

CAYMAN ISLANDS



Civil Aviation Authority Law (2015 Revision)

MORTGAGING OF AIRCRAFT REGULATIONS, 2015

(SL 14 of 2015)

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2015**

(SL 14 of 2015)

The Cabinet, in exercise of the powers conferred by section 39 of the Civil Aviation Authority Law (2005 Revision), makes the following Regulations —

Citation and commencement

1. (1) These Regulations may be cited as the Mortgaging of Aircraft Regulations, 2015.
- (2) These Regulations come into force immediately after the Mortgaging of Aircraft Regulations 1979 (Revocation) Regulations, 2015 come into force.

Definitions

2. (1) In these Regulations —
 - “**Aircraft Protocol**” means the Protocol to the Convention on International Interests in Mobile Equipment on matters specific to Aircraft Equipment which was concluded at Cape Town, South Africa, on 16 th November, 2001;
 - “**appropriate duty**” means the applicable fee payable under regulation 9(2) or 29 of the Air Navigation (Fees) Regulations, 2010;
 - “**Cape Town Convention**” means the Convention on International Interests in Mobile Equipment concluded at Cape Town, South Africa, on 16 th November, 2001;

“**Cayman Islands register**” means the register of aircraft maintained in the Cayman Islands in pursuance of the Air Navigation (Overseas Territories) Order 2013 [S.I. 2013/2870];

“**international interest**” has the same meaning as in the Cape Town Convention;

“**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; “**non-consensual right or interest**” has the same meaning as in the Cape Town Convention;

“**owner**” means the person shown as the owner of a mortgaged aircraft on the form of application for registration of that aircraft in the Cayman Islands register;

“**Register**” means the register of aircraft mortgages kept by the Authority in pursuance of the *Civil Aviation Authority Law (2005 Revision)*; and

“**security interest**” has the same meaning as in the Cape Town Convention.

(2) An expression which —

(a) is used in these Regulations and in the *International Interests in Mobile Equipment (Cape Town Convention) Law, 2015 [Law 2 of 2015]*; and

(b) is not defined in these Regulations,

has the same meaning in these Regulations as in that Law.

Mortgage of aircraft

3. An aircraft registered in the Cayman Islands 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.

Registration of aircraft mortgages

4. (1) Any mortgage of an aircraft registered in the Cayman Islands register may be entered in the Register of Aircraft Mortgages kept by the Authority.
- (2) Application to enter a mortgage in the Register may be made to the Authority by or on behalf of the mortgagee in the form set out in Part 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 duty.

Notice of intention to register an aircraft mortgage

5. (1) A notice of intention to make an application to enter in the Register an existing or contemplated mortgage of an aircraft (in these Regulations 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 Authority by or on behalf of the prospective mortgagee in the form set out in Part 2 of the Schedule, and shall be accompanied by the appropriate duty.

Registration of two aircraft that are the subject of one mortgage

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 a translation thereof, which the applicant shall certify as being, to the best of the applicant's knowledge and belief, a true translation.

Notification of registration

7. (1) When an application to enter a mortgage or priority notice in the Register is duly 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 time of the entry.
(2) Applications duly made shall be entered in the Register in order of their receipt by the Authority.
(3) The Authority shall by notice in its Official Record specify the days on which and hours during which its office 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.
(4) 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 of the register number of the entry and shall send a copy of the notification to the mortgagor and the owner.

Amendment of entries in the Register

8. (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 Part 3 of the Schedule.
(2) On receipt of the form, duly completed and signed by or on behalf of the mortgagor and the mortgagee and on payment of the appropriate duty, the Authority shall enter the notification in the Register and shall notify the mortgagor, the mortgagee and the owner that it has done so.

Discharge of mortgages

9. (1) Where a registered mortgage is discharged the mortgagor shall notify the Authority of the fact in the form set out in Part 4 of the Schedule.
- (2) On receipt of the form, duly completed and signed by or on behalf of the mortgagor and the mortgagee and of a copy of the mortgage with a discharge or receipt for the mortgage money duly endorsed thereon, 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 duty, the Authority shall enter the form in the Register and mark the relevant entries in the Register “Discharged”, and shall notify the mortgagee, the mortgagor and the owner that it has done so.

Removal of entry

10. Where a mortgagee applies to the Authority for the removal of an entry from the Register on the grounds that —
- (a) an international interest has been registered, or is to be registered, under the Cape Town Convention in respect of the aircraft and the mortgage; or
 - (b) the mortgagor and the mortgagee have agreed to remove the entry and have notified the Authority of the grounds for the removal,
- the Authority shall —
- (i) enter the application in the Register;
 - (ii) mark the relevant entries in the Register ‘Removed on application in respect of registration of international interest’ or, as applicable, ‘Removed by agreement of the mortgagor and the mortgagee’; and
 - (iii) notify the mortgagee, the mortgagor and the owner that it has done so.

Rectification of the Register

11. The Grand Court 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 in the Register (including the removal of incorrect or out-dated entries if the court thinks it necessary or appropriate); and, on being served with the order, the Authority shall make the necessary amendment to the Register.

Inspection of the Register and copies of entries

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



- (2) The Authority shall, on the application of any person and on payment by the applicant of the appropriate duty, 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 the applicant of the appropriate duty, 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 Authority.
- (5) Nothing done in pursuance of paragraph (2) or (3) shall affect the priority of any mortgage.

Removal of aircraft from the Cayman Islands register

13. The removal of an aircraft from the Cayman Islands 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 Cayman Islands register.

Register as notice of facts appearing in it

14. 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

15. (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 of or charge on that aircraft, other than another mortgage entered in the Register but mortgages made before 9 th October, 1979, whether entered in the Register or not, shall up to and including 9 th January, 1980, 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 were respectively entered in the Register but —
 - (a) mortgages of an aircraft made before 9 th October, 1979, which are entered in the Register before 9 th January, 1980, shall have priority over any mortgages of that aircraft made on or after 1 st October, 1979, and shall as between themselves have the same priority as they would have had if these Regulations had not been made;
 - (b) without prejudice to subparagraph (a), 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 fourteen days thereafter, that mortgage shall be deemed to have priority from the time when the priority notice was registered; and

- (c) the priority of a mortgage of an aircraft made on or after the date of commencement of the *International Interests in Mobile Equipment (Cape Town Convention) Law, 2015* [Law 2 of 2015] in respect of which mortgage an international interest exists, shall with respect to any other security interest in that aircraft granted on or after that date in respect of which security interest an international interest exists, be equivalent to the priority of the international interests corresponding to such mortgage and such security interest in each case as determined pursuant to the rules set out in Article 29 of the Cape Town Convention.
- (3) In reckoning the period of fourteen days under paragraph (2) there shall be excluded any day which the Authority has by notice in the Gazette specified as a day on which its office is not open for registration of mortgages.
- (4) The priorities provided for by the proceeding paragraphs shall have effect notwithstanding any express, implied or constructive notice affecting the mortgagee.
- (5) Nothing in this regulation shall be construed as giving a registered mortgage made before the date of commencement of the *International Interests in Mobile Equipment (Cape Town Convention) Law, 2015* 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 person lawfully entitled to possession of the aircraft or over any right to detain the aircraft under any Law.
- (6) The priority of a mortgage of an aircraft made on or after the date of commencement of the *International Interests in Mobile Equipment (Cape Town Convention) Law, 2015* in respect of which mortgage an international interest exists shall, with respect to any non-consensual right or interest in respect of that aircraft arising on or after that date, be equivalent to the priority of that international interest with respect to that non-consensual right or interest, in each case determined pursuant to the rules set out in the Cape Town Convention.

Mortgage not affected by bankruptcy

- 16. 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 the mortgagor's bankruptcy the mortgagor had the aircraft in the mortgagor's 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.



False statement and forgery

- 17.** A person who, in furnishing any information for the purpose of these Regulations, makes any statement in the truth of which the person does not believe, commits an offence and is liable - (a) on summary conviction to a fine of one thousand dollars; or
- (b) on conviction on indictment to a fine of five thousand dollars or to imprisonment for a term of two years, or to both.

Indemnity

- 18.** (1) Subject to paragraph (2), a 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 12(2) or in a notification made pursuant to regulation 12(3) shall be indemnified by the Government of the Cayman Islands.
- (2) No indemnity shall be payable under paragraph (1) —
- (a) where the person who has suffered loss has caused or substantially, contributed to the loss by that person's fraud or has derived title from a person so committing fraud; or
- (b) on account of costs or expenses incurred in taking or defending any legal proceedings without the consent of the Authority.

Additional remedies

- 19.** Nothing in these Regulations prevents the holder of a registered interest under the Cape Town Convention from exercising a remedy in accordance with the Cape Town Convention or the Aircraft Protocol.

SCHEDULE

FORMS

PART 1

REGISTER OF AIRCRAFT MORTGAGES

Entry of Aircraft Mortgage (Regulation 4(2))

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.

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 shall include an indication of their character and approximate number and the place or places where they are stored shall be given *).	
3.	The sum secured by the mortgage **.	
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 *.....**

(insert name and, where applicable, company registration number of mortgagee)

of.....

(insert address of mortgagee)

* The description of the mortgaged property may, if necessary, be continued on a separate sheet which shall be signed by the applicant.

** 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.

*** Delete where inapplicable.



PART 2
REGISTER OF AIRCRAFT MORTGAGES

Entry of Priority Notice (Regulation 5(2))

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. *	
2.	The 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 and, where applicable, company registration number of the prospective mortgagor.	

Signed.....

Name in block capitals.....

on behalf of *.....**

(insert name and, where applicable, company registration number of mortgagee)

of.....

(insert address of mortgagee)

*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.

** 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.

***Delete where inapplicable.



PART 3
REGISTER OF AIRCRAFT MORTGAGES

Change in Particulars

(Regulation 8(1))

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

(b) Signed.....

Name in block capitals.....

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

(c) Signed

Name in block capitals.....

on behalf of*.....
*(insert name of mortgagor) * Delete where inapplicable*

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



PART 4
REGISTER OF AIRCRAFT MORTGAGES

Discharge of registered mortgage

(Regulation 9(1))

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

Signed.....

Name in block capitals.....

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

I agree that the aforesaid mortgage has been discharged.

Signed

Name in block capitals

on behalf of *

(insert name of mortgagee)

*Delete where inapplicable

Made in Cabinet the 4 th day of May, 2015.

Meredith Hew
Acting Clerk of the Cabinet.

