



## **Air Craft Registration Act chapter 503 of the Laws of Malta.**

In 2010 parliament enacted the Aircraft Registration Act (from here on referred to as the 'Act'). The main aim behind this Act was to promote and encourage the growth of the aviation industry in Malta. This Act applied the provisions of the Cape Town Convention on the International Interest in Mobile Equipment and its Aircraft Protocol, this convention provides an increased protection for secured creditors.

The Act governs all aspects of aircraft registration, ownership, nationality and aircraft mortgage registration in Malta. It introduces rules on special privileges on aircraft, whilst aligning Maltese law to various international conventions in relation to aviation.

This Act starts off by giving a definition of what an 'aircraft' is under Maltese law:

*"aircraft" means any machine that can derive support in the atmosphere from the reactions of the air other than the reactions of the air against the earth's surface as may be illustrated or amplified by the Minister by regulations but shall exclude aircraft used in the military, customs or police services of any State"*

An aircraft may be registered in Malta subject to the laws of Malta, such registration will give the aircraft all the rights and privileges of a Maltese aircrafts. The Director General responsible for civil aviation in Malta shall keep a National Aircraft Register (which can be inspected by any person) and record all such registrations. Maltese law also allows the registration of an aircraft which is under construction as soon as it is uniquely identifiable, for an aircraft to be rendered uniquely identifiable it is sufficient to have a description of the aircraft which contains:

- Its manufacturer serial number.
- The name of the manufacturer (unless expressly agreed to otherwise with a buyer, this shall be considered to be the owner of such aircraft which is still under construction).
- Its model designation.

Upon registration the Director General Shall take note of the following details:

- The physical details of the aircraft.



- The physical details of the engines attached to the aircraft and any replacement engines owned by the registrant to the extent they are designated for use on the aircraft.
- The name and address of the registrant and in what capacity the registrant has registered the air aircraft.
- The details of any mortgages registered on the aircraft, and subsequently all transactions relating to mortgages.
- The details of any irrevocable de-registration and export request authorization, or any other power of attorney, irrevocable or otherwise, and even if such power of attorney is granted for a stated period of time, after which it shall lapse, such date shall also be recorded.

The registrant (which is the person in whose name the aircraft is registered) or any other person with the consent of the registrant may ask the Director General to note further details in the National Aircraft Register such as information on any international interest and details of the resident agent where the registrant is an international registrant.

Registration of an aircraft has several legal effects in relation to the information registered and the acts to which it refers. Registration renders such information public and thus such information is considered to be within the knowledge of third parties, furthermore the acts shall be effective against third parties, furthermore registration creates priority between different rights provided in the law.

#### **Eligibility to Register an Aircraft:**

The registrant of an aircraft may be any of the following:

- i. The owner of the aircraft who operates the said aircraft
- ii. An owner of an aircraft under construction or an aircraft temporarily not being operated or managed
- iii. An operator of an aircraft under a temporary title.
- iv. A buyer of an aircraft under a conditional sale or title reservation or similar agreement.

In the last two cases the Director General shall exercise his discretion as to whether the operator's agreement qualifies to register an aircraft



The act goes on to make a list of the persons who are qualified to register an aircraft in the National Aircraft Registry, this includes:

- i. The Government of Malta,
- ii. A citizen of a Member state of the European Union/EEA state or Switzerland and having a place of residence in such State.
- iii. An undertaking formed and existing in accordance with the laws of Malta, of a Member State of the European Union, of an EEA State or of Switzerland and having its registered office, central administration and principal place of business within Malta, or the European Union, or the European Economic Area or Switzerland, whereof not less than fifty per cent of the undertaking is owned and effectively controlled by the Government of Malta, or by any Member State of the European Union, or by persons referred to in (ii), whether directly or indirectly through one or more intermediate undertakings
- iv. **Private aircrafts** - A natural person which is a citizen of, or an undertaking established in an approved jurisdiction, other than those mentioned above, shall be qualified to register aircraft in construction or one which is not used to provide air services if the director general is satisfied that it will observe the laws of Malta and is capable of owning and operating an aircraft, in addition to this a local resident agent must be appointed to represent the owner on Malta for matters concerning the registration of the aircraft.

The applicant for registration may also be a trustee, in this case the Director General shall take note of the beneficiaries of the relevant trust to determine the eligibility of the trustee to register an aircraft under this Act and no regard shall be paid to the nationality of the trustee himself.

Where the application for registration of an aircraft is based on ownership and where interest in an aircraft is vested in more than one person, at least 50% of all owners of the shares in the aircraft must be eligible as qualified persons. When the application for registration of an aircraft is based on the operation of such aircraft and where such operation is being carried out by more than one person, then all the operators of the aircraft must be eligible as qualified persons.

The law gives the Minister responsible for transport discretion to establish any other different conditions.



### **Applications for Registration:**

The procedure for the application for registration of an aircraft is laid down in this act. The application must be made in writing and in the prescribed form and shall include such particulars and evidence relating to the aircraft, ownership, acquisition, chartering and operation of the aircraft this has to be accompanied by the qualification of the registrant. This information will enable the Director General to determine whether the aircraft may properly be registered so that he can issue a certificate of registration and determine the classification of the aircraft. Such a certificate is non-transferable and shall include the details written in the register.

For the director General to register an aircraft, the aircraft need not be in Malta. Once the director General is satisfied that the aircraft may be so registered such aircraft may be so registered. The following particulars must be included in the register.

- The number of Certificate of Registration
- The nationality marks of the aircraft and the registration marks assigned to it by the DG;
- The name of the constructor of the aircraft and its designation;
- The Serial number of the aircraft;
- The manufacturer, the serial numbers and physical details of the engines attached to the aircraft and any replacement engines to the extent they are designated for use on the aircraft.

Following the issue of the certificate of registration the Director General has to be informed of certain events, namely:

- Any changes in particulars furnished to the Director General upon application;
- The destruction of the aircraft;
- The permanent withdrawal of the aircraft;
- Any event which brings reversion of title to the seller of the aircraft or the possession, control or operation of the aircraft to a person other than the registrant;
- Any event amounting to the enforcement of a security interest under which it has effect of transferring the title or the possession, control or operation of the aircraft.

Article 13 of the Act speaks about the cancellation of registration. The law gives a wide discretion to the Director General when deciding whether a registration should be cancelled or not, article 13(1)(d) is a clear example of this, "in the opinion of the



Director General, the aircraft could be more suitably be registered elsewhere". If a registration has been cancelled, the certificate of registration is to be considered void, however in the case of an aircraft which is the subject of an undischarged mortgage, the Director General cannot cancel the registration of the aircraft unless all mortgagees of the aircraft have consented to the cancellation. When cancelling a registration the Director General shall give all the registrants and any mortgagees at least 15 working days notice of any intent to terminate such registration, the reason for the termination of the registration must be specified in the notice.

When dealing with the termination of a registration which has unsatisfied mortgages the aircraft shall cease to be registered and the register of the aircraft shall be considered close except in so far as it relates to any unsatisfied mortgages and other holders of any security.

#### **Nationality and Registration Marks:**

An aircraft registered in the Maltese registry shall not bear any marks which purport to indicate that the aircraft is registered in any other country, in addition to this the aircraft shall not have any marks which may suggest that the aircraft is used in the military, customs or police services of a particular country if it is not in fact such an aircraft.

The Nationality mark of an aircraft registered in Malta is characterized by the number 9 followed by the letter 'H' these are followed by 3 capital letters which indicate the registration mark of the aircraft. These marks shall be painted or affixed to the aircraft in a permanent manner and positioned as prescribed in the act.

#### **International Registrant and the Resident Agent:**

An international registrant is required to appoint, prior to registration, a resident agent and must ensure that it has a validly appointed resident agent at all times. The Director General must be immediately notified of the appointment or change of the resident agent. The resident agent must be:

- Habitually resident in Malta
- Is not interdicted or incapacitated or is an undischarged bankrupt
- Has not been convicted of any of the crimes affecting public trust or of theft or of fraud or money laundering or of knowingly receiving property obtained by theft or fraud.



In addition to all these the Director General must be satisfied that he is a person capable of carrying out the functions stated under this Act, furthermore the Director General may impose any conditions as he may deem fit.

The resident agent has **3 main functions:**

1. To act as a channel of communication between the international registrant and the DG and other Maltese Government Departments and authorities
2. To sign and file with the DG and other Maltese government departments and authorities all declarations and forms required in terms of Maltese law
3. To act as a judicial representative for judicial proceedings in Malta. Any notice sent to the resident agent at his last registered address, shall be deemed to have been duly received by and notified to the international registrant.

The resident agent shall not be personally liable for non compliance by the international registrant with any law unless the resident agent shall have the power on behalf of the international registrant to carry out certain action in his name, such as to sign and file applications and apply for the registration of aircrafts under this act. In addition to the function listed in the act the resident agent may appoint in writing another person to act on his behalf, provided that in doing so the resident agent will not be relinquishing his powers and responsibilities.

### **Mortgages and Special Privileges on Aircraft**

Under Maltese law, an aircraft constitutes a particular class of movables forming separate and distinct assets within the estate of their owners for the security of actions and claims to which the aircraft may be subject. In the case of bankruptcy or insolvency of the owner of an aircraft, all actions and claims to which the aircraft may be subject, shall have preference on the aircraft over all other debts of the estate.

When dealing with mortgages an 'aircraft' shall comprise in:

- All data, manuals and technical records
- The airframe, all equipment, machinery and other appurtenances as accessories belonging to the aircraft, which are on board or which have been temporary removed there from.
- Any engines owned by the owner of the aircraft whether attached to the aircraft of not as well as any replacement engines which are designated for use on the



aircraft and owned by the owner of the aircraft but temporarily not attached to the aircraft.

An aircraft may constitute security for a debt or other obligation either by **agreement** or by **operation of the law** in the form of a special privilege. A special privilege is subject to registration in the International Registry and such registration is necessary for the continuing existence of the privilege.

Mortgages and special privileges shall have priority of claims on the aircraft over all other debts of the owner. Once the mortgage has been created or the special privilege arises, the bankruptcy or insolvency of the owner of the aircraft shall not affect the actions and claims to which the aircraft may be subject. A registered mortgage or a privilege shall attach to the aircraft (or share therein) until it is discharged, thus when an aircraft has been sold the interests of the mortgagee as well as that of the privileged creditor in the aircraft shall pass on to the proceeds of the sale of the aircraft.

### **Mortgages:**

#### **The rights of the mortgagee**

In the event of default of any of the terms or conditions of a registered mortgage and upon giving notice in writing to the debtor, the mortgagee can:

- Take possession of the aircraft or share in respect of which the mortgage applies, however the mortgagee shall not be considered as the new owner of the aircraft.
- Sell the aircraft or his respective share. When there is more than one mortgagee registered on the same aircraft, a subsequent mortgagee may not proceed to sell the aircraft unless he has obtained the consent of every prior mortgagee or is doing so under the order of the court.
- Apply for extensions, pay fees, receive certificates and generally do all such things in the name of the owner or registrant as may be required in order to maintain the status and validity of the registration of the aircraft.
- Lease the aircraft so as to generate income there from.
- Receive payment of the price, lease payments and any other income which may be generated from the management of the aircraft.

These powers may be exercised without the need of the leave of any court. These powers shall be exercisable in accordance with the terms of any agreement governing the mortgage.



A registered mortgage over an aircraft or share may be transferred to any person as long as the procedure set out in the law is followed and the director general shall record such transfer by entering it in the register.

The law provides for the recognition of foreign mortgages and thus if a mortgage has been validly recorded in a public registry it is recognized under Maltese law.

### **Special Privileges:**

The debts listed below enjoy priority over all other debts even those registered as mortgages.

- Judicial costs incurred in respect of the sale of the aircraft and the distribution of the proceeds thereof pursuant to the enforcement of any mortgage or other executive title.
- Fees and other charges due to the Director General arising under the applicable law of Malta in respect of the aircraft
- Wages due to crew in respect of their employment on the aircraft.
- Any debt due to the holder of a possessory lien for the repair, preservation of the aircraft to the extent of the services performed on and value added to the aircraft.
- The expenses incurred for the repair, preservation of the aircraft to the extent of the service performed on and value added to the aircraft
- Wages and expenses for salvage in respect of the aircraft.

The act also provides for privileges which may be registered, and thus once registered in the international registry these privileges enjoy the preference and status of such right in relation to the aircraft only if the claim is created by the owner of the aircraft or a person authorized by him. These are:

- Taxes, duties, and/or levies due to the Government of Malta in respect of the aircraft and
- Wages and expenses for assistance or recovery in respect of the aircraft



This Act together with the ratification of the Cape Town convention shed light on the rights and interests of an aircraft and its owner, the Act also sets out the mechanism for the financing of an aircraft and thus gives security to lenders and more effective remedies.