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**Aircraft Repossession and  
Enforcement**

Practical Aspects

Volume II

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# Norway

*Paul Sveinsson*

## Chapter I Repossessions of Aircraft: Self help

- 1. Is ‘self-help’ permitted in your jurisdiction? If yes, please detail the steps required, and also comment on the practical aspects of taking possession with or without the help of police or other authorities or agencies, where required.**

As a general rule repossession of an Aircraft in Norway may be carried out only through the local courts with assistance of the enforcement authorities (i.e., bailiffs), unless the party in possession of the Aircraft voluntarily gives up its possession. This does not prohibit the parties from agreeing to certain self-help measures in a Lease governed by non-Norwegian law, but if the Lessee later objects to repossession in Norway, the Lessor will have to apply for repossession through the courts. This follows from the principle laid down in section 1–3(2) of the Enforcement Act<sup>1</sup> (*tvangsfullbyrdelsesloven*) that an agreement to the effect that enforcement shall not be carried out in accordance with the provisions of the Enforcement Act is invalid if it is made prior to the occurrence of an actual default.

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1. The Enforcement Act of 26 Jun. 1992, No. 86 (*Tvangsfullbyrdelsesloven*) (‘Enforcement Act’).

- 2. Prior to initiating a ‘self-help’ process, are any notices, intimations or permissions required? For instance, clearances from customs or airport authorities or other regulatory agencies to take possession, and then fly the equipment out of your jurisdiction?**

Any notice requirements in an agreement between the parties requires compliance. It follows from Chapter I.1 above that the Enforcement Act or other Norwegian legislation does not have specific provisions in respect of self-help. Either the Lessee agrees to repossession, or repossession must be effected through the courts and enforcement authorities.

- 3. Are there any significant time and costs involved in the above?**

Repossession by agreement with the Lessee should not incur significant costs or take significant time.

- 4. Are there any risks to Lessors or Security Interest Holders, the crew or others, attendant on a ‘self-help’ action? If yes, how can they be mitigated?**

Anyone carrying out non-authorized self-help may be subject to criminal charges and may face fines or a jail sentence of up to three months,<sup>2</sup> and may be liable to damages for any loss caused by the illegal act.

- 5. Is the procedure for ‘self-help’ different where the right is exercised by another claimant such as a Security Interest Holder?**

No, the same principles will apply.

- 6. Can the Lessee (or the Grantor) or any other agency, stop or delay a ‘self-help’ remedy, and, if so, in what circumstances?**

An agreement made prior to an actual default in respect of enforcement to be carried out not in accordance with the provisions of the Enforcement Act, will not be valid; see Chapter I.1 above. Consequently, the Lessee may refuse to respect the self-help remedy.

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2. The Criminal Code of 22 May 1902, No. 10 (*Straffeloven*), s. 392.

- 7. Is written or other evidence of termination of the Lease or exercise of remedies by a Security Interest Holder required for Repossession? If so, is there a usual format?**

Please see Chapter I.1 and I.2 above.

- 8. Can foreign crew be permitted to fly the Aircraft out of your Jurisdiction? Are any special permissions required?**

Please see Chapter I.1 and I.2 above.

- 9. If a foreign crew is already in command of the Aircraft, what 'self-help' steps are necessary to fly the Aircraft out of your jurisdiction?**

Please see Chapter I.1 and I.2 above.

- 10. Can the Lessor opt for the Aircraft to remain on the nationality register of your jurisdiction when the Lease is terminated? If so, for how long and are there any special conditions or (tax) implications?**

The Aircraft will remain on the Norwegian Civil Aircraft Register (NCAR)<sup>3</sup> after expiry of the Lease if the Lessor is a Norwegian entity or an entity majority owned and effectively controlled by a European Union (EU)/European Economic Area (EEA) entity or EU/EEA nationals. The NCAR will, after first having notified the Lessor (owner) by registered mail with a three-week time limit, deregister an Aircraft owned by a non EU/EEA controlled entity after expiry of the Lease,<sup>4</sup> subject to any registered lien, see Chapter VI.12 below.

- 11. Can steps be taken as 'self-help' for recovery of rent and other outstandings? Are there any significant fees or other expenses? Can the Lessor retain any asset of Lessee which may be on board when the Aircraft is repossessed in and exported from your Jurisdiction? Is there any legal or other risk in doing this?**

Because self-help in principle is illegal, such recovery can be carried out only in accordance with a legally valid and binding agreement with the Lessee, see Chapter I.1.

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3. Norwegian Civil Aircraft Register (*Norges Luftfartøyregister*) (NCAR).

4. The Aviation Act of 11 Jun. 1993, No. 101 (*Luftfartsloven*) ('Aviation Act'), s. 3-7, Regulation 5 Feb. 2004, No. 393 on Registration of Aircraft, etc. ('Registration Regulation').

## Chapter II Court Proceedings for Repossessions

- 1. What legal or other proceedings can be taken or are necessary in your jurisdiction to repossess an Aircraft? If more than one kind of proceeding is possible, such as summary proceedings, bankruptcy proceedings, arrest or application to a governmental or regulatory agency, please briefly describe each of these and the implications.**

As a general rule, repossession of an Aircraft in Norway may be carried out only through the local courts and enforcement authorities, unless the party in possession of the Aircraft voluntarily gives up possession. If the Lessee does not voluntarily give up possession, the Lessor must have a legal basis (*tvangsgrunnlag*) for enforcement. Such basis can either be of a general kind,<sup>5</sup> including court judgments, applicable to all enforcement applications or a special basis,<sup>6</sup> compare with the next paragraph below, applicable to a certain kind of enforcement.

An application to the enforcement authorities in respect of repossession can be made on the (special) basis of a written agreement whereby the Lessee has agreed to redeliver the Aircraft if rent is not paid or at expiry of the lease term, as normally included in Aircraft lease agreements.<sup>7</sup>

It is possible to apply for an arrest of the Aircraft if the Lessor can show a probable cause that the Lessee acts in a way that gives reason to believe that the claim for repossession will be made impossible or substantially more difficult to carry out or has to be carried out outside Norway.<sup>8</sup> If the claimant has a mortgage claim that has fallen due, it is not necessary to show such cause.<sup>9</sup> However, an arrest may not be made over an Aircraft if it is engaged in regular commercial air traffic available to the public or the Aircraft otherwise is used for transport of passengers or cargo against payment and is ready for takeoff.<sup>10</sup>

- 2. What courts have jurisdiction? For example, must proceedings be filed at the registered office of the Lessee (or the Grantor)?**

An application for repossession shall normally be filed in the jurisdiction of the bailiff (*namsmann*) where the Aircraft is located, or if the application is based on a foreign judgment, with the local county court (*tingretten*) having jurisdiction

5. The Enforcement Act s. 4-1(2).

6. The Enforcement Act s. 4-1(5).

7. The Enforcement Act s. 13-2.

8. The Civil Procedures Act of 17 Jun. 2005, No. 90 (*Tvisteloven*) ('Civil Procedures Act'), s. 33-2 (1).

9. The Civil Procedures Act s. 33-2 (3).

10. The Civil Procedures Act s. 33-8, which derives from Norway's obligations as a party to the 1933 Rome Convention for the Unification of Certain Rules Relating to the Preventive Seizure of Aircraft.



where the Aircraft is located.<sup>11</sup> An application for arrest shall be filed with the local county court where the Aircraft is located or is expected to arrive shortly.<sup>12</sup>

**3. What time and costs are usually associated with such court proceedings?**

An application for Repossession will incur a nominal court fee and costs in connection with legal representation. The time is dependent on the workload of the bailiff or the court. Because an application for repossession shall be served on the Lessee with a two-week time limit for a rebuttal,<sup>13</sup> a period of four to six weeks will probably elapse before a decision is made.

**4. Are costs usually decreed in favour of the winning party? Are there any limitations?**

In Norway a winning party, as a main rule, will be awarded necessary costs incurred in connection with the enforcement matter. However, it should be noted that such award will be limited to 'necessary' costs, which often may result in the applicant not receiving full compensation of its costs.<sup>14</sup>

**5. Do the courts require a bond or other security as a condition for making an order allowing repossession and export of an Aircraft?**

The bailiff and the courts will normally not require such security. If the Lessee objects to repossession awarded by the bailiff and appeals the decision to the local district court, the court may in its discretion require security from the applicant if it decides to allow continuation of the repossession pending the appeal.<sup>15</sup> The court may in its discretion require security from the applicant as a condition for awarding an arrest.<sup>16</sup>

**6. Can a Lessee (or the Grantor), where it is a government owned operator, claim immunity from suit, execution, attachment or other legal process or delay the same?**

The Norwegian government and municipalities have immunity against enforcement, but an Airline organized as a limited liability company or similar separate

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11. The Enforcement Act s. 13-3.

12. The Civil Procedures Act s. 33-8.

13. The Enforcement Act s. 13-6.

14. The Enforcement Act s. 3-1(1).

15. The Enforcement Act s. 6-5.

16. The Civil Procedures Act s. 33-3.

entity will not be immune from enforcement, even if it is owned by the government or other authority that is immune from enforcement.<sup>17</sup>

**7. Whilst court proceedings are pending, can the Aircraft be grounded? If so, in what circumstances? Would the court usually pass a conditional order?**

In case of an arrest, the court may ground the Aircraft.<sup>18</sup> However, this is not applicable if the Aircraft is engaged in regular commercial air traffic available to the public or the Aircraft otherwise is used for transport of passengers or cargo against payment and is ready for take-off.

**8. What other interim orders for safety, preservation and protection of Aircraft can be sought? What facts need to be established for seeking this or other interim orders and what cost and time do these usually entail?**

It is possible to apply for an interim order if the Lessee acts in a way that makes it necessary to secure the Aircraft in order to avoid damage or otherwise protect the Aircraft. The Lessor will in such case have to show a probable cause for the application, that is make it probable to the court that the Lessee acts in a way that makes an interim order necessary.<sup>19</sup>

**9. Are there any other facts and circumstances that need to be proved before an interim order can be made absolute?**

An interim order is subject to the court's discretion, and the court will consider all relevant and available facts before making its decision.<sup>20</sup>

**10. Where an interim order has been obtained to ground an Aircraft pending resolution of the legal proceedings, would the court also admit a further application to sell the Aircraft, in order to stop the parking charges or deterioration or cannibalization of the Aircraft pending a final decision? If so in what circumstances and upon what conditions?**

Based only on an interim order, the court has no legal grounds to allow the sale of the Aircraft, but otherwise the court has wide discretion to decide how and

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17. The Enforcement Act s. 1-2.

18. The Civil Procedures Act s. 33-8.

19. The Civil Procedures Act Ch. 34.

20. The Civil Procedures Act s. 34-3.

by whom the Aircraft shall be kept safe until the case has been finally decided. A forced sale of an Aircraft needs to be based on a registered mortgage, a distress order previously obtained on the basis of a contractual claim or of a legal lien as a consequence of unpaid landing fees or other governmental aviation services fees, and registered in the NCAR as a lien on the Aircraft, or on a court judgment that qualifies as a legal basis for enforcement under Norwegian law.<sup>21</sup>

**11. What documents are necessary to be filed in court and what facts need be proved to (a) take possession, and (b) where permitted, sell the Aircraft, and at what points in time? Briefly describe the procedure, and where necessary, please draw reference to the relevant regulation in your jurisdiction.**

An application to take possession of the Aircraft must describe the matter and the Aircraft, provide a description of the claim and the parties' names and addresses and explain and document the legal grounds for repossession, which *inter alia* and if applicable, means to prove the agreement whereby the Lessee has agreed to re-deliver the Aircraft if rent has not been paid or the lease term has expired.<sup>22</sup>

**12. Would the procedure be different if the claimant is a Security Interest Holder?**

A Security Interest Holder will have to enforce its Security Interest. If the Security Interest Holder is not the Lessor, it cannot make a claim for repossession unless it has obtained a court judgment in such respect. An Aircraft operated out of Norway by a Norwegian operator must be registered in the NCAR, and a Security Interest Holder will typically have a mortgage over the Aircraft. In order to be perfected, the mortgage must be registered as an encumbrance on the Aircraft in the NCAR.

A mortgage can form the basis for enforcement of such security in accordance with the provisions of the Enforcement Act.<sup>23</sup> The Security Interest Holder may apply for forced use (*tvangsbruk*) of the Aircraft or, more likely, for a forced sale (*tvangssalg*) of the Aircraft. An application for enforcement of a Security Interest needs to describe the circumstances of the case and identify the Aircraft, state the parties' names and addresses, describe the claim and explain and document the legal grounds for the enforcement, which *inter alia* means proving and

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21. The Enforcement Act s. 4-1, the Aviation Act s. 13-7.

22. The Enforcement Act ss 4-1, 5-2 and 13-2.

23. The Enforcement Act s. 11-2.

substantiating the claim against the Lessor, and refer to the mortgage securing such claim.

**13. If a summary procedure is applicable in certain circumstances, what are these (for instance, what are the requirements for a 'summary procedure' to be applicable)?**

Norway does not have any procedure that may lead to a decision that may be referred to as a 'summary procedure', that is, a procedure that may be used if the defendant does not have any genuine defence. However, one may in such connection point to the fact that an application for repossession that is based on a written agreement whereby the Lessee has agreed to redeliver the Aircraft in case rent is not paid or at expiry of the lease term, see Chapter II.1, may lead to the Lessor repossessing the Aircraft sooner than what would have been the case if such agreement had not been in existence.

**14. Can a judgment be given in foreign currency?**

Norwegian courts may be expected to give judgments in currencies other than Norwegian Kroner, provided the exchange rate of such currency into Norwegian Kroner normally is quoted on a stock exchange in Norway.<sup>24</sup> Norwegian law, however, allows the judgment obligor the right to pay the judgment debt (even though denominated in a foreign currency) in Norwegian Kroner, being the legal tender of Norway.<sup>25</sup>

**15. Are there restrictions, exchange control or otherwise which might inhibit the remittance of the decreed amount in hard currency? If yes, please describe them and the procedure to get the permission.**

For the time being, there are no restrictions or exchange controls in Norway that may prohibit payments out of Norway.

**16. Are there any taxes or duties payable on remittances?**

There are no withholding taxes or other taxes on rental payments or payment of sales proceeds under Norwegian law, only on dividends, to entities that are non-Norwegian and not resident in Norway for tax purposes.

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24. The Liens Act of 8 Feb. 1980 (*Panteloven*), s. 1-4.

25. The Act of 17 Feb. 1939 (No. 1) relating to money claims and promissory notes (*Gjeldsbrevloven*), s. 7.

**17. If a Lease or Security Document is governed by foreign law, would the courts in your jurisdiction enforce such foreign laws? Does foreign law have to be established by evidence of an expert witness?**

Norway applies the principle of freedom of contract in the area of commercial matters, and a Lease or Security Document will as a point of departure be considered, interpreted and applied in accordance with the applicable foreign law. In such connection, one may need to hear evidence from a foreign expert witness. However, because enforcement in Norway as a main rule shall take place in accordance with the mandatory provisions of the Enforcement Act, one has to look to the Act to see what kind of foreign document may form the legal basis for enforcement in Norway.

**18. Are foreign judgments, decrees or orders including interim orders recognized in your jurisdiction? If so, under what conditions?**

As a point of departure, foreign judgments, decrees or orders shall not be recognized in Norway. However, if Norway is party to a treaty whereby judgments, decrees or orders rendered by a foreign authority shall be binding in Norway, such judgments, decrees or orders will be binding and enforceable in Norway without a further trial on the merits subject to and in accordance with the terms of section 19-16 of the Civil Procedures Act.

The most important treaty to consider is the Lugano Convention of 30 October 2007 on jurisdiction and enforcement of judgments in civil and commercial matters, implemented into Norwegian law by an amendment passed 19 June 2009 to the Norwegian Civil Procedures Act, and in force from January 2010.

Furthermore, foreign judgments, decrees or orders that are not covered by a treaty or convention will be binding and enforceable in Norway if the parties to an agreement have submitted in writing to the jurisdiction of an agreed foreign court for the purpose of the specific matter; the judgment on such matter is final, binding and enforceable in and pursuant to the laws of the relevant foreign jurisdiction; the matter is subject to the parties' agreement and concerns a subject on which the parties are free to enter into an agreement; and the recognition and enforcement of the judgment shall not be in conflict with decency (*ikke virke støtende på rettsordenen*), Norwegian mandatory laws or public policy.<sup>26</sup>

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26. The Civil Procedures Act ss 4-6 and 19-16.

- 19. If courts in your jurisdiction do not recognize a foreign judgment, can a suit or proceedings be filed based on such foreign judgment? What are the costs and time implications?**

Please see Chapter II.17 and II.18 above.

- 20. If foreign law governs the Security Document, and the Security Interest Holder has foreclosed against Lessor (i.e., proceeded to exercise its right to repossess or sell on a default) under such law, will the courts in your jurisdiction recognize such action?**

A foreclosure under a foreign law document will be recognized by a Norwegian court, provided, however, that foreign laws will not be applied to the extent contrary to Norwegian public policy or mandatory law, including the Enforcement Act, and that Norwegian law will be applied in a bankruptcy proceeding in respect of an execution against a Lessor who is subject to insolvency proceedings in Norway. It also means that claims may become barred under the Limitation Act<sup>27</sup> (*Foreldelsesloven*) or may become subject to defences, set-off or counter-claims and to any provisions generally applicable under Norwegian law in respect of invalidation of unfair contract terms, pro forma arrangements or forged or fraudulent documents and the validity, performance and enforcement of a document may be limited or affected by bankruptcy, insolvency, administration or similar laws affecting creditors' rights generally. It further means that, unless the parties enter into an agreement made after an actual default in respect of repossession or other enforcement measures, enforcement must be carried out in accordance with the Enforcement Act.

### **Chapter III Arbitration and Other Non-court Proceedings**

- 1. What steps are to be taken to enforce arbitration clauses? Please cite the relevant legislation/rules.**

According to the Arbitration Act<sup>28</sup> (*Voldgiftsloven*) section 1, the Arbitration Act is applicable to arbitration proceedings that are agreed between the parties to take place in Norway. The courts shall reject lawsuits if arbitration proceedings are agreed and one of the parties moves for a dismissal, cf. the Arbitration Act section 7. The court may accept the case if it finds that the arbitration agreement is invalid.

27. The Limitation Act of 18 May 1979 No. 18 (*Foreldelsesloven*).

28. The Arbitration Act of 14 May 2004 No. 25 (*Voldgiftsloven*).

**2. Is a clause in the Lease or a Security Document stating that the award passed by an arbitrator or arbitration tribunal be final and binding, enforceable in your jurisdiction?**

In principle the answer will be in the affirmative. The exception under Norwegian law is that an arbitration award can be set aside by the court if the court finds that the award should be regarded as invalid *inter alia* because of certain mistakes and errors of formalities, if the dispute is not subject to arbitration under Norwegian law or if the award is contrary to Norwegian public policy (*ordre public*). A foreign arbitration award shall be enforced in Norway insofar as such decision is recognized in Norway. Such award will be enforceable according to law<sup>29</sup> or treaty between Norway and the country that has jurisdiction over such arbitration award.<sup>30</sup>

**3. What are the cost and time implications of enforcing (a) domestic arbitration awards and (b) foreign arbitration awards respectively?**

Time and costs of enforcing domestic and foreign arbitration awards should, save for costs of translation of documents, be about the same and difficult to predict. The time is dependent on the court's workload and on whether the defendant makes objections against enforcement, and the costs, in addition to nominal court fees, will depend on the work necessary to have the award enforced. We may, however, indicate costs in the area of Norwegian Kroner (NOK) 20,000–50,000 and a time frame of approximately two to three months.

**4. Are there any appeals provided against arbitration order or awards? If so, how many and how long will they normally take to be heard and decided?**

A Norwegian arbitration award may be set aside by the Norwegian courts only because of certain mistakes and errors of formalities, if the dispute is not subject to arbitration under Norwegian law or if the award is contrary to Norwegian public policy (*ordre public*).<sup>31</sup> An appeal against an arbitration award will have to be filed as a normal lawsuit before the courts, which under normal circumstances should render a judgment in the first instance after six to twelve months.

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29. The Arbitration Act Ch. 10.

30. Norway has ratified the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

31. The Arbitration Act Ch. 9.

**5. Can the Lessee (or the Grantor) hold up arbitration or other out of court proceedings or delay the same? If so, in what circumstances?**

The Lessee or the Grantor may try to delay proceedings, but according to the Arbitration Act, the arbitrators may proceed if a party does not produce pleadings or documents or if the party does not appear at a hearing.<sup>32</sup> However, the arbitration agreement may contain provisions in respect of procedure. The Lessee or the Grantor may also contest the validity of the arbitration award, but the options to do so are limited; see Chapter III.4 above.

**6. Pending arbitration, can interim orders be sought from the court to repossess an Aircraft and/or to secure recovery of the claims? If yes, what orders would be usual? Would these be granted upon conditions and, if so, what would those conditions be?**

The courts may grant interim orders pending arbitration in the same way and under the same rules as described under Chapter II.7 and Chapter II.8 above.<sup>33</sup>

**7. Can interim orders of arbitrators be enforced in the same way as interim orders given by a court? If not, how are they enforced?**

Arbitrators may grant interim measures but not interim orders.<sup>34</sup> Interim measures granted by arbitrators cannot be enforced. If such measures are not obeyed with by a party, the party seeking protection will have to seek an interim order from the courts.

**8. Has your country ratified the New York Convention and/or the Geneva Convention on enforcement of foreign arbitral awards?**

Norway has ratified the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards and The Protocol on arbitration clauses established in Geneva on 24 September 1923.

**9. What will be the usual cost of enforcing an arbitration award in your jurisdiction?**

The costs of enforcing a Norwegian arbitration award may be difficult to predict, because cost may depend on whether the defendant makes objections to

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32. The Arbitration Act s. 27.

33. The Arbitration Act s. 8.

34. The Arbitration Act s. 19.



enforcement and on the work necessary to have the award enforced. We may, however, indicate costs in the area of NOK 20,000–50,000.

#### Chapter IV Money Claims and Miscellaneous

- 1. Please describe briefly the procedure for filing and enforcing money claims such as unpaid rent, interest, costs and charges, and whether this is best done simultaneously with the repossession of, or enforcement against, the Aircraft or separately. In either case, what precautions should be taken to preserve such claims?**

Money claims that are based on certain documents, including written acknowledgments of debt, promissory notes, bills of exchange, cheques and invoices, may be enforced directly by an application for enforcement to the enforcement authorities. If such written basis is not in existence, or if the basis is only an agreement, the party seeking satisfaction of its claims must file a lawsuit before the courts to obtain a judgment that can be used as the basis for enforcement. In either case the party seeking satisfaction of its claims should observe the applicable statute of limitation, which may vary from three years for invoices and claims based on agreements, three years for tort claims and up to ten years for claims under other documents.<sup>35</sup>

A lawsuit commences with a writ of summons filed by the plaintiff, outlining and documenting the claim. The court will serve the writ on the defendant and set a time limit of normally three weeks for rebuttal. The court may decide that the parties shall exchange further pleadings to explain matters. The Court of First Instance (*tingretten*) shall normally hear the matter and hand down a judgment within six months from the filing of the writ.

A claim for repossession of an Aircraft is not a money claim; therefore a claim for enforcement of payment should be filed separately.<sup>36</sup>

- 2. What are the usual procedures, their cost and time implications for enforcing maintenance provisions, reporting requirements or other parts of the Lease without seeking repossession?**

We believe observance of maintenance provisions may best be enforced by, or with the help of, the aviation authorities. If the Lessor suspects that the Lessee does not carry out maintenance in accordance with applicable maintenance requirements (be they contractual or statutory), the Lessor may consider contacting the competent aviation authorities and request the aviation authorities to enforce compliance.

35. The Limitation Act of 18 May 1979, No. 18 (*Foreldelsesloven*) ('Limitation Act').

36. The Enforcement Act s. 13-5.

However, non-observance of maintenance provisions, reporting requirements or other parts of the Lease may form the basis for a lawsuit filed with the courts, in which the Lessor may either claim a judgment that imposes a duty for the Lessee to undertake specific actions, such as maintenance, or claim compensation for loss as a consequence of the Lessee's non-compliance with the Lease.

**3. Can interim measure, such as attachment before judgment, be sought when loss or damage is imminent?**

If the actions of the Lessee give reason to fear that the enforcement of the claim under the Lease will be made impossible or substantially more difficult or have to take place outside Norway, the Lessor may apply for an interim order; cf. Chapter II.8 above.

**4. Please specify the portions of the above which do not apply to engines or where other steps may be necessary to enforce rights of a Lessor or a Security Interest Holder in respect of aircraft engines or spare parts.**

The above should in principle be applicable to engines and spare parts. However, if engines and spare parts are not in the possession of the Lessee, the considerations may be different and any application for interim measures will have to take into account that possession is with another party and may also have to be directed against such third party.

## **Chapter V Bankruptcy**

**1. Are the rights of Lessors or Security Interest Holders, to detain, repossess and/or sell an Aircraft, affected in case of a bankruptcy of the Lessee (or the Grantor)?**

The Lessor's right of ownership to the Aircraft is not affected by a bankruptcy of the Lessee,<sup>37</sup> and Security Interest Holders' rights under perfected liens are as a point of departure not affected by a bankruptcy of the Lessee. However, a bankruptcy may delay repossession by the Lessor and enforcement by Security Interest Holders of Security Interests, because the bankruptcy trustee has the right to consider the situation and determine how to proceed. On the other hand, a bankruptcy may speed up repossession from a reluctant Lessee, because the bankruptcy trustee may want to re-deliver an Aircraft to the Lessor, in order to minimize costs.

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37. The Bankruptcy Act of 8 Jun. 1984, No. 58 (*Konkursloven*) ('Bankruptcy Act'), s. 17.

It should be noted that the bankruptcy estate of the Lessee under Norwegian law may choose to continue the Lease.<sup>38</sup> The estate will then be responsible for Lease payments.<sup>39</sup> It may be expected that a bankruptcy estate rarely will want to continue a Lease and would rather re-deliver the Aircraft in order to reduce costs.

**2. What precautions can be taken where a bankruptcy of the Lessee (or the Grantor) is imminent?**

One should remember that self-help as a main rule is not allowed under Norwegian law, see Chapter 1 above. If the Lessee agrees, however, one may consider having the Aircraft re-delivered prior to opening of bankruptcy proceedings, dependent on the circumstances.

**3. What preferential payments rank above unsecured money claims, in the event of bankruptcy of a Lessee (or a Grantor)?**

In a bankruptcy in Norway the following claims have a preferential status: First, claims in connection with the bankruptcy proceedings; second, certain claims for wages and similar claims from employees of the bankrupt entity; and third, claims for taxes, duties and value added tax from the Norwegian authorities.<sup>40</sup>

**Chapter VI Non Consensual Liens and Rights & Security Interests Generally**

**1. Has your country ratified the 1933 Rome Convention on the Unification of Certain Rules relating to the Precautionary Arrest of Aircraft?**

Yes, the Rome Convention of 29 May 1933 on the Unification of Certain Rules relating to the Precautionary Arrest of Aircraft was ratified by Norway on 9 June 1939.

**2. Has your country ratified the 1948 Geneva Convention on the International Recognition of Rights in Aircraft?**

Yes, the Geneva Convention of 19 June 1948 on the International Recognition of Rights in Aircraft was ratified by Norway on 12 February 1954.

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38. The Act of 8 Jun. 1984, No. 59 on Satisfaction of Creditors' Claims (*Dekningsloven*), s. 7-3.

39. The Act on satisfaction of creditors' claims s. 7-4.

40. The Act on satisfaction of creditors' claims ss 9-2, 9-3 and 9-4.

- 3. Has your country ratified the Cape Town Convention on International Interests in Mobile Equipment and the related Aircraft Equipment Protocol? If so, what was the date of ratification and did your country make any declarations pursuant to any of Articles 52, 53, 61, 66, 68, 69, 70, 71, 73 or 76 which are currently in force?**

No, the Cape Town Convention of 16 November 2001 has not yet been ratified by Norway. However, on 18 June 2010 the Norwegian Government made a proposal (Prop 153 LS (2009-2010)) to the Norwegian Parliament to ratify the Cape Town Convention and the related Aircraft Equipment Protocol. As of July 2010 the proposed bill lies with the Committee of Justice in the Parliament.

If the Parliament adopts the bill, the Cape Town Convention and the related Aircraft Protocol will be implemented into Norwegian law by way of an act. A registered security under the Cape Town Convention and the related Aircraft Equipment Protocol may then serve as a legal basis for enforcement under Norwegian law.

- 4. Has your country ratified any other international conventions that relate to Aircraft liens?**

No.

- 5. What types of Security Interest in Aircraft are available in your jurisdiction?**

The main document establishing a security interest in an Aircraft is a mortgage. However, any document that purports to establish, change, transfer, encumber, recognize or cancel a right that has an Aircraft as its object may be recorded in the NCAR, provided the Aircraft is registered there.<sup>41</sup>

- 6. Which laws would, according to the rules of private international law of your jurisdiction, apply to the creation of a Security Interest in Aircraft?**

In Norway the laws of the state where the Aircraft is registered as to nationality, will as a main rule apply to the creation of a security right in an Aircraft.<sup>42</sup> An Aircraft operated by a Norwegian operator shall normally be registered in the NCAR,<sup>43</sup> and the Aviation Act contains provisions in respect of registering Security Interests. The Security Interest (a mortgage) in an Aircraft may under Norwegian law on certain conditions<sup>44</sup> also comprise engines and spare parts in stock at

41. The Aviation Act s. 3-22.

42. The 1948 Geneva Convention Art. 1, the Aviation Act Part 1 Ch. 3 E.

43. The Aviation Act s. 2-2.

44. The Aviation Act s. 3-39.

specific locations, both in Norway and in another state being party to the 1948 Geneva Convention. However, when engines or spare parts are separated from the Aircraft for a longer time than just temporarily (and consequently can no longer be considered an integrated part of the Aircraft or spare parts in stock at specific locations subject to a Security Interest), it is assumed that such engines and spare parts may be considered moveable property and the creation of Security Interests in respect thereof shall be subject to the rules of the state of storage (*lex rei sitae*).<sup>45</sup>

**7. Will the courts of your jurisdiction recognize foreign law security rights in Aircraft and allow the enforcement thereof in your jurisdiction? If so, what requirements will have to be met for recognition and enforcement respectively?**

Norwegian courts will recognize certain foreign law security rights, including a mortgage securing a specified amount, in Aircraft registered in another state being party to the 1948 Geneva Convention, provided such rights have been legally established in accordance with the laws of the state of registration and the rights are registered in a public register of rights in such state.<sup>46</sup> A foreign mortgage must state a specific secured amount. Such foreign law security rights may be enforced in Norway, see Chapter VI.11 below, with certain modifications as to procedures.<sup>47</sup>

**8. Describe what formalities are required by the laws of your jurisdiction for the creation and perfection of a valid, binding and enforceable security right in an Aircraft:**

**(i) Must the Security Document be executed in a special way, i.e., as a deed or with notarization?**

A Security Document needs to be clear and concise, and shall contain only information that may be registered.<sup>48</sup> Such requirement normally means that commonly used English law mortgages may not be registered in Norway. Instead, the use of a standard Norwegian form of mortgage deed is used for registration purposes. The language of such document may be Norwegian, Danish, Swedish or English, although the register may require a translation to explain the contents of the document. Documents made out in other languages need to be translated by a translator authorized by Norwegian authorities. The signature on a mortgage deed must be certified by two persons being of age and resident in Norway, a Norwegian judge or deputy judge, a Norwegian attorney-at-law or authorized associate lawyer, a

45. Gaarder's International Private Law (*Internasjonal Privatrett*), 3rd edn (2000), 285.

46. The Aviation Act s. 3-43.

47. The Aviation Act ss 3-50-3-52.

48. The Registration Regulation ss 17 and 18.

Norwegian notary public or a foreign notary public.<sup>49</sup> If the signature on the mortgage is certified by a notary public outside the Nordic countries,<sup>50</sup> the signature of the notary public must be legalized or apostilled in accordance with applicable conventions.<sup>51</sup>

**(ii) Must the Security Document contain certain specific information in respect of the Aircraft, the secured obligations or otherwise?**

It is a requirement that a mortgage deed shall contain the following information: identification of the Aircraft (registration mark and/or make and serial number), the name and national identity number or organization number of the mortgagor, the name of the mortgagee, the amount and currency and the signature of the mortgagor. Mortgage deeds shall be submitted in duplicate – one original and one copy.<sup>52</sup>

**(iii) Must the Security Document be recorded in a public register or with any other regulatory or governmental authority or agency?**

In order to be perfected (obtain protection against third parties) (*ha rettsvern*), the security document establishing a Security Interest in the Aircraft must be registered in the NCAR.

**(iv) Are there any other steps to be taken for perfection, e.g., must the Security Document be consularized, legalized, apostilled?**

A Security Document executed abroad must be notarized and consularized, legalized or apostilled, as required by applicable conventions,<sup>53</sup> in order to be accepted by the NCAR.

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49. The Registration Regulation s. 20.

50. Denmark, Finland, Iceland, Norway and Sweden.

51. The Convention of 5 Oct. 1961 abolishing the requirement of legalization for foreign public documents.

52. The Registration Regulation s. 21.

53. The Convention of 5 Oct. 1961 abolishing the requirement of legalization for foreign public documents.

**9. Is there any way to restore, at a later stage (e.g., upon enforcement), any failure in taking any of the steps required for the perfection of a Security Interest in Aircraft?**

Registration of a mortgage can be done at any stage. However, under Norwegian insolvency laws there are provisions relating to fraudulent preference,<sup>54</sup> which *inter alia* may lead to annulment of a mortgage or other security right within a three-month period from the perfection of the mortgage or other security right, in the case of insolvency proceedings in respect of the Grantor, if such mortgage or other security right is not perfected without undue delay after the debt being secured by such mortgage or other security right is incurred.

It should also be noted that a mortgage will take priority from the date of registration. If registration is delayed, the mortgagee will have the risk that other liens are registered earlier and will have a higher priority.

**10. Are there any continuation or renewal requirements with respect to a Security Interest in Aircraft under the laws of your jurisdiction?**

Registration of an aircraft mortgage will cease to be in effect five years after a clearly expressed expiry date of the mortgage. If no such date is expressed, the mortgage will cease to be in effect on the date ten years from registration of the mortgage in the NCAR. If the document expresses a minimum time of validity, the mortgage ceases to be in effect five years after the expiry of such minimum time.<sup>55</sup>

A mortgage must be reregistered with the NCAR before the expiration in order to maintain the effect of the registration.

**11. Summarize the rules applicable to enforcement of a Security Interest in an Aircraft expressed to be governed by the laws of your jurisdiction.**

A mortgage will normally form the basis for enforcement of a security right in an Aircraft registered in Norway. Enforcement will have to be carried out in accordance with the provisions of the Enforcement Act.<sup>56</sup> The Security Interest Holder may apply for 'forced use' (*tvangsbruk*) of the Aircraft, that is, the court decides to give the Security Interest Holder the right to operate the Aircraft or, more likely, for a forced sale (*tvangssalg*) of the Aircraft. An application for enforcement of a Security Interest must describe the matter and the Aircraft, name the claim, the parties' names and their addresses; and explain and document the legal grounds for the enforcement, which *inter alia* means to document the claim against the Lessee

54. The Act on satisfaction of creditors' claims ss 5-7 and 5-9.

55. The Aviation Act s. 3-34.

56. The Enforcement Act Ch. 11.

and the mortgage securing such claim.<sup>57</sup> The Lessor (the registered owner), any beneficial owner (if known to the applicant and being different from the registered owner), and a debtor of the secured claim that is not the mortgagor, shall be named as defendants.<sup>58</sup>

After having received the application for enforcement, the court will consider and try the application on a preliminary basis. If the court decides that the application satisfies certain formal requirements, the court shall serve the application on the defendants with a time limit of one month to file any rebuttal relevant to enforcement.<sup>59</sup> At the same time the Lessor and the captain of the aircraft (operator) shall be served with the information that the Aircraft shall be grounded at a place specified by the court and that the Aircraft may not leave Norwegian jurisdiction. The court may seize the aircraft documents. The court may, after having heard the applicant, consent to the aircraft being operated, pending enforcement proceedings.<sup>60</sup> However, a forced sale can take place only when the Aircraft is within Norwegian jurisdiction.

The court then decides whether the Aircraft shall be subject to forced use (*tvangsbruk*), or whether it shall be sold, either by assistance of a court appointed assistant or by auction.<sup>61</sup> The enforcement will then be carried out in accordance with the procedures described in the Enforcement Act.<sup>62</sup>

**12. Would a change in the registration as to nationality of an Aircraft affect any existing Security Interest in respect thereof?**

A deregistration of an Aircraft from the NCAR can be carried out only with the consent of the registered Security Interest Holders. The NCAR will record the application for deregistration or any other reason for deregistration, but such recording does not affect the registered Security Interest.<sup>63</sup>

**13. Summarize the property laws of your jurisdiction to the extent they contain accession rules which would not permit engines or other spare parts to be separately encumbered.**

The registered title to an Aircraft is vested in the party that the NCAR designates as the owner of the Aircraft or as the party entitled to dispose over the Aircraft as if it were the owner. The party that has the registered title to the Aircraft also has the legal title to the engines, propellers, equipment, instruments and other parts that

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57. The Enforcement Act ss 5-2, 11-2 and 11-6.

58. The Enforcement Act s. 11-4.

59. The Enforcement Act s. 11-7.

60. The Enforcement Act s. 11-10.

61. The Enforcement Act s. 11-12.

62. The Enforcement Act s. 11 Parts II, III and IV.

63. The Aviation Act s. 3-8.



belong to the aircraft, unless the NCAR states that a different party has the legal title to these objects.<sup>64</sup>

If a Security Interest encompasses an Aircraft, including its engines and other parts as referred to in the previous paragraph, the Security Interests in such engines and parts are not lost if these objects are removed temporarily from the Aircraft. It has been assumed by the law committee preparing the Aviation Act that inclusion of an engine in a pool arrangement may not be regarded only as a temporary de-installation<sup>65</sup> and inclusion of an engine in a pool arrangement may lead to loss of the Security Interest in such engine.

The engines and spare parts may not be separately recorded in the NCAR, and cannot be separately encumbered by way of a mortgage; see Chapter VI.14 below.

**14. Can engines or spare parts (including future spare parts) be made subject to a Security Interest? If so what formalities must be complied with?**

A mortgage in an Aircraft may, under Norwegian law on certain conditions, also comprise engines and spare parts in stock at specific locations, be it in Norway or in another state being party to the 1948 Geneva Convention.<sup>66</sup> The mortgage must describe the location(s) of the storehouse(s) and the make and models and approximately number of engines and spare parts stored, and each storehouse or storage room must have a placard notifying the public about the Security Interests and the name and address of the mortgagee.

Engines and spare parts, in case they are not considered part of an Aircraft and thereby included in the Security Interest in such Aircraft, may be pledged by a possessory lien.<sup>67</sup> This requires that the pledgee, or a third party on its behalf, takes possession of such engines and spare parts.

**15. Do the laws of your jurisdiction recognize the concept of a security trustee, i.e., a person who holds collateral and rights under Security Documents in trust for financiers? Are there any special issues to be taken into consideration under the laws of your jurisdiction in the event a security trustee is involved in a transaction?**

Norwegian law does not contain any specific provisions as to trusts and trustees, and there are no specific trust laws in existence. However, in Norway there is a long tradition that an agent may hold the security on behalf of the lenders.<sup>68</sup> A security trustee will be considered an agent of the lenders. The loan documentation must

64. The Aviation Act s. 3-23.

65. Official Norwegian Reports (*NOU*) 1991:18, 19.

66. The Aviation Act s. 3-39.

67. The Liens Act s. 3-2.

68. Sjur Brækhus, *Omsetning og kreditt 2*, 2nd edn (1995) ('Brækhus'), 310.

contain provisions giving the agent the right to claim payment, act against the Lessor and enforce the Security Interests on behalf of, and for the benefit of, the lenders and include specific payment obligations of the Lessor to the agent in order to unite the positions of claimant and Security Interest Holder.<sup>69</sup>

**16. Has your country ratified the Convention on the Law Applicable to Trusts and Their Recognition of 1 July 1985?**

No.

**17. Can a Lessor assign its rights under a Lease by way of security? What formalities, such as a notice to the Lessee, must be complied with?**

A Lessor may assign its rights under a Lease by way of security, provided there are no restrictions on assignment in the Lease. Because Norwegian law accepts that the parties of a contract submit to foreign law, such assignment may be governed by non-Norwegian law. However, under Norwegian law such assignment will be effective against Lessor's creditors and in Lessor's bankruptcy only when (i) constituting existing or specified future money claims and (ii) the Lessee has been given, and has received, notice of the assignment by way of security. The Lessee should be given notice as to whether the Lessor may receive payment until further notice or whether only the assignee(s) (in lieu of the Lessor) is entitled to receive money under the assigned money claims.<sup>70</sup>

An assignment by way of security is perfected by a notice to Lessee, that is, the obligor of the assigned claims.

**18. Can a Lessor assign its rights under manufacturer warranties by way of security? What formalities must be complied with?**

An assignment by way of security of Lessor's rights under manufacturer warranties will follow the same rules as described above under Chapter VI.17, and is subject to the same limitations and notice requirements.

69. The right of a Norwegian trustee to appear as a plaintiff on behalf of lenders and sue the borrower for payment is as of December 2009 subject to legal proceedings in Norway, in which the trustee both in the first instance and in the Court of Appeal has been rejected as a plaintiff. The case is on appeal to the Supreme Court of Norway.

70. The Liens Act s. 4-5, Brækhus, 130-133.

**19. Can a Lessee (or a Lessor) assign its rights under a hull insurance by way of security? What formalities must be complied with?**

An assignment by way of security of Lessee's or Lessor's rights under hull insurance will follow the same rules as described above under Chapter VI.17, and is subject to the same limitations and notice requirements.

**20. Are there any constraints or requirements on the form of any such assignment?**

There are no formal requirements to the notice to the obligor of the assignment by way of security, and the notice may in principle be given orally. However, to be able to prove that notice has been given, it should be sent by registered mail or an acknowledgement of receipt should be obtained from the obligor. The notice must clearly identify and mention the claim(s) that have been assigned by way of security and/or describe the legal situation (connection and relation) in which the assigned claims will arise.<sup>71</sup>

**21. Describe what formalities are required by the laws of your jurisdiction for the creation and perfection of a valid, binding and enforceable assignment by way of security in respect of rights under a Lease, manufacturer warranties and hull insurance:**

**(i) Must the security assignment be executed in a special way, i.e., as a deed or with notarization?**

No.

**(ii) Must the security assignment contain certain specific information in respect of the collateral, the secured obligations or otherwise?**

The security assignment should mention the secured obligations and contain clear information about the claim(s) that are being assigned by way of security and/or the legal situation (connection and relation) in which the assigned claims will arise, see Chapter VI.17 and VI.20 above.

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71. The Liens Act s. 4-4.

- (iii) **Must the security assignment be recorded in a public register or with any other regulatory or governmental authority or agency?**

No.

- (iv) **Are there any other steps to be taken for perfection, e.g., must the security assignment be consularized, legalized, apostilled?**

The requirements to the notice are described above under Chapter VI.17 and Chapter VI.20. There is no need for the security assignment to be consularized, legalized or apostilled.

- 22. Is there any way to restore, at a later stage (e.g., upon enforcement) any failure in taking any of the steps required for the perfection of a security assignment?**

Notice of the security assignment can be sent at any stage. However, under Norwegian insolvency laws there are provisions relating to fraudulent preference,<sup>72</sup> which, *inter alia*, may lead to annulment of an assignment by way of security within a three-month period from the perfection of the assignment by way of security, in case of insolvency proceedings in the assignor, if such assignment by way of security is not perfected without undue delay after the debt being secured by such assignment by way of security is incurred.

It should also be noted that an assignment by way of security will take priority from the date the obligor receives the notice. If notification is delayed, the assignee will have the risk that other liens are notified to the obligor and will have a higher priority.

- 23. Are there any continuation or renewal requirements with respect to security assignments under the laws of your jurisdiction?**

An assignment by way of security is not subject to statutory limitation,<sup>73</sup> and there is no need for renewal. However, the claim that is being secured may be subject to such limitation.

- 24. What laws apply to a security assignment on the rights under a Lease (or, as the case may be, manufacturer warranties or hull insurance)?**

Please see Chapter VI.17 above.

72. The Act of 8 Jun. 1984, No. 59 on Satisfaction of Creditors' Claims ss 5-7 and 5-9.

73. The Limitation Act s. 27 No. 3.

**25. Is the concept of assignment, where rights are transferred to another party, recognized in your jurisdiction?**

Yes, as a general rule, but subject to any applicable contract provisions, rights may be assigned to a new creditor. Obligations may not be assigned without the consent of the other party.

**If so:**

**(i) What formalities must be complied with (such as the consent of, or the giving of notice to, the obligor of the assigned rights)?**

The formalities depend on the contract, that is, whether the contract contains assignment restrictions. If no such restrictions apply, an assignment is carried out by an agreement between the assignor and the assignee. In order for the assignee to obtain protection from the creditors of the assignor, a notice of the assignment must be given to the obligor of the assigned rights.

**(ii) Does the assignee have collection or enforcement rights without the involvement of the assignor?**

Yes, provided the obligor has been given notice of the assignment.

**(iii) Can the assignee take legal proceedings without the involvement of the assignor?**

Yes, provided the obligor has been given notice of the assignment.

**26. Can a contract be novated, i.e., can a party to such contract be changed with the consent of the other party or parties?**

Norwegian laws contain no specific principles or concepts in respect of novation. The agreement(s) will be interpreted and considered as a new agreement, either entirely or as an amendment, and recognized as such.

**If so:**

**(i) What formalities must be complied with (such as the consent of, or the giving of notice to, the other party or parties)?**

All parties to the original agreement must consent.

**(ii) Does the new party have collection or enforcement rights without the involvement of the previous party?**

Yes.

**(iii) Can the new party take legal proceedings without the involvement of the previous party?**

Yes.

**27. Do the laws of your jurisdiction allow for detention rights or other forms of non-consensual liens?**

Yes.

**If so:**

**(i) What type of creditors (e.g., repairmen, air traffic control, fuel or catering suppliers, airports, employees) could exercise a right of detention?**

The Norwegian aviation authorities and the airport authorities may exercise a detention right and prevent the Aircraft from leaving the airport, to secure air traffic control charges and other fees and charges incurred in connection with the Aircraft's use of Norwegian airports or other facilities or services, if such charges are not paid when due or if there is not sufficient security for such payment.<sup>74</sup> The aviation authorities and the airport authorities may also detain another aircraft that has the same owner or operator to secure such payment. The right to detain an Aircraft may be used to secure the payment of landing, parking and starting fees in respect of an Aircraft's use of Norwegian airports.<sup>75</sup> As of November 2009 the right to detain an Aircraft has not been extended to secure the payment of Euro control route charges.

Any person entitled to salvage money, provided the rescue work was terminated in Norway, has the right to retain possession of the Aircraft as a security right.<sup>76</sup>

Repairmen may have a contractual detention right as security for repair costs.<sup>77</sup> If no such contractual right is in existence, it is assumed that the lack of any provision in the Aviation Act authorizing such detention right, combined with

74. The Aviation Act s. 13-2.

75. Section 7-7 of Regulation No. 1194 of 5 Nov. 2008 on fees regarding Norway's airports and air services, and s. 10 of the Regulation No. 1704 of 21 Dec. 2007 regarding fees on certain air safety services.

76. The Aviation Act s. 12-8.

77. Agder Court of Appeal (*Agder lagmannsrett*) RG 1993-1121.

an interpretation of the 1948 Geneva Convention, leads to the conclusion that repairmen do not have a detention right to secure repair costs.<sup>78</sup>

**(ii) Would the detention rights, if based on services supplied to the Lessee, be exercisable against the Lessor and the Security Interest Holder of the relevant Aircraft?**

Provided the detention right is legal and valid, cf. above under (i), and the services have preserved or added value to the Aircraft, the detention rights should also be valid against the Lessor and Security Interest Holders of the relevant Aircraft.<sup>79</sup>

**(iii) What remedies would the Lessor and/or the Security Interest Holder have against the person exercising the detention right?**

The Lessor and/or the Security Interest Holder may pay the claim, agree on alternative security with the detention right holder or file a lawsuit disputing the detention right.

**(iv) What is the position of the person rightfully exercising a detention right in the event of foreclosure, i.e., what are his entitlements to the proceeds of a public sale of the Aircraft?**

Provided the detention right is legal and valid, the detention right holder shall normally be the first to receive settlement of its claim.

**(v) What is the priority of detention rights in relation to prior Security Interests?**

Provided the detention right is legal and valid, the detention right holder shall normally be the first to receive settlement of its claim.

**28. Could creditors of the Lessee – not having a detention right – rightfully initiate:**

**(i) A pre-trial arrest of an Aircraft in your jurisdiction?**

No, arrest can be taken only over the assets of the obligor, that is, in this case the Lessee.<sup>80</sup>

78. Brækhus, 509.

79. Brækhus, 526, 528.

80. The Civil Procedures Act s. 33-1.

**(ii) An arrest in execution of an Aircraft in your jurisdiction?**

Please see (i) above.

**29. Could creditors of the Lessor – not having a detention right – rightfully initiate:**

**(i) A pre-trial arrest of an Aircraft in your jurisdiction?**

Please see Chapter II.1 above.

**(ii) An arrest in execution of an Aircraft in your jurisdiction?**

Please see Chapter II.7 and II.8 above.

**30. Can an Aircraft be detained in your jurisdiction for non-payment of navigation charges (charged by e.g., Euro control or similar agencies)? If so, in what circumstances?**

Please see Chapter VI.27(i) above.

**31. Can a non-consensual lien or other rights be exercised against any Aircraft in the fleet, other than the Aircraft which incurred the relevant navigation charges? If so, under what circumstances?**

Please see Chapter VI.27(i) above.

**32. Under what circumstances can governmental agencies in your jurisdiction requisition title to or use of an Aircraft and what remedies are available to the Lessor and the Lessee?**

Norwegian civil and military authorities may have the right to requisition of Aircraft if Norway is at war (or war threatens or the security of the country is a risk). In such case Lessor and Lessee have the right to demand requisition compensation in accordance with procedures and estimated values and rates laid down pursuant to the requisition laws.<sup>81</sup> If the parties do not reach an agreement as to the size of the compensation, the compensation shall be set by an appraisal by a court; in the case of military requisitions, by local appraisal committees; and in major cases, by a national central committee appointed by the government.

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81. The Act 15 Dec. 1950 (No. 4) Relating to Special Measures during War, Risk of War, etc., and the Act 29 Jun. 1951 (No. 19) Relating to Military Requisitions.



**Chapter VII Deregistration Powers of Attorney, Export Permit & General Issues**

- 1. To what extent is a deregistration power of attorney (DPoA), issued by the Lessee to the Lessor and or a Security Interest Holder, useful in enforcing rights of the Lessor or the Security Interest Holder?**

An agreement made prior to an actual default in respect of enforcement to be carried out that is not in accordance with the provisions of the Enforcement Act will not be valid; see Chapter I above. Consequently, the Lessee may refuse to respect a DPoA and may dispute its validity.

- 2. Does a DPoA require consularization/notarization?**

Yes, if issued abroad. But please see Chapter VII.1 above.

- 3. Is a DPoA required to be stamped or filed with any regulatory authority? If yes, what are the consequences of non-filing and non-stamping on the efficacy and enforceability of the DPoA?**

Please see Chapter VII.1 above. However, if issued abroad, a DPoA should be notarized and legalized or apostilled in accordance with applicable conventions.

- 4. What other levies, duties, taxes, if any, are required on a DPoA?**

None.

- 5. Can a DPoA be granted for an indefinite period and made irrevocable?**

Please see Chapter VII.1 above.

- 6. If the Lessee (or the Grantor) has given a DPoA in advance, can the same be revoked, and if so, in what circumstances?**

Yes. Please see Chapter VII.1 above.

- 7. Are there any other circumstances in which a DPoA may not be enforced?**

Please see Chapter VII.1 above.

**8. How long does deregistration of an Aircraft take where the Lessee (and the Grantor) cooperates?**

The normal requirement is that the registered owner of the Aircraft requests the Aircraft to be deregistered from the NCAR and moved to a foreign register. If any encumbrances are registered, the party with a right under the encumbrance must consent to deregistration. This means that if a Lease is registered in the NCAR with respect to the Aircraft, the Lessee must consent to deregistration.

If the deregistration and the move to a foreign register is well prepared (including having obtained necessary consents) and notified well in advance to the NCAR and the foreign register, the deregistration should be relatively quick and simple. It is important that the Aircraft has valid certificates, including a certificate of airworthiness, at the time of deregistration, because it may incur additional costs and cause delay to obtain valid certificates at such time.

**9. Are there any restrictions on re-export of the Aircraft on termination of the Lease or on enforcement of a Security Interest? Please specify the license or consensus, if any, needed for this purpose and how long does it take to get this and what costs are involved?**

There are no restrictions to re-export of the Aircraft after repossession or enforcement sale, however, assuming that the Aircraft will not be exported to a buyer for military or warfare purposes and not in violation with applicable United Nations or other international sanctions made applicable in Norway by law.

**10. Is it possible to obtain an export license/permit in advance?**

Yes, if the re-export of the Aircraft falls under any applicable export license requirements.

**11. Are there any restrictions on the sale of an Aircraft in your jurisdiction on termination of the Lease or on enforcement of a Security Interest?**

In principle there are no restrictions, but a sale out of court may require the consent of any Security Interest Holder of a registered lien in the Aircraft in order to sell the Aircraft free of encumbrances and in order to deregister the Aircraft from the NCAR.

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*Indonesia*

**Enny P. Widhya** is a partner at Mochtar Karuwin Komar, one of the oldest and biggest law firms in Jakarta, Indonesia. She has specialized in aircraft financing for the last 15 years. She obtained her degree in law and a master's degree in law from the University of Indonesia. She represents creditors, lessors and owners in aircraft financing projects, including purchases, financing, foreclosures and repossession. She was involved in the preparation of the new Aviation Law of 2009 in relation to the incorporation of the provisions of the Cape Town Convention which was ratified by the Government of Indonesia in 2007.

**Mr Mulyana** graduated from the Faculty of Law at Parahyangan Catholic University in 1987 and earned an LL.M. from Columbia Law School in 1994. He is a partner of the firm, specializing in commercial litigation and has handled various bankruptcy and aircraft repossession cases. He was involved in the preparation of the new Aviation Law in relation to the incorporation of the provisions of the Cape Town Convention.

**Sandi Adila** graduated *cum laude* from the Faculty of Law of the University of Indonesia in 2005 and joined Mochtar Karuwin Komar shortly thereafter. Sandi specializes in aircraft financing. He also deals with foreign investment and general corporate matters and has been involved in various bankruptcy and insolvency cases, as well as commercial litigation cases. He was involved in the preparation of the new Aviation Law in relation to the incorporation of the provisions of the Cape Town Convention.

*Israel*

**Isaac Winder**, Adv., is a leading aviation law expert, with over thirty years of experience in aviation matters including litigation, aircraft sale and lease transactions and regulatory matters. Mr Winder is a partner in Herman, Makov & Co. – a leading Israeli law firm specializing in civil law and especially in aviation law,

technology law, insurance law and commercial law. The firm was established in 1948. It has twenty-five lawyers, five of them devoting substantially all of their time to aviation and related matters. The firm represents several international airlines in Israel.

**Avner (Nery) Yarkony, Adv.,** is a leading Israeli aviation expert. He is practicing law in Tel Aviv (L.L.M) since 1990, and deals primarily in aviation litigation, regulatory and certification matters. Mr Yarkoni combined throughout the years the careers of an aviation lawyer and a pilot. Mr Yarkoni was the D.A. of the I.D.F's Central Command (1996–1998) and the D.G. of Israeli CAA (1998–2001). He holds an air accident investigator certificate (1986), and still serves as a Colonel (Res.) in the Israeli Air Force flying the F-16. Mr Yarkoni holds a commercial license as well (1982) for flying a Boeing 747.

### *Italy*

**Avv. Gabriele Bricchi** joined Pirola Pennuto Zei & Associati in 1997. Admitted to the Law Society in 1993, his areas of expertise include Company and Commercial law, M&A, Antitrust and Aviation.

Gabriele is the author of following publications: Law Profile of Italy (British Council), Aircraft Finance and Aircraft Liens and Detention Rights (Sweet & Maxwell), Guida Fiscale delle Società 2006 (Il Sole 24 Ore), and has written various articles and lectures.

**Avv. Alessandro Manca** joined Pirola Pennuto Zei & Associati in 2005. He was admitted to the Law Society in 2008. Areas of Expertise: Company and Commercial law, Competition, IP and IT law, Aviation.

### *Malaysia*

**Fuzet Farid** is a transactional shipping and aviation lawyer based in Kuala Lumpur. She is a former partner of a Malaysian law firm and head of the shipping and aviation practice group.

Fuzet has considerable experience in the transportation and offshore oil and gas sectors, representing international and local financial institutions, airline and shipping companies, and aircraft and ship lessors. Fuzet enjoys the recognition of legal directories as a leading individual in Malaysian shipping & aviation law.

Fuzet has advised on a wide range of financing facilities and transactions for commercial airline aircraft, fixed-wing aircraft and helicopters including syndicated and structured debt financing, cross border leasing and off-balance sheet structures.

Fuzet was a graduate of the University of Cambridge, Downing College in the United Kingdom and holds a Masters Degree from the University of Southampton. She was admitted to the English Bar, Middle Temple Inn in July 1993, the Malaysian Bar in 1994 and the Singapore Bar in 2000.

*New Zealand*

**Frank Porter** is a senior partner in Buddle Findlay's Auckland office. He has practised in the area of aircraft financing and leasing for over twenty years. During that time Mr Porter has advised various banks, leasing companies, airlines, manufacturers and export development agencies. He has been involved in the repossession and recovery of aircraft following the collapse of two airlines in New Zealand over the last decade. Mr Porter has authored various articles on aspects of aircraft financing.

**Anita Birkinshaw** is a Senior Associate in Buddle Findlay's commercial litigation team. She has particular experience in disputes involving complex commercial contracts, including multi-party and international claims and regularly advises on recovery and enforcement issues. Ms Birkinshaw is experienced in the resolution of aviation-related disputes including aircraft recovery and product liability issues and claims under the Montreal Convention. Mrs Birkinshaw has an LL.M. from the Université Paris 1 (Sorbonne) and has worked as a litigator in the United Kingdom and in France.

**Anna-Louise Oliver** is a solicitor in the Auckland office at Buddle Findlay, New Zealand. After graduating from the University of Otago she was admitted to the bar in 2008. She advises in the corporate and commercial as well as banking and financing areas, including, in particular, aircraft financing and leasing. Mrs Oliver co-authored the New Zealand chapter in *Getting the Deal Through – Air Transport 2010* (September 2009; contributing editor: John Balfour – Beaumont & Son – Aviation at Clyde & Co. LLP).

*Norway*

**Paul Sveinsson** was formerly General Counsel of Den norske Bank ASA (now DnB NOR Bank ASA) and has wide experience as advisor to and counsel for airlines, banks and finance institutions, listed and private companies in connection with aviation, banking, financing transactions, securities and regulatory matters in such fields. Mr Sveinsson assists both Norwegian and foreign clients within his areas of expertise. His work also comprises litigation, mainly in banking and finance, and appointments as an arbitrator. He is a member of the Norwegian Bar Association, the International Bar Association and of the Fraud Network – <[www.thefraudnetwork.com](http://www.thefraudnetwork.com)>.

*Philippines*

**Jose Luis V. Agcaoili** was designated as Managing Partner of the law firm of Agcaoili and Associates in April 2001, and continues to exercise general supervision over all areas of practice as well as the preparation and handling of the work output of each member of the firm. He also exercises administrative control over paralegal and support staff, as well as the management of the firm's finances.

He obtained his Bachelor of Science degree in Business Management from De La Salle University and graduated with honours in 1981. Mr Agcaoili obtained his Bachelor of Laws degree from the University of Santo Tomas Faculty of Civil Law in 1987 and passed the Bar Examination taken during the same year. He joined the firm as Associate Attorney in 1988 and has since had extensive practice in Aviation and Aircraft Finance, Banking, Corporate and Commercial Law and litigation, Arbitration, and other forms of Alternative Dispute Resolution, Energy, Family Law, as well as Labor and Criminal litigation.

Concurrent with his active law practice, Mr Agcaoili worked as Chief of Staff at the Philippine Senate from the years 1992–1998, during which he was involved in legislative research, policy formulation and various proceedings of the Senate Committees on Health, Banking, Ways and Means, Games and Amusement, and Foreign Relations.

Mr Agcaoili is currently a Director of the Philippine Bar Association. He is also the Treasurer and a Director of the La Salle Greenhills Alumni Lawyers' Association, and a Director of the Merville Park Homeowners' Association.

Practice Areas: Aviation and Aircraft Finance, Banking, Corporate and Commercial Law and Litigation, Arbitration, and other forms of Alternative Dispute Resolution, Energy, Family Law, as well as Labor and Criminal litigation.

#### *Poland*

**Anna Burchacińska-Mańko, Krystyna Marut, Edyta Michalak** – MMMLegal Legal Counsels, aviation lawyers with vast experience in airline, airport and ground handling business in the context of Polish, EU and international law. They specialize in aviation safety, aircraft operator and air carrier liability, leasing and financing of aircraft and engines, charter contracts, handling contracts and aircraft maintenance contracts. They represented airlines regarding consumer protection issues. They gained experience working for airlines and airports, including LOT Polish Airlines and 'Polish Airports' State Enterprise. They advised international aviation organizations as well as lectured and published on aviation law.

#### *South Africa*

**Brian Webber** was admitted as an attorney to the High Court of South Africa during 1979 and has practised since 1982 as a director of Ramsay Webber Inc.

Mr Webber has held a private pilot's license for more than 20 years and has in excess of 800 hours flying experience. He represents both the national carrier and a low-cost airline in South Africa and represents Pilatus Aircraft Company in its South African operations. He has represented South African banks in the repossession of aircraft both locally and internationally.

**Angelo Tzarevski** obtained a LL.B. degree from the University of the Witwatersrand in Johannesburg, South Africa. The following year he undertook a judicial clerkship with the Hon. Justice Kathleen M. Satchwell of the High Court of South Africa and

completed a LL.M. degree in Commercial Law, specializing in company law, the law of banking & financial markets, mergers and acquisitions.

He joined Ramsay Webber Inc in 2009. Since joining he has been involved in a wide array of commercial litigation disputes for clients ranging from private individuals to blue-chip entities and airlines, and has written a number of legal opinions for major commercial airlines involving aviation related issues.

#### *Turkey*

**M. Ali Kartal** gained his law degree in 1984 at the Ankara University Faculty of Law in Ankara, Turkey. He completed his training at the AYBAY & AYBAY Law Firm and was admitted to the Istanbul Bar in 1987. He worked as in-house counsel for IBM Turkey Limited between 1989 and 1993. In 1994 he obtained his Commercial Pilot License and Flight Instructor License in the USA. After that he worked as a private practitioner until 2002, focusing mainly on corporate law, labour law and aviation law. In 2002 he joined the AYBAY & AYBAY Law Firm as a partner. He is presently the managing partner of the firm. AYBAY & AYBAY specializes in maritime law, aviation law, insurance law, corporate law and dispute resolution.

#### *United Arab Emirates*

**Amna Al Jallaf**, Founder and Managing Partner, Al Jallaf & Co. She is a graduate of The American University, Washington DC, USA and is fluent in both Arabic and English. She is a licensed advocate before all Courts in the UAE. She was the founder of Al Jallaf Advocates & Legal Consultants (now Al Jallaf & Co).

She advises on all aspects of national and international aviation law and regulations, corporate and commercial, commercial agencies/distributorships, maritime disputes & arrests, insurance coverage and claims disputes, banking and finance matters, construction law claims and disputes, real estate transactions and disputes, and various other commercial and corporate transactions and disputes.

**Nouraddin A. Ahmed**, Partner at Al Jallaf & Co. He is a graduate of the Faculty of Law at the University of Khartoum from where he graduated in 1981 with a LL.B. (honours).

An ex-partner of Denton Wilde Sapte with twenty-five years of international experience, Nouraddin is undoubtedly one of the most experienced lawyers in the Middle East region. His speciality focuses in the areas of project finance and banking, infrastructure construction and energy projects, intellectual property, securities, insurance, taxation, mergers & acquisitions, commercial agencies, etc. He is an expert on Oman law. Besides his specialization in corporate and commercial areas, Mr Ahmed is an experienced, tactful and proficient litigator.



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**Geoffrey Dillon-Leetch** graduated from the University of Dublin, Trinity College in 2004. He is a Solicitor admitted to practice in Ireland, England and Wales and qualified in early 2009. He trained with a large commercial firm in Dublin and London before moving to the UAE to join Al Jallaf & Co. in mid-2009. Mr Dillon-Leetch trained in a wide variety of areas during his traineeship, both contentious and non-contentious. He specializes in aviation, finance, corporate and commercial matters.