

Aviation Finance & Leasing 2014

Contributing editor:
Mark Bisset
Clyde & Co LLP

Getting the Deal Through is delighted to publish the first edition of *Aviation Finance & Leasing 2014*, a new volume in our series of annual reports, which provide international analysis in key areas of law and policy.

Following the format adopted throughout the series, the same key questions are answered by leading practitioners in each of the 25 jurisdictions featured.

Every effort has been made to ensure that matters of concern to readers are covered. However, specific legal advice should always be sought from experienced local advisers. *Getting the Deal Through* publications are updated annually in print. Please ensure you are always referring to the latest print edition or to the online version at www.GettingTheDealThrough.com.

Getting the Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. *Getting the Deal Through* would also like to extend special thanks to contributing editor Mark Bisset of Clyde & Co LLP for his assistance in devising and editing this volume.

Getting the Deal Through

London
June 2014

Global Overview	3	England & Wales	58
Mark Bisset Clyde & Co LLP		Mark Bisset Clyde & Co LLP	
Aircraft Mortgages - English Law or New York Law?	6	France	63
Thomas A Zimmer and Dominic Pearson Pillsbury Winthrop Shaw Pittman LLP		Edward Campbell Stephenson Harwood AARPI	
Argentina	8	Germany	70
María Laura Maciel and Rogelio N Maciel Maciel, Norman & Asociados		Ulrich Stepler and Katja Helen Brecke Arnecke Siebold Rechtsanwälte	
Austria	14	India	77
Christoph Wildmoser Herbst Kinsky Rechtsanwälte		Ashwin Ramanathan, Nithya Narayanan, Aayush Misra and Manish Jha AZB & Partners	
Belgium	18	Ireland	83
Giulia Mauri Verhaegen Walravens		Hilary Marren and Joe Fay McCann FitzGerald	
Brazil	24	Korea	90
Kenneth Basch Basch & Rameh		Young Kyun Cho, Young Min Kim and Robert L Gilbert Kim & Chang	
Canada	30	Malta	95
Donald G Gray and Jason MacIntyre Blake, Cassels & Graydon LLP		Malcolm Falzon, Steven Decesare and Tara Cann-Navarro Camilleri Preziosi	
Cayman Islands	37	Mexico	102
Matthew Stocker Conyers Dill & Pearman (Cayman) Limited		Javier Alegre and Carlos Campillo Alegre, Calderón y Márquez Abogados	
China	42	Netherlands	107
Liu Yi Beijing Run Ming Law Office		Berend Crans and Thijs Elseman De Brauw Blackstone Westbroek NV	
Dominican Republic	49		
María Esther Fernandez A de Pou and Raul E Rodríguez Pereyra Russin Vecchi & Heredia Bonetti			

Publisher

Gideon Robertson
gideon.roberton@lbresearch.com

Subscriptions

Rachel Nurse
subscriptions@gettingthedealthrough.com

Business development managers

George Ingledew
george.ingledew@lbresearch.com

Alan Lee
alan.lee@lbresearch.com

Dan White
dan.white@lbresearch.com



Published by
Law Business Research Ltd

87 Lancaster Road
London, W11 1QQ, UK
Tel: +44 20 7908 1188
Fax: +44 20 7229 6910

© Law Business Research Ltd 2014
No photocopying: copyright licences do not apply.
First published 2014
ISSN 2055-7256

The information provided in this publication is general and may not apply in a specific situation. Legal advice should always be sought before taking any legal action based on the information provided. This information is not intended to create, nor does receipt of it constitute, a lawyer-client relationship. The publishers and authors accept no responsibility for any acts or omissions contained herein. Although the information provided is accurate as of June 2014, be advised that this is a developing area.

Printed and distributed by
Encompass Print Solutions
Tel: 0844 2480 112



CONTENTS

Nigeria	114	Portugal	134	Switzerland	154
L Fubara Anga and Chinanu Osuji ÆLEX		Luís Soares de Sousa Cuatrecasas, Gonçalves Pereira		Frédéric Meyer, Raphaël Baeriswyl, Philippe Renz and Antoine Labaume Meyer Avocats	
Oman	119	Russia	142	United States	160
Mansoor Malik and Nathaniel Armstrong Al Busaidy, Mansoor Jamal & Co		Victoria Bortkevicha and Evgeniya Armstrong Clifford Chance CIS Limited		Thomas A Zimmer Pillsbury Winthrop Shaw Pittman LLP	
Panama	128	Sweden	148		
Maria de Lourdes Marengo Patton, Moreno & Asvat		Fredrik Wilkens, Emma Stuart-Beck and Malin Sund Advokatfirman Vinge			

Sweden

Fredrik Wilkens, Emma Stuart-Beck and Malin Sund

Advokatfirman Vinge

Overview

- 1** To which major air law treaties is your state a party? Is your state a party to the New York Convention of 1958?

Sweden acceded, and is a party, to the Rome Convention (1933) as of 1939, the Chicago Convention (1944) as of 1946, the Geneva Convention (1948) as of 1955 and the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958) as of 1972.

Sweden has not acceded to the Cape Town Convention (2001). However, through Sweden's EU membership and the EU's accession in 2009 to the Cape Town Convention (2001), Sweden is thus bound by the Convention insofar as the EU has judicial competence (ie, Sweden is not a Contracting State thereto). See 'Update and trends'.

- 2** What is the principal domestic legislation applicable to aviation finance and leasing?

The primary aviation legislation in Sweden consists of:

- the Aviation Act (2010);
- the Aviation Ordinance (2010);
- the Operational Register Ordinance (1986);
- the Registration of Rights to Aircraft Act (1955); and
- the Act on Damage Caused to Third Parties by Air Carriage (1922).

- 3** Are there any restrictions on choice-of-law clauses in contracts to the transfer of interests in or creation of security over aircraft? If parties are not free to specify the applicable law, is the law of the place where the aircraft is located or where it is registered the relevant applicable law?

There are no such restrictions under Swedish law. Instead, the parties are free to specify the applicable law.

Pursuant to the Geneva Convention (1948), and the Swedish implementation thereof in the Act pursuant to Sweden's accession to the 1948 Convention concerning International Recognition of Rights to Aircraft 1955, Swedish law recognises a foreign law security right created by way of contract as security for debt, provided that the security right has been validly constituted in accordance with the law of the convention state where the aircraft was registered at the time of the right's constitution, and provided that the right is duly recorded in a public record in that convention state. Thus, the law where the aircraft is registered would be the applicable law in relation to a security right in an aircraft registered in a convention jurisdiction, regardless of any choice of law clauses. As regards other non-convention jurisdictions, Swedish international private law would recognise the law where the aircraft is registered provided that such application is not viewed as manifestly incompatible with Swedish public policy.

Title transfer

- 4** How is title in an aircraft transferred?

The title in an aircraft is transferred by a valid and enforceable agreement (such as a bill of sale) between the parties.

- 5** What are the formalities for creating an enforceable transfer document for an aircraft?

There are no formalities required for enforceability of the transfer.

However, if the aircraft is registered in Sweden, the Swedish Transport Agency should immediately be given notice of a change in ownership of the aircraft by filing, for example, the original bill of sale or a certified copy thereof. If the bill of sale is in a language other than Swedish, Norwegian, Danish or English, a certified translation to one of those languages has to be provided.

Registration of aircraft ownership and lease interests

- 6** Identify and describe the aircraft registry.

There are two public registers with respect to aircraft:

- the Operational Register, in which aircraft registered in Sweden are recorded; and
- the Rights Register, in which a right in rem for an aircraft registered in Sweden can be recorded.

The Operational Register contains information about the owner and the operator of the aircraft. Both registers are maintained by the Swedish Transport Agency. There is no separate engine register in Sweden, and a registration in the Operational Register or the Rights Register would include, inter alia, the airframe, engines, propellers, radio equipment, instruments and other fittings, irrespective of whether they are installed on the aircraft or temporarily separated from it.

As per April 2014, Sweden has 83-bis arrangements in place with Estonia, Ireland, Italy, Latvia, Luxembourg, Spain and Germany.

- 7** Can an ownership or lease interest in, or lease agreement over, aircraft be registered with the aircraft registry? Are there limitations on who can be recorded as owner? Can an ownership interest be registered with any other registry? Can owners', operators' and lessees' interests in aircraft engines be registered?

An aircraft owner may be registered in the Operational Register only if it is wholly owned by one of the following:

- the Swedish state;
- a Swedish municipality or county council;
- a citizen within the European Economic Area (EEA) or the estate of such a person;
- a company, an association, a trust or an estate of Swedish nationality or having its seat in a country within the EEA; or

- a European economic interest grouping domiciled in Sweden.

In addition, the Swedish Transport Agency may allow an aircraft to be registered in the Operational Register if the aircraft is normally operated in Sweden by one of the legal entities listed above. The Swedish Transport Agency generally grants such a registration when a foreign owner or lessor has leased the aircraft to a Swedish operator or lessee. The ownership may also be registered in the Rights Register. The ownership interest cannot be registered with any other registry besides those two.

A lease can be registered in the Rights Register (eg, by submitting the lease agreement) and if not registered in the Rights Register the lease must be immediately be registered in the Operational Register if the term of the lease is for an indefinite period or for at least one month. The lease may be registered in the Rights Registers and noted in the Operational Register if the lessor or user so requests. In addition, it must be registered in the Operational Register if the lessee shall assume the strict third party liability imposed on the owner or lessor pursuant to the Act on Damage Caused to Third Parties by Air Carriage (1922) (see questions 32 and 33). The operator under a lease is normally registered in the Operational Register.

Furthermore, in accordance with EC Regulation No. 1008/2008 and Schedule 3 of EEC Regulation No. 3922/91 (EU-OPS), a dry lease agreement to which a Swedish (or other EU member) air carrier is a party, or a wet lease agreement under which the Swedish (or other EU member) air carrier is the lessee of the wet-leased aircraft, is subject to prior approval by the Swedish Transport Agency.

The ownership of, or any lease interest in, engines or other spare parts cannot be registered separately in the Rights Register. However, engines or other spare parts may be separately encumbered by assignment under the Chattel Sales Act (1845), provided that they are not installed on the aircraft.

8 Summarise the process to register an ownership interest.

Operational Register

For first-time registration in the Operational Register, the following documents must be submitted:

- an original application form (available on the Swedish Transport Agency's website) to be signed by the owner;
- an original or certified copy or copies of the bill or bills of sale or other documentation proving the owner's acquisition of title to the aircraft as well as the ownership chain for the aircraft;
- a certified copy of the owner's birth certificate, or if the owner is a corporate entity, a certified copy of the certificate of registration not older than six months;
- evidence of the fact that the aircraft has been deregistered from a foreign aircraft register, to be sent by the relevant foreign register directly to the Swedish Transport Agency, or a certificate from the relevant aviation authority evidencing that the aircraft has not been registered previously;
- an original or certified copy of a certificate of insurance in accordance with EC Regulation No. 785/2004 on insurance requirements for air carriers and aircraft operators (as amended by EC Regulation 285/210), where the Swedish registration designation appears; and
- an original application form (available on the Swedish Transport Agency's website) for registration of an emergency locator transmitter (ELT406 MHz), regarding an aircraft exceeding 500 kilos.

The Swedish Transport Agency must immediately be given notice of a change in ownership of an aircraft registered in Sweden by submitting the documents listed under (i)–(iii) above (the application form should be signed by both the new and previous owner and incorporation documents should be provided for both parties), as well as the original copy of the aircraft's nationality and registration certificate.

The fee for registration of an aircraft in the Operational Register is currently 3,300 Swedish krona for a first-time registration and 2,500 Swedish krona for a registration concerning change of ownership. In addition, there is an annual fee for being registered in the amount of 240 Swedish krona. The time period between the filing of the application and the registration of the registration or transfer of ownership will depend on the Swedish Transport Agency's workload, but is generally not longer than two weeks.

Rights Register

A transfer of ownership to an aircraft can also be registered in the Rights Register. The following documents and information must be submitted:

- an original application form (available on the Swedish Transport Agency's website), to be signed by the new owner;
- the original bill of sale together with two certified copies thereof;
- a certified copy of the new owner's birth certificate, or if the new owner is a corporate entity, a certified copy of the certificate of registration not older than six months; and
- a document proving that the person acting on behalf of the previous owner is an authorised signatory of the previous owner.

The registration is effected as of the date of filing if the registration is received by the Swedish Transport Agency before noon on a business day (provided that the application is granted). If received in the afternoon it will be effected on the following day. The registration is generally completed within two weeks.

There is no cost for the actual registration of the ownership in the Rights Register, but the cost of obtaining a certificate of ownership is currently 12,700 Swedish krona.

-
- 9 What is the effect of registration of an ownership interest as to proof of title and third parties?

Operational Register

Registration in the Operational Register does not have an effect on the rights to an aircraft. It merely determines whether an aircraft should be considered to be registered in Sweden or not. Thus, it is only a 'notation' registration. Once registered, the Swedish Transport Agency issues a certificate of registration (nationality and registration certificate) for the aircraft.

Rights Register

Registration in the Rights Register provides proof of ownership and thereby creates priority and protection for the registered owner against third party claims. A registration of ownership in the Rights Register shall, as of the date of filing of the relevant documents with the Swedish Transport Agency, be deemed to be known by all persons whose rights to the aircraft are dependent on good faith in relation to the registration. Registration of the ownership in the Rights Register thus provides protection against bona fide purchasers of the aircraft as of the date on which the registration is made. However, as regards creditors of the previous owner of the aircraft, protection is not obtained until the next day and consequently the aircraft is used to cover the debts of the previous owner up to and including the day when the application for registration was made by the new owner.

-
- 10 Summarise the process to register a lease interest.

The lease can be noted in the Operational Register by a request in writing signed by both parties and providing details of the lessee (as operator of the aircraft), and information on whether the lessee shall assume strict third party liability pursuant to the Act on Damage Caused to Third Parties by Air Carriage (1922) (see questions 32 and 33).

The lease may be registered in the Rights Register, and the following documents should then be submitted:

- an original application form (available on the Swedish Transport Agency's website) to be signed by the lessee;
- the original lease agreement, together with two certified copies thereof;
- a certified copy of the lessee's birth certificate, or if the lessee is a corporate entity, a certified copy of the certificate of registration not older than six months; and
- a document proving that the person acting on behalf of the lessor is an authorised signatory of the lessor.

There is no cost for the actual registration of a lease in the rights register, but the cost of obtaining a certificate (ie, proof of right of lease) is currently 12,700 Swedish krona.

11 What is the regime for certification of registered aviation interests in your jurisdiction?

The Swedish Transport Agency issues certificates of registration (nationality and registration certificate) for the aircraft upon a registration in the Operational Register. A certificate of registration contains information about nationality and registration mark, manufacturer and manufacturer's designation of aircraft, aircraft serial number, owner and the owner's address.

For a fee, the Swedish Transport Agency can issue certificates regarding the rights for the aircraft (general ownership through acquisition, leases and mortgages) registered in the Rights Register.

12 Is an owner or mortgagee required to consent to any deregistration or export of the aircraft? Must the aviation authority give notice? Can the operator block any proposed deregistration or export by an owner or mortgagee?

An aircraft may be deregistered if the owner so requests in writing. An aircraft can only be deregistered or exported if there are no rights registered in the Rights Register or a notice in the Rights Register as regards retention of title (or a similar reservation concerning the right to assign, lease or mortgage), or if consent has been obtained from the relevant parties holding rights registered or noted in the Rights Register (eg, mortgagees). An operator cannot block a proposed deregistration or export by the registered owner.

13 What are the principal characteristics of deregistration and export powers of attorney?

Deregistration and export powers of attorneys are not common in Sweden. The power of attorney may be issued in favour of several attorneys. However, it would not be possible to register the power of attorney, and it is not established by judicial precedent or otherwise by Swedish law that a power of attorney can be made irrevocable, and it is therefore arguable that any power of attorney can be revoked. Furthermore, any powers granted under the power of attorney will be terminated by operation of law upon the grantor's insolvency. Thus, updated powers of attorney issued by the registered owners are generally required by the Swedish Transport Agency in connection with a deregistration from any of the Swedish registers.

14 If the Cape Town Convention is in effect in the jurisdiction, describe any notable features of the irrevocable deregistration and export request authorisation (IDERA) process.

The Cape Town Convention (2001) is not applicable, as Sweden has not acceded to it. However, see 'Update and trends'.

Security

15 What is the typical form of a security document over the aircraft and what must it contain?

The security document usually consists of a promissory note governed by Swedish law, and the aircraft owner (registered in the Rights Register) is required to agree to the security granted in the aircraft by signing the security document or promissory note. The owner's signature must be witnessed by at least two other persons. The promissory note must contain information about the nationality and registration mark of the aircraft and the principal amount (in Swedish or foreign currency) to which the security relates. The interest should be specified. However, it should be noted that the security will not secure interest accumulated for a period extending to three years. It is not a requirement to file the separate loan agreement if such an agreement co-exists with the promissory note.

16 What are the documentary formalities for creation of an enforceable security over an aircraft? What are the documentary costs?

If the promissory note is in a language other than Swedish, Norwegian, Danish or English, a certified translation to one of those languages has to be provided once filed in original with the Swedish Transport Agency for registration in the Rights Register.

17 Must the security document be filed with the aviation authority or any other registry as a condition to its effective creation or perfection against the debtor and third parties? Summarise the process to register a mortgagee interest.

In order to create a security right, the owner must first be registered as the owner in the Rights Register, which requires that the aircraft is registered in the Operational Register. In addition, the promissory note in original must be delivered to the mortgagee in order to be enforceable against the mortgagor and the security must be registered in the Rights Register in order to obtain perfection against other creditors and third parties.

Registration of a security interest in the Rights Register requires that the following documents are submitted:

- an original application form (available on the Swedish Transport Agency's website) to be signed by the owner;
- the original security document or promissory note in original; and
- a certified copy of the owner's birth certificate, or if the owner is a corporate entity, a certified copy of the certificate of registration not older than six months.

Upon registration, the original promissory note will be returned together with relevant documentation such as a certificate or abstract from the Rights Register. There is no cost for the actual registration in the Rights Register besides the stamp duty, but the cost of obtaining an additional certificate evidencing the registration of the security is currently 9,000 Swedish krona.

The registration will be effectuated as of the date of filing if the registration is received by the Swedish Transport Agency before noon on a business day (provided that the application is granted), and if received by the Swedish Transport Agency in the afternoon it will be effectuated on the following day.

In addition, stamp duty of 1 per cent of the principal value secured by the security is levied and payable by the owner of the aircraft. However, pursuant to the Act regarding Sweden's accession to the 1948 Convention concerning International Recognition of Rights to Aircraft (1955), such stamp duty would not apply to a security (which by nature would be recognised in Sweden) that is transferred to the Rights Register upon the request of the mortgagee when the aircraft is transferred to the Operational Register.

However, the aircraft must be registered in Sweden for three months in order for the transferred security's priority right to be recognised under Swedish law.

18 How is registration of a security interest certified?

The rank or priority is stated in the Rights Register, and can be evidenced by the certificate or an abstract from the Rights Register. The Swedish Transport Agency can, for a fee, issue additional certificates as regards security registered in the Rights Register. Provided that the security is registered, the certificate can be issued the day after the day on which the order is made.

19 What is the effect of registration as to third parties?

The registration of a security in the Rights Register perfects the security and thus creates priority and protection for the holder against third party claims. If not registered, the mortgagee has no better right than unsecured creditors. The date of filing of the application for registration of the security with the Swedish Transport Agency determines the priority. If several applications are made during the same day, they rank equally. Third parties may rely on the Rights Register.

20 How is security over aircraft and leases typically structured? What are the consequences of changes to the security or its beneficiaries?

Swedish law does not recognise the concept of trusts. However, a security agent may act on behalf of itself and the financiers provided that it has been duly appointed by the financiers. Security held by the security agent must be properly separated from the security agent's own assets. The security is a right in rem and not in personam that is perfected through registration. The promissory note to be registered in the Rights Register will set out the identity of the mortgagee. However, it is not a requirement (although it is possible) that the details of the mortgagee are noted in the Rights Register in order to obtain perfection. In addition, there is a risk of clawback of the security if registered by the owner in the Rights Register within three months from the owner being declared bankrupt.

21 What form does security over spare engines typically take and how does it operate?

Engines and spare parts may not be registered separately in the Rights Register, and engines which are installed on a host aircraft on more than a purely temporary basis will be included in the registered mortgages if owned by the owner of the aircraft. This may also apply to engines installed by a lessor, although the legal situation in Sweden regarding this issue is not entirely clear. A security may also cover spare parts (including engines) belonging to the owner of the aircraft. The spare parts must then be described in terms of the characteristics as well as the approximate number thereof in the security document or in an appendix thereto, and the spare parts must be stored at locations in Sweden or another state that has acceded to the Geneva Convention (1948). In addition, a certificate from a reliable person stating that the spare parts belong to the owner of the aircraft must be submitted to the Swedish Transport Agency, and the spare parts must be clearly marked at the storage location as mortgaged and provide details of the scope of the mortgage, contact details of the mortgagee, and that the mortgage has been registered in the Rights Register.

Enforcement measures

22 Outline the basic repossession procedures following lease termination. How may the lessee lawfully impede the owner's rights to exercise default remedies?

The owner would be required to pursue its claim through judicial procedures in order to repossess the aircraft, as self-help is not permitted under Swedish law. The judicial procedures available to the owner would be court proceedings or summary proceedings with the Swedish Enforcement Authority including enforcement assistance with repossession. The latter would generally entail submitting an application form, the lease agreement and any notices of termination and payment of a nominal application fee. Once the Swedish Enforcement Authority grants the application, the lessor will be informed of the date of repossession. The owner would be precluded from repossessing or foreclosing the aircraft in an insolvency situation and the repossession would then have to be granted by the receiver in bankruptcy.

There are no sole legal steps to ensure successful repossession.

23 Outline the basic measures to enforce a security interest. How may the owner lawfully impede the mortgagee's right to enforce?

Judicial procedures must be undertaken in order to enforce a security interest in the aircraft, as self-help is not permitted under Swedish law. If the mortgagee takes possession of the aircraft without the owner's consent, the mortgagee is likely to commit a criminal offence under Swedish law and may also be liable for damages. The judicial procedures available would be court proceedings or summary proceedings with the Swedish Enforcement Authority. Summary proceedings entail submitting a written application to the Swedish Enforcement Authority stating the amount claimed and containing a request that the claim is to be satisfied by execution of the mortgaged aircraft. The mortgagor will be requested to respond to the claim in writing and if the mortgagor fails to do so the Swedish Enforcement Authority will issue an order that payment should be paid out of the mortgaged aircraft. However, if the mortgagor challenges the application and raises any defence to the claim, the application will, upon the mortgagee's request, be forwarded for ordinary court proceedings. Ordinary court proceedings would entail that the mortgagee files a summons application (if the matter is not upon the mortgagee's request forwarded from the Swedish Enforcement Authority). The court then issues a writ of summons which is followed by service of the writ of summons, written submissions, one or more preparatory hearings and a main hearing. Should the mortgagor (or its representatives) not appear, the court may render judgment in default.

There exists a right to detain the aircraft by way of court application provided that:

- the mortgagee has a legitimate claim on the mortgagor, being the owner of the aircraft;
- there is a risk that the aircraft will be removed from Sweden or otherwise disposed of in a way that impedes the mortgagee's possibilities to recover the claim; and
- the mortgagee can provide security for damage that might be caused to the mortgagor (this may be disregarded in certain circumstances).

The mortgagor has a right to submit a response to the application, but an ex parte application is possible if the detention is urgent. However, pursuant to the Aircraft Exemption from Provisional Attachment Act (1939), special provisions may apply to, inter alia, aircraft assigned for government service and aircraft for transportation when ready for departure.

Update and trends

The Swedish government has formed a commission of inquiry in order to analyse and provide recommendations as to whether Sweden should accede to the Cape Town Convention (2001). The commission is scheduled to submit its report no later than 1 December 2014.

- 24** Which liens and rights will have priority over aircraft ownership or an aircraft security interest? If an aircraft can be taken, seized or detained, is any form of compensation available to an owner or mortgagee?

There are some preferred creditors, which include secured creditors. Any potential claims would generally rank as follows:

- (i) fees for the administrator of a reorganisation;
- (ii) claims related to agreements entered into by the administrator during a reorganisation;
- (iii) claims secured by a salvage lien (ie, compensation due as a result of salvage of the aircraft, parts thereof, goods or people on board);
- (iv) mortgagee's (secured) claims;
- (v) claims secured by a repairman's lien or other rights of retention;
- (vi) taxes;
- (vii) corporate mortgages;
- (viii) salary claims, and
- (ix) pension claims.

Taxes and payment restrictions

- 25** What taxes may apply to aviation-related lease payments, loan repayments and transfers of aircraft? How may tax liability be lawfully minimised?

Assuming the lessor or lessee has no physical or permanent presence in Sweden, the lessor or lessee will not need to register for tax purposes in Sweden. Aircraft (intended for transportation of fare paying passengers) are exempt from Swedish VAT. Please also refer to question 17 regarding stamp duty for mortgages.

- 26** Are there any restrictions on international payments and exchange controls in effect in your jurisdiction?

No. However, if direct and indirect payments (to or from Sweden) exceed 150,000 Swedish krona, or if the aggregated payments amount to 150,000 Swedish krona, the intermediary arranging the payments must report certain information by submitting a statement of income for the previous income year to the Swedish Tax

Agency no later than by 31 January the subsequent year. In addition, certain restrictions may apply should extraordinary circumstances prevail (such as war or exceptional short-term capital movements) in Sweden.

- 27** Are there any limitations on the amount of default interest that can be charged on lease or loan payments?

No. However, the Swedish Contracts Act (1915) contains a general clause stating that any term in an agreement found unconscionable as regards the contents of the agreement, the circumstances prevailing at the time the agreement was entered into, subsequent circumstances and circumstances in general, may be set aside or modified, although the demands for a term or agreement to be found unconscionable are rather stringent.

- 28** Are there any costs to bring the aircraft into the jurisdiction or take it out of the jurisdiction? Does the liability attach to the owner or mortgagee?

No, not in relation to commercial aircraft to be solely imported to, or exported from, Sweden.

Insurance and reinsurance

- 29** Summarise any captive insurance regime in your jurisdiction as applicable to aviation.

There is no prevailing practice to place the insurance in the Swedish market. There are certain activities for which there are requirements under Swedish law that insurance must have a local connection. None of these activities are, however, likely to apply.

- 30** Are cut-through clauses under the insurance and reinsurance documentation legally effective?

A cut-through clause accessing reinsurance would, in general, be considered valid under Swedish law. However, the insurance company providing the reinsurance cover may be deemed to conduct insurance business in Sweden by way of usage of cut-through clauses and thereby trigger a licensing requirement for insurance business under Swedish law.

- 31** Are assignments of reinsurance (by domestic or captive insurers) legally effective? Are assignments of reinsurance typically provided on aviation leasing and finance transactions?

The Swedish Insurance Contracts Act (2005) does not apply to reinsurance contracts. The reinsurance market for aviation in Sweden is

VINGE

Fredrik Wilkens
Emma Stuart-Beck
Malin Sund

fredrik.wilkens@vinge.se
emma.stuart-beck@vinge.se
malin.sund@vinge.se

Smålandsgatan 20
 Box 1703
 111 87 Stockholm
 Sweden

Tel: +46 10 614 3000
 Fax: +46 10 614 3190
 www.vinge.se

rather limited, and Swedish law provides little guidance, therefore foreign customary law is used for reference. However, the assignment of reinsurance is likely to be legally effective under Swedish law if permitted under the reinsurance contract. In the absence of such a provision in the contract, the general principle under Swedish law would be that rights or obligations under the reinsurance contract can only be assigned if the other party has consented thereto.

32 Can an owner, lessor or financier be liable for the operation of the aircraft or the activities of the operator?

According to the Act on Damage Caused to Third Parties by Air Carriage (1922), a lessor (as owner) of an aircraft will be strictly liable for all damage caused to third parties in operating the aircraft. However, in the event that:

- the lessee and operator and the lessor enter into an agreement stating that the lessee and not the lessor shall be liable;
- the lease is for a term exceeding one year;
- the lessee or operator is entitled to use its own or other pilots or commanders on the aircraft or is entitled to use the aircraft for commercial air transport purposes; and
- the lessee's right to use the aircraft is registered with the Swedish Transport Agency in the Operational Register,

then the lessee or operator and not the lessor or owner will be liable for damage caused to third parties by air carriage.

It is unlikely that a financier or mortgagee could be held liable for any actions or omissions of the counterparty.

33 Does the jurisdiction adopt a regime of strict liability for owners, lessors, financiers or others with no operational interest in the aircraft?

See question 32.

34 Are there minimum requirements for the amount of third-party liability cover that must be in place?

EC Regulation No. 285/210 of 6 April 2010 amending EC Regulation No. 785/2004 of the European Parliament and of the Council on insurance requirements for air carriers and aircraft operators provides for minimum insurance requirements in respect of liability for passengers, baggage, cargo and third parties and is applicable in Sweden. It specifies minimum insurance requirements in respect of third party liability coverage ranging from 0.75–700 million SDR depending on the specific aircraft's maximum take-off weight.

GETTING THE DEAL THROUGH

Annual volumes published on:

- Acquisition Finance
- Advertising & Marketing
- Air Transport
- Anti-Corruption Regulation
- Anti-Money Laundering
- Arbitration
- Asset Recovery
- Banking Regulation
- Cartel Regulation
- Climate Regulation
- Construction
- Copyright
- Corporate Governance
- Corporate Immigration
- Data Protection & Privacy
- Debt Capital Markets
- Dispute Resolution
- Domains & Domain Names
- Dominance
- e-Commerce
- Electricity Regulation
- Enforcement of Foreign Judgments
- Environment
- Foreign Investment Review
- Franchise
- Gas Regulation
- Insurance & Reinsurance
- Insurance Litigation
- Intellectual Property & Antitrust
- Investment Treaty Arbitration
- Islamic Finance & Markets
- Labour & Employment
- Licensing
- Life Sciences
- Mediation
- Merger Control
- Mergers & Acquisitions
- Mining
- Oil Regulation
- Outsourcing
- Patents
- Pensions & Retirement Plans
- Pharmaceutical Antitrust
- Private Antitrust Litigation
- Private Client
- Private Equity
- Product Liability
- Product Recall
- Project Finance
- Public Procurement
- Real Estate
- Restructuring & Insolvency
- Right of Publicity
- Securities Finance
- Shipbuilding
- Shipping
- Tax Controversy
- Tax on Inbound Investment
- Telecoms and Media
- Trade & Customs
- Trademarks
- Vertical Agreements



For more information or to purchase books, please visit:
www.gettingthedealthrough.com



Strategic Research Partner of the
 ABA Section of International Law



**THE QUEEN'S AWARDS
 FOR ENTERPRISE:
 2012**



Official Partner of the Latin American
 Corporate Counsel Association