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STATUTORY INSTRUMENTS

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**2015 No. 912**

**The International Interests in Aircraft Equipment  
(Cape Town Convention) Regulations 2015**

**PART 3**

**EFFECT OF INTERNATIONAL INTEREST**

*Remedies in case of default*

**Meaning of “default”**

**18.**—(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 regulations 19 to 21 and 25.

(2) Where the debtor and the creditor have not so agreed, “default” for the purposes of regulations 19 to 21 and 25 means a default which substantially deprives the creditor of what it is entitled to expect under the agreement.

**Remedies of chargee**

**19.**—(1) This regulation applies—

- (a) where a default has occurred, but
- (b) only to the extent that the chargor has at any time agreed that the remedies specified in this regulation should apply.

(2) The chargee may exercise any one or more of the following remedies—

- (a) it may take possession or control of any aircraft object charged to it;
- (b) it may sell or grant a lease of any such aircraft object;
- (c) it may collect or receive any income or profits arising from the management or use of any such aircraft object.

(3) The chargee may alternatively apply to the court for an order authorising or directing any of the acts referred to in paragraph (2).

(4) A chargee proposing to sell or grant a lease of an aircraft object under paragraph (2) must give reasonable prior notice in writing of the proposed sale or lease to—

- (a) a debtor or guarantor and
- (b) any person other than a debtor or guarantor having rights in or over aircraft objects who has given notice of their rights to the chargee within a reasonable time prior to the sale or lease.

(5) A chargee giving ten or more working days’ prior written notice of a proposed sale or lease to interested persons is deemed to satisfy the requirement of providing reasonable prior notice in paragraph (4) (but this paragraph does not prevent a chargee and a chargor or guarantor from agreeing to a longer period of prior notice).

(6) A sum collected or received by the chargee as a result of exercise of any of the remedies set out in paragraph (2) or (3) is to be applied towards discharge of the amount of the secured obligations.

(7) Where the sums collected or received by the chargee as a result of the exercise of any remedy set out in paragraph (2) or (3) 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 must 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.

### **Vesting of aircraft objects in satisfaction; and redemption**

**20.**—(1) This regulation applies at any time after a default has occurred.

(2) 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 is to vest in the chargee in or towards satisfaction of the secured obligations.

(3) 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 is to vest in the chargee in or towards satisfaction of the secured obligations.

(4) The court may 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.

(5) At any time before sale of the charged aircraft object or the making of an order under paragraph (3), 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 regulation 19(2)(b) or ordered under regulation 19(3).

(6) 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.

(7) Ownership or any other interest of the chargor passing on a sale under regulation 19(2)(b) or passing under paragraph (2) or (3) is free from any other interest over which the chargee's security interest has priority under the provisions of regulation 16.

### **Remedies of conditional seller or lessor**

**21.**—(1) This regulation applies in the event of default under a title reservation agreement or under a leasing agreement.

(2) The conditional seller or the lessor, as the case may be, may—

(a) subject to any declaration that may be made by the United Kingdom under Article 54 of the Cape Town Convention, terminate the agreement and take possession or control of any aircraft object to which the agreement relates; or

(b) apply to the court for an order authorising or directing either of these acts.

### **De-registration and transfer of aircraft**

**22.**—(1) In addition to the remedies specified in the preceding provisions of this Part, the creditor may, to the extent that the debtor has at any time so agreed and in the event of a default—

(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 may not exercise the remedies specified in paragraph (1) without the prior consent in writing of the holder of any registered interest ranking in priority to that of the creditor.

(3) The Civil Aviation Authority must, 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 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 de-registration and export of an aircraft under paragraph (1) otherwise than pursuant to a court order must give reasonable prior notice in writing of the proposed de-registration and export to—

- (a) A debtor or creditor; and
- (b) Any person other than a debtor or creditor who has given notice of their rights to the chargee within a reasonable time prior to the de-registration and export.

(5) Where the debtor has issued an irrevocable de-registration and export request authorisation substantially in the form annexed to the Aircraft Protocol and has submitted such authorisation for record to the Civil Aviation Authority, the Authority must record the authorisation.

(6) The person in whose favour the authorisation has been issued (the “authorised party”) or its certified designee is the only person entitled to exercise the remedies specified in paragraph (1).

(7) The authorised party may exercise those remedies only in accordance with the authorisation and applicable aviation safety enactments.

(8) The authorisation may not be revoked by the debtor without the consent in writing of the authorised party.

(9) The Civil Aviation Authority must remove an authorisation from the registry at the request of the authorised party.

(10) The Civil Aviation Authority must exercise its functions under the Civil Aviation Act 1982(1) and any other enactment in order to co-operate expeditiously with and assist an authorised party in the exercise of the remedies specified in paragraph (1).

(11) Any other public authority must exercise any relevant function for that purpose.

### **Additional remedies**

**23.** Any additional remedies available in accordance with the applicable law, including any remedies agreed upon by the parties, may be exercised to the extent that they are not inconsistent with provisions which may not be waived by agreement under these Regulations or the Cape Town Convention.

### **Requirement of commercial reasonableness**

**24.**—(1) Any remedy given by these Regulations in relation to an aircraft object must be exercised in a commercially reasonable manner.

(2) A remedy is 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.

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(1) 1982 c.16.

### **Relief pending final determination**

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

(2) In making any order under paragraph (1), 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 these Regulations (or the Cape Town Convention or the Aircraft Protocol); or
- (b) fails to establish its claim, wholly or in part, on the final determination of that claim.

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

(4) Nothing in this regulation affects the application of regulation 24 or limits the availability of forms of interim relief other than those set out in paragraph (1).