

Civil Aviation (Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment) (Implementing)

GOVERNMENT NOTICE No. 67 published on 24/02/2012

THE CIVIL AVIATION ACT,
(CAP.80)

REGULATIONS

(Made under section 4)

THE CIVIL AVIATION (PROTOCOL TO THE CONVENTION ON INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT ON MATTERS SPECIFIC TO AIRCRAFT EQUIPMENT) (IMPLEMENTING) REGULATIONS, 2012

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EQUIPMENT) (IMPLEMENTING) REGULATIONS, 2012

PART I

PRELIMINARY PROVISIONS

1. These Regulations may be cited as the Civil Aviation (Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment) (Implementing) Regulations, 2012.

Citation

2. In these Regulations, unless the context otherwise requires-

“agreement” means a security agreement, a title reservation agreement or a leasing agreement;

Defini-
tions

“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 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;

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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 National Aircraft Register or another register maintained by a state or common mark registering authority for purposes of the Chicago convention;

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

(i) at least eight 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;

“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;

“authorised party” means the party referred to in regulation 26(3);

“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;

“Chicago Convention” means the Convention on International Civil Aviation, signed at Chicago on 7th December, 1944, as amended, and its Annexes;

“commencement of the 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 regulation 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;
- “court” means a court of law or an administrative or arbitral tribunal established by a member 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 an aircraft register in accordance with regulations made under the Civil Aviation Act;
- “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;
- “helicopter” 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 persons including crew; or

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(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;

“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:

(i) the commencement of the insolvency proceeding; 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 these regulations is prevented or suspended by law or state action;

“interested persons” means:

(a) the debtor;

(b) any guarantor; and

(c) any other person having rights in or over the aircraft object;

“international interest” means an interest held by a creditor to which regulation 3 applies;

“international registry” means the international registration facilities established by the Cape Town Convention;

“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;

“Member State” means State that is party to the Cape Town Convention;

“National Aircraft Register” means Tanzania aircraft register;

“non-consensual right or interest” means a right or interest conferred

under the law of a Member State to secure the performance of an obligation, including an obligation to a State, State entity or an intergovernmental or private organisations;

“pre-existing right or interest” means a right or interest of any kind in or over an aircraft object created or arising before the effective date of these Regulations;

“primary insolvency jurisdiction” means the member 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 or interest” means a non-consensual right or interest conferred under the law of United Republic of the following types:

(i) liens in favour of workers for unpaid wages arising since the time of a declared default under a contract to finance or lease the subject object; and

(ii) liens in favour of repairers of an object in their possession to the extent of service performed on and value added to that object;

“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 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;

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“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 or interest” means a non-consensual right or interest conferred under the law of United Republic of the following types:

(i) rights of a person obtaining a court order permitting attachment of an aircraft object in partial or full satisfaction of a legal judgement;

(ii) liens or other rights of the government of United Republic relating to taxes or other unpaid charges of any type whatsoever (which is not a priority non-consensual right or interest); and

(iii) any other non-consensual rights or interests which are not a priority non-consensual right or interest;

“Registrar” means the person or body serving as registrar under the Cape Town Convention;

“registry authority” means the Tanzania Civil Aviation Authority, as the authority maintaining a National Aircraft Register, which is responsible for the registration and de-registration of an aircraft in the United Republic in accordance with the Chicago Convention;

“regulations” means regulations made or approved by the Supervisory Authority pursuant to the Cape Town Convention;

“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 shall not pass until fulfillment of the condition or conditions stated in the agreement;

“United Republic” means the United Republic of Tanzania;

“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 regulation 46(1) which has not been registered, whether or not it is registrable under the Cape Town Convention or these Regulations; and

“writing” means a record of information (including information communicated by teletransmission) which is intangible 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.

3. —(1) These regulations shall apply at the time of the conclusion of the agreement creating or providing for the international interest or a contract of sale, the debtor or seller in a member state.

Applica-
tion

(2) Notwithstanding the provisions of subregulation (1) the situation of the creditor or buyer in a non-member state shall not affect the applicability of these Regulations.

(3) Without prejudice to sub-regulation (1), these Regulations shall also apply in relation to a helicopter, or to an airframe pertaining to an aircraft registered in an aircraft register of a member state which is the state of registry.

(4) Where such registration is made pursuant to an agreement for registration of the aircraft it shall be deemed to have been effected at the time of the agreement.

4.—(1) These regulations shall provide for the constitution and effects of an international interest in aircraft objects and associated rights.

The
international
interest

(2) for the purposes of this regulation, an international interest in aircraft objects is an interest constituted under regulation 11, in airframes, aircraft engines or helicopters:

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(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. Provided that, an interest falling within paragraph (a) shall not also fall within paragraph (b) or (c).

(3) the applicable law shall determine whether an interest to which sub-regulation (2) applies falls within sub-regulation (2) (a), (b) or (c).

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

Where debtor or seller is situated

5. —(1) For the purposes of regulation 3(1), the debtor or seller is situated in any member state:

(a) under the laws of which it is incorporated or formed;

(b) where it has its registered office or statutory seat;

(c) where it has its centre of administration; or

(d) where it has its place of business.

(2) A reference in sub-regulation (1) (d) 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.

Interpretation and applicable law

6.—(1) In interpreting these Regulations, consideration shall be made to its purposes as set out in the preamble to the Cape Town Convention, to its international character and to the need to promote uniformity and predictability in its application.

(2) Questions concerning matters governed by these Regulations which are not expressly settled, shall 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) Any references to the applicable law shall mean domestic rules applicable by virtue of rules of private international law of the forum State.

Application to sale and prospective sale

7. In addition to the specific provisions in these Regulations referring to sales and prospective sales, the general provisions of regulation 2 and 6, of Parts IV to VII and 36 of Part X, Part XI (other than regulation 49), Part XII and Part XIII shall apply to contracts of sale and prospective sales.

8. 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.

Representative capacities

Provided that, in such a case that person is entitled to assert rights and interests under these regulations.

9. A description of an aircraft object shall contain the manufacturer's serial number, the name of the manufacturer and its model designation for the purposes of regulations 11 (c) and 12(1)(c) of these Regulations.

Description to aircraft objects

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

Choice of law

(2) Unless otherwise agreed, the reference in sub-regulation (1) 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.

PART II

CONSTITUTION OF AN INTERNATIONAL INTEREST IN CONTRACTS OF SALE

11. An interest is constituted as an international interest under these Regulations if the agreement creating or providing for the interest:

Formal requirements

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

12.—(1) For the purposes of these Regulations, a contract of sale is that one which:

Formalities and effects of contracts of sale

- (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 these Regulations.

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

PART III

DEFAULT REMEDIES

Remedies
of
chargee

13.—(1) In the event of default as provided in regulation 18, the chargee may, to the extent that the chargor has at any time so agreed, exercise any one or more of the following remedies:

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

(2) The chargee may alternatively apply for a court order authorising or directing any of the acts referred to in the preceding sub-regulation.

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

- (a) the debtor and any guarantor as interested persons defined in regulation 2; and
- (b) any other person having rights in or over the aircraft object as interested persons defined in regulation 2 who have given notice of their rights to the chargee within a reasonable time prior to the sale or lease.

(4) A chargee giving ten or more working days' written notice of a proposed sale or lease to an interested person shall be deemed to satisfy the requirement of providing "reasonable notice" specified in sub-regulation (3).

Provided that the foregoing shall not prevent a chargee and a chargor or a guarantor from agreeing to a longer period of notice.

(5) Any sum collected or received by the chargee as a result of exercise of any of the remedies set out in sub-regulation (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 provided under sub-regulation (1) or (2) exceed the amount secured by the security interest and any reasonable costs incurred in the exercise of any such remedy, unless otherwise ordered by the court the chargee shall:

(a) 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

(b) pay any remaining balance to the chargor.

14.—(1) At any time after default as provided in regulation 18, the chargee and all the interested persons may agree that ownership of or any other interest of the chargor in any aircraft object covered by the security interest shall vest in the chargee in or towards satisfaction of the secured obligations.

Vesting of aircraft object in satisfaction; redemption

(2) The court may on the application of the chargee order that ownership of (or any other interest of the chargor in) any aircraft object covered by the security interest shall vest in the chargee in or towards satisfaction of the secured obligations.

(3) The court shall grant an application under sub-regulation (2) only if the amount of the secured obligations to be satisfied by such vesting is commensurate with the value of the aircraft object after taking account of any payment to be made by the chargee to any of the interested persons.

(4) At any time after default as provided in regulation 18 and before sale of the charged aircraft object or the making of an order under sub regulation (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 regulation 13(1)(b) or ordered under regulation 13(2):

Provided that, 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 regulation 13(1)(b) or passing under sub regulation (1) or (2) is free from any other interest over which the chargee's security interest has priority under the provisions of regulation 36.

15. In the event of default under a title reservation agreement or under a leasing agreement as provided in regulation 18, the conditional seller or the lessor, as the case may be, may:-

Remedies of conditional seller or lessor

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- (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.

Additional remedies of creditor

16.—(1) In addition to the remedies specified in regulations 13, 15, 17 and 21, the creditor may, to the extent that the debtor has at any time agreed and in the circumstances specified in such provisions:-

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

(2) The creditor shall not exercise the remedies specified in sub regulation (1) without the prior consent in writing of the holder of any registered interest ranking in priority to that of the creditor.

(3) The registry authority shall, subject to any applicable safety laws and regulations, honour a request for de-registration and export if;

- (a) the request is properly submitted by the authorised party under a recorded irrevocable 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 deregistration and export.

(4) A chargee proposing to procure the deregistration and export of an aircraft under sub regulation (1) otherwise than pursuant to a court order shall give reasonable notice in writing of the proposed deregistration and export to:

- (a) the debtor and any guarantor as interested persons defined in regulation 2; and
- (b) any other person having rights in or over the aircraft object as interested persons defined in regulation 2 who have given notice of their rights to the chargee within a reasonable time prior to the deregistration and export.

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17. 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 as set out in regulation 23.

Additional remedies under applicable law

18.—(1) The debtor and the creditor may at any time agree in writing as to the events that:-

Meaning of default

(a) constitute a default;

(b) give rise to the rights and remedies specified in regulations 13, 14, 15, 16 and 21.

(2) Where the debtor and the creditor have not agreed, "default" for the purposes of regulations 13, 14, 15, 16 and 21 shall mean a default which substantially deprives the creditor of what it is entitled to expect under the agreement.

19.—(1) In the absence of a default within the meaning of regulation 18, the debtor shall be entitled to the quiet possession and use of the aircraft object in accordance with the agreement as against:-

Debtor provisions

(a) its creditor and the holder of any interest from which the debtor takes free pursuant to regulation 36(3) or, in the capacity of buyer, under regulation 36(3), unless and to the extent that the debtor has otherwise agreed; and

(b) the holder of any interest to which the debtor's right or interest is subject pursuant to regulation 36(4) or, in the capacity of buyer, under regulation, 36(4), but only to the extent, if any, that such holder has agreed.

(2) Nothing in these regulations shall affect 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.

20.—(1) Any remedy given by these regulations in relation to an aircraft object shall be exercised commercially in a reasonable manner.

Standard for exercising remedies

(2) A remedy shall be deemed to be exercised commercially in a reasonable manner where it is exercised in conformity with a provision of the agreement.

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Relief
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21.—(1) A creditor who adduces evidence of default by the debtor shall, while pending final determination of its claim and to the extent that the debtor has at any time agreed, be entitled to obtain from a court speedy relief in the form of one or more of the following orders as the creditor requests:-

- (a) preservation of the aircraft object and its value;
- (b) possession, control or custody of the aircraft object;
- (c) immobilisation of the aircraft object;
- (d) lease or, except where covered by sub-regulation (1) (a) to (c), management of the aircraft object and the income therefrom; and the debtor and the creditor specifically agree, sale and application of proceeds therefrom.

(2) For the purposes of sub-regulation (1), "speedy" in the context of obtaining relief means, in respect of the relief specified in sub-regulation (1) (a)-(c), the number of working days equivalent to not more than ten calendar days and in respect of the relief specified in sub-regulation (1)(d)-(e), the number of working days equivalent to not more than thirty calendar days, in each case from the date the application for relief is filed.

(3) Ownership or any other interest of the debtor passing on a sale under sub-regulation (1) (e) is free from any other interest over which the creditor's international interest has priority under the provisions of regulation 36 of these regulations.

(4) In making any order under sub-regulation (1), the court may impose such terms as it considers necessary to protect the interested person in the event that the creditor:-

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

(5) The creditor and the debtor or any other interested person may agree in writing to exclude the application of the sub-regulation (4)

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

(7) With regard to the remedies in regulation 16(1):-

(a) they shall be made available by the registry authority and other administrative authorities, as applicable, in no later than five working days after the creditor notifies such authorities that the relief specified in regulation 16(1) is granted or, in the case of relief granted by a foreign court, recognised by a United Republic court, and that the creditor is entitled to procure those remedies in accordance with these regulations; and

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

(8) Nothing in the proceeding shall affect the application of regulation 20 or limits the availability of forms of interim relief other than those provided in sub regulation (1).

(9) The provisions of sub regulations (2) and (7) shall not affect any applicable aviation safety laws and regulations.

22.—(1) Subject to sub regulation (2) any remedy provided under this part shall be exercised in conformity with the procedure prescribed by law of the place where the remedy is to be exercised.

(2) Any remedy available to the creditor under any provision of these regulations which is not there expressed to require application to the court may be exercised without leave of the court.

23. Any two or more of the parties referred to in this part may at any time, by agreement in writing, exclude the application of regulation 24 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 regulations 13(3) to (6), 14(3) and (4), 16(2), 20 and 22.

24.—(1) The provisions of this regulation shall apply where the United Republic is the primary insolvency jurisdiction.

(2) Upon the occurrence of an insolvency - related event, the insolvency administrator or the debtor, shall, subject to sub regulation (7) give possession of the aircraft object to the creditor not later than:-

(a) the end of the waiting period; and

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remedies

Deroga-
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Remedies
on
insolvency

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

(3) For the purposes of this regulation the "waiting period" means the period of thirty calendar days commencing on the date of the insolvency-related event.

(4) Subject to the provisions of this regulation references to the insolvency administrator" shall be to that person in its official, not in its personal, capacity.

(5) Unless the creditor is given the opportunity to take possession under sub regulation (2):

(a) the insolvency administrator or the debtor, 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 regulation (5) (a) 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, may retain possession of the aircraft object where, by the time specified in sub regulation (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:

Provided that 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 regulation 16(1):

(a) they shall be made available by the registry authority and the administrative authorities, as applicable, not 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 these Regulations; 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 these Regulations may be prevented or delayed after the date specified in sub regulation (2).

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

(11) Nothing in sub regulation (10) shall be construed to affect the authority, if any, of the insolvency administrator under the applicable law to terminate the agreement.

(12) No rights or interests, except for a priority non - consensual right or interest to the extent specified in regulation 46, shall have priority in insolvency proceedings over registered interests.

(13) The provisions of these Regulations shall apply to the exercise of any remedies under this regulation.

25.—(1) This regulation shall apply where the United Republic is not the primary insolvency jurisdiction.

Insolvency
assistance

(2) Where an aircraft object is situated in the United Republic, its courts shall, in accordance with the laws of the United Republic, co-operate to the maximum extent possible with foreign courts and foreign insolvency administrators in carrying out the provisions of regulation 24.

26.—(1) This regulation shall apply where an airframe pertaining to an aircraft, or a helicopter, is registered in the National Aircraft Register.

Deregist-
ration
and
export
request
authorisa-
tion

(2) Where the debtor has issued an irrevocable deregistration and export request authorisation substantially in the form shown in the Schedule and has submitted such authorisation for recordation to the registry authority, that authorisation shall be so recorded.

(3) The person in whose favour the authorisation has been issued (the "authorised party") or its certified designee shall be the sole person entitled to exercise the remedies specified in regulation 16(1) and may do so only in accordance with the authorisation and applicable aviation safety laws and regulations:

Provided that, such authorisation may not be revoked by the debtor without the consent in writing of the authorised party; and provided further that the registry authority shall remove an authorisation from the registry at the request of the authorised party.

G.N. No 67 (contd.)

(4) The registry authority and other administrative authorities shall expeditiously co-operate with and assist the authorised party in the exercise of the remedies specified in regulation 16.

PART IV

REGISTRATIONS IN THE INTERNATIONAL REGISTRATION SYSTEM

Means
and effect
of
registra-
tion

27.—(1) Registration in the International registry shall be the only means of establishing the priority of a right or interest in an aircraft object, such priority being determined in accordance with regulation 36, except only in respect of a priority non-consensual right or interest, whose priority is determined in accordance with regulation 46(1).

(2) Only those registrations with the International registry and complying with these regulations shall, when made, be valid for purposes of determining priority.

(3) The permitted registrations are:-

- (a) international interests, prospective international interests and registrable non-consensual rights and interests;
- (b) assignments and prospective assignments of international interests;
- (c) acquisitions of international interests by legal or contractual subrogations under the applicable law;
- (d) "notices of a national interest", as defined in the Cape Town Convention, under the laws of a member state permitting such notice through a declaration thereunder made by that State, the United Republic not having made such a declaration; and
- (e) subordinations of interests referred to in any of the preceding sub regulations; and
- (f) sales and prospective sales.

(4) All information required for the registrations referred to in sub regulation (2) and (3) in relation to a helicopter, or to an airframe pertaining to an aircraft, registered for nationality purposes in the National Aircraft Register may be transmitted directly to the International Registry or through the National Aircraft Register, as the designated entry point in the United Republic.

(5) Other than payment of a nominal processing fee, as determined by the National Aircraft Register, no additional conditions or legal requirements may be imposed on the use of the National Aircraft Register as a conduct for the transmission to the International Registry of information required for registration.

(6) For the purposes of this part and part V, the term "registration" includes, where appropriate, an amendment, extension or discharge of a registration.

PART V

MODALITIES OF REGISTRATION

28.—(1) A registration shall be valid if made in conformity with regulation 29.

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

(3) A registration shall be searchable for the purposes of the preceding sub regulation at the time when.

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

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

(4) If an interest first registered as a prospective international interest or prospective sale becomes an international interest or a sale, respectively, that international interest or sale shall be treated as registered from the time of registration of the prospective international interest or prospective sale provided that the registration was still current immediately before the international interest or contract of sale was constituted as provided by regulation 11 or 12.

(5) The provision of sub regulation (4) shall apply, with necessary modifications, to the registration of a prospective assignment of an international interest.

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

Validity
and time
of
registra-
tion

Civil Aviation (Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment) (Implementing)

G.N. No 67 (contd.)

Consent
to regis-
tration

29.—(1) An international interest, a prospective international interest, 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.

Duration
of regis-
tration

30.—(1) A Registration of an international interest shall remain effective until discharged or expiry of the period specified in the registration.

(2) The Registration of a contract of sale shall remain effective indefinitely.

(3) The Registration of a prospective sale shall remain effective unless discharged or expiry of the period, if any, specified in the registration.

Searches

31.—(1) Any person may, in the manner prescribed by these regulations and the regulations, make or request a search of the international registry by electronic means concerning interests or prospective interests international registered therein.

(2) Any person may request and receive from the Registrar, in the manner prescribed by the regulations, a registry search certificate by electronic means with respect to any aircraft object:-

(a) stating all registered information relating thereto, together with a statement indicating the date and time of registration of such information; or

(b) stating that there is no information in the international registry relating thereto.

(3) A search certificate issued under sub regulation (2) 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.

32. A document in the form prescribed under these Regulations which purports to be a certificate issued by the international registry shall be prima facie proof:

Evidentiary value of certificates

(a) that it has been issued; and

(b) of the facts recited in it, including the date and time of a registration.

33.—(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, with out 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.

Discharge of 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 sub regulation (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 demand described in such sub regulation.

(4) Where a registration has not been made or is incorrect, the person in whose favour the registration was made shall, without undue delay,

G.N. No 67 (contd.)

procure its discharge or amend the registration after written demand by the debtor delivered to or received at its address stated in the registration.

PART VI

RECOGNITION OF CERTAIN PRIVILEGES AND IMMUNITIES OF THE SUPERVISORY AUTHORITY AND THE REGISTRAR

Legal
personal-
ity;
immunity

34. The United Republic shall recognise that:

- (a) the Supervisory Authority has international legal personality;
- (b) the Supervisory Authority and its officers and employees shall enjoy such immunity from legal and administrative process as provided under the rules applicable to them as an international entity or otherwise; and
- (c) the assets, documents, databases and archives of the International Registry shall be inviolable and immune from seizure or other legal or administrative process.

(2) for the purposes of any claim against the Registrar under regulation 35(1) or regulation 50, the claimant shall be entitled to access to such information and documents as are necessary to enable the claimant to pursue its claim.

(3) The Supervisory Authority may waive the inviolability and immunity conferred by paragraph (c).

PART VII

RECOGNITION OF LIABILITY OF THE REGISTRAR BY THE UNITED REPUBLIC

Standard
and
extent of
liability

35.—(1) The Registrar shall be liable for compensatory damages for loss suffered by a person directly resulting from an error or omission of his 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 sub registration (1) 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 sub regulation (1) may be reduced to the extent that the person who suffered the damage caused or contributed to that damage.

PART VIII

EFFECTS OF AN INTERNATIONAL INTEREST AS AGAINST THIRD PARTIES

36.—(1) A registered interest shall have priority over any other interest subsequently registered and over an unregistered interest.

Priority
of
compet-
ing
interests

(2) The priority of the first-mentioned interest under sub regulation (1) shall apply:

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

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

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

(4) A buyer of an aircraft object shall acquire its interest in that object subject to an interest registered at the time of its acquisition.

(5) A conditional buyer or lessee shall acquire its interest in or right over an aircraft 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 regulation 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 Regulation to an interest in an aircraft object shall extend to proceeds.

G.N. No 67 (contd.)

(8) These Regulations:-

- (a) shall 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) shall 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) The provisions of sub regulation (8) shall apply to an item, other than an aircraft object, installed on an airframe, aircraft engine or helicopter.

Effects of
insol-
vency

37.—(1) In insolvency proceedings against the debtor or seller an international interest or sale, as applicable, shall be effective if prior to the commencement of the insolvency proceedings that interest or sale was registered in conformity with these Regulations.

(2) Nothing in this regulation shall impair the effectiveness of an international interest or sale in the insolvency proceeding where that interest is effective under the applicable law.

(3) Nothing in this regulation shall affect any rules of law applicable in insolvency proceedings relating to the avoidance of a transaction as a preference or a transfer in fraud of creditors or, except as provided in regulation 24, any rules of procedure relating to the enforcement of rights to property which is under the control or supervision of the insolvency administrator.

PART IX

ASSIGNMENTS OF ASSOCIATED RIGHTS AND INTERNATIONAL INTERESTS RIGHTS OR SUBROGATION

Effects of
assign-
ment

38.—(1) Except or otherwise agreed by the parties, an assignment of associated rights made in conformity with regulation 39 shall transfers to the assignee:

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

Civil Aviation (Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment) (Implementing)

G.N. No 67 (contd.)

(2) Nothing in these Regulations prevents a partial assignment of the assignor's associated rights:-

Provided that, 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 sub regulation (1) but not so as adversely to affect the debtor without its consent.

(3) Subject to sub regulation (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 sub regulation (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 shall revert to the assignor, to the extent that they are still subsisting, when the obligations secured by the assignment have been discharged.

39.—(1) An assignment of associated rights shall transfer 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 these regulations 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 shall not be valid unless some or all related associated rights are also assigned.

(3) These Regulations shall not apply to an assignment of associated rights which is not effective to transfer the related international interest.

40.—(1) To the extent that associated rights and the related international interest have been transferred in accordance with regulations 38 and 39, the debtor in relation to those rights and that interest shall be bound by the assignment and shall have a duty to make payment or give other performance to the assignee, if but only if.

formal
requireme-
nts of
assignment

Debtor's
duty to
assignee

Civil Aviation (Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment) (Implementing)

G.N. No 67 (contd.)

- (a) the debtor has been given notice of the assignment in writing by or with the authority of the assignor;
- (b) the notice identifies the associated rights; and
- (c) the debtor has consented in writing, whether or not the consent is given in advance of the assignment or identifies the assignee.

(2) Irrespective of any other ground on which payment or performance by the debtor discharges the latter from liability, payment or performance shall be effective for this purpose if made in accordance with sub regulation (1).

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

Default remedies in respect of assignment by way of security

41. In the event of default by assignor under the assignment of associated rights and the related international interest made by way of security, regulations 13,14, and 16 to 22 shall apply in the relations between the assignor and the assignee (and, in relation to associated rights, apply in so far as those provisions are capable of application to intangible property) as if references:-

- (a) to the secured obligation and the security interest were references to the obligation secured by the assignment of the associated rights and the related international interest and the security interest created by that assignment;
- (b) to the chargee or creditor and chargor or debtor were references to the assignee and assignor;
- (c) to the holder of the international interest were references to the assignee; and
- (d) to the aircraft object were references to the assigned associated rights and the related international interest.

Priority of competing assignments

42.—(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 regulation 36 shall 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.

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G.N. No 67 (contd.)

(2) The provision of regulation 37 shall apply 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.

43.—(1) The assignee of associated rights and the related international interest whose assignment has been registered shall have priority under regulation 42(1) over another assignee of the associated rights:-

Assignee's
priority
with
respect to
associ-
ated
rights

- (a) if the contract under which the associated rights arise states that they are secured by or associated with the object; and
- (b) to the extent that the associated rights are related to an aircraft object.

(2) For the purpose of sub regulation (1)(b), associated rights shall relate to an aircraft object 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 hold 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) othe 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.

44. The provisions of regulation 37 shall apply to insolvency proceedings against the assignor as if references to the debtor were references to the assignor.

Effects of
assignor's
insol-
vency

45.—(1) Subject to sub regulation (2), nothing in thses Regulations shall affect the acquisition of associated rights and the related international interest by legal or contractual subrogation under the applicable law.

Subroga-
tion

G.N. No 67 (contd.)

(2) The priority between any interest within sub regulation (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 time of the assignment a subordination had been registered relating to that agreement.

PART X

NON-CONSENSUAL RIGHT OR INTEREST

Priority
non-
consensual right
or
interest

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

Registrable
non-
consensual
right or
interest

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

PART XI

JURISDICTION

Choice of
forum

48.—(1) Subject to regulation 49 or 50, the courts of a Member State chosen by the parties to a transaction shall have jurisdiction in respect of any claim brought under these Regulations, whether or not the chosen forum has a connection with the parties or the transaction;

Provided that, 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
regulation

49.—(1) The courts of a Member State chosen by the parties in conformity with regulation 48 and the courts of the Member State on the territory of which the aircraft object is situated or in which the aircraft is registered shall have jurisdiction to grant relief under regulation 21(1) (a), (b), (c), and regulation 21 (18) in respect of that aircraft object or aircraft.

(2) Jurisdiction to grant relief under regulation 21(1) (d) and (e) or other interim relief by virtue of regulation 21(8) may be exercised either by:-

(a) the courts chosen by the parties; or

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

(3) A court has jurisdiction under the preceding even if the final determination of the claim referred to in regulation 21 (1) will or may take place in a court of another Member State or by arbitration.

50.—(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.

Jurisdiction to make orders against the registrar

(2) Whether a person fails to respond to a demand made under regulation 33 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 sub regulation (1) shall have exclusive jurisdiction, on the application of the debtor or intending debtor to make an order directed to the registrar requiring the registrar to discharge the registration.

(3) Where a person fails to comply with an order of a court having jurisdiction under these regulations, the courts referred to in sub regulation (1) may direct the registrar to take such steps as will give effect to that order.

(4) Except as otherwise provided by sub regulations (1), (2) and (3), no court may make orders or give judgments or rulings against or purporting to bind the Registrar.

51.—(1) Subject to sub regulation (2) a waiver of sovereign immunity from jurisdiction of the courts specified in regulation 48 or 49 or relating to enforcement of rights and interests relating to an aircraft object under these Regulations 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.

Waivers of sovereign immunity

(2) A waiver under sub regulation (1) shall be in writing and contain a description of the aircraft object.

Civil Aviation (Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment) (Implementing)

G.N. No 67 (contd.)

Jurisdiction in respect of insolvency proceedings 52. The provisions of this Part shall not be applicable to insolvency proceedings.

PART XII

RELATIONSHIP WITH OTHER LEGISLATION

Legislation implementing the United Nations Convention on the International Trade 53. These Regulations shall prevail over any legislation implementing the United Nations Convention on the Assignment of Receivables in International Trade, opened for signature in New York on 12 December 2001, as relates to the assignment of receivables which are associated rights related to international interests in aircraft objects.

Legislation implementing the Convention on the International Recognition 54. These Regulations shall supersede any legislation implementing the Convention on the International Recognition of Rights in Aircraft, signed at Geneva on 19 June 1948, as it relates to aircraft, as defined in these Regulations, and to aircraft objects.

However, in that event, with respect to rights or interests not covered or affected by these Regulations, any such legislation shall not be superseded.

Legislation implementing the Convention for the unification of Certain Rules 55. These Regulations shall supersede any legislation implementing the Convention for the Unification of Certain Rules Relating to the Precautionary Attachment of Aircraft, signed at Rome on 29 May 1933, as it relates to aircraft, as defined in these Regulations.

Legislation implementing the UNIDROIT Convention 56. These Regulations shall supersede any legislation implementing the UNIDROIT Convention on International Financial Leasing, signed at Ottawa on 28 May 1988, as it relates to aircraft objects.

PART XIII

GENERAL PROVISIONS

Transitional provisions 57.—(1) These Regulations shall not apply to a pre-existing right or interest, which retains the priority enjoyed under the applicable law before the effective date of these Regulations.

(2) Nothing in sub regulation (1), shall prevent parties to an agreement and related documents, by affirmative act, from re-constituting a pre-existing right or interest as an international interest and otherwise bringing it within the scope of these Regulations.

(3) A priority non-consensual right or interest shall retain its priority over an international interest, to the extent specified in regulation 46(1), which is registered prior to the effective date.

—
SCHEDULE
—

(Made under regulation 26(2))

FORM OF IRREVOCABLE DE-REGISTRATION AND EXPORT
REQUEST AUTHORISATION

To: Tanzania Civil Aviation 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 manufacture's serial number [insert manufacturer's serial number] and registration [number] [mark] insert registration number/mark] (together with all installed, incorporated or attached accessories, parts and equipment, the "aircraft").

This instrument is an irrevocable de-registration and export request authorisation issued by the undersigned in favour of [insert name of creditor] (the "authorised party") under the authority of (1) regulation 26 of the Civil Aviation (The Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment) (Implementing) Regulations, 2011 and (2) Article XIII of the Protocol. In accordance with (1) and (2), the undersigned hereby requests:

- (a) recognition that the authorised party or the person it certifies as its designee is the sole person entitled to:-
 - (i) procure the de-registration of the aircraft from the Tanzania aircraft register maintained by the Tanzania Civil Aviation Authority for the purposes of Chapter III of the Convention on International Civil Aviation, signed at Chicago, on 7th December 1944; and

Civil Aviation (Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment) (Implementing)

G.N. No 67 (contd.)

- (ii) procure the export and physical transfer of the aircraft from the United Republic; and
- (b) Confirmation that the authorised party or the person it certifies as its designee may take the action specified in clause (a) above on written demand without the consent of the undersigned and that, upon such demand, the authorities in the United Republic 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 the Tanzania Civil Aviation Authority.

[insert name of operator/owner]

Agreed to and lodged this:
[insert date]

By: [Insert name of signatory]
Its: [insert title of signatory]

[insert relevant notational details]

*Select the term that reflects the relevant nationality registration criterion.

Dar es Salaam,
21st February, 2012

OMARI R. NUNDU (MP.),
Minister for Transport