sale of Goods Act s.44. In such a situation the unpaid seller who has parted with the goods may resume possession of the goods as long as they are in transit and he may retain them until payment or tender of the price. *RV Ward v Bignall* (1967) 1 Q.B. 534. In general, the contract for sale will reserve a right of resale/disposal in the event of a default by the buyer.

⁶ CAA s.50(1)–(3): the law of wreck and salvage applies to aircraft.