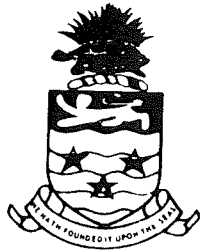


CAYMAN ISLANDS



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Supplement No. 1 published with Gazette Extraordinary 15th October, 1979

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**MORTGAGING OF AIRCRAFT
REGULATIONS 1979**

CAYMAN ISLANDS

**THE AIR NAVIGATION [OVERSEAS TERRITORIES]
ORDER, 1977**

MORTGAGING OF AIRCRAFT REGULATIONS 1979

The Governor in exercise of the powers under Article 91 of the Air Navigation (Overseas Territories) Order, 1977, and of all other powers enabling him in that behalf, hereby makes the following Regulations.

Citation and
commencement.

1. These Regulations may be cited as the Mortgaging of Aircraft Regulations 1979 and shall come into operation on 9th October, 1979.

Interpretation.

2. (1) In these Regulations –

“appropriate duty” means the fee payable under regulation 10(2) of the Air Navigation (Fees) Regulations, 1977;

“the Authority” means the Director of Civil Aviation;

Mortgage of
aircraft.

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

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

“Cayman Islands register” means the register of aircraft maintained in the Cayman Islands in pursuance of the Air Navigation (Overseas Territories) Order, 1977.

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) Applications 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 I of Schedule 1 hereto, and shall be accompanied by a copy of the mortgage, which the applicant shall certify to be a true copy, and the appropriate duty.

5. (1) A notice of intention to make an application to enter a contemplated mortgage of an aircraft in the Register (hereinafter referred to as “a priority notice”) may also be entered in the Register.

(2) Applications to enter a priority notice in the Register shall be made to the Authority by or on behalf of the prospective mortgagee in

the form set out in Part II of Schedule 1 hereto, and shall be accompanied by the appropriate duty.

6. (1) Where two or more aircraft are the subject of one mortgage or where the same aircraft is the subject of two or more mortgages, separate applications shall be made in respect of each aircraft or of each mortgage, as the case may be.

(2) Where a mortgage is in a language other than English, the application to enter that mortgage in the Register shall be accompanied not only by a copy of that mortgage but also by a translation thereof, which the applicant shall certify as being, to the best of his knowledge and belief, a true translation.

7. (1) When an application to enter a mortgage or priority notice in the Register is duly made, the 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. 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 III of Schedule 1 hereto.

(2) On receipt of the said form, duly completed and signed by or on behalf of the mortgagor and the mortgagee and on payment of the appropriate charge, the 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 IV of Schedule 1 hereto.

(2) On receipt of the said form, duly completed and signed by or on behalf of the mortgagor and the mortgagee and 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 said 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.

Rectification of the Register.

10. 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 therein. On being served with the order the Authority shall make the necessary amendment to the Register.

Inspection of Register and copies of entries.

11. (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 a fee of \$5, inspect any entry in the Register specified in the application.

(2) The Authority shall, on the application of any person and on payment by him of the fee of \$5, 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 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.

12. 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.

13. 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.

14. (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:

Provided that mortgages made before 9th October, 1979, whether entered in the Register or not, shall up to and including 9th January, 1980, have the same priority as they would have had if this Order has 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:

Provided that:

- (i) mortgages of an aircraft made before 9th October, 1979, which are entered in the Register before 9th January, 1980, shall have priority over any mortgages of that aircraft made on or after 1st October, 1979, and shall as between themselves have the same priority as they would have had if this Order had not been made;
- (ii) without prejudice to proviso (i), where a priority notice has been entered in the Register and the contemplated mortgage referred to therein is made and entered in the Register within 14 days thereafter that mortgage shall be deemed to have priority from the time when the priority notice was registered.

(3) In reckoning the period of 14 days under 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 preceding 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 any priority over any possessory lien in respect of work done on the aircraft (whether before or after the creation of registration of the mortgage) on the express or implied authority of any persons lawfully entitled to possession of the aircraft or over any right to detain the aircraft under any Law.

Mortgage not
affected by
bankruptcy.

15. 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.

Application of
Bills of Sale
Law (Revised).

16. The provisions of the Bills of Sale Law (R) 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 registered in the Cayman Islands register, which is made on or after 9th October, 1979.

False statement
and forgery.

17. Whoever in furnishing any information for the purpose of these

Regulations, makes any statement in the truth of which he does not believe, is guilty of an offence and liable --

- (a) on summary conviction to a fine not exceeding \$1000;
- (b) on conviction on indictment to a fine of such amount as the court think fit or to imprisonment for a term not exceeding 2 years or both.

Indemnity

18. (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 11 (2) or in a notification made pursuant to regulation 11 (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 himself caused or substantially contributed to the loss by his 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.

**SCHEDULE 1
FORMS
PART I**

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 must include an indication of their character and approximate number and the place or places where they are stored must 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.

* The description of the mortgaged property may, if necessary, be con-

tinued 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.

Signed.....

Name in block capitals.....

On behalf of ***
(insert name and, where applicable,
company registration number of mort-
gagee)

of
(insert address of mortgagee)

PART II

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 ap-

plicable, company registration number
of the prospective mortgagor.

The description of the property which
is the subject of the contemplated
mortgage may, if necessary, be con-
tinued 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.**

Signed

Name in block capitals

on behalf of***
(insert name and, where applicable,
company registration number of mort-
gagee).....

of
(insert address of mortgagee)

PART III

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 IV

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 Council this 9th day of October, 1979.

JENNY MANDERSON
Clerk of the Executive Council