

SWEDEN ADOPTS NEW LEGISLATION ON AVIATION

The Swedish parliament is shortly expected to approve new legislation on commercial aviation. Although for the most part a codification and modernization of existing legislation, this will also introduce a few improvements which should have a positive effect on aircraft leasing and financing transactions involving Swedish investors and/or Swedish aircraft operators.

The present Aviation Act (Swe. *luffartslagen*) dating back to 1957, will be split into two new acts, the new Aviation Act, which will contain the existing rules on civil and commercial aviation such as airport permits, traffic control services, pilots' licensing, certifications and aircraft registration, and a second Act on Air Transport (Swe. *lag om lufttransporter*), which will provide a civil law framework for commercial aviation and as such, act as a sort of "umbrella law" for the incorporation into Swedish law of the Montreal Convention and the package of EU legislation concerning passenger rights.

Of the few novel features introduced by the new legislation, only the proposed simplifications to the requirements for registration of aircraft with the Swedish Aircraft Registry will probably be of any real interest to the finance community. The present requirement for a valid certificate of airworthiness will be abandoned to harmonize the registration process with the prevailing system within the EU, basically making it possible to register with the Swedish Aircraft Registry any aircraft with a "connection to Sweden" irrespective of whether such aircraft is actually airworthy or not. This change should facilitate the smooth transfer of an aircraft from another jurisdiction into Sweden in the case, for instance, of a redelivery or repossession of a leased aircraft.

Another novelty is the mandatory requirement for information on the actual operator of an aircraft to be made public at all times through a special registration in the aircraft register. The main principle remains that an aircraft which is to be used in Swedish airspace may be registered in Sweden if its owner is a Swedish resident or if it is operated by a Swedish operator. Ownership registrations must still be made by the owner but if the aircraft is leased to an operator for a minimum period of one month, the operator/lessee will also need to be registered for information purposes. This brings additional clarity to the register regarding the actual operator of an aircraft and will most certainly benefit lessors and lessees as well as any financiers having an ownership or security interest in such aircraft.

However, Swedish law still contains one major challenge which the parties to any aircraft financing in Sweden must address, namely the very high stamp duty levied on aircraft mortgages (which is 1 % of the mortgage amount and without comparison in an international perspective). It is unfortunate that the legislator did not take this opportunity to put this stamp duty on par with other comparable stamp duties in other countries. And until this happens, the parties to any financing involving Swedish aircraft will doubtless continue to explore alternative procedures and structures to mitigate this rather prohibitive transaction cost.

This new legislation is scheduled to come into force on 1 September 2010.

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