

No. S 57

AIR NAVIGATION ACT  
(CHAPTER 113)

AIR NAVIGATION (MORTGAGING OF AIRCRAFT) ORDER, 2001

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**AIR NAVIGATION ACT  
(CHAPTER 113)**

**AIR NAVIGATION (MORTGAGING OF AIRCRAFT) ORDER, 2001**

In exercise of the power conferred by section 4 of the Air Navigation Act, His Majesty the Sultan and Yang Di-Pertuan hereby makes the following Order —

**Citation.**

1. This Order may be cited as the Air Navigation (Mortgaging of Aircraft) Order, 2001.

**Interpretation.**

2. In this Order, unless the context otherwise requires —

"aircraft register" means the register of Brunei Darussalam aircraft maintained by the Director;

"Director" means the Director of Civil Aviation;

"mortgage" means the mortgage of an aircraft and includes a mortgage which extends to any store of spare parts for that aircraft, but does not otherwise include a mortgage created as a floating charge;

"owner" means the person shown as the owner of an aircraft on the form of application for registration of that aircraft in the aircraft register;

"prescribed fee" means a fee prescribed by any law relating to airport fees and charges;

"priority notice" means a notice of intention referred to in sub-paragraph (1) of paragraph 5;

"Register" means the Register of Aircraft Mortgages.

**Mortgage of aircraft.**

3. An aircraft registered in the aircraft register, or such an aircraft together with any store of spare parts for that aircraft, may be made security for a loan or other valuable consideration.

**Registration of mortgages.**

4. (1) Any mortgage of an aircraft registered in the aircraft register may be entered in the Register kept by the Director.

(2) An application to enter a mortgage in the Register shall be made to the Director by or on behalf of the mortgagee in the form set out in the First Schedule and shall be accompanied by a copy of the mortgage, which the applicant shall certify to be a true copy, and the prescribed fee.

**Priority notices.**

5. (1) A notice of intention to make an application to enter a contemplated mortgage in the Register may be entered in the Register.

(2) An application to enter a priority notice in the Register shall be made to the Director by or on behalf of the prospective mortgagee in the form set out in the Second Schedule, and shall be accompanied by the prescribed fee.

**Procedure in certain cases.**

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

(2) Where a mortgage is in a language other than the English language, the application to enter that mortgage in the Register shall be accompanied by a copy of the mortgage and by a translation thereof, which the applicant shall certify as being, to the best of his knowledge and belief, a true translation.

**Registration of mortgages and priority notices.**

7. (1) When an application to enter a mortgage or priority notice in the Register has been made, the Director shall enter it in the Register by placing the application form therein and by noting on it the date and time of the entry.

(2) Applications shall be entered in the Register in the order of their receipt by the Director.

(3) The Director shall notify the applicant of the date and time of the entry of the mortgage or the priority notice in the Register and of the register number of the entry, and shall send a copy of the notification to the mortgagor and the owner.

**Amendment of entries in Register.**

8. (1) Any change in the person appearing in the Register as mortgagee or as mortgagor, in the name or address of such person or in the description of the mortgaged property shall be notified to the Director by or on behalf of the mortgagee, in the form set out in the Third Schedule.

(2) On receipt of the form duly completed and signed by or on behalf of the mortgagor and the mortgagee and on payment of the prescribed fee, the Director shall enter the notification in the Register and shall thereupon notify the mortgagor, the mortgagee and the owner that he has done so.

**Discharge of mortgages.**

9. On receipt of the form set out in the Fourth Schedule duly completed and signed by or on behalf of the mortgagee and of a copy of the document of discharge or receipt for the mortgage money, or of any other document which shows to the satisfaction of the Director that the mortgage has been discharged and on payment of the prescribed fee, the Director shall enter the form in the Register and mark the relevant entries in the Register "Discharged", and shall thereupon notify the mortgagor, the mortgagee and the owner that he has done so.

**Rectification of Register.**

10. The High Court may order such amendment to be made to the Register as it may consider necessary or expedient for correcting any error therein. On being served with such an order, the Director shall make the necessary amendment to the Register.

**Inspection of Register and copies of entries.**

11. (1) Any person may, on application to the Director and on payment of the prescribed fee, inspect any entry in the Register specified in the application.

(2) The Director shall, on the application of any person and on payment of the prescribed fee, supply to the applicant a copy, certified by him as a true copy, of the entries in the Register specified in the application.

(3) The Director shall, on the application of any person and on payment of the prescribed fee, notify the applicant whether or not there are any entries in the Register relating to any aircraft specified in the application by reference to its nationality and registration marks.

(4) A document purporting to be a copy of an entry in the Register shall be admissible as evidence of that entry if it purports to be certified as a true copy by the Director.

(5) Nothing done under sub-paragraph (2) or (3) shall affect the priority of any mortgage.

**Removal of aircraft from aircraft register.**

12. The removal of an aircraft from the aircraft register shall not affect the rights of any mortgagee under any registered mortgage, and entries shall continue to be made in the Register in relation to that mortgage as if the aircraft had not been removed from the aircraft register.

**Register as notice of facts appearing in it.**

13. All persons shall at all times be taken to have express notice of all facts appearing in the Register, but the registration of a mortgage shall not be evidence of its validity.

**Priority of mortgages.**

14. (1) Subject to this paragraph, a mortgage entered in the Register shall have priority over any other mortgage of or charge on that aircraft, other than another mortgage entered in the Register:

Provided that mortgages made before the commencement of this Order, whether entered in the Register or not, shall up to such commencement have the same priority as they would have had if this Order had not been made.

(2) Subject to sub-paragraphs (3) to (5), where two or more mortgages have been entered in the Register, those mortgages shall as between themselves have priority according to the times at which they were respectively entered in the Register:

Provided that where a priority notice has been entered in the Register and the contemplated mortgage referred to therein was made and entered in the Register within 14 days thereafter that mortgage shall be deemed to have priority from the time when the priority notice was registered.

(3) In reckoning the period of 14 days under sub-paragraph (2), there shall be excluded Fridays, Sundays and public holidays.

(4) The priorities provided for by this paragraph shall have effect notwithstanding any express, implied or constructive notice affecting the mortgagee.

(5) Nothing in this paragraph shall be construed as giving a registered mortgage any priority over any possessory lien in respect of work done on the aircraft, whether before or after the making or registration of the mortgage, on the

express or implied authority of any person lawfully entitled to possession of the aircraft or over any right to detain the aircraft under any law.

**Application of Bills of Sale Act and registration of charges provisions of Companies Act.**

15. (1) The Bills of Sale Act (Chapter 70), in so far as it relates to bills of sale and other documents given by way of security for the payment of money, shall not apply to any mortgage registered in the aircraft register made after the commencement of this Order.

(2) Paragraph (h) of subsection (2) of section 80 of the Companies Act (Chapter 39) shall have effect as if after "ship" where it first appears there were inserted "or aircraft":

Provided that nothing in this paragraph shall render invalid, as against the liquidator or any creditor of the company, any mortgage or charge created by a company before the commencement of this Order which would not have been invalid against the liquidator or such creditor if this Order had not been made.

**Indemnity.**

16. (1) Subject to sub-paragraph (2), any person who suffers loss by reason of any error or omission in the Register or of any inaccuracy in a copy of an entry in the Register supplied under sub-paragraph (2) of paragraph 11 or in a notification made under sub-paragraph (3) of that paragraph shall be indemnified by the Government.

(2) No indemnity shall be payable under this paragraph —

(a) where the person who has suffered loss has himself caused or substantially contributed to the loss by his fraud or has derived title from a person so committing fraud;

(b) on account of costs or expenses incurred in taking or defending any legal proceedings without the written consent of the Director.

**Offence.**

17. (1) Any person who, in furnishing any information for the purpose of this Order, makes any statement which he knows to be false in a material particular, or recklessly makes any statement which is false in a material particular, is guilty of an offence and liable on conviction to imprisonment for a term not exceeding 6 months, a fine not exceeding \$10,000 or both.

(2) Where an offence under this Order committed by a body corporate is proved to have been committed with the consent or connivance of, or to be

attributable to any neglect on the part of, a director, manager, secretary or other similar officer of that body, or of a person purporting to act in any such capacity, he, as well as the body corporate, is also guilty of the offence and liable to be proceeded against and punished accordingly.

FIRST SCHEDULE

paragraph 4(2)

APPLICATION FOR ENTRY OF AIRCRAFT MORTGAGE

I hereby apply for the mortgage, particulars of which are given below, to be entered in the Register of Aircraft Mortgages.

1. Date of mortgage.
2. Description of mortgaged aircraft (including type, nationality, registration marks and aircraft serial number) and of any store of spare parts for that aircraft to which the mortgage extends. Any description of the store of spare parts must include an indication of their character and approximate number, and must give the place or places where they are stored. The description of the mortgaged property may, if necessary, be continued on a separate sheet signed by the applicant.
3. The sum secured by the mortgage. Where the sum secured is of a fluctuating amount, this should be stated and the upper and lower limits (if any) should be mentioned.
4. Does mortgage require the mortgagee to make further advances: If so, of what amount?
5. Name and address of mortgagor.
6. Register number of priority notice (if any).

Signed

.....

(Name in block capitals)

.....

on behalf of .....

(name of mortgagee) (delete where inapplicable)

of .....

(address of mortgagee).



**APPLICATION FOR ENTRY OF PRIORITY NOTICE**

I hereby give notice that I am contemplating entering into a mortgage, particulars of which are given below, and that if I do enter into it I shall apply for it to be entered in the Register of Aircraft Mortgages. I hereby apply for this notice to be entered in that Register.

1. Description of aircraft which is the subject of the contemplated mortgage (including type, nationality, registration marks and aircraft serial number) and of any store of spare parts for that aircraft to which it is contemplated that the mortgage will extend. The description of the property which is the subject of the contemplated mortgage may, if necessary, be continued on a separate sheet signed by the applicant.
2. The sum to be secured by the contemplated mortgage. Where the sum to be secured is of a fluctuating amount, this should be stated and the upper and lower limits (if any) should be mentioned.
3. Is it contemplated that mortgage will require the mortgagee to make further advances? If so, of what amount?
4. Name and address of prospective mortgagor.

Signed

.....

(Name in block capitals)

.....

.....

on behalf of .....

(name of mortgagee) (delete where inapplicable)

of .....

(address of mortgage).

THIRD SCHEDULE

paragraph 8(1)

NOTICE OF CHANGE IN REGISTERED PARTICULARS

I hereby give notice that the particulars shown in the Register of Aircraft Mortgages under Register number ..... should be amended as follows —

(a) Signed .....  
(Name in block capitals) .....  
on behalf of .....  
(insert name of mortgagee) (delete where inapplicable)

(b) Signed .....  
(Name in block capitals) .....  
on behalf of .....  
(insert name of person shown in Register as mortgagee) (applicable only where the change in particulars is a change in the person appearing in Register as mortgagee)

(c) Signed .....  
(Name in block capitals) .....  
on behalf of .....  
(insert name of mortgagor) (delete where inapplicable)

FOURTH SCHEDULE

paragraph 9

NOTICE OF DISCHARGE OF REGISTERED MORTGAGE

I hereby confirm that the mortgage entered in the Register of Aircraft Mortgages under Register number ..... has been discharged.

Signed .....  
(Name in block capitals) .....  
on behalf of .....  
(name of mortgagee) (delete where inapplicable)

I agree that this mortgage has been discharged.

Signed .....  
(Name in block capitals) .....  
on behalf of .....  
(name of mortgagee).

Made this 2nd day of Jamadilawal, 1422 Hijriah corresponding to the 23rd. day of July, 2001.

PEHIN ORANG KAYA AMAR PAHLAWAN DATO SERI SETIA  
AWANG HAJI ZAKARIA BIN DATU MAHAWANGSA HAJI SULAIMAN  
Minister of Communications,  
Brunei Darussalam.