



BERMUDA

MORTGAGING OF AIRCRAFT (PROCEDURES) REGULATIONS 1999

BR 41 / 1999

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	SCHEDULE

The Minister, in exercise of the powers conferred on him by section 7 of the Mortgaging of Aircraft and Aircraft Engines Act 1999, makes the following Regulations:

Citation

1 These Regulations may be cited as the Mortgaging of Aircraft (Procedures) Regulations 1999.

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Definitions

2 (1) In these Regulations—

“Act” means the Mortgaging of Aircraft and Aircraft Engines Act 1999;

“appropriate charge” means the charge prescribed under section 7(1)(b) of the Act;

“Authority” means the Bermuda Civil Aviation Authority established by section 3 of the Bermuda Civil Aviation Authority Act 2016;

“the Register” means the Register of Aircraft Mortgages maintained under section 5(1)(a) of the Act.

(2) A reference in these Regulations to an aircraft includes a share in an aircraft.

[Regulation 2 paragraph (1) “Department” deleted and “Authority” inserted by 2016 : 28 s. 30 effective 1 October 2016]

Registration of aircraft mortgages

3 (1) An application to enter a mortgage of an aircraft in the Register shall be made to the Authority by or on behalf of the mortgagee in the form set out in Form 1 of the Schedule, and shall be accompanied by a copy of the mortgage, which the applicant shall certify to be a true copy, and the appropriate charge.

(2) A notice of intention to make an application to enter a contemplated mortgage of an aircraft in the register (“a priority notice”) may also be entered in the Register.

(3) An application to enter a priority notice in the Register shall be made to the Authority by or on behalf of the prospective mortgagee in the form set out in Form II of the Schedule, and shall be accompanied by the appropriate charge.

(4) 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.

(5) Where a mortgage is in a language other than English, the application to enter that mortgage in the Register shall be accompanied by not only 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.

(6) When an application to enter a mortgage or priority notice in the Register is made, the Authority 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.

(7) Applications duly made shall be entered in the Register in order of their receipt by the Authority.

(8) The Authority shall by notice published in the Gazette specify the days on which and hours during which the office of the Authority is open for registering mortgages and priority notices and any application delivered when the office is closed for that purpose shall be treated as having been received immediately after the office is next opened.

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(9) The Authority 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 the register number of the entry and shall send a copy of the notification to the mortgagor and the owner.

[Regulation 3 paragraphs (1), (3), (6)-(9) amended by 2016 : 28 s. 30 effective 1 October 2016]

Amendment of entries in the Register

4 (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 Authority by or on behalf of the mortgagee, in the form set out in Form III of the Schedule.

(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 Authority shall enter the notification in the Register and shall notify the mortgagor, the mortgagee and the owner that it has done so.

[Regulation 4 paragraphs (1) and (2) amended by 2016 : 28 s. 30 effective 1 October 2016]

Discharge of mortgages

5 On receipt of the form set out in Form IV of the Schedule 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 Authority, that the mortgage has been discharged and on payment of the appropriate charge, the Authority 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.

[Regulation 5 amended by 2016 : 28 s. 30 effective 1 October 2016]

Rectification of the Register

6 If the Authority is satisfied that it is necessary or expedient to correct an error in the Register, it shall direct that the Register be amended and shall enter a notation of the correction and the date of the correction on the Register.

[Regulation 6 amended by 2016 : 28 s. 30 effective 1 October 2016]

Inspection of the Register and copies of entries

7 (1) On such days and during such hours as the Authority may specify in a notice published in the Gazette, any person may, on application to the Authority and on payment to it of the appropriate charge inspect any entry in the Register specified in the application.

(2) The Authority shall, on application of any person and on payment 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 Authority 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 the aircraft specified in the application by reference to its nationality and registration marks.

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(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 Authority.

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

[Regulation 7 paragraphs (1) - (4) amended by 2016 : 28 s. 30 effective 1 October 2016]

Removal of aircraft from the Bermuda nationality register

8 The removal of an aircraft from the Bermuda nationality 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 Bermuda nationality register.

Register as notice of facts appearing in it

9 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.

Priority of mortgages

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

Provided that mortgages made before the date of coming into operation of these Regulations, whether entered in the Register or not, shall for a transitional period of 3 months from the date of coming into operation of these Regulations ("the transitional period") have the same priority as they would have had if these Regulations had not been made.

(2) Subject to the following provisions of this Regulation, 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 are respectively entered in the Register:

Provided that:

- (i) mortgages of an aircraft made before the date of coming into operation of these Regulations which are entered in the Register before the end of the transitional period shall have priority over any mortgages of that aircraft made on or after the date of coming into operation of these Regulations and shall as between themselves have the same priority as they would have had if these Regulations 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.

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(3) In reckoning the period of 14 days under paragraph (2), there shall be excluded any day which is a public holiday.

(4) The priorities provided for by the preceding provisions of this Regulation shall have effect notwithstanding any express, implied or constructive notice affecting the mortgage.

(5) Nothing in this Regulation 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 or registration of the mortgage) on the express or implied authority of any person lawfully entitled to possession of the aircraft or over any right to detain the aircraft under any statutory provision.

Mortgage not affected by bankruptcy

11 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.

Mortgagee to have power of sale

12 Every mortgagee shall have power absolutely to dispose of any aircraft in respect of which he is registered and to give effectual receipts for the purchase money; but where there are more persons than one registered as mortgagees of the same aircraft, a subsequent mortgagee shall not, except under the order of the Supreme Court, sell the aircraft without the concurrence of every prior mortgagee.

Transfer of mortgages

13 A registered mortgage of an aircraft may be transferred to any person, and the instrument effecting the transfer shall be in the form set out in Form V of the Schedule and on the production of the said form the Authority shall record it by entering it in the Register and shall mark the said form with the date and the time of such entry.

[Regulation 13 amended by 2016 : 28 s. 30 effective 1 October 2016]

Transmission of interest in mortgage by death, bankruptcy etc

14 (1) Where the interest of a mortgagee in an aircraft is transmitted on death or bankruptcy, or by any lawful means, other than by a transfer under these Regulations, the transmission shall be authenticated by a declaration of the person to whom the interest is transmitted, containing a statement of the manner in which and the person to whom the property has been transmitted, and shall be accompanied by documentary evidence in a form satisfactory to the Authority.

(2) The Authority on the receipt of the declaration, and the production of the documentary evidence, shall enter the name of the person entitled under the transmission in the Register as the mortgagee of the aircraft.

[Regulation 14 paragraphs (1) and (2) amended by 2016 : 28 s. 30 effective 1 October 2016]

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Application of statutory provisions relating to bills of sale and registration provisions of the Companies Act 1981

15 (1) Any statutory provisions insofar as they relate to bills of sale and other documents given by way of security for the payment of money shall not apply to any mortgage of an aircraft to which these Regulations apply which is made on or after the date of coming into operation of these Regulations.

(2) Section 55(5)(b) of the Companies Act 1981 shall have effect as if after the word "ship" there were inserted the words "or aircraft" and as if after the words "Merchant Shipping Act 1894" where they twice occur there were inserted the words "or the Mortgaging of Aircraft and Aircraft Engines Act 1999 as the case may be":

Provided that nothing in this Regulation shall render invalid as against the liquidator or creditor of the company, any mortgage or charge created by a company before the date on which these Regulations come into force which would not have been invalid against the liquidator or such a creditor if these Regulations had not been made.

Indemnity

16 (1) Subject to paragraph (2), 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 Regulation 7(2) or in a notification made pursuant to Regulation 7(3) shall be indemnified by the Minister.

(2) No indemnity shall be payable under this Regulation—

- (a) where the person who has suffered loss has himself caused or substantially contributed to the loss by his fraud or has 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 Minister.

Commencement

17 These Regulations come into operation on 1 July 1999.

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SCHEDULE

FORM I

Regulation 3(1)

REGISTER OF AIRCRAFT MORTGAGES
ENTRY OF AIRCRAFT MORTGAGE

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

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.

Signed.....

Name in block capitals.....

On behalf of *3.....
(insert name and, where applicable,
company registration number of mortgagee)

Of.....
(insert address of mortgagee)

*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.

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FORM II

Regulation 3(3)

REGISTER OF AIRCRAFT MORTGAGES
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.

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.
2. The sum secured by the contemplated mortgage *2.
3. Is it contemplated that the mortgage will require the mortgagee to make further advances? If so, of what amount?
4. Name and address and, where applicable, company registration number of the prospective mortgagor..

Signed.....

Name in block capitals.....

On behalf of *3.....
(insert name and, where applicable,
company registration number of mortgagee)

Of.....
(insert address of mortgagee)

*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.

*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.

*3 Delete where inapplicable.

FORM III

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Regulation 4(1)

REGISTER OF AIRCRAFT MORTGAGES
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—

(a)... Signed.....

..... Name in block capitals.....

..... on behalf of *1.....
(insert name of mortgagee)

(b)... Signed.....

..... Name in block capitals.....

..... on behalf of *1.....
(insert name of person shown in the Register
as the mortgagee) *2

(c)... Signed.....

..... Name in block capitals.....

..... on behalf of *1.....
(insert name of mortgagor)

*1 Delete where applicable

*2 Applicable only where the change in particulars is a change in the person appearing in the Register as mortgagee.

FORM IV

Regulation 5

REGISTER OF AIRCRAFT MORTGAGES
DISCHARGE OF REGISTERED MORTGAGE

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

(a)... Signed.....

..... Name in block capitals.....

..... on behalf of *
(insert name of mortgagee)

*1 Delete where applicable

FORM V

Regulation 13

REGISTER OF AIRCRAFT MORTGAGES
TRANSFER OF MORTGAGE

[To be endorsed on the original mortgage.]

(a) _____ the within-mentioned _____ in consideration of _____ this day paid to (b) _____ by _____ hereby transfer to (c) _____ the benefit of the within written security. In witness whereof (a) _____ have hereunto subscribed (d) _____ name _____ and affixed (d) _____ seal.

Signed.....

Name in block capitals.....

On behalf of.....

this..... day of.....

Executed by the above named.....

in the presence of.....

- (a) "I" or "we"
- (b) "Me" or "us"
- (c) "Him" or "them"
- (d) "My" or "our"

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Made this 1st day of July, 1999

Minister of Transport

[Amended by:
2016 : 28]