



**Registration of a Charge**

Company name: **AIR BERLIN PLC**

Company number: **05643814**

Received for Electronic Filing: **15/06/2017**



X68NK52W

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**Details of Charge**

Date of creation: **01/06/2017**

Charge code: **0564 3814 0020**

Persons entitled: **BLUESKY 2 LEASING COMPANY LIMITED**

Brief description:

**Contains fixed charge(s).**

**Contains negative pledge.**

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**Authentication of Form**

This form was authorised by: **a person with an interest in the registration of the charge.**

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**Authentication of Instrument**

Certification statement: **I CERTIFY THAT SAVE FOR MATERIAL REDACTED PURSUANT TO S.859G OF THE COMPANIES ACT 2006 THE ELECTRONIC COPY INSTRUMENT DELIVERED AS PART OF THIS APPLICATION FOR REGISTRATION IS A CORRECT COPY OF THE ORIGINAL INSTRUMENT.**

Certified by: **MARTIN WALTER**



## **CERTIFICATE OF THE REGISTRATION OF A CHARGE**

Company number: 5643814

Charge code: 0564 3814 0020

The Registrar of Companies for England and Wales hereby certifies that a charge dated 1st June 2017 and created by AIR BERLIN PLC was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 15th June 2017 .

Given at Companies House, Cardiff on 16th June 2017

The above information was communicated by electronic means and authenticated by the Registrar of Companies under section 1115 of the Companies Act 2006



**Companies House**



**THE OFFICIAL SEAL OF THE  
REGISTRAR OF COMPANIES**

**ASSIGNMENT OF INSURANCES**

among

**Air Berlin PLC**  
as *Assignor*

and

**Bluesky 2 Leasing Company Limited**  
as *Assignee*

dated 1 June 2017

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**One Airbus A321-211 Aircraft**  
**MSN: 6168**  
**Austrian Registration Mark: OE-LCL**

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**THIS ASSIGNMENT OF INSURANCES** is made on this 1<sup>st</sup> day of June 2017 between:

1. **Air Berlin PLC**, a company incorporated and existing under the laws of England and Wales whose registered office is at c/o Browne Jacobson LLP, 6 Bevis Marks, Bury Court, London, EC3A 7BA, United Kingdom, acting through its Berlin branch (*Zweigniederlassung Berlin*) whose principal office is at Saatwinkler Damm 42-43, 13627 Berlin, Germany (**Assignor**); and
2. **Bluesky 2 Leasing Company Limited**, a company incorporated in Ireland with its registered office at 2 Grand Canal Square, Grand Canal Harbour, Dublin 2, Ireland (**Assignee**).

**WHEREAS**

- (A) Pursuant to an operating lease agreement dated 24 June 2014 between Assignee as lessor and Assignor as lessee (as amended and supplemented from time to time, the **Lease Agreement**) in respect of one (1) Airbus A321-211 aircraft bearing manufacturer's serial number 6168 (the **Aircraft**), Assignee has agreed to lease the Aircraft to Assignor upon the terms and conditions set forth in the Lease Agreement.
- (B) Pursuant to a sub-lease agreement dated 24 June 2014 between Assignor as lessor and Air Berlin PLC & Co. Luftverkehrs KG (**Prior Sub-Lessee**) as lessee (as amended and supplemented from time to time, the **Prior Sub-Lease Agreement**) in respect of the Aircraft, Assignor has agreed to lease the Aircraft to Prior Sub-Lessee upon the terms and conditions set forth in the Prior Sub-Lease Agreement. Pursuant to an assignment of insurances dated 30 June 2014 between Assignor and Assignee, Assignor has assigned, *inter alia*, all of the rights, title, benefits and interests (present and future, actual and contingent) of the Assignor, in, to, under, arising out of, or in connection with insurance claim under the insurances to be effected pursuant to the Prior Sub-Lease Agreement (as defined such assignment) to Assignee (the **Prior Assignment of Insurances**).
- (C) Pursuant to a termination agreement to be made between the Assignor and the Prior Sub-Lessee (the **Prior Sub-Lease Termination Agreement**), the Assignor and the Prior Sub-Lessee will terminate the Prior Sub-Lease Agreement. With effect from the time upon which the Prior Sub-Lease Agreement is terminated, the new Sub-Lease Agreement as described below under Clause (D) becomes effective.
- (D) Immediately following termination of the Prior Sub-Lease Agreement, pursuant to a sub-lease agreement in respect of the Aircraft between the Assignor as sub-lessor and NIKI Luftfahrt GmbH (the **Sublessee**) as sub-lessee dated 1 June 2017 (as amended and supplemented from time to time, the **Sub-Lease Agreement**), the Assignor has agreed to sub-lease to the Sub-Lessee, and the Sub-Lessee has agreed to lease from the Assignor, the Aircraft for the period and upon the terms and conditions therein contained.
- (E) As continuing security for the obligations of Assignor and/or any of its affiliates under the Transaction Documents and Other Aircraft Transaction Documents, Assignor wishes to assign to Assignee the Assigned Claims (as defined below) subject to the terms and conditions of this Assignment.
- (F) This document is the deed of Assignor, even if it has not been duly executed by Assignee or has been executed by Assignee but not as a deed.

**NOW THEREFORE**, in consideration of the foregoing the parties agree as follows:

**1. DEFINITIONS**

- 1.1 In this Assignment the following terms shall have the following meanings:

**Assignment** means this assignment of insurances as originally executed by the parties hereto and as the same may be amended, modified or supplemented from time to time.

**Insurances** means any and all of the contracts and policies of insurance and (if applicable) re-insurance (other than aircraft third party, passenger, baggage, cargo and mail and airline general third party liability insurance) effected and maintained in relation to the Aircraft by Assignor.

**Lease Agreement** has meaning provided in Section (A) of the preamble.

**Lessee Assignment of Insurances** means the assignment of insurances relating to the Aircraft and entered into between Assignor as assignee and Sublessee as assignor on or about the date hereof and any and all proceeds in respect of the foregoing, including and together with:

- (a) the assigned benefits and proceeds of any and all of the Insurances (as defined in the Lessee Assignment of Insurances) and Requisition Compensation (as defined in the Lessee Assignment of Insurances) and (ii) all the assigned benefits of, and claims under, and the right to make all claims and retain all proceeds under such Insurances (as defined in the Lessee Assignment of Insurances) and Requisition Compensation (as defined in the Lessee Assignment of Insurances);
- (b) all claims, rights and remedies of Assignor arising out of or in connection with a breach of or default under or in connection with such assignment of insurances (including, without limitation, all damages and other compensation payable for or in respect thereof); and
- (c) all rights of Assignor to require, enforce and compel performance of all or the provisions of such assignment of insurances, and otherwise to exercise all claims, rights and remedies thereunder, and all rights to give and receive notices, reports, requests and consents, to make demands, to exercise discretions, options and elections thereunder and to take all other action thereunder, pursuant thereto or in connection therewith.

**Prior Sub-Lease Agreement** has the meaning provided in Section (B) of the preamble.

**Prior Sub-Lease Termination Agreement** has the meaning provided in Section (C) of the preamble.

**Prior Sub-Lessee** has the meaning provided in Section (B) of the preamble.

**Relevant Insurances** means (i) the benefits and proceeds of any and all of the Insurances and (ii) all the benefits of, and claims under, and the right to make all claims and retain all proceeds under such Insurances.

**Requisition Compensation** means any compensation for requisition (whether for title, use, hire or otherwise), confiscation, nationalisation, sequestration, detention, forfeiture or any compulsory acquisition whatsoever or seizure of the Aircraft or any part thereof and any and all proceeds in respect of any of the foregoing.

**Secured Obligations** means any and all moneys, claims, liabilities and obligations (whether actual or contingent, whether now existing or hereafter arising, whether or not for the payment of money, and including, without limitation, any obligation or liability to pay damages), from time to time owing by Assignor (and/or any of its affiliates) pursuant to the Transaction Documents and/or the Other Aircraft Transaction Documents.

**Sub-Lease Agreement** has meaning provided in Section (D) of the preamble hereto.

*Sublessee* has meaning provided in Section (D) of the preamble hereto.

- 1.2 Capitalized terms used herein and not otherwise defined shall have the same meanings as defined in the Lease Agreement. The rules of interpretation and construction set out in Part II of Schedule 1 to the Lease Agreement shall be incorporated into this Assignment as if set out in full herein and as if references to "this Agreement", "the Lessor", and "the Lessee" were to this Assignment, Assignee and Assignor respectively. This Assignment shall be the "Assignment of Insurances" and a "Transaction Document" as defined in, and for the purposes of, the Lease Agreement.

## **2. RELEASE OF PRIOR ASSIGNMENT OF INSURANCES**

- 2.1 Upon termination of the Prior Sub-Lease Agreement pursuant to the Prior Sub-Lease Termination Agreement, the Assignee reassigns, without recourse or warranty, to the Assignor all (if any) of its rights, title, benefit and interest in, to and under the Lessee Assignment of Insurances (as defined in the Prior Assignment of Insurances) together with that part of the Assigned Claim (as defined in the Prior Assignment of Insurances) relating to, arising out of or in connection with the Lessee Assignment of Insurances (as defined in the Prior Assignment of Insurances), in each case as was assigned to the Assignee under the Prior Assignment of Insurances.
- 2.2 Other than the re-assignment contemplated above, the Prior Assignment of Insurances shall continue to full force and effect and all liabilities and obligations of the Assignor under the Prior Assignment of Insurances shall remain unaffected.

## **3. ASSIGNMENT**

- 3.1 To secure the prompt and complete performance of Secured Obligations, Assignor, with full title guarantee, hereby absolutely and unconditionally assigns to Assignee all claims, rights, title, benefit and interest (whether present or future, actual or contingent) of Assignor in, to, under, arising out of, or in connection with the Relevant Insurances, the Requisition Compensation and the Lessee Assignment of Insurances (the *Assigned Claims*) and Assignee hereby accepts such assignment.
- 3.2 Immediately upon execution of this Assignment:
  - (a) Assignor shall execute and deliver to Sublessee a notice of assignment substantially in the form set out in Schedule 1 to this Assignment and Assignor shall procure the receipt by Assignee of an acknowledgement of such notice in the form set out in Schedule 1 to this Assignment signed by Sublessee.
  - (b) Assignor shall execute and deliver, and Assignor shall procure that Sublessee executes and delivers, a notice of assignment to the broker of the insurers substantially in the form set out in Schedule 1 to the Lessee Assignment of Insurances and the Assignor shall use reasonable endeavours to procure receipt by Assignee of an acknowledgement of such notice in the form set out in schedule 2 to the Lessee Assignment of Insurances and shall provide evidence satisfactory to the Assignee (acting reasonably) that such notice has been duly served to the broker of the insurers.
- 3.3 Should Assignor or Sublessee enter into any new contract or policy of Insurances (or any part thereof) or the broker through whom the Insurances or any part of the Insurances are effected at any time be changed, Assignor undertakes to notify Assignee thereof and, at its own cost, at the time of such entry into the new contract or policy or such change execute and deliver to such new brokers further notices of assignment substantially in the form set out in Schedule 1 to the Lessee Assignment of Insurances and use reasonable endeavours to procure the receipt

of an acknowledgment of such further notices substantially in the form set out in Schedule 2 to the Lessee Assignment of Insurances.

- 3.4 Assignor hereby undertakes to execute and deliver and to procure that Sublessee executes and delivers a notice and acknowledgement of the assignment specified in Clause 3.1 and in the form set out in Schedule 3 to the Lessee Assignment of Insurances in respect of any Requisition Compensation to any relevant Government Entity upon any requisition (whether for title, use, hire or otherwise), confiscation, nationalisation, sequestration, detention, forfeiture or any compulsory acquisition whatsoever or seizure of the Aircraft or any part thereof and to use reasonable endeavours to procure the delivery to Assignee of a copy of each such notice and acknowledgement duly countersigned by or on behalf of the addressee of the relevant Government Entity.

#### **4. REPRESENTATIONS AND WARRANTIES**

Assignor represents and warrants to Assignee on the date of this Assignment that:

- (a) the Insurances have been taken out and the premiums paid up to date and the Insurances are in full force and effect and enforceable in accordance with the terms thereof;
- (b) Assignor is not in breach of the terms of the Insurances;
- (c) subject to the rights granted to Assignee pursuant to this Assignment, it is the legal and beneficial owner of the Assigned Claims;
- (d) it has the power and the authority to enter into, execute and deliver this Assignment and to perform its obligations hereunder; and
- (e) it has not, save for the rights granted to Assignee and/or Loss Payee pursuant to the Lease Agreement, prior to the date hereof created, agreed to create, acquiesced in the creation of, nor has it permitted to exist, any Security Interest on, or in respect of, the Assigned Claims or any of its rights, title and interest therein or any moneys payable thereunder.

#### **5. COVENANTS**

- 5.1 Except with the prior written consent of Assignee, Assignor will not (save pursuant to this Assignment) sell, assign, transfer or otherwise dispose of, or create, or permit to exist, any Security Interest over the Assigned Claims.
- 5.2 Assignor will, until the termination of the leasing of the Aircraft or the expiry of the Lease Period (as defined under the Lease Agreement) and subject to this Assignment and the rights granted to Assignee and/or Loss Payee pursuant to the Lease Agreement, remain the sole legal and beneficial owner of all its rights, title and interest in the Assigned Claims.
- 5.3 Prior to the enforcement of the Assigned Claims pursuant to Clause 6 below, Assignor shall be entitled to collect the Assigned Claims in the ordinary course of business as set out in the notice in Schedule 1 to the Lessee Assignment of Insurances and paragraph (b) of the notice in Schedule 3 to the Lessee Assignment of Insurances.
- 5.4 Following the occurrence of an Event of Default under the Lease Agreement and while the same is continuing, Assignor will not exercise any rights or powers conferred on it in respect of the Assigned Claims unless and until requested to do so by Assignee whereupon Assignor agrees that it will do so, at its own cost, provided always that Assignee shall not be responsible in any way whatsoever in the event that the exercise by Assignor of its rights or powers under the Assigned Claims be thereafter adjudged improper.



5.5 Assignor will not, except with the previous consent in writing of Assignee, release Sublessee or any insurer from any of its respective obligations in respect of the Lessee Assignment of Insurances or the Relevant Insurances or otherwise do, omit to do, or permit to be done, any act, matter or thing which may prejudice the rights of Assignee in and to the Lessee Assignment of Insurances, the Relevant Insurances or impair the value thereof.

5.6 Notwithstanding anything to the contrary herein contained, Assignor agrees with Assignee that the exercise of any of the rights assigned hereunder will not release Assignor from any of its respective duties or obligations expressed to be assumed by it in relation to the Assigned Claims and that Assignee shall not have any obligation or liability in relation to the Assigned Claims by reason of or arising out of this Assignment or be obligated to perform any of the obligations or duties of Assignor.

## **6. ENFORCEMENT**

6.1 If and so long as an Event of Default under the Lease Agreement has occurred and is continuing, Assignee shall be entitled to exercise directly in its own name any and all rights, remedies, powers and privileges of Assignor under or in respect of the Assigned Claims.

6.2 Notwithstanding the foregoing, any proceeds of the Relevant Insurances shall be applied in accordance with clause 17.6 of the Lease Agreement and any Requisition Compensation for any structural change, damage or wear and tear to the Aircraft shall be applied in accordance with clause 16.3 of the Lease Agreement.

## **7. POWER OF ATTORNEY**

7.1 Assignor, by way of security, irrevocably and severally appoints Assignee and any of its delegates or sub-delegates to be its attorney (with full power of substitution and delegation) to take any action which Assignor is obliged to take under this Assignment. Assignor hereby ratifies and confirms whatever any attorney lawfully does pursuant to its appointment.

7.2 Assignor acknowledges that each power of attorney granted by Clause 7.1 is granted irrevocably and for value as part of the security constituted by this Assignment to secure a proprietary interest of, and the performance of obligations owed to, the donee within the meaning of s4 Powers of Attorney Act 1971.

## **8. CONTINUING SECURITY AND FURTHER ASSURANCE**

8.1 The security constituted by this Assignment shall:

(a) be continuing for the payment, discharge and performance in full of the Secured Obligations and is in addition to and is not in any way prejudiced by any other security now or in the future held by Assignee for, or any other rights of Assignee may have against Assignor under the Transaction Documents and/or the Other Aircraft Transaction Documents; and

(b) not be discharged, impaired, prejudiced or otherwise affected by an amendment, modification, variation, supplement or novation of any Transaction Document and/or the Other Aircraft Transaction Document to which Assignor is a party.

8.2 Assignor shall at its own expense undertake whatever action Assignee may reasonably require to perfect, give effect to, protect or ensure the priority of the security intended to be created by this Assignment and to facilitate the exercise of any right, power or discretion exercisable by Assignee in respect of the Assigned Claims. To the extent that the creation of any collateral under this Assignment should be invalid, Assignor hereby undertakes to, at its own expense, carry out, and to assist in, any action requested by Assignee which is reasonably necessary to make up for valid collateral.

## 9. NOTICES

### 9.1 Notices

All communications between the parties shall be in writing or by facsimile and directed to:

a) in the case of Assignee:

Bluesky 2 Leasing Company Limited  
2 Grand Canal Square  
Grand Canal Harbour  
Dublin 2  
Ireland

Attention: Fergal Molony  
Fax: 353 1 2240480  
copy via email to: [fergal.molony@capitaifs.com](mailto:fergal.molony@capitaifs.com)

and a copy to:

Minsheng Financial Leasing Co., Ltd.  
Building No.8, Beijing Friendship Hotel  
No.1 Zhongguancun South Street  
Haidian District, Beijing 100873, China  
Attention: Sun Yue  
Fax: +8610 56087511  
copy via email to: [sunyuel@msfl.com.cn](mailto:sunyuel@msfl.com.cn)

b) in the case of Assignor:

Air Berlin PLC  
Saatwinkler Damm 42-43  
13627 Berlin  
Federal Republic of Germany

Fax: +49-30-3434-1079  
Attention: Legal Department  
Email: [notices@airberlin.com](mailto:notices@airberlin.com)

## 10. RELEASE

Provided that the Secured Obligations have been irrevocably paid and discharged in full, upon the termination of the leasing of the Aircraft or the expiry of the Lease Period (as defined under the Lease Agreement), the Assignee shall, at the request and cost of the Assignor, but without recourse or warranty, release the security constituted by this Assignment and take whatever action is reasonably necessary to reassign the Assigned Claims to the Assignor.

## 11. COUNTERPARTS

This Assignment may be executed by facsimile (with the original to be sent by an internationally recognised courier) and in any number of counterparts and by different parties on separate counterparts and all such counterparts together shall constitute one and the same instrument.

**12. BENEFIT**

- 12.1 Assignee shall be permitted to assign the benefit of this Assignment to any Financier (as defined in the Lease Agreement).
- 12.2 This Assignment shall continue to apply in case of a change of Assignor's or Assignee's shareholders or legal form and in case of a universal succession on the part of Assignor or Assignee.
- 12.3 Save for any Financier (as defined in the Lease Agreement), a person who is not a party to this Assignment has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or enjoy the benefit of any term of this Assignment. No consent of any person who is not a party to this Assignment is required to rescind or vary this Assignment at any time.

**13. AMENDMENTS AND PARTIAL INVALIDITY**

- 13.1 Changes to this Assignment and any waiver of rights under this Assignment shall require written form from Assignor and Assignee. The parties may waive this form requirement by written agreement only.
- 13.2 Should any provision of this Assignment be invalid or unenforceable, in whole or in part, or should any provision later become invalid or unenforceable, this shall not affect the validity of the remaining provisions of this Assignment.

**14. GOVERNING LAW AND JURISDICTION**

This Assignment and any non-contractual obligations arising out of or in connection with this Assignment shall be governed by English law. The courts of England shall have non-exclusive jurisdiction in respect of any dispute arising out of or in connection with this Assignment (including any dispute relating to any non-contractual obligation arising from or in connection with this Assignment and any dispute regarding the existence, validity or termination of this Assignment).

In witness whereof the parties have caused this Assignment to be executed and delivered as a deed on the date first above written

SIGNED and DELIVERED as a DEED

)

for and on behalf of

)

**AIR BERLIN PLC**

)

By its lawfully appointed attorney

)

\_\_\_\_\_  
) Signature of Attorney

In the presence of:

)

Signature of witness:

)

Name of witness:

)

Address of witness:

)

)

Occupation of witness:

)

SIGNED and DELIVERED as a DEED )

for and on behalf of )

**BLUESKY 2 LEASING COMPANY LIMITED** )

By its lawfully appointed attorney ) \_\_\_\_\_

) Signature of Attorney

In the presence of: )

Signature of witness: )

Name of witness: )

Address of witness: )

Occupation of witness: )

**SCHEDULE 1**  
**FORM OF NOTICE AND ACKNOWLEDGMENT OF ASSIGNMENT OF LESSEE**  
**ASSIGNMENT OF INSURANCES**

To: NIKI Luftfahrt GmbH (*Sublessee*)  
From: Air Berlin PLC (*Assignor*)  
Bluesky 2 Leasing Company Limited (*Assignee*)

Date: \_\_\_\_\_ 2017

Dear Sirs,

**One Airbus A321-211 aircraft with manufacturer's serial number 6168 (the Aircraft)**

We refer to the assignment of insurances dated on or about \_\_\_\_\_ 2017 in respect of the Aircraft (the *Lessee Assignment of Insurances*) between Sublessee as assignor and Assignor as assignee.

We hereby notify you that by an assignment of insurances dated on or about \_\_\_\_\_ 2017 in respect of the Aircraft (the *Assignment of Insurances*) between Assignor as assignor and Assignee as assignee (a copy of which is attached), Assignor has assigned to Assignee by way of security (among other things) all of its rights, claims, title, benefit and interest (present and future, actual and contingent) of Assignor in, to, under, arising out of or in connection with, the Lessee Assignment of Insurances.

Accordingly, upon notice from Assignee that an Event of Default (as defined under a lease agreement dated 24 June 2014 between Assignee (as lessor) and Assignor (as lessee) in respect of the Aircraft) has occurred and is continuing, which notice shall be conclusive for these purposes, Assignee shall be entitled to exercise in its own name any and all rights, remedies, powers and privileges of Assignor under or in respect of the Lessee Assignment of Insurances.

Please acknowledge receipt of this notice by signing and returning to Assignee the acknowledgement on the enclosed copy of this notice.

This notice and any non-contractual obligations arising out of or in connection herewith shall be governed by and construed in accordance with the laws of England.

Yours faithfully

\_\_\_\_\_  
For and on behalf of  
Air Berlin PLC

\_\_\_\_\_  
For and on behalf of  
Bluesky 2 Leasing Company Limited

**Acknowledgement**

To: Bluesky 2 Leasing Company Limited

Air Berlin PLC

From: NIKI Luftfahrt GmbH

**One Airbus A321-211 aircraft with manufacturer's serial number 6168 (the *Aircraft*)**

We acknowledge receipt of the notice dated \_\_\_\_\_ 2017 from Air Berlin PLC and Bluesky 2 Leasing Company Limited together with a copy of the Assignment of Insurances and we hereby confirm that we are not aware of any other assignment of the interests in the Lessee Assignment of Insurances.

Dated \_\_\_\_\_ 2017

Yours faithfully,

\_\_\_\_\_  
For and on behalf of  
NIKI Luftfahrt GmbH