

## SCHEDULE 2

### Article 19

## PART I

### APPLICATION OF THE ORDER TO SCOTLAND

- (a) (a) In this Schedule—
- “act of bankruptcy” has the meaning assigned to it in subparagraph (b)(ii) of this paragraph;
  - “aircraft mortgage” has the meaning assigned to it in paragraph 2 of this Schedule;
  - “mortgagee” means the creditor in an aircraft mortgage;
  - “mortgagor” means the person in security of whose indebtedness or obligation the aircraft mortgage is granted;
- and references to an aircraft which is the subject of an aircraft mortgage include, where the mortgage so extends, a reference to a store of spare parts designated or appropriated to that aircraft.
- (b) In the application of this Order to Scotland—
- (i) in Article 14 there shall be added the following paragraph—
    - “6. Subject to paragraph 5 of this article, an aircraft mortgage may contain provisions regulating the order in which that mortgage shall rank with any other mortgage of that aircraft or any floating charge within the meaning of the Companies (Floating Charges) (Scotland) Act 1961 or any re-enactment thereof.”
  - (ii) in Article 15 the words “act of bankruptcy” shall mean—
    - (a) in the case of a company, a winding-up order, or a resolution for voluntary winding-up (other than a members' voluntary winding-up) or the taking of possession, by or on behalf of the holders of any debentures secured by a floating charge, of any property of the company comprised in or subject to the charge;
    - (b) in the case of any other person, his notour bankruptcy, the execution of a trust deed for behoof of, or the making of a composition contract or arrangement with his creditors or in the event of his death, the appointment of a judicial factor under section 163 of the Bankruptcy (Scotland) Act 1913 to divide his insolvent estate among his creditors, or the making of an order for the administration of his estate according to the law of bankruptcy under section 130 of the Bankruptcy Act 1914 or the administration of his estate in accordance with the rules set out in Part I of Schedule 1 to the Administration of Estates Act 1925.
2. A security created in Scotland under Article 3 of this Order for a loan or other obligation shall be constituted by a mortgage in, or as nearly as may be in, the form specified in Part II of this Schedule which shall be known as an aircraft mortgage.
3. A mortgage registered under this Order shall have effect without any requirement of law that delivery of the aircraft shall be made to the mortgagee.
4. A mortgage so registered may be transferred, in whole or in part, by the mortgagee by a transfer in, or as nearly as may be in, the form specified in Part III of this Schedule.

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5. An aircraft mortgage may be discharged, in whole or in part, by the mortgagee by a discharge in, or as nearly as may be in, the form specified in Part IV of this Schedule or by a receipt for the mortgage money duly endorsed on the aircraft mortgage.

6. The provisions of paragraphs 7 to 11 of this Schedule, with such variations as may have been agreed by the parties, shall regulate the rights and powers of parties under an aircraft mortgage.

7. Where the mortgagor, or the owner, is in default within the meaning of paragraph 8 of this Schedule, the mortgagee may exercise such of the rights conferred upon him by the following provisions of this Schedule as he may consider appropriate, and any such right shall be in addition to, and not in derogation from, any other remedy arising from the aircraft mortgage or any other agreement between the parties.

8. The mortgagor or the owner shall be in default if—

- (a) the mortgagee has required the discharge or performance of the debt or obligation to which the aircraft mortgage relates and the mortgagor fails to meet that requirement, or
- (b) the mortgagor or the owner has failed to comply with any other condition of the aircraft mortgage, or
- (c) the mortgagor or the owner has committed an act of bankruptcy.

9. Where default as aforesaid has occurred the mortgagee may sell the mortgaged aircraft in accordance with the following provisions of this paragraph:—

- (a) The mortgagee who intends to sell the aircraft shall give not less than 60 days notice in writing of that intention to the mortgagor, the owner and every person shown in the Register as holding a mortgage over the aircraft, but the said period of notice may be dispensed with or shortened with the consent of all the persons to whom notice is required to be given.
- (b) On the expiry of, or the dispensing with, the period of notice, or, as the case may be, of the reduced period of notice, the mortgagee may sell the aircraft with the consent in writing of every other mortgagee shown in the Register as holding a mortgage over the aircraft.
- (c) In the event of any mortgagee withholding his consent the mortgagee who has served the notice may apply to the Court of Session for a warrant to sell the aircraft; any such application shall be served upon any mortgagee who has withheld his consent and may be granted by the Court, subject to such conditions as it thinks reasonable in all the circumstances.

10. Moneys received by a mortgagee from the sale of the mortgaged aircraft shall be held by him in trust to be applied in accordance with the following order of priority:—

- (a) first, in payment of all expenses properly incurred by him in connection with the sale, or any prior attempted sale, of the aircraft;
- (b) secondly, in payment of the whole amount of principal and interest due under any prior aircraft mortgage to which the sale is not made conditional;
- (c) thirdly, in payment of the whole amount of principal and interest due under his aircraft mortgage and in payment in due proportion of the whole amount due under an aircraft mortgage, if any, ranking *pari passu* with his own mortgage;
- (d) fourthly, in payment of any amounts of principal and interest due under any duly registered mortgages over the aircraft, the ranking of which is postponed to that of his own mortgage; and
- (e) fifthly, in payment of any amount of principal and interest due under any mortgages over the aircraft ranked in accordance with the priorities provided for in Article 14 of this Order where the holder of any such mortgage has lodged in the hands of the mortgagee a claim in writing countersigned by the mortgagor,

and any residue of the moneys so received shall be paid to the owner or to any person authorised by the owner to give receipts therefor.

**11.**—(1) Where default as aforesaid has occurred the mortgagee may apply to the Court of Session for a warrant for possession of the mortgaged aircraft, and the application shall be served upon the mortgagor, the owner and every person shown in the Register as holding a mortgage over the aircraft and upon the owner or occupier of the land or premises where the aircraft is for the time being situated.

(2) Upon such an application being made the Court may—

- (a) grant warrant to the applicant to take interim possession of the aircraft pending further consideration of the application,
- (b) on further consideration grant the application for possession subject to such conditions as it shall consider reasonable in all the circumstances.

(3) Subject to any conditions imposed by the Court a warrant for possession shall empower the applicant to enter at any reasonable time on any land or into any premises where the mortgaged aircraft, or any part thereof, may be, and to remove the aircraft or part, to manage the aircraft and to receive all income accruing from freights or charter fees, to pay insurance premiums and expenses of such management, to effect repairs and make replacements of parts and to recover all expenses, payments and disbursements incurred by him in relation to the exercise of these powers as sums due under his mortgage with interest thereon at the rate stipulated therein from the respective dates of payment or disbursement.

(4) A mortgagee who has obtained a warrant for possession may at any time thereafter sell the mortgaged aircraft after giving not less than 30 days notice in writing of his intention to do so to the mortgagor, the owner and every person shown in the Register as holding a mortgage over the aircraft, provided that the said period of notice may be dispensed with or shortened with the consent of all the persons to whom notice is required to be given.

**12.** The Court of Session shall have jurisdiction to grant an application by a mortgagee in any mortgage of an aircraft registered in the United Kingdom for a warrant for possession or sale of the aircraft while the aircraft is situated in Scotland as if the mortgage had been an aircraft mortgage created in Scotland.

**13.** The provisions of section 16 of the Administration of Justice (Scotland) Act 1933 (power to regulate procedure, etc., by Act of Sederunt) shall apply to the provisions of this Order as it applies to the provisions of an Act of Parliament.