

CAYMAN ISLANDS



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**A BILL FOR A LAW TO GIVE EFFECT TO THE CONVENTION AND  
PROTOCOL ON INTERNATIONAL INTERESTS IN AIRCRAFT AND  
OTHER MOBILE EQUIPMENT SIGNED AT CAPE TOWN ON 16  
NOVEMBER, 2001; AND FOR INCIDENTAL AND CONNECTED  
PURPOSES**

**THE CAPE TOWN CONVENTION BILL, 2009**

**MEMORANDUM OF OBJECTS AND REASONS**

This Bill seeks to give domestic effect to the relevant provisions of the Convention on International Interests in Mobile Equipment ('the Cape Town Convention') as modified by the Protocol to the Convention on Matters specific to Aircraft Equipment, each concluded at Cape Town, South Africa, on 16 November 2001.

Clause 1 of the Bill provides the short title of the legislation.

Clause 2 sets out the definitions of various terms used in the legislation.

Clause 3 specifies the application and scope of the legislation, namely the recognition of international interests in aircraft objects and associated rights, where the debtor or seller of an aircraft object, as applicable, is situated in a Cape Town Convention state as determined under clause 4 of the Bill or is a Cayman Entity as defined under clause 2 that has elected to be covered by the Law. The clause also enables the Governor in Cabinet by Order to-

- (a) designate additional persons to be included in the definition of Cayman Entity;
- (b) make such declarations as may be necessary under the Cape Town Convention; or
- (c) amend section 18(1) to reflect any subsequent amendment to the Cape Town Convention in that regard.

Clause 4 sets out the criteria for determination of whether a debtor or seller of an aircraft object is situated in a Cape Town Convention State.

Clause 5 specifies that an aircraft object be identified by the manufacturer's serial number, the manufacturer's name and the model designation.

Clause 6 specifies the formal requirements for the constitution of a international interest in an aircraft object, being that the agreement creating or providing for the interest-

- (a) is in writing;
- (b) relates to an aircraft object of which the chargor, conditional seller or lessor has power to dispose;
- (c) identifies the aircraft object in accordance with section 5; and

- (d) in the case of a security agreement, enables the secured obligations to be determined, but without the need to state a sum or maximum sum secured.

Clause 7 provides that a debtor and creditor may at any time agree in writing as to the events that constitute a default or otherwise give rise to the rights and remedies specified in the legislation; and that where the debtor and creditor have not so agreed, default for the purposes of the exercise of remedies means a default which substantially deprives the creditor of what it is entitled to expect under the agreement.

Clauses 8 and 9 set out the remedies for a chargee for default, including the ability of a chargee, to the extent that the chargor has at any time so agreed, or alternatively as authorized by a court on application of the chargee, to exercise any one or more of the following remedies-

- (a) take possession or control of any aircraft object charged to it;
- (b) sell or grant a lease of any such aircraft object; or
- (c) collect or receive any income or profits arising from the management or use of any such aircraft object,

subject, in the case of (b) to reasonable prior notice being given in writing of the proposed sale or lease to-

- (i) any interested person who is a debtor or guarantor; and
- (ii) any other person having rights in or over the aircraft object who has given notice of his rights to the chargee within a reasonable time prior to the sale or lease.

Clause 10 provides that by way of remedy for default, a conditional seller or lessor under a title reservation agreement or a leasing agreement respectively, may terminate the agreement and take possession or control of any aircraft object to which the agreement relates; or apply for a court Order authorizing or directing either of these acts.

Clause 11 specifies the remedies available to a creditor in the event of a default in addition to those set out in clauses 8, 10, 12 and 14, to the extent that the debtor has so agreed and subject to applicable aviation safety legislation.

Clauses 12, 13, 14, 15 and 16 contain miscellaneous supporting provisions in relation to the exercise of default remedies.

Clauses 17, 18, 19, 20 and 21 prescribe the effect of registration of an interest in an aircraft object in the International Registry including the requirements for

validity; who has the capacity to effect registration and the duration of registration; and the nature of the interests that can be registered, including-

- (a) international interests, prospective international interests and registrable non-consensual rights or interests;
- (b) assignments and prospective assignments of international interests;
- (c) acquisitions of international interests by legal or contractual subrogations under the applicable law;
- (d) “notices of a national interest”, as defined in the Cape Town Convention, under the laws of a Cape Town Convention State or the Islands permitting such notice through a declaration thereunder made by that State or the Islands;
- (e) subordinations of interests referred to in any of the preceding paragraphs; and
- (f) sales and prospective sales.

Clause 22 provides for information searches within the International Registry.

Clause 23 provides for the evidentiary value of a certificate issued by the International Registry.

Clause 24 sets out the circumstances under which a discharge of a registration is to be procured.

Clauses 25 and 26 provide for the legal personality and immunity of the Supervisory Authority and the standard and extent of liability of the Registrar in the event of errors or omissions.

Clauses 27, 28 and 29 set out the priority of competing interests, namely that a registered interest has priority over any other interest subsequently registered and over an unregistered interest; that in insolvency proceedings against the debtor or the seller, an international interest or sale, as applicable, is effective if prior to the commencement of the insolvency proceedings that interest or sale was registered in conformity with this Law, subject to the Fraudulent Dispositions Law (1996 Revision) and any rules of law applicable in insolvency proceedings relating, *inter alia* to the avoidance of a transaction as a preference or a transfer in fraud of creditors; and further specifies the treatment of a priority non-consensual right or interest.

Clauses 30, 31, 32, 33, 34, 35, 36 and 37 provide for the assignment of associated rights and international interests and rights of subrogation; default remedies in respect of assignment by way of security; and priority of competing assignments.

Clauses 38, 39, 40, 41 and 42 deal with matters of jurisdiction other than jurisdiction in insolvency proceedings.

Clause 43 contains a transitional provision that provides that the Law does not apply to a pre-existing right or interest.

Clause 44 provides for the making of regulations by the Governor in Cabinet.

**THE CAPE TOWN CONVENTION BILL, 2009**

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ENACTED by the Legislature of the Cayman Islands.

**PART I**

**Introductory**

1. This Law may be cited as the Cape Town Convention Law, 2009. Short title
2. In this Law, except where the context otherwise requires- Definitions  
  
"agreement" means a security agreement, a title reservation agreement, or a leasing agreement;  
  
"aircraft" means aircraft as defined for the purposes of the Chicago Convention which are either airframes with aircraft engines installed thereon or helicopters;  
  
"aircraft engine" means an aircraft engine (other than those used in military, customs or police services) powered by jet propulsion or turbine or piston technology and-

- (a) in the case of a jet propulsion aircraft engine, has at least 1750 lb of thrust or its equivalent; and
- (b) in the case of a turbine-powered or piston-powered aircraft engine, has at least 550 rated take-off shaft horsepower or its equivalent,

together with all modules and other installed, incorporated or attached accessories, parts and equipment and all data, manuals and records relating thereto;

"aircraft object" means airframe, aircraft engine or helicopter;

"aircraft register" means the National Aircraft Register or equivalent maintained by a State or common mark registering authority for purposes of the Chicago Convention;

"airframe" means an airframe (other than those used in military, customs and police services) that, when an appropriate aircraft engine is installed thereon, is type certified by the competent aviation authority to transport-

- (a) at least eight persons including crew; or
- (b) goods in excess of 2750 kilograms,

together with all installed, incorporated or attached accessories, parts and equipment (other than aircraft engines), and all data, manuals and records relating thereto;

"applicable law" means the domestic rules of the law applicable by virtue of rules of private international law of the forum State;

"assignment" means a contract which, whether by way of security or otherwise, confers on the assignee associated rights with or without a transfer of the related international interest;

"associated rights" means all rights to payment or other performance by a debtor under an agreement which are secured by or associated with the aircraft object;

"Cape Town Convention" means the Convention on International Interests in Mobile Equipment as modified by the Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Aircraft Equipment, each concluded at Cape Town, South Africa, on 16 November 2001;

"Cape Town Convention State" means a State that is Party to the Cape Town Convention;

"Cayman Entity" means an exempted company or an exempted limited duration company under the Companies Law (2007 Revision), an exempted limited partnership under the Exempted Limited Partnership Law (2007 Revision) and includes any additional persons so designated under section 3(6); (2007 Revision)

"Chicago Convention" means the Convention on International Civil Aviation signed at Chicago on 7 December 1944, as amended, and its Annexes;

"commencement of the insolvency proceedings" means the time at which the insolvency proceedings are deemed to commence under the applicable insolvency law;

"common mark registering authority" means the authority maintaining a register in accordance with Article 77 of the Chicago Convention as implemented by the Resolution adopted on 14 December 1967 by the Council of the International Civil Aviation Organization on nationality and registration of aircraft operated by international operating agencies;

"conditional buyer" means a buyer under a title reservation agreement;

"conditional seller" means a seller under a title reservation agreement;

"contract of sale" means a written contract, other than an agreement transferring the interest of the seller in an aircraft object to a buyer in accordance with its terms and which identifies the aircraft object in accordance with section 5;

"court" means a court of law or an administrative or arbitral tribunal established by a Cape Town Convention State or the Grand Court;

"creditor" means a chargee under a security agreement, a conditional seller under a title reservation agreement or a lessor under a leasing agreement;

"debtor" means a chargor under a security agreement, a conditional buyer under a title reservation agreement, a lessee under a leasing agreement or a person whose interest in an aircraft object is burdened by a registrable non-consensual right or interest;

"de-registration" means deletion or removal of a registration of an aircraft from its aircraft register in accordance with the Chicago Convention;

"Grand Court" means the Grand Court of the Islands;

"guarantee contract" means a contract entered into by a person as guarantor;

"guarantor" means a person who, for the purposes of assuring performance of any obligations in favour of a creditor secured by a security agreement or under an agreement, gives or issues a suretyship or demand guarantee or a standby letter of credit or any other form of credit insurance;

"helicopter" means a heavier-than-air machine (other than those used in military, customs or police services) supported in flight chiefly by the reactions of the air on one or more power-driven rotors on substantially vertical axes and which is type certified by the competent aviation authority to transport-

- (a) at least five persons including crew; or
- (b) goods in excess of 450 kilograms,

together with all installed, incorporated or attached accessories, parts and equipment (including rotors), and all data, manuals and records relating thereto;

"insolvency administrator" means a person authorized to administer the reorganization or liquidation, including one authorized on an interim basis, and includes a debtor in possession, if permitted by the applicable insolvency law;

"insolvency proceedings" means bankruptcy, liquidation or other collective judicial or administrative proceedings, including interim proceedings, in which the assets and affairs of the debtor are subject to control or supervision by a court for the purposes of re-organisation or liquidation;

"interested person" means-

- (a) the debtor;
- (b) any guarantor; or
- (c) any other person having rights in or over the aircraft object;

"international interest" means an interest in an aircraft object constituted in accordance with section 6, held by a creditor that is one only of the following:

- (a) granted by the chargor under a security agreement;
- (b) vested in a person who is the conditional seller under a title reservation agreement; or
- (c) vested in a person who is the lessor under a leasing agreement,

as determined under the applicable law and extends to the proceeds of an aircraft object;

"International Registry" means the international registration facilities established under the Cape Town Convention;

"leasing agreement" means an agreement by which one person (the lessor) grants a right to possession or control of an aircraft object (with or without an option to purchase) to another person (the lessee) in return for a rental or other payment;

"National Aircraft Register" means the aircraft register maintained by the registry authority;

"non-consensual right or interest" means a right or interest conferred under the law of a Cape Town Convention State or the Islands to secure the performance of an obligation, including an obligation to a State, State entity or an intergovernmental or private organisation;

"pre-existing right or interest" means a right or interest of any kind in or over an aircraft object created or arising before the date of commencement of this Law;

"priority non-consensual right or interest" means a non-consensual right or interest of the following types conferred under the law of the Islands-

- (a) liens in favour of repairers of, or those providing services to, an aircraft object, in each case to the extent any such repair or services adds value to an aircraft object and retains possession thereof;
- (b) liens on an aircraft object in favour of the Government of the Islands relating to unpaid taxes or other charges directly relating to the use of that aircraft object;
- (c) employee wages relating to services fairly allocated to the use of an aircraft object as from the date that remedies have been exercised under this Law by the holder of a registered interest; and
- (d) rights of the Government of the Islands to arrest or detain an aircraft object for violation of safety-related or criminal law, but no such arrest or detention shall give rise to the power of sale or right to proceeds;

"proceeds" means money or non-money proceeds of an aircraft object arising from the total or partial loss or physical destruction of the aircraft object or its total or partial confiscation, condemnation or requisition;

"prospective assignment" means an assignment that is intended to be made in the future, upon the occurrence of a stated event, whether or not the occurrence of the event is certain;

"prospective international interest" means an interest that is intended to be created or provided for in an aircraft object as an international interest in the future, upon the occurrence of a stated event (which may include the debtor's acquisition of an interest in the aircraft object), whether or not the occurrence of the event is certain;

"prospective sale" means a sale which is intended to be made in the future, upon the occurrence of a stated event, whether or not the occurrence of the event is certain;

"registered" means registered in the International Registry;

"registered interest" means an interest registered with the International Registry pursuant to the Cape Town Convention;

"registrable non-consensual right or interest" means a non-consensual right or interest of the following types conferred under the law of the Islands:

- (a) rights of a person obtaining a court Order permitting attachment of an aircraft object in partial or full satisfaction of a legal judgment;
- (b) liens or other rights of the Government of the Islands relating to taxes or other unpaid charges of any type whatsoever (which is not a priority non-consensual right or interest); and
- (c) any other non-consensual rights or interests which are not a priority non-consensual right or interest;

"Registrar" means the person or body serving as Registrar under the Cape Town Convention;

"registry authority" means the Civil Aviation Authority of the Cayman Islands, which is responsible for the registration and de-registration of aircraft in the Islands in accordance with the Chicago Convention;

"regulations" means regulations made or approved by the Supervisory Authority pursuant to the Cape Town Convention;

"sale" means a transfer of ownership of an aircraft object pursuant to a contract of sale;

"secured obligation" means an obligation secured by a security interest;

"security agreement" means an agreement by which a chargor grants or agrees to grant to a chargee an interest (including an ownership interest) in or over an

aircraft object to secure the performance of any existing or future obligation of the chargor or a third person;

"security interest" means an interest created by a security agreement;

"State of registry" means, in respect of an aircraft, the State or the national register in which an aircraft is entered or the State of location of the common mark registering authority maintaining the aircraft register;

"Supervisory Authority" means the body acting as Supervisory Authority under the Cape Town Convention;

"title reservation agreement" means an agreement for the sale of an aircraft object on terms that ownership does not pass until fulfillment of the condition or conditions stated in the agreement;

"unregistered interest" means a consensual interest or non-consensual right or interest (other than a priority non-consensual right or interest to the extent specified in section 29(1)), which has not been registered, whether or not it is registrable under the Cape Town Convention or this Law; and

"writing" means a record of information (including information communicated by teletransmission) which is-

- (a) in tangible form; or
- (b) in other form and is capable of being reproduced in tangible form on a subsequent occasion,

and which indicates by reasonable means a person's approval of the record.

3. (1) This Law provides for the constitution and recognition of an international interest in aircraft objects and associated rights and for the recognition of the registration system operated by the International Registry.

Application and scope

(2) This Law applies when, after the commencement date of this Law and at the time of the conclusion of the agreement creating or providing for the international interest or a contract of sale, the debtor or seller, as applicable, is situated in a Cape Town Convention State as determined in accordance with section 4 or is a Cayman Entity that has made an election in writing, which election shall be irrevocable, that this Law shall apply to it generally or in respect of certain aircraft objects identified in accordance with section 5, by recording an appropriate notation in the register of mortgages maintained pursuant to section 54 of the Companies Law (2007 Revision), and any such recording shall constitute conclusive evidence of such election.

(2007 Revision)

(3) The fact that the creditor or buyer is situated in neither a Cape Town Convention State nor the Islands or is not a Cayman Entity does not affect the applicability of this Law.

(4) Without prejudice to subsection (2), this Law shall also apply in relation to a helicopter, or to an airframe pertaining to an aircraft, registered in an aircraft register of a Cape Town Convention State which is the State of registry, and where such registration is made pursuant to an agreement for registration of the aircraft it is deemed to have been effected at the time of the agreement.

(5) In addition to the specific provisions of this Law referring to sales and prospective sales, the general provisions of Parts III and IV, section 27, sections 18(2) and 29, Part VII (other than section 39), and Part VIII shall apply to contracts of sale and prospective sales.

(6) The Governor in Cabinet may by Order-

- (a) designate additional persons to be included in the definition of Cayman Entity;
- (b) make such declarations as may be necessary under the Cape Town Convention; or
- (c) amend section 18(1) to reflect any subsequent amendment to the Cape Town Convention in that regard.

Determination of where debtor or seller is situated

4. (1) For the purposes of section 3(2), a debtor or seller is situated in the Cape Town Convention State-

- (a) under the laws of which it is incorporated or formed;
- (b) where it has its registered office or statutory seat;
- (c) where it has its center of administration; or
- (d) where it has its place of business.

(2) A reference in subsection (1)(d) to the debtor's or seller's place of business is a reference to-

- (a) its principal place of business, if it has more than one place of business; or
- (b) its habitual residence, if it has no place of business.

Identification of an aircraft object

5. For the purposes of a contract of sale or the constitution of an international interest, an aircraft object shall be identified by the manufacturer's serial number, the name of the manufacturer and the model designation.

Formal requirements for constitution of an international interest

6. An interest is constituted as an international interest under this Law where the agreement creating or providing for the interest-

- (a) is in writing;

- (b) relates to an aircraft object of which the chargor, conditional seller or lessor has power to dispose;
- (c) identifies the aircraft object in accordance with section 5; and
- (d) in the case of a security agreement, enables the secured obligations to be determined, but without the need to state a sum or maximum sum secured.

## PART II

### Remedies for Default

7. (1) The debtor and the creditor may at any time agree in writing as to the events that constitute a default or otherwise give rise to the rights and remedies specified in sections 8 to 11 and 14. Meaning of default

(2) Where the debtor and the creditor have not so agreed, default for the purposes of sections 8 to 11 and 14 means a default which substantially deprives the creditor of what it is entitled to expect under the agreement.

8. (1) In the event of default as provided in section 7, the chargee may, to the extent that the chargor has at any time so agreed, or alternatively as authorized or directed by a court on application of the chargee, exercise any one or more of the following remedies: Remedies of chargee

- (a) take possession or control of any aircraft object charged to it;
- (b) sell or grant a lease of any such aircraft object; or
- (c) collect or receive any income or profits arising from the management or use of any such aircraft object.

(2) A chargee proposing to sell or grant a lease of an aircraft object under subsection (1)(b) shall give reasonable prior notice in writing of the proposed sale or lease to-

- (a) any interested person who is a debtor or guarantor; and
- (b) any other person having rights in or over the aircraft object who has given notice of his rights to the chargee within a reasonable time prior to the sale or lease.

(3) For the purposes of subsection (2), reasonable prior notice is ten working days or such other longer period of notice as may be agreed by a chargee and a chargor or a guarantor.

(4) Any sum collected or received by the chargee as a result of the exercise of any of the remedies set out in subsection (1) shall be applied towards the discharge of the amount of the secured obligations.

(5) Where the sums collected or received by the chargee as a result of the exercise of any remedy set out in subsection (1) exceed the amount secured by the security interest and any reasonable costs incurred in the exercise of any such remedy, then unless otherwise ordered by the court the chargee shall distribute the surplus among holders of subsequently ranking interests which have been registered or of which the chargee has been given notice, in order of priority, and pay any remaining balance to the chargor.

Vesting of aircraft object  
in satisfaction;  
redemption

9. (1) At any time after default as provided in section 7, the chargee and all interested persons may agree that ownership of (or any other interest of the chargor in) any aircraft object covered by the security interest shall vest in the chargee in or towards satisfaction of the secured obligations.

(2) The court may on the application of the chargee order that ownership of (or any other interest of the chargor in) any aircraft object covered by the security interest shall vest in the chargee in or towards satisfaction of the secured obligations.

(3) The court shall grant an application under subsection (2) only if the amount of the secured obligations to be satisfied by such vesting is commensurate with the value of the aircraft object after taking account of any payment to be made by the chargee to any of the interested persons.

(4) At any time after default as provided in section 7 and before sale of the charged aircraft object or the making of an Order under subsection (2), the chargor or any interested person may discharge the security interest by paying in full the amount secured, subject to any lease granted under section 8 (1)(b); and where, after such default, the payment of the amount secured is made in full by an interested person other than the debtor, that person is subrogated to the rights of the chargee.

(5) Ownership or any other interest of the chargor passing on a sale under section 8(1)(b) or passing under subsection (1) or (2) is free from any other interest over which the chargee's security interest has priority under section 27.

Remedies of conditional  
seller or lessor

10. In the event of default under a title reservation agreement or under a leasing agreement as provided in section 7, the conditional seller or the lessor, as the case may be, may terminate the relevant agreement and take possession or control of any aircraft object to which such agreement relates; or apply for a court Order authorizing or directing either of these acts.

Additional remedies of  
creditor

11. (1) In addition to the remedies specified in sections 8, 10, 12 and 14, the creditor may, to the extent that the debtor has at any time so agreed and in the

circumstances specified in such agreed provisions and subject to applicable aviation safety regulations-

- (a) procure the de-registration of the aircraft; and
- (b) procure the export and physical transfer of the aircraft object from the territory in which it is situated.

(2) The creditor shall not exercise the remedies specified in subsection (1) without the prior consent in writing of the holder of any registered interest ranking in priority to that of the creditor.

(3) A chargee proposing to procure the de-registration and export of an aircraft under subsection (1) otherwise than pursuant to a court Order shall give reasonable prior notice in writing of the proposed deregistration and export to-

- (a) any interested person who is a debtor or a guarantor; and
- (b) any other person having rights in or over the aircraft object who has given notice of his rights to the chargee within a reasonable time prior to the deregistration and export.

(4) The registry authority shall, subject to any applicable safety legislation, honour a request for de-registration and export in accordance with the relevant provisions of the Cape Town Convention under regulations made for that purpose and administered by the registry authority.

12. Any additional remedies permitted by the applicable law, including any remedies agreed upon by the parties, may be exercised to the extent that they are not inconsistent with the provisions set out in section 16.

Additional remedies  
under applicable law

13. (1) In the absence of a default within the meaning of section 7, the debtor shall be entitled to the quiet possession and use of the aircraft object in accordance with the agreement as against-

Debtor provisions

- (a) its creditor and the holder of any interest from which the debtor takes free pursuant to section 27(5) or, in the capacity of buyer, section 27(3), unless and to the extent that the debtor has otherwise agreed; and
- (b) the holder of any interest to which the debtor's right or interest is subject pursuant to section 27(5) or, in the capacity of buyer, section 27(3), but only to the extent, if any, that such holder has agreed.

(2) Nothing in this Law affects the liability under the applicable law of a creditor for any breach of the agreement in so far as that agreement relates to an aircraft object.

- Relief pending final determination
- 14 (1) A creditor who adduces evidence of default by the debtor shall, pending final determination of its claim and to the extent that the debtor has at any time so agreed, be entitled to apply to a court for relief on an expedited basis in the form of one or more of the following Orders-
- (a) preservation of the aircraft object and its value;
  - (b) possession, control or custody of the aircraft object;
  - (c) immobilisation of the aircraft object;
  - (d) lease or, except where covered by paragraphs (a) to (c), management of the aircraft object and the income therefrom; and
  - (e) if at any time the debtor and the creditor specifically agree, sale of the aircraft object and application of proceeds therefrom.
- (2) Ownership or any other interest of the debtor passing on a sale under subsection (1)(e) is free from any other interest over which the creditor's international interest has priority under section 27.
- (3) In making an Order under subsection (1), the court may impose such terms as it considers necessary to protect the interested persons in the event that the creditor-
- (a) in implementing any Order granting such relief, fails to perform any of its obligations to the debtor under this Law; or
  - (b) fails to establish its claim, wholly or in part, on the final determination of that claim.
- (4) The creditor and the debtor or any other interested person may agree in writing to exclude the application of subsection (3).
- (5) Before making any Order under subsection (1), the court may require notice of the request to be given to any of the interested persons.
- (6) Nothing in this section limits the availability of forms of interim relief to those set out in subsection (1).

Procedural requirements for non-judicial remedies

15. A remedy provided by this Part shall be exercised in conformity with the procedures prescribed by the law of the place where the remedy is to be exercised.

Derogation

16. Any two or more of the parties referred to in this Part may at any time, by agreement in writing, exclude the application of section 17(2) and in their relations with each other, derogate from or vary the effect of any of the provisions of this Part, except sections 8(2) to (5), 9(3) and (4), 11(2) and 15.

**PART III**

**Registration in the International Registry**

17. (1) A valid registration in the International Registry shall be the sole means of establishing the priority of a right or interest in an aircraft object, such priority being determined in accordance with section 27, except only in respect of a priority non-consensual right or interest, whose priority is determined in accordance with section 29(1). Effect of registration

(2) No right or interest, except for a priority non-consensual right or interest to the extent specified in section 29(1), shall have priority in insolvency proceedings over registered interests.

18. (1) The following rights or interests are permitted to be registered- Registrable rights or interests

- (a) international interests, prospective international interests and registrable non-consensual rights and interests;
- (b) assignments and prospective assignments of international interests;
- (c) acquisitions of international interests by legal or contractual subrogations under the applicable law;
- (d) "notices of a national interest", as defined in the Cape Town Convention, under the laws of a Cape Town Convention State or the Islands permitting such notice through a declaration thereunder made by that State or the Islands;
- (e) subordinations of interests referred to in any of the preceding paragraphs; and
- (f) sales and prospective sales.

(2) A registrable non-consensual right or interest relating to any aircraft object may be registered under this Law as if the right or interest were an international interest and shall be treated accordingly.

(3) All information required for the registrations referred to in subsection (1) in relation to a helicopter, or to an airframe pertaining to an aircraft, registered for nationality purposes in the National Aircraft Register shall be transmitted directly to the International Registry.

19. (1) A registration shall be valid only if made in conformity with section 20 and any rules duly made by the Supervisory Authority. Validity and time of registration

(2) A valid registration shall be complete upon entry of the required information into the International Registry database so as to be searchable.

(3) A registration shall be searchable for the purposes of subsection (2) at the time when-

- (a) the International Registry has assigned to it a sequentially ordered file number; and
- (b) the registration information, including the file number, is stored in durable form and may be accessed at the International Registry.

(4) If an interest first registered as a prospective international interest or prospective sale becomes an international interest or a sale, respectively, that international interest or sale shall be treated as registered from the time of registration of the prospective international interest or prospective sale if the registration was still current immediately before the international interest or contract of sale was constituted.

(5) Subsection (4) applies *mutatis mutandis* to the registration of a prospective assignment of an international interest.

(6) A registered interest pertaining to an aircraft object shall be searchable in the International Registry database according to the name of its manufacturer, its manufacturer's serial number and its model designation.

Capacity to effect registration

20. (1) An international interest, a prospective international interest, an assignment or prospective assignment of an international interest, or a contract of sale or a prospective sale may be registered, and any such registration may be amended or extended prior to its expiry, by either party with the consent in writing of the other.

(2) The subordination of an international interest to another international interest may be registered at any time by or with the consent in writing of the person whose interest has been subordinated.

(3) The acquisition of an international interest by legal or contractual subrogation may be registered by the subrogee.

(4) A registrable non-consensual right or interest may be registered by the holder thereof.

(5) A registration may be discharged by or with the consent in writing of the party in whose favour it was made.

21. Registration remains effective- Duration of registration
- (a) in the case of an international interest, until discharged or until expiry of the period specified in the registration;
  - (b) in the case of a contract of sale, indefinitely; and
  - (c) in the case of a prospective sale, unless discharged or until expiry of the period, if any, specified in the registration.
22. (1) A person may, in the manner prescribed by this Law or the regulations, make or request a search of the International Registry by electronic means concerning interests or prospective interests internationally registered therein. Searches
- (2) A person may request and receive from the Registrar a registry search certificate by electronic means with respect to any aircraft object-
- (a) stating all registered information relating thereto, together with a statement indicating the date and time of registration of such information; or
  - (b) stating that there is no information in the International Registry relating thereto.
- (3) A search certificate issued under subsection (2) shall indicate that the creditor named in the registration information has acquired or intends to acquire an international interest in the object but shall not indicate whether what is registered is an international interest or a prospective international interest, even if this is ascertainable from the relevant registration information.
23. A document in the form prescribed by the regulations which purports to be a certificate issued by the International Registry is prima facie proof- Evidentiary value of International Registry certificate
- (a) that it has been so issued; and
  - (b) of the facts recited in it, including the date and time of a registration.
24. (1) Where the obligations secured by a registered security interest or the obligations giving rise to a registered non-consensual right or interest have been discharged, or where the conditions of transfer of title under a registered title reservation agreement have been fulfilled, the holder of such interest shall, without undue delay, procure the discharge of the registration after written demand by the debtor delivered to or received at its address stated in the registration. Discharge of registration
- (2) Where a prospective international interest, a prospective assignment of an international interest, or a prospective sale has been registered, the intending creditor, intending assignee or intending buyer shall, without undue delay, procure the discharge of the registration after written demand by the intending

debtor, assignor or seller which is delivered to or received at its address stated in the registration before the intending creditor, assignee or buyer has given value or incurred a commitment to give value.

(3) For the purpose of subsection (2) and in the circumstances there described, the holder of a registered prospective international interest or the person in whose favour a prospective sale has been registered shall take such steps as are within its power to procure the discharge of the registration no later than five working days after the receipt of the said demand.

(4) Where a registration ought not to have been made or is incorrect, the person in whose favour the registration was made shall, without undue delay, procure its discharge or amendment after written demand by the debtor or seller to, or received at, its address stated in the registration.

## **PART IV**

### **The Supervisory Authority and the Registrar**

Legal personality and immunity

25. (1) The Supervisory Authority is deemed to have international legal personality and its officers and employees shall enjoy such immunity from legal and administrative process as is provided under the rules applicable to them as an international entity or otherwise in accordance with the Cape Town Convention.

(2) The assets, documents, databases and archives of the International Registry shall be inviolable and immune from seizure or other legal or administrative process but such inviolability and immunity may be waived by the Supervisory Authority.

(3) For the purposes of any claim against the Registrar under section 26(1) or section 40, the claimant shall be entitled to such information and documents as are necessary to enable the claimant to pursue its claim.

Standard and extent of liability of the Registrar

26. (1) For the purposes of legal proceedings before a court it is hereby declared that the Registrar shall be liable for compensatory damages for loss suffered by a person directly resulting from an error or omission of the Registrar and its officers and employees or from a malfunction of the international registration system except where the malfunction is caused by an event of an inevitable and irresistible nature, which could not be prevented by using the best practices in current use in the field of electronic registry design and operation, including those related to back-up and systems security and networking.

(2) The Registrar shall not be liable under subsection (1) for factual inaccuracy of registration information received by the Registrar or transmitted by the Registrar in the form in which it received that information nor for acts or circumstances for which the Registrar and its officers and employees are not responsible and arising prior to receipt of registration information at the International Registry.

(3) Compensation under subsection (1) may be reduced to the extent that the person who has suffered the damage had caused or contributed to the damage.

## PART V

### Effects of an international interest as against third parties

27. (1) A registered interest has priority over any other interest subsequently registered and over an unregistered interest. Priority of competing interests

(2) The priority of the first-mentioned interest under subsection (1) applies-

- (a) even if the first-mentioned interest was acquired or registered with actual knowledge of the other interest; and
- (b) even as regards value given by the holder of the first-mentioned interest with such knowledge.

(3) A buyer of an aircraft object under a registered sale acquires its interest in that object free from an interest subsequently registered and from an unregistered interest, even if the buyer has actual knowledge of the unregistered interest.

(4) A buyer of an aircraft object under a registered sale acquires its interest in that object subject to an interest previously registered.

(5) A conditional buyer or lessee acquires its interest in or right over that object-

- (a) subject to an interest registered prior to the registration of the international interest held by its conditional seller or lessor; and
- (b) free from an interest not so registered at that time even if it has actual knowledge of that interest.

(6) The priority of competing interests or right under this section may be varied by agreement between the holders of these interests, but an assignee of a subordinated interest is not bound by an agreement to subordinate that interest

unless at the time of the assignment a subordination had been registered relating to that agreement.

(7) Any priority given by this section to an interest in an aircraft object extends to proceeds.

(8) This Law-

- (a) does not affect the rights of a person in an item other than an aircraft object held prior to its installation on an aircraft object if under the applicable law those rights continue to exist after the installation; and
- (b) does not prevent the creation of rights in an item other than an aircraft object which has previously been installed on an aircraft object where under the applicable law those rights are created.

(9) Ownership of or another right or interest in an aircraft engine shall not be affected by its installation or on removal from an aircraft.

(10) Subsection (8) applies to an item, other than an aircraft object, installed on an airframe, aircraft engine or helicopter.

Insolvency

28. (1) In insolvency proceedings against the debtor or seller, an international interest or sale, as applicable, is effective if prior to the commencement of the insolvency proceedings that interest or sale was registered in conformity with this Law.

(2) Nothing in this section impairs the effectiveness of an international interest or sale in the insolvency proceedings where that interest is effective under the applicable law.

(1996 Revision)

(3) Nothing in this section affects the application of the Fraudulent Dispositions Law (1996 Revision) or any rules of law applicable in insolvency proceedings relating to the avoidance of a transaction as a preference or a transfer in fraud of creditors or any rules of procedure relating to the enforcement of rights to property which is under the control or supervision of the insolvency administrator.

Priority non-consensual right or interest

29. (1) A priority non-consensual right or interest, to the extent it had priority over an interest in an aircraft object equivalent to that of the holder of a registered international interest prior to the effective date of this Law, shall retain that priority over a registered international interest hereunder, whether in or outside of insolvency proceedings.

(2) Nothing in this Law shall affect the right of the Government of the Islands or any state entity intergovernmental organisation or other private provider of public services thereof to arrest or detain an aircraft object under the laws of the Islands for payments of amounts owed to the Government of the Islands or such entity, organisation or provider directly relating to services in respect of that object or another aircraft object.

## PART VI

### Assignments of associated rights and international interests; rights of subrogation

30. (1) Except as otherwise agreed by the parties, an assignment of associated rights made in conformity with section 31 also transfers to the assignee- Effects of assignment

- (a) the related international interest; and
- (b) all the interests and priorities of the assignor under this Law.

(2) Nothing in this Law prevents a partial assignment of the assignor's associated rights; and where there is such partial assignment the assignor and assignee may agree as to their respective rights concerning the related international interest assigned under subsection (1), but not so as adversely to affect the debtor without its consent.

(3) Subject to subsection (4), the applicable law shall determine the defences and rights of set-off available to the debtor against the assignee.

(4) The debtor may at any time by agreement in writing waive all or any of the defences and rights of set-off referred to in subsection (3) other than defences arising from fraudulent acts on the part of the assignee.

(5) In the case of an assignment by way of security, the assigned associated rights revert in the assignor, to the extent that they are still subsisting, when the obligations secured by the assignment have been discharged.

31. (1) An assignment of associated rights transfers the related international interest only if it- Formal requirements of assignment

- (a) is in writing;
- (b) enables the associated rights to be identified under the contract from which they arise; and
- (c) in the case of an assignment by way of security, enables the obligations secured by the assignment to be determined, but without the need to state a sum or maximum sum secured.

(2) An assignment of an international interest created or provided for by a security agreement is not valid unless some or all related associated rights are also assigned.

(3) This Law does not apply to an assignment of associated rights which is not effective to transfer the related international interest.

Debtor's duty to assignee

32. (1) To the extent that associated rights and the related international interest have been transferred in accordance with sections 30 and 31, the debtor in relation to those rights and that interest is bound by the assignment and has a duty to make payment or give other performance to the assignee, but only if-

- (a) the debtor has been given notice of the assignment in writing by or with the authority of the assignor;
- (b) the notice identifies the associated rights; and
- (c) the debtor has consented in writing, whether or not the consent is given in advance of the assignment or identifies the assignee.

(2) Irrespective of any other ground on which payment or performance by the debtor discharges the latter from liability, payment or performance shall be effective for this purpose if made in accordance with subsection (1).

(3) Nothing in this section shall affect the priority of competing assignments.

Default remedies in respect of assignment by way of security

33. In the event of default by the assignor under the assignment of associated rights and the related international interest made by way of security, sections 7 to 9 and 11 to 15 apply in the relations between the assignor and the assignee (and, in relation to associated rights, apply in so far as those provisions are capable of applications to intangible property) as if references-

- (a) to the secured obligations and the security interest were references to the obligation secured by the assignment of the associated rights and the related international interest and the security interest created by that assignment;
- (b) to the chargee or creditor and chargor or debtor were references to the assignee and assignor;
- (c) to the holder of the international interest were references to the assignee; and
- (d) to the aircraft object were references to the assigned associated rights and the related international interest.

Priority of competing assignments

34. (1) Where there are competing assignments of associated rights and at least one of the assignments includes the related international interest and is registered, section 27 applies as if the references to a registered interest were

references to an assignment of the associated rights and the related registered interest and as if references to a registered or unregistered interest were references to a registered or unregistered assignment.

(2) Section 28 applies to an assignment of associated rights as if the references to an international interest were references to an assignment of the associated rights and the related international interest.

35. (1) The assignee of associated rights and the related international interest whose assignment has been registered has priority under section 34(1) over another assignee of the associated rights only- Assignee's priority with respect to associated rights

- (a) if the contract under which the associated rights arise states that they are secured by or associated with the object; and
- (b) to the extent that the associated rights are related to an aircraft object.

(2) For the purposes of subsection (1)(b), associated rights are related to an aircraft object only to the extent that they consist of rights to payment or performance that relate to-

- (a) a sum advanced and utilised for the purchase of the aircraft object;
- (b) a sum advanced and utilised for the purchase of another aircraft in which the assignor held another international interest if the assignor transferred that interest to the assignee and the assignment has been registered;
- (c) the price payable for the aircraft object;
- (d) the rentals payable in respect of the aircraft object; or
- (e) other obligations arising from a transaction referred to in this subsection.

(3) In all other cases, the priority of the competing assignments of the associated rights shall be determined by the applicable law.

36. Section 28 applies to insolvency proceedings against the assignor as if references to the debtor were references to the assignor. Effects of assignor's insolvency

37. (1) Subject to subsection (2), nothing in this Law affects the acquisition of associated rights and the related international interest by legal or contractual subrogation under the applicable law. Subrogation

(2) The priority between any interest within subsection (1) and a competing interest may be varied by agreement in writing between the holders of the respective interests but an assignee of a subordinated interest is not bound by

an agreement to subordinate that interest unless at the time of the assignment a subordination had been registered relating to that agreement.

## **PART VII**

### **Jurisdiction**

Choice of forum

38. (1) Subject to section 39 or 40, the courts of a Cape Town Convention State or the Islands chosen by the parties to a transaction have jurisdiction in respect of any claim brought under this Law, whether or not the chosen forum has a connection with the parties or the transaction and such jurisdiction shall be exclusive unless otherwise agreed between the parties.

(2) Any such agreement shall be in writing or otherwise concluded in accordance with the formal requirements of the law of the chosen forum.

Jurisdiction under section 14

39. (1) The courts chosen by the parties in conformity with section 38 and the courts of any Cape Town Convention State or the Islands in the territory of which the aircraft object is situated or in which the aircraft is registered have jurisdiction to grant relief under section 14(1)(a), (b), (c) and (6) in respect of that aircraft object or aircraft.

(2) Jurisdiction to grant relief under section 14(1)(d) and (e) or other interim relief by virtue of Article 14(6) may be exercised either-

- (a) by the courts chosen by the parties; or
- (b) by the courts of a Cape Town Convention State or the Islands in whose territory the debtor is situated, being relief which, by the terms of the Order granting it, is enforceable only in the territory of that State or the Islands.

(3) A court has jurisdiction under the preceding paragraphs even if the final determination of the claim referred to in section 14(1) will or may take place in a court of another Cape Town Convention State or the Islands or by arbitration.

Jurisdiction to make Orders against the Registrar

40. (1) The courts of the place in which the Registrar has its center of administration shall have exclusive jurisdiction to award damages or make Orders against the Registrar.

(2) Where a person fails to respond to a demand made under section 24 and that person has ceased to exist or cannot be found for the purpose of enabling an Order to be made against it requiring it to procure discharge of the registration, the courts referred to in subsection (1) shall have exclusive jurisdiction, on the

application of the debtor or intending debtor, to make an Order directed to the Registrar requiring the Registrar to discharge the registration.

(3) Where a person fails to comply with an Order of a court having jurisdiction under this Law, the courts referred to in subsection (1) may direct the Registrar to take such steps as will give effect to that Order.

(4) Except as otherwise provided by this section, no court may make Orders or give judgments or rulings against, or purporting to bind, the Registrar.

41. (1) Subject to subsection (2), a waiver of sovereign immunity from jurisdiction of the courts specified in section 38 or 39 or relating to enforcement of rights and interests relating to an aircraft object under this Law shall be binding and if the other conditions to such jurisdiction or enforcement have been satisfied, shall be effective to confer jurisdiction and permit enforcement, as the case may be.

Waivers of sovereign immunity

(2) A waiver under subsection (1) must be in writing and contain a description of the aircraft object.

42. This Part is not applicable to insolvency proceedings.

Jurisdiction in respect of insolvency proceedings

## PART VIII

### General and transitional provisions

43. (1) This Law does not apply to a pre-existing right or interest, which retains the priority it enjoyed under the applicable law.

Transitional provisions

(2) Nothing in subsection (1) or otherwise in this Law shall prevent parties to an agreement and related documents, by affirmative act, from re-constituting a pre-existing right or interest as an international interest and otherwise bringing it within the scope of this Law.

(3) A priority non-consensual right or interest shall retain its priority over an international interest, to the extent specified in section 29(1), which is registered prior to the effective date.

44. The Governor in Cabinet may make regulations generally for carrying the purposes and provisions of this Law into effect and, without prejudice to the generality of the foregoing, may make regulations prescribing the procedures for dealing with requests pursuant to section 11(4).

Regulations

Passed by the Legislative Assembly the      day of      2009.

Speaker.

Clerk of the Legislative Assembly.