

Sweden

Fredrik Wilkens and Henrik Schön

Advokatfirman Vinge

OVERVIEW

Conventions

1 | To which major air law treaties is your state a party?

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 New York Convention (1958) as of 1972.

Sweden has acceded to the Cape Town Convention (2001) (the Convention) and the protocol on matters specific to aircraft equipment (the Protocol), effective as of 1 April 2016.

Domestic legislation

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

The primary aviation legislation in Sweden consists of the following:

- the Act on International Security Rights in Chattel and Goods (2015);
- 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).

Governing law

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, 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. Furthermore, Swedish law recognises an international security right duly created in accordance with the Convention. 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

Transfer of aircraft

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.

Transfer document requirements

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 must be provided.

REGISTRATION OF AIRCRAFT OWNERSHIP AND LEASE INTERESTS

Aircraft registry

6 | Identify and describe the aircraft registry.

There are two Swedish public registers with respect to aircraft:

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

The Operational Register is an 'owner-based' register and 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 at February 2021, Sweden has 83-bis arrangements in place with Estonia, Germany, Ireland, Italy, Latvia, Luxembourg and Spain.

As Sweden has acceded to the Cape Town Convention (2001) (the Convention) and the protocol on matters specific to aircraft equipment (the Protocol), registration of security rights in aircraft (including separate registration of right in an engine) can be made in the International Register that follows from the Convention. There is nothing prohibiting registrations in both the Swedish Rights Register and the International Register. However, registrations in the International Registry will

have priority unless a right has been registered in the Swedish Rights Register prior to the Swedish entry into force of the Convention.

Registrability of ownership of aircraft and lease interests

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 on 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, association, trust or 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 owner domiciled outside the EEA to be registered on 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 Swedish registry besides these two.

A lease can be registered on the Rights Register (eg, by submitting the lease agreement) and if not registered on the Rights Register the lease must immediately be registered on 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 on the Rights Register and noted on the Operational Register if the lessor or user so requests. In addition, it must be registered on 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). The operator under a lease is normally registered on the Operational Register.

Furthermore, in accordance with EC Regulation No. 1008/2008, as amended, and Schedule 3 of EEC Regulation No. 3922/91 (EU-OPS), as amended, 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 on 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. Furthermore, it is possible to separately register rights to an engine on the International Register.

Registration of ownership interests

8 | Summarise the process to register an ownership interest.

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

- 1 an original application form (available on the Swedish Transport Agency's website), signed by the owner;
- 2 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;

- 3 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;
- 4 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;
- 5 an original or certified copy of a certificate of insurance in accordance with Regulation (EC) No. 785/2004 on insurance requirements for air carriers and aircraft operators (as amended), where the Swedish registration designation appears; and
- 6 an original application form for registration of an emergency locator transmitter (ELT406 MHz) (available on the Swedish Transport Agency's website), regarding an aircraft exceeding 500kg.

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 (1)–(3) (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 8,000 Swedish kronor for a first-time registration and 5,000 Swedish kronor for a registration concerning change of ownership. In addition, there is an annual fee for being registered in the amount of 600 Swedish kronor (2021). The time period between the filing of the application and 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, 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.

The Swedish Transport Agency currently charges 10,000 Swedish kronor for registration of the ownership in the Rights Register.

Title and third parties

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 on 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 on 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 on 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.

Registration of lease interests

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 containing 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).

The lease may be registered on the Rights Register, in which case the following documents should be submitted:

- an original application form, 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 lessee is an authorised signatory of the lessee.

The Swedish Transport Agency currently charges 10,000 Swedish kronor for registration of a lease on the Rights Register.

Certificate of registration

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 on 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 to the aircraft (general ownership through acquisition, leases and mortgages) registered on the Rights Register.

Deregistration and export

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 on the Rights Register or a notice on 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 on the Rights

Register (eg, mortgagees). An operator cannot block a proposed deregistration or export by the registered owner. If a registered owner wishes to deregister an aircraft, any IDERA granted in favour of an authorised party that has been lodged with the Swedish Transport Agency must prior thereto be deregistered or withdrawn by the authorised party.

Sweden has acceded to the Convention, the provisions thereof being in effect as of 1 April 2016. Sweden has made a declaration in relation to article XIII of the Protocol and accordingly it is possible to register an IDERA with the Swedish Transport Agency. The IDERA shall have the form required under the Protocol and must be submitted to the Swedish Transport Agency in original who will countersign, lodge and register the IDERA before returning the original to the submitting party. A creditor who has been granted an IDERA from the registered owner of the aircraft and which has been registered or lodged with the Swedish Transport Agency shall be allowed to request for deregistration and export of the aircraft. The agency shall grant such request without any trial of the case on its merits.

Powers of attorney

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

Deregistration and export powers of attorneys are not common in Sweden. It has not been established by judicial precedent or otherwise by Swedish law that a power of attorney can be made irrevocable, and it is therefore possible to argue that any power of attorney can be revoked. However, Sweden has given a declaration in relation to article XIII of the Protocol and the Swedish Transport Agency accepts the registration of an IDERA meaning that it should be possible to deregister an aircraft upon the written request of the holder of the power of attorney provided that the power of attorney has been lodged or registered with the Swedish Transport Agency.

Cape Town Convention and IDERA

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.

Sweden has acceded to the Convention and the provisions thereof are in effect as of 1 April 2016. Sweden has made a declaration in relation to article XIII of the Protocol and accordingly it is possible to register an IDERA with the Swedish Transport Agency. The IDERA shall have the form required under the Protocol and must be submitted to the Swedish Transport Agency in original who will countersign and stamp the IDERA before returning the original to the submitting party. A creditor or authorised party who has been granted an IDERA from the registered owner of the aircraft and which has been registered or lodged with the Swedish Transport Agency shall be allowed to request for deregistration and export of the aircraft. The agency shall grant such request without any trial of the case on its merits.

SECURITY

Security document (mortgage) form and content

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, the security will not secure interest accumulated for a period extending three years. It is not a requirement to file the separate loan agreement if such an agreement coexists with the promissory note.

Security documentary requirements and costs

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 must be provided once filed in original with the Swedish Transport Agency for registration on the Rights Register.

Security registration requirements

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.

To create a security right, the owner must first be registered as the owner on the Rights Register, which requires that the aircraft is registered on 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 on the Rights Register in order to obtain perfection against other creditors and third parties.

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

- an original application form, 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. The Swedish Transport Agency currently charges 10,000 Swedish kronor for registration of a security on the Rights Register besides any stamp duty that may apply.

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 for the transferred security's priority right to be recognised under Swedish law.

Registration of security

18 | How is registration of a security interest certified?

The rank or priority is stated on 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 on 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.

Effect of registration of a security interest

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.

Security structure and alteration

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 on 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 to obtain perfection. In addition, there is a risk of clawback of the security if registered by the owner on the Rights Register within three months of the owner being declared bankrupt.

Security over spare engines

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

Engines and spare parts may not be registered separately on the Rights Register, and engines that are installed on a host aircraft on more than a purely temporary basis will be included in the registered mortgages if owed 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. 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 on the Rights Register.

Notwithstanding that it is not possible to separately register engines on the Rights Register, such registration is possible on the International Registry currently kept by Aviareto Ltd.

ENFORCEMENT MEASURES

Repossession following lease termination

- 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 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.

In relation to lease agreements falling within the scope of the Cape Town Convention (2001) (the Convention) and the protocol on matters specific to aircraft equipment (the Protocol), Sweden has, in relation to article 54.2 of the Convention, declared that remedies available to a creditor (under, for example, articles 8 to 10 of the Convention) may be taken without having to obtain approval from a court. Sweden's declaration to this article entails that all remedies available to the creditor under the Convention may be carried out without application to a court, unless otherwise specified under the relevant provision of the Convention.

Enforcement of security

- 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 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.

Priority liens and rights

- 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:

- fees for the administrator of a reorganisation;
- claims related to agreements entered into by the administrator during a reorganisation;
- claims secured by a salvage lien (ie, compensation due as a result of salvage of the aircraft, parts thereof, goods or people on board);
- mortgagee's (secured) claims, where claims secured by a registration on the International Register will have priority over nationally registered rights unless registration on the Swedish Rights Register has been made prior to the Convention's entry into force;
- claims secured by a repairman's lien or other rights of retention;
- taxes;
- corporate mortgages;
- salary claims; and
- pension claims.

Enforcement of foreign judgments and arbitral awards

- 25 | How are judgments of foreign courts enforced? Is your jurisdiction party to the 1958 New York Convention?

Sweden is a party to the 1958 New York Convention on the recognition and enforcement of foreign arbitral awards and will recognise and enforce such arbitral awards provided that the necessary conditions therefor are prevalent.

With respect to foreign court judgments, Sweden is a party to the 2012 Brussels Regulation, the 2005 Hague Convention and the 2007 Lugano Convention. Consequently, a court judgment in any contracting state to these international instruments would generally at the date hereof be recognised and enforceable in Sweden upon the satisfaction of the formal requirements of the respective convention or regulation without any declaration of enforceability being required. A New York court judgment would, in principle, not be recognised or enforceable in Sweden as a matter of right without a retrial on its merits (but will be of persuasive authority as a matter of evidence before the courts of law, administrative tribunals or executive or other public authorities of Sweden).

As a general matter, judgments and arbitral awards as described above would not be recognised and enforced in Sweden if deemed to contravene Swedish public policy.

TAXES AND PAYMENT RESTRICTIONS

Taxes

- 26 | 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 generally exempt from Swedish VAT. However, the exemption may not apply in relation to certain lease structures in respect of the head lease where the sublessor is a Swedish entity. Such Swedish entity may be imposed and required to report VAT in relation to the head lease. Nevertheless, deduction possibilities will render in no increased VAT expenses.

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 for the transferred security's priority right to be recognised under Swedish law.

Exchange control

- 27 | 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 kronor, or if the aggregated payments amount to 150,000 Swedish kronor, 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 of the subsequent year. In addition, certain restrictions may apply should extraordinary circumstances prevail (such as war or exceptional short-term capital movements) in Sweden.

Default interest

- 28 | 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.

Customs, import and export

- 29 | 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. Different rules may however apply depending on the jurisdiction to which the aircraft is to be exported.

INSURANCE AND REINSURANCE

Captive insurance

- 30 | 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.

Cut-through clauses

- 31 | 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.

Reinsurance

- 32 | 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 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.

Liability

- 33 | 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 through the operation of the aircraft.

However, the lessee or operator and not the lessor or owner will be liable for damage caused to third parties by air carriage if:

- the lessee or 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 noted with the Swedish Transport Agency in the Operational Register.

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

Strict liability

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

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 through the operation of the aircraft.

However, the lessee or operator and not the lessor or owner will be liable for damage caused to third parties by air carriage if:

- the lessee or 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 noted with the Swedish Transport Agency in the Operational Register.

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

Third-party liability insurance

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

EC Regulation No. 785/2004 of the European Parliament and of the Council on insurance requirements for air carriers and aircraft operators, as amended, 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 to 700 million special drawing rights, depending on the specific aircraft's maximum take-off weight.

UPDATE AND TRENDS**Key developments of the past year**

- 36 | What were the key cases, decisions, judgments and policy and legislative developments of the past year?

The Cape Town Convention (2001) (the Convention) and the protocol on matters specific to aircraft equipment (the Protocol) entered into force following Sweden's accession thereto. One of the most prominent arguments for Sweden's accession was to achieve the predictability for financiers of aircraft that the Convention and the Protocol create, which is hoped to result in, inter alia, more airline carriers conducting operations out of Sweden with aircraft registered in Sweden. In relation to the practical application of the Convention and the Protocol by Swedish authorities (including the Swedish Transport Agency), certain practices are beginning to develop, although many practical questions are still to be addressed by the Swedish Transport Agency and, ultimately, by Swedish courts.

VINGE

Fredrik Wilkens

fredrik.wilkens@vinge.se

Henrik Schön

henrik.schon@vinge.se

Smålandsgatan 20
Box 1703
111 87 Stockholm
Sweden
Tel: +46 10 614 3000
Fax: +46 10 614 3190
www.vinge.se

Coronavirus

- 37 | What emergency legislation, relief programmes and other initiatives specific to your practice area has your state implemented to address the pandemic? Have any existing government programmes, laws or regulations been amended to address these concerns? What best practices are advisable for clients?

While certain specific state credit guarantees were made available to airlines (in aggregate 5 billion Swedish kronor) and support for the operation of airports, no general emergency legislation, relief programmes or other form of initiatives have been implemented by the Swedish government to address the impact of the covid-19 pandemic on the aviation sector.