

# Text as applied to the Isle of Man by SD 2016/0229

## STATUTORY INSTRUMENTS

2015 No. 912

### CIVIL AVIATION

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

##### 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*.

3. Omitted

###### 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.

#### **9. Exclusions and modifications by agreement**

- (1) Omitted

(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(2)**.

#### *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 regulation 25(1)(e), 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 setoff 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*

**35.** Omitted

#### **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.

37. Omitted

#### 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 XII** 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, a contract of sale, 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; and
- (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) **or other interim relief by virtue of regulation 25(4)** 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) Subject to regulation 42, the courts of the *Isle of Man* may also grant relief under regulation 25(1)(a), (b), (c) or (d) or (e) where the aircraft 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.**

**52. Omitted.**

SCHEDULE 1  
TEXT OF CAPE TOWN CONVENTION

























































SCHEDULE 2  
TEXT OF PROTOCOL ON AIRCRAFT EQUIPMENT















































SCHEDULE 3  
THE INTERNATIONAL REGISTRY AND REGISTRAR

**Introductory**

1. This Schedule makes provision about—

- (a) the International Registry established in accordance with Article 16 of the Cape Town Convention, and
- (b) the Registrar appointed in accordance with Article 17(2) of the Cape Town Convention and Article XVII of the Aircraft Protocol.

**Status**

2. The Registry and the Registrar are recognised.

**Inviolability**

3.—(1) The assets, documents, data bases and archives of the International Registry are inviolable and immune from seizure or other legal or administrative process.

(2) The Supervisory Authority may waive the inviolability and immunity conferred by subparagraph (1).

**Claims against Registrar**

4. For the purposes of any claim against the Registrar under Article 28(1) or 44 of the Cape Town Convention, the claimant is entitled to access to such information and documents as are necessary to enable the claimant to pursue its claim.

SCHEDULE 4  
THE SUPERVISORY AUTHORITY

**Introductory**

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

**Recognition**

2. The Supervisory Authority (identified in accordance with Article XVII of the Aircraft Protocol) is recognised.

**Status**

3. The Supervisory Authority has legal personality.

4. The Supervisory Authority has the legal capacities of a body corporate, for the purposes of entering into agreements under Article 17(3) of the Cape Town Convention, and generally.

SCHEDULE 5  
CONSEQUENTIAL AMENDMENTS  
PART 1  
STATUTORY INSTRUMENTS

**Mortgaging of Aircraft Order 1972**

1.—(1) The Mortgaging of Aircraft Order 1972<sup>1</sup> 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.”.

**2. and 3. Omitted**

*This amendment to the ANO 2015 has not been made ....*

**Air Navigation Order 2009 Air Navigation (Isle of Man) Order 2015**

**4.—(1) The Air Navigation Order 2009(4) Air Navigation (Isle of Man) Order 2015 is amended as follows.**

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

<sup>1</sup> 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).

"(6) (The **CAA 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 **CAA 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."

**5. 6. and 7. Omitted**

### **Civil Aviation Act 1982**

**8.—(1)** Section 88 of the Civil Aviation Act 1982<sup>2</sup> (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**

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<sup>2</sup>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) as amended by the Civil Aviation Acts (Application)(Amendment) Order 2017 (SD 2017/0001).

**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.**