CORRIGENDA 4TH EDITION OC AIRCRAFT

INTRODUCTION

Paragraph

3:      Substitute the following for the last sentence:

"The Convention has now been ratified by 82 States, the Aircraft Protocol, the only protocol currently in force, by 79 States, and both instruments by what is now the European Union."

TABLE OF AIRCRAFT PROTOCOL ARTICLES

Page xxii, third column for entry on "Depositary and its functions": references should be to: 2.343, 2.345, 3.158-3.167, 4.380-4.383

PART 2

Paragraph:

2.16:   Replace the penultimate sentence with the following:

"There are five States who originally ratified the Convention but not the Aircraft Protocol, namely Costa Rica, Republic of Moldova, Seychelles, Syrian Arab Republic and Zimbabwe. Subsequently Costa Rica and the Republic of Moldova ratified the Protocol, leaving only three Convention States who have not."

Second last line, delete "on" between "force" and "after"

2.22: Alter the second sentence to read as follows:

"They are all contained in the final clauses and include Article 47 (signature, ratification, etc.), Article 48 (Regional Economic Integration Organisations), Article 49 (entry into force), Article 51 (arrangements for extension to future Protocols), Article 52 (territorial units), Article 56 (reservations and declarations), Article 59 (denunciations), and Article 62 (Depositary and its functions)."

2.30, under (2) Item, line 1-2: add "requires" after "except where the context otherwise"

2.40, under (1), line 4 on p. 33: delete "been"

2.54, at the end: after "Illustrations 1 and 2" add ", paragraphs 4.52 and 4.53 respectively."

2.61, first whole paragraph on page 50, line 12: the reference to Article 29(3) should be a reference to Article 22(3)

2.62:   Replace with the following:

"2.62.   Article 2(5) of the Convention provides that an international interest in an object extends to proceeds of that object. "Proceeds" are defined narrowly as 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 (Article 1(w)). So the term "proceeds" is confined by Article 1(w) to insurance and other loss-related proceeds. General proceeds, such as receivables arising from the sale of an object, are outside the definition. This is a deliberate policy decision, reflecting the fact that the Convention is essentially dealing with interests in tangible assets (aircraft objects, railway rolling stock, space assets and MAC equipment), not with receivables as such, and there was a concern that if general proceeds were included they could become the subject of an assignment under the Convention without any continuing linkage with the tangible assets from which they were derived, producing a potential conflict with the 2001 UN Convention on the Assignment of Receivables in International Trade ("the UN Assignments Convention). It appears to have been overlooked that this concern applies equally to the assignment of loss-related proceeds. In fact the perceived problem is resolved not by the definition of "proceeds" but by Article 32(3), which provides that the Convention does not apply to an assignment of associated rights (which include rights to payment under the agreement) which is not effective to transfer the related international interest.

The term "proceeds" features in only two provisions of the Convention, Article 2(5) referred to above and Article 29(6) under which any priority given by Article 29 to an interest in an object extends to proceeds. In addition the Protocols extend the types of advance relief that may be given under Article 13 to cover sale and the application of proceeds therefrom if the debtor and the creditor specifically agree. Where the proceeds are money proceeds and are collected by the creditor and re-lent under a security agreement covering another aircraft object or utilised to purchase another aircraft object and supply it under a title reservation or leasing agreement the creditor will need to register an international interest in the aircraft object to preserve its priority. This is because the definition of proceeds

does not extend to proceeds of proceeds. Non-money proceeds can only arise where the creditor and debtor agree with the insurance that the latter will procure replacement of the aircraft object instead of making a money payment. This situation will rarely, if ever, arise, and need not be discussed further.

It is important to note that the definition does not preclude claims to proceeds in the normal, wider, sense from falling within the Convention, since it is to be applied only where the term "proceeds" is used. So it does not affect the creditor's right to retain (a) the proceeds of sale received after the exercise of the remedy of sale under Article 8(1)(b) of the Convention (which is made obvious by the provisions of Article 8(5) and (6) that prescribe how the sums collected from such a sale are to be applied by the creditor) or (b) any proceeds captured by the definition of "associated rights" in Article 1(c) and their assignment under Article 31, none of which provisions contains any reference to the defined term. Moreover, the definition does not apply where the context otherwise requires, for example in relation to the additional remedy of sale and the application of proceeds therefrom given by the Protocols where the debtor and the creditor specifically so agree. Since the proceeds of a sale fall outside the definition, to apply the definition would deprive the creditor of the additional remedy specifically provided by the Protocol. So the only effect of the definition is to ensure that proceeds arising from total or partial destruction of the object, etc., which are not otherwise dealt with in the Convention, fall within its provisions and enjoy the benefit of any priority under Article 29(6)."

2.83, under (4), line 2: replace the "him" with "the representative".

2.121, line 3 from the bottom of page 79: in "or whether on the other act the act of taking…" replace the first "act" with "hand"

2.131, at the end of the last line: add the missing number of the paragraph: 2.133 and close the bracket

2.133, last line: add "2" before ".145"

2.149, last line of (1) on page 93: the reference should be to "fn. 27", not "n.25".

2.172, line 1: for "my" read "may"

2.176: lines 5 and 4 from bottom of the page: for "it" substitute "the acquirer"

2.202, line 6 from bottom: add the missing number of the paragraph in "See paragraph …By extension": 2.48.

2.216, line 4: reference should be to paragraph 2.84, not 2.82(4).

2.228, first line on page 132: in "… does not apply to all to the item…" replace the first "to" by "at"

2.245, line 5 from bottom: in "… validity of an agreement is governed of associated rights is governed not By…" delete "is governed" before "associated rights"

2.268, line 1: in "so far as not able to be covered by" delete "able to be"

2.270, line 2 before (1): "Article 1(2) of the Convention" should read "Article I(2) of the Protocol".

2.273, four lines from the end: substitute "Registry" for "Registration".

2.276 on page 160, lines 5-8: delete the sentence from "Under Article 1(g)" to "outright sale" which is a repetition of what is stated on page 159.

2.278, line 8: in "can be conferred only the courts.." Insert "on" before "the courts"

2.279, pages 161-162: after "Article 26" insert "of the Hague Convention"

2.282, line 13: the last word should be "of" and not "if" and there should be a full stop after "EU" on the following line.

2.283, line 6 from bottom of page 164: add "to" after "jurisdiction".

2.284, line 14: replace present text in bracket "(above, n. 27)" with the full reference "(unreported, 13 May 2013, case 2[2013])"

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2.284, last para 3rd line: delete the second "with".

2.294, line 4: delete *"varied."*

2.313, line 6: delete "5110."

2.327, top paragraph of page 188, line 6: delete the full stop after "forum", and add "under" before "Article 40" and "Article 54(1)".

2.344, line 5: add "the" before "judicial"

2.346: last reference: change to

Article XX   International Registry (Articles 17(2), 19(6), 25(2), 28)

Article XXI   Jurisdiction (Article 43)

PART 3

3.38, under (4), line 2: After "creditor" insert "(Article IX(2))" Then delete "is expressly provided by Article IX(2)"

3.63, line 4 from the bottom of page 237: in (Procedures, Section 2(d), (c) close the bracket after 2(c)
        Change (c) to (e)

3.65, line 1: replace the Arabic 1 with a Roman one in: XIX

3.65, last line of first paragraph on page 239: add "in" in: "…International Registry *in* order to effect registration"

3.74, second para, line 4 from the bottom: add "of the Convention" after Article 7(c)

3.77, line 7 from bottom: delete the 3 in "bee3n"

3.81. top paragraph on page 248, line 5 from bottom: in "Regulation 5.16" replace "Regulation" by "Section"

3.86, line 2 from the bottom of page 254: in "(Procedures, *paragraph*"….) replace "paragraph" by "Section"

3.101: At the beginning of the paragraph, insert the words "Where the presumption in favour of the debtor's seat, etc., is displaced."

3.138, line 11: for "Convention" substitute "regulation". Five 5 lines further on after "Article XI" add "of the Aircraft Protocol."

3.139, line 11 from bottom and line 2-3 from bottom: capitalise "Precautionary Attachment of Aircraft Convention"

PART 4

4.17, line 3 from the bottom: replace "the present article" by "Article 1 and Chapter XII".

4.33 Replace the text after the first sentence with the following:

"An international interest in an object extends to proceeds (Article 2(5)) and any priority given by Article 29 to an interest in the object extends to proceeds (Article 29(6)). General proceeds, such as receivables arising from sale of an object subject to a security agreement, are not as such within the definition. However, this appears to be of little significance. See paragraph 2.62."

4.54, line 2: delete "of organization"

4.56: 6th and 5th lines from the end of page 318 should read:

"If, for example, …… as a security agreement, then Articles 8 and 9 of the Convention will apply, not Article 10."

4.70, top line on page 324: "law" after "the applicable" at the beginning.

4.98 (Illustration 10): line 7: C4 is cited twice: delete one

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4.124, Second-last line on page 348: add paragraph number to the illustration: "(see Illustration 19, paragraph 4.127)"

4.251, line 3 from bottom: replace "he" by "the debtor"

4.278, second last line of page 425: add paragraph number to Illustration: (see Illustration 52, paragraph 4.290).

4.280, second line of page 427, replace comma in paragraph number by full stop: 2.271

4.290: delete the extra 9 in the number of the paragraph: 4.2990

4.292, Illustration 54, lines 4-3 from bottom: move the words "another Contracting State" to after "Ruritania", so it reads "If the government attempts to arrest aircraft 1 in Ruritania, another Contracting State, in order to recover the additional 70,000 euro the law selected by the conflicts of laws of Ruritania, not the Convention, will determine….".

4.298, line 5 from bottom: add the missing "n" in "ad"

4.309: Add the following sentence at the end:

"A separate ground of jurisdiction, in countries within the European Union, is provided by Article 24(3) of Brussels I (recast), under which, in proceedings which have as their object the validity of entries in public registers, the courts of the Member States in which the register is kept have exclusive jurisdiction, regardless of the domicile of the parties".

4.332: "to apply" is repeated in line 3, delete one.

4.334, last line of the first paragraph: add "with" after "together".

Header of page 453: add "e" to "Futur"

4.335, line 7-8 from bottom: it should read that "UNIDROIT will organise the convening of a Diplomatic Conference"

4.341, line 2 from bottom: add "Article" before "43" in "Article 13 or 43"

4.342, last line: add "always" after "almost"

PART 5

5.11, third line from the bottom: add "Convention" after "Cape Town"

5.33, last line of page 497: add "to" after "in relation"

5.38, line 11 of page 501: "that" is repeated: delete one

5.46, end of first line: delete the "an"

5.46: line 4 of page 505: add the paragraph numbers of the Illustrations to read "See Illustration 69, paragraph 55 and Illustration 70, paragraph 5.56"

5.58, line 4: as first word of that line, add "the" and delete the extra full stop after "Protocol"

5.70. *Illustration 71:* replace with the following:

O, the owner of an aircraft engine, leased it to L, a company situated in State X, where the engine was located at the time of the transaction. The lessor's international interest was not registered in the International Registry, but under the laws of State X is nevertheless effective in the debtor's bankruptcy. State X has declared Alternative A for all insolvency proceedings (and for other insolvency-related events not subject to insolvency proceedings – see paragraph 5.124) with a 60-day waiting period. The aircraft engine must be returned at the end of the 60-day period unless all defaults are cured and the insolvency administrator or L agrees to perform its future obligations. In the meantime, obligations under the lease may not be modified, the aircraft engine must be preserved, and the insolvency administrator or L will be required to maintain the aircraft engine

and its value in accordance with the terms of the security agreement, even if that requires expenditure from general assets of the estate.

5.108: add "Cape Town" before "Convention" in line 6 of page 538

5.110, under (3): delete "(Article X)" at the end of the phrase in line 4

546, para 5.120: add an "s" to "Article" in line 1.

INDEX

Page 806, right column, under Assignment, entry on object-related rights: the references should be to 2.244, 2.257, 4.266-4.267

Page 811, right column, line 14, entry on "opt-in": the reference should be to fn 16, not fn 13.

Page 820, left column, entry on "Lease remedy", line 1: the reference should be to fn 13 and not to fn 12

Page 828, left column: line 2 of the entry "Representative capacity": add comma after "2.87"

Page 829, left column, line 8: the reference under "Search criteria" should be to fn 24, not fn 19