

THE AIRCRAFT REGISTRATION ACT, 2010

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**A BILL
entitled**

AN ACT to regulate the registration of aircraft and aircraft mortgages and to repeal and re-enact various existing laws relating to such matters; and to regulate the aircraft register, to introduce rules on aircraft mortgages, their registration and their enforcement, to introduce rules on special privileges on aircraft, and to implement the Convention on International Interests in Mobile Equipment and Protocol thereto on Matters Specific to Aircraft Equipment.

BE IT ENACTED by the President, by and with the advice and consent of the House of Representatives, in this present Parliament assembled, and by the authority of the same, as follows:-

PART I

PRELIMINARY AND GENERAL

Short title and commencement.

1. (1) The short title of this Act is the Aircraft Registration Act, 2010.

(2) This Act shall come into force on such a date as the Minister may by Notice in the Gazette establish, and different dates may be so established for different provisions or different purposes of this Act.

Interpretation.

2. (1) In this Act, unless the context otherwise requires:

"aircraft" means any machine that can derive support in the atmosphere from the reactions of the air other than the reactions of the air against the earth's surface as may be illustrated or amplified by the Minister by regulations but shall exclude aircraft used in the military, customs or police services of any State;

"the Aircraft Protocol" and "the Protocol" mean the Protocol to the Convention on International Interests in Mobile Equipment in Matters Specific to Aircraft Equipment that was opened for signature at Cape Town on 16 November 2001, the text of which is consolidated with the text of the Cape Town Convention and substantively reproduced in the First Schedule reflecting the Implementing Law;

"air service" means a flight or a series of flights carrying passengers, cargo and, or mail for remuneration and, or hire;

"air transport undertaking" has the same meaning as is given to it in the Civil Aviation Act;

Cap. 232.

"approved jurisdiction" means any member country of the Organisation for Economic Co-operation and Development and any other country approved by the Minister by notice for the purposes of this Act;

"the Authority" means the Authority for Transport in Malta established under the Authority for Transport in Malta Act;

Cap. 499.

"aviation undertaking" means a legal organisation established under the laws of Malta the objects of which are:

- (a) to own aircraft; or
- (b) to operate aircraft; or
- (c) to manage aircraft; or
- (d) to carry on business relating to the:
 - (i) financing;
 - (ii) insurance;
 - (iii) brokerage;
 - (iv) maintenance;
 - (v) repair and overhaul;

(vi) classification; or

(vii) surveying

of aircraft, and to carry on all, or any ancillary business related thereto;

"the Cape Town Convention" and "the Convention" mean the Convention on International Interests in Mobile Equipment that was opened for signature at Cape Town on 16 November 2001, the text of which is consolidated with the text of the Aircraft Protocol and substantively reproduced in the First Schedule reflecting the Implementing Law;

"Certificate of Registration" means the certificate of registration issued by the Director General in accordance with the provisions of this Act;

"crew" means any person employed or engaged on an aircraft in flight on the business of the aircraft;

"Declaration" means a declaration made by a State acceding to the Cape Town Convention pursuant to a particular provision or provisions of the Convention or its Aircraft Protocol as the case may be;

"the Depositary" means the Headquarters of the International Institute for the Unification of Private Law (UNIDROIT) in Rome;

"the Diplomatic Conference" means the Diplomatic Conference held under the joint auspices of the International Civil Aviation Organisation and the International Institute of Private Law at Cape Town from 29 October to 16 November 2001;

"the Director General" means the Director General responsible for Civil Aviation in Malta, and to the extent of the authority given, any person authorised in that behalf by the Director General;

"EEA State" means a State which is a party to the EEA Agreement;

"EEA Agreement" means the Agreement on the European Economic Area signed at Oporto on the 2 May, 1992 as adjusted by the Protocol signed at Brussels on the 17 March, 1993, as modified or supplemented from time to time;

"effective date" means the date established in accordance with article 56 of the First Schedule;

"Implementing Law" means the Model for National Implementing Legislation prepared by the Aviation Working Group to UNIDROIT, dated August, 2008 substantively reproduced in the First Schedule;

"lease agreement" means an agreement by which a person (the lessor) grants a right to possession or control for a stipulated period of time, of an aircraft or an aircraft engine (with or without the option to purchase) to another person (the lessee) in return for a rental or other payment, and the terms "lease", "sub-lease", "sub-lessor" and "sub-lessee" shall be construed accordingly and where the term "lease" is used, it shall include a "sub-lease", where the term "lessor" is used, it shall include a "sub-lessor", and where the term "lessee" is used, it shall include a "sub-lessee";

"Minister" means the Minister responsible for transport, and includes any person authorised by such Minister in that behalf;

"mortgage" means a mortgage registered in terms of this Act and shall, where the context so requires, include an equivalent charge registered in the International Registry in terms of the First Schedule, and "mortgagee" shall be construed accordingly;

"National Aircraft Register" or "register" mean the register to be maintained by the Director General in terms of article 4;

"operating agreement", for the purposes of Part II, means a lease agreement and any other agreement by virtue of which the operation of an aircraft is granted by an owner (or any person authorised to grant such powers, including a lessee), to another person and under which the possession or control of the aircraft is vested in the operator for such purpose, and shall include a sale agreement with reserved rights or conditions;

"operating licence" means a licence granted under article 7 of the Civil Aviation Act to an air transport undertaking for the provision of air transport service as stated in the operating licence; Cap. 232.

"operator" means the person entitled to operate the aircraft as owner, or under an operating agreement;

"registrant" means that person in whose name an aircraft is registered in the National Aircraft Register;

"resolution" means a resolution of the House of Representatives;

"security interest" means an interest granted in terms of a

security agreement drawn up to secure the rights of -

(a) a person who is a conditional seller under a title reservation agreement; or

(b) the rights of a person who is a lessor under a lease,

and which is recognised and regulated in terms of article 41;

"temporary title", for the purposes of Part II, means a lease agreement, an operating agreement, or similar agreement;

"undertaking" has the same meaning as assigned to it in article 2 of the Companies Act.

Cap. 386.

(2) The definition of the words referred to in the preceding sub-article is supplemented by definitions in article 1 of the First Schedule for the purposes of the said Schedule. Where words used in this Act are defined in the First Schedule, they shall apply also to the interpretation of the provisions of this Act.

(3) Where this Act refers to a matter which may be prescribed, unless this Act expressly designates the person authorised and the manner thereof, such matter may be prescribed by the Minister through regulations, by the Authority through directives, or by the Director General through guidelines or any one or all of them as may be determined, provided that in the case of any conflict, a regulation by the Minister shall prevail over a directive, and a directive shall prevail over a guideline.

Prevalence of
Implementing
Law in case of
conflict.

(4) When the Implementing Law applies, it shall prevail over any other part of this Act and over any other law, in case of conflict.

Application of
Implementing
Law in case of
lacuna.

(5) To the extent that any matter provided for by the Implementing Law is not regulated by this Act, then the Implementing Law shall govern such matter and any other laws shall be construed so as to give effect to such provisions of the Implementing Law as may be applicable.

(6) Where this Act is silent on any matter, such matter shall be determined in accordance with the principles reflected in other provisions of other laws of Malta relating to aviation.

(7) This Act shall be construed consistently with Regulation EC No 1008/2008 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the Community.

(8) In so far as the operation of air services is carried out outside the European Community, this Act shall be construed consistently with the International Treaties applicable to aviation to which Malta is a party.

PART II

REGISTRATION OF AIRCRAFT

3. (1) An aircraft may be registered in Malta and be subject to the laws of Malta and have all the rights and privileges of a Maltese aircraft subject to the provisions of this Act and any regulations made hereunder and any other laws as may be applicable to it, including:

Aircraft registered under this Act.

(a) the Civil Aviation Act;

Cap. 232.

(b) the Civil Aviation (Air Operators' Certificates) Act, where relevant; and

Cap. 218.

(c) any other law applicable to the operation of aircraft and events occurring thereon or in relation thereto.

(2) The Authority shall be the authority for the registration of aircraft in Malta and shall cause such registration to be recorded in a register to be kept by the Director General, to whom all powers relating to registration are hereby delegated.

(3) It shall also be lawful to register any aircraft which is under construction as soon as it is uniquely identifiable, under such conditions as the Minister may prescribe by regulations. A description of an aircraft that contains its manufacturer serial number, the name of the manufacturer and its model designation shall be sufficient to render an aircraft uniquely identifiable.

For all purposes of this Act, the manufacturer of the aircraft shall, unless expressly agreed otherwise with a buyer, be considered to be the owner of such aircraft under construction and shall, subject to satisfying the requirements of this Act, be entitled to register an aircraft accordingly.

(4) The interest in an aircraft registered in terms of this Act may be divided into shares or other interests as may be specified on registration and the interest in the aircraft shall be noted by the Director General pursuant to article 4(2)(b)(i) in the manner which reflects the ownership interests in the aircraft.

An operator or a trustee who registers an aircraft may request that his position as registrant be recorded more than once so as to reflect underlying principals or beneficial interests.

(5) When an aircraft is registered, the engines of such aircraft and any replacement engines may also be noted in the National Aircraft Register at the request of the registrant and, when the engines do not belong to the registrant, with the consent of the owner of the said engines.

National
Aircraft
Register.

4. (1) There shall be a National Aircraft Register which shall be maintained by the Director General in physical or electronic form as may be determined by the Minister.

(2) When an aircraft is registered in terms of this Act, the Director General shall record or note transactions or information in accordance with this article and other provisions of this Act and in such manner as may be prescribed from time to time. In accordance with this sub-article:

(a) the Director General shall record the following in the register:

(i) the physical details of the aircraft;

(ii) the physical details of the engines attached to the aircraft and any replacement engines owned by the registrant to the extent they are designated for use on the aircraft;

(iii) the name and address of the registrant and in what capacity the registrant has registered the aircraft in terms of article 5;

(iv) the details of any mortgages registered on the aircraft, and subsequently all transactions relating to mortgages registrable in terms of this Act;

(v) the details of any irrevocable de-registration and export request authorisation, or any other power of attorney, irrevocable or otherwise, in a separate document or as part of an agreement between the parties granted to an owner or to a lessor of an aircraft or granted by way of security to the mortgagee, or to a third party for the benefit of any such person, granting powers relating to the exercise of rights relating to the aircraft, or to the closure of the register on behalf of the registrant and, in the event that a mandate or power of attorney is granted for a stated

period of time after which it shall lapse, such date shall also be recorded in the register and the registration of the mandate shall have no effect after such date;

(vi) any other act which is to be registered in the National Aircraft Register under the provisions of article 31 or of any other law;

(b) the Director General shall note the following matters in the National Aircraft Register if requested to do so by the registrant or by any other person who, with the consent of the registrant, demonstrates an interest in such information being entered in the National Aircraft Register:

(i) the ownership rights in the aircraft or an engine including when:

1. held by a trustee, for a single interest or more;
2. held by one or more owners;
3. divided into fractional shares or otherwise; or
4. held under an agreement with reservation of ownership rights or under conditions affecting title in terms of article 31.

The information and documents which are to be provided to the Director General relating to the above may be prescribed from time to time;

(ii) the lessee rights in relation to the aircraft or an engine and all matters relating thereto in terms of article 31;

(iii) the details of the resident agent where the registrant is an international registrant;

(iv) information on any international security interest registered in the International Registry and the debtor thereof.

(3) It shall not be a condition for registration that a registrant of an aircraft shall have the ownership and, or the lessor rights in the aircraft or its engines noted in the National Aircraft Register.

(4) Registration in the National Aircraft Register, whether by means of a record or a notation, shall have the following legal effects in relation to the information and the acts to which it refers:

(a) it renders such information public and the information shall be considered to be within the knowledge of third parties;

(b) the acts shall be effective against third parties;

(c) it shall create priority, according to the provisions of this Act and applicable law, between different rights, provided that, except as stated in the First Schedule, the notation of ownership or lessor rights shall not imply any priority over those of the holder of a registered mortgage;

(d) where expressly conditional on registration, it shall create legal effects between the parties to certain transactions; and

(e) it shall have all other effects under the applicable law.

Registrants of aircraft to be operators of aircraft.

5. (1) An aircraft may be registered in the National Aircraft Register by any person referred to in article 6, upon satisfying such requirements as are prescribed by this Act or as may be further prescribed by regulations, and who may be:

(a) an owner of the aircraft who operates the said aircraft; or

(b) an owner of an aircraft under construction or temporarily not being operated or managed; or

(c) an operator of an aircraft under a temporary title which satisfies the conditions which may be prescribed; or

(d) a buyer of an aircraft under a conditional sale or title reservation or similar agreement which satisfies the conditions which may be prescribed and who is authorised thereunder to operate the aircraft.

(2) For the purposes of sub-article (1)(c) and (d), the Director General shall exercise his discretion as to whether the operator's agreement qualifies to register an aircraft thereunder.

The information and documents which are to be provided to the Director General as evidence of the right to operate the aircraft

may be prescribed from time to time.

(3) Where the applicant for registration of an aircraft is a person enjoying a temporary title, whether or not an unqualified person holds any interest therein by way of ownership, the aircraft may be registered in the name of that person upon the Director General being satisfied that the aircraft may otherwise be properly so registered, and, subject to the provisions of this article, the aircraft may remain so registered for the duration of the temporary title.

6. (1) The following persons shall be qualified to register any aircraft in the National Aircraft Register, whether that aircraft is used to provide air services or otherwise in a capacity referred to in article 5: Qualified persons.

(a) the Government of Malta;

(b) a citizen of Malta or a citizen of a Member State of the European Union or of an EEA State, or Switzerland, having a place of residence or business in Malta, the European Union, the European Economic Area or Switzerland, including a person sharing in the ownership of such aircraft by virtue of the community of acquests subsisting between such person and a citizen as described above in whose name the aircraft is registered;

(c) an undertaking formed and existing in accordance with the laws of Malta, of a Member State of the European Union, of an EEA State or of Switzerland and having its registered office, central administration and principal place of business within Malta, or the European Union, or the European Economic Area or Switzerland, whereof not less than fifty per cent of the undertaking is owned and effectively controlled by the Government of Malta, or by any Member State of the European Union, or by persons referred to in paragraph (b), whether directly or indirectly through one or more intermediate undertakings;

(d) a natural person who is a citizen of, or an undertaking established in, an approved jurisdiction, other than those mentioned in paragraphs (b) or (c), shall be qualified to register aircraft in construction or one which is not used to provide air services if it:

(i) enjoys, to the satisfaction of the Director General, legal capacity to own or operate an aircraft in terms of the law under which it has been established or

registered;

(ii) complies with the requirements established under this Act, and any regulations made or guidelines issued pursuant thereto;

(iii) satisfies the Director General that it can and will ensure due observance of the laws of Malta relating to civil aviation; and

(iv) complies with the requirements applicable to an international registrant in terms of Part III.

(2) Where the applicant for registration is a trustee, the Director General shall pay regard to the beneficiaries of the relevant trust to determine the eligibility of the trustee to register an aircraft under this Act and no regard shall be paid to the nationality of the trustee himself:

Provided that the Director General shall implement procedures to ensure the confidentiality of the information he may obtain on the identity of the beneficiaries and shall not make any such information available to third parties without the prior written consent of the trustee, duly authenticated, or otherwise in accordance with the provisions of the Professional Secrecy Act.

Cap. 377.

(3) In this Act, references to any interest in an aircraft do not include any references to an interest in an aircraft to which a person is entitled only by virtue of his membership of a flying club and the references in this Part to the registrant include, in the case of a deceased person, his heirs at law, and in the case of a body corporate which has been dissolved, its liquidator or, until a liquidator is appointed, each of the directors at the time of the dissolution, or equivalent in the applicable jurisdiction.

Conditions of eligibility to joint or fractional ownership.

7. (1) Where the application for registration of an aircraft is based on ownership and where interest in an aircraft is vested in more than one person, then at least fifty per cent of the owners of the shares in the aircraft must be eligible as qualified persons, provided that the Minister may by regulations establish different conditions, including different minimum thresholds on ownership participation by qualified persons for the eligibility to register an aircraft when owned by more than one person.

(2) The same rule shall apply when the applicant for registration is a trustee where reference shall be made to the beneficial interests *mutatis mutandis*.

(3) Where the application for registration of an aircraft is based on the operation of such aircraft and where such operation is being carried out by more than one person, then all the operators of the aircraft must be eligible as qualified persons:

Provided that in the case of an aircraft which is not used to provide air services, the Minister may by regulations establish different conditions for the eligibility to register an aircraft when operated by more than one person.

8. (1) Application for the registration of an aircraft shall be made in writing on the prescribed form to the Director General, and shall include or be accompanied by such particulars and evidence relating to the aircraft, the ownership, acquisition, chartering and operation thereof and qualifications of the registrant as may be prescribed to enable the Director General to determine whether the aircraft may properly be registered and to enable the Director General:

Applications for registration.

- (a) to issue a Certificate of Registration; and
- (b) to determine the classification of the aircraft for the purpose of application of this Act and any applicable rules and regulations.

(2) The Director General may from time to time issue guidelines in order to determine the applicability of rules when an aircraft is partly used for remuneration and, or hire, and partly not, subject to due observance of applicable international conventions and regulations.

9. Upon receiving an application for the registration of an aircraft and after being satisfied that the aircraft may be so registered, the Director General shall register the aircraft wherever it may be, and shall include in the register the following particulars relating to the aircraft:

Particulars of aircraft, engines, etc., to be entered in the National Aircraft Register.

- (a) the number of the certificate of registration;
- (b) the nationality marks of the aircraft, and the registration marks assigned to it by the Director General;
- (c) the name of the constructor of the aircraft and its designation;
- (d) the serial number of the aircraft; and
- (e) the manufacturer, the serial numbers, and physical

details of the engines attached to the aircraft and any replacement engines to the extent they are designated for use on the aircraft.

Certificate of
Registration.

10. (1) The Director General shall furnish to the person in whose name the aircraft is registered a certificate of registration which is not transferable, and shall include the particulars referred to in article 9(1) and the date of issue of such certificate.

(2) Where an aircraft is registered by a registrant under article 5(c) or (d), every person who holds any interest by way of ownership or title in the aircraft or a share therein may make a request in writing to the Director General to have his name, address and ownership interests or title noted in the certificate of registration.

(3) A certificate of registration shall be issued when an aircraft is registered while it is still under construction, but it shall expressly state that the aircraft is not permitted to operate until such time as it complies with the provisions of the applicable law.

(4) A certificate of registration purporting to be signed by the Director General or other authorized officer shall constitute *prima facie* evidence that it has been so issued, and of its contents.

Obligation of
the registrant to
notify the
Director
General of
certain events.

11. (1) Any registrant of an aircraft shall forthwith inform the Director General in writing of -

(a) any change in the particulars which were furnished to the Director General upon application being made for the registration of the aircraft or the title thereto;

(b) the destruction of the aircraft, or its permanent withdrawal from use;

(c) in the case of an aircraft registered pursuant to article 5(c), the termination of the temporary title and in case of an aircraft registered pursuant to article 5(d), any event which brings into force the reversion of title to the seller of the aircraft or the possession, control or operation of the aircraft to a person other than the registrant; and

(d) where an aircraft is subject to a registered mortgage or other security interest, any event amounting to an enforcement thereof which has the effect of transferring the title or the possession, control, or operation of the aircraft to a person other than the registrant.

(2) The registrant shall provide such information as may be requested relating to any such events within five working days of a demand in writing from the Director General.

12. The Director General may, whenever it appears to him necessary or appropriate to do so for giving effect to this Part, or for bringing up to date, or otherwise correcting the particulars entered in the National Aircraft Register or the certificate of registration, amend the National Aircraft Register or the certificate of registration:

Updating of the
National
Aircraft
Register.

Provided that where there is registered in the National Aircraft Register an aircraft mortgage the Director General shall provide the mortgagee with fifteen days' notice of his intent and receive any representations from the mortgagee. The Director General shall act in such a manner as to protect the status of the mortgage and the rights of the mortgagee:

Provided further that where there is a person recorded as owner or lessor of the aircraft in terms of article 4(2)(b), the Director General shall provide the owner or lessor with fifteen days' notice of his intent and receive any representations from the owner or lessor. The Director General shall act in such a manner as to protect their rights as owner or lessor as the case may be.

13. (1) Subject to the provisions of this article and article 14, an aircraft shall not be registered or continue to be registered in Malta, and the certificate of registration shall forthwith be returned by the registrant to the Director General for cancellation by the Director General if:

Cancellation of
registration.

(a) it appears to the Director General that the aircraft is registered outside Malta and that such registration does not cease, by operation of law, upon the aircraft being registered in Malta;

(b) a person who is not qualified in terms of article 6 holds an interest above the applicable threshold by way of ownership in the aircraft or share therein:

Provided that where a registered mortgagee or a holder of a security interest takes such action as is considered necessary to protect his rights, including temporarily vesting the aircraft in his own name or that of a special purpose vehicle for himself for the purpose of protecting his interests, the Director General shall not cancel the registration of the aircraft on the basis that such person is not qualified to register such aircraft until such time as such rights are enforced;

(c) the qualified person, being the registrant of the aircraft, is no longer the operator of the aircraft:

Provided that if an unqualified person has been permitted to operate a registered aircraft together with qualified persons under specified conditions, the operation by such person under such conditions shall be disregarded for the purpose of this provision:

Provided further that where a registered mortgagee or a holder of a security interest takes such action as is considered necessary to protect his rights, including temporarily taking over the operation of the aircraft directly (if competent) or through a competent person, nothing in this sub-article shall require the Director General to cancel the registration of the aircraft until such time as the aircraft has been transferred to a third party which is not a qualified person in terms of article 6;

(d) in the opinion of the Director General, the aircraft could more suitably be registered elsewhere;

(e) in the opinion of the Minister, it would be inexpedient in the public interest for the aircraft to be or to continue to be registered in Malta;

(f) the registrant has made a written request to the Director General for cancellation of registration and closure of register;

(g) it appears to the Director General that any applicable requirements under the Civil Aviation Act or under regulations or directives thereunder or under EU regulations, relating to the safety of the operation or the airworthiness of that aircraft, are not being faithfully or cannot be complied with; or

(h) it is not compliant with any applicable statutory aircraft registration conditions in respect of aircraft noise or exhaust gas emissions.

(2) Where the request is made by an authorised person or his delegate in writing, pursuant to an irrevocable de-registration authorisation or power of attorney which has been registered in the National Aircraft Register or in the International Registry, such request shall be acted upon in all cases.

(3) The certificate of registration of an aircraft is in any case to be considered void if the registration of the aircraft to which it relates is cancelled.

(4) The registration of an aircraft which is the subject of an undischarged mortgage shall not become void by virtue of any of the events referred to in sub-article (1), nor shall the Director General cancel the registration of such an aircraft pursuant to this article unless all mortgagees of that aircraft have consented to the cancellation:

Provided that in the case referred to in sub-article (1)(e), the Minister may order that an aircraft registration be cancelled even without the consent of any mortgagee provided that the provisions of the following sub-articles shall apply prior to the cancellation taking place.

(5) The Director General shall give all registrants and any mortgagees at least fifteen working days' notice of any intent to close the register, in terms of this article, unless the cause for such closure is remedied within such time or such longer period expressly stated in the notice. The Director General shall specify in the notice the reason for the proposed closure and the expiry date for the issue to be addressed, failing which closure will be effected.

(6) The registrant and any mortgagee may appeal to the Administrative Review Tribunal established under the Administrative Justice Act, within fifteen working days of receiving the relevant notice under sub-article (5) either: Cap. 490.

(a) on the basis that it is not justified; or

(b) on the basis that effective action has been taken to remedy the complaint and the Director General has failed to withdraw the order to cancel.

(7) Pending the determination of an appeal under the preceding sub-article, the Director General shall not proceed to close the register.

14. In the case of cancellation of the registration of an aircraft in terms of the provisions of article 13, the aircraft shall cease to be registered and the register of the aircraft shall be considered as closed except in so far as relates to any unsatisfied mortgages and other holders of any security interest: Register closed
save unsatisfied
mortgages and
security
interests.

Provided that the Director General may, without prejudice to rights of the mortgagee, communicate independently with the mortgagee or holder of any security interest to take all action as is necessary, including extending the validity of the registration beyond the stated deadline, for the orderly closure of the registry and enforcement of the mortgage or other security interest as well as to

ensure the safe operation of the aircraft.

Inspection of
the National
Aircraft
Register.

15. (1) The National Aircraft Register may, upon payment of the prescribed fee, be inspected by any person at the offices of the Director General subject to any conditions the Director General may specify.

(2) The Director General may make the information in the National Aircraft Register accessible on the internet or by any other suitable electronic means.

(3) A transcript of the National Aircraft Register shall be issued upon request and upon the payment of the prescribed fee.

Nationality and
registration
marks.

16. (1) The marks to be borne by aircraft registered in Malta shall comply with this Act and particularly with Part B of the Fourth Schedule and other regulations prescribed hereunder.

(2) An aircraft shall not bear any marks which purport to indicate -

(a) that the aircraft is registered in a country in which it is not in fact registered; or

(b) that the aircraft is an aircraft used in the military, customs or police services of a particular country if it is not in fact such an aircraft, unless the appropriate authority of that country has sanctioned the bearing of such marks.

Fees.

17. There shall be charged for the registration of an aircraft, or of a mortgage over an aircraft, the fees as may be prescribed from time to time by the Minister, or under any applicable laws.

PART III

INTERNATIONAL REGISTRANT

International
registrants'
eligibility to
register aircraft.

18. The provisions of this Part shall apply limitedly to registrants of aircraft not engaged in air services.

International
registrant.

19. A foreign national or undertaking, not being a person mentioned in article 6(1)(b) or (c) (in this Act referred to as an "international registrant") shall be deemed to satisfy the qualifying requirements of article 6(d) unless the Director General has made a declaration to the contrary; and the Director General may, before withdrawing such declaration, impose such conditions as he may deem fit in the circumstances that may include the provision of a guarantee or a bond.

20. (1) The international registrant is required to appoint in writing prior to registration, a resident agent who - Appointment of resident agent.

(a) is habitually resident in Malta;

(b) is not interdicted or incapacitated or is an undischarged bankrupt;

(c) has not been convicted of any of the crimes affecting public trust or of theft or of fraud or money laundering or of knowingly receiving property obtained by theft or fraud; and

(d) has satisfied the Director General that he is a person capable of carrying out the functions stated under this Act.

(2) A resident agent shall be deemed to satisfy the Director General unless the Director General has made a declaration to the contrary; and the Director General may, before withdrawing such declaration, impose such conditions as he may deem fit in the circumstances.

(3) The international registrant shall ensure that it has a validly appointed resident agent at all times.

(4) Notices of the appointment, resignation or removal of the resident agent shall be filed with the Director General in the prescribed form, and where a notice of appointment is given it shall be accompanied by the acceptance in writing of the resident agent of such appointment.

(5) The Director General may at any time refuse or reject any notice of an appointment which he considers is not in compliance with this Act and in such case the international registrant shall immediately appoint another resident agent.

21. An international registrant in whose name an aircraft is, or has been, registered under this Act, or in whose name a certificate of registration has been issued, shall be deemed to have submitted to the jurisdiction of the Maltese courts in terms of article 742(1)(g) of the Code of Organization and Civil Procedure for any action in connection with the aircraft while it is or was so registered. Jurisdiction of the Maltese courts.
Cap. 12.

22. (1) It shall be the function of the resident agent, on behalf of the international registrant, to - Functions of the resident agent.

(a) act as the channel of communication between the international registrant and the Director General and other Maltese government departments and authorities;

(b) sign and file with the Director General and other Maltese government departments and authorities all declarations and forms required in terms of Maltese law;

(c) act as the judicial representative of the international registrant for judicial proceedings in Malta, and any notice whether by the Director General, other authority, any mortgagee or any other holder of a security interest, is sent to the resident agent at his last registered address, shall be deemed to have been duly received by and notified to the international registrant.

(2) The resident agent shall not be personally liable for non-compliance by the international registrant with any law, unless the resident agent has personally undertaken liability in writing or has willfully or recklessly made a false declaration.

Powers of
resident agent.

23. (1) Without prejudice to the express powers enjoyed by an international registrant in his engagement, the resident agent shall have the power, on behalf of the international registrant, to -

(a) sign and file applications, declarations, notices, returns and any other document required in terms of Maltese law;

(b) apply for the registration of an aircraft under this Act and for the closure of register of an aircraft, and to perform any ancillary act in relation thereto;

(c) pay all relative fees and taxes payable in terms of Maltese law;

(d) do all other things as may be considered conducive or ancillary for the registration of an aircraft under this Act or for the maintenance of such registration;

(e) do all other things as may be considered conducive or ancillary to the cancellation of the registration of an aircraft under this Act;

(f) authenticate documents issued by the international registrant; and

(g) receive formal notification on behalf of the international registrant when notifications are required in relation to the aircraft, under the provisions of this Act or any agreement.

(2) The resident agent shall be deemed to have all the necessary power to provide binding undertakings to the Director General on matters relating to the registration of the aircraft on behalf of the international registrant and the Director General is authorised to act accordingly; provided that nothing in this Act shall imply any power of a resident agent to execute any document relating to a mortgage or security interest unless expressly authorised to do so in writing.

(3) Except with regard to matters in relation to the registration of the aircraft under this Act and to the maintenance of such registration, the international registrant may restrict any of the above powers of the resident agent:

Provided that where the international registrant limits such powers he shall file with the Director General a declaration to that effect in the prescribed form and such limitation shall not have effect with regard to third parties until it is so filed and recorded in the National Aircraft Register.

(4) The resident agent may appoint in writing another person to act in specific matters on his behalf provided that in so doing the resident agent shall not be relinquishing the functions, powers and responsibilities conferred on him under this Part.

24. (1) A resident agent may resign by giving at least fifteen days' notice (or such other shorter period as the international registrant, the Director General and any registered mortgagee may consent to) in writing to the international registrant, the Director General and to any registered mortgagee.

Resignation or
removal of
resident agent.

(2) The international registrant may remove the resident agent by giving at least fifteen days' notice (or such other shorter period as the Director General and any registered mortgagee may consent to) in writing to the Director General and to any registered mortgagee.

(3) A registered mortgagee shall be deemed to enjoy the power to appoint a resident agent on behalf of the international registrant in case of failure of the international registrant to appoint such an agent.

(4) Where the international registrant is in default of his obligations under this Act, the Director General may, without prejudice to any other action that can be taken under this Act, apply to the Civil Court, First Hall for the appointment of a curator to act as resident agent until such time as another resident agent is validly appointed or the aircraft ceases to be registered:

Provided that any expense incurred shall be considered as

a charge due to the Director General under article 42.

PART IV

MORTGAGES ON AIRCRAFT

Aircraft as security for debts.

25. (1) Aircraft constitute a particular class of movables whereby they form separate and distinct assets within the estate of their owners for the security of actions and claims to which the aircraft is subject. In case of bankruptcy and, or insolvency of the owner of an aircraft, all actions and claims, to which the aircraft may be subject, shall have preference, on the said aircraft, over all other debts of the estate.

(2) For the purposes of this Part, an aircraft shall comprise:

(a) all data, manuals and technical records, and

(b) the airframe, all equipment, machinery and other appurtenances as accessories belonging to the aircraft, which are on board or which have been temporarily removed therefrom, and

(c) any engines owned by the owner of the aircraft whether attached to the aircraft or not, as well as any replacement engines which are designated for use on the aircraft and owned by the owner of the aircraft but temporarily not attached to the aircraft.

Types of charges on aircraft.

26. (1) An aircraft may constitute security for a debt or other obligation either by agreement or by operation of the law as hereinafter provided.

(2) (a) Special privileges arise in virtue of law and no debt or other obligation other than those specified at law shall be secured by a special privilege.

(b) To the extent that a special privilege is subject to registration in the International Registry, such registration shall be an additional requirement for the continuing existence of such special privilege.

Cap. 16.

(3) Subject to the provisions of article 31 and the provisions of the First Schedule, engines and separate items on or in an aircraft may themselves be subject to special privileges in accordance with the provisions of the Civil Code, in security of the debts therein specified.

Cap. 16.

(4) For the purposes of article 573 of the Civil Code, where an engine has been attached to an airframe, which is not also owned by

the airframe owner, each of the owners shall retain the ownership of their thing and the engine shall not accede to the airframe.

Any security over the aircraft shall not extend to any engine attached to the airframe when such engine does not belong to the owner of the airframe who has granted the security, notwithstanding that the engines may be specifically referred to in the instrument of mortgage, the National Aircraft Register or elsewhere.

27. (1) All registered mortgages, any special privileges and all actions and claims to which an aircraft may be subject shall not be affected by the bankruptcy and, or insolvency of the mortgagor or owner, happening after the date on which the mortgage was created, or the special privilege, action or claim arose, notwithstanding that the owner at the commencement of the bankruptcy and, or insolvency had the aircraft in his possession, order or disposition, or was the reputed owner thereof, and such mortgage, privilege, action or claim shall have preference, on the said aircraft, over all other debts, claims or interests of any other creditor of the bankrupt or of any curator, liquidator, receiver or trustee, acting on behalf of any other creditors.

Priority of claims on aircraft over all other debts of owner.

(2) All owners, lessors, lessees, creditors, mortgagees, holders of security interests and any other persons having an interest in or in relation to an aircraft may enter into an inter-creditor agreement which shall govern the relevant relationship and shall be binding and effective in accordance with its terms. Article 1996A of the Civil Code shall apply to such agreements.

Cap. 16.

(3) Any judicial sale proceedings instituted and any other enforcement actions initiated by any registered mortgagee or creditor enjoying a special privilege under article 42(1), shall not be interrupted or in any way hindered by any curator in bankruptcy and, or insolvency, whether voluntary or compulsory, or any liquidator, receiver or trustee of the owner for any cause other than a cause that could be set up by the owner of an aircraft.

(4) The provisions of the preceding sub-article shall apply *mutatis mutandis* to proceedings for the termination of any agreement or the taking of possession or control of an aircraft by the holder of a security interest instituted against a conditional buyer or lessee.

(5) For the avoidance of doubt the provisions of the Companies Act relating to insolvency shall not apply insofar as inconsistent with this Act.

Cap. 386.

28. (1) A registered mortgage shall attach to the aircraft or share therein in respect of which it is registered until it is discharged.

Attachment and extinguishment of charges and other rights.

(2) Where the aircraft has been forfeited under an applicable law, the interest of the mortgagee in the aircraft shall terminate if such person has authorised, consented to, or conspired, to the act, failure or omission in consequence of which the aircraft is forfeited.

(3) Where an aircraft has been sold pursuant to an order or with the approval of a competent court within whose jurisdiction the aircraft was at the time of the sale, the interest of the mortgagees as well as that of any other creditor in the aircraft shall pass on to the proceeds of the sale of the aircraft.

(4) Where an aircraft has been sold by a mortgagee in possession, in enforcement of such mortgage pursuant to his rights in terms of this Part and it is stated in the bill of sale that the aircraft is being sold free from such encumbrance, then -

(a) the rights arising from such registered mortgage shall no longer be exercisable in relation to that aircraft; and

(b) all rights of other creditors, including those of other registered mortgagees which rank after the said mortgage shall no longer attach to the aircraft; and

(c) all rights of other creditors which rank before the said mortgage shall be exercisable against the proceeds of sale by whosoever held, but shall no longer attach to the aircraft.

(5) The creditor selling the aircraft to enforce his mortgage shall be bound to act in a commercially reasonable manner and shall be bound by fiduciary duties towards the debtor and other creditors when effecting a sale of the aircraft and shall be bound to:

(a) pay from the proceeds which he receives any creditor who ranks prior to his rights as he may determine or as may be determined by the court in case of disagreement; and

(b) provide information to any creditor whose rights rank after his own rights and to the debtor for the conditions of sale, the expenses incurred, the prior rights settled and any other deductions from the price received.

(6) Any hypothec or privilege whether general or over particular movables to which an aircraft may be subject under the provisions of the Civil Code shall not continue to attach to it when the aircraft is transferred to third parties.

Cap. 16.

Mortgage of
aircraft or share.

29. (1) A registered aircraft or a share therein may be made a security for any debt or other obligation by means of an instrument

creating a mortgage in accordance with this Part (in this Act called a "mortgage") executed by the mortgagor in favour of the mortgagee in the presence of, and attested by, a witness or witnesses, in the form specified in regulations.

(2) A mortgage is indivisible notwithstanding the divisibility of the underlying debt or other obligation which it may secure.

(3) A mortgage shall attach to any proceeds from any indemnity arising from any mishaps as well as any insurance proceeds; provided that this provision shall not apply in relation to an indemnity payable under a liability policy.

(4) It shall be lawful for a mortgage to be executed and registered in favour of a security trustee appointed or acting under a trust for the benefit of persons to whom a debt or other obligation is due. Such security trustee shall, in any such case, be recognised as the mortgagee of the particular mortgage and shall be entitled to exercise all the rights in relation to that mortgage as are accorded to mortgagees by this Act or any other enactment. Any such security trust shall be governed by the provisions of article 2095E of the Civil Code when the applicable law is the law of Malta. Cap. 16.

(5) A mortgage registered under this Part may be drawn up to secure the payment of a principal sum and interest, an account current, as well as the performance of any other obligation, including a future obligation due by the debtor to the creditor. It shall not be necessary to indicate the monetary value of the indebtedness in the mortgage unless it is intended to secure a future obligation in which case a maximum sum by way of principal for which the mortgage is granted must be expressly stated in the registered instrument and such sum shall be reflected in the register by the Director General.

A mortgage to secure a future obligation may only be granted in favour of a credit institution in an approved jurisdiction or such other organisation as may be permitted by means of a Notice issued by the Minister.

(6) For the purposes of this Act, the term "account current" means any indebtedness of a mortgagor in favour of a mortgagee arising and determinable in accordance with an underlying obligation and all the provisions of the Commercial Code relative to the contract of account current including the provisions of article 264 thereof shall not apply thereto unless expressly agreed to by the parties. Cap. 13.

(7) When an international interest is registered in the International Registry it shall be enforceable even in the absence of the registration or notation in the National Aircraft Register and shall

be regulated by the First Schedule and the law governing its terms.

Registration of mortgages.

30. (1) On the production of a mortgage for registration in the form prescribed, the Director General shall record it in the National Aircraft Register.

(2) Mortgages shall be recorded by the Director General in the order of time in which they are produced to him for that purpose, and the Director General shall by memorandum under his hand notify on each mortgage that it has been recorded by him, stating the day and hour of that record.

(3) Where it is stated in the instrument of the mortgage that it is prohibited to create further mortgages on an aircraft without the prior written consent of the mortgagee, the Director General shall make a note in the National Aircraft Register to such effect, and the Director General shall not record such further mortgage unless the consent in writing of the holder of a prior mortgage is produced to him, and any mortgage registered in violation of this provision shall be null and void:

Provided that where such further mortgage is executed in favour of an existing creditor, no such consent shall be required from such creditor:

Provided further that nothing in this article shall hinder the registration of a special privilege where this Act requires registration for its continuing validity and effect.

(4) When it is stated in the instrument of mortgage that it is prohibited to effect the transfer of the aircraft which is being mortgaged or charged, or of a share therein, without the previous written consent of the mortgagee, the Director General shall make a note in the National Aircraft Register to such effect, and the Director General, notwithstanding any other provision of this Act, shall not record any transfer of such aircraft or of a share therein unless the consent in writing of such mortgagee is produced to him, saving where the transfer is made pursuant to a court order in a sale by auction of such an aircraft or pursuant to any other court order, and any transfer registered in violation of this provision shall be null and void.

(5) Where a creditor has registered an international interest in the International Registry in accordance with the First Schedule, it shall be lawful for the debtor (being the registrant and, or the owner of the aircraft) to execute and file a prohibitory notice, in the form prescribed, which shall be entered in the National Aircraft Register by

the Director General.

(6) When a prohibitory notice is entered in the National Aircraft Register in accordance with this article, the Director General shall not thereafter record any security interest in the National Aircraft Register in accordance with this Part, until the prohibitory notice is withdrawn by the creditor.

31. (1) Subject to article 32 and the terms of any inter-creditor agreement, upon the registration of any mortgage in the National Aircraft Register, the rights of any mortgagee shall not be affected by the following happening subsequently:

Preservation of special privileges or reservation of title of aircraft on accessories of aircraft.

(a) the creation of any separate privilege or charge on an aircraft or on any part, appurtenance or accessory of an aircraft which may attach in virtue of any law except for the privileges listed in article 42(1); or

(b) the reservation of ownership rights by a seller on an aircraft or on any part, appurtenance or accessory sold to a buyer under a contract of sale, hire purchase or any similar contract;

(c) any lease:

Provided that provisions, fuel and other consumable goods shall not be considered as appurtenances:

Provided further that the provision of this article shall in no way prejudice or reduce the rights of any creditor enjoying a privilege or reserving ownership rights in relation to any creditor other than the mortgagee.

(2) Subject to article 32, at any time prior to the registration of a mortgage on an aircraft any creditor having a separate privilege or charge on any part, appurtenance or accessory of an aircraft may register such privilege or charge in the register of the aircraft by means of an instrument executed by the owner in the presence of a witness in the form prescribed, and on the production of such instrument, the Director General shall by memorandum under his hand notify on each charge that it has been recorded by him stating the day and hour of that record.

(3) Subject to article 32, a seller reserving ownership rights on an aircraft or on any part, appurtenance or accessory of an aircraft or enjoying the benefit of any conditions affecting title thereto may register his interest in the register of the aircraft at any time prior to the registration of a mortgage.

(4) A lessee having rights to an aircraft or any part, appurtenance or accessory of an aircraft may register his interest in the register of the aircraft at any time prior to the registration of a mortgage.

(5) The registration of such a charge or reservation of ownership rights or of lessee rights prior to the registration of a mortgage shall preserve the rights of the person referred to in the preceding sub-articles, on the aircraft or that part, appurtenance or accessory in relation to any subsequent mortgage.

(6) A reservation of ownership rights registered on an aircraft or a part, appurtenance or accessory shall be cancelled upon production by the owner of a receipt for the price and other charges relative to the transfer of an aircraft or such part, appurtenance or accessory, and the Director General, upon production of such receipt duly signed and attested to his satisfaction, shall make an entry in the National Aircraft Register to the effect that the reservation of ownership rights has been cancelled.

(7) When a lease which is noted in the Register is terminated for any reason, the record thereof shall be removed by the Director General upon production of such documents as may be prescribed which demonstrate such termination to his satisfaction.

(8) The transfer of the interest of any creditor enjoying a reservation of ownership or lessee rights registered in terms of this article may, on the production of proof to the satisfaction of the Director General, be recorded by the Director General who shall enter in the register the name of the transferee and shall by memorandum under his hand notify on the instrument of transfer that it has been recorded by him.

Priority of mortgages.

32. (1) If there are more than one mortgage registered in respect of the same aircraft or share, the mortgagees shall, notwithstanding any express, implied or constructive notice, be entitled in priority, one over the other, according to the date and the time at which each mortgage is recorded in the National Aircraft Register.

(2) Subject to the provisions of sub-article (3), after the effective date all mortgages registered in terms of this Part shall rank after any international interest, prospective international interest and other right or interest which is registered in the International Registry on such aircraft or share therein irrespective of the date and time of registration in the international registry.

(3) A mortgage registered in terms of this Part or any law (which this Act substitutes) before the effective date shall retain its priority over any international interest or prospective international interest as defined in the First Schedule which may be registered in the International Registry on such aircraft or share therein.

33. (1) Without prejudice to any default remedies as may be applicable by virtue of the First Schedule, the mortgagee shall, in the event of default of any term or condition of a registered mortgage or of any document or agreement referred to therein, and upon giving notice in writing to the debtor -

Rights of mortgagee.

(a) be entitled to take possession of the aircraft or share therein in respect of which he is registered; but except so far as may be necessary for making a secured aircraft or share available as a security for the secured debt, the mortgagee shall not, by reason of the mortgage, be deemed to be the owner of the aircraft or share, nor shall the mortgagor be deemed to have ceased to be the owner thereof;

(b) have power absolutely to sell the aircraft or share in respect of which he is registered; but where there are more persons than one registered as mortgagees of the same aircraft or share, a subsequent mortgagee shall not, except under the order of a court of competent jurisdiction, sell the aircraft or share without the concurrence of every prior mortgagee; and if the proceeds of sale, after discharging the secured debt, show a surplus in his hands, the mortgagee shall hold under trust or deposit the same for the benefit of other creditors and of the mortgagor debtor;

(c) have power to apply for any extensions, pay fees, receive certificates, and generally do all such things in the name of the owner or registrant as may be required in order to maintain the status and validity of the registration of the aircraft;

(d) have the power to lease the aircraft so as to generate income therefrom; and

(e) have the power to receive any payment of the price, lease payments, and any other income which may be generated from the management of the aircraft.

Cap. 426.

For the purposes of this sub-article, the requirement to give notice in writing to the debtor shall be considered to have been satisfied if the mortgagee or holder of any security interest gives the notice to the debtor by means of an electronic communication in accordance with the Electronic Commerce Act, or in such other manner as agreed between the parties, or if such notice is served at the registered office of the debtor, if the registered address of the owner is in Malta, or on a curator appointed by the court to represent the debtor and the aircraft, and in the case of an international registrant, on the resident agent in accordance with article 23(1)(g).

(2) The powers referred to in sub-article (1) may be exercised by the mortgagee without the need of the leave of any court and to the extent that any mortgagee seeks the support of the court due to any hindrance of any person to the exercise of his rights, the court shall render full support to the mortgagee as expeditiously as possible.

(3) The said powers shall be exercisable in accordance with the terms of any agreement governing the mortgage.

Cap. 12.

(4) A registered mortgage shall be deemed to be an executive title for the purposes of article 253 of the Code of Organization and Civil Procedure:

(a) where the obligation it secures is a debt certain, liquidated and due;

(b) where a maximum sum secured thereby is expressly stated in the instrument creating the security and such figure is recorded in the register for public notice.

(5) The provisions of this article shall also apply to all registered mortgages which secure debts resulting from any account current or overdraft or other credit facility as well as mortgages which secure future debts.

(6) In connection with the enforcement of any mortgage, for the purpose of determining -

(a) the amount certain, liquidated and due, or

(b) the actual sum due when the mortgage secures a future debt within an expressly stated maximum,

in connection with the enforcement of the security involving the sale of an aircraft, the creditor shall specify the sum due at the time of enforcement by means of a sworn affidavit notified or served on the debtor. This shall be without prejudice to the right of the debtor to pay

such sum in settlement of the amount due to the secured creditor, or the right of any interested party to contest such amount according to law, even after payment of the sum claimed, but no person shall have the right to hinder the exercise of the rights of the secured creditor in any manner.

(7) Any judicial proceedings to enforce a mortgage shall be carried out in accordance with the procedure described in article 187(4), (5) and (6) of the Code of Organisation and Civil Procedure, provided that in the case of an international registrant registered under Part III, service on the debtor shall be carried out by serving a copy of the proceedings on the resident agent in accordance with article 22(1)(c). Cap. 12.

(8) Subject to article 43, the debtor and the person in possession of the aircraft shall be obliged to co-operate fully with the mortgagee enforcing his rights under this article including, but not limited to, surrendering and submitting all data, manuals, technical records, parts, accessories and appurtenances belonging to the aircraft.

34. (1) A registered mortgage over an aircraft or share may be transferred to any person by an instrument of transfer executed by the transferor in the presence of, and attested by, a witness or witnesses; and on the production of such instrument for registration the Director General shall record it by entering in the register the name of the transferee as mortgagee, of the aircraft or share, and shall by memorandum under his hand notify on the instrument of transfer that it has been recorded by him, stating the day and hour of the record. Transfer of mortgage.

(2) For the purposes of article 1471 of the Civil Code, registration of the instrument of transfer of a registered mortgage of an aircraft or share made by the Director General in the National Aircraft Register in terms of the provisions of this article shall be deemed to constitute due notice of the assignment of such mortgage to the debtor. Cap. 16.

35. (1) It shall be lawful for the assignee of part of a debt or other obligation secured by a registered mortgage of an aircraft or share to demand that the assignment be entered in the register of the particular aircraft for the part so assigned and the Director General shall, upon the production to him of the relative instrument of transfer together with the mortgage to which it relates, forthwith proceed to record such partial assignment by entering in the register the name of the assignee as co-mortgagee of the aircraft or share, and shall by memorandum under his hand notify on the mortgage or security interest that such assignment has been recorded by him, stating the Assignment of part of a debt or other obligation.

day and hour of the record.

(2) The provisions of article 34(2) shall be applicable *mutatis mutandis* to the assignments contemplated in sub-article (1).

Transmission of interest of mortgagee by death.

36. (1) Where the interest of the mortgagee in an aircraft or share is transmitted by death, the person to whom the interest is transmitted shall make and sign a declaration containing a statement of the manner in which and the person to whom the property has been transmitted and such declaration shall be accompanied by the like evidence as is by this Act required in case of a corresponding transmission of the ownership of an aircraft or share.

(2) On the receipt of the declaration and the production of the evidence aforesaid, the Director General shall enter the name of the person entitled upon the transmission in the National Aircraft Register as mortgagee in the aircraft or share therein.

Amendment of mortgage.

37. (1) Where a registered mortgage is amended, the Director General shall on the production of the instrument of mortgage executed in accordance with the provisions of article 29 containing the amendment, together with the written consent on the said instrument of the mortgagee whose mortgage has been amended, make a note thereof in the National Aircraft Register to the effect that the mortgage has been amended, and any such amendment shall form an integral part of the registered mortgage which it amends and such mortgage, as amended, shall continue to have the same priority as it had before the amendment was noted.

(2) Subject to the provisions of this article, an amendment of a mortgage may be effected for any purpose.

(3) Without prejudice to the generality of the foregoing, and subject always to the provisions of sub-articles (4), (5) and (6), an amendment of a mortgage shall be effected for any one or more of the following purposes:

(a) to increase the amount of capital secured by such mortgage. An agreement to vary -

(i) the interest payable, the modalities for the calculation of interest including any rate, indices, margin, or market mechanism; or

(ii) the repayment schedule; or

(iii) the currency in which payment is to be made,

shall not be considered as an increase for the purposes of this article; and

(b) to extend such mortgage to secure any other obligation of the debtor, whether as principal or as surety for any other person, in favour of the creditor, except where the new obligation qualifies as a future obligation of the mortgagor to the mortgagee secured by the mortgage being within a maximum sum stated in the relative mortgage instrument and registered in the National Aircraft Register.

(4) An amendment of a mortgage may not be effected after the obligation secured by the registered mortgage has been unconditionally discharged.

(5) Where any mortgages other than the one that it is intended to amend, are entered in the National Aircraft Register of the aircraft an amendment shall not be noted unless the consent in writing of all the other mortgagees, whose interests may be prejudiced by the amendment, is produced to the Director General.

(6) The consent to an amendment to a mortgage shall be signified by means of a declaration executed by the creditor in the presence of, and attested by, a witness or witnesses.

38. Where a registered mortgage is discharged, the Director General shall, on the production of the mortgage deed, with a receipt for the secured money endorsed thereon, duly signed and attested, make an entry in the National Aircraft Register to the effect that the mortgage has been discharged.

Entry of discharge of mortgage.

39. A transfer or mortgage of a registered aircraft or share therein, and a transfer of a registered mortgage shall have no effect in regard to the aircraft or share or against any person other than the transferor or the mortgagor, unless the transfer or mortgage has been registered under and in accordance with this Act.

Transfers and mortgages not to have effect unless registered.

40. (1) In case of loss of any registered mortgage the Director General shall, at the request of the mortgagee alone, or together with the debtor, reconstitute the original mortgage and certify this instrument as a reconstituted original of the mortgage. The Director General shall only accede to such a request upon the production by the party making the request of a sworn declaration to the effect that the original has been lost.

Loss of original mortgage deed.

(2) In such a case the Director General shall make a note in the National Aircraft Register that a reconstituted mortgage has been issued, reciting at whose request such a reconstituted instrument has

been issued.

(3) In case of loss of any original mortgage, the Director General may enter any transfer or discharge of mortgage if the mortgagee produces a sworn declaration that he is the holder of the mortgage, the instrument of which has been lost, and that he is discharging or transferring the said mortgage in virtue of the sworn declaration.

(4) In such a case the Director General shall, on production of the said sworn declaration, treat such declaration as the mortgage and shall follow the procedure specified in this Act for the transfer or discharge of the mortgage; the Director General shall make a note in the National Aircraft Register that the transfer or discharge of the mortgage has taken place in virtue of a sworn declaration.

Recognition of foreign mortgages and foreign security interests.

41. (1) A foreign mortgage shall be recognised as a mortgage with the status and all the rights and powers specified in this Act, notwithstanding the fact that it is not entered on a registered aircraft if:

(a) such mortgage has been validly recorded in the registry of aircraft or other register of the country under whose laws the aircraft is documented;

(b) such registry is a public registry;

(c) such mortgage appears upon a search of such registry; and

(d) such mortgage is granted a preferential and generally equivalent status as a mortgage under this Act under the laws of the country where the mortgage is registered.

(2) An international security interest registered in the International Registry in accordance with the provisions of the First Schedule shall be duly recognised and enforceable as an international security interest with the status and all the rights and powers specified in the Cape Town Convention as may be applicable, whether entered in the National Aircraft Register with reference to a registered aircraft or otherwise.

(3) Without prejudice to any default remedies as may be applicable by virtue of the First Schedule, the holder of a security interest which is registered in accordance with the First Schedule shall, in the event of default of any term or condition of such security or of any document or agreement referred to therein, and upon giving notice in writing to the debtor -

(a) have power to terminate the agreement and take possession or control of the aircraft to which the agreement relates; or

(b) apply to the court to authorise or direct either of these acts.

(4) A security interest which is registered in accordance with the First Schedule shall be an executive title for the purposes of article 253 of the Code of Organization and Civil Procedure where: Cap. 12.

(a) it secures the rights of a seller under a conditional sale with reservation of ownership rights; or

(b) it secures the rights of a lessor under a lease agreement.

(5) The powers referred to in sub-article (3) may be exercised by the creditor without the leave of any court and to the extent that any creditor seeks the support of the court due to any hindrance of any conditional buyer or lessee to the exercise of his rights, the court shall render full support to the holder of the security interest as expeditiously as possible including by making any declaration on the vesting of ownership or lessor rights or the termination of possessory rights to the aircraft.

(6) The provisions of -

(a) the last paragraph of article 33(1); and

(b) article 33(2), (7) and (8), with reference to the powers stated in sub-article (3) of this article and generally stated in the First Schedule

shall apply to the enforcement of a security interest which is registered in accordance with the First Schedule.

(7) When the proper law of a conditional sale or a lease agreement is Maltese law and the security interest in relation thereto is registered in accordance with the First Schedule, for the purposes of Maltese law, the owner and, or the lessor shall enjoy the status and powers in relation to the relevant aircraft as is envisaged in terms of sub-articles (3) to (6).

(8) A security interest shall be governed by the terms of the security agreement constituting such interest whether with reference to a registered aircraft or otherwise. The existence or validity of the security interest, its construction and its effects shall be governed by

the proper law applicable to the security agreement and when executed and, or perfected in accordance with the proper law, shall be recognised and given effect to in Malta in accordance with this article. Such interests shall be subject and subordinate to the rights of any registered mortgagee or the holder of an international security interest duly registered in accordance with the First Schedule and shall be subject also to the terms of any inter-creditor agreement.

(9) A security interest shall operate for such time and under such conditions as apply under the proper law governing the security agreement.

PART V

SPECIAL PRIVILEGES ON AIRCRAFT

Special
privileges on
aircraft.

42. (1) The debts hereunder specified are secured by a special privilege upon the aircraft, as well as any proceeds from any indemnity arising from any mishaps as well as any insurance proceeds, provided that this provision shall not apply in relation to an indemnity payable under a liability policy:

(a) judicial costs incurred in respect of the sale of the aircraft and the distribution of the proceeds thereof pursuant to the enforcement of any mortgage or other executive title;

(b) fees and other charges due to the Director General arising under applicable law of Malta in respect of the aircraft;

(c) wages due to crew in respect of their employment on the aircraft;

(d) any debt due to the holder of a possessory lien for the repair, preservation of the aircraft to the extent of the service performed on and value added to the aircraft;

(e) the expenses incurred for the repair, preservation of the aircraft to the extent of the service performed on and value added to the aircraft; and

(f) wages and expenses for salvage in respect of the aircraft.

(2) The debts hereunder specified are secured by a special privilege upon the aircraft, as well as any proceeds from any indemnity arising from any mishaps as well as any insurance proceeds, other than from a liability policy, if registered in the International Registry after the effective date:

(a) taxes, duties and, or levies due to the Government of Malta in respect of the aircraft; and

(b) wages and expenses for assistance or recovery in respect of the aircraft.

(3) The debts referred to in sub-article (2) shall constitute a special privilege and enjoy the preference and status of such right in relation to the aircraft only if the claim is created by the owner of the aircraft or a person authorised by him. When such a claim is created by an operator of the aircraft, it shall not affect the aircraft or the owner thereof, and shall only operate in relation to the said debtor and upon the termination of his temporary title and reversion of the aircraft to the owner, the said claim shall be dissolved with regard to the aircraft which shall revert unencumbered to the owner. This article shall apply to a lessor in relation to a lessee, and a sub-lessor to a lessee in the same manner, subject to such modifications as are required due to the context.

(4) Upon the registration of such privileges in the register, the person registering the aircraft, its owner, or operator shall be notified of the registration by the registrant of the privilege.

(5) For the avoidance of doubt, the requirement for registration of the privilege for taxes, duties and levies due to the Government of Malta in sub-article (2)(a) and the specific ranking position of such claim in article 44, shall apply and be binding with reference to such claims notwithstanding the provisions of other special laws of Malta which may govern such claims.

43. (1) Any aircraft repairer, aircraft manufacturer or other creditor into whose care and authority an aircraft has been placed for the execution of works or other purposes shall have a possessory lien on the aircraft as security for the works done to the extent of the service performed on and value added to the aircraft.

Possessory lien
or privilege.

(2) A possessory lien shall entitle the creditor to retain possession on the aircraft on which he has worked or carried out activity until such creditor is paid the debts due to him for such building, repairs or activity.

(3) A possessory lien shall be extinguished by the voluntary release of the aircraft from the custody of the creditor.

(4) A possessory lien shall not be extinguished if the aircraft is released pursuant to a court order or following a judicial sale of the aircraft. In the latter case the creditor shall enjoy the priority specified in article 44(1) over the proceeds of sale of the aircraft.

(5) The creditor shall be obliged to release the aircraft if he is paid the sum claimed, or adequate security is deposited in the Civil Court, First Hall, under the provisions of the Code of Organisation and Civil Procedure:

Provided that the creditor shall enjoy the same priority over such sum or security.

(6) For the purposes of this article, the creditor upon a demand by judicial letter served upon him by any person interested in the aircraft, shall be obliged to declare the amount of his claim by judicial act to be filed within a period of two days from the date of notification to him of the aforesaid demand failing which he shall be obliged to release the aircraft forthwith.

44. (1) The debts specified in article 42(1) shall rank in the order therein set out and in preference to all other claims; provided that the person in possession of the aircraft enjoying a possessory lien shall not be constrained to release the aircraft until the sums due to him are unconditionally discharged or otherwise secured to his satisfaction and in any such case shall rank first on such security as may be granted.

(2) Any debt secured by a mortgage registered in the National Aircraft Register or a charge in the International Registry or secured by a foreign mortgage recognised under this Act shall rank after the debts secured by possessory liens and, subject to sub-article (5), special privileges on aircraft in terms of article 42(1) and in preference to other hypothecary and privileged claims.

(3) The debts secured by special privileges referred to in article 42(2) shall, on registration in the International Registry, and subject to sub-article (5), rank after the debts referred to in article 42(1) but after all debts secured by mortgages and charges in the International Registry registered prior to the date of the registration of the relevant privilege.

(4) Where the fund is insufficient -

(a) competing creditors under the same heading of privileges in article 43(1) shall rank equally and shall share in such fund *pro rata* to the amount of their claim;

(b) registered special privileges referred to in article 42(2) and mortgages shall rank in order of date and time in accordance with article 32(1), subject to the specific exceptions laid down in sub-articles (2) and (3) of the same article;

(c) security interests governed by a foreign law and recognised in accordance with article 41 shall rank after the claims referred to in paragraphs (a) and (b); and

(d) general hypothecs and privileges, whether general or over particular movables, shall rank after the debts referred to in paragraphs (a), (b) and (c), and shall rank among themselves according to the provisions of the Civil Code.

Cap. 16.

(5) The preference and rights of privileges listed in article 42(2) shall arise only in relation to the particular title of an operator of an aircraft, whether being the owner or a person under a temporary title, and shall not bind any other party or encumber his assets.

PART VI

IMPLEMENTATION OF THE CAPE TOWN CONVENTION

45. (1) Words and expressions used in this Part have the same meaning as the corresponding words and expressions used in the Cape Town Convention and the Protocol as reproduced in the First Schedule.

Interpretation.

(2) In interpreting the Cape Town Convention and the Aircraft Protocol and Implementing Law, a court or other interpreter may have recourse to the list of sources and materials listed in the Third Schedule as the same may be updated and supplemented from time to time, and such other texts as the court considers relevant to interpreting the Cape Town Convention and the Protocol.

46. (1) The Government of Malta is hereby authorised to ratify the Cape Town Convention and its Aircraft Protocol and without prejudice to the Declarations lodged by the European Community on behalf of its Member States, the Government of Malta, through the Minister of Foreign Affairs, is authorized to lodge such Declarations in respect thereof as the Minister may decide, and in future to lodge any revocation thereof, or amendment thereto, as may be necessary from time to time.

Cape Town Convention and Aircraft Protocol to have the force of law in Malta.

(2) Subject to sub-article (3), the Cape Town Convention and the Aircraft Protocol as reproduced by the Implementing Law shall have the force of law in Malta in relation to matters to which they apply and shall prevail over any other law, in case of conflict.

(3) The provisions of the Cape Town Convention and the Aircraft Protocol shall come into effect on the effective date.

Relevant court for the purposes of the Cape Town Convention and Aircraft Protocol.

47. The First Hall Civil Court is the relevant court for the purposes of the Cape Town Convention and the Protocol for the purposes of Article 53 of the Cape Town Convention.

Cape Town Convention and Aircraft Protocol to be judicially noticed.

48. All courts and tribunals are required to take judicial notice of the provisions of the Cape Town Convention and the Protocol as implemented by the Implementing Law.

Protection of operation of the International Registry.

49. A court or tribunal may not make an order or a decision that would have the effect of binding the Registrar and if such a matter were to arise before a Maltese court, the court shall stay proceedings and refer the matter to the relevant courts enjoying jurisdiction in accordance with the Cape Town Convention.

PART VII

RULES ON THE OPERATION OF SECURITY RIGHTS IN AIRCRAFT WHEN GOVERNED BY TWO PARTS OF THIS ACT

Entitlement to registration.

50. A creditor is entitled to register his mortgage under Part IV or as an international interest under Part VI and the First Schedule as he may require.

Applicable Part.

51. To the extent that the creditor chooses to register his mortgage only in terms of Part IV, Part IV shall apply exclusively to such security.

Registration of international interest.

52. Where an international interest is registered in terms of Part VI and the First Schedule, such international interest will be fully enforceable in Malta subject however to those rights having priority as provided for in article 42. The international interest shall not be subordinate to any mortgage registered under Part IV, even if the international interest is registered at a later date, except for those mortgages registered under Part IV prior to the effective date.

In case of conflict between two Parts.

53. When a creditor chooses to register a mortgage under Part IV and an international interest under Part VI and the First Schedule, Part VI and the First Schedule shall prevail to the extent that there is a conflict between the two Parts.

Registered international interest to operate independently of the application of Part IV.

54. Apart from the specific exception referred to in article 52, the registration of a mortgage under Part IV shall under no circumstances prejudice the operation of an international interest registered under Part VI and the First Schedule.

55. In case of conflict on any matter between Part IV on the one hand and Part VI and the First Schedule on the other hand, Part VI and the First Schedule shall prevail over Part IV; however, to the extent that a mortgage registered under Part IV attaches to more assets or grants additional rights, then the mortgagee registered under Part IV shall be entitled to such additional rights in terms of Part IV.

Prevalence of Part VI and the First Schedule.

PART VIII

MISCELLANEOUS

56. In addition to the matters on which the Minister is empowered to prescribe rules under the provisions of this Act, the Minister shall additionally have the power to make regulations to regulate the following matters:

Powers to make regulations.

- (a) the registration of any aircraft, including matters relating to nationality and marking as well as eligibility to register the same or to remain the registrant thereof and to establish rules applicable to cases where the ownership is held by, or for the benefit of, more than one person;
- (b) the registration of aircraft under construction;
- (c) the conditions of any temporary title to an aircraft in the context of registration thereof;
- (d) fractional ownership and all matters related thereto;
- (e) forms, fees, declarations and undertakings and ancillary matters relating to registration of aircraft, mortgages and other rights over aircraft or parts thereof;
- (f) the registration of foreign law security interests in the register and the rules applicable thereto including forms, fees and other matters;
- (g) proceedings for damages;
- (h) the classification of aircraft, nationality, and registration marks of aircraft registered in Malta;
- (i) the operation of security granted to secure future debts;
- (j) the regulation of agreements constituting security, other than mortgages, over or in relation to aircraft as well as registration or enforcement thereof and ancillary matters

relating thereto;

(k) the establishment, operation and expansion of aviation undertakings of any legal form or purpose by the introduction of incentives, schemes and other facilitations;

(l) the recognition of rights in aircraft components;

(m) the introduction of penalties for non-observance of the provision of this Act;

(n) the definition of aircraft for the purposes of this Act and for the purposes of the applicability or interpretation of any other law; and

(o) any other matter which may be further regulated for the better implementation of the provisions of this Act.

Segregated cells within aviation undertakings. Cap. 16.

57. (1) It shall be lawful for aviation undertakings having the legal form of foundations registered in terms of the Second Schedule of the Civil Code to establish segregated cells in accordance with the provisions of article 20 of the Second Schedule of the Civil Code.

Cap. 16.

(2) The Minister may, with the concurrence of the relevant Minister responsible for foundations, make regulations relating to article 20 of the Second Schedule of the Civil Code to regulate:

(a) the mode of its applicability to aviation undertakings of the particular legal form; and

(b) all related and ancillary matters, including but not limited to the powers of the relevant Registrar, any requirements for notification to such registrar or for registration in the relevant registry, applicable fees, forms, or otherwise.

Conflict between texts and language of the First Schedule and regulations.

58. (1) In case of conflict between the Maltese and English text of this Act, the English text shall prevail.

(2) The First Schedule is published only in the English language.

(3) Any rules or regulations made under any provision of this Act may be made in the English language only.

Transitory provisions.

59. (1) All registered aircraft that have been validly entered in the register before the entry into force of this Act shall continue to be validly registered in terms of this Act until the registration is cancelled in accordance with this Act, unless required to comply with

any requirements of this Act by means of a notice in writing issued by the Minister which shall provide for a minimum period of six months for such compliance.

(2) All registered mortgages that have been validly entered in the register before the entry into force of this Act shall continue to be valid and enforceable in terms of this Act and shall not be affected in any manner whatsoever by the entry into force of this Act, or the repeal, or amendment, of any provision applicable to such mortgage prior to the coming into force of this Act.

(3) Any special privileges which may have arisen over the aircraft before the entry into force of this Act shall be governed by the law in force until such date and shall not be affected by the coming into force of this Act.

60. The following enactments shall apply in the case of the landing in or departure from Malta of passengers from or by any aircraft, and any obligation or duty and any penalty for any breach thereof imposed by the said enactments on the master of a vessel shall be deemed to be imposed on the pilot or other person in command of an aircraft:

Application of
Laws.

- | | |
|---|-----------|
| (a) the Immigration Act; and | Cap. 217. |
| (b) article 103 of the Merchant Shipping Act. | Cap. 234. |

61. The enactments in the First Column of the Fifth Schedule shall have effect subject to the amendments appearing relative thereto in the Second Column of the said Schedule.

Consequential
amendments.

62. Without prejudice to any other law, in any reprint of this Act, the Fifth Schedule need not be reproduced and it shall be sufficient to reproduce Parts I to VIII and the First, the Second, the Third and the Fourth Schedules to this Act:

Reprint.

Provided that nothing in this article shall be construed as reducing the validity of anything contained in the Fifth Schedule not so reproduced.

FIRST SCHEDULE

(Articles 2, 4, 26, 28, 29, 30, 31, 32, 33, 39, 45, 50, 52, 53, 54, 55 and 58)

THE IMPLEMENTING LAW IN RESPECT OF THE CAPE TOWN CONVENTION ON INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT AND THE AIRCRAFT PROTOCOL THERETO

PREAMBLE

AWARE of the need to acquire and use aircraft equipment of high value or particular economic significance and to facilitate the financing of the acquisition and use of such equipment in an efficient manner,

RECOGNISING the advantages of asset-based financing and leasing for this purpose and desiring to facilitate these types of transaction by establishing clear rules to govern them,

MINDFUL of the need to ensure that interests in such equipment are recognised and protected universally,

DESIRING to provide broad and mutual economic benefits for all interested parties,

BELIEVING that such rules must reflect the principles underlying asset-based financing and leasing and promote the autonomy of the parties necessary in these transactions,

CONSCIOUS of the need to establish a legal framework for international interests in such equipment and for that purpose use of an international registration system for their protection,

MINDFUL of the principles and objectives of the Convention on International Civil Aviation, signed at Chicago on 7 December 1944,

Malta has promulgated the following implementing legislation ("this Schedule") relating to its accession to the Convention on International Interests in Mobile Equipment and the Protocol thereto on Matters Specific to Aircraft Equipment:

CHAPTER I

Sphere of application and general provisions

Article 1

Definitions

In this Schedule, references to "this Act" are references to the principal Act to which this Schedule is annexed and except where the context otherwise requires, the following terms are employed with the meanings set out below:

(a) "agreement" means a security agreement, a title reservation agreement or a leasing agreement;

(b) "aircraft" means aircraft as defined for the purposes of the Chicago Convention which are either airframes with aircraft engines installed thereon or helicopters;

(c) "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:

(i) in the case of jet propulsion aircraft engines, have at least 1750 lb of thrust or its equivalent; and

(ii) 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 thereto;

(d) "aircraft objects" means airframes, aircraft engines and helicopters;

(e) "aircraft register" means the National Aircraft Registry or another register maintained by a State or common mark registering authority for purposes of the Chicago Convention;

(f) "airframes" means airframes (other than those used in military, customs and police services) that, when appropriate aircraft engines are installed thereon, are type certified by the competent aviation authority to transport:

(i) at least eight (8) persons including crew; or

(ii) 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 thereto;

(g) "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;

(h) "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;

(i) "authorised party" means the party referred to in Article 25(3);

(j) "Cape Town Convention" means the Convention on International Interests in Mobile Equipment as modified by the Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Aircraft Equipment, each concluded at Cape Town, South Africa on 16 November 2001;

(k) "Cape Town Convention State" means any State that is party to the Cape Town Convention;

(l) "Chicago Convention" means the Convention on International Civil Aviation, signed at Chicago on 7 December 1944, as amended, and its Annexes;

(m) "commencement of the insolvency proceedings" means the time at which the insolvency proceedings are deemed to commence under the applicable insolvency law;

(n) "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 14 December 1967 by the Council of the International Civil Aviation Organization on nationality and registration of aircraft operated by international operating agencies;

(o) "conditional buyer" means a buyer under a title reservation agreement;

(p) "conditional seller" means a seller under a title reservation agreement;

(q) "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 in (a) above;

(r) "court" means a court of law or an administrative or arbitral tribunal established by a Cape Town Convention State;

(s) "creditor" means a chargee under a security agreement, a conditional seller under a title reservation agreement or a lessor under a leasing agreement;

(t) "debtor" means a chargor under a security agreement, a conditional buyer under a title reservation agreement, a lessee under a leasing agreement or a person whose interest in an aircraft object is burdened by a registrable non-consensual right or interest;

(u) "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;

(v) "guarantee contract" means a contract entered into by a person as guarantor;

(w) "guarantor" means a person who, for the purpose of assuring performance of any obligations in favour of a creditor secured by a security agreement or under an agreement, gives or issues a suretyship or demand guarantee or a standby letter of credit or any other form of credit insurance;

(x) "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:

- (i) at least five (5) persons including crew; or
- (ii) 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 thereto;

(y) "insolvency administrator" means a person authorised to administer the reorganisation or liquidation, including one authorised on an interim basis, and includes a debtor in possession if permitted by the applicable insolvency law;

(z) "insolvency proceedings" means bankruptcy, liquidation or other collective judicial or administrative proceedings, including interim proceedings, in which the assets and affairs of the debtor are subject to control or supervision by a court for the purposes of reorganisation or liquidation;

(aa) "insolvency-related event" means:

- (i) the commencement of the insolvency proceedings; or
- (ii) the declared intention to suspend or actual suspension of payments by the debtor where the creditor's right to institute insolvency

proceedings against the debtor or to exercise remedies under this Act is prevented or suspended by law or State action;

(bb) "interested persons" means:

- (i) the debtor;
- (ii) any guarantor;
- (iii) any other person having rights in or on the aircraft object;

(cc) "international interest" means an interest held by a creditor to which Article 2 applies;

(dd) "International Registry" means the international registration facilities established by the Cape Town Convention;

(ee) "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;

(ff) "National Aircraft Register" means the National Aircraft Register of Malta;

(gg) "non-consensual right or interest" means a right or interest conferred under the law of a Cape Town Convention State to secure the performance of an obligation, including an obligation to a State, State entity or an intergovernmental or private organisation;

(hh) "pre-existing right or interest" means a right or interest of any kind in or on an aircraft object created or arising before the effective date of this Schedule, as specified in Article 56 of this Schedule;

(ii) "primary insolvency jurisdiction" means the Cape Town Convention State in which the centre of the debtor's main interests is situated, which for this purpose shall be deemed to be the place of the debtor's statutory seat or, if there is none, the place where the debtor is incorporated or formed, unless proved otherwise;

(jj) "priority non-consensual right or interest" means a non-consensual right or interest conferred under the law of Malta of the following types:

- (i) judicial costs incurred in respect of the sale of the aircraft and the distribution of the proceeds thereof pursuant to the enforcement of any mortgage or other executive title;

(ii) fees and other charges due to the Director General arising under applicable law of Malta in respect of the aircraft;

(iii) wages due to crew in respect of their employment on the aircraft;

(iv) any debt due to the holder of a possessory lien for the repair, preservation of the aircraft to the extent of the service performed on and value added to the aircraft;

(v) the expenses incurred for the repair, preservation of the aircraft to the extent of the service performed on and value added to the aircraft; and

(vi) wages and expenses for salvage in respect of the aircraft.

(kk) "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;

(ll) "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;

(mm) "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;

(nn) "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;

(oo) "registered" means registered in the International Registry under the Cape Town Convention;

(pp) "registered interest" means an interest registered with the International Registry pursuant to the Cape Town Convention;

(qq) "registrable non-consensual right or interest" means a non-consensual right or interest conferred under the law of Malta of the following types:

(i) taxes, duties and/or levies due to the Government of Malta in respect of the aircraft;

(ii) wages and expenses for assistance or recovery in respect of

the aircraft;

(rr) "Registrar" means the person or body serving as Registrar under the Cape Town Convention;

(ss) "registry authority" means the Maltese Director General of Civil Aviation as the authority maintaining a National Aircraft Register, which is responsible for the registration and de-registration of an aircraft in Malta in accordance with the Chicago Convention;

(tt) "regulations" means regulations made or approved by the Supervisory Authority pursuant to the Cape Town Convention;

(uu) "sale" means a transfer of ownership of an aircraft object pursuant to a contract of sale;

(vv) "secured obligation" means an obligation secured by a security interest;

(ww) "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;

(xx) "security interest" means an interest created by a security agreement;

(yy) "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;

(zz) "Supervisory Authority" means the body acting as Supervisory Authority under the Cape Town Convention;

(aaa) "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;

(bbb) "unregistered interest" means a consensual interest or non-consensual right or interest (other than a priority non-consensual right or interest to the extent specified in Article 45(1)) which has not been registered, whether or not it is registrable under the Cape Town Convention or this Act; and

(ccc) "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.

Article 2

The international interest

1. This Act provides for the constitution and effects of an international interest in aircraft objects and associated rights.

2. For the purposes of this Schedule, an international interest in aircraft objects is an interest, constituted under Article 10, in airframes, aircraft engines or helicopters:

- (a) granted by the chargor under a security agreement;
- (b) vested in a person who is the conditional seller under a title reservation agreement; or
- (c) vested in a person who is the lessor under a leasing agreement.

An interest falling within sub-paragraph (a) does not also fall within sub-paragraph (b) or (c).

3. The applicable law determines whether an interest to which the preceding paragraph applies falls within sub-paragraph (a), (b) or (c) of that paragraph.

4. An international interest in an aircraft object extends to proceeds of that aircraft object.

Article 3

Sphere of application

1. This Act applies when, at the time of the conclusion of the agreement creating or providing for the international interest or a contract of sale, the debtor or seller, as applicable, is situated in a Cape Town Convention State.

2. The fact that the creditor or buyer is situated in a non-Cape Town Convention State does not affect the applicability of this Act.

3. Without prejudice to paragraph 1 of this Article, this Schedule shall also apply in relation to a helicopter, or to an airframe pertaining to an aircraft, registered in an aircraft register of a Cape Town Convention State which is the State of registry, and where such 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.

Article 4

Where debtor or seller is situated

1. For the purposes of Article 3(1), the debtor or seller is situated in any Cape Town Convention State:

- (a) under the laws of which it is incorporated or formed;
- (b) where it has its registered office or statutory seat;
- (c) where it has its centre of administration; or
- (d) where it has its place of business.

2. A reference in sub-paragraph (d) of the preceding paragraph to the debtor's place of business shall, if it has more than one place of business, mean its principal place of business or, if it has no place of business, its habitual residence.

Article 5

Interpretation and applicable law

1. In the interpretation of this Schedule, regard is to be had to its purposes as set forth in the preamble, to its international character and to the need to promote uniformity and predictability in its application.

2. Questions concerning matters governed by this Schedule which are not expressly settled in it are to be settled in conformity with the general principles on which it is based or, in the absence of such principles, in conformity with the applicable law.

3. References to the applicable law are to the domestic rules of the law applicable by virtue of rules of private international law of the forum State.

Article 6

Application to sale and prospective sale

In addition to the specific provisions in this Schedule referring to sales and prospective sales, the general provisions of Article 1, Article 5, Chapters IV to VII, Article 35, Chapter X, Chapter XI (other than Article 48), Chapter XII and Chapter XIII shall apply to contracts of sale and prospective sales.

Article 7

Representative capacities

A person may enter into an agreement or a sale, and register an international

interest in, or a sale of, an aircraft object [or take any other action under this Schedule], in an agency, trust or other representative capacity. In such case, that person is entitled to assert rights and interests under this Schedule.

Article 8

Description of aircraft objects

A description of an aircraft object that contains its manufacturer's serial number, the name of the manufacturer and its model designation is necessary and sufficient to identify the aircraft object for the purposes of Articles 10(c) and 11(1)(c) of this Schedule.

Article 9

Choice of law

Intentionally omitted in the light of the terms of Accession to the Convention and the Protocol by the European Union

CHAPTER II

Constitution of an international interest; contracts of sale

Article 10

Formal requirements

1. An interest is constituted as an international interest under this Schedule where the agreement creating or providing for the interest:

- (a) is in writing;
- (b) relates to an aircraft object of which the chargor, conditional seller or lessor has power to dispose;
- (c) enables the aircraft object to be identified; and
- (d) in the case of a security agreement, enables the secured obligations to be determined, but without the need to state a sum or maximum sum secured.

2. Unless otherwise agreed, the reference in the preceding paragraph to the law chosen by the parties is to the domestic rules of law of the designated State or, where that State comprises several territorial units, to the domestic law of the designated territorial unit.

Article 11

Formalities and effects of contracts of sale

1. For the purposes of this Act, 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 this Schedule.
2. A contract of sale transfers the interest of the seller in the aircraft object to the buyer according to its terms.

CHAPTER III

Default remedies

Article 12

Remedies of chargee

1. In the event of default as provided in Article 17, the chargee may, to the extent that the chargor has at any time so agreed, exercise any one or more of the following remedies:
 - (a) take possession or control of any aircraft object charged to it;
 - (b) sell or grant a lease of any such aircraft object;
 - (c) collect or receive any income or profits arising from the management or use of any such aircraft object.
2. The chargee may alternatively apply for a court order authorising or directing any of the acts referred to in the preceding paragraph.
3. A chargee proposing to sell or grant a lease of an aircraft object under paragraph 1 shall give reasonable prior notice in writing of the proposed sale or lease to:
 - (a) interested persons specified in Article 1(bb)(i) and (ii); and
 - (b) interested persons specified in Article 1(bb)(iii) who have given notice of their rights to the chargee within a reasonable time prior to the sale or lease.

4. A chargee giving ten or more working days' prior written notice of a proposed sale or lease to interested persons shall be deemed to satisfy the requirement of providing "reasonable prior notice" specified in the preceding paragraph. The foregoing shall not prevent a chargee and a chargor or a guarantor from agreeing to a longer period of prior notice.

5. Any sum collected or received by the chargee as a result of exercise of any of the remedies set out in paragraph 1 or 2 shall be applied towards discharge of the amount of the secured obligations.

6. Where the sums collected or received by the chargee as a result of the exercise of any remedy set out in paragraph 1 or 2 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 shall 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.

Article 13

Vesting of aircraft object in satisfaction; redemption

1. At any time after default as provided in Article 17, 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 shall vest in the chargee in or towards satisfaction of the secured obligations.

2. 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 shall vest in the chargee in or towards satisfaction of the secured obligations.

3. The court shall 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.

4. At any time after default as provided in Article 17 and before sale of the charged aircraft object or the making of an order under paragraph 2, 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 Article 12(1)(b) or ordered under Article 12(2). 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.

5. Ownership or any other interest of the chargor passing on a sale under Article 12(1)(b) or passing under paragraph 1 or 2 of this Article is free from any

other interest over which the chargee's security interest has priority under the provisions of Article 35.

Article 14

Remedies of conditional seller or lessor

In the event of default under a title reservation agreement or under a leasing agreement as provided in Article 17, the conditional seller or the lessor, as the case may be, may:

- (a) terminate the agreement and take possession or control of any aircraft object to which the agreement relates; or
- (b) apply for a court order authorising or directing either of these acts.

Article 15

Additional remedies of creditor

1. In addition to the remedies specified in Articles 12, 14, 16 and 20, the creditor may, to the extent that the debtor has at any time so agreed and in the circumstances specified in such provisions:

- (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 shall not exercise the remedies specified in the preceding paragraph without the prior consent in writing of the holder of any registered interest ranking in priority to that of the creditor.

3. The registry authority shall, 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 registry authority, if required by that authority, 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 deregistration and export of an aircraft under paragraph 1 otherwise than pursuant to a court order shall give

reasonable prior notice in writing of the proposed deregistration and export to:

- (a) interested persons specified in Article 1(bb)(i) and (ii); and
- (b) interested persons specified in Article 1(bb)(iii) who have given notice of their rights to the chargee within a reasonable time prior to the deregistration and export.

Article 16

Additional remedies under applicable law

Any additional remedies permitted by the applicable law, including any remedies agreed upon by the parties, may be exercised to the extent that they are not inconsistent with the mandatory provisions of this Chapter as set out in Article 22.

Article 17

Meaning of default

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 Articles 12 to 15 and 20.
2. Where the debtor and the creditor have not so agreed, "default" for the purposes of Articles 12 to 15 and 20 means a default which substantially deprives the creditor of what it is entitled to expect under the agreement.

Article 18

Debtor provisions

1. In the absence of a default within the meaning of Article 17, the debtor shall be 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 Article 35(5) or, in the capacity of buyer, Article 35(3), 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 Article 35(5) or, in the capacity of buyer, Article 35(4), but only to the extent, if any, that such holder has agreed.
2. Nothing in this Schedule affects the liability of a creditor for any breach of the agreement under the applicable law in so far as that agreement relates to an aircraft object.

Article 19

Standard for exercising remedies

Any remedy given by this Schedule in relation to an aircraft object shall be exercised in a commercially reasonable manner. A remedy shall be 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.

Article 20

Relief pending final determination

1. A creditor who adduces evidence of default by the debtor shall, pending final determination of its claim and to the extent that the debtor has at any time so agreed, be entitled to obtain from a court speedy 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 sub-paragraphs (a) to (c), management of the aircraft object and the income therefrom; and
- (e) if at any time the debtor and the creditor specifically agree, sale and application of proceeds therefrom.

2. For the purposes of the preceding paragraph, "speedy" in the context of obtaining relief means, in respect of the relief specified in Article 20(1)(a)-(c), the number of working days equivalent to no more than ten (10) calendar days, and in respect of the relief specified in Article 20(1)(d)-(e), the number of working days equivalent to no more than thirty (30) calendar days, in each case from the date the application for relief is filed.

3. Ownership or any other interest of the debtor passing on a sale under sub-paragraph (e) of paragraph 1 of this Article is free from any other interest over which the creditor's international interest has priority under the provisions of Article 35 of this Schedule.

4. In making any order under paragraph 1 of this Article, 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 this Act; or

(b) fails to establish its claim, wholly or in part, on the final determination of that claim.

5. The creditor and the debtor or any other interested person may agree in writing to exclude the application of the preceding paragraph.

6. Before making any order under paragraph 1, the court may require notice of the request to be given to any of the interested persons.

7. With regard to the remedies in Article 15(1):

(a) they shall be made available by the registry authority and other administrative authorities, as applicable, in no later than five (5) working days after the creditor notifies such authorities that the relief specified in Article 15(1) is granted or, in the case of relief granted by a foreign court, recognised by a Maltese court, and that the creditor is entitled to procure those remedies in accordance with this Schedule; and

(b) the applicable authorities shall expeditiously co-operate with and assist the creditor in the exercise of such remedies in conformity with the applicable aviation safety laws and regulations.

8. Nothing in the preceding paragraphs affects the application of Article 19 or limits the availability of forms of interim relief other than those set out in paragraph 1.

9. Paragraphs 2 and 7 shall not affect any applicable aviation safety laws and regulations.

Article 21

Procedural requirements; Non-Judicial Remedies

1. Subject to paragraph 2, any remedy provided by this Chapter shall be exercised in conformity with the procedure prescribed by the law of the place where the remedy is to be exercised.

2. Any remedy available to the creditor under any provision of this Schedule which is not there expressed to require application to the court may be exercised without court action and without leave of the court.

Article 22

Derogation

Any two or more of the parties referred to in this Chapter may at any time, by

agreement in writing, exclude the application of Article 23 and, in their relations with each other, derogate from or vary the effect of any of the preceding provisions of this Chapter, except as stated in Articles 12(3) to (6), 13(3) and (4), 15(2), 19 and 21.

Article 23

Remedies on insolvency

1. This Article applies to all insolvency proceedings where Malta is the primary insolvency jurisdiction.

2. Upon the occurrence of an insolvency-related event, the insolvency administrator or the debtor, as applicable, shall, subject to paragraph 7, give possession of the aircraft object to the creditor no later than the earlier of:

(a) the end of the waiting period; and

(b) the date on which the creditor would be entitled to possession of the aircraft object if this Article did not apply.

3. For the purposes of this Article, the "waiting period" shall be the period of thirty (30) calendar days commencing on the date of the insolvency-related event.

4. References in this Article to the "insolvency administrator" shall be to that person in its official, not in its personal, capacity.

5. Unless and until the creditor is given the opportunity to take possession under paragraph 2:

(a) the insolvency administrator or the debtor, as applicable, shall preserve the aircraft object and maintain it and its value in accordance with the agreement; and

(b) the creditor shall be entitled to apply for any other forms of interim relief available under the applicable law.

6. Sub-paragraph (a) of the preceding paragraph shall not preclude the use of the aircraft object under arrangements designed to preserve the aircraft object and maintain it and its value.

7. The insolvency administrator or the debtor, as applicable, may retain possession of the aircraft object where, by the time specified in paragraph 2, it has cured all defaults other than a default constituted by the opening of insolvency proceedings and has agreed to perform all future obligations under the agreement. A second waiting period shall not apply in respect of a default in the performance of such future obligations.

8. With regard to the remedies in Article 15(1):

(a) they shall be made available by the registry authority and the administrative authorities, as applicable, no later than five working days after the date on which the creditor notifies such authorities that it is entitled to procure those remedies in accordance with this Schedule; and

(b) the applicable authorities shall expeditiously co-operate with and assist the creditor in the exercise of such remedies in conformity with the applicable aviation safety laws and regulations.

9. No exercise of remedies permitted by this Schedule may be prevented or delayed after the date specified in paragraph 2.

10. No obligations of the debtor under the agreement may be modified without the consent of the creditor.

11. Nothing in the preceding paragraph shall be construed to affect the authority, if any, of the insolvency administrator under the applicable law to terminate the agreement.

12. No rights or interests, except for a priority non-consensual right or interest to the extent specified in Article 45(1), shall have priority in insolvency proceedings over registered interests.

13. The provisions of this Schedule shall apply to the exercise of any remedies under this Article.

Article 24

Insolvency assistance

1. This Article applies where Malta is not the primary insolvency jurisdiction.

2. Where an aircraft object is situated in Malta its courts shall, in accordance with the laws of Malta, co-operate to the maximum extent possible with foreign courts and foreign insolvency administrators in carrying out the provisions of Article 23.

Article 25

De-registration and export request authorization

1. This Article applies where an airframe pertaining to an aircraft, or a helicopter, is registered in the National Aircraft Register.

2. Where the debtor has issued an irrevocable de-registration and export

request authorisation substantially in the form in the Second Schedule and has submitted such authorisation for recordation to the registry authority, that authorisation shall be so recorded.

3. The person in whose favour the authorization has been issued (the "authorized party") or its certified designee shall be the sole person entitled to exercise the remedies specified in Article 15(1) and may do so only in accordance with the authorization and applicable aviation safety laws and regulations. Such authorisation may not be revoked by the debtor without the consent in writing of the authorized party. The registry authority shall remove an authorization from the registry at the request of the authorized party.

4. The registry authority and other administrative authorities shall expeditiously co-operate with and assist the authorized party in the exercise of the remedies specified in Article 15.

CHAPTER IV

Registrations in the international registration system

Article 26

Means and Effect of Registration

1. Registration in the International Registry under the Cape Town Convention is the only means of establishing the priority of a right or interest in an aircraft object, such priority being determined in accordance with Article 35, except only in respect of a priority non-consensual right or interest, whose priority is determined in accordance with Article 45(1).

2. Only those registrations with the International Registry permitted by the Cape Town Convention and complying with the regulations and this Act shall, when made, be valid for purposes of determining priority. Such permitted registrations are:

(a) international interests, prospective international interests and registrable non-consensual rights and interests;

(b) assignments and prospective assignments of international interests;

(c) acquisitions of international interests by legal or contractual subrogations under the applicable law;

(d) "notices of a national interest", as defined in the Cape Town Convention, under the laws of a Cape Town Convention State permitting such notice through a declaration thereunder made by that State, Malta not having made such a declaration;

(e) subordinations of interests referred to in any of the preceding sub-paragraphs; and

(f) sales and prospective sales.

3. All information required for the registrations referred to in the previous paragraph in relation to a helicopter, or to an airframe pertaining to an aircraft, registered for nationality purposes in the National Aircraft Register may only be transmitted directly to the International Registry, not through any designated entry point.

4. *Omitted intentionally.*

5. For the purposes of this Chapter and Chapter V, the term "registration" includes, where appropriate, an amendment, extension or discharge of a registration.

CHAPTER V

Modalities of registration

Article 27

Validity and time of registration

1. A registration shall be valid only if made in conformity with Article 28.

2. A registration, if valid, shall be complete upon entry of the required information into the International Registry database so as to be searchable.

3. A registration shall be searchable for the purposes of the preceding paragraph at the time when:

(a) the International Registry has assigned to it a sequentially ordered file number; and

(b) the registration information, including the file number, is stored in durable form and may be accessed at the International Registry.

4. If an interest first registered as a prospective international interest or prospective sale becomes an international interest or a sale, respectively, that international interest or sale shall be treated as registered from the time of registration of the prospective international interest or prospective sale provided that the registration was still current immediately before the international interest or contract of sale was constituted as provided by Article 10 or 11.

5. The preceding paragraph applies with necessary modifications to the registration of a prospective assignment of an international interest.

6. A registration pertaining to an aircraft object shall be searchable in the International Registry data base according to the name of its manufacturer, its manufacturer's serial number and its model designation, as further specified in the regulations.

Article 28

Consent to registration

1. An international interest, a prospective international interest, an assignment or prospective assignment of an international interest, or a contract of sale or a prospective sale may be registered, and any such registration extended prior to its expiry (except in respect of a contract of sale) or amended, by either party with the consent in writing of the other.

2. The subordination of an international interest to another international interest may be registered by or with the consent in writing at any time of the person whose interest has been subordinated.

3. A registration may be discharged by or with the consent in writing of the party in whose favour it was made.

4. The acquisition of an international interest by legal or contractual subrogation may be registered by the subrogee.

5. A registrable non-consensual right or interest may be registered by the holder thereof.

Article 29

Duration of registration

1. Registration of an international interest remains effective until discharged or until expiry of the period specified in the registration.

2. Registration of a contract of sale remains effective indefinitely. Registration of a prospective sale remains effective unless discharged or until expiry of the period, if any, specified in the registration.

Article 30

Searches

1. Any person may, in the manner prescribed by this Act and the regulations, make or request a search of the International Registry by electronic means concerning interests or prospective interests international registered therein.

2. Any person may request and receive from the Registrar, in the manner

prescribed by the regulations, a registry search certificate by electronic means with respect to any aircraft object:

- (a) stating all registered information relating thereto, together with a statement indicating the date and time of registration of such information; or
- (b) stating that there is no information in the International Registry relating thereto.

3. A search certificate issued under the preceding paragraph shall indicate that the creditor named in the registration information has acquired or intends to acquire an international interest in the object but shall not indicate whether what is registered is an international interest or a prospective international interest, even if this is ascertainable from the relevant registration information.

Article 31

Evidentiary value of certificates

A document in the form prescribed by the regulations which purports to be a certificate issued by the International Registry is *prima facie* proof

- (a) that it has been so issued; and
- (b) of the facts recited in it, including the date and time of a registration.

Article 32

Discharge of registration

1. Where the obligations secured by a registered security interest or the obligations giving rise to a registered non-consensual right or interest have been discharged, or where the conditions of transfer of title under a registered title reservation agreement have been fulfilled, the holder of such interest shall, without undue delay, procure the discharge of the registration after written demand by the debtor delivered to or received at its address stated in the registration.

2. Where a prospective international interest, a prospective assignment of an international interest, or a prospective sale has been registered, the intending creditor, intending assignee, or intending buyer shall, without undue delay, procure the discharge of the registration after written demand by the intending debtor, assignor or seller which is delivered to or received at its address stated in the registration before the intending creditor, assignee or buyer has given value or incurred a commitment to give value.

3. For the purpose of the preceding paragraph and in the circumstances there described, the holder of a registered prospective international interest or a

registered prospective assignment of an international interest or the person in whose favour a prospective sale has been registered shall take such steps as are within its power to procure the discharge of the registration no later than five working days after the receipt of the demand described in such paragraph.

4. Where a registration ought not to have been made or is incorrect, the person in whose favour the registration was made shall, without undue delay, procure its discharge or amendment after written demand by the debtor [or seller] to or received at its address stated in the registration.

CHAPTER VI

Recognition of certain privileges and immunities of the Supervisory Authority and the Registrar

Article 33

Legal personality; immunity

As a matter of law Malta recognises that:

- (a) the Supervisory Authority has international legal personality;
- (b) the Supervisory Authority and its officers and employees shall enjoy such immunity from legal and administrative process as is provided under the rules applicable to them as an international entity or otherwise;
- (c) the assets, documents, databases and archives of the International Registry shall be inviolable and immune from seizure or other legal or administrative process;
- (d) for the purposes of any claim against the Registrar under Article 34(1) or Article 49, the claimant shall be entitled to access to such information and documents as are necessary to enable the claimant to pursue its claim; and
- (e) the Supervisory Authority may waive the inviolability and immunity conferred by paragraph (c) of this Article.

CHAPTER VII

Recognition of Liability of the Registrar

Article 34

Standard and extent of liability

1. As a matter of law Malta recognises that the Registrar shall be liable for

compensatory damages for loss suffered by a person directly resulting from an error or omission of the Registrar and its officers and employees or from a malfunction of the international registration system except where the malfunction is caused by an event of an inevitable and irresistible nature, which could not be prevented by using the best practices in current use in the field of electronic registry design and operation, including those related to back-up and systems security and networking.

2. The Registrar shall not be liable under the preceding paragraph for factual inaccuracy of registration information received by the Registrar or transmitted by the Registrar in the form in which it received that information nor for acts or circumstances for which the Registrar and its officers and employees are not responsible and arising prior to receipt of registration information at the International Registry.

3. Compensation under paragraph 1 may be reduced to the extent that the person who suffered the damage caused or contributed to that damage.

CHAPTER VIII

Effects of an international interest as against third parties

Article 35

Priority of competing interests

1. A registered interest has priority over any other interest subsequently registered and over an unregistered interest.

2. The priority of the first-mentioned interest under the preceding paragraph applies:

(a) even if the first-mentioned interest was acquired or registered with actual knowledge of the other interest; and

(b) even as regards value given by the holder of the first-mentioned interest with such knowledge.

3. A buyer of an aircraft object under a registered sale acquires its interest in that object free from an interest subsequently registered and from an unregistered interest, even if the buyer has actual knowledge of the unregistered interest.

4. A buyer of an aircraft object under a registered sale acquires its interest in that object subject to an interest previously registered.

5. A conditional buyer or lessee acquires its interest in or right over that 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.

6. The priority of competing interests or rights under this Article 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.

7. Any priority given by this Article to an interest in an aircraft object extends to proceeds.

8. This Schedule -

(a) does not affect the rights of a person in an item, other than an aircraft object, held prior to its installation on an aircraft object if under the applicable law those rights continue to exist after the installation; and

(b) does 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 applicable law those rights are created.

9. Ownership of or another right or interest in an aircraft engine shall not be affected by its installation on or removal from an aircraft.

10. Paragraph 8 of this Article applies to an item, other than an aircraft object, installed on an airframe, aircraft engine or helicopter.

Article 36

Effects of insolvency

1. In insolvency proceedings against the debtor or seller an international interest or sale, as applicable, is effective if prior to the commencement of the insolvency proceedings that interest or sale was registered in conformity with this Schedule.

2. Nothing in this Article impairs the effectiveness of an international interest or sale in the insolvency proceedings where that interest is effective under the applicable law.

3. Nothing in this Article affects any rules of law applicable in insolvency proceedings relating to the avoidance of a transaction as a preference or a transfer in fraud of creditors or, except as provided in Article 23, any rules of procedure relating to the enforcement of rights to property which is under the control or

supervision of the insolvency administrator.

CHAPTER IX

Assignments of associated rights and international interests; rights of subrogation

Article 37

Effects of assignment

1. Except as otherwise agreed by the parties, an assignment of associated rights made in conformity with Article 38 also transfers to the assignee:

- (a) the related international interest; and
- (b) all the interests and priorities of the assignor under this Schedule.

2. Nothing in this Schedule prevents a partial assignment of the assignor's associated rights. In the case of such a partial assignment the assignor and assignee may agree as to their respective rights concerning the related international interest assigned under the preceding paragraph but not so as adversely to affect the debtor without its consent.

3. Subject to paragraph 4, the applicable law shall determine the defences and rights of set-off available to the debtor against the assignee.

4. The debtor may at any time by agreement in writing waive all or any of the defences and rights of set-off referred to in the preceding paragraph other than defences arising from fraudulent acts on the part of the assignee.

5. 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.

Article 38

Formal requirements of assignment

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

this Schedule 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 are also assigned.

3. This Schedule does not apply to an assignment of associated rights which is not effective to transfer the related international interest.

Article 39

Debtor's duty to assignee

1. To the extent that associated rights and the related international interest have been transferred in accordance with Articles 37 and 38, 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 shall be effective for this purpose if made in accordance with the preceding paragraph.

3. Nothing in this Article shall affect the priority of competing assignments.

Article 40

Default remedies in respect of assignment by way of security

In the event of default by the assignor under the assignment of associated rights and the related international interest made by way of security, Articles 12, 13 and 15 to 21 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.

Article 41

Priority of competing assignments

1. Where there are competing assignments of associated rights and at least one of the assignments includes the related international interest and is registered, the provisions of Article 35 apply as if the references to a registered interest were references to an assignment of the associated rights and the related registered interest and as if references to a registered or unregistered interest were references to a registered or unregistered assignment.

2. Article 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.

Article 42

Assignee's priority with respect to associated rights

1. The assignee of associated rights and the related international interest whose assignment has been registered only has priority under Article 41(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 object; and

(b) to the extent that the associated rights are related to an aircraft object.

2. For the purpose of sub-paragraph (b) of the preceding paragraph, 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 the preceding sub-paragraphs.

3. In all other cases, the priority of the competing assignments of the associated rights shall be determined by the applicable law.

Article 43

Effects of assignor's insolvency

The provisions of Article 36 apply to insolvency proceedings against the assignor as if references to the debtor were references to the assignor.

Article 44

Subrogation

1. Subject to paragraph 2, nothing in this Schedule 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 the preceding paragraph 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.

CHAPTER X

Non-consensual right or interest

Article 45

Priority non-consensual right or interest

A priority non-consensual right or interest, to the extent it had priority over an interest in an aircraft object equivalent to that of the holder of a registered international interest prior to the effective date, shall retain that priority over a registered international interest hereunder, whether in or outside of insolvency proceedings.

Article 46

Registrable non-consensual right or interest

A registrable non-consensual right or interest relating to any aircraft object may be registered under this Schedule as if the right or interest were an international interest and shall be regulated accordingly.

CHAPTER XI

Jurisdiction

Article 47

Choice of forum

1. Subject to Articles 48 or 49, the courts of a Cape Town Convention State chosen by the parties to a transaction have jurisdiction in respect of any claim brought under this Schedule, whether or not the chosen forum has a connection with the parties or the transaction. Such jurisdiction shall be exclusive unless otherwise agreed between the parties.

2. Any such agreement shall be in writing or otherwise concluded in accordance with the formal requirements of the law of the chosen forum.

Article 48

Jurisdiction under Article 20

1. The courts of a Cape Town Convention State chosen by the parties in conformity with Article 47 and the courts of the Cape Town Convention State on the territory of which the aircraft object is situated or in which the aircraft is registered have jurisdiction to grant relief under Article 20(1)(a), (b), (c), and Article 20(8) in respect of that aircraft object or aircraft.

2. Jurisdiction to grant relief under Article 20(1)(d) and (e) or other interim relief by virtue of Article 20(8) may be exercised either:

(a) by the courts chosen by the parties; or

(b) by the courts of a Cape Town Convention State on the territory of which the debtor is situated, being relief which, by the terms of the order granting it, is enforceable only in the territory of that State.

3. A court has jurisdiction under the preceding paragraphs even if the final determination of the claim referred to in Article 20(1) will or may take place in a court of another Cape Town Convention State or by arbitration.

Article 49

Jurisdiction to make orders against the Registrar

1. The courts of the place in which the Registrar has its centre of administration shall have exclusive jurisdiction to award damages or make orders against the Registrar.

2. Where a person fails to respond to a demand made under Article 32 and that person has ceased to exist or cannot be found for the purpose of enabling an order to be made against it requiring it to procure discharge of the registration, the courts referred to in the preceding paragraph shall have exclusive jurisdiction, on the application of the debtor or intending debtor, to make an order directed to the Registrar requiring the Registrar to discharge the registration.

3. Where a person fails to comply with an order of a court having jurisdiction under these Rules, the courts referred to in paragraph 1 may direct the Registrar to take such steps as will give effect to that order.

4. Except as otherwise provided by the preceding paragraphs, no court may make orders or give judgments or rulings against or purporting to bind the Registrar.

Article 50

Waivers of sovereign immunity

1. Subject to paragraph 2, a waiver of sovereign immunity from jurisdiction of the courts specified in Article 47 or 48 or relating to enforcement of rights and interests relating to an aircraft object under this Schedule shall be binding and, if the other conditions to such jurisdiction or enforcement have been satisfied, shall be effective to confer jurisdiction and permit enforcement, as the case may be.

2. A waiver under the preceding paragraph must be in writing and contain a description of the aircraft object.

Article 51

Jurisdiction in respect of insolvency proceedings

The provisions of this Chapter are not applicable to insolvency proceedings.

Article 52 to Article 55 have been intentionally omitted as they are not applicable to Malta.

CHAPTER XII**Final Provisions****Article 56****Effective date of this Schedule**

This Schedule shall take effect on the effective date. The "effective date" is first day of the month following the expiration of three months after the date on which Malta deposits its instrument of accession to the Cape Town Convention with the depositary therefor.

Article 57**Transitional provisions**

1. This Schedule does not apply to a pre-existing right or interest, which retains the priority it enjoyed under the applicable law before the effective date of this Schedule.

2. Nothing in the preceding paragraph or otherwise in this Schedule shall prevent parties to an agreement and related documents, by affirmative act, from re-constituting a pre-existing right or interest as an international interest and otherwise bringing it within the scope of this Act.

3. A priority non-consensual right or interest shall retain its priority over an international interest, to the extent specified in Article 45(1), which is registered prior to the effective date.

SECOND SCHEDULE

(Article 25 of the First Schedule)

Form of Irrevocable De-Registration and Export Request Authorisation

Annex referred to in Article 25 of the First Schedule relating to the accession by Malta of The Convention on International Interests in Mobile Equipment and the Protocol thereto on Matters Specific to Aircraft Equipment

{*Insert Date*}

To: National Aircraft Register

Re: Irrevocable De-Registration and Export Request Authorisation

The undersigned is the registered [*operator*] [*owner*] of the [*insert the airframe/helicopter manufacturer name and model number*] bearing manufacturer's serial number [*insert manufacturer's serial number*] and registration [*number*] [*mark*] [*insert registration number/mark*] (together with all installed, incorporated or attached accessories, parts and equipment, the "aircraft").

This instrument is an irrevocable de-registration and export request authorisation issued by the undersigned in favour of [*insert name of creditor*] (the "authorised party") under the authority of (1) Article 25 of the Schedule relating to the ratification by Malta of the Convention on International Interests in Mobile Equipment and the Protocol thereto on Matters Specific to Aircraft Equipment (the latter instrument, the "Protocol"), and (2) Article XIII of the Protocol. In accordance with these Articles, the undersigned hereby requests:

- (a) recognition that the authorised party or the person it certifies as its designee is the sole person entitled to:
 - (i) procure the de-registration of the aircraft from the National Aircraft Register maintained by the national registry authority for the purposes of Chapter III of the Convention on International Civil Aviation, signed at Chicago, on 7 December 1944; and
 - (ii) procure the export and physical transfer of the aircraft from Malta;

And

- (b) confirmation that the authorised party or the person it certifies as its designee may take the action specified in clause (a) above on written demand without the consent of the undersigned and that, upon such demand, the authorities in Malta shall co-operate with the authorised party with a view to the speedy completion of such action.

The rights in favour of the authorised party established by this instrument may not be revoked by the undersigned without the written consent of the authorised party.

Please acknowledge your agreement to this request and its terms by appropriate notation in the space provided below and lodging this instrument in National Aircraft Register.

[insert name of operator/owner]

Agreed to and lodged this

[insert date]

By: *[insert name of signatory]*

Its: *[insert title of signatory]*

THIRD SCHEDULE

(Article 45)

List of Sources and Materials to be used by Court

- (i) The Official Commentary by Professor Sir Roy Goode that was prepared in response to Resolution No. 5 of the Diplomatic Conference;
 - (ii) Resolution No. 2 of the Diplomatic Conference, relating to the establishment of the Supervisory Authority and the International Registry for aircraft objects;
 - (iii) Resolution No. 3 of the Diplomatic Conference, pursuant to Article 2(3)(b) and (c) of the Convention;
 - (iv) Resolution No. 4 of the Diplomatic Conference, relating to technical assistance with regard to the implementation and the use of the International Registry;
 - (iv) Materials, papers, commentaries and any guidelines issued by the International Institute for the Unification of Private Law ("UNIDROIT").
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FOURTH SCHEDULE

(Article 16)

Part A

Table of General Classification of Aircraft

Col. 1	Col. 2	Col. 3	Col. 4
Aircraft	Lighter than air aircraft	Non-mechanically driven	{ Free Balloon Captive Balloon Airship
		Mechanically driven	
	Heavier than air aircraft	Non-mechanically driven	{ Glider Kite
		Mechanically driven (flying - machines)	{ Aeroplane (Landplane) Aeroplane (Seaplane) Aeroplane (Amphibian) Aeroplane (Self-launching motor glider) Gyroplane Helicopter

Part B

Nationality and Registration Marks of Aircraft Registered in Malta

1. The nationality marks of the aircraft shall be the number 9 followed by the capital letter "H" in roman character and the registration mark shall be a group of three capital letters in Roman character assigned by the Director General on the registration of the aircraft. The letters shall be without ornamentation and the hyphen shall be placed between the nationality mark and the registration mark.

2. The nationality and registration mark shall be painted on the aircraft or shall be affixed thereto by any other means ensuring a similar degree of permanence in the following manner:

I. Position of Marks

(a) Flying machines and Gliders

(i) Wings: Except on aircraft having no fixed wing surface, the marks shall appear on the lower surface of the wing structure, and shall be on the left half of the lower surface of the wing structure unless they extend across the whole surface of both wings. So far as possible the marks shall be

located equidistant from the leading and trailing edges of the wings. The tops of the letters shall be towards the leading edge of the wing.

(ii) Fuselage (or equivalent structure) or Vertical Tail Surface: The marks shall also be either on each side of the fuselage (or equivalent structure) between the wings and the tail surfaces, or on the upper halves of the vertical tail surfaces. When on a single vertical tail surface they shall be on both sides of the tail. When there is more than one vertical tail surface, the marks shall appear on the outboard sides of the outer tails.

(b) Airships and Balloons

(i) Airships: The marks shall be on each side of the airship and also on the upper surface on the line of symmetry. They shall be placed lengthwise near the maximum cross-section of the airship.

(ii) Spherical Balloons: The marks shall be in two places diametrically opposite. They shall be placed near the maximum horizontal circumference of the balloon.

(iii) Non-Spherical Balloons: The marks shall be on each side. They shall be placed near the maximum cross-section of the balloon immediately above either the rigging band or the points of attachment of the basket suspension cables.

(iv) In the case of all airships and balloons the side marks shall be so placed as to be visible both from the sides and from the ground.

II. Size of Marks

(a) Flying Machines and Gliders

(i) Wings: The letters constituting each group of marks shall be of equal height. The height of the letters shall be at least 50 centimetres.

(ii) Fuselage (or equivalent structure) or Vertical Tail Surfaces: The marks on the fuselage (or equivalent structure) shall not interfere with the visible outlines of the fuselage (or equivalent structure). The marks on the vertical tail surfaces shall be such as to leave a margin of at least 5 centimetres along each side of the vertical tail surface. The letters constituting each group shall be of equal height. The height of the marks shall be at least 30 centimetres.

Provided that where owing to the structure of the aircraft a height of 30 centimetres is not reasonably practicable, the height shall be the greatest height reasonably practicable in the circumstances, but not less than 15 centimetres.

(b) Airships and Balloons

The letters constituting each group of marks shall be of equal height. The height of the letters shall be at least 75 centimetres.

III. Width and Spacing of Marks

(a) The width of each letter (except the letter I) and the length of the hyphen between the nationality mark and registration mark shall be two-thirds of the height of a letter.

(b) The letters and hyphen shall be formed by solid lines and shall be of a colour clearly contrasting with the background on which they appear. The thickness of the lines shall be one-sixth of the height of a letter.

(c) Each letter shall be separated from the letter which it immediately precedes or follows by a space equal to half the width of a letter. A hyphen shall be regarded as a letter for this purpose.

3. The nationality and registration marks shall be displayed to the best advantage taking into consideration the constructional features of the aircraft and shall always be kept clean and visible.

4. In addition to the foregoing requirements of this Schedule the nationality and registration marks shall also be inscribed, together with the name and address of the registered owner of the aircraft, on a fireproof metal plate affixed in a prominent position to the fuselage or car or basket, as the case may be, and near the main entrance to the aircraft.

FIFTH SCHEDULE

(Article 61)

Amendments of Laws

First Column	Second Column
Code of Organisation and Civil Procedure Cap. 12.	<p>1. In article 273 thereof, paragraph (i) shall be renumbered as paragraph (j) and immediately after paragraph (h) there shall be added the following new paragraph:</p> <p style="padding-left: 40px;">"(i) warrant of arrest of aircraft;"</p> <p>2. In Sub-title V of Title VII of Part I of Book Second thereof, for the words "OF COURT APPROVED SALES FOR SHIPS AND VESSELS" there shall be substituted the words "OF COURT APPROVED SALES FOR SHIPS, VESSELS AND AIRCRAFT".</p> <p>3. Article 358 thereof shall be amended as follows:</p> <p style="padding-left: 40px;">3.1. in the marginal note thereto, immediately after the words "or vessel" there shall be added the words "or aircraft"; and</p> <p style="padding-left: 40px;">3.2. for the words "of a ship or vessel" there shall be substituted the words "of a ship or vessel or aircraft".</p> <p>4. In article 359 thereof, immediately after the words "or vessel" there shall be inserted the words "or aircraft".</p> <p>5. In article 362 thereof, immediately after the words "or vessel" there shall be inserted the words "or aircraft".</p> <p>6. In article 364 thereof, for the words "ship or vessel", wherever they appear, there shall be substituted the words "ship or vessel or aircraft".</p> <p>7. Sub-title XI of Title VII of Part I of Book Second thereof shall be renumbered as Sub-title XII and article 388E shall be renumbered as article 388G.</p> <p>8. Immediately after article 388D thereof, there shall be inserted the following:</p> <p style="text-align: center;">"Sub-title XI OF THE EXECUTIVE WARRANT OF ARREST OF AIRCRAFT"</p> <p>388E. An executive warrant of arrest of aircraft is effected by application in terms of articles 869 and 871.</p> <p>388F. (1) The court shall, when a demand is made for the issue of an executive warrant of arrest, establish whether it shall order the sale of the said article or fix a time-limit within which the debtor is to pay the amount due or remedy the default which in any case shall not be a term exceeding thirty calendar days from the date of the application.</p> <p style="padding-left: 40px;">(2) When the court orders such sale, it shall proceed according to the procedures laid down in the provisions relating to judicial sale by auction.</p> <p style="padding-left: 40px;">(3) When the court fixes a time limit within which the debtor is to pay, it shall order the executive warrant to be definitely in force until payment of the amount due, or the performance of the obligation is effected.</p> <p style="padding-left: 40px;">(4) When the said time limit passes without any effect the court shall, on a demand to be made by the interested party, order the sale to take place according to the provisions of sub-article (2)."</p> <p>9. Immediately after article 742D thereof, there shall be added the following new articles:</p>
Application for the issue of warrant.	
Court to decide about the sale or to fix time-limit for payment.	

First Column

Second Column

"Jurisdiction *in rem* against aircraft.

742E.(1) Save as otherwise provided by law, the civil courts of Malta shall have jurisdiction *in rem* against aircraft in the following claims:

- (a) any claim to the ownership, or title to or of an aircraft, or to the ownership of any share therein;
- (b) any claim for possession of the aircraft;
- (c) any claim in respect of a mortgage or equivalent international interest;
- (d) any claim giving rise to a special privilege in terms of article 42(1) of the Aircraft Registration Act;
- (e) any claim based on a registered non-consensual right or interest registered in the International Registry in terms of the First Schedule and article 42(2) of the Aircraft Registration Act for which the owner of the aircraft would be liable *in personam*;
- (f) any claim in the nature of salvage in respect of an aircraft;
- (g) any claim in the nature of towage in respect of an aircraft;
- (h) any claim in the nature of pilotage in respect of an aircraft.

Cap. 232.

(2) The reference in sub-article (1)(f) to claims in the nature of salvage includes a reference to such claims for services rendered in saving life from an aircraft or in preserving cargo, apparel or wreck as, under article 14 of the Civil Aviation Act, are authorized to be made in connection with an aircraft.

(3) For the purposes of sub-article (1)(g) and (h), "towage" and "pilotage" mean towage and pilotage while the aircraft is waterborne.

Action *in rem*.

742F.(1) An action *in rem* may be brought against the relevant aircraft before the civil courts of Malta on a claim mentioned in article 742E when:

- (a) the claim arises in connection with that aircraft; and
- (b) the person who would be liable on the claim for an action *in personam* ("the relevant person") was, when the cause of action arose, the owner or lessee of, or in possession or in control of, the aircraft, if at the time when the action is brought the relevant person is either an owner or beneficial owner of that aircraft or the lessee of that aircraft under a dry lease agreement.

(2) Notwithstanding the previous sub-article, in the case of a claim in terms of article 742E(1)(e), (g) and (h) in respect of an aircraft, an action *in rem* may be brought before the civil courts of Malta against the aircraft only if, at the time when the action is brought, it is beneficially owned by the person who would be liable on the claim in an action *in personam*."

10. In sub-article (1) of article 830 thereof, paragraph (g) shall be renumbered as paragraph (h) and immediately after paragraph (f) there shall be inserted the following new paragraph:

"(g) warrant of arrest of aircraft;"

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11. Immediately after article 865 thereof, there shall be inserted the following:

"Sub-title IVA

OF THE WARRANT OF ARREST OF AIRCRAFT

Object of warrant. 865A.(1) A precautionary warrant of arrest of any aircraft may solely be issued to secure a debt or claims, whether *in personam* or *in rem* which could be frustrated by the departure of the said aircraft, and no other warrant may be issued against an aircraft unless it is a warrant of arrest.

(2) The provisions of article 843 shall apply to the warrant.

(3) For the purposes of this Code, the word "aircraft" shall comprise -

(a) all data, manuals and technical records, and

(b) the airframe, all equipment, machinery and other appurtenances as accessories belonging to the aircraft, which are on board or which have been temporarily removed therefrom,

(c) if in Malta, any engines owned by the owner of the aircraft whether attached to the aircraft or not, as well as any replacement engines which are designated for use on the aircraft and owned by the owner of the aircraft but temporarily not attached to the aircraft,

but shall not include any engine which is attached to the aircraft and which does not belong to the owner of the aircraft, which engine shall be subject to such orders of the court as are appropriate to the protection of the rights of the owner of the engine and the safe operation of the aircraft in accordance with the agreement relating to such engine.

Warrant's effects. 865B.(1) The warrant of arrest shall have the effect to seize the aircraft from the debtor and also to attach the same in the hands of the authority where the property is, and also to order that the said authority shall not release such aircraft or allow the debtor to divest himself in any way from the same in whole or in part or to give or surrender to any person any rights on the same.

(2) The warrant is executed for all effects of the law when notice is served on the executive officer of the authority which has the aircraft in its hands or under its power or control.

(3) A copy of the warrant of arrest shall also be served on the person whose aircraft is arrested or the aircraft commander or other person in charge of the aircraft or the agent of such aircraft.

The authority in charge of the aircraft to be considered official consignee.

865C.(1) The authority which has in its hands or under its control the aircraft against which such warrant of arrest has been issued, shall take all necessary measures to display the court order for the general attention of third parties.

(2) For the purposes of this warrant the Authority for Transport in Malta, or such other authority or person as may be designated from time to time by the Minister shall be deemed to be the authority having in its hands or under its power or control the arrested aircraft.

(3) An aircraft is deemed to be in the power or control of the Authority for Transport in Malta as soon as the aircraft enters Maltese airspace.

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	<p>(4) All expenses as may be necessary for the preservation of the arrested aircraft shall, from the moment that the warrant of arrest is served on the Authority for Transport in Malta, be borne by the party issuing the warrant, saving his right to recover such expenses together with his claim.</p>
Warrant to be sued out on appropriate form.	<p>865D.(1) A warrant of arrest shall be sued out by means of an application on a form to be prescribed by the Minister responsible for justice, on which form there shall be included a court decree by virtue of which the necessary orders are given and issued.</p> <p>(2) The court executive officer shall have the power to adopt, subject to such directives as may be given by the Court or the Registrar of Courts, all such measures as may be deemed necessary for the execution of the warrant of arrest.</p>
Warrant not below certain values.	<p>865E. A warrant may be demanded and obtained before the Court of Magistrates (Malta) or before the Court of Magistrates (Gozo) in its inferior jurisdiction or before the First Hall of the Civil Court in security of a debt or any other claim whatsoever amounting to not less than seven thousand euro and in case of an aircraft being used for public air transport of passengers or goods, not less than one million euro, provided that these limitations on the amount of the claim do not apply to holders of a mortgage or an international security interest when such mortgage or interest has been registered or is recognized under Part IV or in accordance with Part VI of the Aircraft Registration Act, 2010.</p>
Statement to be contained in application.	<p>865F. The application for the issue of a warrant of arrest shall, under pain of nullity, state in a clear manner such particulars as may enable the identification of the aircraft, the name of the authority in whose hands or under whose power or control the arrested aircraft may be, as well as the place where the aircraft is to be found.</p>
Penalty in case of malicious demand for warrant.	<p>865G. Where it is found that the warrant was obtained upon a demand maliciously made, the penalty in terms of article 836(8) shall not be less than eleven thousand and six hundred euro.</p>
Security for payment of penalty, etc.	<p>865H. It shall be lawful for the court, on good cause being shown, upon the demand by application by a person whose aircraft is detained or by the commander of the aircraft, or by any person being in charge thereof or by its agent, order the party suing out the warrant to give, within a time fixed by the court, sufficient security, in an amount not less than eleven thousand and six hundred euro, for the payment of the penalty, damages and interest and, in default, to rescind the warrant.</p>
Aircraft not subject to the issue of a warrant.	<p>865I. (1) No warrant shall be issued against any aircraft wholly chartered in the service of the Government of Malta.</p> <p>(2) No warrant shall be issued against any aircraft of war.</p> <p>(3) Following the arrest of an aircraft in any airport and on the application of the Authority for Transport of Malta, a court may, if it is satisfied that because of its cargo, or other circumstances concerning safety, pollution, air navigation, it is advisable that the aircraft should leave the aerodrome or airport without delay, order that the aircraft should leave without delay or order that the aircraft be shifted from that airport to any other location within Malta or if not possible, to leave Malta.</p>

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(4) Following the arrest of an aircraft in any airport or aerodrome or Maltese airspace and on an application of the Authority for Transport in Malta, a court may, if it is satisfied that because of the nature of its cargo and, or other circumstances concerning safety or pollution it is advisable that the aircraft should leave the airport or Maltese airspace, rescind the warrant of arrest and order that the aircraft should leave Malta and its airspace without delay.

Order for the sale of an aircraft *pendente lite*.

865J. The court may order the sale of an arrested aircraft *pendente lite* if it appears to the court upon the application of a creditor that the debtor is insolvent or otherwise unlikely to be able to continue trading and maintaining the asset. In reaching its conclusion the court shall consider all the circumstances connected therewith, including the nature of the plaintiff's claim, the defence raised against such claim, if any, and such other steps which the debtor has taken to secure the claim, or otherwise to preserve the asset.

Joint and several liability.

865K.(1) If, notwithstanding the issue and execution of a precautionary warrant of arrest, an aircraft is removed from the jurisdiction of the court in breach of the warrant of arrest, the owner, lessee or other person being in possession of the aircraft at the time of such breach shall be jointly and severally liable to a penalty of one hundred and twenty thousand euro payable to the party issuing the warrant.

(2) The liability for the payment of a penalty arising under this article shall be without prejudice to any other possible sanction arising under the provisions of Title XVII of Book Third of this Code."

Civil Code.
Cap. 16.

1. For article 1740B thereof, there shall be substituted the following:

"Transfers to trusts, within groups, and as security.

1740B. Any transfer which is -

- (a) a settlement of property under trusts, or
- (b) a gratuitous assignment, transfer or contribution of capital, cash or any other assets by an undertaking to another undertaking where both undertakings are either controlled or beneficially owned, directly or indirectly, to the extent of more than fifty per cent by the same persons:

Provided that such assignment, transfer or contribution shall on the pain of nullity be expressed in writing; or

- (c) a grant of security by title transfer for the performance of an obligation,

shall not be governed by the provisions of this Title and in particular shall not be subject to the formalities required by article 1753:

Provided that where the transaction consists in or includes a transfer of immovable property in Malta, the transfer of such immovable property only shall remain subject to the formalities required by article 1753(1)."

2. In article 1857 thereof, immediately after sub-article (2) there shall be added the following new sub-article:

"(3) An irrevocable mandate granted by way of security as specified in article 1887(1) shall be granted in writing on pain of nullity."

3. Article 1886 thereof shall be renumbered as sub-article (1) and immediately thereafter there shall be added the following new sub-articles:

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"(2) An irrevocable mandate by way of security shall not terminate upon the events stated in sub-article (1) and shall continue to be binding on, or continue for the benefit of, the heirs or liquidator (or similar officer) of the mandator, or of the mandatary, or the creditor if a different person, in accordance with its terms. Neither shall such an irrevocable mandate terminate on such events when they occur in relation to a mandatary who is a different person than the creditor in whose favour the mandate has been granted.

(3) The creditor whose interests are secured through the mandate, or his heirs, or liquidator (or similar officer), may appoint a substitute to act as mandatary, including himself, or may apply to the Court of voluntary jurisdiction to make such appointment."

4. Article 1887 thereof shall be amended as follows:

4.1 for sub-article (1) thereof there shall be substituted the following:

"(1) The mandator may revoke the mandate whenever he chooses, unless the mandate is expressly stated to be granted by way of security in favour of the mandatary or of any other person, and that it is irrevocable, in which case it may only be revoked with the consent of the person whose interest is secured thereby. The mandatary under such an irrevocable mandate granted by way of security, shall be bound to act in a fair and reasonable manner when exercising the powers granted thereunder, provided that a mandate by way of security which is irrevocable may only be granted when the object to which it relates is property which is movable, by nature or by operation of law, and it shall not be permissible for such a mandate to be issued with reference to immovable property or rights therein.";

4.2 sub-articles (2) and (3) thereof shall be renumbered as sub-articles (3) and (4) respectively;

4.3 immediately after sub-article (1) thereof there shall be inserted the following new sub-article:

"(2) Where powers are exercised under an irrevocable mandate granted as stated above and form part of or are granted pursuant to or in the context of a written agreement governing a broader relationship, the mandatary shall furthermore be bound to exercise such powers in accordance with the terms and subject to the conditions of such agreement."; and

4.4 in sub-article (3) thereof, as re-numbered, for the words "The appointment of" there shall be substituted the words "Except as provided in the preceding sub-article, the appointment of".

5. Article 1995 thereof shall be amended as follows:

5.1 the existing article shall be renumbered as sub-article (1);

5.2 in sub-article (1) thereof, as renumbered, immediately after the words "causes of preference" there shall be added the words "or there shall have been a transfer of any property by way of security or a transfer under a security trust for such purpose in accordance with this Code";

5.3 immediately after sub-article (1) thereof, as renumbered, there shall be added the following new sub-articles:

"(2) Property is lawfully transferred by way of security, if made in accordance with article 2095E or articles 2095F to 2095I and such transfer shall not be subject to re-characterisation as any other contract.

(3) Creditors of the transferor may impeach any transfer by way of security as aforesaid if the transfer is made in fraud of their rights. For the purposes of article 1144 such transfers shall be considered to be onerous and in case of a security trust, the creditor must prove fraud on the part of both the transferor and the transferee but it shall be sufficient if he proves fraud either on the part of the security trustee or on the part of the beneficiary whose interest is being secured thereby."

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6. For sub-article (2) of article 1997 thereof, there shall be substituted the following:

"(2) The said provisions shall not apply to ships or aircraft, or to debts to which ships or aircraft may be subject except so far as they are consistent with the provisions of the Merchant Shipping Act or of the Aircraft Registration Act, 2010, as the case may be."

7. Article 2042 thereof shall be amended as follows:

7.1 for paragraph (e) thereof there shall be substituted the following:

"(e) an indication as to whether interest on the debt has been agreed upon or not"; and

7.2 paragraph (f) thereof shall be deleted.

8. Article 2095 thereof shall be amended as follows:

8.1 the existing article shall be renumbered as sub-article (1) thereof, and, in the said sub-article, as renumbered, immediately after the word "privileged" there shall be added the following proviso:

"Provided that in the case of a hypothec, the above rule shall apply with reference to interest only if the fact that interest has been agreed upon is indicated in the note of registration of the hypothec in accordance with article 2042(e).";

8.2 immediately after sub-article (1) thereof, as renumbered, there shall be added the following new sub-articles:

"(2) When the note of registration of a hypothec indicates that interest has been agreed to accrue on a debt, no additional note of registration shall be required when any change, variation, or amendment takes place in relation to the of rates of interest payable, the modalities for the calculation of interest including any indices, margin, or market mechanism.

(3) Furthermore, no additional note of registration shall be required, for any change, variation or amendment of:

(a) the repayment schedule; or

(b) the currency in which payment of the debt is to be made.

(4) The above shall apply irrespective of whether the change, variation or amendment takes place in virtue of a public deed or a private writing, pursuant to a term of the original agreement or as a result of a market event.

(5) The obligations changed, varied, or amended as aforesaid shall continue to rank in the same rank in which the principal obligation is placed."

9. Article 2095E thereof shall be amended as follows:

9.1 in sub-article (1) thereof, immediately after the words "class or classes of creditors", there shall be added the words "by either constituting security in favour of the trustee in the manner provided for by applicable law of Malta relating to particular types of security, or, by the settlement of property in favour of the trustee under written terms governing the trusts intended to operate for the purposes of providing security";

9.2 in sub-article (3) thereof, for the word "assignment" there shall be substituted by the word "title";

9.3 in sub-article (4) thereof, immediately after the words "for the purposes of article 2042" there shall be added the words "in lieu of the requirements of paragraphs (c), (d) and (e) of article 2042";

9.4 sub-articles (5) to (12) thereof shall be renumbered as sub-articles (6) to (13) respectively;

9.5 immediately after sub-article (4) thereof, there shall be inserted the following new sub-article:

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"(5) The Minister responsible for Justice may make regulations to regulate the operation of security granted in favour of a security trustee to secure future debts."; and

9.6 immediately after sub-article (13) thereof, as renumbered, there shall be added the following new sub-article:

"(14) The provisions of article 1967 shall apply *mutatis mutandis* where a pledge is granted by the debtor or a third party for the debtor, to a security trustee, for the benefit of any creditor or creditors, present or future, or in favour of a class or classes of creditors.".

10. Immediately after article 2095E thereof, there shall be added the following:

"Title XXIIB

OF SECURITY BY TITLE TRANSFER

Agreement
establishing
security.

2095F.(1) Security by title transfer is a contract whereby the debtor, or a third party for the debtor, transfers or assigns movable things, whether by nature or by operation of law, so as to secure a present or future obligation, to:

- (a) a creditor or creditors, present or future; or
- (b) to a third party, who shall thereby be considered to be a trustee for the benefit of a creditor or creditors, present and, or future and subordinately for the debtor in accordance with article 2095E.

In this title:

(i) the term "creditor" shall include both the creditor and a third party security trustee for the creditor; and

(ii) the terms "debtor" and "transferor" may refer to the same person or to different persons depending on the circumstances and the term "debtor" shall include the transferor unless the context requires otherwise.

(2) Subject to the observance of such formalities as may be required in case of particular types of movable property, ownership of the property is acquired by the creditor as soon as the debtor and, or the transferor and the creditor enter into an agreement in writing designating:

- (a) the property being transferred;
- (b) the secured obligations, which may be existing or future obligations; and
- (c) the rights of the transferee in case of default as stipulated in the agreement.

(3) For the purposes of the preceding sub-article -

(a) when the property being transferred consists of debts and other monetary obligations the inclusion in the agreement of a list of debts arising from a written or legally equivalent instrument shall be sufficient;

(b) when the transfer of property refers to a large amount of debts or to a class or classes of debts, present or future, the provisions of articles 9 to 14 of the Securitisation Act shall apply *mutatis mutandis* with such amendments as are required paying regard to the fact that in lieu of a transfer for the purposes of a securitisation, the parties may agree to a transfer of the same assets for the purpose of security.

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- (4) Such agreement may also designate:
- (a) the rights of the transferee in the event of a breach of the secured obligations; and
 - (b) the rights of the transferor in case of payment or other extinction of the secured obligations; and
 - (c) the manner in which the property is to be valued when rights of sale or set-off are exercised by the creditor,

and such agreement shall take effect in accordance with its terms. In the absence of terms of agreement on the matters stated in this sub-article, the provisions of this title shall apply.

(5) Where the property being transferred by way of security is of a kind which may be transferred by mere delivery, an agreement in writing as provided for in sub-article (2) shall be required for the transfer of such property. Without prejudice to the rights of third parties acting in good faith, the creditor may agree that the debtor use the property so transferred.

(6) A transfer by way of security of debts and other rights shall be operate between the parties from the moment when the agreement referred to in sub-article (2) is made.

(7) A transfer by way of security shall operate as a transfer with regard to third parties:

- (a) in the case of debts and rights against an obligor, when notice is given in accordance with the article 1471 or the obligor of the assigned right has acknowledged the assignment; or
- (b) in the case where the rights consist of property, where there is no obligor and where the title to which is registered in a public registry, the effects of the transfer shall arise when the transfer is registered in the relevant register.

For the purposes of article 1471, notice in writing may be given by any means, including by electronic means, and it shall not be required that notice be made by judicial act.

(8) Apart from the case contemplated in article 1472(b), when a further assignment of a debt or other right is made by way of security and is notified to the debtor or registered in accordance with sub-article (7) of this article, the effects of the subsequent assignment shall arise only on the termination of the effects of the prior assignment and the rights of the subsequent assignee are conditional thereon. Except where the subsequent assignment is made with the written consent of the prior assignee and subject to the terms of such consent, the prior assignee shall have no obligations towards any subsequent assignee.

(9) The consideration for a transfer by way of security shall be the grant and acceptance of security, and the provisions of Title VI of Part II of Book Second as to "price" shall not apply to such transfers.

(10) For all effects and purposes, the creditor to whom the property has been transferred shall be considered to be the absolute owner of the property so transferred and such property shall not form part of the patrimony of the debtor.

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(11) A transfer made in accordance with the provisions of this title:

(a) shall not be subject to re-characterisation as any other contract and shall take effect in accordance with its terms; and

(b) shall be enforceable in accordance with the terms of an agreement made in accordance with sub-article (2) and the provisions of this title notwithstanding the bankruptcy or insolvency of the debtor of the debt or the grantor of security by title transfer or the commencement or continuation of any insolvency or winding up proceedings or re-organisation measures.

(12) The fruits of the property transferred by way of security shall be deemed to form a part of the property and shall be subject to all the rights of the creditor as stated in this Title.

Enforcement of rights.

2095G.(1) The terms of the agreement relating to the transfer of property by way of security shall regulate all matters between the debtor, the transferor and the creditor, including the rights of the creditor to enforce the security in case of default.

(2) Subject to the terms of the agreement between the parties, in the event of a default, the creditor shall, upon giving notice in writing to the debtor and the transferor of property by way of security, if different, be entitled to realise the property transferred in one of the following ways:

(a) by sale; or

(b) by setting off or netting their value, and applying their value in discharge of the secured obligations.

(3) Set-off or netting shall only be possible if it has been expressly agreed to in the agreement between the parties.

(4) Where a creditor exercises his rights as aforesaid, he must exercise such rights in a commercially reasonable manner, shall be bound by fiduciary obligations in that regard and shall be bound to account to the debtor as to the value used for such enforcement.

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(5) Without prejudice to the title vested in the creditor, the creditor shall be entitled, in any case, to demand the sale by judicial auction of the property transferred by way of security and the provisions of Sub-title II of Title VII of Part I of Book Second of Code of Organisation and Civil Procedure on Judicial Sales by Auction shall apply with such variation as is required due to the context.

(6) Where the property transferred by way of security is in the possession of the debtor, the Court shall afford such support to the creditor as may be necessary to take possession of the property for the purposes of any mode of enforcement as aforesaid.

(7) Any enforcement pursuant to the preceding sub-articles shall be without prejudice to the rights of any third party who may have acquired any personal or real rights over the property from the debtor prior to the transfer by way of security, or, if after, with the prior written consent and participation of the creditor; provided that when the security arrangement is not binding with regard to third parties or otherwise publicly known through -

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(a) registration of the transfer in a public registry; or

(b) notice to or acknowledgement by the debtor of a debt in accordance with article 1471 (as modified by sub-article (7) of article 2095F), or

(c) transfer of possession of the property to the creditor or a security trustee,

any person acquiring rights over the said property in good faith for value shall also be protected.

Cap. 459. (8) It shall be lawful for the parties to enter into a close out netting agreement in accordance with the Set-Off and Netting on Insolvency Act to be applied when a default takes place.

Liability of the creditor transferee. 2095H.(1) When the creditor has taken possession of the property so transferred, subject to the terms of the transfer agreement, he shall not be permitted to make use of the property unless expressly permitted to do so by the agreement between the parties and shall be liable to the transferor for the loss or deterioration of the property arising from his negligence.

(2) Where the property transferred by way of security is fungible in nature:

(a) the parties may agree that the creditor to whom the property has been transferred may enter into transactions involving its sale and may also use it as security for the performance of his obligations;

(b) the obligation to return the property shall be to return equivalent property but may be extended to return equivalent value.

(3) The provisions on fiduciary obligations in this Code shall apply to the creditor who shall be considered as having acquired title and possession as a fiduciary for the sole purposes of -

(a) retaining the title and, if so agreed, possession of property as security for the performance of the secured obligations,

(b) of applying such property or its value in settlement of the secured obligations in case of default; and

(c) of returning the property, or its equivalent in case of fungible property, on performance of the secured obligations or of returning any excess in value to the transferor in case of enforcement,

and notwithstanding the obligation to avoid conflicts of interest he shall be entitled to act in his own interests for the above purposes.

(4) Notwithstanding the fact that the creditor is the absolute owner of property transferred by way of security, any exercise of ownership rights other than as may be provided for in the agreement between the parties or as herein provided shall be a breach of fiduciary duties for which the creditor shall be liable toward the debtor in accordance with this Code.

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(5) When enforcement is through set-off by the creditor, upon notice of enforcement given in accordance with article 2095G(2), the creditor shall become the absolute owner of the property and shall be released of all fiduciary duties arising from the transfer agreement and these provisions. The value of the obligation of the creditor to return the property transferred by way of security which is set-off against the rights of the creditor to payment of the obligation due to him shall be established by agreement with the transferor or established in the manner agreed between the parties and in the absence of such agreement, at the market value if there is one, or where there is no market value, at a price established by an independent person competent to value such property.

(6) Upon a notice of enforcement through sale of the property in accordance with article 2095F(2), the creditor shall have the power to sell the property -

(a) in the manner agreed with the transferor or, in the absence of agreement, in the manner the creditor considers most appropriate and commercially reasonable;

(b) for a price established by agreement with the transferor or established in the manner agreed between the parties and in the absence of such agreement, at the market value if there is one, or where there is no market value, at a price established by an independent person competent to value such property; and

(c) when the property is to be sold through a judicial sale by auction, at a price and in accordance with applicable provisions of law,

and the creditor shall be the sole person entitled to receive the proceeds of sale.

(7) Upon the events in the preceding sub-articles taking place, the creditor shall allocate to and set-off against the obligation secured -

(a) in the case referred to in sub-article (5), the value of the obligation to return the property set-off against the secured obligations;

(b) in the case referred to in sub-article (6), the proceeds of sale received by the creditor shall be set-off against the secured obligations,

and any excess shall be immediately paid over to the transferor.

(8) If it is necessary to properly realise the commercially reasonable value, the creditor shall be entitled to sell or set-off as aforesaid all the property transferred by way of security even if it exceeds the value of the secured obligations. Otherwise, the creditor shall only sell or set-off as much as is required to cover the secured obligations, interest and charges and return the excess property to the transferor.

(9) Except where special laws permit otherwise, it shall not be lawful for the debtor to agree on the value of property transferred by way of security for the purposes of enforcement before the receipt by him of a notice of sale or set-off provided for in article 2095G(2); provided it shall be lawful to agree on a value to be established by reference to a market or on valuation mechanisms to be followed in case of disagreement between the parties.

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Return of property to debtor.	<p>(10) The Court may, <i>a posteriori</i>, on the demand of the debtor verify the commercial reasonableness of the realisation of the property or the valuation used in terms of the preceding provisions. Upon such review the Court may, if it finds that the realisation was not carried out in accordance with the agreement between the parties or, absent terms of agreement, in a commercially reasonable manner or at a fair value, condemn the creditor to pay damages to the transferor and, or the debtor for the losses suffered by his actions.</p> <p>2095I.(1) When the debtor has performed the secured obligations the creditor is bound absolutely to return the property to the transferor by carrying out such formal and others acts as may be required.</p> <p>(2) Except as otherwise agreed, it shall not be lawful for the transferor to demand the partial return of the property transferred by way of security on the partial fulfilment of the secured obligations and the creditor is only obliged to return the property so transferred to the transferor, when the debtor has fully performed the secured obligations.</p> <p>(3) The terms of any undertaking relating to the return of property transferred in accordance with this Title shall be enforceable in accordance with its terms and the provisions of article 1357 shall not apply.</p>
Reservations.	<p>2095J. (1) Nothing in this Title shall limit or affect the application of the laws of Malta which may implement the Financial Collateral Arrangements Directive (2002/47/EC), as the same may from time to time be amended, in so far as it applies to particular property which may be the subject of a title transfer financial collateral arrangement.</p> <p>(2) A transfer of an obligation by way of security shall not affect the operation or effect of the legal or contractual terms of the underlying debt or other right being the property transferred by way of security.</p> <p>(3) A debtor of a debt or other right may, in accordance with article 1996A, validly waive his rights of set-off or other defence <i>vis-a-vis</i> his immediate creditor when such debt or other obligation is the subject of a transfer by way of security and such debtor shall not, thereafter, be entitled to raise any defence against any claim made by a transferee of the assigned debt and this notwithstanding the absence of any notice or acknowledgement in terms of article 1471.</p> <p>(4) The provisions of article 1483 shall not apply in the case of an assignment by way of security."</p>

Aircraft (Application of Laws) Ordinance. Cap. 80.

The Aircraft (Application of Laws) Ordinance shall be revoked.

Civil Aviation Act. Cap. 232.

1. Article 2 thereof shall be amended as follows:

1.1. the definition "air service licence" shall be deleted and for the words "air service licence" or "air services licences", wherever they occur in the principal Act and in any regulations or Order made thereunder, there shall be substituted the words "operator licence" or "operator licences" respectively; and

2.2. immediately after the definition "Minister" there shall be inserted the following new definition:

" "operating licence" means a licence issued under article 7;"

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	<p>2. In sub-article (1) of article 7 thereof, for the words "a licence for any air transport service" there shall be substituted the words "a licence to operate any air transport service".</p> <p>3. Article 15 thereof shall be deleted.</p>
Merchant Shipping Act. Cap. 234.	<p>1. Article 2 thereof shall be amended as follows:</p> <p>1.1 immediately before the definition "Authority" there shall be inserted the following new definition:</p> <p style="padding-left: 40px;">" "approved jurisdiction" means any member country of the Organisation for Economic Cooperation and Development and any other country approved for the purposes of this Act by the Minister by notice;" and</p> <p>1.2. immediately after the definition "name" there shall be inserted the following new definition:</p> <p style="padding-left: 40px;">" "Organisation for Economic Cooperation and Development" means the Organisation for Economic Cooperation and Development established in 1961 under the Convention on the Organisation for Economic Cooperation and Development;"</p> <p>2. Article 17 thereof shall be amended as follows:</p> <p>2.1 the article shall be numbered as sub-article (1), and immediately after paragraph (e) thereof there shall be added the following new paragraph:</p> <p style="padding-left: 40px;">"(f) the details of any mandate or power of attorney, irrevocable or otherwise in a separate document or as part of an agreement between the parties, granted by way of security to the mortgagee, or to a third party for the mortgagee's benefit, granting powers relating to the exercise of rights relating to the vessel or the closure of the register on behalf of the registered owner or grantor, where he is not the registered owner."; and</p> <p>2.2. immediately after sub-article (1) as renumbered there shall be added the following new sub-articles:</p> <p style="padding-left: 40px;">"(2) Where a mortgagor has issued a mandate or power of attorney, whether irrevocable or otherwise, and whether in a separate document or within an agreement between the parties, and has submitted such mandate or power of attorney for registration to the registrar, such power of attorney shall be registered in the register of the ship to which it refers.</p> <p style="padding-left: 40px;">(3) The registrar shall register any notice of cancellation or release of such mandate or power of attorney from the registry at the request of the party authorised under the power of attorney or of the person for whose benefit it has been granted. In the event that a mandate or power of attorney is granted for a stated period of time after which it shall lapse, such date shall also be recorded in the register and the registration of the mandate shall have no effect after such date.</p> <p style="padding-left: 40px;">(4) The registrar and other administrative authorities shall support and co-operate with the authorised party in the exercise of the powers specified in any mandate or power of attorney entered in the register; provided that in so far as relates to powers granted for the benefit of holders of mortgages registered prior to the coming into force of this article, such assistance shall be granted even if the mandate or power of attorney is not recorded in the register and this upon the authorities being satisfied of the authenticity of the mandate.</p> <p style="padding-left: 40px;">(5) It shall be lawful for all holders of existing mortgages to submit for registration, at their option, any mandate or power of attorney they have received in their favour and which falls within the scope of this article and the registrar shall act accordingly.</p>

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- (6) The registrar shall not be bound in any manner by any written notice from the grantor of revocation of such a mandate or power of attorney which is stated to be irrevocable and shall not be liable in any manner for acting upon the basis of a mandate or power of attorney issued in accordance with this article."
3. Immediately after sub-article (2) of article 37C thereof, there shall be added the following new sub-article:
- "(3) For the avoidance of doubt, the provisions of the Companies Act relating to insolvency shall not apply insofar as inconsistent with this Act."
4. Article 38 thereof shall be amended as follows:
- 4.1 for sub-article (5) thereof there shall be substituted the following:
- "(5) A mortgage registered under this Act may be drawn up to secure the payment of a principal sum and interest, an account current, as well as the performance of any other obligation, including a future obligation due by the debtor to the creditor. It shall not be necessary to indicate the monetary value of the indebtedness in the mortgage unless it is intended to secure a future obligation in which case a maximum sum by way of principal for which the mortgage is granted must be expressly stated in the registered instrument and such sum shall be recorded in the register by the registrar.
- A mortgage to secure a future obligation may only be granted in favour of a credit institution in an approved jurisdiction or such other organisation as may be permitted by means of a notice issued by the Minister.";
- 4.2 sub-article (6) thereof shall be renumbered as sub-article (7); and
- 4.3 immediately after sub-article (5) thereof there shall be inserted the following new sub-article:
- "(6) The Minister may make regulations to regulate the operation of security granted to secure future debts."
5. Article 42 thereof shall be amended as follows:
- 5.1 in sub-article (1) thereof, for the words "giving notice to the mortgagor", there shall be substituted the words "giving notice in writing to the mortgagor";
- 5.2 for sub-article (2) thereof there shall be substituted the following new sub-article:
- "(2) A registered mortgage shall be deemed to be an executive title for the purposes of article 253 of the Code of Organisation and Civil Procedure:
- (a) where the obligation it secures is a debt certain liquidated and due and not consisting in the performance of an act; or
- (b) where a maximum sum secured thereby is expressly stated in the instrument creating the security and such figure is recorded in the register for public notice."
- 5.3 in sub-article (4) thereof, immediately after the words "the amount certain liquidated and due" there shall be inserted the words "or the actual sum due when the mortgage secures a future debt within an expressly stated maximum,".
6. For sub-article (3) of article 45A thereof there shall be substituted the following new sub-article:
- "(3) Without prejudice to the generality of the foregoing, and subject always to the provisions of sub-articles (4), (5) and (6), an amendment of a mortgage shall be effected for any one or more of the following purposes:

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(a) to increase the amount of capital secured by such mortgage. An agreement to amend and vary the rates of interest payable, the modalities for the calculation of interest including any indices, margin, or market mechanism, the repayment schedule or the currency in which payment is to be made is not considered as an increase for the purposes of this article; and

(b) to extend such mortgage to secure any other obligation of the mortgagor, whether as principal debtor or as surety for any other person, in favour of the mortgagee, except where the new obligation qualifies as a future obligation of the mortgagor to the mortgagee secured by the mortgage being within a maximum sum by way of principal stated in the relative mortgage instrument."

Airports and Civil Aviation (Security) Act. 1. In article 2 thereof, for the definition "operator" there shall be substituted the following:

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" "operator" in relation to any aircraft, shall have the same meaning given to it in the Aircraft Registration Act, 2010;".

Objects and Reasons

The object of this Bill is to regulate the registration of aircraft, aircraft mortgages and security interests and to repeal and re-enact various existing laws relating to such matters.
