Precautionary Arrest of Aircraft under Tunisian Law
Between the Protection of Creditors and the Continuity of Air Transport
Introduction

An aircraft is not merely a means of transportation. In legal and economic terms, it is a high-value asset that may be subject to ownership rights, mortgages, privileges, leasing arrangements, financing transactions and enforcement proceedings.

This particular legal nature raises a significant practical issue:

Can a creditor obtain a precautionary arrest of an aircraft in Tunisia in order to secure payment of a debt?

The issue becomes considerably more complex when the aircraft is foreign-registered, when its operator is not its owner, or when the debt arose outside Tunisia.

The matter is particularly sensitive because the arrest of a commercial aircraft may have consequences extending far beyond the relationship between creditor and debtor. It may result in the interruption of flights, contractual breaches, losses to passengers and disruption of the air carrier’s commercial operations.

For this reason, the Tunisian Civil Aviation Code establishes a specific legal regime governing the precautionary arrest of aircraft.

The relevant provisions are principally contained in Articles 36 to 43, while enforcement proceedings are subsequently governed by Articles 44 to 66. The regime must also be read together with the provisions concerning aircraft privileges and mortgages contained in Articles 18 to 35.

I. The Aircraft as a Special Category of Movable Property

Under Tunisian civil aviation legislation, an aircraft is classified as movable property. However, it is not treated in the same manner as an ordinary movable asset.

Its legal status is closely connected with:

- its registration;
- its nationality;
- its ownership;
- its operator;
- the rights recorded against it;
- mortgages;
- privileges;
- leasing arrangements; and
- its registration in the Tunisian Civil Aircraft Register.

Consequently, before seeking an arrest, a creditor must determine precisely who owns the aircraft and what rights third parties may have over it.

This issue is particularly important in aircraft financing and leasing transactions.

An airline may operate an aircraft without owning it. The aircraft may instead belong to a

lessor, a financing company or a special-purpose vehicle.
Accordingly, possession or operation of an aircraft does not necessarily establish ownership, and a creditor of the operator cannot automatically treat the aircraft as an asset belonging to its debtor.
II. What Is a Precautionary Arrest of an Aircraft?
Article 36 of the Tunisian Civil Aviation Code establishes a specific concept of precautionary arrest applicable to aircraft.
The provision essentially regards the precautionary arrest as a judicial measure by which an aircraft may be immobilised for the protection of a private interest, whether at the request of a creditor, an owner or a holder of a real right over the aircraft.
The provision also treats the exercise of a right of retention over an aircraft without the consent of the operator as a form of precautionary arrest.
The purpose is therefore not to immediately sell the aircraft.
The purpose is to preserve the creditor’s position and prevent the dissipation of the asset pending determination of the underlying dispute or enforcement of the creditor’s rights.
This distinction between precautionary protection and enforcement is fundamental.
III. Not Every Aircraft May Be Subject to Precautionary Arrest
The Tunisian legislator has established important restrictions.
Under Article 37, precautionary arrest is generally excluded in relation to certain categories of aircraft, including:
State aircraft;
aircraft actually operating scheduled public air transport services;
reserve aircraft required for such services; and
commercial air transport aircraft ready for departure, subject to the statutory exception where the debt was contracted for, or arose during, the particular flight.
These restrictions reflect a fundamental principle:
The protection of private creditors must be reconciled with the public and economic importance of maintaining air transport operations.
The aircraft is therefore protected against indiscriminate arrest when its immobilisation would seriously interfere with scheduled air transport.
The protection, however, is not absolute.
Where the debt is directly connected with the flight itself, the statutory exception may permit the arrest.
IV. Precautionary Registration in Respect of Tunisian-Registered Aircraft
One of the most interesting features of the Tunisian system is the distinction between the physical arrest of an aircraft and the precautionary registration of an objection against the aircraft in the Civil Aircraft Register.
Article 38 provides a specific mechanism for aircraft registered in Tunisia.

Where the creditor possesses an enforceable title or a registered instrument whose payment has become due, the debtor may first be served with formal notice by a judicial officer, warning that failure to pay will result in the registration of a precautionary objection against the aircraft.
Where the creditor does not possess an enforceable title or a registered instrument, or where the debt has not yet fallen due but its recovery is threatened, the creditor may seek authorisation from the President of the Tunis Court of First Instance to register a precautionary objection.
This mechanism is particularly significant because it allows the creditor to freeze the legal status of the aircraft without necessarily immobilising the aircraft physically.

V. The Legal Effect of the Precautionary Objection

Article 39 gives the precautionary registration significant legal consequences.
Once registered, the objection prevents the registration of subsequent transfers of ownership, mortgages and other real rights over the aircraft, from the date of registration.
The practical effect is therefore considerable.
The aircraft may continue to operate, while its legal status is effectively frozen for the protection of the creditor.
This mechanism represents an important balance between two competing interests:
the creditor’s right to security
and
the air carrier’s interest in continuing to operate its aircraft.
In practical terms, this may be preferable to physically grounding a commercial aircraft.

VI. The Ninety-Day and Two-Year Time Limits

Procedural timing is particularly important.
The precautionary objection must be registered within the statutory period, which Article 39 links to the notice or judicial authorisation.
The legislation also establishes a maximum period for the effectiveness of the registration.
These time limits demonstrate that precautionary protection is inherently temporary.
A creditor cannot use a precautionary registration indefinitely as a substitute for proceedings on the merits.
For counsel representing the creditor, the chronological sequence must therefore be carefully monitored:
notice → judicial authorisation, where required → registration → substantive proceedings → enforcement.
A procedural failure at any stage may compromise the effectiveness of the security measure.

VII. Can the Debtor Prevent or Lift the Arrest?

Yes.
The Tunisian Civil Aviation Code provides mechanisms enabling the debtor to avoid or

obtain the lifting of the precautionary measure by providing adequate security.
The purpose is logical.
A precautionary arrest exists to secure the creditor's claim.
If the debtor provides sufficient security capable of protecting the creditor's financial position, continued immobilisation of the aircraft may no longer be justified.
This principle is particularly important in aviation because the economic value of continued operation of an aircraft may be substantial.
A guarantee may therefore provide a more proportionate solution than grounding the aircraft.
VIII. Judicial Authorisation and the Creditor's Liability
Article 41 refers the procedural aspects of precautionary arrest and its lifting to the relevant provisions of the Tunisian Code of Civil and Commercial Procedure concerning judicial orders.
The court may also require the applicant to provide security or a surety.
This is particularly important where the creditor has no established domicile in Tunisia.
The law also requires the creditor to initiate proceedings on the merits within the period determined by the judicial order, subject to the statutory maximum.
This principle is essential:
A precautionary arrest is an ancillary protective measure; it is not a substitute for the substantive action establishing the creditor's right.
A creditor cannot indefinitely immobilise or restrict an aircraft while failing to pursue the underlying claim.
IX. Liability for an Unlawful Arrest
The exceptional economic importance of aircraft explains why the legislation also provides protection against abusive or unlawful arrest.
Article 42 establishes liability where an aircraft is arrested in circumstances prohibited by the law, particularly where the aircraft belongs to a category protected by Article 37.
The applicant may therefore face liability for losses suffered by the owner or operator.
This is a crucial consideration in aviation litigation.
Grounding a commercial aircraft may generate substantial losses within a very short period, including:
cancelled flights;
passenger claims;
contractual penalties;
airport charges;
crew costs;
aircraft leasing costs;
loss of revenue; and

reputational damage.
Accordingly, the creditor and its counsel must assess not only whether a claim exists, but also whether the proposed arrest is legally justified and proportionate.

X. Aircraft Mortgages and Precautionary Arrest

Precautionary arrest cannot be examined independently from the legal regime governing aircraft mortgages.
Articles 22 to 35 of the Tunisian Civil Aviation Code regulate mortgages over aircraft.
The registration of a mortgage in the Civil Aircraft Register is particularly important because it determines its enforceability against third parties and its ranking.
The existence of a registered mortgage may therefore place the secured creditor in a fundamentally different legal position from that of an ordinary unsecured creditor.
The mortgagee may also benefit from specific rights in relation to insurance compensation following the loss or damage of the aircraft.
Consequently, before seeking an arrest, counsel should examine the aircraft register carefully in order to determine whether prior mortgages or other real rights exist.

XI. From Precautionary Arrest to Judicial Enforcement

Precautionary protection is only the first stage.
Where the debt remains unpaid and the creditor obtains the necessary enforceable title, the matter may proceed to executory arrest and judicial sale.
Articles 44 to 66 of the Tunisian Civil Aviation Code establish a specific enforcement regime applicable to aircraft.
At this stage, the objective is no longer merely to preserve the asset.
The purpose is to realise the aircraft and apply the proceeds toward satisfaction of the creditor’s claim, subject to the rights and priorities recognised by law.
This distinction is fundamental:
Precautionary arrest protects the claim.
Executory arrest implements the claim.

XII. The Problem of Multiple Creditors

An aircraft may simultaneously be connected to several creditors and rights:
mortgagees;
lessors;
maintenance providers;
fuel suppliers;
airport operators;
tax authorities;
insurers;
creditors arising from accidents; and
ordinary commercial creditors.

The existence of one arrest therefore does not eliminate the rights of other creditors.
The ranking of mortgages, privileges and other rights may determine who ultimately benefits from the value of the aircraft.
For this reason, an aviation lawyer should not examine the aircraft merely as an asset belonging to the debtor.
The aircraft must be examined as a legal bundle of registered rights and competing claims.
XIII. Arresting a Foreign Aircraft in Tunisia
The most difficult cases arise when the aircraft is foreign-registered.
A foreign aircraft may be:
registered in another State;
owned by a foreign company;
operated by a different airline;
temporarily present in Tunisia; and
subject to a debt arising outside Tunisia.
The mere fact that the aircraft is physically present in Tunisia does not answer all legal questions.
The lawyer must examine:
the State of registration;
the identity of the owner;
the identity of the operator;
the nature of the claim;
the place where the debt arose;
existing mortgages and real rights;
the applicable law;
the jurisdiction of Tunisian courts; and
any applicable international convention.
This is where aviation law intersects directly with private international law.
The aircraft may be physically located in Tunisia while its legal relationships are connected with several other jurisdictions.
XIV. International Aircraft Financing and the Cape Town Convention
The international financing of aircraft has progressively led to the development of an international system of security interests.
The Cape Town Convention on International Interests in Mobile Equipment and its Aircraft Protocol were adopted to facilitate financing and leasing transactions involving aircraft and to provide greater protection to international creditors.
However, the status of the relevant international instruments must always be verified in relation to the State concerned.
In the case of Tunisia, the current ICAO status documentation indicates that Tunisia is not a

party to the Cape Town Convention or the Aircraft Protocol.
This is of practical significance when advising international lenders, lessors and airlines involved in transactions connected with Tunisia.

XV. The Strategic Question for Aviation Counsel

The central question for counsel is not simply:
“Does my client have a debt?”
The more important question is:
“What is the most effective legal mechanism for securing that debt without exposing the client to unnecessary liability?”
Depending on the circumstances, the appropriate strategy may involve:
precautionary registration;
precautionary arrest;
enforcement proceedings;
reliance on a registered mortgage;
enforcement of a privilege;
requesting security in lieu of arrest;
initiating proceedings on the merits; or
seeking recognition or enforcement of a foreign judgment.
The answer depends on the legal status of the aircraft, the nature of the claim and the applicable procedural and international rules.

Conclusion

The Tunisian regime governing the precautionary arrest of aircraft demonstrates the special legal nature of aircraft as high-value, internationally mobile assets.
The legislator has sought to reconcile two competing interests:
the protection of creditors
and
the continuity and safety of air transport.
Articles 36 to 43 of the Tunisian Civil Aviation Code establish the framework for precautionary measures, while Articles 44 to 66 govern enforcement. These provisions must be considered together with the rules governing privileges and mortgages under Articles 18 to 35.
The practical complexity of aircraft arrest arises from the fact that an aircraft may be:
owned by one entity;
operated by another;
financed by a third party;
registered in another State;
subject to mortgages or privileges; and
physically present in Tunisia only temporarily.

Consequently, aircraft arrest is not merely an enforcement procedure. It lies at the intersection of aviation law, civil and commercial enforcement, secured transactions and private international law.
For the aviation lawyer, the decisive issue is therefore not simply whether an aircraft can be arrested, but which legal mechanism is available, against which aircraft, in favour of which creditor, before which court, under which law, and with what consequences for the owner, operator and other creditors.
This is precisely what makes aircraft arrest one of the most technically demanding areas of modern aviation litigation.