

# BILLET D'ÉTAT No. VII, 2015

29<sup>th</sup> APRIL 2015

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## **The Pilotage (Amendment) Ordinance, 2015**

**THE STATES**, in pursuance of their Resolutions of the 11<sup>th</sup> December, 2014<sup>a</sup>, and in exercise of the powers conferred on them by section 1 of the Pilotage (Guernsey) Law, 1966<sup>b</sup>, hereby order:-

### **Amendment of Ordinance.**

1. The Pilotage Ordinance, 1967<sup>c</sup> is further amended as follows.

2. In section 4(3), for "the Deputy States Harbourmaster" substitute "the Chief Officer of the Department".

3. In section 12 –

(a) delete paragraphs (a)(i) and (ii), and

(b) for paragraph (a)(iv), substitute –

(iv) he is the holder of a certificate of competence as master of a ship of 500 gross tons or more, granted by any State which is a contracting

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<sup>a</sup> Resolutions 1, 2 and 4 on Article XIV of Billet d'État No. XXVI of 2014.

<sup>b</sup> Ordres en Conseil Vol. XX, p. 206; as amended by Vol. XXIX, p. 340; Vol. XXXI, p. 278; Vol. XLI, p. 681; and Recueil d'Ordonnances Tome XXIX, p. 406.

<sup>c</sup> Recueil d'Ordonnances Tome XV, p. 50; as amended by Ordres en Conseil Vol. XXXI, p. 278; Recueil d'Ordonnances Tome XVIII, p. 24; Tome XX, p. 161; Tome XXIII, p.34; Tome XXIV, p. 1; Tome XXVI, p. 118; and Ordinance No. XII of 2012. There are other amendments not relevant to this enactment.

party to the Agreement on the European Economic Area signed at Oporto on 2<sup>nd</sup> May, 1992, as subsequently amended,".

4. In section 24(5)(c), for "efficiency" substitute "efficiently".

5. In section 35(1), delete from "that is to say" until "1913,", and after that subsection insert –

"(1A) In subsection (1), the reference to "a pilot signal" is a reference to flag GOLF in accordance with the International Code of Signals, being a flag consisting of blue and yellow vertical stripes.".

6. In section 37(1), for "set out in" until the end of the subsection, substitute "required by the Pilotage Board from time to time.".

7. The First Schedule is repealed.

**Interpretation.**

8. References in this Ordinance to an enactment are references thereto as amended, re-enacted (with or without modification), extended or applied.

**Citation and commencement.**

9. This Ordinance may be cited as the Pilotage (Amendment) Ordinance, 2015, and shall come into force on 1<sup>st</sup> June, 2015.

**The Machinery of Government  
(Transfer of Functions) (Guernsey) (Amendment)  
Ordinance, 2015**

**THE STATES**, in pursuance of their Resolutions of 11<sup>th</sup> December 2014<sup>a</sup>, and in exercise of the powers conferred on them by sections 1 and 3 of the Public Functions (Transfer and Performance) (Bailiwick of Guernsey) Law, 1991<sup>b</sup>, hereby order:-

**Amendment of Ordinance.**

**1.** (1) The Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003<sup>c</sup> is further amended as follows.

(2) In paragraph 2(b) (Functions of Board of Administration transferred to Public Services Department) of Schedule 2, immediately after "Boats and Vessels (Registration, Speed Limits and Abatement of Noise) Ordinance, 1970", insert "(except in relation to section 8(1))".

(3) In paragraph 2(c) (Functions of Board of Administration transferred to Environment Department) of Schedule 2, immediately after "Boats and Vessels (Registration, Speed Limits and Abatement of Noise) Ordinance, 1970", insert "(in relation to section 8(1) only)".

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<sup>a</sup> Resolutions 3 and 4 on Article XIV of Billet d'État No. XXVI of 2014.

<sup>b</sup> Ordres en Conseil Vol. XXXIII, p. 478; as amended by Recueil d'Ordonnances Tome XXIX, p. 406.

<sup>c</sup> Recueil d'Ordonnances Tome XXIX, p. 406; as amended by Ordinance No. VII of 2013.

**Interpretation.**

2. References in this Ordinance to an enactment are references thereto as amended, re-enacted (with or without modification), extended or applied.

**Citation and commencement.**

3. This Ordinance may be cited as the Machinery of Government (Transfer of Functions) (Guernsey) (Amendment) Ordinance, 2015, and shall come into force on 1<sup>st</sup> June, 2015.

**The Criminal Justice (Sex Offenders and Miscellaneous Provisions) (Bailiwick of Guernsey) Law, 2013  
(Commencement) Ordinance, 2015**

**THE STATES**, in exercise of the powers conferred on them by sections 54(8), 55 and 57 of the Criminal Justice (Sex Offenders and Miscellaneous Provisions) (Bailiwick of Guernsey) Law, 2013<sup>a</sup> and all other provisions enabling them in that behalf, hereby order:-

**Commencement of the Law.**

1. (1) The provisions of the Criminal Justice (Sex Offenders and Miscellaneous Provisions) (Bailiwick of Guernsey) Law, 2013 ("**the Law**") set out in subsection (2) shall come into force on the 29<sup>th</sup> April, 2015.

(2) The provisions of the Law are -

(a) section 1,

(b) section 25,

(c) Part VIII, and

(d) Part IX (including section 54 so far as it relates to the provisions brought into force by this Ordinance), except sections 50 and 53.

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<sup>a</sup>

Order in Council No. IX of 2014.

(3) Section 53 of the Law shall come into force on the registration of the Sexual Offences (Incitement, Jurisdiction and Protected Material) (Bailiwick of Guernsey) Law, 2009<sup>b</sup> on the Records of the Island.

**Amendment of section 54.**

2. The following amendments are made to section 54 of the Law ("**Interpretation**") -

(a) immediately after the definition of "notifier", insert -

**"picture"** includes a likeness, howsoever produced,"

(b) immediately after the definition of "prescribed notification requirements", insert -

**"publication"** includes any speech, writing, relevant programme or other communication in whatever form, which is addressed to the public at large or any section of the public (and for this purpose every relevant programme shall be taken to be so addressed) but shall not include an indictment or other document prepared for use in particular legal proceedings," and

(c) immediately after the definition of "relevant offence", insert -

**"relevant programme"** means a programme included in a programme service, within the meaning of the Broadcasting Act 1990

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<sup>b</sup> Approved by the States of Deliberation on the 25<sup>th</sup> February, 2009.



of the United Kingdom as that Act from time to time has effect in the Bailiwick by virtue of any Order in Council."

**Interpretation.**

3. (1) In this Ordinance, unless the context requires otherwise -

"**enactment**" means any Law, Ordinance or subordinate legislation,

"**the Law**" means the Criminal Justice (Sex Offenders and Miscellaneous Provisions) (Bailiwick of Guernsey) Law, 2013, and

"**subordinate legislation**" means any regulation, rule, order, rule of court, resolution, scheme, byelaw or other instrument made under any enactment and having legislative effect.

(2) The Interpretation (Guernsey) Law, 1948<sup>c</sup> applies to the interpretation of this Ordinance throughout the Bailiwick.

(3) Any reference in this Ordinance to an enactment is a reference thereto as from time to time amended, re-enacted (with or without modification), extended or applied.

**Citation.**

4. This Ordinance may be cited as the Criminal Justice (Sex Offenders and Miscellaneous Provisions) (Bailiwick of Guernsey) Law, 2013 (Commencement) Ordinance, 2015.

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<sup>c</sup> Ordres en Conseil Vol. XIII, p. 355.

**The Guernsey Financial Services Commission**  
**(Transfer of Functions) (Fees) (Bailiwick of Guernsey)**  
**Ordinance, 2015**

**THE STATES**, in pursuance of their Resolution of the 24<sup>th</sup> September, 2014<sup>a</sup>, and in exercise of the powers conferred on them by sections 1 and 3 of the Public Functions (Transfer and Performance) (Bailiwick of Guernsey) Law, 1991<sup>b</sup> and all other powers enabling them in that behalf, hereby order:-

**Transfer of functions relating to fees regulations, etc.**

1. The functions of the Guernsey Financial Services Commission referred to in sections 4 and 5 relating to the enactment of regulations or orders which prescribe or specify fees or charges payable to the Commission and ancillary matters are transferred to and vested in -

- (a) the States of Guernsey Policy Council (in the case of the functions and enactments referred to in section 4), and
- (b) the States of Guernsey Commerce and Employment Department (in the case of the functions and enactments referred to in section 5).

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<sup>a</sup> Article VI of Billet d'État No. XX of 2014 (Vol. 1).

<sup>b</sup> Ordres en Conseil Vol. XXXIII, p. 478.

**Amendment of statutory references.**

2. For any reference in an enactment referred to in section 4 or 5 to the Guernsey Financial Services Commission, however expressed, there is substituted a reference to -

- (a) the States of Guernsey Policy Council (in the case of the functions referred to in section 4), and
- (b) the States of Guernsey Commerce and Employment Department (in the case of the functions referred to in section 5).

**Savings and transitional provisions.**

3. Anything done before the date of commencement of this Ordinance, or in the process of being done on that date, by or in relation to the Guernsey Financial Services Commission, shall have effect as if done or (as the case may be) may be continued by or in relation to -

- (a) the States of Guernsey Policy Council (in the case of the functions referred to in section 4), and
- (b) the States of Guernsey Commerce and Employment Department (in the case of the functions referred to in section 5).

**Functions transferred to Policy Council.**

4. The functions of the Guernsey Financial Services Commission which are transferred to the States of Guernsey Policy Council are those conferred by the following enactments -

- (a) section 13(b) of the Financial Services Commission (Bailiwick of Guernsey) Law, 1987<sup>c</sup>,
- (b) section 22 of the Protection of Investors (Bailiwick of Guernsey) Law, 1987<sup>d</sup>,
- (c) section 7 of the Banking Supervision (Bailiwick of Guernsey) Law, 1994<sup>e</sup>,
- (d) sections 7 and 38(2) of the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) Law, 2000<sup>f</sup>,
- (e) section 94 of the Insurance Business (Bailiwick of Guernsey) Law, 2002<sup>g</sup>,
- (f) section 71 of the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002<sup>h</sup>,
- (g) sections 4(2)(c) and 7(2) of the Registration of Non-Regulated Financial Services Businesses (Bailiwick of Guernsey) Law, 2008<sup>i</sup>.

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<sup>c</sup> Ordres en Conseil Vol. XXX, p. 243.  
<sup>d</sup> Ordres en Conseil Vol. XXX, p. 283.  
<sup>e</sup> Ordres en Conseil Vol. XXXV (Vol. 1), p. 271.  
<sup>f</sup> Ordres en Conseil Vol. XLI, p. 13.  
<sup>g</sup> Ordres en Conseil Vol. XLII (Vol. 2), p. 766.  
<sup>h</sup> Ordres en Conseil Vol. XLII (Vol. 2), p. 1022.

**Functions transferred to Commerce and Employment Department.**

5. The functions of the Guernsey Financial Services Commission which are transferred to the States of Guernsey Commerce and Employment Department are those conferred by the following enactments -

- (a) sections 66(2)(i), 94(2)(e), 438(3)(b) and 469(3)(b) of the Companies (Guernsey) Law, 2008<sup>j</sup>, and
- (b) sections 36(2)(c) and 45(2)(d) of the Limited Liability Partnerships (Guernsey) Law, 2013<sup>k</sup>.

**Agreement of Commission required.**

6. (1) The States of Guernsey Policy Council (in the case of the functions referred to in section 4) and the States of Guernsey Commerce and Employment Department (in the case of the functions referred to in section 5) may not make regulations under the enactments specified respectively in those sections without the agreement of the Guernsey Financial Services Commission.

(2) Subsection 1 is without prejudice to any other formalities and procedural requirements which must be observed in respect of the making of the regulations in question.

**Interpretation.**

7. (1) In this Ordinance –

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i Order in Council No. XV of 2008.  
j Order in Council No. VIII of 2008.  
k Order in Council No. VI of 2014.

"**enactment**" means any Law, Ordinance or subordinate legislation, and

"**subordinate legislation**" means any statutory instrument, regulation, rule, order, byelaw, scheme, code and other subordinate instrument of a legislative nature.

(2) The Interpretation (Guernsey) Law, 1948<sup>1</sup> applies to the interpretation of this Ordinance as it applies to the interpretation of an enactment in force in the Island of Guernsey.

(3) Any reference in this Ordinance to an enactment is a reference thereto as from time to time amended, repealed and replaced, extended or applied.

**Extent.**

8. (1) This Ordinance, apart from section 5, has effect throughout the Bailiwick of Guernsey.

(2) Section 5 has effect in the Islands of Guernsey, Herm and Jethou.

**Citation.**

9. This Ordinance may be cited as the Guernsey Financial Services Commission (Transfer of Functions) (Fees) (Bailiwick of Guernsey) Ordinance, 2015.

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<sup>1</sup> Ordres en Conseil Vol. XIII, p. 355.

**Commencement.**

10. This Ordinance shall come into force on the 1<sup>st</sup> May, 2015.

## **The Income Tax (Guernsey) (Approval of Agreement with the British Virgin Islands) Ordinance, 2015**

**THE STATES**, in exercise of the powers conferred on them by section 75C of the Income Tax (Guernsey) Law, 1975 as amended<sup>a</sup> and all other powers enabling them in that behalf, hereby order:-

### **Approval of Agreement.**

1. The agreement providing for the obtaining, furnishing and exchanging of information in relation to tax –

- (a) made between the States of Guernsey and the Government of the British Virgin Islands, and
- (b) contained in a Protocol signed on the 25<sup>th</sup> November, 2014 and the 11<sup>th</sup> December, 2014, on behalf of Guernsey and the British Virgin Islands respectively (which amends the agreement providing for the obtaining and exchanging of information in relation to tax made between the States of Guernsey and the Government of the British Virgin Islands signed on the 12<sup>th</sup> April, 2013 and the 17<sup>th</sup> April, 2013<sup>b</sup>),

is, pursuant to section 75C of the Income Tax (Guernsey) Law, 1975, as amended, hereby specified for the purposes of that Law.

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<sup>a</sup> Ordres en Conseil Vol. XXV, p. 124; section 75C was inserted by section 5 of Order in Council No. XVII of 2005, and section 75C has subsequently been amended Order in Council No. XVI of 2002; No. I of 2014; and No. XXXI of 2014.

<sup>b</sup> Ordinance No. XXIII of 2013.



**Citation.**

2. This Ordinance may be cited as the Income Tax (Guernsey) (Approval of Agreement with the British Virgin Islands) Ordinance, 2015.

**Commencement.**

3. This Ordinance shall come into force on the 29<sup>th</sup> April, 2015.

## **The Yemen (Restrictive Measures) (Guernsey) Ordinance, 2014**

**THE STATES LEGISLATION SELECT COMMITTEE**, in exercise of the powers conferred on the States by sections 1 and 4 of the European Communities (Implementation) (Bailiwick of Guernsey) Law, 1994<sup>a</sup>, as amended and all other powers enabling the States in that behalf, and in exercise of the powers conferred on the Committee by Article 66(3) of the Reform (Guernsey) Law, 1948<sup>b</sup>, as amended, hereby orders:-

### **Application and infringement of EU Regulation.**

1. (1) Subject to the modifications in section 2, Council Regulation (EU) No. 1352/2014 of the 18th December 2014<sup>c</sup>, concerning restrictive measures in view of the situation in Yemen ("**the EU Regulation**") has full force and effect in Guernsey.

(2) A person who contravenes, or causes or permits any contravention of, any of the prohibitions in or requirements of the EU Regulation is guilty of an offence.

### **Modification of Regulation.**

2. The modifications referred to in section 1 are as follows -

(a) Articles 16 and 17 shall not apply,

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<sup>a</sup> Ordres en Conseil Vol. XXXV(1), p. 65.

<sup>b</sup> Ordres en Conseil Vol. XIII, p.288; there are amendments not material to this Ordinance.

<sup>c</sup> OJ L 365, 19.12.2014, p. 60

- (b) a reference to the competent authority of a Member State shall be construed so as to include the Policy Council,
- (c) a reference to the obligation of a competent authority of a Member State, or Member State, to inform or notify shall be construed as an obligation on the part of the Policy Council to inform or notify one of Her Majesty's Principal Secretaries of State,
- (d) a reference to the obligation of any natural or legal person, entity or body to transmit information to the Commission shall be construed as an obligation to transmit such information to the Policy Council,
- (e) a reference to a Member State shall be construed so as to include Guernsey,
- (f) a reference to the Union shall be construed so as to include Guernsey,
- (g) a reference to a vessel under the jurisdiction of a Member State shall be construed so as to include a Guernsey ship and a Guernsey fishing vessel,
- (h) a reference to an aircraft under the jurisdiction of a Member State shall be construed so as to include an aircraft registered on the Register of Aircraft established under the Aviation Registry (Guernsey)

Law, 2013<sup>d</sup>,

- (i) a reference to the territory of the Union and its airspace shall be construed so as to include Guernsey, its airspace and the territorial waters adjacent thereto, and
- (j) the inclusion of any natural or legal person, entity or body in the list provided for by Article 2 of the EU Regulation shall be subject to any annulment of the EU Regulation in its application to that person, entity or body by the Court of Justice of the European Union and having effect in the European Union for the time being.

**Appeals against decisions of Policy Council.**

3. (1) A person aggrieved by a decision of the Policy Council made under the EU Regulation may appeal to the Ordinary Court against that decision on the grounds that -

- (a) the decision was ultra vires or there was some other error of law,
- (b) the decision was unreasonable,
- (c) the decision was made in bad faith,
- (d) there was a lack of proportionality, or

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<sup>d</sup> Order in Council No. XIII of 2013; Ordinance No. XI of 2014.

(e) there was a material error as to the facts or as to the procedure.

(2) An appeal under this section shall be instituted -

(a) within a period of 28 days immediately following the date of the decision of the Policy Council (or such other period as the Ordinary Court may in any particular case direct), and

(b) by summons served on the Chief Minister stating the grounds and material facts on which the appellant relies.

(3) The Chief Minister may, where an appeal under this section has been instituted, apply to the Ordinary Court, by summons served on the appellant, for an order that the appeal shall be dismissed for want of prosecution; and, on hearing the application, the Court may -

(a) dismiss the appeal or dismiss the Chief Minister's application (in either case on such terms and conditions as the Court may direct), or

(b) make such other order as the Court considers just,

and the provisions of this subsection are without prejudice to the inherent powers of the Royal Court or to the provisions of rule 52(3) of the Royal Court Civil Rules,

2007<sup>e</sup>.

- (4) On an appeal under this section the Ordinary Court may -
- (a) set the decision of the Policy Council aside and, if the Court considers it appropriate to do so, remit the matter to the Policy Council with such directions as the Court thinks fit, or
  - (b) confirm the decision, in whole or in part.

(5) On an appeal under this section the Ordinary Court may, upon the application of the appellant, and on such terms as the Court thinks just, suspend or modify the operation of the decision in question, pending the determination of the appeal.

(6) An appeal from a decision of the Ordinary Court made on an appeal under this section lies, with leave of the Ordinary Court or Court of Appeal, to the Court of Appeal on a question of law.

(7) Section 21 of the Court of Appeal (Guernsey) Law, 1961<sup>f</sup> ("powers of a single judge") applies to the powers of the Court of Appeal to give leave to appeal under subsection (6) as it applies to the powers of the Court of Appeal to give leave to appeal under Part II of that Law.

**Powers to obtain information.**

4. The Schedule has effect in order to facilitate the obtaining, by or on

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<sup>e</sup> O.R.C. No. IV of 2007; amended by No. II of 2008.

<sup>f</sup> Ordres en Conseil Vol. XVIII, p. 315.

behalf of the Policy Council, of information and documents for the purpose of ensuring compliance with the EU Regulation.

**Failure to provide information or to co-operate.**

5. A person who, without reasonable excuse, fails to comply with any obligation to provide information to or co-operate with the Policy Council in the exercise of any power to request or demand the provision of information, or the co-operation of any person, under any article of the EU Regulation is guilty of an offence.

**Furnishing of false information etc.**

6. A person who in purported compliance with any article of the EU Regulation intentionally furnishes any false information, document or explanation, or recklessly furnishes any information, document or explanation which is false, is guilty of an offence.

**Penalties and proceedings.**

7. (1) A person guilty of an offence under -

- (a) section 1(2), 5 or 6, or
- (b) paragraph 2(b) or (c) of the Schedule,

is liable -

- (i) on conviction on indictment, to imprisonment for a term not exceeding two years, to a fine, or to both,
- (ii) on summary conviction, to imprisonment for a

term not exceeding three months, to a fine not exceeding level 5 on the uniform scale, or to both.

(2) A person guilty of an offence under paragraph 2(a) or 3(2) of the Schedule is liable on summary conviction to imprisonment for a term not exceeding three months, to a fine not exceeding level 5 on the uniform scale, or to both.

**Offences by bodies corporate and unincorporated bodies.**

8. (1) Where a body corporate is guilty of an offence under this Ordinance, and the offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, or any person purporting to act in any such capacity, he as well as the body corporate is guilty of the offence and may be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

(3) Where an offence under this Ordinance is committed by an unincorporated body and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of -

- (a) in the case of a partnership, any partner,
- (b) in the case of any other unincorporated body, any officer of that body who is bound to fulfil any duty



whereof the offence is a breach or, if there is no such officer, any member of the committee or other similar governing body, or

- (c) any person purporting to act in any capacity described in paragraph (a) or (b),

that person as well as the unincorporated body is guilty of the offence and may be proceeded against and punished accordingly.

(4) Where an offence under this Ordinance is alleged to have been committed by an unincorporated body, proceedings for the offence shall be brought in the name of that body and not in the name of any of its members.

(5) A fine imposed on an unincorporated body on its conviction of an offence under this Ordinance shall be paid from the funds of that body.

**Certain provisions of Customs and Excise Law applicable.**

9. (1) Section 55 of the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972 applies to the detention of a person for an offence under section 1 as it applies to the detention of a person for an offence under the customs Laws or excise Laws.

(2) Sections 61 to 65 of the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972 apply in relation to offences, fines, penalties and proceedings for offences under this Ordinance as they apply to offences, fines, penalties and proceedings for offences under the customs Laws or excise Laws.

**Interpretation.**

10. (1) In this Ordinance, except where the context requires otherwise -

"**advocate**" means an advocate of the Royal Court of Guernsey,

"**Bailiff**" includes the Bailiff, the Deputy Bailiff, a Lieutenant Bailiff, a Juge-Délégué and a Judge of the Royal Court,

"**contravention**" includes failure to comply, and cognate expressions shall be construed accordingly,

"**Court of Appeal**" means the court established by the Court of Appeal (Guernsey) Law, 1961,

"**customs Laws**" and "**excise Laws**" mean those provisions of the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972 and any other enactment for the time being in force relating to customs or, as the case may be, excise,"

"**enactment**" includes a Law, an Ordinance and any subordinate legislation,

"**EU Regulation**" has the meaning given by section 1,

"**Guernsey**" means the Bailiwick of Guernsey apart from the Islands of Alderney and Sark,

"**Guernsey fishing vessel**" and "**Guernsey ship**" have the meanings given by section 294(1) of the Merchant Shipping (Bailiwick of Guernsey)

Law, 2002<sup>g</sup>,

"**Judge of the Royal Court**" means the office of that name established by section 1 of the Royal Court (Reform) (Guernsey) Law, 2008<sup>h</sup>,

"**Ordinary Court**" means the Royal Court of Guernsey sitting as an Ordinary Court which, for the purposes of this Ordinance, may be validly constituted by the Bailiff sitting alone,

"**Policy Council**" means the States of Guernsey Policy Council,

"**subordinate legislation**" means any regulation, rule, order, rule of court, resolution, scheme, byelaw or other instrument made under any statutory, customary or inherent power and having legislative effect, but does not include an Ordinance, and

"**uniform scale of fines**" means the scale of fines from time to time in force under the Uniform Scale of Fines (Bailiwick of Guernsey) Law, 1989<sup>i</sup>,

and other terms used in this Ordinance and the EU Regulation shall have the same meaning as in the EU Regulation.

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<sup>g</sup> Ordres en Conseil Vol. XLIV(2), p. 1; Order in Council No. XIII of 2010; Merchant Shipping (Bailiwick of Guernsey) (Amendment) Law, 2014; Recueil d'Ordonnances Tome XXIX, p. 406; Tome XXXIII, p. 624; Ordinance No. LIV of 2012 .

<sup>h</sup> Order in Council No. XXII of 2008.

<sup>i</sup> Ordres en Conseil Vol. XXXI, p. 278.

(2) A reference in this Ordinance to an enactment or to the EU Regulation is a reference thereto as from time to time amended, repealed and re-enacted (with or without modification), extended or applied.

**Citation.**

11. This Ordinance may be cited as the Yemen (Restrictive Measures) (Guernsey) Ordinance, 2014.

**Commencement.**

12. This Ordinance shall come into force on the 22<sup>nd</sup> December, 2014.

## SCHEDULE

Section 4

## INFORMATION

1. (1) The Policy Council (or any person authorised by it for that purpose either generally or in a particular case) may request any person to furnish or produce to it (or, as the case may be, to that authorised person) such information and documents in his possession or control as the Policy Council (or, as the case may be, that authorised person) may require for the purpose of ensuring compliance with the EU Regulation; and a person to whom such a request is made shall comply with it within such time and in such manner as may be specified in the request.

(2) No obligation of secrecy or confidence or other restriction on the disclosure of information to which any person may be subject, whether arising by statute, contract or otherwise, is contravened by reason of the disclosure by that person or by any of his officers, servants or agents of any information or document in compliance with this Schedule.

(3) Nothing in this Schedule compels the production by an advocate or other legal adviser of a communication subject to legal professional privilege; but an advocate or other legal adviser may be required to give the name and address of any client.

(4) Where a person is convicted of an offence under this Schedule of failing to furnish any information or produce any document, the court may make an order requiring him, within such period as may be specified in the order, to furnish the information or produce the document.

(5) The power conferred by this paragraph to request any person to produce documents shall include power to take copies of or extracts from any

document so produced and to request that person or, where that person is a body corporate, any other person who is a present or past officer of, or is employed by, the body corporate, to provide an explanation of any such document.

**2.** A person who -

- (a) without reasonable excuse, refuses or fails within the time and in the manner specified (or, if no time is specified, within a reasonable time) to comply with a request made under this Schedule,
- (b) intentionally furnishes any false information, document or explanation, or recklessly furnishes any information, document or explanation which is false, to any person exercising his powers under this Schedule, or
- (c) with intent to evade the provisions of this Schedule, destroys, mutilates, defaces, tampers with, falsifies, secretes, removes or otherwise disposes of any document,

is guilty of an offence.

**3.** (1) No information furnished or document produced (including any copy or extract made of any document produced) by any person in pursuance of a request or order made under this Schedule shall be disclosed except -

- (a) with the consent of the person by whom the information was furnished or the document was

produced: provided that a person who has obtained information or is in possession of a document only in his capacity as servant or agent of another person may not give consent for the purposes of this item but such consent may instead be given by any person who is entitled to that information or to possession of that document in his own right,

- (b) to any person who would have been empowered under this Schedule to request that it be furnished or produced or any person holding or acting in any office under or in the service of the Crown in right of Guernsey,
- (c) on the authority of the Policy Council, to the European Commission, to any of the competent authorities listed in or under the EU Regulation or any annex thereto, or to one of Her Majesty's Principal Secretaries of State, for the purpose of assisting the Commission, that competent authority or that Principal Secretary of State to ensure compliance with the EU Regulation, or
- (d) for the purposes of the investigation, prevention or detection of crime or with a view to the instigation of, or otherwise for the purposes of, any criminal proceedings.

(2) A person who without reasonable excuse discloses any information or document in contravention of subparagraph (1) is guilty of an offence.

**The Crimea and Sevastopol (Restrictive Measures)  
(Guernsey) (Amendment) Ordinance, 2014**

THE STATES LEGISLATION SELECT COMMITTEE, in exercise of the powers conferred on the States by sections 1 and 4 of the European Communities (Implementation) (Bailiwick of Guernsey) Law, 1994<sup>a</sup> and all other powers enabling the States in that behalf, and in exercise of the powers conferred on the Committee by Article 66(3) of the Reform (Guernsey) Law, 1948<sup>b</sup>, as amended, hereby orders:-

**Amendment of Crimea and Sevastopol (Restrictive Measures) (Guernsey) Ordinance, 2014.**

1. (1) The Crimea and Sevastopol (Restrictive Measures) (Guernsey) Ordinance, 2014<sup>c</sup> is amended as follows.

(2) In section 2 –

- (a) delete "and" where it appears at the end of paragraph (f),
- (b) for the full-stop substitute ", and", and
- (c) immediately after paragraph (g) insert the following paragraph -

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<sup>a</sup> Ordres en Conseil Vol. XXXV(1), p. 65.

<sup>b</sup> Ordres en Conseil Vol. XIII, p.288; there are amendments not material to this Ordinance.

<sup>c</sup> Ordinance No. XXXIII of 2014.



"(h) references to ships flying the flag of a Member State shall be construed as including a Guernsey ship, and references to any ship owned and under the operational control of a Union shipowner or any ship over which a Union operator assumed overall responsibility as regards its operation shall be construed as including a ship owned and under the operational control of a Guernsey shipowner or a ship over which a Guernsey operator assumed overall responsibility as regards its operation."

(3) In section 8(1) immediately after the definition of "Guernsey", insert the following definition -

""**Guernsey ship**" has the meaning given by section 294(1) of the Merchant Shipping (Bailiwick of Guernsey) Law, 2002, "

**Citation.**

2. This Ordinance may be cited as the Crimea and Sevastopol (Restrictive Measures) (Guernsey) (Amendment) Ordinance, 2014.

**Commencement.**

3. This Ordinance shall come into force on the 22<sup>nd</sup> December, 2014.

## The Cremation (Longue Hougue Facility) Ordinance, 2015

THE STATES LEGISLATION SELECT COMMITTEE, in exercise of the powers conferred on the States by Article IV of the Law entitled "Loi relative à la Crémation"<sup>a</sup> and all other powers enabling the States in that behalf, and in exercise of the powers conferred on the Committee by Article 66(3) of the Reform (Guernsey) Law, 1948 as amended<sup>b</sup>, hereby orders:-

### Authorisation for use of Longue Hougue facility.

1. (1) The cremation facility operated by the States at the Longue Hougue may be used as a crematorium for the purposes of the Law entitled "Loi relative à la Crémation" in such exceptional circumstances as a Law Officer of the Crown may authorise in writing.

(2) An authorisation under subsection (1) may be granted subject to such conditions as a Law Officer of the Crown may think fit.

(3) Subsections (1) and (2) are without prejudice to the usual requirements to be observed in relation to a crematorium and cremation under the Law mentioned in subsection (1) and any other enactment.

### Interpretation.

2. (1) In this Ordinance -

"**enactment**" means any Law, Ordinance or subordinate legislation,  
and

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<sup>a</sup> Ordres en Conseil Vol. VIII, p. 209.

<sup>b</sup> Ordres en Conseil Vol. XIII, p. 288.

"**subordinate legislation**" means any regulation, rule, order, rule of court, resolution, scheme, byelaw or other instrument made under any enactment and having legislative effect.

(2) Any reference in this Ordinance to an enactment is a reference that enactment as from time to time amended, re-enacted (with or without modification), extended or applied.

**Citation.**

3. This Ordinance may be cited as the Cremation (Longue Hougue Facility) Ordinance, 2015.

**Commencement.**

4. This Ordinance shall come into force on the 29<sup>th</sup> January, 2015.

**The Financial Services Ombudsman (Bailiwick of  
Guernsey) Law, 2014 (Commencement and Amendment)  
Ordinance, 2015**

THE STATES LEGISLATION SELECT COMMITTEE, in exercise of the powers conferred on the States by sections 6(1), 27 and 29(2) of the Financial Services Ombudsman (Bailiwick of Guernsey) Law, 2014<sup>a</sup>, and in exercise of the powers conferred on the Committee by Article 66(3) of the Reform (Guernsey) Law, 1948, as amended<sup>b</sup> and all other powers enabling it in that behalf, hereby orders:-

**Commencement.**

1. The following provisions of the Financial Services Ombudsman (Bailiwick of Guernsey) Law, 2014 ("**the Law**") shall come into force on the 30<sup>th</sup> January, 2015 -

- (a) Parts I and II,
- (b) section 9,
- (c) sections 20 and 21,
- (d) Part VI, and

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<sup>a</sup> Order in Council No. I of 2015.

<sup>b</sup> Ordres en Conseil Vol. XIII, p. 288 (there are amendments not material to this Ordinance).

- (e) Schedules 1 to 4.

**Amendment of the Law.**

2. After paragraph 2(6) of Schedule 2 to the Law, insert the following subparagraph -

"(7) For the purposes of subparagraphs (4)(a) and (5), in relation to the financial years 2015 and 2016, the references to financial service providers, fees, levy, resources, OFSO, income, functions and reserve are to be read as including references to the equivalents of those terms under any Jersey scheme."

**Interpretation.**

3. (1) In this Ordinance -

"**enactment**" means any Law, Ordinance or subordinate legislation,

"**Jersey scheme**" has the meaning given in section 6(1)(i) of the Law,

"**the Law**" has the meaning given in section 1, and

"**subordinate legislation**" means any regulation, rule, order, rule of court, resolution, scheme, byelaw or other instrument made under any enactment and having legislative effect.

(2) The Interpretation (Guernsey) Law, 1948<sup>c</sup> applies to the

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<sup>c</sup> Ordres en Conseil Vol. XIII, p. 355.

interpretation of this Ordinance throughout the Bailiwick of Guernsey.

(3) Any reference in this Ordinance to an enactment is a reference thereto as from time to time amended, re-enacted (with or without modification), extended or applied.

**Citation and commencement.**

4. This Ordinance -

- (a) may be cited as the Financial Services Ombudsman (Bailiwick of Guernsey) Law, 2014 (Commencement and Amendment) Ordinance, 2015, and
- (b) shall come into force on the 30<sup>th</sup> January, 2015.

**The Aviation Registry (Interests in Aircraft)  
(Guernsey) Ordinance, 2015**

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48. Constitution and rules of Royal Court.
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- Schedule 1 Convention on International Interests in Mobile Equipment.
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## **The Aviation Registry (Interests in Aircraft) (Guernsey) Ordinance, 2015**

**THE STATES LEGISLATION SELECT COMMITTEE**, in pursuance of the States' Resolution of the 1<sup>st</sup> November, 2012<sup>a</sup>, and in exercise of the powers conferred on them by sections 50 and 52 of the Aviation Registry (Guernsey) Law, 2013<sup>b</sup> and all other powers enabling the States in that behalf, and on the Committee by Article 66(3) of the Reform (Guernsey) Law, 1948<sup>c</sup>, hereby orders:-

### PART I

#### SPHERE OF APPLICATION AND GENERAL PROVISIONS

##### **The Cape Town Convention (giving effect to Article 6).**

1. (1) This Ordinance gives effect to the Cape Town Convention by providing for the constitution and effects of an international interest in aircraft objects and associated rights, including contracts of sale, in Guernsey.

(2) Chapters I to XII of the Convention on International Interests in Mobile Equipment which is set out in full in Schedule 1, have effect subject to Schedules 2 and 3.

(3) Chapters I to IV of the Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Aircraft

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<sup>a</sup> Article V of Billet d'État No. XXI of 2012.

<sup>b</sup> Order in Council No. XIII of 2013, as amended by Ordinance No. XI of 2014.

<sup>c</sup> Ordres en Conseil Vol. XIII, p. 288 (there are amendments not material to this Ordinance).

Equipment, which is set out in full in Schedule 2, have effect, subject to Schedule 3.

(4) The Department shall by regulations append the Cape Town Declarations made on behalf of Guernsey by the United Kingdom in Schedule 3, which shall have effect in relation to the interpretation of Schedules 1 and 2.

(5) Parts I to VII and sections 49, 50 and 51 of this Ordinance comprise a consolidated text of the Cape Town Convention, as it has effect in Guernsey.

(6) If there is any inconsistency between Guernsey law (including the provisions of this Ordinance) and the Cape Town Convention (as it has effect in Guernsey in accordance with this section), the provisions of the Convention prevail.

**The international interest (giving effect to Article 2).**

2. (1) For the purposes of this Ordinance, an "**international interest**" in aircraft objects is an interest constituted under section 8, 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 paragraph (a) does not also fall within paragraph (b) or (c).

(2) The applicable law determines whether an interest to which subsection (1) applies falls within subsection (1) (a), (b) or (c).

(3) An international interest in an aircraft object extends to proceeds of that object.

**Sphere of application (giving effect to Article 3 and Article IV(1)).**

3. (1) This Ordinance applies when, at the time of the conclusion of the agreement creating or providing for -

(a) an international interest, the debtor is situated, or

(b) a contract of sale, the seller 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 Ordinance.

(3) Without prejudice to subsection (1), this Ordinance also applies 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.

**Where debtor or seller is situated (giving effect to Article 4).**

4. (1) For the purposes of section 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) The reference in subsection (1)(d) to the debtor's place of business shall, if the debtor has more than one place of business, mean the debtor's principal place of business or, if the debtor has no place of business, the debtor's habitual residence.

**Interpretation and applicable law (giving effect to Article 5).**

5. (1) In the interpretation of the provisions of this Ordinance, regard is to be had to the purposes of the Cape Town Convention as set out in the preambles thereof, to its international character and to the need to promote uniformity and predictability in its application.

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

**Representative capacities (giving effect to Article VI).**

6. A person may -

- (a) enter into an agreement or a sale, and

- (b) register an international interest in, or a sale of, an aircraft object,

in an agency, trust or other representative capacity, and may assert rights and interests under this Ordinance accordingly.

**Choice of law (giving effect to Article VIII(2) and (3)).**

7. (1) The parties to an agreement, a contract of sale, or a related guarantee contract or subordination agreement may agree on the law that is to govern their contractual rights and obligations, wholly or in part.

(2) Unless otherwise agreed, the reference in subsection (1) to the law chosen by the parties is to the domestic rules of law of the designated place.

PART II

CONSTITUTION OF AN INTERNATIONAL INTEREST, CONTRACTS OF  
SALE

**Formal requirements for an international interest (giving effect to Article 7).**

8. An interest is constituted as an international interest 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 in accordance with section 10, 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.

**Formalities and effects of contracts of sale (giving effect to Article V).**

9. (1) For the purpose of this Ordinance, 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 accordance with section 10.

(2) A contract of sale transfers the interest of the seller in the aircraft object to the buyer subject to its terms.

**Description of aircraft objects (giving effect to Article VII).**

10. A description of an aircraft object that contains its manufacturer's serial number, the name of the manufacturer and its model designation is necessary to identify the object for the purposes of sections 8(c) and 9(1)(c).

PART III  
DEFAULT REMEDIES

**Remedies of chargee (giving effect to Articles 8 and IX(4)).**

11. (1) In the event of default (as defined in section 19), 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 the chargee,
- (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 subsection (1).

(3) A chargee proposing to sell or grant a lease of an aircraft object under subsection (1) shall give reasonable prior notice in writing of the proposed sale or lease to -

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



(4) A chargee giving 10 or more working days' prior written notice of a proposed sale or lease shall be deemed to satisfy the requirement of providing "**reasonable prior notice**" under subsection (3), but a chargee and a chargor or a guarantor may agree a longer notice period.

(5) Any sum collected or received by the chargee as a result of the exercise of any of the remedies in subsections (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 in subsections (1) or (2) exceed -

- (a) the amount secured by the security interest, and
- (b) 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.

**Vesting of aircraft object in satisfaction, redemption (giving effect to Article 9).**

12. (1) At any time after default (as defined in section 19) -

- (a) the chargee and all interested persons may agree, or
- (b) the court, on the application of the chargee, may order,

that ownership of, or any other interest of the chargor in, any aircraft asset covered by the charge shall vest in the chargee in or towards satisfaction of the secured obligations.

(2) The court shall grant an application under subsection (1)(b) 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.

(3) At any time after such default and before -

(a) sale of the charged aircraft object, or

(b) the making of an order under subsection (1)(b),

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 section 11(1)(b) or ordered under section 11(2). If, after default, 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.

(4) Ownership or any other interest of the chargor passing on a sale under section 11(1)(b) or passing under subsection (1) is free from any other interest over which the chargee's security interest has priority under section 31.

**Remedies of conditional seller or lessor (giving effect to Article 10).**

13. In the event of default (as defined in section 19) under a title reservation agreement or under a leasing agreement, 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.

**Relief by way of court order pending final determination (giving effect to Articles 13 and X).**

14. (1) A creditor who adduces evidence of default (as defined in section 19) by the debtor shall, pending final determination of the claim and to the extent that the debtor has at any time so agreed, be entitled to obtain from the Royal 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 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 subsection (1), and subject to any applicable aviation safety enactments, "**speedy**" in the context of obtaining relief means -

- (a) in respect of the orders in paragraphs (1)(a) - (c), within 10 working days, and
- (b) in respect of the orders in paragraphs (1)(d) - (e), within 30 working days,

from the day on which the application for relief is filed.

(3) Ownership or any other interest of the debtor passing on a sale under subsection (1)(e) is free from any other interest over which the creditor's international interest has priority under section 31.

(4) In making an order under subsection (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 this Ordinance, 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 subsection (4).

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

(7) Nothing in this section affects the application of section 23(b) or limits the availability of forms of interim relief other than those in subsection (1)

**Additional remedies of creditor: de-registration and export (giving effect to Articles IX(1), (2) and (6), and XIII(4)).**

15. (1) In addition to the remedies specified in sections 11 to 14 and, section 18 the creditor, or the creditor's certified designee, may, to the extent that the debtor has at any time so agreed and in the circumstances specified in those sections -

- (a) procure the de-registration of the aircraft, and
- (b) procure the export and physical transfer of the aircraft object from the place in which it is situated,

as permitted by the applicable law or by section 16 or 17.

(2) The remedies in subsection (1) shall not be exercised without the prior consent in writing of the holder of any registered interest ranking in priority.

(3) A chargee proposing to procure the deregistration and export of an aircraft under subsection (1) otherwise than in accordance with section 16 shall give reasonable prior notice in writing of the proposed deregistration and export to -

- (a) the debtor and the guarantor, and

- (b) any other person having rights in or over the object who has given notice of those rights to the chargee within a reasonable time prior to the deregistration and export.

(4) The Registrar and other administrative authorities shall expeditiously co-operate with and assist the creditor, or the creditor's certified designee, in the exercise of the remedies in subsection (1).

(5) A chargee giving 10 or more working days' prior written notice shall be deemed to satisfy the requirement of providing "**reasonable prior notice**" under subsection (3), but a chargee and a chargor or a guarantor may agree a longer notice period.

**De-registration and export by way of court order (giving effect to Article X(6)).**

16. Subject to any applicable aviation safety enactments, the remedies in subsection 15(1) shall be made available by the Registrar and other administrative authorities, as applicable, in no later than five working days after the creditor notifies such authorities that -

- (a) the relief in section 14 is granted, or
- (b) in the case of relief granted by a foreign court, recognised by the Royal Court,

and that the creditor is entitled to procure those remedies in accordance with this Ordinance.

**De-registration and export by way of request authorisation (giving effect to Article IX(5), XI(8, Alternative A) and XIII(2) and (3)).**

17. (1) This section applies where an airframe pertaining to an aircraft, a helicopter, or an aircraft engine is registered on the Guernsey Aircraft Register, or the Guernsey Engine Register (as the case may be).

(2) Where the debtor has issued an irrevocable de-registration and export request authorisation substantially in the form annexed to the Convention and has submitted such authorisation to the Registrar, that authorisation -

- (a) shall be recorded by the Registrar,
- (b) may not be revoked by the debtor without the consent in writing of the creditor or the creditor's certified designee, and
- (c) shall be removed from the Register at the request of the creditor.

(3) Subject to any applicable aviation safety enactments, the Registrar shall 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 in accordance with -
  - (i) this section, and
  - (ii) any regulations made under section 16(4) of the Law,

- (b) the creditor certifies to the Registrar on request that -
  - (i) all registered interests ranking in priority to that of the creditor in whose favour the authorisation has been issued have been discharged, or
  - (ii) that the holders of such interests have consented to the de-registration and export.

(4) Subject to any applicable aviation safety enactments, the remedies in section 15(1), exercised in accordance with this section, shall be made available by the Registrar and other administrative authorities, as applicable, in no later than five working days after the date on which the creditor notifies such authorities that the creditor is entitled to procure those remedies in accordance with this Ordinance.

**Additional remedies under applicable law (giving effect to Article 12).**

**18.** 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 Part (see section 24).

**Meaning of default (giving effect to Article 11).**

**19.** (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 sections 11 to 20.



(2) Where the debtor and the creditor have not so agreed, "default" for the purposes of sections 11 to 20 means a default which substantially deprives the creditor of what the creditor is entitled to expect under the agreement.

**Debtor provisions (giving effect to Article XVI).**

20. (1) In the absence of a default (as defined in section 19), 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 section 31(5) or, in the capacity of buyer, section 31(4)(b) and (c), 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 section 31(5) or, in the capacity of buyer, section 31(4)(a), but only to the extent, if any, that such holder has agreed.

(2) Nothing in this Ordinance affects the liability of a creditor for any breach of the agreement under the applicable law insofar as that agreement relates to an aircraft object.

**Remedies on insolvency (giving effect to Article XI, Alternative A).**

21. (1) Subject to subsection (5), where Guernsey is the primary insolvency jurisdiction and upon the occurrence of an insolvency-related event, the insolvency administrator or the debtor, as the case may be, shall 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 section did not apply.

(2) For the purposes of this section, the "**waiting period**" shall be the period of sixty calendar days commencing on the date of the insolvency-related event.

(3) Unless and until the creditor is given the opportunity to take possession under subsection (1) -

- (a) the insolvency administrator or the debtor, as the case may be, 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.

(4) Subsection (3)(a) does not preclude the use of the aircraft object under arrangements designed to preserve the object and maintain it and its value.

(5) The insolvency administrator or the debtor, as the case may be, may retain possession of the aircraft object where, by the time specified in subsection (1), 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.

(6) No exercise of remedies permitted by this Ordinance may be prevented or delayed after the date specified in subsection (1).

(7) No obligations of the debtor under the agreement may be modified without the consent of the creditor but this does not affect the authority, if any, of the insolvency administrator under the applicable law to terminate the agreement.

(8) No rights or interests, except for priority non-consensual rights, have priority in insolvency proceedings over registered interests.

**Insolvency assistance (giving effect to Article XII(2)).**

22. Where -

- (a) Guernsey is not the primary insolvency jurisdiction,  
and
- (b) an aircraft object is situated in Guernsey,

the Royal Court shall co-operate with foreign courts and foreign insolvency administrators in order to give effect to section 21, to the maximum extent possible under Guernsey law.

**Exercise of remedies: procedure and standard (giving effect to Articles 14 and IX(3)).**

23. The remedies in this Part shall be exercised in -

- (a) in conformity with the procedure prescribed by the law of the place in which the remedy is to be exercised, and
- (b) in a commercially reasonable manner, which shall be deemed to be done where exercised in conformity with a provision of the agreement, save where such a provision is manifestly unreasonable.

**Derogation and mandatory provisions (giving effect to Articles 15 and IV(3)).**

24. Any two or more of the parties referred to in this Part may at any time, by agreement in writing, exclude the application of section 21 and, in their relations with each other, derogate from or vary the effect of any of the preceding provisions of this Part, except as stated in sections 11(3) to (6), 12(2) and (3), 14(4), 15(2), 15(5) and 23.

PART IV

REGISTRATIONS IN THE INTERNATIONAL REGISTRATION SYSTEM

**International Registration (giving effect to Articles 16, 17, 22, 27, 28 and XVII).**

25. (1) The International Registry established by Article 16 of the Convention, and the functions thereof, are recognised as a matter of Guernsey law.

(2) The Supervisory Authority and the office of Registrar of the International Registry established by Article 17 and in respect of which provision is made in Articles 27, 28 and XVII, are recognised, as a matter of Guernsey law, together with the functions thereof.

(3) The following interests may be registered directly upon the International Register, in accordance with the International Regulations -

- (a) international interests and prospective international interests,
- (b) assignments and prospective assignments of international interests,
- (c) acquisitions of international interests by legal or contractual subrogations under the applicable law,
- (d) subordinations of the interests in paragraphs (a) - (c), and
- (e) sales and prospective sales.

(4) For the purposes of this Part, the term "**registration**" includes, where appropriate, an amendment, extension or discharge of a registration.

(5) Searches of the International Registry shall be conducted as prescribed by Article 22 of the Convention, and in accordance with the International Regulations.

**Validity and time of registration (giving effect to Articles 19 and XX(1)).**

26. (1) A registration is only valid if made in conformity with section 27.

(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 subsection (2) 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 (see sections 8 and 9 respectively).

(5) Subsection (4) 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 database according to the name of its manufacturer, its manufacturer's serial number and its model designation, as further specified in the International Regulations.

**Consent to registration (giving effect to Article 20).**

27. (1) An international interest, a prospective international interest, an assignment or prospective assignment of an international interest, or a sale or a prospective sale may be registered, and any such registration extended prior to its expiry (see section 28) 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.

**Duration of registration (giving effect to Articles 21 and V(3))**

28. (1) Registration of an international interest, or a prospective sale, remains effective until discharged or until expiry of the period specified in the registration.

(2) Registration of a sale remains effective indefinitely.

**Evidentiary value of certificates (giving effect to Article 24).**

29. A document in the form prescribed by the International 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.

**Discharge of registration (giving effect to Articles 25 and XX(2)).**

30. (1) Where -

- (a) the obligations secured by a registered security interest have been discharged, or
- (b) 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 subsection (2) 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 written demand.

(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, delivered to or received at that person's address stated in the registration.

PART V  
EFFECTS OF AN INTERNATIONAL INTEREST AS AGAINST THIRD  
PARTIES

**Priority of competing interests (giving effect to Articles 29, 39(1), III and XIV).**

31. (1) Preferred taxes and preferred liens, "**priority non-consensual rights**", have priority over registered international interests, whether in or outside of insolvency proceedings.

(2) A registered international interest has priority over any other interest subsequently registered and over an unregistered interest (see also section 37 in relation to priority of competing assignments).

(3) The priority of the first-mentioned interest under subsection (2) applies -

- (a) even if that interest was acquired or registered with actual knowledge of the other interest, and
- (c) even as regards value given by the holder of that interest with such knowledge.

(4) A buyer of an aircraft object under a registered sale acquires its interest in that object -

- (a) subject to an interest previously registered,
- (b) free from an interest subsequently registered, and
- (c) free from an unregistered interest, even if the buyer has actual knowledge of the unregistered interest.

(5) A conditional buyer or lessee of an aircraft object 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 section 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 section to an interest in an aircraft object extends to the proceeds thereof.

- (8) This Ordinance -
- (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) Subsection (8) applies to an item, other than an aircraft object, installed on an airframe, aircraft engine or helicopter.

**Effects of insolvency (giving effect to Article 30).**

**32.** (1) In insolvency proceedings against a debtor an international interest or sale, as the case may be, is effective if prior to the commencement of the insolvency proceedings that interest or sale was registered in conformity with this Ordinance.

- (2) Nothing in this section -
- (a) impairs the effectiveness of an international interest or sale in the insolvency proceedings where that interest is effective under the applicable law,

- (b) 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
- (c) affects any rules of procedure relating to the enforcement of rights to property which is under the control or supervision of the insolvency administrator.

## PART VI

### ASSIGNMENTS OF ASSOCIATED RIGHTS AND INTERNATIONAL INTERESTS, RIGHTS OF SUBROGATION

#### **Formal requirements of assignment (giving effect to Article 32).**

33. (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 Ordinance 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 Ordinance does not apply to an assignment of associated rights which is not effective to transfer the related international interest.

**Effects of assignment (giving effect to Article 31).**

34. (1) Except as otherwise agreed by the parties, an assignment of associated rights made in conformity with section 33 also transfers to the assignee -

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

(2) Nothing in this Ordinance prevents a partial assignment of the assignor's associated rights. In the case of a partial assignment the assignor and assignee may agree their respective rights concerning the related international interest assigned under subsection (1) but not so as adversely to affect the debtor without the debtor's consent.

(3) Subject to subsection (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 subsection (3) 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 revest in the assignor, to the extent that they are still subsisting, when the obligations secured by the assignment have been discharged.

**Debtor's duty to assignee (giving effect to Articles 33 and XV).**

35. (1) To the extent that associated rights and the related international interest have been transferred in accordance with sections 34 and 33, 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, 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 basis on which payment or performance by the debtor discharges the debtor from liability, payment or performance shall be effective for this purpose if made in accordance with subsection (1).

(3) Nothing in this section shall affect the priority of competing assignments.

**Default remedies in respect of assignment by way of security (giving effect to Article 34).**

36. In the event of default by the assignor under the assignment of associated rights and the related international interest made by way of security, sections 11, 12, 14, 18, 19 and 23 apply in the relations between the assignor and the assignee (and, in relation to associated rights, apply insofar 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.

**Priority of competing assignments (giving effect to Article 35).**

37. (1) Where there are competing assignments of associated rights and -

- (a) at least one of the assignments includes the related international interest, and
- (b) the assignment of that international interest is registered,

the provisions of section 31 apply as if the references to a registered or unregistered interest were references to a registered or unregistered assignment.

(2) Section 32 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.

**Assignee's priority with respect to associated rights (giving effect to Article 36).**

38. (1) The assignee of associated rights and the related international interest whose assignment has been registered only has priority under section 37(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 subsection (1)(b), 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 paragraphs.

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

**Effects of assignor's insolvency (giving effect to Article 37).**

39. The provisions of section 32 apply to insolvency proceedings against the assignor as if references to the debtor were references to the assignor.

**Subrogation (giving effect to Article 38).**

40. (1) Subject to subsection (2), nothing in this Ordinance 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 subsection (1) 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.

PART VII  
JURISDICTION

**Application of this Part: insolvency proceedings and sales (giving effect to Article 45 and III).**

41. The provisions of this Part -

- (a) are not applicable to insolvency proceedings, and
- (b) with the exception of section 43, also apply to sales and prospective sales.

**Choice of forum (giving effect to Article 42).**

42. (1) Subject to sections 43 and 44, 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 Ordinance, whether or not that 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.

**Jurisdiction under section 14 (giving effect to Article 43 and Article XXI).**

43. (1) Jurisdiction to grant relief of a type described in section 14(1)(a), (b), (c), and section 14(7) in respect of that aircraft object may be exercised either -

- (a) by the courts chosen by the parties in accordance with section 42, or
- (b) by the courts of the place in the Cape Town Convention State in which -
  - (i) the aircraft object is situated or

(ii) the aircraft is registered.

(2) Jurisdiction to grant relief under section 14(1)(d) and (e) or other interim relief by virtue of section 14(7) may be exercised either -

(a) by the courts chosen by the parties in accordance with section 42, or

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

(3) A court has jurisdiction under this section even if the final determination of the claim referred to in section 14(1) will or may take place in a court of another Cape Town Convention State or by arbitration.

**Jurisdiction over the International Registrar (giving effect to Article 44).**

44. The courts of the place in which the International Registrar has its centre of administration have the jurisdiction and powers set out in Article 44 of the Convention.

**Waivers of sovereign immunity (giving effect to Article XXII)**

45. A waiver of sovereign immunity may be made to the extent permitted by, and in accordance with, Article XXII of the Convention.

PART VIII  
AMENDMENT TO REGISTRY LAW

**Amendment to Registry Law.**

46. The Aviation Registry (Guernsey) Law, 2013<sup>d</sup> ("**the Law**") is amended as follows -

- (a) in section 16 insert the following subsection -

"(4) The Department may, after consultation with the Registrar, by regulation make provision for the removal of aircraft and engines from the relevant registers by way of irrevocable de-registration and export request authorisations ("IDERAs")",

- (b) delete section 24(3),

- (c) for the text of section 26, substitute "An engine may only be registered upon the Engine Register in accordance with the provisions of this Part."

- (d) in section 27, for subsections (2) - (4) substitute -

"(2) An engine must not be registered or continue to be registered in Guernsey if it appears to the Registrar that -

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<sup>d</sup> Order in Council No. XIII of 2013 as amended by the Aviation Registry (Guernsey) (Amendment) Ordinance, 2014, No. XI of 2014.

(a) an unqualified person holds any legal or beneficial interest by way of ownership in the engine or any share in the engine,

(b) it would not be in the public interest for the engine to be or to continue to be registered in Guernsey.

(3) The Registrar shall make public the days on which and hours during which the Registrar's office is open for registering engines."

(e) in section 29, for subsections (1) and (2), substitute -

"(1) Subject to section 30(1), if at any time after an engine has been registered in Guernsey an unqualified person becomes entitled to a legal or beneficial interest by way of ownership in the engine or in the aircraft in which it is installed or a share in the engine or in that aircraft, the registration of the engine becomes void and the certificate of registration must be returned immediately by the registered owner to the Registrar and the appropriate changes must be made to the Register.

(2) Any person who is the registered owner of an engine registered in Guernsey must immediately inform the Registrar in writing of the destruction of the engine, its permanent removal from, or installation in, any aircraft or its permanent withdrawal from use."

(f) in section 31 -

(i) in subsection (1) for the words 'A registered' substitute "An", and

(ii) for subsection (3)(a) substitute -

"(a) an "**aircraft asset**" means -

(i) an aircraft, together with any store of spare parts therefor, or

(ii) an aircraft engine, together with any store of spare parts therefor,"

(iii) for subsection (3)(b) substitute -

"(b) a "**charge**" means a prospective or actual interest in an aircraft asset (which extends to the proceeds thereof) granted by the chargor over an aircraft asset under an agreement in writing and which

may be subrogated, subordinated, assigned or otherwise transferred, and chargor and chargee shall be construed accordingly,"

- (g) delete section 35A,
- (h) in section 37 after the word "aircraft" wherever it appears, insert "asset",
- (i) after section 40 insert the following cross headings and sections -

*"Charges over aircraft*

**Nature of charges over aircraft assets.**

**40A.** Where a legal charge is created over an aircraft asset in accordance with section 31(3)(b) and is either -

- (a) subject to the law of Guernsey, or
- (b) a registered charge,

the chargee shall have the benefit of the protection, powers and remedies set out in this Part below, which may be exercised by the chargee accordingly.

*Default remedies***Remedies of chargee.**

**40B.** (1) In the event of default (as defined in section 40I), 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 asset charged to the chargee,
- (b) sell or grant a lease of any such aircraft asset, and
- (c) collect or receive any income or profits arising from the management or use of any such aircraft asset.

(2) The chargee may alternatively apply for a court order authorising or directing any of the acts referred to in subsection (1).

(3) A chargee proposing to sell or grant a lease of an aircraft asset under subsection (1) shall give reasonable prior notice in writing of the proposed sale or lease to -

- (a) the chargor and any guarantor, and
- (b) any other person having rights in or over the object who has given notice of those rights to the chargee within a reasonable time prior to the sale or lease.



(4) A chargee giving 10 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**" under subsection (3), but a chargee and a chargor or a guarantor may agree a longer notice period.

(5) Any sum collected or received by the chargee as a result of exercise of any of the remedies in subsections (1) or (2) shall be applied towards discharge of the amount of the secured obligations, and where such sum exceeds -

- (a) the amount secured, and
- (b) 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 charges or debts of which the chargee has been given notice, in order of priority, and pay any remaining balance to the chargor.

**Vesting of aircraft asset in satisfaction, redemption.**

**40C.** (1) At any time after default (as defined in section 40I) -

- (a) the chargee and all interested persons may agree, or
- (b) the Royal Court, on the application of the chargee, may order,

that ownership of, or any other interest of the chargor in, any aircraft asset covered by the charge shall vest in the chargee in or towards satisfaction of the secured obligations.

(2) The Royal Court shall grant an application under subsection (1)(b) only if the amount of the secured obligations to be satisfied by such vesting is commensurate with the value of the aircraft asset, after taking account of any payment to be made by the chargee to any of the interested persons.

(3) At any time after such default and before -

(a) sale of the charged aircraft asset, or

(b) the making of an order under subsection (1)(b),

the chargor or any interested person may discharge the charge by paying in full the amount secured, subject to any lease granted by the chargee under section 40B(1)(b) or ordered under section 40B(2). If, after default, payment of the amount secured is made in full by an interested person other than the chargor, that person is subrogated to the rights of the chargee.

(4) Ownership or any other interest of the chargor passing on a sale under section 40B(1)(b) or passing under subsection (1) is free from any other interest over which the charge has priority under section 35.

**Relief by way of court order pending final determination.**

**40D.** (1) A chargee who adduces evidence of default (as defined in section 40I), by the chargor shall, pending final determination of the

claim and to the extent that the chargor has at any time so agreed, be entitled to obtain from the Royal Court speedy relief in the form of such one or more of the following orders as the chargee requests -

- (a) preservation of the aircraft asset and its value,
- (b) possession, control or custody of the aircraft asset,
- (c) immobilisation of the aircraft asset,
- (d) lease or, except where covered by paragraphs (a) to (c), management of the aircraft asset and the income therefrom, and
- (e) if at any time the chargor and the chargee specifically agree, sale and application of proceeds therefrom.

(2) For the purposes of subsection (1), and subject to any applicable aviation safety enactments, "**speedy**" in the context of obtaining relief means -

- (a) in respect of the orders in paragraphs (1)(a)-(c), within 10 working days, and
- (b) in respect of the orders in paragraphs (1)(d)-(e), within 30 working days,

from the day on which the application for relief is filed.

(3) Ownership or any other interest of the chargor passing on a sale under subsection (1)(e) is free from any other interest over which the chargee's charge has priority under the provisions of section 35.

(4) In making any order under subsection (1), the court may impose such terms as it considers necessary to protect the interested persons in the event that the chargee -

- (a) in implementing any order granting such relief, fails to perform any of its obligations to the chargor under this Law, or
- (b) fails to establish its claim, wholly or in part, on the final determination of that claim.

(5) The chargee and the chargor or any other interested person may agree in writing to exclude the application of subsection (4).

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

(7) Nothing in this section affects the application of section 40L(b) or limits the availability of forms of interim relief other than those in subsection (1).

**Additional remedies of creditor: de-registration and export.**

**40E.** (1) In addition to the remedies specified in sections 40B, 40C, 40D and 40H, the creditor, or the creditor's certified designee, may, to

the extent that the debtor has at any time so agreed and in the circumstances specified in those sections -

- (a) procure the de-registration of the aircraft, and
- (b) procure the export and physical transfer of the aircraft object from the place in which it is situated,

as permitted by the applicable law or by section 40F or 40G.

(2) The remedies in subsection (1) shall not be exercised without the prior consent in writing of the holder of any registered interest ranking in priority.

(3) A chargee proposing to procure the deregistration and export of an aircraft under subsection (1) otherwise than in accordance with section 40F shall give reasonable prior notice in writing of the proposed deregistration and export to -

- (a) the debtor and the guarantor, and
- (b) any other person having rights in or over the object who has given notice of those rights to the chargee within a reasonable time prior to the deregistration and export.

(4) The Registrar and other administrative authorities shall expeditiously co-operate with and assist the creditor, or the creditor's certified designee, in the exercise of the remedies in subsection (1).

(5) A chargee giving 10 or more working days' prior written notice shall be deemed to satisfy the requirement of providing "**reasonable prior notice**" under subsection (3), but a chargee and a chargor or a guarantor may agree a longer notice period.

**De-registration and export by way of court order.**

**40F.** Subject to any applicable aviation safety enactments, the remedies in subsection 40E(1) shall be made available by the Registrar and other administrative authorities, as applicable, in no later than five working days after the creditor notifies such authorities that -

- (a) the relief in section 40D is granted, or
- (b) in the case of relief granted by a foreign court, recognised by the Royal Court,

and that the creditor is entitled to procure those remedies in accordance with this Law.

**De-registration and export by way of request authorisation.**

**40G.** (1) This section applies where an aircraft asset is registered on the Guernsey Aircraft Register, or the Guernsey Engine Register (as the case may be).

(2) Where the debtor has issued an irrevocable de-registration and export request authorisation and has submitted such authorisation to the Registrar, that authorisation -

- (a) shall be recorded by the Registrar,

- (b) may not be revoked by the debtor without the consent in writing of the creditor or the creditor's certified designee, and
- (c) shall be removed from the Register at the request of the creditor.

(3) Subject to any applicable aviation safety enactments, the Registrar shall 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 in accordance with -
  - (i) this section, and
  - (ii) any regulations made under section 16(4),
- (b) the creditor certifies to the Registrar on request that -
  - (i) all registered interests ranking in priority to that of the creditor in whose favour the authorisation has been issued have been discharged, or

- (ii) that the holders of such interests have consented to the de-registration and export.

(5) Subject to any applicable aviation safety enactments, the remedies in section 40E(1), exercised in accordance with this section, shall be made available by the Registrar in no later than five working days after the date on which the creditor has provided notification that the creditor is entitled to procure those remedies in accordance with this Law.

**Additional remedies.**

**40H.** The following remedies may be exercised to the extent that they are not inconsistent with the mandatory provisions as defined in section 40M -

- (a) any remedies agreed by the parties, and
- (b) where the charge is not subject to the law of Guernsey, any other remedies permitted by the applicable law.

**Meaning of default.**

**40I.** (1) The chargor and the chargee 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 sections 40B to 40J.

(2) Where the chargor and the chargee have not so agreed, "**default**" for the purposes of sections 40B to 40J means a default which substantially deprives the chargee of what it is entitled to expect under the agreement.



**Chargor provisions.**

**40J.** In the absence of a default (as defined in section 40I), the chargor shall be entitled to the quiet possession and use of the aircraft asset in accordance with the agreement as against -

- (a) its chargee and the holder of any charge from which the chargor takes free pursuant to section 35, unless and to the extent that the chargor has otherwise agreed, and
- (b) the holder of any charge to which the chargor's right or interest is subject pursuant to section 35, but only to the extent, if any, that such holder has agreed.

**Remedies on insolvency.**

**40K.** (1) Subject to subsection (4), where Guernsey is the primary insolvency jurisdiction, upon the occurrence of an insolvency-related event, the insolvency administrator or the chargor, as the case may be, shall give possession of the aircraft asset to the chargee no later than the earlier of -

- (a) the end of the waiting period, and
- (b) the date on which the chargee would be entitled to possession of the aircraft asset if this section did not apply.

(2) For the purposes of this section, the "**waiting period**" shall be the period of sixty calendar days commencing on the date of the insolvency-related event.

(3) Unless and until the chargee is given the opportunity to take possession under subsection (1) -

(a) the insolvency administrator or the chargor, as the case may be, shall preserve the aircraft asset and maintain it and its value in accordance with the agreement, and

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

(4) Subsection (3)(a) does not preclude the use of the aircraft asset under arrangements designed to preserve the aircraft asset and maintain it and its value.

(5) The insolvency administrator or the chargor, as the case may be, may retain possession of the aircraft asset where, by the time specified in subsection (1), 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.

(6) No exercise of remedies permitted by this Law may be prevented or delayed after the date specified in subsection (1).

(7) No obligations of the chargor under the agreement may be modified without the consent of the chargee but this does not affect the authority, if any, of the insolvency administrator under the applicable law to terminate the agreement.

(8) No rights or interests, except for a preferred liens or preferred taxes, have priority in insolvency proceedings over registered charges.

**Exercise of remedies: procedure and standard.**

**40L.** The remedies in this Part shall be exercised in -

- (a) in conformity with the procedure prescribed by the law of the place in which it is to be exercised, and
- (b) in a commercially reasonable manner, which shall be deemed to be done where exercised in conformity with a provision of the agreement, save where such a provision is manifestly unreasonable.

**Derogation.**

**40M.** Any two or more of the parties referred to in this Part may at any time, by agreement in writing, exclude the application of section 40K and, in their relations with each other, derogate from or vary the effect of any of the preceding provisions of this Part, except as stated in sections 40B(3) to (5), 40C(2) and (3), 40D(4), 40E(2), 40E(5) and 40L ("the **mandatory provisions**").",

- (j) for section 41, substitute the following -

**"Law applicable to aircraft assets.**

- 41AA.** (1) The law applicable to an aircraft asset is -
- (a) where the matter is governed by an agreement between the parties, the law chosen by the parties in that agreement (*la convention fait la loi des parties*), or
  - (b) if there is no such agreement or no law is chosen, the *lex registri* of the aircraft, or
  - (c) if there is no such agreement, no law is chosen and there is no applicable *lex registri*, the *lex situs* of the aircraft asset.
- (2) Subsection (1) applies to -
- (a) any registered aircraft asset,
  - (b) any aircraft asset -
    - (i) subject to the law of Guernsey, or
    - (ii) situate in Guernsey.

**Law applicable to charges over aircraft assets.**

**41AB.** (1) The law applicable to a legal charge over an aircraft asset is -

- (a) the law chosen by the parties in the agreement creating the charge (*la convention fait la loi des parties*), or
- (b) if no law is chosen, the *lex registri* of the aircraft, or
- (c) if no law is chosen and there is no applicable *lex registri*, the *lex situs* of the aircraft asset.

(2) Subsection (1) applies to -

- (a) any charge over a Guernsey registered aircraft, but where such a charge is registered on the International Registry subsection (1) may not be given effect so as to exclude or affect the operation of the Aviation Registry (Guernsey) (Interests in Aircraft) Ordinance, 2015, and
- (b) any charge subject to the law of Guernsey.

(3) For the purpose of this section, where the law of a legal charge is expressed to be the law of the Bailiwick of Guernsey, the law shall be deemed to be that of the Island of Guernsey.

**Jurisdiction of Royal Court.**

41. The Royal Court sitting as an Ordinary Court ("**the Royal Court**") has jurisdiction in respect of -

- (a) any registered matter and all matters relating thereto,
- (b) any charge subject to -
  - (i) the law of Guernsey, or
  - (ii) the jurisdiction of the Royal Court, and
- (c) any aircraft asset in Guernsey.",
- (k) in section 53 -
  - (i) in the definition of "preferred lien" after the words "Detention of Aircraft (Guernsey and Alderney) Law, 1994", insert "but does not include the lien created by section 1(1)(a)(ii) of that law",
  - (ii) for the definition of "enactment" substitute -

**"enactment"** means a Law, an

Ordinance, an Order in Council, an Act of the UK Parliament and any subordinate legislation made thereunder,"

- (iii) insert the following definitions in the relevant places -

**"applicable law"** means the domestic rules of the law applicable by virtue of the rules of private international law of the relevant forum,

**"interested persons"** means -

- (a) the debtor,
- (b) any guarantor, or
- (c) any other person having rights in or over the aircraft asset,".

**Transitional provision for registered charges under the Law.**

47. Where a charge has been registered on the Charges Register established under the Law, prior to the commencement of this Ordinance, section 35A shall continue apply to that charge for the benefit of the chargee (in addition to the remedies under this Ordinance) as if that section had not been repealed.

PART IX  
GENERAL PROVISIONS

**Constitution and rules of Royal Court.**

48. (1) In this Ordinance, "**the Royal Court**" means the Royal Court sitting as an Ordinary Court constituted by the Bailiff sitting unaccompanied by the Jurats.

(2) The Royal Court sitting as a Full Court may by order make rules dealing with all procedural and incidental matters arising under this Law in respect of the court and its powers, proceedings, practice and procedure.

(3) Rules under subsection (2) may, without limitation, regulate and prescribe -

- (a) the procedure, including the method of pleading, and the practice to be followed in proceedings,
- (b) the means by which matters may be proved, and
- (c) the manner and the way in which evidence may be adduced.

**Definitions (giving effect to Articles 1 and I).**

49. (1) In this Ordinance, except where the context otherwise requires -

"**agreement**" means a security agreement, a title reservation agreement or a leasing agreement,



"**aircraft**" means aircraft as defined for the purposes of the Chicago Convention which are either airframes with aircraft engines installed thereon or helicopters,

"**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 -

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

"**aircraft objects**" means airframes, aircraft engines and helicopters,

"**aircraft register**" means the Guernsey Aircraft Register or another register maintained by a State or common mark registering authority for purposes of the Chicago Convention,

"**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 -

- (a) at least eight (8) persons including crew, or

(b) 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,

**"applicable law"** means the domestic rules of law applicable by virtue of the rules of private international law of the relevant forum,

**"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,

**"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,

**"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,

**"Cape Town Convention State"** means any State that is party to the Cape Town Convention,

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

**"commencement of insolvency proceedings"** means the time at which the insolvency proceedings are deemed to commence under the applicable insolvency law,

**"common mark registering authority"** means the authority maintaining a register in accordance with Section 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,

**"conditional buyer"** means a buyer under a title reservation agreement,

**"conditional seller"** means a seller under a title reservation agreement,

**"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 above),

**"the Convention"** means the Cape Town Convention,

**"court"** means a court of law or an administrative or arbitral tribunal established by a Cape Town Convention State,

**"creditor"** means a chargee under a security agreement, a conditional seller under a title reservation agreement or a lessor under a leasing agreement,

"**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,

"**de-registration of the aircraft**" means deletion or removal of the registration of the aircraft from its an aircraft register in accordance with the Chicago Convention,

"**enactment**" means a Law, an Ordinance, an Order in Council, an Act of the UK Parliament and any subordinate legislation made thereunder,

"**functions**" includes rights, powers, discretions, privileges, obligations, liabilities and duties,

"**guarantee contract**" means a contract entered into by a person as guarantor,

"**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,

"**Guernsey Aircraft Register**" means the Aircraft Register as defined by section 10(1)(a) of the Law,

"**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 -

- (a) at least five (5) persons including crew, or
- (b) 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,

**"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,

**"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,

**"insolvency-related event"** means -

- (a) the commencement of the insolvency proceedings, or
- (b) 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 Ordinance is prevented or suspended by law or State action,

**"interested persons"** means -

- (a) the debtor,
- (b) any guarantor,
- (c) any other person having rights in or over the aircraft object,

**"international interest"** means an interest held by a creditor to which section 2 applies,

**"International Registrar"** means the person or body serving as Registrar under the Cape Town Convention,

**"International Registry"** means the international registration facilities established by the Cape Town Convention,

**"International Regulations"** means the regulations issued by the Supervisory Authority under Articles 17(2)(d) and XVIII of the Cape Town Convention,

**"the Law"** means the Aviation Registry (Guernsey) Law, 2013<sup>e</sup>,

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<sup>e</sup> Order in Council No. XIII of 2013 as amended by the Aviation Registry (Guernsey) (Amendment) Ordinance, 2014, No. XI of 2014.

**"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,

**"non-business day"** means -

- (a) a Saturday, a Sunday, Christmas Day and Good Friday, and
- (b) any day appointed as a public holiday by Ordinance of the States under section 1(1) of the Bills of Exchange (Guernsey) Law, 1958<sup>f</sup>,

**"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,

**"place"** includes a district or territory,

**"pre-existing right or interest"** means a right or interest of any kind in or over an aircraft object created or arising before the commencement of this Ordinance,

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<sup>f</sup> Ordres en Conseil Vol. XVII, p. 384, Vol. XXIV, p. 84, Orders in Council No. XI of 1993, No. XIV of 1994 and No. IX of 2001.

**"preferred liens"** means a lien created by the detention of an aircraft under the Detention of Aircraft (Guernsey and Alderney) Law, 1994<sup>g</sup> but does not include the lien created by section 1(1)(a)(ii) of that Law,

**"preferred taxes"** means any taxes, fees or dues owed to the States of Guernsey in respect of that aircraft asset,

**"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,

**"priority non-consensual right"** has the meaning given in section 31(1),

**"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,

**"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,

**"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

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<sup>g</sup> Ordres en Conseil Vol. XXXV, p. 15.



include the debtor's acquisition of an interest in the aircraft object), whether or not the occurrence of the event is certain,

"**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,

"**registered**" means registered in the International Registry under the Cape Town Convention,

"**registered interest**" means an interest registered with the International Registry pursuant to the Cape Town Convention,

"**registrable non-consensual right**" means a non-consensual right or interest registrable pursuant to a declaration deposited under Article 40 of the Convention,

"**Registrar**" means the Aircraft Registrar as defined by section 1(2) of the Law,

"**regulations**" means regulations made or approved by the Supervisory Authority pursuant to the Cape Town Convention,

"**Royal Court**" means the Royal Court sitting as an Ordinary Court, constituted in accordance with section 48,

"**sale**" means a transfer of ownership of an aircraft object pursuant to a contract of sale,

"**secured obligation**" means an obligation secured by a security interest,

"**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,

"**security interest**" means an interest created by a security agreement,

"**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,

"**Supervisory Authority**" means the body acting as Supervisory Authority under the Cape Town Convention,

"**title reservation agreement**" means an agreement for the sale of an aircraft object on terms that ownership does not pass until fulfillment of the condition or conditions stated in the agreement,

"**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 section 31(1)) which has not been registered, whether or not it is registrable under the Cape Town Convention or this Ordinance,

"**working day**" means any day other than a non business day, and

"**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.

**Transitional provisions (giving effect to Articles 39(4) and 60(1)).**

**50.** (1) This Ordinance does not apply to a pre-existing right or interest, which retains the priority it enjoyed under the applicable law before the commencement of this Ordinance.

(2) A priority non-consensual right has priority over an international interest registered prior to commencement (see section 31(1)).

**Saving (giving effect to Article 39(1)(b)).**

**51.** For the avoidance of doubt, this Ordinance does not affect the rights created by section 1 of the Detention of Aircraft (Guernsey and Alderney) Law, 1994<sup>h</sup> save that where there is an international interest in an aircraft object, the lien created by section 1(1)(a)(ii) of that Law shall not be exercised in connection with that object without the consent of the creditor.

*Citation and commencement*

**Citation.**

**52.** This Ordinance may be cited as the Aviation Registry (Interests in Aircraft) (Guernsey) Ordinance, 2015.

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<sup>h</sup> Ordres en Conseil Vol. XXXV, p. 15.

**Commencement.**

**53.** This Ordinance comes into force on the first day of the month which falls three months after the date on which the United Kingdom, on behalf of Guernsey, deposits the instrument of accession to the Cape Town Convention with the depositary, which commencement date shall be specified by regulations of the Department.

**Extent.**

**54.** This Ordinance has effect in the Island of Guernsey.

## SCHEDULE 1

Section 1(2)

## CONVENTION ON INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT

THE STATES PARTIES TO THIS CONVENTION,

AWARE of the need to acquire and use mobile 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 to create an international registration system for their protection,

TAKING INTO CONSIDERATION the objectives and principles enunciated in existing Conventions relating to such equipment,

HAVE AGREED upon the following provisions:

## CHAPTER I

## SPHERE OF APPLICATION AND GENERAL PROVISIONS

**Article 1 — Definitions**

In this Convention, 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) "**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,
- (c) "**associated rights**" means all rights to payment or other performance by a debtor under an agreement which are secured by or associated with the object,
- (d) "**commencement of the insolvency proceedings**" means the time at which the insolvency proceedings are deemed to commence under the applicable insolvency law,
- (e) "**conditional buyer**" means a buyer under a title reservation agreement,
- (f) "**conditional seller**" means a seller under a title reservation agreement,
- (g) "**contract of sale**" means a contract for the sale of an object by a seller to a buyer which is not an agreement as defined in (a) above,
- (h) "**court**" means a court of law or an administrative or arbitral tribunal established by a Contracting State,

- (i) "**creditor**" means a chargee under a security agreement, a conditional seller under a title reservation agreement or a lessor under a leasing agreement,
- (j) "**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 object is burdened by a registrable non-consensual right or interest,
- (k) "**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,
- (l) "**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,
- (m) "**interested persons**" means:
  - (i) the debtor,
  - (ii) any person who, for the purpose of assuring performance of any of the obligations in favour of the creditor, gives or issues a suretyship or demand guarantee or a standby letter of credit or any other form of credit insurance,
  - (iii) any other person having rights in or over the object,

- (n) "**internal transaction**" means a transaction of a type listed in Article 2(2)(a) to (c) where the centre of the main interests of all parties to such transaction is situated, and the relevant object located (as specified in the Protocol), in the same Contracting State at the time of the conclusion of the contract and where the interest created by the transaction has been registered in a national registry in that Contracting State which has made a declaration under Article 50(1),
- (o) "**international interest**" means an interest held by a creditor to which Article 2 applies,
- (p) "**International Registry**" means the international registration facilities established for the purposes of this Convention or the Protocol,
- (q) "**leasing agreement**" means an agreement by which one person (the lessor) grants a right to possession or control of an object (with or without an option to purchase) to another person (the lessee) in return for a rental or other payment,
- (r) "**national interest**" means an interest held by a creditor in an object and created by an internal transaction covered by a declaration under Article 50(1),
- (s) "**non-consensual right or interest**" means a right or interest conferred under the law of a Contracting State which has made a declaration under Article 39 to secure the performance of an obligation, including an obligation to a State, State entity or an intergovernmental or private organisation,



- (t) "**notice of a national interest**" means notice registered or to be registered in the International Registry that a national interest has been created,
- (u) "**object**" means an object of a category to which Article 2 applies,
- (v) "**pre-existing right or interest**" means a right or interest of any kind in or over an object created or arising before the effective date of this Convention as defined by Article 60(2)(a),
- (w) "**proceeds**" means money or non-money proceeds of an object arising from the total or partial loss or physical destruction of the object or its total or partial confiscation, condemnation or requisition,
- (x) "**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,
- (y) "**prospective international interest**" means an interest that is intended to be created or provided for in an 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 object), whether or not the occurrence of the event is certain,
- (z) "**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,

- (aa) "**Protocol**" means, in respect of any category of object and associated rights to which this Convention applies, the Protocol in respect of that category of object and associated rights,
- (bb) "**registered**" means registered in the International Registry pursuant to Chapter V,
- (cc) "**registered interest**" means an international interest, a registrable non-consensual right or interest or a national interest specified in a notice of a national interest registered pursuant to Chapter V,
- (dd) "**registrable non-consensual right or interest**" means a non-consensual right or interest registrable pursuant to a declaration deposited under Article 40,
- (ee) "**Registrar**" means, in respect of the Protocol, the person or body designated by that Protocol or appointed under Article 17(2)(b),
- (ff) "**regulations**" means regulations made or approved by the Supervisory Authority pursuant to the Protocol,
- (gg) "**sale**" means a transfer of ownership of an object pursuant to a contract of sale,
- (hh) "**secured obligation**" means an obligation secured by a security interest,
- (ii) "**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 object to secure the performance of any existing or future obligation of the chargor or a third person,

- (jj) "**security interest**" means an interest created by a security agreement,
- (kk) "**Supervisory Authority**" means, in respect of the Protocol, the Supervisory Authority referred to in Article 17(1),
- (ll) "**title reservation agreement**" means an agreement for the sale of an object on terms that ownership does not pass until fulfilment of the condition or conditions stated in the agreement,
- (mm) "**unregistered interest**" means a consensual interest or non-consensual right or interest (other than an interest to which Article 39 applies) which has not been registered, whether or not it is registrable under this Convention, and
- (nn) "**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 Convention provides for the constitution and effects of an international interest in certain categories of mobile equipment and associated rights.
2. For the purposes of this Convention, an international interest in mobile equipment is an interest, constituted under Article 7, in a uniquely identifiable

object of a category of such objects listed in paragraph 3 and designated in the Protocol:

- (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 subparagraph (a) does not also fall within subparagraph (b) or (c).

3. The categories referred to in the preceding paragraphs are:

- (a) airframes, aircraft engines and helicopters,
- (b) railway rolling stock, and
- (c) space assets.

4. The applicable law determines whether an interest to which paragraph 2 applies falls within subparagraph (a), (b) or (c) of that paragraph.

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

### **Article 3 — Sphere of application**

1. This Convention applies when, at the time of the conclusion of the agreement creating or providing for the international interest, the debtor is situated in a Contracting State.

2. The fact that the creditor is situated in a non-Contracting State does not affect the applicability of this Convention.

**Article 4 — Where debtor is situated**

1. For the purposes of Article 3(1), the debtor is situated in any Contracting State:

- (a) under the law 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 Convention, 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 Convention 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 the rules of private international law of the forum State.

4. Where a State comprises several territorial units, each of which has its own rules of law in respect of the matter to be decided, and where there is no indication of the relevant territorial unit, the law of that State decides which is the territorial unit whose rules shall govern. In the absence of any such rule, the law of the territorial unit with which the case is most closely connected shall apply.

**Article 6 — Relationship between the Convention and the Protocol**

1. This Convention and the Protocol shall be read and interpreted together as a single instrument.

2. To the extent of any inconsistency between this Convention and the Protocol, the Protocol shall prevail.

CHAPTER II

CONSTITUTION OF AN INTERNATIONAL INTEREST

**Article 7 — Formal requirements**

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

- (a) is in writing,
- (b) relates to an object of which the chargor, conditional seller or lessor has power to dispose,
- (c) enables the object to be identified in conformity with the Protocol,  
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.

CHAPTER III  
DEFAULT REMEDIES

**Article 8 — Remedies of chargee**

1. In the event of default as provided in Article 11, the chargee may, to the extent that the chargor has at any time so agreed and subject to any declaration that may be made by a Contracting State under Article 54, exercise any one or more of the following remedies:

- (a) take possession or control of any object charged to it,
- (b) sell or grant a lease of any such object,
- (c) collect or receive any income or profits arising from the management or use of any such 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. Any remedy set out in sub-paragraph (a), (b) or (c) of paragraph 1 or by Article 13 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 security agreement except where such a provision is manifestly unreasonable.

4. A chargee proposing to sell or grant a lease of an 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(m)(i) and (ii), and
- (b) interested persons specified in Article 1(m)(iii) who have given notice of their rights to the chargee within a reasonable time prior to the sale or lease.

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 9 — Vesting of object in satisfaction; redemption**

1. At any time after default as provided in Article 11, the chargee and all the interested persons may agree that ownership of (or any other interest of the chargor in) any 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 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 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 11 and before sale of the charged 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 8(1)(b) or ordered under Article 8(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 8(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 29.

**Article 10 — 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 11, the conditional seller or the lessor, as the case may be, may:

- (a) subject to any declaration that may be made by a Contracting State under Article 54, terminate the agreement and take possession or control of any object to which the agreement relates, or
- (b) apply for a court order authorising or directing either of these acts.

**Article 11 — 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 8 to 10 and 13.

2. Where the debtor and the creditor have not so agreed, "default" for the purposes of Articles 8 to 10 and 13 means a default which substantially deprives the creditor of what it is entitled to expect under the agreement.

**Article 12 — Additional remedies**

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 15.

**Article 13 — Relief pending final determination**

1. Subject to any declaration that it may make under Article 55, a Contracting State shall ensure that 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 a court speedy relief in the form of such one or more of the following orders as the creditor requests:

- (a) preservation of the object and its value,
- (b) possession, control or custody of the object,
- (c) immobilisation of the object, and
- (d) lease or, except where covered by sub-paragraphs (a) to (c), management of the object and the income therefrom.

2. In making any order under the preceding paragraph, 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 Convention or the Protocol, or
- (b) fails to establish its claim, wholly or in part, on the final determination of that claim.

3. Before making any 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 Article affects the application of Article 8(3) or limits the availability of forms of interim relief other than those set out in paragraph 1.

#### **Article 14 — Procedural requirements**

Subject to Article 54(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.

#### **Article 15 — Derogation**

In their relations with each other, any two or more of the parties referred to in this Chapter may at any time, by agreement in writing, derogate from or vary the effect of any of the preceding provisions of this Chapter except Articles 8(3) to (6), 9(3) and (4), 13(2) and 14.

**Article 16 — The International Registry**

1. An International Registry shall be established for registrations of:
  - (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 national interests, and
  - (e) subordinations of interests referred to in any of the preceding subparagraphs.
2. Different international registries may be established for different categories of object and associated rights.
3. For the purposes of this Chapter and Chapter V, the term "**registration**" includes, where appropriate, an amendment, extension or discharge of a registration.

**Article 17 — The Supervisory Authority and the Registrar**

1. There shall be a Supervisory Authority as provided by the Protocol.
2. The Supervisory Authority shall:

- (a) establish or provide for the establishment of the International Registry,
- (b) except as otherwise provided by the Protocol, appoint and dismiss the Registrar,
- (c) ensure that any rights required for the continued effective operation of the International Registry in the event of a change of Registrar will vest in or be assignable to the new Registrar,
- (d) after consultation with the Contracting States, make or approve and ensure the publication of regulations pursuant to the Protocol dealing with the operation of the International Registry,
- (e) establish administrative procedures through which complaints concerning the operation of the International Registry can be made to the Supervisory Authority,
- (f) supervise the Registrar and the operation of the International Registry,
- (g) at the request of the Registrar, provide such guidance to the Registrar as the Supervisory Authority thinks fit,
- (h) set and periodically review the structure of fees to be charged for the services and facilities of the International Registry,
- (i) do all things necessary to ensure that an efficient notice-based electronic registration system exists to implement the objectives of this Convention and the Protocol, and

- (j) report periodically to Contracting States concerning the discharge of its obligations under this Convention and the Protocol.
3. The Supervisory Authority may enter into any agreement requisite for the performance of its functions, including any agreement referred to in Article 27(3).
4. The Supervisory Authority shall own all proprietary rights in the data bases and archives of the International Registry.
5. The Registrar shall ensure the efficient operation of the International Registry and perform the functions assigned to it by this Convention, the Protocol and the regulations.

CHAPTER V  
OTHER MATTERS RELATING TO REGISTRATION

**Article 18 — Registration requirements**

1. The Protocol and regulations shall specify the requirements, including the criteria for the identification of the object:
- (a) for effecting a registration (which shall include provision for prior electronic transmission of any consent from any person whose consent is required under Article 20),
  - (b) for making searches and issuing search certificates, and, subject thereto,

- (c) for ensuring the confidentiality of information and documents of the International Registry other than information and documents relating to a registration.
2. The Registrar shall not be under a duty to enquire whether a consent to registration under Article 20 has in fact been given or is valid.
3. Where an interest registered as a prospective international interest becomes an international interest, no further registration shall be required provided that the registration information is sufficient for a registration of an international interest.
4. The Registrar shall arrange for registrations to be entered into the International Registry data base and made searchable in chronological order of receipt, and the file shall record the date and time of receipt.
5. The Protocol may provide that a Contracting State may designate an entity or entities in its territory as the entry point or entry points through which the information required for registration shall or may be transmitted to the International Registry. A Contracting State making such a designation may specify the requirements, if any, to be satisfied before such information is transmitted to the International Registry.

**Article 19 — Validity and time of registration**

1. A registration shall be valid only if made in conformity with Article 20.
2. A registration, if valid, shall be complete upon entry of the required information into the International Registry data base 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 becomes an international interest, that international interest shall be treated as registered from the time of registration of the prospective international interest provided that the registration was still current immediately before the international interest was constituted as provided by Article 7.

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

6. A registration shall be searchable in the International Registry data base according to the criteria prescribed by the Protocol.

#### **Article 20 — Consent to registration**

1. An international interest, a prospective international interest or an assignment or prospective assignment of an international interest may be registered, and any such registration amended or extended prior to its expiry, 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.
6. A notice of a national interest may be registered by the holder thereof.

#### **Article 21 — Duration of registration**

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

#### **Article 22 — Searches**

1. Any person may, in the manner prescribed by the Protocol and regulations, make or request a search of the International Registry by electronic means concerning interests or prospective international interests registered therein.
2. Upon receipt of a request therefor, the Registrar, in the manner prescribed by the Protocol and regulations, shall issue a registry search certificate by electronic means with respect to any 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 23 — List of declarations and declared non-consensual rights or interests**

The Registrar shall maintain a list of declarations, withdrawals of declaration and of the categories of nonconsensual right or interest communicated to the Registrar by the Depository as having been declared by Contracting States in conformity with Articles 39 and 40 and the date of each such declaration or withdrawal of declaration. Such list shall be recorded and searchable in the name of the declaring State and shall be made available as provided in the Protocol and regulations to any person requesting it.

**Article 24 — 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 25 — 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 or a prospective assignment of an international interest has been registered, the intending creditor or intending assignee shall, without undue delay, procure the discharge of the registration after written demand by the intending debtor or assignor which is delivered to or received at its address stated in the registration before the intending creditor or assignee has given value or incurred a commitment to give value.

3. Where the obligations secured by a national interest specified in a registered notice of a national interest have been discharged, 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.

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 delivered to or received at its address stated in the registration.

**Article 26 — Access to the international registration facilities**

No person shall be denied access to the registration and search facilities of the International Registry on any ground other than its failure to comply with the procedures prescribed by this Chapter.

CHAPTER VI  
PRIVILEGES AND IMMUNITIES OF THE SUPERVISORY AUTHORITY AND  
THE REGISTRAR

**Article 27 — Legal personality; immunity**

1. The Supervisory Authority shall have international legal personality where not already possessing such personality.
2. The Supervisory Authority and its officers and employees shall enjoy such immunity from legal or administrative process as is specified in the Protocol.
3.
  - (a) The Supervisory Authority shall enjoy exemption from taxes and such other privileges as may be provided by agreement with the host State.
  - (b) For the purposes of this paragraph, "**host State**" means the State in which the Supervisory Authority is situated.
4. The assets, documents, data bases and archives of the International Registry shall be inviolable and immune from seizure or other legal or administrative process.
5. For the purposes of any claim against the Registrar under Article 28(1) or Article 44, the claimant shall be entitled to access to such information and documents as are necessary to enable the claimant to pursue its claim.
6. The Supervisory Authority may waive the inviolability and immunity conferred by paragraph 4.

CHAPTER VII  
LIABILITY OF THE REGISTRAR

**Article 28 — Liability and financial assurances**

1. 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.

4. The Registrar shall procure insurance or a financial guarantee covering the liability referred to in this Article to the extent determined by the Supervisory Authority, in accordance with the Protocol.

CHAPTER VIII  
EFFECTS OF AN INTERNATIONAL INTEREST AS AGAINST THIRD  
PARTIES

**Article 29 — 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. The buyer of an object acquires its interest in it:
  - (a) subject to an interest registered at the time of its acquisition of that interest, and
  - (b) free from an unregistered interest even if it has actual knowledge of such an interest.
- 4. The 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.
- 5. 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.

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

7. This Convention:

- (a) does not affect the rights of a person in an item, other than an object, held prior to its installation on an 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 object, which has previously been installed on an object where under the applicable law those rights are created.

**Article 30 — Effects of insolvency**

1. In insolvency proceedings against the debtor an international interest is effective if prior to the commencement of the insolvency proceedings that interest was registered in conformity with this Convention.

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

3. Nothing in this Article affects:

- (a) 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

- (b) 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 31 — Effects of assignment**

1. Except as otherwise agreed by the parties, an assignment of associated rights made in conformity with Article 32 also transfers to the assignee:
  - (a) the related international interest, and
  - (b) all the interests and priorities of the assignor under this Convention.
2. Nothing in this Convention 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 revert in the assignor, to the extent that they are still subsisting, when the obligations secured by the assignment have been discharged.

**Article 32 — 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 the Protocol 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 also are assigned.

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

**Article 33 — Debtor's duty to assignee**

1. To the extent that associated rights and the related international interest have been transferred in accordance with Articles 31 and 32, 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, and
  - (b) the notice identifies the associated rights.
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 34 — 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 8, 9 and 11 to 14 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 object were references to the assigned associated rights and the related international interest.

**Article 35 — 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 29 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 30 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 36 — 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 35(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 object.

2. For the purposes of sub-paragraph (b) of the preceding paragraph, associated rights are related to an 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 object,

- (b) a sum advanced and utilised for the purchase of another 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 object,
  - (d) the rentals payable in respect of the object, or
  - (e) other obligations arising from a transaction referred to in any of the preceding subparagraphs.
3. In all other cases, the priority of the competing assignments of the associated rights shall be determined by the applicable law.

**Article 37 — Effects of assignor’s insolvency**

The provisions of Article 30 apply to insolvency proceedings against the assignor as if references to the debtor were references to the assignor.

**Article 38 — Subrogation**

1. Subject to paragraph 2, nothing in this Convention 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  
RIGHTS OR INTERESTS SUBJECT TO DECLARATIONS BY CONTRACTING  
STATES

**Article 39 — Rights having priority without registration**

1. A Contracting State may at any time, in a declaration deposited with the Depository of the Protocol declare, generally or specifically:
  - (a) those categories of non-consensual right or interest (other than a right or interest to which Article 40 applies) which under that State's law have priority over an interest in an object equivalent to that of the holder of a registered international interest and which shall have priority over a registered international interest, whether in or outside insolvency proceedings, and
  - (b) that nothing in this Convention shall affect the right of a State or State entity, intergovernmental organisation or other private provider of public services to arrest or detain an object under the laws of that State for payment of amounts owed to such entity, organisation or provider directly relating to those services in respect of that object or another object.
2. A declaration made under the preceding paragraph may be expressed to cover categories that are created after the deposit of that declaration.
3. A non-consensual right or interest has priority over an international interest if and only if the former is of a category covered by a declaration deposited prior to the registration of the international interest.

4. Notwithstanding the preceding paragraph, a Contracting State may, at the time of ratification, acceptance, approval of, or accession to the Protocol, declare that a right or interest of a category covered by a declaration made under subparagraph (a) of paragraph 1 shall have priority over an international interest registered prior to the date of such ratification, acceptance, approval or accession.

**Article 40 — Registrable non-consensual rights or interests**

A Contracting State may at any time in a declaration deposited with the Depository of the Protocol list the categories of non-consensual right or interest which shall be registrable under this Convention as regards any category of object as if the right or interest were an international interest and shall be regulated accordingly. Such a declaration may be modified from time to time.

CHAPTER XI

APPLICATION OF THE CONVENTION TO SALES

**Article 41 — Sale and prospective sale**

This Convention shall apply to the sale or prospective sale of an object as provided for in the Protocol with any modifications therein.

CHAPTER XII

JURISDICTION

**Article 42 — Choice of forum**

1. Subject to Articles 43 and 44, the courts of a Contracting State chosen by the parties to a transaction have jurisdiction in respect of any claim brought under this Convention, 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 43 — Jurisdiction under Article 13**

1. The courts of a Contracting State chosen by the parties and the courts of the Contracting State on the territory of which the object is situated have jurisdiction to grant relief under Article 13(1)(a), (b), (c) and Article 13(4) in respect of that object.

2. Jurisdiction to grant relief under Article 13(1)(d) or other interim relief by virtue of Article 13(4) may be exercised either:

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

(b) by the courts of a Contracting 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 Contracting State.

3. A court has jurisdiction under the preceding paragraphs even if the final determination of the claim referred to in Article 13(1) will or may take place in a court of another Contracting State or by arbitration.

**Article 44 — 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 25 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 this Convention or, in the case of a national interest, an order of a court of competent jurisdiction requiring that person to procure the amendment or discharge of a registration, 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 45 — Jurisdiction in respect of insolvency proceedings**

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

CHAPTER XIII  
RELATIONSHIP WITH OTHER CONVENTIONS

**Article 45bis — Relationship with the *United Nations Convention on the Assignment of Receivables in International Trade***

This Convention shall prevail over the United Nations Convention on the Assignment of Receivables in International Trade, opened for signature in New York on 12 December 2001, as it relates to the assignment of receivables which are associated rights related to international interests in aircraft objects, railway rolling stock and space assets.



**Article 46 — Relationship with the *UNIDROIT Convention on International Financial Leasing***

The Protocol may determine the relationship between this Convention and the UNIDROIT Convention on International Financial Leasing, signed at Ottawa on 28 May 1988.

CHAPTER XIV  
FINAL PROVISIONS

**Article 47 — Signature, ratification, acceptance, approval or accession**

1. This Convention shall be open for signature in Cape Town on 16 November 2001 by States participating in the Diplomatic Conference to Adopt a Mobile Equipment Convention and an Aircraft Protocol held at Cape Town from 29 October to 16 November 2001. After 16 November 2001, the Convention shall be open to all States for signature at the Headquarters of the International Institute for the Unification of Private Law (UNIDROIT) in Rome until it enters into force in accordance with Article 49.

2. This Convention shall be subject to ratification, acceptance or approval by States which have signed it.

3. Any State which does not sign this Convention may accede to it at any time.

4. Ratification, acceptance, approval or accession is effected by the deposit of a formal instrument to that effect with the Depositary.

**Article 48 — Regional Economic Integration Organisations**

1. A Regional Economic Integration Organisation which is constituted by sovereign States and has competence over certain matters governed by this Convention may similarly sign, accept, approve or accede to this Convention.

The Regional Economic Integration Organisation shall in that case have the rights and obligations of a Contracting State, to the extent that that Organisation has competence over matters governed by this Convention. Where the number of Contracting States is relevant in this Convention, the Regional Economic Integration Organisation shall not count as a Contracting State in addition to its Member States which are Contracting States.

2. The Regional Economic Integration Organisation shall, at the time of signature, acceptance, approval or accession, make a declaration to the Depositary specifying the matters governed by this Convention in respect of which competence has been transferred to that Organisation by its Member States. The Regional Economic Integration Organisation shall promptly notify the Depositary of any changes to the distribution of competence, including new transfers of competence, specified in the declaration under this paragraph.

3. Any reference to a "**Contracting State**" or "**Contracting States**" or "**State Party**" or "**States Parties**" in this Convention applies equally to a Regional Economic Integration Organisation where the context so requires.

#### **Article 49 — Entry into force**

1. This Convention enters into force on the first day of the month following the expiration of three months after the date of the deposit of the third instrument of ratification, acceptance, approval or accession but only as regards a category of objects to which a Protocol applies:

- (a) as from the time of entry into force of that Protocol,
- (b) subject to the terms of that Protocol, and
- (c) as between States Parties to this Convention and that Protocol.

2. For other States this Convention enters into force on the first day of the month following the expiration of three months after the date of the deposit of their instrument of ratification, acceptance, approval or accession but only as regards a category of objects to which a Protocol applies and subject, in relation to such Protocol, to the requirements of sub-paragraphs (a), (b) and (c) of the preceding paragraph.

#### **Article 50 — Internal transactions**

1. A Contracting State may, at the time of ratification, acceptance, approval of, or accession to the Protocol, declare that this Convention shall not apply to a transaction which is an internal transaction in relation to that State with regard to all types of objects or some of them.

2. Notwithstanding the preceding paragraph, the provisions of Articles 8(4), 9(1), 16, Chapter V, Article 29, and any provisions of this Convention relating to registered interests shall apply to an internal transaction.

3. Where notice of a national interest has been registered in the International Registry, the priority of the holder of that interest under Article 29 shall not be affected by the fact that such interest has become vested in another person by assignment or subrogation under the applicable law.

#### **Article 51 — Future Protocols**

1. The Depositary may create working groups, in co-operation with such relevant non-governmental organisations as the Depositary considers appropriate, to assess the feasibility of extending the application of this Convention, through one or more Protocols, to objects of any category of high-value mobile equipment, other than a category referred to in Article 2(3), each member of which is uniquely identifiable, and associated rights relating to such objects.

2. The Depositary shall communicate the text of any preliminary draft Protocol relating to a category of objects prepared by such a working group to all States Parties to this Convention, all member States of the Depositary, member States of the United Nations which are not members of the Depositary and the relevant intergovernmental organisations, and shall invite such States and organisations to participate in intergovernmental negotiations for the completion of a draft Protocol on the basis of such a preliminary draft Protocol.

3. The Depositary shall also communicate the text of any preliminary draft Protocol prepared by such a working group to such relevant non-governmental organisations as the Depositary considers appropriate. Such non-governmental organisations shall be invited promptly to submit comments on the text of the preliminary draft Protocol to the Depositary and to participate as observers in the preparation of a draft Protocol.

4. When the competent bodies of the Depositary adjudge such a draft Protocol ripe for adoption, the Depositary shall convene a diplomatic conference for its adoption.

5. Once such a Protocol has been adopted, subject to paragraph 6, this Convention shall apply to the category of objects covered thereby.

6. Article 45*bis* of this Convention applies to such a Protocol only if specifically provided for in that Protocol.

#### **Article 52 — Territorial units**

1. If a Contracting State has territorial units in which different systems of law are applicable in relation to the matters dealt with in this Convention, it may, at the time of ratification, acceptance, approval or accession, declare that this Convention

is to extend to all its territorial units or only to one or more of them and may modify its declaration by submitting another declaration at any time.

2. Any such declaration shall state expressly the territorial units to which this Convention applies.

3. If a Contracting State has not made any declaration under paragraph 1, this Convention shall apply to all territorial units of that State.

4. Where a Contracting State extends this Convention to one or more of its territorial units, declarations permitted under this Convention may be made in respect of each such territorial unit, and the declarations made in respect of one territorial unit may be different from those made in respect of another territorial unit.

5. If by virtue of a declaration under paragraph 1, this Convention extends to one or more territorial units of a Contracting State:

- (a) the debtor is considered to be situated in a Contracting State only if it is incorporated or formed under a law in force in a territorial unit to which this Convention applies or if it has its registered office or statutory seat, centre of administration, place of business or habitual residence in a territorial unit to which this Convention applies,
- (b) any reference to the location of the object in a Contracting State refers to the location of the object in a territorial unit to which this Convention applies, and
- (c) any reference to the administrative authorities in that Contracting State shall be construed as referring to the administrative authorities

having jurisdiction in a territorial unit to which this Convention applies.

**Article 53 — Determination of courts**

A Contracting State may, at the time of ratification, acceptance, approval of, or accession to the Protocol, declare the relevant "court" or "courts" for the purposes of Article 1 and Chapter XII of this Convention.

**Article 54 — Declarations regarding remedies**

1. A Contracting State may, at the time of ratification, acceptance, approval of, or accession to the Protocol, declare that while the charged object is situated within, or controlled from its territory the chargee shall not grant a lease of the object in that territory.

2. A Contracting State shall, at the time of ratification, acceptance, approval of, or accession to the Protocol, declare whether or not any remedy available to the creditor under any provision of this Convention which is not there expressed to require application to the court may be exercised only with leave of the court.

**Article 55 — Declarations regarding relief pending final determination**

A Contracting State may, at the time of ratification, acceptance, approval of, or accession to the Protocol, declare that it will not apply the provisions of Article 13 or Article 43, or both, wholly or in part. The declaration shall specify under which conditions the relevant Article will be applied, in case it will be applied partly, or otherwise which other forms of interim relief will be applied.

**Article 56 — Reservations and declarations**

1. No reservations may be made to this Convention but declarations authorised by Articles 39, 40, 50, 52, 53, 54, 55, 57, 58 and 60 may be made in accordance with these provisions.

2. Any declaration or subsequent declaration or any withdrawal of a declaration made under this Convention shall be notified in writing to the Depositary.

**Article 57 — Subsequent declarations**

1. A State Party may make a subsequent declaration, other than a declaration authorised under Article 60, at any time after the date on which this Convention has entered into force for it, by notifying the Depositary to that effect.

2. Any such subsequent declaration shall take effect on the first day of the month following the expiration of six months after the date of receipt of the notification by the Depositary. Where a longer period for that declaration to take effect is specified in the notification, it shall take effect upon the expiration of such longer period after receipt of the notification by the Depositary.

3. Notwithstanding the previous paragraphs, this Convention shall continue to apply, as if no such subsequent declarations had been made, in respect of all rights and interests arising prior to the effective date of any such subsequent declaration.

**Article 58 — Withdrawal of declarations**

1. Any State Party having made a declaration under this Convention, other than a declaration authorised under Article 60, may withdraw it at any time by notifying the Depositary. Such withdrawal is to take effect on the first day of the month following the expiration of six months after the date of receipt of the notification by the Depositary.

2. Notwithstanding the previous paragraph, this Convention shall continue to apply, as if no such withdrawal of declaration had been made, in respect of all rights and interests arising prior to the effective date of any such withdrawal.

**Article 59 — Denunciations**

1. Any State Party may denounce this Convention by notification in writing to the Depositary.
2. Any such denunciation shall take effect on the first day of the month following the expiration of twelve months after the date on which notification is received by the Depositary.
3. Notwithstanding the previous paragraphs, this Convention shall continue to apply, as if no such denunciation had been made, in respect of all rights and interests arising prior to the effective date of any such denunciation.

**Article 60 — Transitional provisions**

1. Unless otherwise declared by a Contracting State at any time, the Convention 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 Convention.
2. For the purposes of Article 1(v) and of determining priority under this Convention:
  - (a) "**effective date of this Convention**" means in relation to a debtor the time when this Convention enters into force or the time when the State in which the debtor is situated becomes a Contracting State, whichever is the later, and
  - (b) the debtor is situated in a State where it has its centre of administration or, if it has no centre of administration, its place of business or, if it has more than one place of business, its principal



place of business or, if it has no place of business, its habitual residence.

3. A Contracting State may in its declaration under paragraph 1 specify a date, not earlier than three years after the date on which the declaration becomes effective, when this Convention and the Protocol will become applicable, for the purpose of determining priority, including the protection of any existing priority, to pre-existing rights or interests arising under an agreement made at a time when the debtor was situated in a State referred to in sub-paragraph (b) of the preceding paragraph but only to the extent and in the manner specified in its declaration.

**Article 61 — Review Conferences, amendments and related matters**

1. The Depositary shall prepare reports yearly or at such other time as the circumstances may require for the States Parties as to the manner in which the international regimen established in this Convention has operated in practice. In preparing such reports, the Depositary shall take into account the reports of the Supervisory Authority concerning the functioning of the international registration system.

2. At the request of not less than twenty-five per cent of the States Parties, Review Conferences of States Parties shall be convened from time to time by the Depositary, in consultation with the Supervisory Authority, to consider:

- (a) the practical operation of this Convention and its effectiveness in facilitating the asset-based financing and leasing of the objects covered by its terms,
- (b) the judicial interpretation given to, and the application made of the terms of this Convention and the regulations,

- (c) the functioning of the international registration system, the performance of the Registrar and its oversight by the Supervisory Authority, taking into account the reports of the Supervisory Authority, and
- (d) whether any modifications to this Convention or the arrangements relating to the International Registry are desirable.

3. Subject to paragraph 4, any amendment to this Convention shall be approved by at least a two-thirds majority of States Parties participating in the Conference referred to in the preceding paragraph and shall then enter into force in respect of States which have ratified, accepted or approved such amendment when ratified, accepted, or approved by three States in accordance with the provisions of Article 49 relating to its entry into force.

4. Where the proposed amendment to this Convention is intended to apply to more than one category of equipment, such amendment shall also be approved by at least a two-thirds majority of States Parties to each Protocol that are participating in the Conference referred to in paragraph 2.

#### **Article 62 — Depositary and its functions**

1. Instruments of ratification, acceptance, approval or accession shall be deposited with the International Institute for the Unification of Private Law (UNIDROIT), which is hereby designated the Depositary.

2. The Depositary shall:

- (a) inform all Contracting States of:

- (i) each new signature or deposit of an instrument of ratification, acceptance, approval or accession, together with the date thereof,
  - (ii) the date of entry into force of this Convention,
  - (iii) each declaration made in accordance with this Convention, together with the date thereof,
  - (iv) the withdrawal or amendment of any declaration, together with the date thereof, and
  - (v) the notification of any denunciation of this Convention together with the date thereof and the date on which it takes effect,
- (b) transmit certified true copies of this Convention to all Contracting States,
- (c) provide the Supervisory Authority and the Registrar with a copy of each instrument of ratification, acceptance, approval or accession, together with the date of deposit thereof, of each declaration or withdrawal or amendment of a declaration and of each notification of denunciation, together with the date of notification thereof, so that the information contained therein is easily and fully available, and
- (d) perform such other functions customary for depositaries.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, having been duly authorised, have signed this Convention.

DONE at Cape Town, this sixteenth day of November, two thousand and one, in a single original in the English, Arabic, Chinese, French, Russian and Spanish languages, all texts being equally authentic, such authenticity to take effect upon verification by the Joint Secretariat of the Conference under the authority of the President of the Conference within ninety days hereof as to the conformity of the texts with one another.

## SCHEDULE 2

Section 1(3)

PROTOCOL TO THE CONVENTION ON INTERNATIONAL INTERESTS IN  
MOBILE EQUIPMENT ON MATTERS SPECIFIC TO AIRCRAFT  
EQUIPMENT

THE STATES PARTIES TO THIS PROTOCOL,

CONSIDERING it necessary to implement the Convention on International Interests in Mobile Equipment (hereinafter referred to as "**the Convention**") as it relates to aircraft equipment, in the light of the purposes set out in the preamble to the Convention,

MINDFUL of the need to adapt the Convention to meet the particular requirements of aircraft finance and to extend the sphere of application of the Convention to include contracts of sale of aircraft equipment,

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

HAVE AGREED upon the following provisions relating to aircraft equipment:

## CHAPTER I

## SPHERE OF APPLICATION AND GENERAL PROVISIONS

**Article I — Defined terms**

1. In this Protocol, except where the context otherwise requires, terms used in it have the meanings set out in the Convention.
2. In this Protocol the following terms are employed with the meanings set out below:

- (a) "**aircraft**" means aircraft as defined for the purposes of the Chicago Convention which are either airframes with aircraft engines installed thereon or helicopters,
  
- (b) "**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,
  
- (c) "**aircraft objects**" means airframes, aircraft engines and helicopters,
  
- (d) "**aircraft register**" means a register maintained by a State or a common mark registering authority for the purposes of the Chicago Convention,
  
- (e) "**airframes**" means airframes (other than those used in military, customs or 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,

- (f) "**authorised party**" means the party referred to in Article XIII(3),
- (g) "**Chicago Convention**" means the Convention on International Civil Aviation, signed at Chicago on 7 December 1944, as amended, and its Annexes,
- (h) "**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,
- (i) "**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,
- (j) "**guarantee contract**" means a contract entered into by a person as guarantor,

(k) "**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,

(l) "**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,

(m) "**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 the Convention is prevented or suspended by law or State action,



- (n) "**primary insolvency jurisdiction**" means the Contracting 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,
- (o) "**registry authority**" means the national authority or the common mark registering authority, maintaining an aircraft register in a Contracting State and responsible for the registration and de-registration of an aircraft in accordance with the Chicago Convention, and
- (p) "**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.

#### **Article II — Application of Convention as regards aircraft objects**

1. The Convention shall apply in relation to aircraft objects as provided by the terms of this Protocol.
2. The Convention and this Protocol shall be known as the Convention on International Interests in Mobile Equipment as applied to aircraft objects.

#### **Article III — Application of Convention to sales**

The following provisions of the Convention apply as if references to an agreement creating or providing for an international interest were references to a contract of sale and as if references to an international interest, a prospective international interest, the debtor and the creditor were references to a sale, a prospective sale, the seller and the buyer respectively:

Articles 3 and 4,  
Article 16(1)(a),  
Article 19(4),  
Article 20(1) (as regards registration of a contract of sale or a prospective sale),  
Article 25(2) (as regards a prospective sale), and  
Article 30.

In addition, the general provisions of Article 1, Article 5, Chapters IV to VII, Article 29 (other than Article 29(3) which is replaced by Article XIV(1) and (2)), Chapter X, Chapter XII (other than Article 43), Chapter XIII and Chapter XIV (other than Article 60) shall apply to contracts of sale and prospective sales.

#### **Article IV — Sphere of application**

1. Without prejudice to Article 3(1) of the Convention, the Convention shall also apply in relation to a helicopter, or to an airframe pertaining to an aircraft, registered in an aircraft register of a Contracting 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.
  
2. For the purposes of the definition of "**internal transaction**" in Article 1 of the Convention:
  - (a) an airframe is located in the State of registry of the aircraft of which it is a part,
  
  - (b) an aircraft engine is located in the State of registry of the aircraft on which it is installed or, if it is not installed on an aircraft, where it is physically located, and

- (c) a helicopter is located in its State of registry,

at the time of the conclusion of the agreement creating or providing for the interest.

3. The parties may, by agreement in writing, exclude the application of Article XI and, in their relations with each other, derogate from or vary the effect of any of the provisions of this Protocol except Article IX (2)-(4).

**Article V — Formalities, effects and registration of contracts of sale**

1. For the purposes of this Protocol, 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 Protocol.

2. A contract of sale transfers the interest of the seller in the aircraft object to the buyer according to its terms.

3. 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 VI — 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, in an agency, trust or other representative

capacity. In such case, that person is entitled to assert rights and interests under the Convention.

**Article VII — 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 object for the purposes of Article 7(c) of the Convention and Article V(1)(c) of this Protocol.

**Article VIII — Choice of law**

1. This Article applies only where a Contracting State has made a declaration pursuant to Article XXX(1).

2. The parties to an agreement, or a contract of sale, or a related guarantee contract or subordination agreement may agree on the law which is to govern their contractual rights and obligations, wholly or in part.

3. 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.

CHAPTER II

DEFAULT REMEDIES, PRIORITIES AND ASSIGNMENTS

**Article IX — Modification of default remedies provisions**

1. In addition to the remedies specified in Chapter III of the Convention, the creditor may, to the extent that the debtor has at any time so agreed and in the circumstances specified in that Chapter:

- (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. Article 8(3) of the Convention shall not apply to aircraft objects. Any remedy given by the Convention 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.

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 Article 8(4) of the Convention. The foregoing shall not prevent a chargee and a chargor or a guarantor from agreeing to a longer period of prior notice.

5. The registry authority in a Contracting State 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 deregistration 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.

6. A chargee proposing to procure the de-registration 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(m)(i) and (ii) of the Convention, and

- (b) interested persons specified in Article 1(m)(iii) of the Convention who have given notice of their rights to the chargee within a reasonable time prior to the de-registration and export.

**Article X — Modification of provisions regarding relief pending final determination**

1. This Article applies only where a Contracting State has made a declaration under Article XXX(2) and to the extent stated in such declaration.

2. For the purposes of Article 13(1) of the Convention, "**speedy**" in the context of obtaining relief means within such number of working days from the date of filing of the application for relief as is specified in a declaration made by the Contracting State in which the application is made.

3. Article 13(1) of the Convention applies with the following being added immediately after sub-paragraph (d):

"(e) if at any time the debtor and the creditor specifically agree, sale and application of proceeds therefrom",

and Article 43(2) applies with the insertion after the words "Article 13(1)(d)" of the words "and (e)".

4. Ownership or any other interest of the debtor passing on a sale under the preceding paragraph is free from any other interest over which the creditor's international interest has priority under the provisions of Article 29 of the Convention.

5. The creditor and the debtor or any other interested person may agree in writing to exclude the application of Article 13(2) of the Convention.

6. With regard to the remedies in Article IX(1):

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

7. Paragraphs 2 and 6 shall not affect any applicable aviation safety laws and regulations.

**Article XI — Remedies on insolvency**

1. This Article applies only where a Contracting State that is the primary insolvency jurisdiction has made a declaration pursuant to Article XXX(3).

*Alternative A*

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 specified in a declaration of the Contracting State which is the primary insolvency jurisdiction.

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 IX(1):

- (a) they shall be made available by the registry authority and the administrative authorities in a Contracting State, 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 the Convention, 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 the Convention or this Protocol 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 non-consensual rights or interests of a category covered by a declaration pursuant to Article 39(1), shall have priority in insolvency proceedings over registered interests.

13. The Convention as modified by Article IX of this Protocol shall apply to the exercise of any remedies under this Article.

*Alternative B*

2. Upon the occurrence of an insolvency-related event, the insolvency administrator or the debtor, as applicable, upon the request of the creditor, shall give notice to the creditor within the time specified in a declaration of a Contracting State pursuant to Article XXX(3) whether it will:

- (a) cure all defaults other than a default constituted by the opening of insolvency proceedings and agree to perform all future obligations, under the agreement and related transaction documents, or
- (b) give the creditor the opportunity to take possession of the aircraft object, in accordance with the applicable law.

3. The applicable law referred to in sub-paragraph (b) of the preceding paragraph may permit the court to require the taking of any additional step or the provision of any additional guarantee.

4. The creditor shall provide evidence of its claims and proof that its international interest has been registered.

5. If the insolvency administrator or the debtor, as applicable, does not give notice in conformity with paragraph 2, or when the insolvency administrator or the debtor has declared that it will give the creditor the opportunity to take possession of the aircraft object but fails to do so, the court may permit the creditor to take possession of the aircraft object upon such terms as the court may order and may require the taking of any additional step or the provision of any additional guarantee.

6. The aircraft object shall not be sold pending a decision by a court regarding the claim and the international interest.

#### **Article XII — Insolvency assistance**

1. This Article applies only where a Contracting State has made a declaration pursuant to Article XXX(1).

2. The courts of a Contracting State in which an aircraft object is situated shall, in accordance with the law of the Contracting State, co-operate to the maximum extent possible with foreign courts and foreign insolvency administrators in carrying out the provisions of Article XI.

#### **Article XIII — De-registration and export request authorisation**

1. This Article applies only where a Contracting State has made a declaration pursuant to Article XXX(1).

2. Where the debtor has issued an irrevocable de-registration and export request authorisation substantially in the form annexed to this Protocol and has

submitted such authorisation for recordation to the registry authority, that authorisation shall be so recorded.

3. The person in whose favour the authorisation has been issued (the "**authorised party**") or its certified designee shall be the sole person entitled to exercise the remedies specified in Article IX(1) and may do so only in accordance with the authorisation and applicable aviation safety laws and regulations.

Such authorisation may not be revoked by the debtor without the consent in writing of the authorised party. The registry authority shall remove an authorisation from the registry at the request of the authorised party.

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

#### **Article XIV — Modification of priority provisions**

1. 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.

2. A buyer of an aircraft object acquires its interest in that object subject to an interest registered at the time of its acquisition.

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

4. Article 29(7) of the Convention applies to an item, other than an object, installed on an airframe, aircraft engine or helicopter.

#### **Article XV — Modification of assignment provisions**

Article 33(1) of the Convention applies as if the following were added immediately after sub-paragraph (b):

"and (c) the debtor has consented in writing, whether or not the consent is given in advance of the assignment or identifies the assignee."

#### **Article XVI — Debtor provisions**

1. In the absence of a default within the meaning of Article 11 of the Convention, the debtor shall be entitled to the quiet possession and use of the 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 29(4) of the Convention or, in the capacity of buyer, Article XIV(1) of this Protocol, 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 29(4) of the Convention or, in the capacity of buyer, Article XIV(2) of this Protocol, but only to the extent, if any, that such holder has agreed.

2. Nothing in the Convention or this Protocol 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.

### CHAPTER III REGISTRY PROVISIONS RELATING TO INTERNATIONAL INTERESTS IN AIRCRAFT OBJECTS

#### **Article XVII — The Supervisory Authority and the Registrar**

1. The Supervisory Authority shall be the international entity designated by a Resolution adopted by the Diplomatic Conference to Adopt a Mobile Equipment Convention and an Aircraft Protocol.
2. Where the international entity referred to in the preceding paragraph is not able and willing to act as Supervisory Authority, a Conference of Signatory and Contracting States shall be convened to designate another Supervisory Authority.
3. 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.
4. The Supervisory Authority may establish a commission of experts, from among persons nominated by Signatory and Contracting States and having the necessary qualifications and experience, and entrust it with the task of assisting the Supervisory Authority in the discharge of its functions.
5. The first Registrar shall operate the International Registry for a period of five years from the date of entry into force of this Protocol. Thereafter, the Registrar shall be appointed or reappointed at regular five-yearly intervals by the Supervisory Authority.

#### **Article XVIII — First regulations**

The first regulations shall be made by the Supervisory Authority so as to take effect upon the entry into force of this Protocol.

#### **Article XIX — Designated entry points**

1. Subject to paragraph 2, a Contracting State may at any time designate an entity or entities in its territory as the entry point or entry points through which there shall or may be transmitted to the International Registry information required

for registration other than registration of a notice of a national interest or a right or interest under Article 40 in either case arising under the laws of another State.

2. A designation made under the preceding paragraph may permit, but not compel, use of a designated entry point or entry points for information required for registrations in respect of aircraft engines.

**Article XX — Additional modifications to Registry provisions**

1. For the purposes of Article 19(6) of the Convention, the search criteria for an aircraft object shall be the name of its manufacturer, its manufacturer's serial number and its model designation, supplemented as necessary to ensure uniqueness.

Such supplementary information shall be specified in the regulations.

2. For the purposes of Article 25(2) of the Convention 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.

3. The fees referred to in Article 17(2)(h) of the Convention shall be determined so as to recover the reasonable costs of establishing, operating and regulating the International Registry and the reasonable costs of the Supervisory Authority associated with the performance of the functions, exercise of the powers, and discharge of the duties contemplated by Article 17(2) of the Convention.

4. The centralised functions of the International Registry shall be operated and administered by the Registrar on a twenty-four hour basis. The various entry points shall be operated at least during working hours in their respective territories.

5. The amount of the insurance or financial guarantee referred to in Article 28(4) of the Convention shall, in respect of each event, not be less than the maximum value of an aircraft object as determined by the Supervisory Authority.

6. Nothing in the Convention shall preclude the Registrar from procuring insurance or a financial guarantee covering events for which the Registrar is not liable under Article 28 of the Convention.

#### CHAPTER IV JURISDICTION

##### **Article XXI — Modification of jurisdiction provisions**

For the purposes of Article 43 of the Convention and subject to Article 42 of the Convention, a court of a Contracting State also has jurisdiction where the object is a helicopter, or an airframe pertaining to an aircraft, for which that State is the State of registry.

##### **Article XXII — Waivers of sovereign immunity**

1. Subject to paragraph 2, a waiver of sovereign immunity from jurisdiction of the courts specified in Article 42 or Article 43 of the Convention or relating to enforcement of rights and interests relating to an aircraft object under the Convention 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.

#### CHAPTER V RELATIONSHIP WITH OTHER CONVENTIONS



**Article XXIII- Relationship with the Convention on the International  
Recognition of Rights in Aircraft**

The Convention shall, for a Contracting State that is a party to the *Convention on the International Recognition of Rights in Aircraft*, signed at Geneva on 19 June 1948, supersede that Convention as it relates to aircraft, as defined in this Protocol, and to aircraft objects. However, with respect to rights or interests not covered or affected by the present Convention, the Geneva Convention shall not be superseded.

**Article XXIV — Relationship with the Convention for the Unification of  
Certain Rules Relating to the Precautionary Attachment of Aircraft**

1. The Convention shall, for a Contracting State that is a Party to the *Convention for the Unification of Certain Rules Relating to the Precautionary Attachment of Aircraft*, signed at Rome on 29 May 1933, supersede that Convention as it relates to aircraft, as defined in this Protocol.

2. A Contracting State Party to the above Convention may declare, at the time of ratification, acceptance, approval of, or accession to this Protocol, that it will not apply this Article.

**Article XXV — Relationship with the UNIDROIT Convention on International  
Financial Leasing**

The Convention shall supersede the *UNIDROIT Convention on International Financial Leasing*, signed at Ottawa on 28 May 1988, as it relates to aircraft objects.

**Article XXVI — Signature, ratification, acceptance, approval or accession**

1. This Protocol shall be open for signature in Cape Town on 16 November 2001 by States participating in the Diplomatic Conference to Adopt a Mobile Equipment Convention and an Aircraft Protocol held at Cape Town from 29 October to 16 November 2001. After 16 November 2001, this Protocol shall be open to all States for signature at the Headquarters of the International Institute for the Unification of Private Law (UNIDROIT) in Rome until it enters into force in accordance with Article XXVIII.
2. This Protocol shall be subject to ratification, acceptance or approval by States which have signed it.
3. Any State which does not sign this Protocol may accede to it at any time.
4. Ratification, acceptance, approval or accession is effected by the deposit of a formal instrument to that effect with the Depositary.
5. A State may not become a Party to this Protocol unless it is or becomes also a Party to the Convention.

**Article XXVII — Regional Economic Integration Organisations**

1. A Regional Economic Integration Organisation which is constituted by sovereign States and has competence over certain matters governed by this Protocol may similarly sign, accept, approve or accede to this Protocol. The Regional Economic Integration Organisation shall in that case have the rights and obligations of a Contracting State, to the extent that that Organisation has competence over matters governed by this Protocol. Where the number of Contracting States is relevant in this Protocol, the Regional Economic Integration Organisation shall not count as a Contracting State in addition to its Member States which are Contracting States.

2. The Regional Economic Integration Organisation shall, at the time of signature, acceptance, approval or accession, make a declaration to the Depository specifying the matters governed by this Protocol in respect of which competence has been transferred to that Organisation by its Member States. The Regional Economic Integration Organisation shall promptly notify the Depository of any changes to the distribution of competence, including new transfers of competence, specified in the declaration under this paragraph.

3. Any reference to a "**Contracting State**" or "**Contracting States**" or "**State Party**" or "**States Parties**" in this Protocol applies equally to a Regional Economic Integration Organisation where the context so requires.

#### **Article XXVIII — Entry into force**

1. This Protocol enters into force on the first day of the month following the expiration of three months after the date of the deposit of the eighth instrument of ratification, acceptance, approval or accession, between the States which have deposited such instruments.

2. For other States this Protocol enters into force on the first day of the month following the expiration of three months after the date of the deposit of its instrument of ratification, acceptance, approval or accession.

#### **Article XXIX — Territorial units**

1. If a Contracting State has territorial units in which different systems of law are applicable in relation to the matters dealt with in this Protocol, it may, at the time of ratification, acceptance, approval or accession, declare that this Protocol is to extend to all its territorial units or only to one or more of them and may modify its declaration by submitting another declaration at any time.

2. Any such declaration shall state expressly the territorial units to which this Protocol applies.

3. If a Contracting State has not made any declaration under paragraph 1, this Protocol shall apply to all territorial units of that State.

4. Where a Contracting State extends this Protocol to one or more of its territorial units, declarations permitted under this Protocol may be made in respect of each such territorial unit, and the declarations made in respect of one territorial unit may be different from those made in respect of another territorial unit.

5. If by virtue of a declaration under paragraph 1, this Protocol extends to one or more territorial units of a Contracting State:

- (a) the debtor is considered to be situated in a Contracting State only if it is incorporated or formed under a law in force in a territorial unit to which the Convention and this Protocol apply or if it has its registered office or statutory seat, centre of administration, place of business or habitual residence in a territorial unit to which the Convention and this Protocol apply,
- (b) any reference to the location of the object in a Contracting State refers to the location of the object in a territorial unit to which the Convention and this Protocol apply, and
- (c) any reference to the administrative authorities in that Contracting State shall be construed as referring to the administrative authorities having jurisdiction in a territorial unit to which the Convention and this Protocol apply and any reference to the national register or to the registry authority in that Contracting State shall be construed as

referring to the aircraft register in force or to the registry authority having jurisdiction in the territorial unit or units to which the Convention and this Protocol apply.

**Article XXX — Declarations relating to certain provisions**

1. A Contracting State may, at the time of ratification, acceptance, approval of, or accession to this Protocol, declare that it will apply any one or more of Articles VIII, XII and XIII of this Protocol.
2. A Contracting State may, at the time of ratification, acceptance, approval of, or accession to this Protocol, declare that it will apply Article X of this Protocol, wholly or in part. If it so declares with respect to Article X(2), it shall specify the time-period required thereby.
3. A Contracting State may, at the time of ratification, acceptance, approval of, or accession to this Protocol, declare that it will apply the entirety of Alternative A, or the entirety of Alternative B of Article XI and, if so, shall specify the types of insolvency proceeding, if any, to which it will apply Alternative A and the types of insolvency proceeding, if any, to which it will apply Alternative B. A Contracting State making a declaration pursuant to this paragraph shall specify the time-period required by Article XI.
4. The courts of Contracting States shall apply Article XI in conformity with the declaration made by the Contracting State which is the primary insolvency jurisdiction.
5. A Contracting State may, at the time of ratification, acceptance, approval of, or accession to this Protocol, declare that it will not apply the provisions of Article XXI, wholly or in part. The declaration shall specify under which conditions

the relevant Article will be applied, in case it will be applied partly, or otherwise which other forms of interim relief will be applied.

**Article XXXI — Declarations under the Convention**

Declarations made under the Convention, including those made under Articles 39, 40, 50, 53, 54, 55, 57, 58 and 60 of the Convention, shall be deemed to have also been made under this Protocol unless stated otherwise.

**Article XXXII — Reservations and declarations**

1. No reservations may be made to this Protocol but declarations authorised by Articles XXIV, XXIX, XXX, XXXI, XXXIII and XXXIV may be made in accordance with these provisions.

2. Any declaration or subsequent declaration or any withdrawal of a declaration made under this Protocol shall be notified in writing to the Depositary.

**Article XXXIII — Subsequent declarations**

1. A State Party may make a subsequent declaration, other than a declaration made in accordance with Article XXXI under Article 60 of the Convention, at any time after the date on which this Protocol has entered into force for it, by notifying the Depositary to that effect.

2. Any such subsequent declaration shall take effect on the first day of the month following the expiration of six months after the date of receipt of the notification by the Depositary. Where a longer period for that declaration to take effect is specified in the notification, it shall take effect upon the expiration of such longer period after receipt of the notification by the Depositary.

3. Notwithstanding the previous paragraphs, this Protocol shall continue to apply, as if no such subsequent declarations had been made, in respect of all rights and interests arising prior to the effective date of any such subsequent declaration.

**Article XXXIV — Withdrawal of declarations**

1. Any State Party having made a declaration under this Protocol, other than a declaration made in accordance with Article XXXI under Article 60 of the Convention, may withdraw it at any time by notifying the Depositary. Such withdrawal is to take effect on the first day of the month following the expiration of six months after the date of receipt of the notification by the Depositary.

2. Notwithstanding the previous paragraph, this Protocol shall continue to apply, as if no such withdrawal of declaration had been made, in respect of all rights and interests arising prior to the effective date of any such withdrawal.

**Article XXXV — Denunciations**

1. Any State Party may denounce this Protocol by notification in writing to the Depositary.

2. Any such denunciation shall take effect on the first day of the month following the expiration of twelve months after the date of receipt of the notification by the Depositary.

3. Notwithstanding the previous paragraphs, this Protocol shall continue to apply, as if no such denunciation had been made, in respect of all rights and interests arising prior to the effective date of any such denunciation.

**Article XXXVI — Review Conferences, amendments and related matters**

1. The Depositary, in consultation with the Supervisory Authority, shall prepare reports yearly, or at such other time as the circumstances may require, for

the States Parties as to the manner in which the international regime established in the Convention as amended by this Protocol has operated in practice. In preparing such reports, the Depositary shall take into account the reports of the Supervisory Authority concerning the functioning of the international registration system.

2. At the request of not less than twenty-five per cent of the States Parties, Review Conferences of the States Parties shall be convened from time to time by the Depositary, in consultation with the Supervisory Authority, to consider:

- (a) the practical operation of the Convention as amended by this Protocol and its effectiveness in facilitating the asset-based financing and leasing of the objects covered by its terms,
- (b) the judicial interpretation given to, and the application made of the terms of this Protocol and the regulations,
- (c) the functioning of the international registration system, the performance of the Registrar and its oversight by the Supervisory Authority, taking into account the reports of the Supervisory Authority, and
- (d) whether any modifications to this Protocol or the arrangements relating to the International Registry are desirable.

3. Any amendment to this Protocol shall be approved by at least a two-thirds majority of States Parties participating in the Conference referred to in the preceding paragraph and shall then enter into force in respect of States which have ratified, accepted or approved such amendment when it has been ratified, accepted



or approved by eight States in accordance with the provisions of Article XXVIII relating to its entry into force.

**Article XXXVII — Depositary and its functions**

1. Instruments of ratification, acceptance, approval or accession shall be deposited with the International Institute for the Unification of Private Law (UNIDROIT), which is hereby designated the Depositary.

2. The Depositary shall:

(a) inform all Contracting States of:

(i) each new signature or deposit of an instrument of ratification, acceptance, approval or accession, together with the date thereof,

(ii) the date of entry into force of this Protocol,

(iii) each declaration made in accordance with this Protocol, together with the date thereof,

(iv) the withdrawal or amendment of any declaration, together with the date thereof, and

(v) the notification of any denunciation of this Protocol together with the date thereof and the date on which it takes effect,

(b) transmit certified true copies of this Protocol to all Contracting States,

- (c) provide the Supervisory Authority and the Registrar with a copy of each instrument of ratification, acceptance, approval or accession, together with the date of deposit thereof, of each declaration or withdrawal or amendment of a declaration and of each notification of denunciation, together with the date of notification thereof, so that the information contained therein is easily and fully available, and
  
- (d) perform such other functions customary for depositaries.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, having been duly authorised, have signed this Protocol.

DONE at Cape Town, this sixteenth day of November, two thousand and one, in a single original in the English, Arabic, Chinese, French, Russian and Spanish languages, all texts being equally authentic, such authenticity to take effect upon verification by the Joint Secretariat of the Conference under the authority of the President of the Conference within ninety days hereof as to the conformity of the texts with one another.

## ANNEX

**FORM OF IRREVOCABLE DE-REGISTRATION AND EXPORT REQUEST  
AUTHORISATION**

Annex referred to in Article XIII

[*Insert Date*]

To: [*Insert Name of Registry Authority*]

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 Article XIII of the Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Aircraft Equipment. In accordance with that Article, the undersigned hereby requests:

- (i) recognition that the authorised party or the person it certifies as its designee is the sole person entitled to:
  - (a) procure the de-registration of the aircraft from the [*insert name of aircraft register*] maintained by the [*insert name of registry authority*] for the purposes of Chapter III of the Convention on International Civil Aviation, signed at Chicago, on 7 December 1944, and
  - (b) procure the export and physical transfer of the aircraft from [*insert name of country*], and
- (ii) confirmation that the authorised party or the person it certifies as its designee may take the action specified in clause (i) above on written demand without the consent of the undersigned and that, upon such demand, the authorities in [*insert name of country*] 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 *[insert name of registry authority]*.

*[insert name of operator/owner]*

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Agreed to and lodged this  
*signatory*  
*[insert date]*

By: *[insert name of*  
*Its: [insert title of signatory]*

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*[insert relevant notational details]*

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\* Select the term that reflects the relevant nationality registration criterion

SCHEDULE 3

Section 1(4)

CAPE TOWN DECLARATIONS

## **The Côte d'Ivoire (Restrictive Measures) (Guernsey) Ordinance, 2015**

THE STATES LEGISLATION SELECT COMMITTEE, in exercise of the powers conferred on the States by sections 1 and 4 of the European Communities (Implementation) (Bailiwick of Guernsey) Law, 1994<sup>a</sup>, as amended and all other powers enabling the States in that behalf, and in exercise of the powers conferred on the Committee by Article 66(3) of the Reform (Guernsey) Law, 1948<sup>b</sup>, as amended, hereby orders:-

### **Application and infringement of EU Regulations.**

1. (1) Subject to the modifications in section 2 -
  - (a) Council Regulation (EC) No 174/2005 of the 31<sup>st</sup> January 2005<sup>c</sup> imposing restrictions on the supply of assistance related to military activities to Côte d'Ivoire ("**the first Regulation**"), and
  - (b) Council Regulation (EC) No 560/2005 of the 12<sup>th</sup> April 2005<sup>d</sup> imposing certain specific restrictive measures directed against certain persons and entities in view of the situation in Côte d'Ivoire ("**the second**

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<sup>a</sup> Ordres en Conseil Vol. XXXV(1), p. 65.

<sup>b</sup> Ordres en Conseil Vol. XIII, p. 288; there are amendments not material to this Ordinance.

<sup>c</sup> OJ L 029, 2.2.2005, p. 5; as amended by (EC) No 2015/192 (OJ L 33/1 10.2.2015).

<sup>d</sup> OJ L 095, 14.4.2005, p. 1.

**Regulation"),**

have full force and effect in Guernsey.

(2) A person who contravenes, or causes or permits any contravention of, any of the prohibitions in or requirements of the EU Regulations is guilty of an offence.

**Modification of Regulations.**

2. The modifications referred to in section 1 are as follows -

- (a) Article 8 of the first Regulation and Articles 11, 12 and 12a of the second Regulation shall not apply,
- (b) a reference to the competent authority of a Member State shall be construed so as to include the Policy Council,
- (c) a reference to the obligation of a competent authority of a Member State, or Member State, to inform or notify shall be construed as an obligation on the part of the Policy Council to inform or notify one of Her Majesty's Principal Secretaries of State,
- (d) a reference to the obligation of any natural or legal person, entity or body to transmit information to the Commission shall be construed as an obligation to transmit such information to the Policy Council,
- (e) a reference to a Member State shall be construed so as

to include Guernsey,

- (f) a reference to the Union shall be construed so as to include Guernsey,
- (g) a reference to a vessel under the jurisdiction of a Member State shall be construed so as to include a Guernsey ship and a Guernsey fishing vessel,
- (h) a reference to an aircraft under the jurisdiction of a Member State shall be construed so as to include an aircraft registered on the Register of Aircraft established under the Aviation Registry (Guernsey) Law, 2013<sup>e</sup>,
- (i) a reference to the territory of the Union and its airspace shall be construed so as to include Guernsey, its airspace and the territorial waters adjacent thereto, and
- (j) the inclusion of any natural or legal person, entity or body in any list provided for by the first Regulation shall be subject to any annulment of the first Regulation in its application to that person, entity or body by the Court of Justice of the European Union and having effect in the European Union for the time being.

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<sup>e</sup> Order in Council No. XIII of 2013; Ordinance No. XI of 2014.



**Appeals against decisions of Policy Council.**

3. (1) A person aggrieved by a decision of the Policy Council made under the EU Regulations may appeal to the Ordinary Court against that decision on the grounds that -

- (a) the decision was ultra vires or there was some other error of law,
- (b) the decision was unreasonable,
- (c) the decision was made in bad faith,
- (d) there was a lack of proportionality, or
- (e) there was a material error as to the facts or as to the procedure.

(2) An appeal under this section shall be instituted -

- (a) within a period of 28 days immediately following the date of the decision of the Policy Council (or such other period as the Ordinary Court may in any particular case direct), and
- (b) by summons served on the Chief Minister stating the grounds and material facts on which the appellant relies.

(3) The Chief Minister may, where an appeal under this section has been instituted, apply to the Ordinary Court, by summons served on the

appellant, for an order that the appeal shall be dismissed for want of prosecution; and, on hearing the application, the Court may -

- (a) dismiss the appeal or dismiss the Chief Minister's application (in either case on such terms and conditions as the Court may direct), or
- (b) make such other order as the Court considers just,

and the provisions of this subsection are without prejudice to the inherent powers of the Royal Court or to the provisions of rule 52(3) of the Royal Court Civil Rules, 2007<sup>f</sup>.

- (4) On an appeal under this section the Ordinary Court may -
  - (a) set the decision of the Policy Council aside and, if the Court considers it appropriate to do so, remit the matter to the Policy Council with such directions as the Court thinks fit, or
  - (b) confirm the decision, in whole or in part.

(5) On an appeal under this section the Ordinary Court may, upon the application of the appellant, and on such terms as the Court thinks just, suspend or modify the operation of the decision in question, pending the determination of the appeal.

- (6) An appeal from a decision of the Ordinary Court made on an

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<sup>f</sup> O.R.C. No. IV of 2007; amended by No. II of 2008.

appeal under this section lies, with leave of the Ordinary Court or Court of Appeal, to the Court of Appeal on a question of law.

(7) Section 21 of the Court of Appeal (Guernsey) Law, 1961<sup>g</sup> ("powers of a single judge") applies to the powers of the Court of Appeal to give leave to appeal under subsection (6) as it applies to the powers of the Court of Appeal to give leave to appeal under Part II of that Law.

**Powers to obtain information.**

4. The Schedule has effect in order to facilitate the obtaining, by or on behalf of the Policy Council, of information and documents for the purpose of ensuring compliance with the EU Regulations.

**Failure to provide information or to co-operate.**

5. A person who, without reasonable excuse, fails to comply with any obligation to provide information to or co-operate with the Policy Council in the exercise of any power to request or demand the provision of information, or the co-operation of any person, under any article of the EU Regulations is guilty of an offence.

**Furnishing of false information etc.**

6. A person who in purported compliance with any article of the EU Regulations intentionally furnishes any false information, document or explanation, or recklessly furnishes any information, document or explanation which is false, is guilty of an offence.

**Penalties and proceedings.**

7. (1) A person guilty of an offence under -

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<sup>g</sup> Ordres en Conseil Vol. XVIII, p. 315.

- (a) section 1(2), 5 or 6, or
- (b) paragraph 2(b) or (c) of the Schedule,

is liable -

- (i) on conviction on indictment, to imprisonment for a term not exceeding two years, to a fine, or to both,
- (ii) on summary conviction, to imprisonment for a term not exceeding three months, to a fine not exceeding level 5 on the uniform scale, or to both.

(2) A person guilty of an offence under paragraph 2(a) or 3(2) of the Schedule is liable on summary conviction to imprisonment for a term not exceeding three months, to a fine not exceeding level 5 on the uniform scale, or to both.

**Offences by legal persons and unincorporated bodies.**

8. (1) Where a legal person is guilty of an offence under this Ordinance, and the offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of -

- (a) any director, manager, secretary or other similar officer, or any foundation official, of the legal person, or

- (b) any person purporting to act in any such capacity,

he as well as the legal person is guilty of the offence and may be proceeded against and punished accordingly.

(2) Where the affairs of a legal person are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director.

(3) Where an offence under this Ordinance is committed by an unincorporated body and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of -

- (a) in the case of a partnership, any partner,
- (b) in the case of any other unincorporated body, any officer of that body who is bound to fulfil any duty whereof the offence is a breach or, if there is no such officer, any member of the committee or other similar governing body, or
- (c) any person purporting to act in any capacity described in paragraph (a) or (b),

that person as well as the unincorporated body is guilty of the offence and may be proceeded against and punished accordingly.

(4) Where an offence under this Ordinance is alleged to have been committed by an unincorporated body, proceedings for the offence shall be brought in the name of that body and not in the name of any of its members.

(5) A fine imposed on an unincorporated body on its conviction of an offence under this Ordinance shall be paid from the funds of that body.

**Certain provisions of Customs and Excise Law applicable.**

9. (1) Section 55 of the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972 applies to the detention of a person for an offence under section 1 as it applies to the detention of a person for an offence under the customs Laws or excise Laws.

(2) Sections 61 to 65 of the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972 apply in relation to offences, fines, penalties and proceedings for offences under this Ordinance as they apply to offences, fines, penalties and proceedings for offences under the customs Laws or excise Laws.

**Interpretation.**

10. (1) In this Ordinance, except where the context requires otherwise -

"**advocate**" means an advocate of the Royal Court of Guernsey,

"**Bailiff**" includes the Bailiff, the Deputy Bailiff, a Lieutenant Bailiff, a Juge-Délégué and a Judge of the Royal Court,

"**contravention**" includes failure to comply, and cognate expressions shall be construed accordingly,

"**Court of Appeal**" means the court established by the Court of Appeal (Guernsey) Law, 1961,

"**customs Laws**" and "**excise Laws**" mean those provisions of the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972 and any other enactment for the time being in force relating to customs or, as the case may be, excise,

"**enactment**" includes a Law, an Ordinance and any subordinate legislation,

"**EU Regulations**" means the first Regulation and the second Regulation,

"**foundation official**" has the same meaning as it does under the Foundations (Guernsey) Law, 2012<sup>h</sup>,

"**Guernsey**" means the Bailiwick of Guernsey apart from the Islands of Alderney and Sark,

"**Guernsey fishing vessel**" and "**Guernsey ship**" have the meanings given by section 294(1) of the Merchant Shipping (Bailiwick of Guernsey) Law, 2002<sup>i</sup>,

"**Judge of the Royal Court**" means the office of that name established by section 1 of the Royal Court (Reform) (Guernsey) Law,

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<sup>h</sup> Order in Council No. I of 2013.

<sup>i</sup> Ordres en Conseil Vol. XLIV(2), p. 1; Order in Council No. XIII of 2010; Merchant Shipping (Bailiwick of Guernsey) (Amendment) Law, 2014; Recueil d'Ordonnances Tome XXIX, p. 406; Tome XXXIII, p. 624; Ordinance No. LIV of 2012.

2008<sup>j</sup>,

"**Ordinary Court**" means the Royal Court of Guernsey sitting as an Ordinary Court which, for the purposes of this Ordinance, may be validly constituted by the Bailiff sitting alone,

"**Policy Council**" means the States of Guernsey Policy Council,

"**subordinate legislation**" means any regulation, rule, order, rule of court, resolution, scheme, byelaw or other instrument made under any statutory, customary or inherent power and having legislative effect, but does not include an Ordinance, and

"**uniform scale of fines**" means the scale of fines from time to time in force under the Uniform Scale of Fines (Bailiwick of Guernsey) Law, 1989<sup>k</sup>,

and other terms used in this Ordinance and the EU Regulations shall have the same respective meanings as in the EU Regulations.

(2) A reference in this Ordinance to an enactment or to the EU Regulations is a reference thereto as from time to time amended, repealed and re-enacted (with or without modification), extended or applied.

### Repeals

11. The following Ordinances are repealed -

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<sup>j</sup> Order in Council No. XXII of 2008.

<sup>k</sup> Ordres en Conseil Vol. XXXI, p. 278.



- (a) the Ivory Coast (Restrictive Measures) (Guernsey) Ordinance, 2005<sup>l</sup>,
- (b) the Ivory Coast (Freezing of Funds) (Guernsey) Ordinance, 2006<sup>m</sup>, and
- (c) the Ivory Coast (Freezing of Funds) (Guernsey) (Amendment) Ordinance, 2011<sup>n</sup>.

**Citation.**

12. This Ordinance may be cited as the Côte d'Ivoire (Restrictive Measures) (Guernsey) Ordinance, 2015.

**Commencement.**

13. This Ordinance shall come into force on the 23<sup>rd</sup> February, 2015.

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<sup>l</sup> Ordinance No. VI of 2005.

<sup>m</sup> Ordinance No. X of 2006 and No. XXII of 2011.

<sup>n</sup> Ordinance No. XXII of 2011.

## SCHEDULE

Section 4

## INFORMATION

1. (1) The Policy Council (or any person authorised by it for that purpose either generally or in a particular case) may request any person to furnish or produce to it (or, as the case may be, to that authorised person) such information and documents in his possession or control as the Policy Council (or, as the case may be, that authorised person) may require for the purpose of ensuring compliance with the EU Regulations; and a person to whom such a request is made shall comply with it within such time and in such manner as may be specified in the request.

(2) No obligation of secrecy or confidence or other restriction on the disclosure of information to which any person may be subject, whether arising by statute, contract or otherwise, is contravened by reason of the disclosure by that person or by any of his officers, servants or agents of any information or document in compliance with this Schedule.

(3) Nothing in this Schedule compels the production by an advocate or other legal adviser of a communication subject to legal professional privilege; but an advocate or other legal adviser may be required to give the name and address of any client.

(4) Where a person is convicted of an offence under this Schedule of failing to furnish any information or produce any document, the court may make an order requiring him, within such period as may be specified in the order, to furnish the information or produce the document.

(5) The power conferred by this paragraph to request any person

to produce documents shall include power to take copies of or extracts from any document so produced and to request that person or, where that person is a body corporate, any other person who is a present or past officer of, or is employed by, the body corporate, to provide an explanation of any such document.

**2.** A person who -

- (a) without reasonable excuse, refuses or fails within the time and in the manner specified (or, if no time is specified, within a reasonable time) to comply with a request made under this Schedule,
- (b) intentionally furnishes any false information, document or explanation, or recklessly furnishes any information, document or explanation which is false, to any person exercising his powers under this Schedule, or
- (c) with intent to evade the provisions of this Schedule, destroys, mutilates, defaces, tampers with, falsifies, secretes, removes or otherwise disposes of any document,

is guilty of an offence.

**3.** (1) No information furnished or document produced (including any copy or extract made of any document produced) by any person in pursuance of a request or order made under this Schedule shall be disclosed except -

- (a) with the consent of the person by whom the

information was furnished or the document was produced: provided that a person who has obtained information or is in possession of a document only in his capacity as servant or agent of another person may not give consent for the purposes of this item but such consent may instead be given by any person who is entitled to that information or to possession of that document in his own right,

- (b) to any person who would have been empowered under this Schedule to request that it be furnished or produced or any person holding or acting in any office under or in the service of the Crown in right of Guernsey,
- (c) on the authority of the Policy Council, to the European Commission, to any of the competent authorities listed in or under the EU Regulations or any annex thereto, or to one of Her Majesty's Principal Secretaries of State, for the purpose of assisting the Commission, that competent authority or that Principal Secretary of State to ensure compliance with the EU Regulations, or
- (d) for the purposes of the investigation, prevention or detection of crime or with a view to the instigation of, or otherwise for the purposes of, any criminal proceedings.

- (2) A person who without reasonable excuse discloses any

information or document in contravention of subparagraph (1) is guilty of an offence.

**The Sark General Purposes and Advisory and Finance and  
Commerce Committees (Transfer of Functions) (Guernsey)  
Ordinance, 2015**

**THE STATES LEGISLATION SELECT COMMITTEE**, in exercise of the powers conferred on the States by section 1 of the Public Functions (Transfer and Performance) (Bailiwick of Guernsey) Law, 1991<sup>a</sup>, and all other powers enabling the States in that behalf, and in exercise of the powers conferred on the Committee by Article 66(3) of the Reform (Guernsey) Law, 1948<sup>b</sup>, as amended, hereby orders:-

**Transfer of functions.**

1. The functions, rights and liabilities of a committee named in column 2 of the Schedule and of its Chairman arising under or by virtue of any relevant enactment are transferred to and vested in, respectively, the committee named in relation to that committee in column 3 of the Schedule and its Chairman.

**Amendment of statutory references.**

2. For any reference in any relevant enactment to a committee named in column 2 of the Schedule or its Chairman, however expressed, there is substituted a reference to the committee named in relation to that committee in column 3 of the Schedule or (as the case may be) its Chairman.

**Savings and transitional provisions.**

3. Anything done before the date of the commencement of this

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<sup>a</sup> Ordres en Conseil Vol. XXXIII, p. 478.

<sup>b</sup> Ordres en Conseil Vol. XIII, p. 288; there are amendments not material to this Ordinance.

Ordinance or in the process of being done on that date by or in relation to a committee named in column 2 of the Schedule or its Chairman, under or by virtue of any relevant enactment, shall have effect as if done or (as the case may be) may be continued by or in relation to the committee named in relation to that committee in column 3 of the Schedule or (as the case may be) its Chairman.

**Interpretation.**

4. (1) In this Ordinance the expression "**relevant enactment**" means-

- (a) any Law, and any Act of Parliament extended to the Bailiwick, other than one applicable only in Sark or Alderney,
- (b) any Ordinance of the States of Deliberation of Guernsey, and
- (c) any subordinate legislation made by any department, council or committee (however called) of the States of Guernsey.

(2) The Interpretation (Guernsey) Law, 1948<sup>e</sup> shall apply to the interpretation of this Ordinance.

**Citation.**

5. This Ordinance may be cited as Sark General Purposes and Advisory and Finance and Commerce Committees (Transfer of Functions) (Guernsey) Ordinance, 2015.

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<sup>e</sup> Ordres en Conseil Vol. XIII, p. 355.

**Commencement.**

6. This Ordinance shall come into force on 26<sup>th</sup> February, 2015.



## SCHEDULE

Section 1

## TRANSFER OF FUNCTIONS

	COMMITTEE FROM WHICH FUNCTIONS ARE TRANSFERRED	COMMITTEE TO WHICH FUNCTIONS ARE TRANSFERRED
(a)	Sark General Purposes and Advisory Committee.	Sark Policy and Performance Committee.
(b)	Sark Finance and Commerce Committee.	Sark Finance and Resources Committee.