

S.I.49 OF 1996

**CIVIL, AVIATION ACT,1949 (OVERSEAS
TERRITORIES) ORDER,1969**

(Cap.31)

Civil Aviation (Mortgage of Aircraft) Regulations, 1996

In exercise of the power conferred by article 4 of the Civil Aviation Act, 1949 (Overseas Territories) Order, 1969 the Minister of Tourism and Transport hereby makes the following Regulations –

- Citation and commencement**
1. These Regulations may be cited as the Civil Aviation (Mortgage of Aircraft) Regulations, 1996 and shall come into operation on 28th June, 1996.
- Interpretation
Cap.31 sub. Leg**
2. In these Regulations –

“aircraft” means an aircraft registered in the Register of Aircraft kept under article 4(1) of the Air Navigation (Overseas) Territories, Order.

“Register” means the Register of Mortgages of Aircraft kept under regulation 3 (2);

“Register” Means the Registrar of Mortgages of Aircraft under these Regulations;
- Registrar and Register**
3. (1) The Director General of Civil Aviation shall be the Registrar of Mortgages of Aircraft under these Regulations

(2) The Register shall keep and maintain a Register of Mortgages of Aircraft.

(3) The Registrar on application made under these Regulations, shall enter in the register-
 - (a) a mortgage of aircraft and any store of spare parts for that aircraft;
 - (b) a priority notice in respect of contemplated mortgages of aircraft and any store of spare parts for that aircraft.
 - (c) amendment of entries in the Register:
 - (d) discharge of a mortgage, and
 - (e) any order made by a court in relation to a mortgage.
- Cap 190**
- (4) The office of the Registrar shall be kept open for entering mortgages and for making other entries in the Register from Monday to Friday every week, other than public holiday under the public Holidays Act, between the hours of 8.00 am and 4.00 pm on each day.

(5) Any application delivered to the Registrar when the office remains closed shall be treated as having been received immediately after the office is next opened.
- Mortgage of aircraft**
4. An aircraft and any store of spare parts for that aircraft in these Regulations referred to as the “mortgaged property” may be made a security for a loan or other valuable consideration and the instrument creating the security is in these Regulations called a “mortgage”

Application for entry in the register

5. (1) An application to enter a mortgage in the Register may be made to the Registrar by or on behalf of the mortgagee in Form 1 of Schedule A.
- (2) An application under subregulation (1) shall be accompanied by -
- (a) copy of the mortgage certified by the applicant as a true copy; and
- (b) the fee specified in Schedule B.
- (3) When a mortgage is in a language other than English, the applicant shall submit a translation thereof in the English language certified by the applicant as being, to the best of the applicant's knowledge and belief, a true translation of the mortgage.

Entry of mortgage in the Register

6. (1) On receipt of an application made under regulation 5, the Registrar shall enter the mortgage in the Register by making an entry of the mortgage in the Register.
- (2) Mortgages shall be entered in the Register in the order in which the applications are received by the Registrar and the Registrar shall endorse and sign a memorial on each mortgage stating the date and time it was received by the Registrar.
- (3) The Registrar shall notify the applicant of the date time of the entry of the mortgage in the Register and of the registration number of the entry and shall send a copy of the notification to the mortgagor and the owner of the mortgaged property.

Priority notice

7. (1) A notice of an intention to make an application to enter a contemplated Mortgage under these Regulations in the Register, in these Regulations referred to as a "Priority notice may, on an application made by or on behalf of the prospective mortgagee, be entered in the Register.
- (2) An application to enter a priority notice in the Register shall be in the Form 2 of Schedule A and shall be accompanied by the fee specified in Schedule B.
- (3) On receipt of an application under this Registrar shall enter the priority notice in the Register by making an entry of the priority notice in the Register
- (4) Priority notices shall be entered in the Register in the order in which the applications are received and the Registrar shall endorse and sign on each application a memorial stating the date and time it was received by the Registrar.
- (5) The Registrar shall notify the applicant of the date and time of the entry of the priority notice in the register and of the registration number in the Register and shall send a copy of the notification to the prospective mortgagor and the owner of the mortgaged property.

Amendment of Particulars

8. (1) An application to amend any entry in the Register in relation to –
- (a) the name of the mortgagor or mortgagee:
- (b) the address of such person : or
- (c) the description of the mortgagee Property.
- May be made by on a behalf of the mortgagee in Form 3 of Schedule A.

(2) The application under subregulation (1) shall be signed by or on behalf of the mortgagor and mortgagee and shall be accompanied by the fee specified in Schedule B.

(3) On receipt of an application under this regulation the Registrar shall amend the register accordingly and notify the mortgagee, mortgagor and the owner of the mortgaged property of such amendment.

Discharge of mortgage

9. (1) Where a mortgage entered in the Register is discharged the mortgagor shall the Registrar of the discharge in Form 4 in Schedule A.

(2) The notice under subregulation (1)--

(a) shall, subject to paragraph (c), be signed by the mortgagor: and mortgages:

(b) shall be accompanied by the mortgage with the discharge or receipt for the mortgage money endorsed thereon:

(c) shall, where the mortgagee fails or refuses to sign the notice of discharge, be accompanied by any other documents which show, to the satisfaction of the Registrar, that the mortgage had been discharged: and

(d) shall be accompanied by the fee specified in the Schedule B.

(3) On receipt of a notice of discharge the Registrar shall in the relevant entry in the Register in respect of the mortgage make an entry in the Register that the mortgage had been discharged by endorsing thereon the word "discharged" and the date and time of receipt of the notice and notify the mortgagor mortgagee and the owner of the mortgaged property of such entry.

Inspection of register and issue of copies entries

10. (1) Any person may on application made to the Registrar inspect an entry in the Register and the documents relating to such entry during such time as the office is kept open under regulation 3 (4).

(2) The Registrar may on application made to the Registrar issue to the applicant a copy of any entry in the Register and of the documents relating thereto, certified as a true copy of such entry or documents.

(3) The Registrar may on application made to the Registrar notify an applicant whether or not there are any entries in the Register relating to any aircraft ad store of spare parts for that aircraft specified in the application.

(4) An application made under subregulation (1) or (2) or (3) shall be accompanied by the fee specified in Schedule B.

(5) Any document issued under this regulation as a true copy certified by the Registrar shall be admissible in evidence at any trial to the same extent and in the same manner as the original could be admissible.

priority of mortgages

11. (1) Where there are more than one mortgage entered in the Register in respect of the same mortgaged property the Mortgagees shall, notwithstanding any express, implied or constructive notice, be subject to subregulation (3), entitled in priority, one over the other, according to the date and time at which each mortgage is entered in the Register and not according to the date of the mortgage itself.

(2) A mortgage entered in the Register shall not be affected by any act of bankruptcy committed by the mortgagor after the date of entry of the mortgage in the Register, notwithstanding that the mortgagor, where the mortgagor is adjudicated bankrupt, at the commencement of the bankruptcy had the mortgaged property in the possession, order or disposition of the mortgagor or was the reputed owner thereof and the mortgage shall be preferred to any right, claim or interest in the mortgaged property of other creditors of the bankrupt or

any trustee or assignee on their behalf.

(3) Where a priority notice has been entered in the Register under regulation 7 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 entered on the Register.

(4) In reckoning the 14 days under subregulation (3), any day on which the office is not open under regulation 3 (4), shall be excluded.

(5) Nothing in this regulation shall be construed as giving a mortgage entered in the Register any priority over any possessor lien in respect of work done on the aircraft (whether before or after the creation 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 law.

Mortgagee not treated as owner

12. Except as may be necessary for making the mortgaged property available as a security mortgage debt, the mortgagee shall not by reason of the mortgage be deemed the owner of the mortgaged property nor shall the mortgagor, if the mortgagor is the owner, be deemed to have ceased to be owner thereof.

Mortgagee's power of sale

13. (1) Every mortgagee of a mortgage entered in the register shall, subject to subregulations (2) and (3) have power absolutely to dispose of the mortgaged property and give effectual receipts for the purchase money.

(2) The Power conferred under subregulation (1) shall only be exercised by the leave of a court of competent jurisdiction and subject to the conditions imposed by such court.

(3) Notice of an application for leave of court shall be given to the mortgagor, all other mortgagees, if any, and the owner of the mortgaged property.

(4) Where a mortgagee has obtained the leave of a court of competent jurisdiction to exercise the powers conferred under subregulation (1), the mortgagee shall prior to the exercise of that power apply to the Registrar for entering of the order of the court in the Register.

(5) An application under subregulation (4) shall be accompanied.

(a) by a copy of the order certified by the court to be a true copy, together with, where the order is in a language other than English, a translation of the order in the English language certified by the applicant as being, to the best of the applicant's knowledge and belief, a true translation thereof:

(b) by an affidavit of the applicant verifying compliance with subregulation (3);

(c) by the fees specified in Schedule B.

(6) On an application under subregulation (4), made in accordance with subregulation (5), the Registrar shall enter the order in the Register by making an endorsement in the relevant entry of the Register in relation to the mortgage.

(7) Where an order entered in the Register is an order of a court of competent jurisdiction outside Seychelles, the order shall be given effect to in Seychelles as an order of the supreme Court of Seychelles.

(8) In this regulation "a court of competent jurisdiction" means the court designated as the court of competent jurisdiction in the mortgage and, in the absence of such designation, the Supreme Court of Seychelles.

Cap 31
Sub. Leg

(9) The removal of an aircraft from the register of aircraft kept under article 4 (1) of the Air Navigation (Overseas Territories) Order shall not affect the rights of any mortgagee of a mortgaged property under these Regulations and entries shall continue to be made in the Register of Mortgages of Aircraft kept under these Regulations as if the aircraft had not been removed from the said register of aircraft.

Transfer of mortgage

14. (1) A mortgage entered in the Register may be transferred to any person and the instrument effecting the transfer shall be in Form 5 in Schedule A.
- (2) On production of an instrument of transfer effected under subregulation (1) together with the fee specified in Schedule B, the Registrar shall record it by entering in the Register the name of the transferee as the mortgagee of the mortgaged property.
- (3) The Registrar shall make an endorsement on the instrument to transfer that it has been recorded in the Register stating the day and time of the record.

Transmission of interest in mortgage by death etc.

15. (1) Where the interest of a mortgagee of any mortgaged property is transmitted to any person on mortgage by death or bankruptcy of the mortgagee or by any lawful means other than by a transfer under regulation 14, the transmission shall be authenticated by a declaration of the person to whom the interest is transmitted.
- (2) A declaration under subregulation (1) shall contain a statement of the manner in which and the person to whom the interest has been transferred and shall be accompanied by an affidavit verifying to the accuracy of the averments contained in the statement.
- (3) The Register shall, on receipt of the declaration and the affidavit together with the fee specified in Schedule B, enter the name of the person entitled to the transmission in the Register as the mortgagee of the mortgaged property.

Documents filed of record

16. All applications and other documents tendered to the Registrar under these Regulations shall be filed of record in the office, in such a manner as the Registrar may determine.

Offence

17. Any person who in an application, notice or an affidavit under these Regulations makes any statement which the person knows to be false is guilty of an offence and liable on conviction to a fine of R100,000 and to imprisonment for 5 years

SCHEDULE A

FORM 1

Reg. 5

APPLICATION FOR ENTRY OF MORTGAGE

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

PARTICULARS

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 (The description of the store of spare parts shall include an indication of their character and appropriate number and the place where they are stored shall be stated):
3. The sum secured by the Mortgage:
4. Does the mortgage require the mortgagee to make further advance?
If so, what amount:
5. Name and address of the Mortgagor:
6. Registration Number of any priority notice, if any

Date:.....

Signature of applicant.....

FORM 2

PRIORITY NOTICE

Reg 7

I of 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 mortgages of Aircraft. I hereby apply for this notice to be entered in this Register.

PARTICULARS

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 any store of spare parts for that aircraft to which it is contemplated to extend:
2. Sum to be secured by the contemplated mortgage:
3. Is it contemplated that the mortgage will require the mortgagee to make further advances? If so, of what amount:
4. Name and address of the prospective mortgagor

Date Signature of application

FORM 3

CHANGE IN PARTICULARS Reg 8

We ----- hereby give notice that the particulars shown in the Register of Mortgages of Aircraft under registration number shall be amended as follows:-

{State the changes}

Date: Signature of Mortgagee

FORM 4

DISCHARGE OF MORTGAGE Reg 9

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

Date Signature of mortgagor

I agree that the aforesaid mortgage has been discharged.

Date Signature of mortgagee

FORM 5

TRANSFER OF MORTGAGE Reg 14

{To be endorsed on the original mortgage}

I of in consideration of paid to me by hereby transfer the benefit of this mortgage.

Date Signature of mortgagee.....

SCHEDULE B

FEES

- | | | |
|-----|--|---|
| 1. | Application under regulation 5 | \$500 for entry of each mortgage |
| 2. | Application under regulation 7 | \$300 for entry of each priority notice |
| 3. | Application under regulation 8 | \$100 for each application |
| 4. | Notice under regulation 9 | \$100 for each notice of discharge |
| 5. | Application regulation 10 | |
| (a) | under subregulation (1) | \$200 for each application |
| (b) | under subregulation (2) | \$100 for each copy |
| (c) | under subregulation (3) | \$ 50 for each copy |
| 6. | Application under regulation 13(5) | \$100 for each order |
| 7. | Record of transfer of mortgage
Under regulation 14 | \$100 for each transfer |
| 8. | Record of transmission of an
Interest under regulation 15 | \$100 for each transmission |

In this Schedule the symbol \$ denotes dollars in the currency United States of America.

MADE this 27th day of June, 1996.

S. DE COMARMOND
MINISTER OF TOURISM
AND TRANSPORT
