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REPUBLIC OF SOUTH AFRICA

GOVERNMENT GAZETTE

STAATSKOERANT

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STATE PRESIDENT'S OFFICE

KANTOOR VAN DIE STAATSPRESIDENT

No. 785.

7 May 1993

No. 785.

7 Mei 1993

It is hereby notified that the State President has assented to the following Act which is hereby published for general information:—

Hierby word bekend gemaak dat die Staatspresident sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

No. 59 of 1993: Convention on the International Recognition of Rights in Aircraft Act, 1993.

No. 59 van 1993: Wet op die Konvensie oor die Internasionale Erkenning van Regte in Lugvaartuie, 1993.

ACT

To provide for the application in the Republic of the Convention on the International Recognition of Rights in Aircraft; to make special provision for the hypothecation of aircraft and shares in aircraft; and to provide for matters connected therewith.

(English text signed by the State President.)
(Assented to 29 April 1993.)

BE IT ENACTED by the State President and the Parliament of the Republic of South Africa, as follows:—

Definitions

1. In this Act, unless the context otherwise indicates—
 - (i) “Convention” means the Convention on the International Recognition of Rights in Aircraft, signed at Geneva on 19 June 1948, and set out in the Schedule; (iii) 5
 - (ii) “Director-General” means the Director-General: Transport; (i)
 - (iii) “Minister” means the Minister of Transport; (iv)
 - (iv) “prescribed” means prescribed by or under this Act; (vi) 10
 - (v) “regulations” means the regulations made under section 14; (v)
 - (vi) “this Act” includes the regulations. (ii)

Application of Convention

2. (1) The Convention shall, subject to the provisions of this Act, apply in the Republic. 15
- (2) The State President may by proclamation in the *Gazette* add to this Act any Schedule containing a convention, relating to the recognition of rights in aircraft, ratified on behalf of the Republic.
- (3) The State President may do all things necessary—
 - (a) to ratify or cause to be ratified on behalf of the Republic any amendment of the Convention or any convention contemplated in subsection (2) which may from time to time be made; 20
 - (b) to ratify or cause to be ratified on behalf of the Republic any convention which may from time to time be adopted in substitution for the Convention or any convention contemplated in subsection (2), 25
 and may by proclamation in the *Gazette*—
 - (i) amend the appropriate Schedule to this Act to give effect to any amendment ratified under paragraph (a); and
 - (ii) substitute for the Convention appearing in the appropriate Schedule to this Act the convention which has been ratified under paragraph (b). 30
- (4) The Minister shall lay a copy of every proclamation issued under subsection (2) or (3) upon the Table in Parliament within 14 days after the date of the publication of such proclamation in the *Gazette*, if Parliament is then in ordinary session, or, if Parliament is not then in ordinary session, within 14 days after the commencement of its next ensuing ordinary session. 35

Mortgage of aircraft or share not to be registered in deeds registry

3. (1) Notwithstanding anything contained in the Deeds Registries Act, 1937 (Act No. 47 of 1937), or in any other law, but subject to the provisions of subsection (2), an aircraft or a share in an aircraft shall not after the coming into

Act No. 59, 1993 CONVENTION ON THE INTERNATIONAL RECOGNITION
OF RIGHTS IN AIRCRAFT ACT, 1993

operation of this Act be mortgaged by bond registered in a deeds registry, and no bond so registered—

(a) before such coming into operation shall after the expiration of 60 days from such coming into operation; or

(b) after such coming into operation shall after its registration, 5
confer upon the mortgagee any preference over other creditors.

(2) (a) The mortgagee under any bond by which an aircraft or a share in an aircraft is hypothecated and which is registered in a deeds registry at the coming into operation of this Act may produce to the Director-General, within 60 days after such coming into operation or within such further period as the Director-General in the particular case may allow, a copy of the duplicate original of the bond filed in the deeds registry, certified by the registrar of deeds in charge of that registry. 10

(b) Thereupon the Director-General shall record the mortgage in the register referred to in section 4, and thereafter the provisions of this Act relating to the mortgage of aircraft and shares in aircraft shall apply in respect of that mortgage: Provided that for the purposes of section 6 the mortgage shall be deemed to have been registered in the register on the date on which and at the time at which the said bond was registered in the deeds registry. 15

(3) (a) Whenever the Director-General records any mortgage in terms of subsection (2) he shall send written notice thereof to the registrar of deeds in charge of the deeds registry in which the bond was registered. 20

(b) Upon receipt of such notice the registrar shall endorse upon the duplicate original of the bond filed in the deeds registry the fact that the mortgage has been so recorded. 25

How aircraft or share mortgaged

4. (1) (a) An aircraft or share therein may be mortgaged as security for a loan or other debt, and the instrument creating the mortgage shall be called a deed of mortgage and shall be in the prescribed form.

(b) On the production of such instrument and payment of the prescribed fee the Director-General shall record the mortgage in the register kept by him for that purpose in the prescribed manner and containing the prescribed particulars. 30

(2) Mortgages shall be recorded by the Director-General in the order in which the deeds creating them are produced to him, and he shall endorse on each deed that it has been so recorded, stating the date and time of that record. 35

Discharge of mortgage

5. If a registered mortgage is discharged the Director-General shall, on the production of the deed of mortgage, with a receipt for the mortgage money endorsed thereon, duly signed and attested, make an entry in the register referred to in section 4 to the effect that the mortgage has been discharged, and shall cancel the deed of mortgage. 40

Priority of mortgages

6. If there are more mortgages than one registered in respect of the same aircraft or share in an aircraft, the respective mortgagees claiming thereunder shall, notwithstanding any express, implied or constructive notice, but subject to the proviso to subsection (2) of section 3, be entitled in priority, one before the other, according to the date and time at which each mortgage is recorded in the register referred to in section 4, and not according to the date and time at which each deed of mortgage was executed. 45

Act No. 59, 1993 CONVENTION ON THE INTERNATIONAL RECOGNITION
OF RIGHTS IN AIRCRAFT ACT, 1993**Rights of mortgagee**

7. (1) The mortgagee under a registered mortgage of an aircraft or a share in an aircraft shall be entitled to recover the amount due under the mortgage in any court of competent jurisdiction, and when giving judgment or thereafter the court may direct that the mortgaged aircraft or share be sold in execution of the judgment. 5

(2) Subject to the provisions of subsection (1), the mortgagee under a registered mortgage of an aircraft or a share in an aircraft shall not merely by virtue of the mortgage be entitled to sell or otherwise dispose of the mortgaged aircraft or share. 10

Preference under mortgage not affected by insolvency

8. Notwithstanding anything contained in the Insolvency Act, 1936 (Act No. 24 of 1936), or any other law, the right of preference given to a mortgagee by a registered mortgage of an aircraft or a share in an aircraft shall not be affected by any act of insolvency committed by the mortgagor, or by the sequestration of the estate of the mortgagor or, if the mortgagor is a company, by its being wound up, after the date of the record of the mortgage. 15

Transfer of mortgage

9. (1) A registered mortgage of an aircraft or a share in an aircraft may be transferred to any person by deed of cession in the prescribed form, and on the production of such deed and the relative deed of mortgage, the Director-General shall record the transfer of the mortgage by entering in the register referred to in section 4, the name of the transferee as mortgagee of the aircraft or share, and shall endorse on the deeds of mortgage and cession that the transfer of the mortgage has been so recorded, stating the date and time of the record. 20 25

(2) The person to whom a registered mortgage of an aircraft or a share in an aircraft has been transferred shall enjoy the same right of preference as was enjoyed by the transferor.

Transmission of interest in mortgage by death, etc.

10. (1) Whenever the rights of the mortgagee under a deed of mortgage over an aircraft or a share in an aircraft are transmitted on marriage or death or by any other lawful means other than by transfer under this Act to any person, that person shall execute a declaration in the prescribed form certifying that the transmission has taken place. 30

(2) The Director-General shall, on receipt of the declaration referred to in subsection (1) accompanied by the prescribed documents, enter in the register referred to in section 4 as mortgagee the name of the person to whom the rights have been transmitted. 35

Authority to mortgage outside Republic

11. (1) Upon written application on the prescribed form and on payment of the prescribed fee by the registered owner of a South African aircraft or a share therein who wishes to mortgage the aircraft or share by a deed of mortgage to be executed outside the Republic, the Director-General shall issue to him a certificate of mortgage. 40

(2) A certificate of mortgage shall not authorize any mortgage to be made in the Republic or by any person not named in the certificate. 45

(3) A certificate of mortgage shall contain the prescribed particulars and also a statement of any registered mortgages or certificates of mortgage affecting the aircraft or share in respect of which the certificate is given.

(4) The Minister may, by notice in the *Gazette*, make rules to be observed with regard to certificates of mortgage. 50

(5) For the purposes of this section the expression "registered owner" shall mean a person to whom an aircraft or a share in an aircraft belongs and whose name is registered as such in the prescribed register.

Loss of certificate of mortgage

12. On proof at any time to the satisfaction of the Director-General that a certificate of mortgage has been lost or destroyed or so damaged as to be useless, and that the powers thereby given have never been exercised, or if they have been exercised, then on proof of the several matters and things that have been done thereunder, the Director-General may either issue a new certificate or direct such entries to be made in the register referred to in section 4 or such other things to be done as might have been made or done if the loss, destruction or damage had not taken place.

Access to register

13. (1) Any person may upon payment of the prescribed fee have access to the register referred to in section 4 at any reasonable time during the hours of official attendance of the Director-General.

(2) The Director-General shall, at the written request of any person who pays the prescribed fee, furnish to such person, from the register referred to in section 4, the information required by him.

Regulations

14. (1) The Minister may make regulations—

- (a) to give effect to any provision of the Convention or any convention referred to in section 2(2);
- (b) providing for the recovery of any expenditure incurred in connection with the application of the Convention or any convention referred to in section 2(2);
- (c) regarding any matter which in terms of this Act is required or permitted to be prescribed; and
- (d) regarding any other matter the regulation of which, in the opinion of the Minister, may be necessary or desirable in order to achieve or promote the objects of this Act.

(2) Any regulation made under subsection (1) may for the contravention thereof or failure to comply therewith, prescribe a penalty of a fine or imprisonment for a period not exceeding ten years or both such fine and such imprisonment.

(3) Before making regulations under this section, the Minister shall publish the proposed regulations by notice in the *Gazette*.

(4) After publication of the notice referred to in subsection (3) any interested person may in writing, and within a period stated in the notice, but not less than four weeks from the date of publication of the notice, make representations regarding the regulations in question to the Director-General for submission to the Minister.

(5) After considering the representations referred to in subsection (4), the Minister may, whether or not he has adjusted the regulations in question, promulgate such regulations in their final form.

(6) Regulations referred to in subsection (1) shall be laid upon the Table in Parliament within 14 days after promulgation thereof under subsection (5) if Parliament is then in ordinary session, or, if Parliament is not then in ordinary session, within 14 days after the commencement of its next ensuing ordinary session.

Short title and commencement

15. This Act shall be called the Convention on the International Recognition of Rights in Aircraft Act, 1993, and shall come into operation on a date fixed by the State President by proclamation in the *Gazette*.

Schedule

CONVENTION ON THE INTERNATIONAL RECOGNITION OF RIGHTS IN AIRCRAFT, 1948

WHEREAS the International Civil Aviation Conference, held at Chicago in November-December 1944, recommended the early adoption of a Convention dealing with the transfer of title to aircraft,

WHEREAS it is highly desirable in the interest of the future expansion of international civil aviation that rights in aircraft be recognized internationally,

THE UNDERSIGNED, duly authorized, HAVE AGREED, on behalf of their respective Governments, AS FOLLOWS:

ARTICLE I

(1) The Contracting States undertake to recognize:

- (a) rights of property in aircraft;
- (b) rights to acquire aircraft by purchase coupled with possession of the aircraft;
- (c) rights to possession of aircraft under leases of six months or more;
- (d) mortgages, hypothèques and similar rights in aircraft which are contractually created as security for payment of an indebtedness;

provided that such rights

- (i) have been constituted in accordance with the law of the Contracting State in which the aircraft was registered as to nationality at the time of their constitution, and
- (ii) are regularly recorded in a public record of the Contracting State in which the aircraft is registered as to nationality.

The regularity of successive recordings in different Contracting States shall be determined in accordance with the law of the State where the aircraft was registered as to nationality at the time of each recording.

(2) Nothing in this Convention shall prevent the recognition of any rights in aircraft under the law of any Contracting State; but Contracting States shall not admit or recognize any right as taking priority over the rights mentioned in paragraph (1) of this Article.

ARTICLE II

(1) All recordings relating to a given aircraft must appear in the same record.

(2) Except as otherwise provided in this Convention, the effects of the recording of any right mentioned in Article 1, paragraph (1), with regard to third parties shall be determined according to the law of the Contracting State where it is recorded.

(3) A Contracting State may prohibit the recording of any right which cannot validly be constituted according to its national law.

ARTICLE III

(1) The address of the authority responsible for maintaining the record must be shown on every aircraft's certificate of registration as to nationality.

(2) Any person shall be entitled to receive from the authority duly certified copies or extracts of the particulars recorded. Such copies or extracts shall constitute *prima facie* evidence of the contents of the record.

(3) If the law of a Contracting State provides that the filing of a document for recording shall have the same effect as the recording, it shall have the same effect for the purposes of this Convention. In that case, adequate provision shall be made to ensure that such document is open to the public.

(4) Reasonable charges may be made for services performed by the authority maintaining the record.

ARTICLE IV

(1) In the event that any claims in respect of:

- (a) compensation due for salvage of the aircraft, or
 - (b) extraordinary expenses indispensable for the preservation of the aircraft,
- give rise, under the law of the Contracting State where the operations of salvage or preservation were terminated, to a right conferring a charge against the aircraft, such right shall be recognized by Contracting States and shall take priority over all the rights in the aircraft.

(2) The rights enumerated in paragraph (1) shall be satisfied in the inverse order of the dates of the incidents in connection with which they have arisen.

(3) Any of the said rights may, within three months from the date of the termination of the salvage or preservation operations, be noted on the record.

(4) The said rights shall not be recognized in other Contracting States after expiration of the three months mentioned in paragraph (3) unless, within this period,

- (a) the right has been noted on the record in conformity with paragraph (3), and
- (b) the amount has been agreed upon or judicial action on the right has been commenced. As far as judicial action is concerned, the law of the forum shall determine the contingencies upon which the three months period may be interrupted or suspended.

(5) This Article shall apply notwithstanding the provisions of Article I, paragraph (2).

ARTICLE V

The priority of a right mentioned in Article I, paragraph (1)(d), extends to all sums thereby secured. However, the amount of interest included shall not exceed that accrued during the three years prior to the execution proceedings together with that accrued during the execution proceedings.

Act No. 59, 1993

CONVENTION ON THE INTERNATIONAL RECOGNITION
OF RIGHTS IN AIRCRAFT ACT, 1993

ARTICLE VI

In case of attachment or sale of an aircraft in execution, or of any right therein, the Contracting States shall not be obliged to recognize, as against the attaching or executing creditor or against the purchaser, any right mentioned in Article I, paragraph (1), or the transfer of any such right, if constituted or effected with knowledge of the sale or execution proceedings by the person against whom the proceedings are directed.

ARTICLE VII

(1) The proceedings of a sale of an aircraft in execution shall be determined by the law of the Contracting State where the sale takes place.

(2) The following provisions shall however be observed:

- (a) The date and place of the sale shall be fixed at least six weeks in advance.
- (b) The executing creditor shall supply to the Court or other competent authority a certified extract of the recordings concerning the aircraft. He shall give public notice of the sale at the place where the aircraft is registered as to nationality, in accordance with the law there applicable, at least one month before the day fixed, and shall concurrently notify by registered letter, if possible by air mail, the recorded owner and the holders of recorded rights in the aircraft and of rights noted on the record under Article IV, paragraph (3), according to their addresses as shown on the record.

(3) The consequences of failure to observe the requirements of paragraph (2) shall be as provided by the law of the Contracting State where the sale takes place. However, any sale taking place in contravention of the requirements of that paragraph may be annulled upon demand made within six months from the date of the sale by any person suffering damage as the result of such contravention.

(4) No sale in execution can be effected unless all rights having priority over the claim of the executing creditor in accordance with this Convention which are established before the competent authority, are covered by the proceeds of sale or assumed by the purchaser.

(5) When injury or damage is caused to persons or property on the surface of the Contracting State where the execution sale takes place, by any aircraft subject to any right referred to in Article I held as security for an indebtedness, unless adequate and effective insurance by a State or an insurance undertaking in any State has been provided by or on behalf of the operator to cover such injury or damage, the national law of such Contracting State may provide in case of the seizure of such aircraft or any other aircraft owned by the same person and encumbered with any similar right held by the same creditor:

- (a) that the provisions of paragraph (4) above shall have no effect with regard to the person suffering such injury or damage or his representative if he is an executing creditor;
- (b) that any right referred to in Article I held as security for an indebtedness encumbering the aircraft may not be set up against any person suffering such injury or damage or his representative in excess of an amount equal to 80% of the sale price.

In the absence of other limit established by the law of the Contracting State where the execution sale takes place, the insurance shall be considered adequate within the meaning of the present paragraph if the amount of the insurance corresponds to the value when new of the aircraft seized in execution.

(6) Costs legally chargeable under the law of the Contracting State where the sale takes place, which are incurred in the common interest of creditors in the course of execution proceedings leading to sale, shall be paid out of the proceeds of sale before any claims, including those given preference by Article IV.

ARTICLE VIII

Sale of an aircraft in execution in conformity with the provisions of Article VII shall effect the transfer of the property in such aircraft free from all rights which are not assumed by the purchaser.

ARTICLE IX

Except in the case of a sale in execution in conformity with the provisions of Article VII, no transfer of an aircraft from the nationality register or the record of a Contracting State to that of another Contracting State shall be made, unless all holders of recorded rights have been satisfied or consent to the transfer.

ARTICLE X

(1) If a recorded right in an aircraft of the nature specified in Article I, and held as security for the payment of an indebtedness, extends, in conformity with the law of the Contracting State where the aircraft is registered, to spare parts stored in a specified place or places, such right shall be recognized by all Contracting States, as long as the spare parts remain in the place or places specified, provided that an appropriate public notice, specifying the description of the right, the name and address of the holder of this right and the record in which such right is recorded, is exhibited at the place where the spare parts are located, so as to give due notification to third parties that such spare parts are encumbered.

(2) A statement indicating the character and the approximate number of such spare parts shall be annexed to or included in the recorded document. Such parts may be replaced by similar parts without affecting the right of the creditor.

(3) The provisions of Article VII, paragraphs (1) and (4), and of Article VIII shall apply to a sale of spare parts in execution. However, where the executing creditor is an unsecured creditor, paragraph 4 of Article VII in its application to such a sale shall be construed so as to permit the sale to take place if a bid is received in an amount not less than two-thirds of the value of the spare parts as determined by experts appointed by the authority responsible for the sale. Further, in the distribution of the proceeds of sale, the competent authority may, in order to provide for the claim of the executing creditor, limit the amount payable to holders of prior rights to two-thirds of such proceeds of sale after payment of the costs referred to in Article VII, paragraph (6).

(4) For the purpose of this Article the term "spare parts" means parts of aircraft, engines, propellers, radio

Act No. 59, 1993

CONVENTION ON THE INTERNATIONAL RECOGNITION
OF RIGHTS IN AIRCRAFT ACT, 1993

apparatus, instruments, appliances, furnishings, parts of any of the foregoing, and generally any other articles of whatever description maintained for installation in aircraft in substitution for parts of articles removed.

ARTICLE XI

(1) The provisions of this Convention shall in each Contracting State apply to all aircraft registered as to nationality in another Contracting State.

(2) Each Contracting State shall also apply to aircraft there registered as to nationality:

- (a) The provisions of Articles II, III, IX, and
- (b) The provisions of Article IV, unless the salvage or preservation operations have been terminated within its own territory.

ARTICLE XII

Nothing in this Convention shall prejudice the right of any Contracting State to enforce against an aircraft its national laws relating to immigration, customs or air navigation.

ARTICLE XIII

This Convention shall not apply to aircraft used in military, customs or police services.

ARTICLE XIV

For the purpose of this Convention, the competent judicial and administrative authorities of the Contracting States may, subject to any contrary provision in their national law, correspond directly with each other.

ARTICLE XV

The Contracting States shall take such measures as are necessary for the fulfilment of the provisions of this Convention and shall forthwith inform the Secretary General of the International Civil Aviation Organization of these measures.

ARTICLE XVI

For the purposes of this Convention the term "aircraft" shall include the airframe, engines, propellers, radio apparatus, and all other articles intended for use in the aircraft whether installed therein or temporarily separated therefrom.

ARTICLE XVII

If a separate register of aircraft for purposes of nationality is maintained in any territory for whose foreign relations a Contracting State is responsible, references in this Convention to the law of the Contracting State shall be construed as references to the law of that territory.

ARTICLE XVIII

This Convention shall remain open for signature until it comes into force in accordance with the provisions of Article XX.

ARTICLE XIX

(1) This Convention shall be subject to ratification by the signatory States.

(2) The instruments of ratification shall be deposited in the archives of the International Civil Aviation Organization, which shall give notice of the date of deposit to each of the signatory and adhering States.

ARTICLE XX

(1) As soon as two of the signatory States have deposited their instruments of ratification of this Convention, it shall come into force between them on the ninetieth day after the date of the deposit of the second instrument of ratification. It shall come into force, for each State which deposits its instrument of ratification after that date, on the ninetieth day after the deposit of its instrument of ratification.

(2) The International Civil Aviation Organization shall give notice to each signatory State of the date on which this Convention comes into force.

(3) As soon as this Convention comes into force, it shall be registered with the United Nations by the Secretary General of the International Civil Aviation Organization.

**Act No. 59, 1993 CONVENTION ON THE INTERNATIONAL RECOGNITION
OF RIGHTS IN AIRCRAFT ACT, 1993****ARTICLE XXI**

- (1) This Convention shall, after it has come into force, be open for adherence by non-signatory States.
- (2) Adherence shall be effected by the deposit of an instrument of adherence in the archives of the International Civil Aviation Organization, which shall give notice of the date of the deposit to each signatory and adhering State.
- (3) Adherence shall take effect as from the ninetieth day after the date of the deposit of the instrument of adherence in the archives of the International Civil Aviation Organization.

ARTICLE XXII

- (1) Any Contracting State may denounce this Convention by notification of denunciation to the International Civil Aviation Organization, which shall give notice of the date of receipt of such notification to each signatory and adhering State.
- (2) Denunciation shall take effect six months after the date of receipt by the International Civil Aviation Organization of the notification of denunciation.

ARTICLE XXIII

- (1) Any State may at the time of deposit of its instrument of ratification or adherence, declare that its acceptance of this Convention does not apply to any one or more of the territories for the foreign relations of which such State is responsible.
- (2) The International Civil Aviation Organization shall give notice of any such declaration to each signatory and adhering State.
- (3) With the exception of territories in respect of which a declaration has been made in accordance with paragraph (1) of this Article, this Convention shall apply to all territories for the foreign relations of which a Contracting State is responsible.
- (4) Any State may adhere to this Convention separately on behalf of all or any of the territories regarding which it has made a declaration in accordance with paragraph (1) of this Article and the provisions of paragraphs (2) and (3) of Article XXI shall apply to such adherence.
- (5) Any Contracting State may denounce this Convention, in accordance with the provisions of Article XXII, separately for all or any of the territories for the foreign relations of which such State is responsible.

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

DONE at Geneva, on the nineteenth day of the month of June of the year one thousand nine hundred and forty eight in the English, French and Spanish languages, each text being of equal authenticity.

THIS CONVENTION shall be deposited in the archives of the International Civil Aviation Organization where, in accordance with Article XVIII, it shall remain open for signature.