

**LAWS OF MALAYSIA****Act 659****INTERNATIONAL INTERESTS IN MOBILE  
EQUIPMENT (AIRCRAFT) ACT 2006**

---

**ARRANGEMENT OF SECTIONS**

---

## Section

1. Short title and commencement
2. Application of the Convention on International Interests in Mobile Equipment and the Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment
3. Interpretation
4. Relevant courts
5. Power to make regulations
6. Non-application of other Acts
7. Prevailing law

FIRST SCHEDULE

SECOND SCHEDULE

P.4.(B) 28/2006

INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT  
(AIRCRAFT) ACT 2006

APPOINTMENT OF DATE OF COMING INTO OPERATION

In exercise of the powers conferred by subsection 1(2) of the International Interests in Mobile Equipment (Aircraft) Act 2006 [Act 659], the Minister appoints 19 October 2006 as the date on which the Act comes into operation.

Dated 16 October 2006

[KP/BU/0.220. Jld. 8; PN(U<sup>2</sup>)2484/II]

DATO' SRI CHAN KONG CHOY  
Minister of Transport

## LAWS OF MALAYSIA

Act 659

INTERNATIONAL INTERESTS IN MOBILE  
EQUIPMENT (AIRCRAFT) ACT 2006

An Act to implement the Convention on the International Interests in Mobile Equipment, and the Protocol to that Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment, and to provide for matters connected therewith.

[ 19 October 2006

] P4(B)281/2006

WHEREAS the Convention on International Interests in Mobile Equipment was opened for signature at Cape Town on 16 November 2001;

AND WHEREAS the Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment was opened for signature at Cape Town on 16 November 2001;

AND WHEREAS Malaysia deposited her instruments of accession on 2 November 2005 and therefore in accordance with Article 49 of the Convention and Article XXVIII of the Protocol, the said Convention and Protocol entered into force as far as Malaysia is concerned on 1 March 2006:

NOW, THEREFORE, IT IS **ENACTED** by the Parliament of Malaysia as follows:

### **Short title and commencement**

1. (1) This Act may be cited as the International Interests in Mobile Equipment (Aircraft) Act 2006.

(2) This Act comes into operation on a date to be appointed by the Minister by notification in the *Gazette*.

### **Application of the Convention on International Interests in Mobile Equipment and the Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment**

2. (1) Subject to subsection (2), the Convention on International Interests in Mobile Equipment as set out in the First Schedule and the Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment as set out in the Second Schedule shall have the force of law in Malaysia and for that purpose be construed in accordance with the provisions of this Act.

(2) Notwithstanding Article 2 of the Convention on International Interests in Mobile Equipment, this Act shall apply in respect of aircraft objects only.

### **Interpretation**

3. In this Act, unless the context otherwise requires—

“this Act” includes any subsidiary legislation made under this Act;

“Cape Town Convention” means the Convention on International Interests in Mobile Equipment;

“Minister” means the Minister charged with the responsibility for civil aviation;

“aircraft object” means any airframe, aircraft engine and helicopter as defined under Article I(2) of the Aircraft Protocol;

“Aircraft Protocol” means the Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment.

### **Relevant courts**

4. Pursuant to Article 53 of the Cape Town Convention, all courts with competent jurisdiction shall be the relevant courts for the purposes of Article 1 and Chapter XII of that Convention.

### **Power to make regulations**

5. The Minister may make such regulations as may be expedient or necessary for the better carrying out of the provisions of this Act, to provide generally for regulating and carrying out the Cape Town Convention and the Aircraft Protocol and any amendments of such Convention and Protocol.

### **Non-application of other Acts**

6. (1) Subsection 108(3) of the Companies Act 1965 [*Act 125*] shall not apply to a charge on any aircraft objects falling within the scope of the Cape Town Convention and the Aircraft Protocol.

(2) Subsection 4(3) of the Civil Law Act 1956 [*Act 67*] shall not apply to any assignment falling within the scope of the Cape Town Convention and the Aircraft Protocol.

### **Prevailing law**

7. (1) Subject to section 6, the provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other written law relating to the financing and leasing of aircraft object, creation of international interests in aircraft object and their registration thereof.

(2) Notwithstanding subsection (1), to the extent of any conflict or inconsistency between the provisions of this Act and those of any other written law relating to matters governed by the Cape Town Convention and the Aircraft Protocol, the provisions of this Act shall prevail and the conflicting or inconsistent provisions of such other written law shall, to the extent of the conflict or inconsistency, be deemed to be superseded.

## FIRST SCHEDULE

[Subsection 2(1)]

CONVENTION ON INTERNATIONAL INTERESTS IN MOBILE  
EQUIPMENT

THE STATES PARTIES TO THIS CONVENTION,

AWARE of the need to acquire and use mobile equipment of high value or particular economic significance and to facilitate the financing of the acquisition and use of such equipment in an efficient manner,

RECOGNISING the advantages of asset-based financing and leasing for this purpose and desiring to facilitate these types of transaction by establishing clear rules to govern them,

MINDFUL of the need to ensure that interests in such equipment are recognised and protected universally,

DESIRING to provide broad and mutual economic benefits for all interested parties,

BELIEVING that such rules must reflect the principles underlying asset-based financing and leasing and promote the autonomy of the parties necessary in these transactions,

CONSCIOUS of the need to establish a legal framework for international interests in such equipment and for that purpose to create an international registration system for their protection,

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

HAVE AGREED upon the following provisions:

## Chapter I

## Sphere of application and general provisions

*Article 1 — Definitions*

In this Convention, except where the context otherwise requires, the following terms are employed with the meanings set out below:

(a) "agreement" means a security agreement, a title reservation agreement or a leasing agreement;

(b) "assignment" means a contract which, whether by way of security or otherwise, confers on the assignee associated rights with or without a transfer of the related international interest;

- (c) "associated rights" means all rights to payment or other performance by a debtor under an agreement which are secured by or associated with the object;
- (d) "commencement of the insolvency proceedings" means the time at which the insolvency proceedings are deemed to commence under the applicable insolvency law;
- (e) "conditional buyer" means a buyer under a title reservation agreement;
- (f) "conditional seller" means a seller under a title reservation agreement;
- (g) "contract of sale" means a contract for the sale of an object by a seller to a buyer which is not an agreement as defined in (a) above;
- (h) "court" means a court of law or an administrative or arbitral tribunal established by a Contracting State;
- (i) "creditor" means a chargee under a security agreement, a conditional seller under a title reservation agreement or a lessor under a leasing agreement;
- (j) "debtor" means a chargor under a security agreement, a conditional buyer under a title reservation agreement, a lessee under a leasing agreement or a person whose interest in an object is burdened by a registrable non-consensual right or interest;
- (k) "insolvency administrator" means a person authorised to administer the reorganisation or liquidation, including one authorised on an interim basis, and includes a debtor in possession if permitted by the applicable insolvency law;
- (l) "insolvency proceedings" means bankruptcy, liquidation or other collective judicial or administrative proceedings, including interim proceedings, in which the assets and affairs of the debtor are subject to control or supervision by a court for the purposes of reorganisation or liquidation;
- (m) "interested persons" means:
  - (i) the debtor;
  - (ii) any person who, for the purpose of assuring performance of any of the obligations in favour of the creditor, gives or issues a suretyship or demand guarantee or a standby letter of credit or any other form of credit insurance;
  - (iii) any other person having rights in or over the object;
- (n) "internal transaction" means a transaction of a type listed in Article 2(2)(a) to (c) where the centre of the main interests of all parties to such transaction is situated, and the relevant object located (as specified in the Protocol), in the same Contracting State at the time of the conclusion of the contract and where the interest created by the transaction has been registered in a national registry in that Contracting State which has made a declaration under Article 50(1);

- (o) "international interest" means an interest held by a creditor to which Article 2 applies;
- (p) "International Registry" means the international registration facilities established for the purposes of this Convention or the Protocol;
- (q) "leasing agreement" means an agreement by which one person (the lessor) grants a right to possession or control of an object (with or without an option to purchase) to another person (the lessee) in return for a rental or other payment;
- (r) "national interest" means an interest held by a creditor in an object and created by an internal transaction covered by a declaration under Article 50(1);
- (s) "non-consensual right or interest" means a right or interest conferred under the law of a Contracting State which has made a declaration under Article 39 to secure the performance of an obligation, including an obligation to a State, State entity or an intergovernmental or private organisation;
- (t) "notice of a national interest" means notice registered or to be registered in the International Registry that a national interest has been created;
- (u) "object" means an object of a category to which Article 2 applies;
- (v) "pre-existing right or interest" means a right or interest of any kind in or over an object created or arising before the effective date of this Convention as defined by Article 60(2)(a);
- (w) "proceeds" means money or non-money proceeds of an object arising from the total or partial loss or physical destruction of the object or its total or partial confiscation, condemnation or requisition;
- (x) "prospective assignment" means an assignment that is intended to be made in the future, upon the occurrence of a stated event, whether or not the occurrence of the event is certain;
- (y) "prospective international interest" means an interest that is intended to be created or provided for in an object as an international interest in the future, upon the occurrence of a stated event (which may include the debtor's acquisition of an interest in the object), whether or not the occurrence of the event is certain;
- (z) "prospective sale" means a sale which is intended to be made in the future, upon the occurrence of a stated event, whether or not the occurrence of the event is certain;
- (aa) "Protocol" means, in respect of any category of object and associated rights to which this Convention applies, the Protocol in respect of that category of object and associated rights;
- (bb) "registered" means registered in the International Registry pursuant to Chapter V;
- (cc) "registered interest" means an international interest, a registrable non-consensual right or interest or a national interest specified in a notice of a national interest registered pursuant to Chapter V;



An interest falling within subparagraph (a) does not also fall within subparagraph (b) or (c).

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

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

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

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

#### *Article 3 – Sphere of application*

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

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

#### *Article 4 – Where debtor is situated*

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

- (a) under the law of which it is incorporated or formed;
- (b) where it has its registered office or statutory seat;
- (c) where it has its centre of administration; or
- (d) where it has its place of business.

2. A reference in subparagraph (d) of the preceding paragraph to the debtor's place of business shall, if it has more than one place of business, mean its principal place of business or, if it has no place of business, its habitual residence.

#### *Article 5 – Interpretation and applicable law*

1. In the interpretation of this Convention, regard is to be had to its purposes as set forth in the preamble, to its international character and to the need to promote uniformity and predictability in its application.

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

3. References to the applicable law are to the domestic rules of the law applicable by virtue of the rules of private international law of the forum State.

- (dd) “registrable non-consensual right or interest” means a non-consensual right or interest registrable pursuant to a declaration deposited under Article 40;
- (ee) “Registrar” means, in respect of the Protocol, the person or body designated by that Protocol or appointed under Article 17(2)(b);
- (ff) “regulations” means regulations made or approved by the Supervisory Authority pursuant to the Protocol;
- (gg) “sale” means a transfer of ownership of an object pursuant to a contract of sale;
- (hh) “secured obligation” means an obligation secured by a security interest;
- (ii) “security agreement” means an agreement by which a chargor grants or agrees to grant to a chargee an interest (including an ownership interest) in or over an object to secure the performance of any existing or future obligation of the chargor or a third person;
- (jj) “security interest” means an interest created by a security agreement;
- (kk) “Supervisory Authority” means, in respect of the Protocol, the Supervisory Authority referred to in Article 17(1);
- (ll) “title reservation agreement” means an agreement for the sale of an object on terms that ownership does not pass until fulfilment of the condition or conditions stated in the agreement;
- (mm) “unregistered interest” means a consensual interest or non-consensual right or interest (other than an interest to which Article 39 applies) which has not been registered, whether or not it is registrable under this Convention; and
- (nn) “writing” means a record of information (including information communicated by teletransmission) which is in tangible or other form and is capable of being reproduced in tangible form on a subsequent occasion and which indicates by reasonable means a person’s approval of the record.

*Article 2 – The international interest*

1. This Convention provides for the constitution and effects of an international interest in certain categories of mobile equipment and associated rights.
2. For the purposes of this Convention, an international interest in mobile equipment is an interest, constituted under Article 7, in a uniquely identifiable object of a category of such objects listed in paragraph 3 and designated in the Protocol:
  - (a) granted by the chargor under a security agreement;
  - (b) vested in a person who is the conditional seller under a title reservation agreement; or
  - (c) vested in a person who is the lessor under a leasing agreement.

8(1)(b) or ordered under Article 8(2). Where, after such default, the payment of the amount secured is made in full by an interested person other than the debtor, that person is subrogated to the rights of the chargee.

5. Ownership or any other interest of the chargor passing on a sale under Article 8(1)(b) or passing under paragraph 1 or 2 of this Article is free from any other interest over which the chargee's security interest has priority under the provisions of Article 29.

*Article 10 – Remedies of conditional seller or lessor*

In the event of default under a title reservation agreement or under a leasing agreement as provided in Article 11, the conditional seller or the lessor, as the case may be, may:

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

*Article 11 – Meaning of default*

1. The debtor and the creditor may at any time agree in writing as to the events that constitute a default or otherwise give rise to the rights and remedies specified in Articles 8 to 10 and 13.
2. Where the debtor and the creditor have not so agreed, "default" for the purposes of Articles 8 to 10 and 13 means a default which substantially deprives the creditor of what it is entitled to expect under the agreement.

*Article 12 – Additional remedies*

Any additional remedies permitted by the applicable law, including any remedies agreed upon by the parties, may be exercised to the extent that they are not inconsistent with the mandatory provisions of this Chapter as set out in Article 15.

*Article 13 – Relief pending final determination*

1. Subject to any declaration that it may make under Article 55, a Contracting State shall ensure that a creditor who adduces evidence of default by the debtor may, pending final determination of its claim and to the extent that the debtor has at any time so agreed, obtain from a court speedy relief in the form of such one or more of the following orders as the creditor requests:

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

2. The chargee may alternatively apply for a court order authorising or directing any of the acts referred to in the preceding paragraph.

3. Any remedy set out in subparagraph (a), (b) or (c) of paragraph 1 or by Article 13 shall be exercised in a commercially reasonable manner. A remedy shall be deemed to be exercised in a commercially reasonable manner where it is exercised in conformity with a provision of the security agreement except where such a provision is manifestly unreasonable.

4. A chargee proposing to sell or grant a lease of an object under paragraph 1 shall give reasonable prior notice in writing of the proposed sale or lease to:

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

5. Any sum collected or received by the chargee as a result of exercise of any of the remedies set out in paragraph 1 or 2 shall be applied towards discharge of the amount of the secured obligations.

6. Where the sums collected or received by the chargee as a result of the exercise of any remedy set out in paragraph 1 or 2 exceed the amount secured by the security interest and any reasonable costs incurred in the exercise of any such remedy, then unless otherwise ordered by the court the chargee shall distribute the surplus among holders of subsequently ranking interests which have been registered or of which the chargee has been given notice, in order of priority, and pay any remaining balance to the chargor.

*Article 9 — Vesting of object in satisfaction; redemption*

1. At any time after default as provided in Article 11, the chargee and all the interested persons may agree that ownership of (or any other interest of the chargor in) any object covered by the security interest shall vest in the chargee in or towards satisfaction of the secured obligations.

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

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

4. At any time after default as provided in Article 11 and before sale of the charged object or the making of an order under paragraph 2, the chargor or any interested person may discharge the security interest by paying in full the amount secured, subject to any lease granted by the chargee under Article

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

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

1. This Convention and the Protocol shall be read and interpreted together as a single instrument.
2. To the extent of any inconsistency between this Convention and the Protocol, the Protocol shall prevail.

Chapter II

Constitution of an international interest

*Article 7 — Formal requirements*

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

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

Chapter III

Default remedies

*Article 8 — Remedies of chargees*

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

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

2. In making any order under the preceding paragraph, the court may impose such terms as it considers necessary to protect the interested persons in the event that the creditor:

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

3. Before making any order under paragraph 1, the court may require notice of the request to be given to any of the interested persons.

4. Nothing in this Article affects the application of Article 8(3) or limits the availability of forms of interim relief other than those set out in paragraph 1.

#### *Article 14 – Procedural requirements*

Subject to Article 54(2), any remedy provided by this Chapter shall be exercised in conformity with the procedure prescribed by the law of the place where the remedy is to be exercised.

#### *Article 15 – Derogation*

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

### Chapter IV

#### The international registration system

#### *Article 16 – The International Registry*

1. An International Registry shall be established for registrations of:
  - (a) international interests, prospective international interests and registrable non-consensual rights and interests;
  - (b) assignments and prospective assignments of international interests;
  - (c) acquisitions of international interests by legal or contractual subrogations under the applicable law;
  - (d) notices of national interests; and
  - (e) subordinations of interests referred to in any of the preceding subparagraphs.

## Chapter V

## Other matters relating to registration

*Article 18 — Registration requirements*

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

*Article 19 — Validity and time of registration*

1. A registration shall be valid only if made in conformity with Article 20.
2. A registration, if valid, shall be complete upon entry of the required information into the International Registry data base so as to be searchable.
3. A registration shall be searchable for the purposes of the preceding paragraph at the time when:
  - (a) the International Registry has assigned to it a sequentially ordered file number; and
  - (b) the registration information, including the file number, is stored in durable form and may be accessed at the International Registry.

2. Different international registries may be established for different categories of object and associated rights.

3. For the purposes of this Chapter and Chapter V, the term “registration” includes, where appropriate, an amendment, extension or discharge of a registration.

*Article 17 – The Supervisory Authority and the Registrar*

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

2. The Supervisory Authority shall:

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

3. The Supervisory Authority may enter into any agreement requisite for the performance of its functions, including any agreement referred to in Article 27(3).

4. The Supervisory Authority shall own all proprietary rights in the data bases and archives of the International Registry.

5. The Registrar shall ensure the efficient operation of the International Registry and perform the functions assigned to it by this Convention, the Protocol and the regulations.