

International Comparative Legal Guides

Aviation Finance & Leasing

A practical cross-border resource to inform legal minds

Seventh Edition

Contributing Editor:

Philip Perrotta

K&L Gates LLP



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1 General and Contractual

1.1 What are the typical structures available for financing the purchase of an aircraft?

The purchase of commercial aircraft registered in the Finnish Aircraft Register is typically funded by external financing. Finnish airlines both own and lease aircraft in their fleet. The lessors providing services to Finnish airlines are mostly foreign entities that may be debt as well as equity financed. There have also been some aircraft lease securitisations originated by these lessors and involving Finnish aircraft leases.

1.2 What are the key advantages/disadvantages and main issues arising in relation to these financing structures?

Usually, due to the international nature of the arrangements, the finance documents are governed by the laws of the lessor's or financier's jurisdiction, or another jurisdiction commonly used in international financing, such as England or New York. Where the finance documents are governed by the laws of a jurisdiction outside the European Economic Area (EEA), they are also typically subject to the jurisdiction of such non-EEA courts. A judgment rendered by such non-EEA courts may not be directly enforceable in Finland, and enforcement in Finland may require separate proceedings.

Irrespective of the financing structure, a Finnish law mortgage is the only way to take effective security over a Finnish registered aircraft and its constituent parts (please see section 4 below).

1.3 What types of leasing are possible under the laws of your jurisdiction? What are their essential characteristics?

Finnish law does not set specific restrictions on the types of leasing arrangements possible. The choice between different types of leases is typically driven by commercial and accounting aspects. Operating leases, financial leases, sale and leaseback arrangements and Japanese Operating Leases with Call Options (JOLCOs) are seen in the market. Wet leases are used by the airlines to cover capacity shortages resulting, for example, from maintenance breaks.

1.4 Are there any proposals for reform in the area of aviation finance?

Finland has not ratified the Cape Town Convention. The Finnish Ministry of Justice has a long-term project on the question of Finland's need to ratify the Cape Town Convention, but there have been no developments published by the Ministry of Justice on the subject in over a decade.

Separately, a political working group was set up to discuss the possibility of ratification. The working group concluded that the ratification could take place in connection with a general overhaul of the Finnish legislation relating to vehicle, vessel and aircraft mortgages in the future. The general overhaul is predicted to have an impact on, among other things, the process of registration of mortgages and the establishment of security over Finnish aircraft; however, the nature of the changes has not yet taken shape.

1.5 Is it possible according to the laws in your jurisdiction to enter into non-binding or partially binding pre-contractual agreements (e.g. 'letters of intent') that will NOT take effect as fully enforceable agreements?

Yes. Letters of intent are recognised by Finnish law and it is possible to enter into non-binding or partially binding letters of intent.

1.6 Is there a doctrine of 'good faith' in your jurisdiction that applies to all pre-contractual agreement, financing and leasing transaction documents, and the conduct of parties connected to them?

Yes. Prospective parties are generally required to negotiate and conduct in good faith. Negotiating in bad faith may result in pre-contractual liability.

2 Taxation and Related Matters

2.1 Which government authority in your jurisdiction has primary responsibility for the accounting for and regulation of revenue control and taxes?

The Finnish Tax Administration has primary responsibility for tax control and collection of tax revenue. In addition, Finnish Customs is responsible for collecting customs duties and similar charges. National tax legislation is prepared by the Ministry of Finance and enacted by the Finnish Parliament.

2.2 What are typically the taxes in your jurisdiction that may arise in relation to a sale, a lease or a financing of an aircraft or an engine?

Aviation finance and leasing transactions in Finland may give rise to certain tax issues. The following is a brief discussion of a few selected tax issues that are commonly addressed in the case of a foreign entity selling, financing or leasing an aircraft or engine to a Finnish resident.

Corporate income tax and Finnish-sourced income

A foreign entity that is engaged in business through a permanent establishment in Finland is subject to Finnish corporate income tax at a rate of 20% on any income attributable to the permanent establishment. The taxable income broadly includes both rental income and capital gains. However, in prevailing taxation practice, the mere cross-border leasing of an aircraft by a foreign entity to a Finnish resident has not been deemed to give rise to a permanent establishment in Finland.

A foreign entity that is not engaged in business through a permanent establishment in Finland may still be liable to Finnish tax on certain Finnish-sourced income, unless the applicable double-tax treaty restricts Finland's taxing rights. Generally, rentals payable by a Finnish lessee to a foreign entity (lessor) on the lease of an aircraft or engine would not be regarded as Finnish-sourced income. In addition, interest payable by a Finnish borrower to a foreign entity (non-resident lender) is in turn exempt from tax under Finnish domestic tax laws.

Based on the foregoing, foreign entities are normally not subject to any Finnish tax on a sale, lease or financing of an aircraft or engine.

Withholding tax

As rentals and interest payables by a Finnish lessee or borrower to a foreign entity (lessor or lender) are either not regarded as Finnish-sourced income or are, alternatively, exempt from tax, no withholding tax applies to such payments.

2.3 Is the provision of a current tax-residency certificate by a payee sufficient for a lessee or a borrower potentially subject to withholding taxes in your jurisdiction on rental or interest payments to avail itself of treaty access and the mitigation of tax liability?

As rental payments to a foreign entity (lessor) are not regarded as Finnish-sourced income, there is, at the outset, no requirement for the payee (lessor) to provide a tax-residency certificate. However, with respect to interest payments, there is a specific requirement for the payee to provide the lender with information supporting its non-tax-resident status. The payee should provide the lender with its name, identity code number, the address in the state of tax residence and the tax-residency certificate from the state of tax residence.

Owing to the foregoing, tax treaty access is at the outset of less relevance since no tax is generally payable or withheld under domestic Finnish tax laws (see question 2.2 above).

2.4 Has the advent of BEPS (the Base Erosion and Profit Shifting initiative of the OECD) had any effect as regards structures in aviation finance and leasing or their interpretation?

The advent of BEPS has, to date, not had any direct effect on structures generally applied in aviation finance and leasing.

2.5 What are the typical thresholds in your jurisdiction for which a permanent establishment may be triggered under the terms of any relevant double-tax treaty or similar?

Finnish tax treaties generally follow the OECD Model Tax Convention and, consequently, *inter alia*, a place of management, an office or a factory may give rise to a permanent establishment. For example, a foreign entity that carries on the business of leasing at a fixed place of business within Finland may be subject to Finnish corporate income tax (through the creation of a permanent establishment). However, as mentioned under question 2.2 above, in prevailing taxation practice, the mere cross-border leasing of an aircraft or engine by a foreign entity to a Finnish resident has not been deemed to give rise to a permanent establishment in Finland. Then again, as of tax year 2021, the concept of place of effective management has been introduced to determine the tax residency of a foreign entity in Finland. Accordingly, a foreign entity could be regarded as generally liable to tax in Finland if its place of effective management, i.e. the location where the day-to-day decisions of the highest company organ are made, is located in Finland. As of yet, there is no legal praxis on the interpretation of the new rules.

2.6 Is the authority at question 2.1 likely to establish a 'look-through' right or similar as regards a lender or a lessor that is a special-purpose vehicle involved for the purpose of tax treaty access?

As access to tax treaty benefits requires beneficial ownership, the Finnish Tax Administration may establish a look-through approach. However, tax treaty access is, at the outset, of less relevance since no tax is generally payable or withheld under domestic Finnish tax laws (see question 2.2 above).

2.7 Will the import of an aircraft into your jurisdiction and/or the sale or leasing of the aircraft give rise to any VAT, sales or use taxes or any customs import or excise duties?

Assuming that the aircraft is acquired and used by an airline operating for reward chiefly on international routes, there should be no VAT payable in Finland.

2.8 Are there any documentary taxes (for example, stamp duty payable on the execution of documents)?

There are, at present, no documentary taxes (e.g. transfer tax) applicable to the sale, lease or financing of an aircraft or engine in Finland.

3 Registration and Deregistration

3.1 Which government authority in your jurisdiction has primary responsibility for the regulation of aviation and the registration of aircraft? Is it an owner registry or an operator registry? If the aircraft register is an operator register, is it possible to record the details of an owner or lessor and any financier with an aircraft mortgage?

The Finnish Transport and Communications Agency, Traficom, is the governmental authority responsible for

aviation permit, registration, safety and security matters in Finland. Traficom maintains the Finnish Aircraft Register, which is a part of the Transport Register. The Aircraft Register is a register of owner, operator and mortgage information. It is possible to record the details of a mortgage holder in the register, although Finnish aircraft mortgages are typically made out to the bearer, and no mortgage holder information is registered. It is not possible to record the details of a financier that does not hold a mortgage over the aircraft.

3.2 What is the effect of registration of the aircraft? Does registration on your national aircraft register confer proof of ownership of the aircraft and/or engine?

The registration of an owner with the Finnish Aircraft Register constitutes primary evidence of ownership interest in the aircraft and its constituent parts and accessories, however such registration is challengeable in court proceedings by a party that can demonstrate a better right to the aircraft or its parts. In part because Finland has not ratified the Cape Town Convention, title to valuable aircraft parts (for example, engines) cannot be separately registered in the Finnish Aircraft Register (see question 1.4 above).

Complex questions may arise in determining the ownership rights or other rights *in rem* to engines and other parts. Generally, any transactions involving the main object (aircraft/airframe) would also concern the constituent parts and accessories thereof. For instance, if the main object was sold to a new owner in good faith, titles to its constituent parts and accessories also transfer to the purchaser of the main object.

3.3 Can foreign-owned aircraft be registered on your national aircraft register and are there limits or restrictions on the age of aircraft that may be registered or operated?

An aircraft can be registered in the Finnish Aircraft Register if the aircraft's owner or operator is a legal entity that is domiciled, or a natural person who is habitually resident, in a Member State of the EEA. If the place of residence or domicile is in an EEA country other than Finland, registration also requires that the aircraft's principal place of departure is Finland and that the owner, possessor or operator has a competent representative in Finland. Furthermore, Traficom may, at its discretion, decide to register an aircraft in Finland in special circumstances, provided that the aircraft has sufficient operational connections with Finland and that the aircraft owner, possessor or operator has a competent representative in Finland.

Any aircraft registered in the Finnish Aircraft Register must be certified as airworthy. When registering an aircraft, Traficom reviews the airworthiness criteria, which depends on whether the aircraft is imported from a European Union Aviation Safety Agency (EASA) Member State and whether the aircraft is new or used. Airworthiness of the aircraft is reviewed annually. Traficom may, at any time, cancel an airworthiness review certificate or ground the aircraft if it is suspected that the aircraft no longer meets the criteria for airworthiness.

3.4 Can aircraft leases be registered? If so, in what circumstances? Must the lease be in a particular form if it is to be valid and enforceable (for example, must it be in a particular language or be notarised, legalised or apostilled)?

Aircraft leases are not registered. There are no language requirements for the lease to be valid and enforceable in Finland, although Finnish or Swedish language translations may be required in connection with any dispute adjudicated in Finland. In transactions involving non-Finnish parties, lease agreements are typically made in the English language and governed by English law. There are no specific formality requirements, such as requiring a notary or apostille. However, after Brexit, enforceability of judgments rendered by English courts may be limited in Finland.

3.5 How is deregistration affected and what steps can a lessor take to deregister the aircraft on termination of the lease?

An application for deregistration is submitted to the Aircraft Register. The application is signed by the registered owner (lessor) of the aircraft. Where a mortgage is registered against the aircraft, the mortgage must be deregistered prior to deregistration of the aircraft.

4 Security

4.1 Is it possible to create a mortgage over an aircraft or engine in your jurisdiction? If so, what are the types of aircraft mortgage and engine mortgage available and what formalities are required in order to perfect it?

It is possible to create security over an aircraft by way of a Finnish law aircraft mortgage. An aircraft mortgage is created by a pledge agreement whereby the owner pledges one or several so-called aircraft mortgage promissory notes to the pledgee. The pledge is perfected by registering the aircraft mortgage promissory notes against the aircraft in the Finnish Aircraft Register and, after registration, transferring them to the pledgee's possession. Once registered, an aircraft mortgage remains in force for 10 years, during which period the promissory notes can be reused as security as needed.

Title over engines cannot be registered with the Finnish Aircraft Register and it is not possible to create a mortgage over engines. In certain limited situations, engines can be used as a security by way of a possessory pledge separately from the airframe (please see question 4.4 below).

4.2 Can spare parts, including future parts, be subject to the aircraft mortgage or engine mortgage (as the case may be)? If not, are there any other forms of security that can be taken over spare parts?

Parts, including spare parts, that are installed in and intended for the permanent use of an aircraft, may be deemed under Finnish law as constituent parts of the aircraft and may be subject, under certain circumstances, to the aircraft mortgage.

Security over spare parts can be granted by way of a possessory pledge. Depending on the circumstances, affixing the spare parts to an airframe may adversely affect the effectiveness of the pledge.

4.3 Is there a register of mortgages or rights over aircraft and/or engine?

The Finnish Aircraft Register contains information on aircraft mortgages. There is no register of engine mortgages or other rights over engines.

4.4 What other forms of security can be taken over an aircraft and/or engine and can these other forms be registered?

Generally, only a Finnish law-governed aircraft mortgage registered with the Finnish Aircraft Register is recognised by Finnish law as a valid security interest in the aircraft and its constituent parts and accessories. No other type of security can be registered.

In practice, engines or other non-registrable parts are sometimes pledged or assigned by way of security assignment. Where an engine does not constitute a constituent part of the aircraft (please see question 3.2 above), the engine would be regarded as movable property and could be used as security separately from the airframe. Movable property can be pledged by way of a possessory pledge (please see question 4.2 above). Finnish law does not have a concept of security assignment. Where an assignment and its effectiveness are assessed under Finnish law, the assessment is made on a substance-over-form basis, in light of the particular circumstances at hand.

4.5 What claims and rights would take priority in your jurisdiction over a registered mortgage?

Under law, claims that have a statutory right of pledge under the Finnish Aviation Act, third-party claims secured by a right of retention, and claims for damages under the Finnish Aviation Act, take priority over a registered mortgage. In addition, costs of public enforcement will be deducted from the enforcement proceeds prior to distribution to the mortgagee.

4.6 What other forms of security can be granted over an aircraft and/or engine lease?

Security can be granted over the monetary claims under a lease agreement, provided that the lease agreement does not prohibit this. In Finland, monetary claims can be pledged as security. The pledge is perfected by notifying the underlying debtor and instructing the debtor to make any payments to the pledgee instead of the pledgor.

Finnish law also recognises foreign law-governed security over monetary claims. Frequently in aircraft finance transactions, the rights of the lessor under the lease agreement are assigned by an English law security assignment. Where the debtor of the assigned claim (the lessee) is Finnish, the security must nonetheless be perfected as required under Finnish law in order to be effective in relation to third parties. Furthermore, the effectiveness of an assignment of any non-monetary contractual obligations and benefits is unclear under Finnish law.

5 Enforcement and Repossession

5.1 What are the circumstances in which a mortgagee or owner can take possession of the aircraft and/or sell the aircraft? What requirements must the mortgagee or owner comply with?

Outside insolvency, repossession of the aircraft is largely a matter of the terms of the lease agreement or security agreement. Typically, quiet enjoyment covenants limit the mortgage holder's right to take possession of the aircraft from the lessee, unless the lessee is also in default under the lease agreement.

Depending on the terms of the security agreement, a Finnish law mortgage generally becomes enforceable when the secured debt falls due. An aircraft mortgage is enforced by obtaining an enforceable judgment on the secured debt and enforcing such judgment through the National Enforcement Authority, which will seize and sell the aircraft and remit the net proceeds to the secured creditor after covering enforcement costs and satisfying any prior ranking claims. While not entirely clear, it has been suggested that the mortgage holder could also enforce the mortgage by selling the aircraft. The mortgage holder has a general duty of care towards the owner and any third parties, such as second-ranking mortgage holders. The duty of care entails that the mortgage holder is obliged to realise the aircraft at market value and deliver to the owner an accounting of enforcement proceeds, as well as any surplus proceeds exceeding the value of the secured claim. If the owner contests private enforcement action, the mortgage holder must obtain an enforceable court judgment and apply for enforcement through public enforcement authorities.

In the insolvency of a Finnish operator, procedural moratoria may limit the owner's rights to repossess the aircraft and the mortgage holder's rights to enforce the mortgage. Similarly, in the insolvency of a Finnish owner, procedural moratoria may limit the mortgage holder's right to enforce the mortgage.

5.2 What is the procedure for repossession of the aircraft?

Where uncontested, repossession is generally a matter of agreement between the lessor and the lessee. The lessee can contest repossession and apply for a temporary injunction against repossession with the competent district court under Finnish general rules of procedure. Where the court rules in favour of the party that is not in possession of the aircraft at the time, such party can seek the assistance of public enforcement authorities to repossess the aircraft.

5.3 Will local courts recognise a choice of foreign law in an aircraft mortgage? Are there any mandatory local rules that apply, despite a choice of foreign law?

No. Only a Finnish law aircraft mortgage may be registered against an aircraft that is registered in the Finnish Aircraft Register. Hence, the governing law of the mortgage is generally Finnish even though the other finance documents would be governed by foreign laws.

5.4 Will local courts recognise and enforce a foreign court judgment in favour of a mortgagee or lessor? Are any interim relief measures available?

A judgment rendered by a court of an EU Member State is enforceable in Finland in accordance with, and subject to, EU Regulation No. 1215/2012 (Recast Brussels Regulation). A judgment by a court of England is enforceable in Finland in accordance with, and subject to, the Hague Convention of 30 June 2005 on choice of court agreements. A judgment by a Norwegian, Swiss or Icelandic court is enforceable in accordance with the Lugano Convention of 30 October 2007 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters. Unless an enforcement regulation, treaty or convention applies, enforcement of a judgment of a court of any jurisdiction other than Finland requires a judgment of a Finnish court, or a court of an EU Member State. Arbitral awards are enforceable in accordance with the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, dated 10 June 1958.

5.5 Are powers of attorney from a local airline in favour of a lessor or mortgagee likely to be effective to allow the lessor or mortgagee to deregister the aircraft? Can such powers be irrevocable, be governed by a foreign law and/or do they need to be in any particular form for local recognition?

An application for deregistration of an aircraft must be made by the registered owner. Where a mortgage is registered against the aircraft, the aircraft cannot be deregistered until the mortgage is nullified.

Foreign law powers of attorney are generally recognised. There are no specific form requirements, such as a notary or apostille. Under Finnish law, a power of attorney is always revocable by the principal, even if it is stated to be irrevocable.

5.6 If recovery of the aircraft is contested by the lessee and a court judgment is obtained in favour of the lessor, how long is it likely to take to gain possession of the aircraft?

Where recovery of the aircraft is contested by the lessee and a court judgment is obtained in favour of the lessor, the lessor would typically seek the assistance of public enforcement authorities to repossess the aircraft by filing the court judgment with the public enforcement authorities. The public enforcement authorities appoint a bailiff to deal with the matter. The timing depends on the specific circumstances at hand, such as the urgency of the situation and the processing queue of the public enforcement authorities. The bailiff can impose temporary measures, such as seizure, if there is a risk of loss while the matter is being processed.

5.7 To what extent is there a risk from the perspective of an owner or financier that a lessee of aircraft or other aviation assets in your jurisdiction may acquire an economic interest in the aircraft merely by payment of rent and thereby potentially frustrate any rights to possession or legal ownership or security?

The risk depends on the specific terms of the lease and the overall arrangement. Under Finnish legal principles, any contractual arrangements are assessed on a substance-over-form basis. For example, from a Finnish law perspective, a

lease could be recharacterised as a hire purchase if it had the factual and economic characteristics of such instead of a lease. Such recharacterisation would not, at the outset, adversely affect a mortgage security over the aircraft.

5.8 Are there any restrictions on the ability of the lessor to export the aircraft from your jurisdiction on termination of the leasing?

No, there are not.

5.9 Are exchange controls prevailing in your jurisdiction as regards payments in foreign currency? Will any consents be required for the remittance of the sale proceeds abroad?

Generally no, subject to applicable sanctions regimes.

5.10 If the lease is governed by English law and a judgment is obtained by the lessor in the English courts, can that judgment be automatically enforced in your jurisdiction or will the case have to be re-examined on its merits?

Only if an enforcement treaty applies. Please see question 5.4 above.

5.11 What is the applicable procedure for repossession of an aircraft under other forms of security interests?

This is not applicable.

6 Conventions

6.1 Has your jurisdiction ratified any of the following: (a) The Chicago Convention of 1944 on International Civil Aviation (the Chicago Convention); (b) The 1948 Convention on the International Recognition of Rights in Aircraft (the Geneva Convention); (c) The 1933 Convention for the Unification of Certain Rules Relating to the Precautionary Arrest of Aircraft (the 1933 Rome Convention); and (d) The Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment (the Cape Town Convention) and the Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment?

Finland is a party to the Chicago Convention and the 1933 Rome Convention, but not the Geneva Convention or the Cape Town Convention.

6.2 Has ratification of the Cape Town Convention caused any conflicts or issues with local laws?

This is not applicable – Finland has not ratified the Cape Town Convention.

6.3 What is the legal position regarding non-consensual rights and interests under Article 39 of the Cape Town Convention?

This is not applicable.

6.4 Has your jurisdiction adopted the remedies on insolvency provided under Article XI of the Protocol to the Cape Town Convention?

This is not applicable.

6.5 What is the procedure to file an irrevocable deregistration and export request authorisation under the Cape Town Convention (IDERA)?

This is not applicable.

7 Liability for Damage and Environmental

7.1 Can the owner be strictly liable – liable without a requirement to prove fault or negligence – for any damage or loss caused by the aircraft assuming the owner is an innocent owner with no operational control of the aircraft?

Yes. The owner of the aircraft is, in general, strictly, jointly and severally liable with the operator and possessor for any damage caused to a person or property not being carried on board the aircraft. However, if an operator has been registered with the Finnish Aircraft Register, the liability will not extend to a lessor or holder of security.

7.2 Does the EU Emissions Trading System (EU ETS), or ICAO's Carbon Offsetting and Reduction Scheme for International Aviation (CORSA), apply to aircraft and aircraft operators in your jurisdiction? Will charges levied according to the EU ETS, or its equivalent, give rise to any *in rem* rights in relevant aircraft that are part of the fleet of the operator concerned and, if so, will such rights rank in priority ahead of any mortgage interests properly registered in the relevant aircraft and/or engine?

The EU ETS applies at the moment to air traffic between airports located in the EEA. The charges payable under the EU ETS do not give rise to any *in rem* rights.

Finland participates in CORSA together with the 44 Member States of the European Civil Aviation Conference (ECAC). CORSA is implemented in the European Union on the basis of the Emissions Trading Directive (2003/87/EC). Traficom is responsible for implementing CORSA in Finland.

7.3 What liabilities (actual or potential) could an owner, lessor or financier of an aircraft incur in your jurisdiction because of a failure to comply with local environmental law and/or regulations on the part of an operator of aircraft leased or financed by it?

If the operator has caused environmental damage or risk thereof, an owner, lessor or financier could be jointly and severally liable for prevention and restoration costs as well as damages, provided that it can be considered comparable to the operator. In the assessment of the comparability, consideration is given, *inter alia*, to whether the owner, lessor or financier had actual control over the operations. Additionally, the operator's failure to comply with local environmental law could have an adverse impact on the owner's reputation.

8 Insolvency and Searches

8.1 Are there any public registers in your jurisdiction where a search can be carried out to determine whether an order or resolution for any bankruptcy, bankruptcy protection or similar insolvency proceedings has been registered in relation to an operator or lessee?

Yes. A public register search can be carried out online in respect of bankruptcy or company administration proceedings of a Finnish operator or lessee. The register search shows whether a petition to commence such insolvency proceedings has been filed and the status of such proceedings.

8.2 In the event that an operator or lessee were to become insolvent either on a balance sheet basis (assets less than liabilities) or is unable to pay debts as they fall due, would an operator or lessee be required to file for insolvency protection?

Yes. Where a Finnish lessee or operator is unable to pay its debts as they fall due, other than on a temporary basis, the board of directors of the lessee or operator is required to file for insolvency proceedings, unless other viable options are available. The formal insolvency proceedings generally applicable to all companies under Finnish law are bankruptcy (aimed at liquidating an insolvent debtor and distributing its assets among its creditors) and company administration (aimed at rehabilitating an insolvent but ultimately viable debtor by rearranging its business operations and its debts).

8.3 Do the available forms of insolvency protection in your jurisdiction involve the appointment of either an officer of the court or a specifically court-appointed official to take control of the operator or lessee (an 'Insolvency Official') while in insolvency protection?

In bankruptcy proceedings, the debtor no longer has the capacity to represent itself and dispose of its assets. Instead, the court appoints a liquidator, who is essentially a representative of the creditors and who takes over the assets of the debtor company.

Similarly, in company administration proceedings, the court appoints an administrator to manage the debtor's business and prepare a restructuring plan. However, the debtor retains the right to represent itself and run its business in the ordinary course. While the company administration proceedings are ongoing, a general moratorium on payment of debts and enforcement by creditors is in place until the restructuring plan is approved. Once approved, the debtor can only make payments on the restructuring debts in accordance with the plan.

8.4 Does the commencement of insolvency protection involving the appointment of an Insolvency Official in your jurisdiction have the effect of prohibiting the owner from taking the following actions to enforce the lease after commencement of such protection: (a) applying any security deposit held by the owner against any unpaid amounts due under the lease; (b) accepting payment of rent or other lease payments from the lessee, a guarantor or a shareholder; (c) giving notice of default under the lease; (d) obtaining

a judgment or arbitral award for unpaid lease payments; (e) giving notice to terminate the leasing of the aircraft and/or engine; or (f) exercising rights to repossess the aircraft and/or engine?

- (a) In bankruptcy, a secured creditor (such as a security deposit holder) may enforce its security notwithstanding the proceedings, but the liquidator must be notified in advance and may temporarily prevent the enforcement to protect the interests of the bankruptcy estate, or to determine the secured creditor's claim. In company administration, a general moratorium applies and no enforcement action (including the application of any security deposit) may be taken.
- (b) In insolvency proceedings, generally all payments by the insolvent debtor are blocked. A guarantee holder may nonetheless enforce third-party guarantees or security notwithstanding the insolvency of the debtor, provided that such third parties are not subject to insolvency proceedings.
- (c) Giving notice of default is possible notwithstanding insolvency proceedings. However, in company administration, a notice of default solely on the basis of the company administration proceedings or non-payment by the debtor is ineffective.
- (d) Notwithstanding insolvency proceedings, the creditor can obtain a judgment or arbitral award for unpaid lease payments. However, the enforcement of such judgment may be limited by the insolvency proceedings.
- (e) See (c) above.
- (f) See (a) above.

8.5 Can the commencement of insolvency proceedings have retrospective effect in relation to any such actions taken before commencement? If so, for what period can there be a look back?

Yes. A transaction, series of transactions, an arrangement or any other act relating to the assets of the debtor can be challenged, if made during a critical period preceding insolvency or foreclosure proceedings, provided that certain conditions are met. The critical period is calculated backwards from the filing for insolvency proceedings or enforcement of a claim by foreclosure.

Transactions may be revoked where the arrangement can be deemed improper or inappropriate from the point of view of the other creditors of the debtor, and the counterparty of the debtor knew, or ought to have known, of the debtor being, or by virtue of the transaction becoming, unable to pay its debts when due. The critical period is five years preceding the insolvency/foreclosure filing. However, no time limit applies in dealings between related parties.

In addition, specific grounds apply, for example, in respect of revocation of payments, set-off and granting of security. The critical periods for these are generally three months, or two years between related parties.

8.6 Is there, either under law or as a matter of practice in your jurisdiction, a period of time within which the Insolvency Official will either 'adopt' the lease and pay rent and other lease payments as an expense of the insolvency or 'reject' the lease and permit the owner to enforce such rights as it may have

under the lease? (a) If the lease is 'adopted', will the Insolvency Official also pay any unpaid lease payments due as at commencement of the insolvency protection? (b) If not or if the lease is 'rejected', would the owner's claim for any outstanding sums rank equally with other ordinary unsecured creditors of the lessee?

In both bankruptcy and company administration proceedings, the liquidator or administrator has the option to "adopt" agreements that relate to continued performance. Generally, the ranking of accrued sums depends on whether the sums relate to the period prior to application for insolvency proceedings (in which case they rank *pari passu* with ordinary unsecured creditors) or after (in which case they rank ahead of ordinary unsecured creditors whose claims arose before the application).

8.7 Are there certain types of preferred creditors whose claims will rank above claims of the owner?

Secured creditors and holders of right of retention rank above unsecured creditors. The owner's ranking depends, *inter alia*, on whether the lease receivables are secured or unsecured.

8.8 If the aircraft is in the possession of a person other than the operator or lessee at the commencement of insolvency protection of the operator or lessee, for example, an independent maintenance facility, will such person be entitled, under the laws of your jurisdiction, to assert a lien arising under law or contract over the aircraft in respect of amounts then due and unpaid to such person by the operator or lessee?

A service provider who has prepared or carried out any reparation, maintenance or similar work on the aircraft has the right to hold the aircraft in its possession until the services have been paid in full. Similarly, the aircraft may be held by a landlord for unpaid rent for space in which it has been stored.

Under the Finnish Aviation Act, the aircraft owner, possessor and operator are jointly liable for the costs of services obtained from aerodrome operators or service providers (e.g. airport or air navigation fees). An aerodrome operator may, by refusing to provide services or by using equipment or constructions intended to prevent aircraft departure, prevent an aircraft from departing until the charges due have been paid or a security for them has been given.

9 Detention and Confiscation

9.1 Other than insolvency laws (see section 8), are there any laws that may have the effect of defeating the owner's right in the aircraft – for example, government requisition? Do the laws of your jurisdiction provide for any compensation in such circumstances?

Under the Preparedness Act, the Finnish Defence Forces may require that the aircraft be handed over for military use in the event of a state of war.

9.2 Are there any rights in relation to third parties to detain or sell the aircraft pursuant to illegal activities, tax or any other laws if the operator or lessee fails to pay when due? If so, can the aircraft be forfeited and sold without the owner being made aware?

An aircraft may, under the Penal Code, be detained by the State of Finland if the aircraft is used for drug trafficking or for the purpose of another criminal offence (except where the equipment belongs in full or in part to someone other than the offender and the owner of the equipment was acting in good faith).

10 Aircraft/Engine Technology

10.1 With the global commitment of IATA to zero-emissions by 2050, are there any particular developments regarding the associated new aircraft and engine technology which might be foreseeable as regards aviation finance in your jurisdiction, e.g. as regards taking security (battery powertrain equipment) or enforcement (different airport infrastructure environments)?

There is no Finland-specific legislative development directly tied to IATA's 2050 zero emissions initiative, battery electric aircraft, or new engine technologies from an aviation finance perspective.



Maria Lehtimäki is head of the firm's structured finance and securitisation practice. She advises financial institutions, investors and corporates on cross-border capital markets and structured finance transactions and related regulatory matters. Key areas of her practice include structured finance and securitisations across a variety of asset classes and industries, including aviation. Maria also has experience in special situations financing and distressed investments.

Waselius Attorneys Ltd

Eteläesplanadi 24 A
00130 Helsinki
Finland

Tel: +358 40 578 9398
Email: maria.lehtimaki@waselius.fi
LinkedIn: www.linkedin.com/in/marialehtimaki



Oona Honkamaa joined Waselius in 2022, after having obtained her LL.M. from Lund University in the same year. Oona specialises in banking and finance, capital markets and corporate law. Oona regularly advises lessors and lenders on matters relating to aircraft sales and purchases and financing.

Waselius Attorneys Ltd

Eteläesplanadi 24 A
00130 Helsinki
Finland

Tel: +358 45 197 4299
Email: oona.honkamaa@waselius.fi
LinkedIn: www.linkedin.com/in/oona-honkamaa-652b6a135

Waselius has broad experience in cross-border transactions and other legal matters with international implications. It is especially renowned for providing high-end advice within the fields of banking and finance, M&A, capital markets, dispute resolution, intellectual property rights (IPR), tax law, real estate, employment law, and EU and competition law. It has close connections to and regularly works with leading law firms in Europe and worldwide. The firm comprises members of the Finnish Bar Association, and is accordingly subject to its rules and supervision. Waselius has earned the confidence of some of the world's most demanding clients – it advises leading banks, investment firms, funds and other financial institutions, investors, multinational and Finnish companies, and public and private organisations. The firm aims to build long-term relationships with its clients, and feels that gaining a thorough understanding of each client's business, operating environment, needs and goals is at the heart of a successful client relationship.

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