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# Aircraft Repossession and Enforcement Practical Aspects

Volume II

*Edited by*  
Ravi Nath and Berend Crans



Wolters Kluwer  
Law & Business

KLUWER LAW INTERNATIONAL  
and  
International Bar Association



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International Bar Association Series

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Enforcement**

Practical Aspects

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# **International Bar Association**

## **The Global Voice of the Legal Profession**

The International Bar Association (IBA), established in 1947, is the world's leading organization of international legal practitioners, bar associations and law societies. The IBA influences the development of international law reform and shapes the future of the legal profession throughout the world. It has a membership of 35,000 individual lawyers and more than 195 bar associations and law societies spanning all continents. It has considerable expertise in providing assistance to the global legal community.

Grouped into two divisions – the Legal Practice Division and the Public and Professional Interest Division – the IBA covers all practice areas and professional interests, providing members with access to leading experts and up-to-date information. Through the various committees of the divisions, the IBA enables an interchange of information and views among its members as to laws, practices and professional responsibilities relating to the practice of business law around the globe. Additionally, the IBA's high-quality publications and world-class conferences provide unrivalled professional development and network-building opportunities for international legal practitioners and professional associates.

The IBA's Bar Issues Commission provides an invaluable forum for IBA member organisations to discuss all matters relating to law at an international level.

The IBA's Human Rights Institute (IBAHRI) works across the Association, to promote, protect and enforce human rights under a just rule of law, and to preserve the independence of the judiciary and the legal profession worldwide.

Other institutions established by the IBA include the Southern Africa Litigation Centre and the International Legal Assistance Consortium.

### **Aviation Committee**

The International Bar Association Aviation Law Committee is concerned with several major areas of law. Aircraft transactions and financing are always a major interest. The committee also follows developments of international law

with respect to airlines in both economic and tort areas, and also focuses on competition issues related to aviation.

The committee provides an opportunity not only to contribute to the development of aviation law but also to make useful contacts with aviation attorneys from all over the world. This is particularly important in an international industry such as aviation, where attorneys are required to deal with aviation attorneys in other countries on a regular basis.

### **Further information**

International Bar Association, 10th Floor, 1 Stephen Street, London W1T 1AT, United Kingdom, Tel: +44 (0)20 7691 6868, Fax: +44 (0)20 7691 6544, E-mail: [member@int-bar.org](mailto:member@int-bar.org), [www.ibanet.org](http://www.ibanet.org)

## Preface

The success of Aircraft Repossession and Enforcement has prompted this second volume which brings the total jurisdictions covered to 46. The two-volume set brings to lessors, financiers and operators a practical guide for most issues they may encounter in aircraft finance or lease transactions.

This is not the end of our work as there are further jurisdictions to be explored and they will be added to the first volume during the updating process of the jurisdictions covered so far.

Time is always in short supply with busy practitioners and we are grateful to our Authors in the fourteen jurisdictions covered in this volume for providing that scarce and valuable resource, and certainly for their patience and understanding when dealing with 'the editorial comments'. Seeing their chapters in print, we hope, will give them satisfaction with a job well done.

Finally, we hope that this volume will meet the expectations of our readers from whom suggestions and comments are always welcome.

Ravi Nath  
Berend Crans

## Editors

Berend Crans is a partner/shareholder of De Brauw Blackstone Westbroek N.V. in Amsterdam, The Netherlands. From 2005 to 2010, he was a member of De Brauw's management committee and head of the firm's finance practice. He specializes in asset and project finance.

Mr Crans has particular experience in aviation law. Initially, the emphasis of his practice was on aviation liability and regulatory issues. Subsequently he moved more and more to the transaction side of aviation.

Mr Crans has been involved, mainly as lessor or lender counsel, in many aircraft finance transactions, including JLLs, GLLs, JOLs, ECA supported transactions, acquisitions of aircraft lease portfolios and lease portfolio securitizations. In addition, Mr Crans represented lessors and lenders in airline insolvencies.

He is the former chair of the Aviation Law Committee of the International Bar Association and is a member of the Editorial Board of Air & Space Law. He also heads De Brauw's aviation industry group. In the Who's Who Legal 2010 (Aviation Law) he was among the 10 Most Highly Regarded Individuals and stated to be 'an innovative lawyer' and 'one of the most highly rated in our research'. His expertise in finance and aviation is further recognized by Chambers and Legal 500.

Mr Crans is admitted to the Dutch Bar and a member of the American Bar Association and the International Bar Association. He publishes regularly on asset and structured finance issues, as well as aircraft finance and aviation law and is a frequent guest speaker on these topics at conferences. He is a guest lecturer on aircraft finance at the LL.M. Programme of the Air & Space Law Institute (Leyden University) and on structured finance at the University of Amsterdam.

Ravi Nath, is the immediate past Chair of the Aviation Committee of the International Bar Association and is the group leader for Aviation, structured finance & Banking practice of *RNClegal* / Rajinder Narain & Co. He has twenty-five years experience in Aircraft finance, structured leasing and banking.

He advises on tax, enforcement editors and regulatory issues. He wrote the India Chapters in the two books on (a) Aircraft Finance and (b) Aircraft Liens and Detention Rights both published by Sweet & Maxwell. He regularly represents major Lessors, and Banks besides equipment manufacturers. The Legal 500 stated that: 'Ravi Nath's esteemed reputation as an aviation expert puts clear blue water between Rajinder Narain & Co. and its rivals ...' He is regularly featured in Who's Who of Aviation Lawyers.

Mr Nath served on the Legal Advisory Panel of the Aviation Working Group with respect to Cape Town Convention and is a member of the International Registry's Advisory Board.

Mr Nath is a frequent speaker at various Aviation Finance and other conferences and lawyer meetings. The Bar Association of India has conferred its highest honour on him. He is a co-author, along with India's Cabinet Minister, Mr Chidambaram and others, of a book relating to legal aspects of Doing Business in India. He is a Partner at one of India's oldest law firm.

Mr Nath acknowledges the excellent work done over several months by the Aviation law team at RNClegal / Rajinder Narain & Co. and particularly Rajesh Roshan, Ajay Kumar, Mahesh Kumar, Ritesh Singh and Mehak Thakur, who were invaluable at all stages right from the preparation of the questionnaire, checking the responses, editing, researching and extensive emailing.



## List of Jurisdictions and Authors

### *Austria*

#### **Tibor Fabian**

BINDER GRÖSSWANG Rechtsanwälte GmbH  
Sterngasse 13  
1010 Vienna  
Tel.: +43 (1) 534 80-230  
Fax: +43 (1) 534 80-8  
Mobile: +43 (664) 534 47 17  
E-mail: fabian@bindergroesswang.at

#### **Emanuel Welten**

BINDER GRÖSSWANG Rechtsanwälte GmbH  
Sterngasse 13  
1010 Vienna  
Tel.: +43 (1) 534 80-250  
Fax: +43 (1) 534 80-8  
Mobile: +43 (664) 822 40 04  
E-mail: welten@bindergroesswang.at

### *Egypt*

#### **Tamim Hassan Foda**

Al Kamel Law Office  
17 Nabil El Wakkad Street  
Dokki  
Giza  
Egypt

Tel.: +202 3761 5271  
Fax: +202 3761 5272  
Mobile: +2 0101465742  
Website: [www.kamelaw.com](http://www.kamelaw.com)  
E-mail: [t.foda@kamelaw.com](mailto:t.foda@kamelaw.com)

#### **Rasheed Kamel**

Al Kamel Law Office  
17 Nabil El Wakkad Street  
Dokki  
Giza  
Egypt  
Tel.: +202 3761 5271  
Fax: +202 3761 5272  
Mobile: +20122119427  
E-mail: [r.kamel@kamelaw.com](mailto:r.kamel@kamelaw.com)  
Website: [www.kamelaw.com](http://www.kamelaw.com)

### *Germany*

#### **P. Nikolai Ehlers**

Ehlers, Ehlers & Partners  
Rechtsanwaltssocietät  
Widenmayerstr. 29  
80538 Munich  
Germany  
Tel.: +49 (0)89-21 09 69 0  
Fax: +49 (0)89-21 09 69 99  
E-mail: [n.ehlers@eep-law.de](mailto:n.ehlers@eep-law.de)

**Indonesia****Enny P. Widhya, Mulyana and Sandi Adila**

Mochtar Karuwin Komar  
Wisma Metropolitan II, 14th Floor  
Jl. Jend. Sudirman Kav. 31  
Jakarta 12920 Indonesia  
Tel.: +62 21 571 1130  
Fax: +62 21 571 1162, 570 1686  
E-mail: mail@mkklaw.net  
Website: www.mkklaw.net

E-mail: sandi.adila@mkklaw.net  
E-mail: mulyana@mkklaw.net  
E-mail: ennypw@mkklaw.net

**Israel****Isaac Winder, Adv.**

Hermann Makov & Co.  
7 Menachem Begin St.  
Ramat Gan, 52521, Israel.  
Tel.: (972) (3) 6114200.  
Fax: (972) (3) 6114220.  
E-mail: isaac@hmlaw.co.il

**Avner (Nery)Yarkoni, Adv.**

13 Balfour St. Tel-Aviv 65211 Israel  
Tel.: 972(0) 3 6290780  
Fax: 972 (0)3 6290789  
Mobile: 972 (0) 52 8422276  
E-mail: yarkony@bezeqint.net

**Italy****Avv. Gabriele Bricchi**

Pirola Pennuto Zei & Associati  
20124 Milan, V. Pisani 20 – Italy  
Tel.: +39.02.669 95422  
Fax : +39.02.669 1800  
E-mail: gabriele.bricchi@studiopirola.com

**Avv. Alessandro Manca**

Pirola Pennuto Zei & Associati  
20124 Milan, V. Pisani 20 – Italy  
Tel. Office: +39.02.669 95422

Fax : +39.02.669 1800

E-mail: alessandro.manca@studiopirola.com

**Malaysia****Fuzet Farid**

Former Partner of  
Zul Rafique & Partners  
Mobile: +60122918908  
Email: fuzet.farid@yahoo.com

**New Zealand****Frank Porter**

Buddle Findlay  
New Zealand Lawyers  
Pricewaterhouse Coopers Tower  
188, Quay Street, P.O Box 1433, Auckland 1140  
Tel.: +64 9 358 2555  
Direct: +64 9 358 7016  
Fax: +64 9 363 0716  
Mobile: +64 21 635 646  
E-mail: frank.porter@buddlefindlay.com

**Anita Birkinshaw**

PricewaterhouseCoopers Tower  
188 Quay Street  
PO Box 1433  
Auckland 1140  
New Zealand  
DX CP24024  
Tel.: 64-9-358 7017  
Fax: 64-9-363 0717  
E-mail: anita.birkinshaw@buddlefindlay.com

**Anna-Louise Oliver**

PricewaterhouseCoopers Tower  
188 Quay Street  
PO Box 1433  
Auckland 1140  
New Zealand  
DX CP24024  
Tel.: 64-9-358 2555  
Fax: 64-9-358 2055  
E-mail: anna-louise.oliver@buddlefindlay.com

**Norway****Paul Sveinsson**

Arntzen de Besche Advokatfirma AS  
P.O. Box 2734 Solli, NO-0204 Oslo  
Tel.: +47 23 89 40 00  
Fax: +47 23 89 40 01  
Mobile: +47 98 29 45 84  
E-mail: paul.sveinsson@arntzenbesche.no

**Philippines****Jose Luis V. Agcaoili**

Managing Partner of Agcaoili and Associates,  
7/F, Citibank Center,  
8741 Paseo de Roxas,  
Makati City 1200,  
Philippines  
Tel.: (632) 892-4901  
Fax: (632) 819-1868  
E-mail: jlvagcaoili@avaslaw.com

**Poland****Anna Burchacińska-Mańko, Krystyna Marut  
and Edyta Michalak**

MMMLegal Legal Counsels  
ul. Gminnej Rady Narodowej 56A  
05-506 Lesznowola, Poland  
Tel.: +48 22 713 82 12  
Fax: +48 22 713 82 11  
E-mail: lawoffice@mmmlegal.pl

**South Africa****Brian Webber**

Ramsay Webber Inc  
269 Oxford Road  
Illovo  
Johannesburg  
South Africa  
Tel.: +27 11 778 0600  
Mobile: +27 82 658 5455  
E-mail: bw@ramweb.co.za

**Angelo Tzarevski**

Ramsay Webber Inc  
269 Oxford Road  
Illovo  
Johannesburg  
South Africa  
Tel: +27117780600  
E-mail: at@ramweb.co.za

**Turkey****M. Ali Kartal**

Aybay & Aybay  
Siraselviler Cad.  
Yeny Hayat Apt.  
No: 49/8 34433  
Taksim, Istanbul/Turkey  
Tel.: +90 (212) 293 23 23  
Fax: +90 (212) 245 39 49  
E-mail: ali.kartal@aybaylaw.com

**United Arab Emirates****Amna Al Jallaf**

Al Jallaf & Co.  
Dubai, United Arab Emirates  
Tel.: +9714 3366260  
Fax: +9714 3366274  
Mobile: +97150 6243329  
E-mail: amna.aljallaf@aljallaflegal.com

**Nouraddin A. Ahmed**

Al Jallaf & Co.  
Dubai, United Arab Emirates  
Tel.: +9714 3366260  
Fax: +9714 3366274  
Mobile: +97150 1249002  
E-mail: nouraddin.ahmed@aljallaflegal.com

**Geoffrey Dillon-Leetch**

Associate, Al Jallaf & Co.  
Dubai, United Arab Emirates  
Tel.: +9714 3366260  
Fax: +9714 3366274  
Mobile: +97150 056 1013082  
E-mail: geoffrey.dillon-leetch@aljallaflegal.com

# Questionnaire

(including main parts of the questionnaire  
and definitions)

## ***AUTHOR GUIDELINES DEFINITIONS***

Chapter I	Repossessions of Aircraft: Self help
Chapter II	Court Proceedings for Repossessions
Chapter III	Arbitration and other Non-court Proceedings
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Chapter V	Bankruptcy
Chapter VI	Non Consensual Liens and Rights & Security Interests Generally
Chapter VII	Deregistration Powers of Attorney, Export Permit & General Issues

## **DEFINITIONS**

*In this questionnaire, where the context permits, the expressions:*

- i. Aircraft or equipment refer to, and are intended to cover, other Aircraft objects such as engines, spare parts, records and log books.*
- ii. Grantor means the grantor of a Security Interest.*
- iii. Lease means an agreement between a Lessor and a Lessee with respect to the use and possession of an Aircraft.*
- iv. Lessee refers to a person having a right of possession and use in respect of an Aircraft pursuant to a Lease with a Lessor.*
- v. Lessor refers to the owner of an Aircraft which is leased to a Lessee.*

- vi. *Security Document means any agreement, deed or other document pursuant whereto a Security Interest is vested.*
- vii. *Security Interest means a security right or interest in tangible or intangible assets, including mortgages and other rights in rem on Aircraft.*
- viii. *Security Interest Holders refers all persons holding a Security Interest in an Aircraft.*
- ix. *Security Trustee a person holding one or more Security Interests for certain secured parties, i.e. lenders or other creditors of the Grantor of such Security Interests.*
- x. *Repossession includes deregistration and export of the Aircraft.*

## **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.
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?
3. Are there any significant time and costs involved in the above?
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?
5. Is the procedure for 'self-help' different where the right is exercised by another claimant such as a Security Interest Holder?
6. Can the Lessee (or the Grantor) or any other agency, stop or delay a 'self-help' remedy, and, if so, in what circumstances?
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?
8. Can foreign crew be permitted to fly the Aircraft out of your Jurisdiction? Are any special permissions required?
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?
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?
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?

**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.
2. What courts have jurisdiction? For example, must proceedings be filed at the registered office of the Lessee (or the Grantor)?
3. What time and costs are usually associated with such court proceedings?
4. Are costs usually decreed in favour of the winning party? Are there any limitations?
5. Do the courts require a bond or other security as a condition for making an order allowing repossession and export of an Aircraft?
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?
7. Whilst court proceedings are pending, can the Aircraft be grounded? If so, in what circumstances? Would the court usually pass a conditional order?
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?
9. Are there any other facts and circumstances that need to be proved before an interim order can be made absolute?
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?
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.
12. Would the procedure be different if the claimant is a Security Interest Holder?
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)?
14. Can a judgment be given in foreign currency?
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.
16. Are there any taxes or duties payable on remittances?

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

### **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.
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?
3. What are the cost and time implications of enforcing (a) domestic arbitration awards and (b) foreign arbitration awards respectively?
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?
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?
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?
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?
8. Has your country ratified the New York Convention and/or the Geneva Convention on enforcement of foreign arbitral awards?
9. What will be the usual cost of enforcing an arbitration award in your jurisdiction?

### **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?

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

## **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)?
2. What precautions can be taken where a bankruptcy of the Lessee (or the Grantor) is imminent?
3. What preferential payments rank above unsecured money claims, in the event of bankruptcy of a Lessee (or a Grantor)?

## **Chapter VI    Non-consensual Liens and Rights and 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?
2. Has your country ratified the 1948 Geneva Convention on the International Recognition of Rights in Aircraft?
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?
4. Has your country ratified any other international conventions that relate to Aircraft liens?
5. What types of Security Interest in Aircraft are available in your jurisdiction?
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?
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?



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?
  - (ii) Must the Security Document contain certain specific information in respect of the Aircraft, the secured obligations or otherwise?
  - (iii) Must the Security Document be recorded in a public register or with any other regulatory or governmental authority or agency?
  - (iv) Are there any other steps to be taken for perfection, e.g., must the Security Document be consularized, legalized, apostilled?
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?
10. Are there any continuation or renewal requirements with respect to a Security Interest in Aircraft under the laws of your jurisdiction?
11. Summarize the rules applicable to enforcement of a Security Interest in an Aircraft expressed to be governed by the laws of your jurisdiction.
12. Would a change in the registration as to nationality of an Aircraft affect any existing Security Interest in respect thereof?
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.
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?
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?
16. Has your country ratified the Convention on the Law Applicable to Trusts and Their Recognition of 1 July 1985?
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?
18. Can a Lessor assign its rights under manufacturer warranties by way of security? What formalities must be complied with?
19. Can a Lessee (or a Lessor) assign its rights under a hull insurance by way of security? What formalities must be complied with?
20. Are there any constraints or requirements on the form of any such assignment?
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?