



Isle of Man
Government

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Department of Economic Development

**Consultation on Extension of Ratification of the Cape Town
Convention and Aircraft Protocol to the Isle of Man**

August 2015

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Aircraft Protocol to the Isle of Man**

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Background

1. The Convention on International Interests in Mobile Equipment¹ ("the Convention") and the Protocol to the Convention on International Interests in Mobile Equipment on matters specific to Aircraft Equipment² ("the Protocol") are instruments which together provide an internationally agreed framework for the legal rights of financiers of mobile equipment for aircraft, in order to reduce the cost of borrowing and thereby encourage the flow of capital for high value aircraft equipment.
2. The Convention and its Protocol have been ratified extensively worldwide. The UK ratified the Convention and Protocol earlier this year.
3. There is provision in both the Convention and Protocol for their extension to "territorial units" of the Contracting States. The Department of Economic Development considers that application of the Convention and Protocol to the Isle of Man would be beneficial to the Isle of Man and therefore intends to progress its application to the Island.
4. The Department has published this consultation paper in order to ascertain the views of stakeholders on extension of the Convention and the Protocol to the Isle of Man.
5. In addition both the Convention and Protocol set out a number of options with regard to the way that they can be applied and the Department seeks feedback on these. In particular it should be noted that the Department is aware that a declaration in relation to Article XI on remedies on insolvency would affect Manx insolvency law and therefore it is proposed that a declaration on this issue is deferred for the foreseeable future, pending further consideration.

Consultation Process

6. Responses to this consultation should be submitted in writing to:

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¹ <http://www.unidroit.org/instruments/security-interests/cape-town-convention>

² <http://www.unidroit.org/instruments/security-interests/aircraft-protocol>

Fax: +44 (0)1624 682355

Email: simon.williams@gov.im

The closing date for the receipt of comments is Friday 2nd October 2015.

7. When submitting your views please indicate if you are responding on behalf of an organisation.
8. To ensure that the process is transparent and consistent with the Government's Code of Conduct on Consultation responses can only be accepted if you provide your name with your response.
9. The purpose of consultation is an information, views and evidence gathering exercise from which an informed decision can be made. In any consultation exercise the responses received do not guarantee changes will be made to what has been proposed.
10. A summary of the responses will be published after the consultation has closed.
11. Unless specifically requested otherwise, any responses received may be published either in part or in their entirety along with the name of the person or body that has submitted the response. Please mark your response clearly if you wish your response and/or name to be kept confidential. Confidential responses will be included in any statistical summary of the numbers of comments received.

About the Convention and Protocol

12. The Convention on International Interests in Mobile Equipment (also known as the Cape Town Convention) provides an internationally agreed legal order for the creation, enforcement, registration and priority of security and similar interests in high value internationally mobile equipment. The Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment (known as the Aircraft Protocol) applies this general regime to aircraft objects above a certain size, in order to meet the specific needs of the sector.
13. The rules laid down in the Convention and Protocol are applicable in all Contracting States, so that in these States creditors have an assured legal regime of default remedies and priority of registered interests, as well as recognition of their international interest in the event of the debtor's insolvency. In this way an international framework is laid down to deal with any disputes arising under the treaty, such as the ability of creditors to recover an aircraft object should there be a default on payments.

The case for extension to the Isle of Man

14. The Convention and its Protocol have been ratified extensively worldwide – the Convention now has 68 Contracting States and the Protocol 59 Contracting States. There are also a number of countries that are working towards ratification, including all of the Isle of Man's competitors.

15. The Department considers that the Isle of Man risks a loss of reputation which might be detrimental to the Island's aviation-related economy should it fail to undertake the necessary work to allow extension of ratification to be granted by the UK. International financial/legal/insurance companies which are inherently risk averse are likely to become increasingly reluctant to support registration of aircraft on the Isle of Man if extension of the UK's ratification does not take place. On this basis the Department therefore considers that the Convention and Protocol should be extended to the Isle of Man.
16. The Department is advised that the Convention and Protocol can be extended to the Island by way of an Order under section 11 of the Airports and Civil Aviation Act 1987 (of Tynwald) applying to the Isle of Man with modifications the UK's International Interests in Aircraft Equipment (Cape Town Convention) Regulations 2015 (SI 2015/912), which implements the Convention and Protocol in UK law.
17. The draft Order is attached at Annex A. For ease of reference, a version of the UK Regulations as proposed to be modified in their application to the Island is attached at Annex B.

Question 1

Do you agree with the Department's proposal to implement the Convention and Protocol and ask the UK to extend its ratification of these instruments to the Isle of Man?

Options for implementation

18. In addition to the decision whether to progress extension to the Island, both the Convention and Protocol present a number of options in the way that they are applied.
19. In particular, a decision must be made regarding a declaration under Article XI of the Protocol on the issue of remedies on insolvency.
20. It should be noted that, so far as the UK is concerned, certain options fall within the competence of the European Union, and therefore the UK as a Member State is constrained by decisions of the EU authorities with respect to its own territory. As the Isle of Man is outside the EU in relation to civil aviation matters, those constraints are not binding on the Isle of Man, or on the UK Government with respect to the Island.

Article XI of the Protocol — Remedies on insolvency

21. A contracting State may declare under Article XXX(3) that it will apply Alternative A or Alternative B in Article XI to some or all insolvency proceedings.
22. The UK states that this is a matter within the EU's competence; Member States cannot make a declaration under Article XXX(3), but are free to amend domestic law to have the same effect. The options for the Isle of Man are as follows:

- (a) adopt Alternative A: the liquidator/administrator must either give possession to the creditor or cure all defaults, within a specified time (e.g. 60 days); the creditor does not need court's permission to take possession or sell;
 - (b) adopt Alternative B: as for A, but the liquidator/administrator must notify creditor of intention; the creditor cannot take possession or sell without a court order;
 - (c) adopt neither A nor B, so that the domestic rules of insolvency will apply.
23. The UK has opted for Alternative A, on the ground that it could lower the cost of obtaining finance; it would not affect the creditor's rights in liquidation, but might improve the chance of rescue in administration.
24. Manx insolvency law does not allow for administration, or for delays in the enforcement of a security, so Alternative A would be inconsistent with the present law. The Department is aware that changes to Manx insolvency law are outwith the scope of this exercise and therefore to make a declaration at this time might be premature. It is therefore proposed that the Isle of Man defer a declaration in relation to Article XI, and instead continue to rely on its domestic insolvency rules on the ground that it could also lower the cost of obtaining finance by allowing immediate recourse to enforcement remedies. Accordingly it is proposed to exclude regulation 37 of the UK Regulations in their application to the Isle of Man.

Question 2

Do you have any views on the Department's proposed course of action in relation to Article XI of the Protocol?

Other declarations

25. There follows a list of the remaining Articles under both the Convention and Protocol which require a decision by the Isle of Man as to how they will be implemented in the Island. The Department's proposed course of action under each Article is also set out.

Cape Town Convention

Article 39 — Priority of non-consensual interests

26. A Contracting State may declare (Article 39(1)) that (a) non-consensual rights or interests which have priority in domestic law (e.g. liens) have priority, and (b) the rights of the State and others to arrest or detain objects for payment of sums owed for services are preserved; it may also declare (Article 39(4)) that a right or interest within (a) has priority over an interest registered before ratification.
27. The UK has made declarations under Article 39, implemented by regulation 17 of the UK Regulations.
28. The Department proposes that the Isle of Man follow the UK in relation to Article 39. It is therefore proposed that the UK Government be requested to make declarations under Article 39(1) and (4) with respect to the Isle of Man, and that regulation 17 of the UK Regulations be applied to the Island.

Article 40 — Registrable non-consensual rights or interests

29. A Contracting State may declare categories of non-consensual rights or interests which may be registrable as if they were international interests.
30. The UK has not made a declaration under Article 40.
31. The Department proposes that the Isle of Man follow the UK, and that no action be taken with regard to Article 40.

Article 50 — Internal transactions

32. A Contracting State may declare that the Convention shall not apply to internal transactions.
33. The UK has not made a declaration under Article 50.
34. The Department proposes that the Isle of Man follow the UK, and that no action be taken with regard to Article 50.

Article 53 — Determination of courts

35. A Contracting State may designate courts with jurisdiction under the Convention.
36. The UK has made declarations designating the High Court (England and Wales), the Court of Session (Scotland) and the High Court (N Ireland). Those declarations have been implemented by regulation 44 of the UK Regulations.
37. The Department proposes that the Isle of Man follow the UK with regard to Article 53. It is therefore proposed that the UK Government be requested to make a declaration under Article 53 with respect to the Isle of Man, and that regulation 44 of the UK Regulations be applied with modifications so as to designate the Manx High Court for this purpose (see the modified regulation 44 in Annex B).

Article 54 — Declarations regarding remedies

38. A Contracting State may declare (1) that a chargee may not lease an object within its territory; (2) whether or not any remedy may be exercised only with leave of the court.
39. The UK has not made a declaration under Article 54(1), but has made a declaration under Article 54(2); no action is necessary to implement that declaration.
40. The Department proposes that the Isle of Man follow the UK with regard to Article 54. It is therefore proposed that the UK Government be requested to make a declaration under Article 54(2) with respect to the Isle of Man.

Article 55 — Declarations regarding relief pending final determination

41. A Contracting State may declare that it will not apply Article 13 (relief pending final determination) or Article 43 (jurisdiction under article 13).
42. The UK state that this is a matter within the EU's competence (and accordingly a Member State may not exercise any option in the matter). Regulation (EC) 44/2001 (the "Brussels I

regulation") is consistent with Articles 13 and 43, i.e. with no declaration under Article 55. Articles 13 and 43 are implemented by regulations 25 and 43 of the UK Regulations.

43. Isle of Man law is consistent with Articles 13 and 43.
44. The Department proposes that the Isle of Man follow the UK with regard to Article 55, and therefore that regulations 25 and 43 of the UK Regulations be applied to the Island.

Question 3

Do you have any comments on the proposals relating to declarations under the Convention?

Aircraft Protocol

Article VIII — Choice of law

45. A Contracting State may declare under Article XXX(1) that it will apply Article VIII, the effect of which is that the parties to an agreement, contract or sale etc. may agree on the law which is to govern their contractual rights and obligations.
46. The UK state that this is a matter within the EU's competence (and accordingly a Member State may not exercise any option in the matter). Regulation (EC) 593/2008 (the "Rome I regulation", which determines the "applicable law" of a contract) is consistent with a declaration under Article VIII. No provision of the Regulations is therefore needed to implement Article VIII with respect to the UK.
47. Provision is made in Manx law for adopting the "Rome I" rules by the Contracts (Applicable Law) Act 1992 s.2, but that is not in force. Accordingly the common-law rules for determining the "proper law" of a contract, which are similar but not identical, still apply in the Isle of Man.
48. The Department proposes that, for the sake of consistency and clarity, Article VIII be adopted in place of the common-law rules to apply to agreements within the scope of the Protocol. It is therefore proposed that the UK Government be requested to make a declaration under Article VIII with respect to the Isle of Man, and that provision be made in the terms of Article VIII by way of modification of the UK Regulations (see proposed regulations 37B and 38(1)(g) in Annex B).

Article X — Relief pending final determination

49. A Contracting State may make declarations modifying Article 13(1) of the Convention in specified ways.
50. The UK has made declarations adopting Article X(3) (court may authorise sale), (4) (sale overrides other interests) and (5) (parties may exclude court's power to impose terms); implemented by regulations 25(1)(e), 20(7) and 9(2) of the UK Regulations. It has not adopted Article X(2) (time-limit for "speedy" relief) or (6) (notification of relief to registry).
51. The Department proposes that the Isle of Man follow the UK with regard to Article X, and that regulations 25(1)(e), 20(7) and 9(2) of the UK Regulations accordingly be applied to the Island.

Article XII — Insolvency assistance

52. A Contracting State may declare under Article XXX(1) that its courts will co-operate with foreign courts and liquidators/administrators in carrying out Article XI.
53. The UK state that this is a matter within the EU's competence (and accordingly a Member State may not exercise any option in the matter). Regulation (EC) 1346/2000 on insolvency proceedings is consistent with a declaration under Article XII, and no provision is needed to implement Article XII.
54. Limited statutory provision is made in Manx law for co-operation with overseas insolvency courts, the exception in the field of insolvency being the Bankruptcy Act 1988 s.1, but this is not as wide as Article XII, since it does not deal with corporate insolvency.
55. The Department proposes that, for the sake of consistency and clarity, Article XII be adopted in place of the 1988 Act to apply to insolvencies within the scope of the Protocol. It is therefore proposed that the UK Government be requested to make a declaration under Article XII with respect to the Isle of Man, and that provision be made in the terms of Article XII by way of modification of the Regulations (see proposed regulation 37B in Annex B).

Article XIII — De-registration and export request authorisation

56. A Contracting State may declare under Article XXX(1) that the parties may agree that the debtor may issue an irrevocable authorisation allowing the creditor to de-register the aircraft and export the object in order to enforce its security.
57. The UK has made a declaration under Article XII, which implemented by regulation 22 of the UK Regulations.
58. The Department proposes that the Isle of Man follow the UK in this regard. It is therefore proposed that the UK Government be requested to make a declaration under Article XII with respect to the Isle of Man, and that regulation 22 of the UK Regulations be applied to the Island.

Article XXIV — Relationship with the Convention for the Unification of Certain Rules Relating to the Precautionary Attachment of Aircraft

59. This applies only to States party to the Convention for the Unification of Certain Rules Relating to the Precautionary Attachment of Aircraft; the UK is not a party to it and therefore it does not apply to the Island. Accordingly no action is proposed with respect to Article XXIV.

Question 4

Do you have any comments on the proposals relating to declarations under the Protocol?

Question 5

Do you have any other comments to make on the proposals laid out in this consultation paper?

Summary of Questions

Question 1

Do you agree with the Department's proposal to implement the Convention and Protocol and ask the UK to extend its ratification of these instruments to the Isle of Man?

Question 2

Do you have any views on the Department's proposed course of action in relation to Article XI of the Protocol?

Question 3

Do you have any comments on the proposals relating to declarations under the Convention?

Question 4

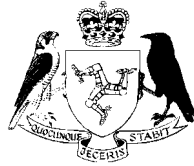
Do you have any comments on the proposals relating to declarations under the Protocol?

Question 5

Do you have any other comments to make on the proposals laid out in this consultation paper?

Annex A – Draft Aviation (Cape Town Convention) Order 2015

Statutory Document No.



AIRPORTS AND CIVIL AVIATION ACT 1987

AVIATION (CAPE TOWN CONVENTION) ORDER 2015

Approved by Tynwald

2015

Coming into operation

1 January 2016

The Department of Economic Development makes this Order under section 11 of the Airports and Civil Aviation Act 1987³.

1. Title

This Order is the Aviation (Cape Town Convention) Order 2015.

2. Commencement

If approved by Tynwald, this Order comes into operation on 1 January 2016.

3. Interpretation

In this Order “the UK Regulations” means the International Interests in Aircraft Equipment (Cape Town Convention) Regulations 2015⁴, being provisions of an instrument of a legislative character, made under the European Communities Act 1972 (an Act of Parliament)⁵, which relates to civil aviation.

4. Application of UK Regulations

The UK Regulations shall apply to the Island as part of the law of the Island, subject to the exceptions, adaptations and modifications specified in the Schedule.

MADE

2015

Minister for Economic Development

³ 1987 c.10

⁴ SI 2015/912

⁵ 1972 c.68

SCHEDULE

EXCEPTIONS, ADAPTATIONS AND MODIFICATIONS

General adaptations and modifications

1. (1) Subject to the following provisions of this Schedule —
 - (a) references to —
 - (i) an Act of Parliament extending to the Island, or applied to the Island under section 11 of the Airports and Civil Aviation Act 1987,
 - (ii) an instrument of a legislative character made under an Act of Parliament and so extending or so applied (including the UK Regulations), or
 - (iii) any provision of such an Act or instrument,are to the Act, instrument or provision as it has effect in the Island;
 - (b) for “United Kingdom” (in each place) substitute “Isle of Man”;
 - (c) for “Civil Aviation Authority” and “the Authority” (in each place) substitute “Department of Economic Development” and “the Department” respectively.
- (2) Sub-paragraph (1)(c) does not apply to the references to the United Kingdom in regulations 17(5) and (6)(a) and 21(2)(a).

Particular exceptions, adaptations and modifications

2. In regulation 2 —
 - (a) for "Article XXVIII" substitute "Article XXXIII";
 - (b) for "commencement of that Protocol" substitute "taking effect of the declaration extending that Protocol to the Isle of Man".
3. Omit regulation 3.
4. In regulation 5 —
 - (a) omit the definition of “law of the United Kingdom”;
 - (b) in the definition of “recognised”, omit “each Part of”.
5. Omit regulation 9(1).
6. In regulation 14(1), omit "or, in Scotland, sufficient evidence".
7. In regulation 17 —
 - (a) in paragraph (2)(b), for the words in brackets substitute "(including an Act of Tynwald);
 - (b) in paragraph (4)(a), omit “(including any Part of the United Kingdom)”;
 - (c) in paragraph (6)(b), for "enactment or commencement" substitute "application to the Isle of Man".
8. In regulation 26(2), omit “any Part of”.
9. Omit regulation 35.
10. Omit regulation 37.
11. At the end of Part 3 insert —

"Insolvency assistance

37A. The courts of the Isle of Man shall, in accordance with the law of the Isle of Man, cooperate to the maximum extent possible with foreign courts and foreign insolvency administrators in carrying out the provisions of Article XI of the Aircraft Protocol in relation to an aircraft object which is situated in the Isle of Man.

Choice of law

Choice of law

37B. The parties to an agreement, or a related guarantee contract or subordination agreement, may agree on the law which is to govern their contractual rights and obligations, wholly or in part."

12. In regulation 38(1), at the end insert —
 - (g) regulation 37B."
13. In regulation 42(1) and (3), omit "any Part of".
14. (1) In regulation 43(1) and (2), omit "any Part of".
 - (2) After regulation 43(2) insert —

"(2A) The courts of the Isle of Man may also grant relief under regulation 25(1)(a), (b), (c) or (d) where the object is a helicopter, or an airframe pertaining to an aircraft, for which the Isle of Man is the State of registry."
 - (3) In regulation 43(3), for "(1) and (2)" substitute "(1), (2) and (2A)".
15. For regulation 44 substitute —

"Court with jurisdiction in the Isle of Man

44. Where the courts of the Isle of Man have jurisdiction in accordance with this regulation, the jurisdiction is to be exercised by the High Court of Justice of the Isle of Man."
16. Omit regulation 52.
17. (1) Schedule 5 is modified as follows.
 - (2) In paragraph 1 —
 - (a) in sub-paragraph (2)(a), for "the Authority" substitute "appropriate charge";
 - (b) in sub-paragraph (5), omit the words from "(the paragraph" onwards;
 - (c) omit sub-paragraphs (6) to (8).
 - (3) Omit paragraphs 2 and 3.
 - (4) In paragraph 4 —
 - (a) in the side-heading and sub-paragraph (1), for "Air Navigation Order 2009" substitute "Air Navigation (Isle of Man) Order 2015";
 - (b) in sub-paragraphs (2) and (3), in the inserted articles 7(6) and 8A(3), for "CAA" substitute "Department".
 - (5) Omit paragraphs 5, 6 and 7.
 - (6) For paragraph 9 substitute —

“Companies Acts

9. Part III of the Companies Act 1931 (an Act of Tynwald) and Part VIII of the Companies Act 2006 (an Act of Tynwald) (registration of charges) do not apply to a charge which is an international interest.”.

EXPLANATORY NOTE

(This note is not part of the Order.)

This Order applies to the Isle of Man, with modifications, the International Interests in Aircraft Equipment (Cape Town Convention) Regulations 2015 (SI 2015/912), which implement the Convention on International Interests in Mobile Equipment (Cm 8786) and its Protocol on matters specific to Aircraft Equipment (Cm 8787) (Cape Town, 2001).

DRAFT

STATUTORY INSTRUMENTS

2015 No. 912

CIVIL AVIATION

The International Interests in Aircraft Equipment (Cape Town Convention) Regulations 2015

<i>Made</i>	<i>23rd March 2015</i>
<i>Laid before Parliament</i>	<i>26th March 2015</i>
<i>Coming into force in accordance with Regulation 2</i>	

The Secretary of State is designated for the purposes of section 2(2) of the European Communities Act 1972 in relation to property interests in moveable objects.

The Convention on International Interests in Mobile Equipment and its Protocol on matters specific to Aircraft Equipment signed on 16th November 2001 are together to be regarded as an EU Treaty as defined in section 1(2) of the European Communities Act 1972, by virtue of the European Union (Definition of Treaties) (Convention on International Interests in Mobile Equipment and Protocol thereto on matters specific to Aircraft Equipment) Order 2014.

The Secretary of State, in exercise of the powers conferred by section 2(2) of the European Communities Act 1972, makes the following Regulations:

PART 1

INTRODUCTORY

Citation

1. These Regulations may be cited as the International Interests in Aircraft Equipment (Cape Town Convention) Regulations 2015.

Commencement

2. These Regulations come into force on the date specified in Article XXXIII of the Aircraft Protocol for the taking effect of the declaration extending that Protocol to the Isle of Man.

[. . .]

The Cape Town Convention and Aircraft Protocol

4.—(1) In these Regulations “the Cape Town Convention” means the Convention on International Interests in Mobile Equipment signed at Cape Town on 16th November 2001.

(2) In these Regulations “the Aircraft Protocol” means the Protocol to the Cape Town Convention on matters specific to Aircraft Equipment.

(3) In these Regulations “Protocol Regulations” means regulations made or approved by the Supervisory Authority pursuant to the Aircraft Protocol.

(4) The text of the Cape Town Convention is set out in Schedule 1.

(5) The text of the Aircraft Protocol is set out in Schedule 2.

(6) The Cape Town Convention and the Aircraft Protocol may be referred to together as the Convention on International Interests in Mobile Equipment as applied to aircraft objects.

Interpretation

5. In these Regulations—

“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 engines” means aircraft engines (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 jet propulsion aircraft engines, have at least 1750lb of thrust or its equivalent, and

(b) in the case of turbine-powered or piston-powered aircraft engines, have 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 to them;

“aircraft objects” means airframes, aircraft engines and helicopters;

“the Aircraft Protocol” has the meaning given by regulation 4(2);

“aircraft register” means a register maintained by a State or a common mark registering authority for the purposes of the Chicago Convention;

“airframes” means airframes (other than those used in military, customs or police services) that, when appropriate aircraft engines are installed thereon, are type certified by the competent aviation authority to transport—

(a) at least 8 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 to them;

“applicable law” means the domestic rules of the law applicable by virtue of the rules of private international law of a State; and where a State comprises several territorial units, each of which has its own rules of law in respect of the matter to be decided, and where there is no indication of the relevant territorial unit—

(a) the law of that State decides which is the territorial unit whose rules govern, and

(b) in the absence of any such rule, the law of the territorial unit with which the case is most closely connected applies;

“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;

“authorised party” means the party referred to in regulation 22(6);

“the Cape Town Convention” has the meaning given by regulation 4(1);

“Chicago Convention” means the Convention on International Civil Aviation, signed at Chicago on 7th 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 14th 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 contract for the sale of an aircraft object by a seller to a buyer which is not an agreement (as defined);

“Contracting State” means a State party to the Cape Town Convention and the Aircraft Protocol;

“the court” has the meaning given by regulation 47;

“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 or a lessee under a leasing agreement;

“default” has the meaning given by regulation 18;

“de-registration of the aircraft” means deletion or removal of the registration of the aircraft from its aircraft register in accordance with the Chicago Convention;

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

“helicopters” means heavier-than-air machines (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 are type certified by the competent aviation authority to transport—

(a) at least 5 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 to them;

“insolvency office holder” means a person authorised to administer insolvency proceedings, including one authorised on an interim basis, and includes a debtor in possession if permitted by the applicable insolvency law;

“insolvency proceedings” means liquidation, bankruptcy, sequestration or other collective judicial or administrative insolvency proceedings, including interim proceedings, in which the assets and affairs of the debtor are subject to control or supervision by a court (or liquidation committee);

“interested persons” means—

(a) the debtor;

(b) a guarantor;

(c) any other person having rights in or over the aircraft object;

“international interest” means an interest held by a creditor to which Article 2 of the Cape Town Convention applies;

“International Registry” means the international registration facilities established for the purposes of the Cape Town Convention and the Aircraft Protocol;

[. . .]

“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;

“non-consensual right or interest” means a right or interest conferred under the law of a Contracting State which has made a declaration under Article 39 of the Cape Town Convention 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 effective date of the Cape Town Convention as defined by Article 60(2)(a);

“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;

“Protocol Regulations” has the meaning given by regulation 4(3);

“recognised” means recognised in the law of [. . .] the Isle of Man;

“registered” means registered in the International Registry pursuant to Chapter V of the Cape Town Convention;

“registered interest” means an international interest including an interest treated as an international interest in accordance with article 40 of the Cape Town Convention, or in cases where a State has made a declaration under Article 50 of the Cape Town Convention, a national interest specified in a notice of a national interest registered pursuant to Chapter V of the Cape Town Convention;

“Registrar” means, in respect of the Aircraft Protocol, the person or body designated by that Protocol or appointed under Article 17(2)(b) of 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” includes territory;

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

“Supervisory Authority” means, in respect of the Aircraft Protocol, the Supervisory Authority referred to in Article 17(1) of 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 fulfilment of the condition or conditions stated in the agreement;

“unregistered interest” means a consensual interest or non-consensual right or interest (other than an interest to which Article 39 of the Cape Town Convention applies) which has not been registered, whether or not it is registrable under the Convention; and

“writing” means a record of information (including information communicated by teletransmission) which is in tangible or 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.

PART 2

THE INTERNATIONAL INTEREST

Recognition and application

International interest to have effect in the law of the Isle of Man

6.—(1) The international interest provided for by Articles 2 to 7 of the Cape Town Convention is recognised in relation to aircraft objects.

(2) These Regulations are subject to, and to be applied in accordance with, the provisions of—

- (a) the Cape Town Convention,
- (b) the Aircraft Protocol, and
- (c) Protocol Regulations.

(3) In accordance with paragraph (1), the international interest has effect where the conditions of the Cape Town Convention and the Aircraft Protocol are satisfied (with no requirement to determine whether a proprietary right has been validly created or transferred pursuant to the common law *lex situs* rule).

Description of aircraft objects

7.—(1) A description of an aircraft object that contains the information listed in paragraph (2) is necessary and sufficient to identify the object for the purposes of Article 7(c) of the Cape Town Convention and Article V(1)(c) of the Aircraft Protocol.

(2) The information required by paragraph (1) in relation to an aircraft object is—

- (a) its manufacturer’s serial number,
- (b) the name of the manufacturer, and
- (c) its model designation.

Helicopters and airframes

8.—(1) Without prejudice to Article 3(1) of the Cape Town Convention, these Regulations also apply in relation to a helicopter, or to an airframe pertaining to an aircraft, registered in an aircraft register of a Contracting State which is the State of registry.

(2) Where the 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.

Exclusions and modifications by agreement

9.— [. . .]

(2) In their relations with each other, the parties may derogate from or vary the effect of regulations 19(1) to (3), 20(1) and (2), 21, 22 and 25(1).

Registry, Registrar and Supervisory Authority

The Registry

10. Schedule 3 makes provision about the International Registry established in accordance with Article 16 of the Cape Town Convention.

The Registrar

11. Schedule 3 also makes provision about the Registrar appointed in accordance with Article 17(2) of the Cape Town Convention.

Supervisory Authority

12. Schedule 4 makes provision about the Supervisory Authority established in accordance with Article 17 of the Cape Town Convention and Chapter III of the Aircraft Protocol.

Enforcement of orders against the Registrar

13.—(1) The court may make orders for or in connection with the enforcement of awards or orders made under Article 44 of the Cape Town Convention (jurisdiction to make orders against the Registrar).

(2) This regulation is without prejudice to the exclusivity of the jurisdiction provided for in that Article.

Registration procedure and duration

Registration procedure

14.—(1) Registration of an international interest or other matter in accordance with the Cape Town Convention (including any amendment or extension) has effect for the purposes of these Regulations only if and to the extent that it complies with the provisions of Articles 18 to 20 of the Convention (registration requirements; validity and time of registration; consent to registration) as modified or supplemented by Article XX of the Aircraft Protocol and by Protocol Regulations.

(2) A document in the form prescribed by Protocol Regulations which purports to be a certificate issued by the International Registry is to be taken as evidence [. . .], unless the contrary is proved—

- (a) that it has been so issued, and
- (b) of the facts recited in it, including the date and time of registration.

Duration of registration

15.—(1) Registration of an international interest has effect for the purposes of these Regulations while it remains effective in accordance with the provisions of Article 21 of the Cape Town Convention (duration of registration).

(2) The effect of registration is subject to the obligations imposed under Article 25 of the Cape Town Convention (discharge of registration) as modified by Article XX of the Aircraft Protocol and by Protocol Regulations.

(3) Holders of interests, intending creditors or assignees, and persons in whose favour an incorrect or erroneous registration has been made, must comply with those obligations.

(4) This regulation is subject to regulation 41.

PART 3

EFFECT OF INTERNATIONAL INTEREST

Priority of interests

Priority of competing interests

16.—(1) A registered interest has priority over any other interest subsequently registered and over an unregistered interest (but this regulation is subject to regulations 17 and 51).

(2) The priority of the registered interest under paragraph (1) applies—

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

(3) The buyer of an aircraft object under a registered sale acquires its interest in it subject to an interest previously registered.

(4) The conditional buyer or lessee acquires its interest in or right over that aircraft 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.

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

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

(7) The priority of competing interests or rights under this regulation may be varied by agreement between the holders of those 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.

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

(9) Regulation 14(1) and 15(1) have effect in accordance with Article 19(4) of the Cape Town Convention (which provides that an interest first registered as a prospective international interest becomes an international interest and must be treated as registered from the time of registration of the prospective international interest provided that the registration was still current immediately before the international interest was constituted as provided for by Article 7 of the Cape Town Convention).

(10) Paragraph (9) applies in relation to registration whether the registration of an international interest or of a prospective assignment of an international interest with the necessary modifications.

(11) These Regulations—

- (a) do not affect the rights of a person in an item, other than an aircraft object, installed on an airframe, aircraft engine or helicopter, held prior to its installation if under the law of the Isle of Man those rights continue to exist after the installation; and
- (b) do 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 law of the Isle of Man those rights are created.

Overriding non-consensual rights and interests

17.—(1) The categories of non-consensual right and interest listed in paragraph (2) —

- (a) have priority over an interest in an aircraft object equivalent to that of the holder of a registered international interest, and
- (b) have priority over a registered international interest (whether in or outside insolvency proceedings).

(2) Those rights and interests are—

- (a) a possessory lien in respect of work done on the aircraft object (whether before or after the creation or registration of the international interest or equivalent interest) on the express or implied authority of any persons lawfully entitled to possession of the aircraft object; and
- (b) any right to detain the aircraft object under an enactment (including an Act of Tynwald).

(3) Nothing in these Regulations or the Cape Town Convention affects the right of a public authority to arrest or detain an aircraft object under the law of the Isle of Man for payment of amounts owed to a public authority directly relating to public services in respect of the aircraft object or another aircraft object.

(4) In paragraph (3) “public authority” means—

- (a) a public authority of the Isle of Man [. . .],
- (b) a public authority of another State,
- (c) an intergovernmental organisation, and

(d) a private provider of public services in the Isle of Man or elsewhere.

(5) This regulation applies to categories of rights and interests whether created before or after the deposit by the United Kingdom of the declaration under Article 39 of the Cape Town Convention to which this regulation gives effect.

(6) A right or interest which has priority or is preserved by virtue of this regulation has priority irrespective of whether the relevant international interest was registered before or after—

- (a) any action taken by the United Kingdom in respect of the Cape Town Convention, or
- (b) the application to the Isle of Man of these Regulations.

Remedies in case of default

Meaning of “default”

18.—(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 regulations 19 to 21 and 25.

(2) Where the debtor and the creditor have not so agreed, “default” for the purposes of regulations 19 to 21 and 25 means a default which substantially deprives the creditor of what it is entitled to expect under the agreement.

Remedies of chargee

19.—(1) This regulation applies—

- (a) where a default has occurred, but
- (b) only to the extent that the chargor has at any time agreed that the remedies specified in this regulation should apply.

(2) The chargee may exercise any one or more of the following remedies—

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

(3) The chargee may alternatively apply to the court for an order authorising or directing any of the acts referred to in paragraph (2).

(4) A chargee proposing to sell or grant a lease of an aircraft object under paragraph (2) must give reasonable prior notice in writing of the proposed sale or lease to—

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

(5) A chargee giving ten or more working days’ prior written notice of a proposed sale or lease to interested persons is deemed to satisfy the requirement of providing reasonable prior notice in

paragraph (4) (but this paragraph does not prevent a chargee and a chargor or guarantor from agreeing to a longer period of prior notice).

(6) A sum collected or received by the chargee as a result of exercise of any of the remedies set out in paragraph (2) or (3) is to be applied towards discharge of the amount of the secured obligations.

(7) Where the sums collected or received by the chargee as a result of the exercise of any remedy set out in paragraph (2) or (3) 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 must 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 objects in satisfaction; and redemption

20.—(1) This regulation applies at any time after a default has occurred.

(2) The chargee and all the interested persons may agree that ownership of (or any other interest of the chargor in) any aircraft object covered by the security interest is to vest in the chargee in or towards satisfaction of the secured obligations.

(3) 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 is to vest in the chargee in or towards satisfaction of the secured obligations.

(4) The court may grant an application under the preceding paragraph 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.

(5) At any time before sale of the charged aircraft object or the making of an order under paragraph (3), the chargor or any interested person may discharge the security interest by paying in full the amount secured, subject to any lease granted by the chargee under regulation 19(2)(b) or ordered under regulation 19(3).

(6) 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.

(7) Ownership or any other interest of the chargor passing on a sale under regulation 19(2)(b) or passing under paragraph (2) or (3) is free from any other interest over which the chargee's security interest has priority under the provisions of regulation 16.

Remedies of conditional seller or lessor

21.—(1) This regulation applies in the event of default under a title reservation agreement or under a leasing agreement.

(2) The conditional seller or the lessor, as the case may be, may—

(a) subject to any declaration that may be made by the United Kingdom under Article 54 of the Cape Town Convention, terminate the agreement and take possession or control of any aircraft object to which the agreement relates; or

(b) apply to the court for an order authorising or directing either of these acts.

De-registration and transfer of aircraft

22.—(1) In addition to the remedies specified in the preceding provisions of this Part, the creditor may, to the extent that the debtor has at any time so agreed and in the event of a default—

- (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 may not exercise the remedies specified in paragraph (1) without the prior consent in writing of the holder of any registered interest ranking in priority to that of the creditor.

(3) The Department of Economic Development must, subject to any applicable safety laws and regulations, honour a request for de-registration and export if—

- (a) the request is properly submitted by the authorised party under a recorded irrevocable de-registration and export request authorisation; and
- (b) the authorised party certifies to the Department that all registered interests ranking in priority to that of the creditor in whose favour the authorisation has been issued have been discharged or that the holders of such interests have consented to the de-registration and export.

(4) A chargee proposing to procure the de-registration and export of an aircraft under paragraph (1) otherwise than pursuant to a court order must give reasonable prior notice in writing of the proposed de-registration and export to—

- (a) a debtor or creditor; and
- (b) any person other than a debtor or creditor who has given notice of their rights to the chargee within a reasonable time prior to the de-registration and export.

(5) Where the debtor has issued an irrevocable de-registration and export request authorisation substantially in the form annexed to the Aircraft Protocol and has submitted such authorisation for record to the Department of Economic Development, the Department must record the authorisation.

(6) The person in whose favour the authorisation has been issued (the “authorised party”) or its certified designee is the only person entitled to exercise the remedies specified in paragraph (1).

(7) The authorised party may exercise those remedies only in accordance with the authorisation and applicable aviation safety enactments.

(8) The authorisation may not be revoked by the debtor without the consent in writing of the authorised party.

(9) The Department of Economic Development must remove an authorisation from the registry at the request of the authorised party.

(10) The Department of Economic Development must exercise its functions under the Civil Aviation Act 1982 and any other enactment in order to co-operate expeditiously with and assist an authorised party in the exercise of the remedies specified in paragraph (1).

(11) Any other public authority must exercise any relevant function for that purpose.

Additional remedies

23. Any additional remedies available in accordance with the applicable law, including any remedies agreed upon by the parties, may be exercised to the extent that they are not inconsistent with provisions which may not be waived by agreement under these Regulations or the Cape Town Convention.

Requirement of commercial reasonableness

24.—(1) Any remedy given by these Regulations in relation to an aircraft object must be exercised in a commercially reasonable manner.

(2) A remedy is deemed to be exercised in a commercially reasonable manner where it is exercised in conformity with a provision of the agreement except where such a provision is manifestly unreasonable.

Relief pending final determination

25.—(1) A creditor who adduces evidence of default by the debtor may, pending final determination of its claim and to the extent that the debtor has at any time so agreed, obtain from the court relief in the form of such one or more of the following orders as the creditor requests—

- (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 from it; and
- (e) if at any time the debtor and the creditor specifically agree, sale and application of proceeds.

(2) In making any order under paragraph (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 these Regulations (or the Cape Town Convention or the Aircraft Protocol); or
- (b) fails to establish its claim, wholly or in part, on the final determination of that claim.

(3) Before making an order under paragraph (1), the court may require notice of the request to be given to any of the interested persons.

(4) Nothing in this regulation affects the application of regulation 24 or limits the availability of forms of interim relief other than those set out in paragraph (1).

Position where no default

Debtor's rights

26.—(1) In the absence of a default, the debtor is entitled to the quiet possession and use of the aircraft object in accordance with the agreement as against—

- (a) its creditor and the holder of any interest from which the debtor takes free pursuant to regulation 16(4) or, in the capacity of buyer, regulation 16(5), 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 regulation 16(4) or, in the capacity of buyer, regulation 16(3) but only to the extent, if any, that such holder has agreed.

(2) Nothing in these Regulations (or the Cape Town Convention or Aircraft Protocol) affects the liability of a creditor for any breach of the agreement under the law of [. . .] the Isle of Man in so far as that agreement relates to an aircraft object.

Assignment

Effect of assignment

27.—(1) Except as otherwise agreed by the parties, an assignment of associated rights made in conformity with regulation 28 also transfers to the assignee—

- (a) the related international interest; and
- (b) all the interests and priorities of the assignor under these Regulations and the Cape Town Convention.

(2) Nothing in these Regulations prevents a partial assignment of the assignor's associated rights.

(3) In the case of a partial assignment the assignor and assignee may agree as to their respective rights concerning the related international interest assigned under paragraph (1) but not so as adversely to affect the debtor without its consent.

(4) Subject to paragraph (5), the applicable law determines the defences and rights of set-off available to the debtor against the assignee.

(5) 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 paragraph (4) other than defences arising from fraudulent acts on the part of the assignee.

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

Formal requirements of assignment

28.—(1) An assignment of associated rights transfers the related international interest only if it—

- (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 in accordance with the Aircraft Protocol 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 also are assigned.

(3) These Regulations do not apply to an assignment of associated rights which is not effective to transfer the related international interest.

Debtor's duty to assignee

29.—(1) To the extent that associated rights and the related international interest have been transferred in accordance with regulations 27 and 28, 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, if (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 is effective for this purpose if made in accordance with paragraph (1).

(3) Nothing in this regulation affects the priority of competing assignments.

Default remedies in respect of assignment by way of security

30. In the event of default by the assignor under the assignment of associated rights and the related international interest made by way of security, regulations 18, 19, 20, 23, 25 and 48 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 application to intangible property) as if references—

- (a) to the secured obligation 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

31.—(1) Where there are competing assignments of associated rights, and—

- (a) at least one of the assignments includes the related international interest, and
- (b) the assignment of the international interest is registered,

the provisions of regulation 16 apply as if—

- (a) references to a registered or unregistered interest were references to a registered or unregistered assignment, and

(b) references to a registered interest were references to a prospective assignment of the associated rights.

(2) Regulation 36 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.

Assignee's priority with respect to associated rights

32.—(1) The assignee of associated rights and the related international interest whose assignment has been registered only has priority under regulation 31(1) over another assignee of the associated rights—

(a) if the contract under which the associated rights arise states that they are secured by or associated with the aircraft object; and

(b) to the extent that the associated rights are related to an aircraft object.

(2) For the purposes of paragraph (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 object 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 any of sub-paragraphs (a) to (d).

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

Effect of assignor's insolvency

33. The provisions of regulation 36 apply to insolvency proceedings against the assignor as if references to the debtor were references to the assignor.

Subrogation

34.—(1) Subject to paragraph (2), nothing in these Regulations affects the acquisition of associated rights and the related international interest by legal or contractual subrogation under the applicable law.

(2) The priority between any interest within paragraph (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.

Insolvency

[. . .]

Effects of insolvency

36.—(1) In insolvency proceedings against the debtor an international interest is effective if prior to the commencement of the insolvency proceedings that interest was registered in conformity with the Cape Town Convention and the Aircraft Protocol.

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

(3) Nothing in this regulation affects—

- (a) any rules of law applicable in insolvency proceedings relating to the avoidance of a transaction as a preference or a transfer to the detriment of creditors; or
- (b) any rules of procedure relating to the enforcement of rights to property which is under the control or supervision of the insolvency office holder.

[. . .]

Insolvency assistance

37A. The courts of the Isle of Man shall, in accordance with the law of the Isle of Man, co-operate to the maximum extent possible with foreign courts and foreign insolvency administrators in carrying out the provisions of Article XI of the Aircraft Protocol in relation to an aircraft object which is situated in the Isle of Man.

Choice of law

Choice of law

37B. The parties to an agreement, or a related guarantee contract or subordination agreement, may agree on the law which is to govern their contractual rights and obligations, wholly or in part.

PART 4

APPLICATION TO SALES

Application of Regulations to sales and prospective sales

38.—(1) The following provisions of these Regulations apply in relation to sales and prospective sales—

- (a) regulation 6 in so far as it implements Articles 3 and 4 of the Cape Town Convention and Article III of the Aircraft Protocol;
- (b) regulation 10 and Schedule 3 in so far as they implement Article 16(1)(a) of the Cape Town Convention;
- (c) regulation 14 in so far as it implements Article 19(4) of the Cape Town Convention;
- (d) regulation 14 in so far as it implements Article 20(1) of the Cape Town Convention (as regards registration of a contract of sale or a prospective sale);

- (e) regulation 15 in so far as it implements Article 25(2) of the Cape Town Convention (as regards a prospective sale); and
- (f) regulation 36;
- (g) regulation 37B.

(2) In the application of those provisions to sales and prospective sales—

- (a) references to an agreement creating or providing for an international interest are to be treated as references to a contract of sale;
- (b) references to an international interest are to be treated as references to a sale;
- (c) references to the debtor are to be treated as references to the seller; and
- (d) references to the creditor are to be treated as references to the buyer.

(3) In addition, the provisions of the following regulations apply generally to contracts of sale and prospective sales—

- (a) regulation 5 in so far as it implements Article 1 of the Cape Town Convention;
- (b) regulation 5 in so far as it implements Article 5 of the Cape Town Convention;
- (c) regulations 10, 11, 12, 13, 14 and 15;
- (d) regulation 16;
- (e) regulation 17;
- (f) regulations 42 and 46.

Formalities

39. For the purposes of this Part, a contract of sale is one which—

- (a) is in writing;
- (b) relates to an aircraft object of which the seller has power to dispose; and
- (c) enables the aircraft object to be identified in conformity with these Regulations and the Aircraft Protocol.

Effect of sale

40. A contract of sale transfers the interest of the seller in the aircraft object to the buyer according to its terms.

Duration of registration (sales and prospective sales)

41.—(1) Registration of a contract of sale remains effective indefinitely.

(2) Registration of a prospective sale remains effective unless discharged or until expiry of the period, if any, specified in the registration.

PART 5

PROCEDURE

Jurisdiction

Choice of forum

42.—(1) Where the parties to a transaction make a written choice that the courts of [. . .] the Isle of Man are to have jurisdiction in respect of claims brought under the Cape Town Convention, the courts have jurisdiction in accordance with this regulation.

(2) Jurisdiction in accordance with paragraph (1)—

- (a) applies whether or not the Isle of Man has a connection with the parties or the transaction; and
- (b) is exclusive unless otherwise agreed between the parties.

(3) The courts of [. . .] the Isle of Man must give effect to choices of jurisdiction made in accordance with Article 42 of the Cape Town Convention as a result of which courts of another Contracting State have jurisdiction.

Grant of relief

43.—(1) The courts of [. . .] the Isle of Man may grant relief in respect of an aircraft object under regulation 25(1)(a), (b) or (c) if—

- (a) those courts are chosen by the parties, or
- (b) the aircraft object is situated in the Isle of Man.

(2) The courts of [. . .] the Isle of Man may grant relief under regulation 25(1)(d) and (e) or other interim relief by virtue of regulation 25(4) if—

- (a) those courts are chosen by the parties, or
- (b) the debtor is situated in the Isle of Man, where the relief is granted in terms under which it is enforceable only in the Isle of Man.

(2A) The courts of the Isle of Man may also grant relief under regulation 25(1)(a), (b), (c) or (d) where the object is a helicopter, or an airframe pertaining to an aircraft, for which the Isle of Man is the State of registry.

(3) Paragraphs (1), (2) and (2A) apply even if the final determination of the claim referred to in regulation 25(1) will or may take place in a court of another Contracting State or by arbitration.

Court with jurisdiction in the Isle of Man

44. Where the courts of the Isle of Man have jurisdiction in accordance with this regulation, the jurisdiction is to be exercised by the High Court of Justice of the Isle of Man.

Exclusion of insolvency proceedings

45. Regulations 42 to 44 do not apply to insolvency proceedings.

Waiver of sovereign immunity

46.—(1) A waiver of sovereign immunity from jurisdiction of the courts specified in regulation 42 or 44 or relating to enforcement of rights and interests relating to an aircraft object under these Regulations or the Cape Town Convention—

- (a) is binding, and
- (b) if the other conditions for jurisdiction or enforcement have been satisfied, is effective to confer jurisdiction and permit enforcement.

(2) A waiver must—

- (a) be in writing, and
- (b) contain a description of the aircraft object.

Interpretation: “the court”

47. A reference in these Regulations to “the court” is a reference to a court which has jurisdiction in accordance with this Part (or which has jurisdiction to hear insolvency proceedings, as the case may be).

Rules of court

Effect of Rules of court

48.—(1) A provision of these Regulations which provides for a remedy to be available from the court has effect in accordance with any applicable Rules of court.

(2) The Rules of court may make provision about matters (including time limits) arising in relation to rights under these Regulations, the Cape Town Convention or the Aircraft Protocol.

PART 6

GENERAL

Representative capacities

49.—(1) A person who does an act listed in paragraph (2) in an agency, trust or other representative capacity is entitled to assert rights and interests under the Cape Town Convention.

(2) This subsection applies to the following acts—

- (a) entering into an agreement in respect of an aircraft object,
- (b) entering into a sale of an aircraft object,
- (c) registering an international interest in an aircraft object, and
- (d) registering a sale of an aircraft object.

Consequential amendments

50. The enactments listed in Schedule 5 are amended as specified.

Transitional provision

51. These Regulations do not apply to a pre-existing right or interest, which retains the priority it enjoyed under the law of the Isle of Man before the effective date of these Regulations.

[. . .]

23rd March 2015

Matthew Hancock
Minister of State for Business and Enterprise and Energy
Department for Business, Innovation and Skills

SCHEDULE 1

TEXT OF CAPE TOWN CONVENTION

(omitted)

SCHEDULE 2

TEXT OF PROTOCOL ON AIRCRAFT EQUIPMENT

(omitted)

SCHEDULE 3

THE INTERNATIONAL REGISTRY AND REGISTRAR

(omitted)

SCHEDULE 4

THE SUPERVISORY AUTHORITY

(omitted)

SCHEDULE 5
CONSEQUENTIAL AMENDMENTS

PART 1

STATUTORY INSTRUMENTS

Mortgaging of Aircraft Order 1972

1.—(1) The Mortgaging of Aircraft Order 1972⁶ is amended as follows.

(2) In Article 2 (interpretation)—

(a) after the definition of “appropriate charge” insert—

““the Cape Town Convention Regulations” means the International Interests in Aircraft Equipment (Cape Town Convention) Regulations 2015;” and

(b) at the end add—

“(3) An expression used in this Order and in the Cape Town Convention Regulations has the same meaning in this Order as in those Regulations.”

(3) After Article 9 (discharge of mortgages) insert—

“Transfer to international registration

9A.—(1) This article applies where the mortgagee applies to the Authority for the removal of an entry from the register on the grounds that an international interest has been registered, or is to be registered, under the Cape Town Convention in respect of the aircraft to which the mortgage relates.

(2) The Authority must—

(a) enter the application in the Register;

(b) mark the relevant entries in the Register ‘Removed on application in respect of registration of international interest’, and

(c) notify the mortgagee, the mortgagor and the owner that it has done so.”

(4) In Article 10 (rectification of the Register) after “for correcting any error therein” insert “(including the removal of incorrect or outdated entries if the court thinks it necessary or appropriate)”.

(5) In Article 14 (priority of mortgages) after paragraph (5) insert—

“(6) This article is subject to the rules set out in regulation 16 of the Cape Town Convention Regulations.”;

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⁶ The Mortgaging of Aircraft Order 1972 (SI 1972/1268) and the Mortgaging of Aircraft (Amendment) Order 1981 (SI 1981/611) were applied to the Isle of Man with modifications by the Civil Aviation (Subordinate Legislation) (Application) Order 2006 (SD 909/06).

Air Navigation (Isle of Man) Order 2015

4.—(1) The Air Navigation (Isle of Man) Order 2015 is amended as follows.

(2) At the end of article 7 (changes to the register) add—

“(6) The Department must also cancel the registration of an aircraft as soon as reasonably practical if satisfied that a person wishes and is entitled to procure the de-registration of the aircraft in accordance with Article IX (modification of default remedies provisions) of the Aircraft Protocol (within the meaning of the International Interests in Aircraft Equipment (Cape Town Convention) Regulations 2015).

(7) Paragraph (6) is subject to regulation 51 of the 2015 Regulations (disapplication in respect of pre-existing rights and interests).”

(3) After article 8 (aircraft which are entered in the Register of Aircraft Mortgages) insert—

“Aircraft subject to an international interest

8A.—(1) This article applies to an aircraft—

- (a) which is the subject of a registered international interest within the meaning of the International Interests in Aircraft Equipment (Cape Town Convention) Regulations 2015, and
- (b) in respect of which an irrevocable de-registration and export request authorisation is in force.

(2) The registration of an aircraft to which this article applies does not become void by virtue of article 7(1).

(3) The Department may cancel the registration of an aircraft to which this article applies under article 7(4) only in pursuance of an application made by a person who is recorded, in accordance with regulation 22 of the 2015 Regulations, as the authorised party under an irrevocable de-registration and export request authorisation in respect of the aircraft.

(4) Article 8(2) does not apply to an aircraft to which this article applies (subject to regulation 51 of the 2015 Regulations (transitional provision)).

(5) Expressions used in this article have the same meaning as in the 2015 Regulations.”

[. . .]

PART 2

ACTS

[. . .]

Civil Aviation Act 1982

8.—(1) Section 88 of the Civil Aviation Act 1982⁷ (detention and sale of aircraft for unpaid airport charges: application of proceeds) is amended as follows.

(2) At the end of subsection (6) add “(with priority being given to any person or persons having an international interest within the meaning of the Cape Town Convention Regulations, in accordance with the rules set out in regulation 16 of those Regulations)”.

(3) After subsection (6) insert—

“(6A) In subsection (6) “the Cape Town Convention Regulations” means the International Interests in Aircraft Equipment (Cape Town Convention) Regulations 2015.”

Companies Acts

9. Part III of the Companies Act 1931 (an Act of Tynwald) and Part VIII of the Companies Act 2006 (an Act of Tynwald) (registration of charges) do not apply to a charge which is an international interest.

⁷ Section 88 of the Civil Aviation Act 1982 was applied to the Isle of Man with modifications by the Civil Aviation Acts (Application) Order 2006 (SD 910/06).

Annex C - List of consultees

Tynwald Members

Clerk of Tynwald

Acting Attorney General

Deemsters

Local Authorities

Chief Officers

Chamber of Commerce

Law firms

Corporate Service Providers



Department of Economic Development

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