



Isle of Man
CIVIL AVIATION ADMINISTRATION

Mortgaging of Aircraft Order 1972

(as amended and as applied to the Isle of Man)



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Amendment Record

Version	Date	Details
1	Aug 2017	Initial Issue
2	Dec 2017	Incorporation of consequential amendments from the Aviation (Cape Town Convention) (No.2) Order 2016 (SD 2016/0229). Change in interpretation of "the Department" resulting from the Transfer of Functions (Economic Development and Education) Order 2017 (SD 2017/0325)

Foreword

1. This document has been prepared to provide stakeholders with an easy reference working copy of the Mortgaging of Aircraft Order 1972 'as amended' and 'as applied to the Isle of Man'. It is edited by the Isle of Man Civil Aviation Administration. However, Courts of Law will refer only to the source regulatory material.
2. The document content is compiled from the following regulations:
 - (a) Isle of Man Statutory Document No 909/06 – The Civil Aviation (Subordinate Legislation) (Application) Order 2006.
 - (b) UK Statutory Instrument 1972 No 1268 – The Mortgaging of Aircraft Order 1972.
 - (c) UK Statutory Instrument 1981 No 611 – The Mortgaging of Aircraft (Amendment) Order 1981.
 - (d) Isle of Man Statutory Document No 2016/0229 - Aviation (Cape Town Convention) (No.2) Order 2016.
3. This document will be updated regularly to take into account further amendments.



1. Citation and Commencement

This Order may be cited as the Mortgaging of Aircraft Order 1972.

2. Interpretation

(1) The Interpretation Act 1889 applies for the interpretation of this Order as it applies for the interpretation of an Act of Parliament.

(2) In this Order:

"appropriate charge" means the charge payable under section 11 of the Civil Aviation Act 1982;

"the Cape Town Convention Regulations" means the International Interests in Aircraft Equipment (Cape Town Convention) Regulations 2015;

"the Department" means the Department for Enterprise;

"the Isle of Man register" means the register of aircraft maintained by the Department in pursuance of an Air Navigation Order;

"mortgage of an aircraft" includes a mortgage which extends to any store of spare parts for that aircraft but does not otherwise include a mortgage created as a floating charge;

"owner" means the person shown as the owner of a mortgaged aircraft on the form of application for registration of that aircraft in the Isle of Man register;

"the Register" means Register of Aircraft Mortgages referred to in article 4 below.

(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. Mortgage of Aircraft

An aircraft registered in the Isle of Man register or such an aircraft together with any store of spare parts for that aircraft may be made security for a loan or other valuable consideration.

4. Registration of Aircraft Mortgages

(1) Any mortgage of an aircraft registered in the Isle of Man register may be entered in the Register of Aircraft Mortgages kept by the Department.

(2) Applications to enter a mortgage in the Register shall be made to the Department by or on behalf of the mortgagee in the form set out in Part 1 of Schedule 1 hereto, and shall be accompanied by a copy of the mortgage, which the applicant shall certify to be a true copy, and the appropriate charge.

5.

- (1) A notice of intention to make an application to enter a contemplated mortgage of an aircraft in the Register (hereinafter referred to as "a priority notice") may also be entered in the Register.
- (2) Applications to enter a priority notice in the Register shall be made to the Department by or on behalf of the prospective mortgagee in the form set out in Part II of Schedule 1 hereto, and shall be accompanied by the appropriate charge.

6.

- (1) Where two or more aircraft are the subject of one mortgage or where the same aircraft is the subject of two or more mortgages, separate applications shall be made in respect of each aircraft or of each mortgage, as the case may be.
- (2) Where a mortgage is in a language other than English, the application to enter that mortgage in the Register shall be accompanied not only by a copy of that mortgage but also by a translation thereof, which the applicant shall certify as being, to the best of his knowledge and belief, a true translation.

7.

- (1) When an application to enter a mortgage or priority notice in the Register is duly made, the Department shall enter the mortgage or the priority notice, as the case may be, in the Register by placing the application form therein and by noting on it the date and the time of the entry.
- (2) Applications duly made shall be entered in the Register in order of their receipt by the Department.
- (3) *[omitted]*
- (4) The Department shall notify the applicant of the date and time of the entry of the mortgage or the priority notice, as the case may be, in the Register and of the register number of the entry and shall send a copy of the notification to the mortgagor and the owner.

8. Amendment of entries in the Register

- (1) Any change in the person appearing in the Register as mortgagee or as mortgagor or in the name or address of such person or in the description of the mortgaged property shall be notified to the Department by or on behalf of the mortgagee, in the form set out in Part III of Schedule 1 hereto.
- (2) On receipt of the said form, duly completed and signed by or on behalf of the mortgagor and the mortgagee and on payment of the appropriate charge, the Department shall enter the notification in the Register and shall notify the mortgagor, the mortgagee and the owner that it has done so.

9. Discharge of Mortgages

[On receipt of the form set out in Part IV of Schedule 1 hereto duly completed and signed by or on behalf of the mortgagee and of a copy of the document of discharge or receipt for the mortgage money, or of any other document which shows, to the satisfaction of the Department, that the mortgage has been discharged and on payment of the appropriate charge, the Department shall enter the said form in the Register and mark the relevant entries in the Register "Discharged" and shall notify the mortgagee, mortgagor and the owner that it has done so.]

9A Transfer to International Registration

- (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.

10. Rectification of the Register

The High Court of Justice of the Isle of Man may order such amendments to be made to the Register as may appear to the court to be necessary or expedient for correcting any error therein including the removal of incorrect or outdated entries if the court thinks it necessary or appropriate. On being served with the order the Department shall make the necessary amendment to the Register.

11. Inspection of Register and copies of entries

- (1) Any person may, on application to the Department and on payment to it of the appropriate charge inspect any entry in the Register specified in the application.
- (2) The Department shall, on the application of any person and on payment by him of the appropriate charge, supply to the applicant a copy, certified as a true copy, of the entries in the Register specified in the application.
- (3) The Department shall, on the application of any person and on payment by him of the appropriate charge, notify the applicant whether or not there are any entries in the register relating to any aircraft specified in the application by reference to its nationality and registration marks.
- (4) A document purporting to be a copy of an entry in the Register shall be admissible as evidence of that entry if it purports to be certified as a true copy by the Department.

- (5) Nothing done in pursuance of paragraph (2) or (3) of this Article shall affect the priority of any mortgage.

12. Removal of aircraft from the Isle of Man register

The removal of an aircraft from the Isle of Man register shall not affect the rights of any mortgagee under any registered mortgage and entries shall continue to be made in the Register in relation to the mortgage as if the aircraft had not been removed from the Isle of Man register.

13. Register as notice of facts appearing in it

All persons shall at all times be taken to have express notice of all facts appearing in the Register, but the registration of a mortgage shall not be evidence of its validity.

14. Priority of Mortgages

- (1) Subject to the following provisions of this article, a mortgage of an aircraft entered in the Register shall have priority over any other mortgage of or charge on that aircraft, other than another mortgage entered in the Register:

Provided that mortgages made before 1st May 2007, whether entered in the Register or not, shall up to and including 31st July 2007 have the same priority as they would have had if this Order had not been made.

- (2) Subject to the following provisions of this article, where two or more mortgages of an aircraft are entered in the Register, those mortgages shall as between themselves have priority according to the times at which they were respectively entered in the Register:

Provided that:

- (i) mortgages of an aircraft made before 1st May 2007 which are entered in the Register before 31st July 2007 shall have priority over any mortgages of that aircraft made on or after 1st May 2007 and shall as between themselves have the same priority as they would have had if this Order had not been made;
- (ii) without prejudice to proviso (i), where a priority notice has been entered in the Register and the contemplated mortgage referred to therein is made and entered in the Register within 14 days thereafter that mortgage shall be deemed to have priority from the time when the priority notice was registered.
- (3) In reckoning the period of 14 days under the preceding paragraph of this article, there shall be excluded Saturdays, Sundays, Christmas Day, Good Friday and bank holidays.
- (4) The priorities provided for by the preceding provisions of this article shall have effect notwithstanding any express, implied or constructive notice affecting the mortgagee.

- (5) Nothing in this article shall be construed as giving a registered mortgage any priority over any possessory lien in respect of work done on the aircraft (whether before or after the creation of registration of the mortgage) on the express or implied authority of any persons lawfully entitled to possession of the aircraft or over any right to detain the aircraft under any Act of Parliament or Act of Tynwald.
- (6) This article is subject to the rules set out in regulation 16 of the Cape Town Convention Regulations

15. Mortgage not affected by bankruptcy

A registered mortgage of an aircraft shall not be affected by any act of bankruptcy committed by the mortgagor after the date on which the mortgage is registered, notwithstanding that at the commencement of his bankruptcy the mortgagor had the aircraft in his possession, order or disposition, or was reputed owner thereof, and the mortgage shall be preferred to any right, claim or interest therein of the other creditors of the bankrupt or any trustee or assignee on their behalf.¹

16. *[omitted]*

17. False Statement and Forgery

- (1) If, in furnishing any information for the purpose of this Order, any person makes any statement which he knows to be false in a material particular, or recklessly makes any statement which is false in a material particular, he shall be guilty of an offence.
- (2) Any person guilty of an offence under paragraph (1) of this article shall:—
 - (a) on summary conviction be liable to a fine not exceeding £5,000;
 - (b) on conviction on information be liable to a fine of such amount as the court thinks fit or to custody for a term not exceeding 2 years or to both such a fine and such custody.
- (3) The Forgery Act 1952 (an Act of Tynwald) shall apply in relation to documents forwarded to the Department in pursuance of this Order as if such documents were included in the list of documents in section 3(3) of that Act.

18. Indemnity

- (1) Subject to paragraph (2) of this article, any person who suffers loss by reason of any error or omission in the Register or of any inaccuracy in a copy of an entry in the Register supplied pursuant to Article 11(2) of this Order or in a notification made pursuant to Article 11(3) of this Order shall be indemnified by the Department.
- (2) No indemnity shall be payable under this article:

¹ Art.15 omitted in UK by SI 1986/2001



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- (a) where the person who has suffered loss has himself caused or substantially contributed to the loss by his fraud or had derived title from a person so committing fraud;
- (b) on account of costs or expenses incurred in taking or defending any legal proceedings without the consent of the Department.

SCHEDULE 1 – FORMS

PART I - REGISTER OF AIRCRAFT MORTGAGES

Art. 4 (2)

Entry of Aircraft Mortgage

To be completed by Applicant:-

I hereby apply for the mortgage, particulars of which are given below, to be entered in the Register of Aircraft Mortgages.

<p>1. Date of mortgage. 2. Description of the mortgaged aircraft (including its type, nationality and registration marks and aircraft serial number) and of any store of spare parts for that aircraft to which the mortgage extends. (The description of the store of spare parts must include an indication of their character and approximate number and the place or places where they are stored must be given *1). 3. The sum secured by the mortgage *2. 4. Does the mortgage require the mortgagee to make further advances? If so, of what amount? 5. Name and address and, where applicable, company registration number of the mortgagor. 6. Register number of priority notice, if any.</p>	
	<p>Signed. Name in block capitals. On behalf of *3 (insert name and, where applicable, company registration number of mortgagee) of (insert address of mortgagee)</p>
<p>*1 The description of the mortgaged property may, if necessary, be continued on a separate sheet, which shall be signed by the applicant. *2 Where the sum secured is of a fluctuating amount this should be stated and the upper and lower limits, if any, should be set out. *3 Delete where inapplicable.</p>	



PART II - REGISTER OF AIRCRAFT MORTGAGES

Art. 5 (2)

Entry of Priority Notice

To be completed by Applicant:-

I hereby give notice that I am contemplating entering into a mortgage, particulars of which are given below, and that if i do enter into the said mortgage I shall apply for it to be entered in the Register of Aircraft Mortgages. I hereby apply for this notice to be entered in the said Register.

<p>1. Description of the aircraft which is the subject of the contemplated mortgage (including its type, nationality and registration marks and aircraft serial number) and of any store of spare parts for that aircraft to which it is contemplated that the mortgage will extend *1.</p> <p>2. The sum to be secured by the contemplated mortgage *2.</p> <p>3. Is it contemplated that the mortgage will require the mortgagee to make further advances? If so, of what amount?</p> <p>4. Name and address and, where applicable, company registration number of the prospective mortgagor</p>	
	<p>Signed</p> <p>Name in block capitals.</p> <p>on behalf of * 3</p> <p>(insert name and, where applicable company registration number of mortgagee)</p> <p>of</p> <p>(insert address of mortgagee)</p>
<p>*1 The description of the property which is the subject of the contemplated mortgage may, if necessary, be continued on a separate sheet which shall be signed by the applicant.</p> <p>*2 Where the sum to be secured is of a fluctuating amount, this should be stated and the upper and lower limits, if any, should be set out.</p> <p>*3 Delete where inapplicable.</p>	



PART III - REGISTER OF AIRCRAFT MORTGAGES

Art. 8 (1)

Change in Particulars

We hereby give notice that the particulars shown on the Register of Aircraft Mortgages under Register number should be amended as follows:

	<p>(a) Signed on behalf of *1. (insert name of mortgagee)</p> <p>(b) Signed. Name in block capitals. on behalf of * 1 (insert name of person shown in the Register as the mortgagee)*2</p> <p>(c) Signed Name in block capitals. on behalf of *1. (insert name of mortgagor)</p>
<p>*1 Delete where inapplicable</p> <p>*2 Applicable only where the change in particulars is a change in the person appearing in the Register as mortgagee.</p>	



PART IV - REGISTER OF AIRCRAFT MORTGAGES

Art. 9 (1)

Discharge of registered mortgage

I hereby confirm that the mortgage entered in the Register of Aircraft Mortgages under Register number has been discharged.

	<p>Signed</p> <p>on behalf of *.</p> <p>(insert name of mortgagee)</p> <p>* Delete where inapplicable]</p>
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