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CHFP025

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\*insert full name  
of Company

## COMPANIES FORM No. 395

### Particulars of a mortgage or charge

A fee of £10 is payable to Companies House in respect  
of each register entry for a mortgage or charge.

Pursuant to section 395 of the Companies Act 1985

To the Registrar of Companies  
(Address overleaf - Note 6)

Name of company

*\*South African Airways (Proprietary) Limited (carrying on business in the United Kingdom under the trade name "South African Airways") (the "Assignor")*

Date of creation of the charge

*31 March 1999*

Description of the instrument (if any) creating or evidencing the charge (note 2)

*Insurance Assignment in respect of certain insurances relating to one (1) Airbus A320-231 Aircraft Manufacturer's Serial Number 243 (the "Assignment") dated 31 March 1999 made between the Assignor and the Security Agent.*

Amount secured by the mortgage or charge

*Any and all of the obligations of the Owner which are now or at any time owed to any of the Secured Parties pursuant to any of the Ancillary Documents (as defined in the Amended Conditional Sale Agreement) (the "Secured Obligations")*

*All defined terms used in this Form 395 are defined in the attached Schedule 1.*

Names and addresses of the mortgagees or persons entitled to the charge

*HypoVereinsbank Luxembourg Société Anonyme (formerly Hypobank International Société Anonyme) a company incorporated and existing under the laws of Luxembourg having an office at 4 rue Alphonse Weicker, L-2721 Luxembourg, in its capacity as security agent and trustee for and on behalf of the Secured Parties (the "Security Agent" and "Chargee")*

Presentor's name address and  
reference (if any):

Clifford Chance  
200 Aldersgate Street  
London  
EC1A 4JJ  
S3437/00076  
[H:\GNH\DRS01\$9.15]

Time critical reference

For official Use  
Mortgage Section

Post room



Short particulars of all the property mortgaged or charged

See Schedule 2.

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legibly, preferably  
in black type, or  
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lettering

Particulars as to commission allowance or discount (note 3)

None

Signed

*Clifford Chance*

Date

*19/4/99*

On behalf of [company] [mortgagee/chargee] †

A fee of £10 is  
payable to  
Companies House  
in respect of each  
register entry for a  
mortgage or  
charge.  
(See Note 5)

† delete as  
appropriate

## Notes

- 1 The original instrument (if any) creating or evidencing the charge, together with these prescribed particulars correctly completed must be delivered to the Registrar of Companies within 21 days after the date of creation of the charge (section 395). If the property is situated and the charge was created outside the United Kingdom delivery to the Registrar must be effected within 21 days after the date on which the instrument could in due course of post, and if dispatched with due diligence, have been received in the United Kingdom (section 398). A copy of the instrument creating the charge will be accepted where the property charged is situated and the charge was created outside the United Kingdom (section 398) and in such cases the copy must be verified to be a correct copy either by the company or by the person who has delivered or sent the copy to the registrar. The verification must be signed by or on behalf of the person giving the verification and where this is given by a body corporate it must be signed by an officer of that body. A verified copy will also be accepted where section 398(4) applies (property situate in Scotland or Northern Ireland) and Form No. 398 is submitted.
- 2 A description of the instrument, eg "Trust Deed", "Debenture", "Mortgage" or "Legal charge", etc, as the case may be, should be given.
- 3 In this section there should be inserted the amount or rate per cent. of the commission, allowance or discount (if any) paid or made either directly or indirectly by the company to any person in consideration of his;
  - (a) subscribing or agreeing to subscribe, whether absolutely or conditionally, or
  - (b) procuring or agreeing to procure subscriptions, whether absolute or conditional,for any of the debentures included in this return. The rate of interest payable under the terms of the debentures should not be entered.
- 4 If any of the spaces in this form provide insufficient space the particulars must be entered on the prescribed continuation sheet.
- 5 Cheques and Postal Orders are to be made payable to **Companies House**.
- 6 The address of the Registrar of Companies is:-  
Companies House, Crown Way, Cardiff CF4 3UZ

## SCHEDULE 1

**"Aircraft"** means the Airbus A320-231 aircraft bearing manufacturer's serial number 243 and registration mark ZS-SHA, as is more particularly described in the Amended Conditional Sale Agreement;

**"Amended Conditional Sale Agreement"** means the Conditional Sale Agreement as novated in accordance with the terms of the Novation Agreement and as amended by the Amendment Agreement;

**"Amendment Agreement"** means the amendment agreement relating to the Conditional Sale Agreement (as novated in accordance with the terms of the Novation Agreement) dated 31 March 1999 between the Assignor and the Owner;

**"Conditional Sale Agreement"** means the conditional sale agreement dated 28 September 1990 between the Owner, as owner, and Transnet, as purchaser, in relation to the Aircraft and certain spare parts;

**"Insurances"** means any and all contracts or policies of insurances which are from time to time taken out or effected pursuant to the Amended Conditional Sale Agreement in respect of the Aircraft other than any insurances in respect of liabilities to third parties;

**"Novation Agreement"** means the novation agreement dated 31 March 1999 between the Assignor, Transnet and the Owner relating to the novation of Transnet's rights and obligations under the Conditional Sale Agreement;

**"Owner"** means Cape-Aviator Limited, a limited liability company incorporated and existing under the laws of the Cayman Islands having its registered office at Ironshore Corporate Services Limited, CIBC Financial Centre, P.O. Box 1234 GT, Georgetown, Grand Cayman, Cayman Islands, British West Indies;

**"Receiver"** means any receiver or receiver and manager appointed by the Security Agent hereunder or under any statutory power;

**"Secured Parties"** means together the Banks (as defined in the Amended Conditional Sale Agreement), the Agent and the Security Agent and their respective successors, transferees, subrogees and assigns; and

**"Transnet"** means Transnet Limited, a limited liability company incorporated and existing under the laws of the Republic of South Africa with registration number 90/00900/06 and its registered office at Transnet Park, 8 Hillside Road, Parktown 2193, Republic of South Africa.

## SCHEDULE 2

### 1. ASSIGNMENT

1.1 As a continuing security for the due and punctual performance and discharge by the Borrower (as defined in the Amended Conditional Sale Agreement) of the Secured Obligations, the Assignor as beneficial owner has assigned to the Security Agent, by way of first priority legal assignment, all of its right, title and interest (present and future) in and to the Insurances and all benefits thereof (including, without limitation, claims of whatsoever nature and return of premiums) but excluding all moneys received or receivable by the Assignor pursuant to the Insurances which are paid by the insurers in respect of any third party liability provided that such moneys are so applied by or on behalf of the Assignor to indemnify itself in respect of such liability or to pay third parties concerned provided however that unless and until the occurrence of an Event of Default (as defined in the Amended Conditional Sale Agreement) which is continuing (whereupon all insurance recoveries shall be payable exclusively to the Security Agent and applied in accordance with Clause 8 of the Assignment) any sums receivable in respect of the Insurances shall be payable as follows:-

- (a) all recoveries under the Assignment in respect of a Total Loss (as defined in the Amended Conditional Sale Agreement) in relation to the Aircraft or the Airframe (as defined in the Amended Conditional Sale Agreement) which forms part of the Aircraft or an Engine (as defined in the Amended Conditional Sale Agreement) shall be paid in full to the Security Agent or as it shall direct without any deduction or deductions whatsoever;
- (b) all other recoveries not exceeding one million Dollars (US\$1,000,000) or the equivalent thereof in any other currency (inclusive of any deductible) in any one case shall be paid in full to the Assignor or as it shall direct; and
- (c) all other recoveries exceeding one million Dollars (US\$1,000,000) or the equivalent thereof in any other currency (inclusive of any deductible) in any one case shall (subject to the prior written consent of the Security Agent) be paid in full to the Assignor or as it shall direct without deduction or deductions whatsoever. In the absence of such prior written consent, moneys received in respect of claims in excess of million Dollars (US\$1,000,000) or the equivalent as aforesaid shall be paid to the Security Agent or as it shall direct.

1.2 Notwithstanding any contrary provision of the Assignment or any of the Ancillary Documents (as defined in the Amended Conditional Sale Agreement), the Assignor shall at all times remain liable to perform all of its obligations under the Insurances (including without limitation all of its obligations in respect of premiums payable in respect thereof) and nothing contained in the Assignment, any of the Ancillary Documents (as defined in the Amended Conditional Sale Agreement) and the Insurances and no exercise by the Security Agent of any right under the Assignment and no failure on the part of the Assignor to perform any or all of its obligations under

the Insurances shall constitute or be deemed to constitute an assumption or acceptance by the Security Agent of any obligation of the Assignor or any other person.

**2. APPOINTMENT OF ATTORNEY**

- 2.1 The Assignor by way of security irrevocably has appointed the Security Agent and any Receiver severally to be its true and lawful attorney (with full power of substitution and delegation) for the Assignor and in its name or otherwise and on its behalf and as its act and deed to sign, seal, execute, deliver and do all such assurances, acts and things which the Security Agent or any Receiver may deem to be necessary or advisable in order to give full effect to the purposes of the Assignment including, without limitation, to ask, require, demand, receive, compound and give acquittance for any and all moneys and claims for any and all moneys due under or arising out of the Insurances (to the extent assigned under the Assignment), to endorse any cheque, draft or other document, instrument or order in connection therewith and to make any claim or to take any action or to institute any suit, legal action or other proceeding which the Security Agent or any Receiver may consider to be necessary or advisable in connection with the Insurances (to the extent assigned under the Assignment), and generally in the Assignor's name and on its behalf to exercise all or any part of the powers, authorities and discretions conferred by or pursuant to the Assignment or applicable law on the Security Agent or any Receiver and, without prejudice to the generality of the foregoing, to seal and deliver and otherwise perfect any deed, assurance, agreement, instrument, act or thing which the Security Agent or any Receiver may deem appropriate for the purpose of exercising any of such powers, authorities and discretions, provided that the authority conferred by Clause 9.1 of the Assignment shall only be exercisable after the security constituted by the Assignment shall have become enforceable.
- 2.2 The Assignor unconditionally and irrevocably ratified and confirmed and agreed to ratify and confirm whatever any such attorney appointed pursuant to Clause 9.1 of the Assignment shall do or purport to do in the exercise or purported exercise of all or any of the powers, authorities and discretions conferred pursuant to Clause 9.1 of the Assignment.

**3. FURTHER ASSURANCES**

The Assignor shall from time to time promptly execute, acknowledge, deliver, file and register all such additional documents, instruments, agreements, certificates, consents and assurances and do all such other acts and things as may be necessary or desirable or as the Security Agent may request from time to time in order to perfect the Security Interests (as defined in the Amended Conditional Sale Agreement) intended to be constituted by the Assignment or to enable the Security Agent to obtain the full benefits of the Assignment and to exercise and enforce its rights and remedies under the Assignment.

FILE COPY



## CERTIFICATE OF THE REGISTRATION OF A MORTGAGE OR CHARGE

Pursuant to section 401(2) of the Companies Act 1985

COMPANY No. FC015529

THE REGISTRAR OF COMPANIES FOR ENGLAND AND WALES HEREBY CERTIFIES THAT AN INSURANCE ASSIGNMENT DATED THE 31st MARCH 1999 AND CREATED BY SOUTH AFRICAN AIRWAYS FOR SECURING ANY AND ALL THE OBLIGATIONS OF MERLIN LEASING LIMITED (THE BORROWER) WHICH ARE NOW OR AT ANY TIME OWED TO HYPOVEREINSBANK LUXEMBOURG SOCIETE ANONYME (FORMERLY HYPOBANK INTERNATIONAL SOCIETE ANONYME) IN IT'S CAPACITY AS SECURITY AGENT AND TRUSTEE FOR AND ON BEHALF OF THE SECURED PARTIES (AS DEFINED) AND TO ANY OF THE SECURED PARTIES PURSUANT TO ANY OF THE ANCILLARY DOCUMENTS (AS DEFINED IN THE AMENDED LEASE AGREEMENT) WAS REGISTERED PURSUANT TO CHAPTER 1 PART XII OF THE COMPANIES ACT 1985 ON THE 20th APRIL 1999.

GIVEN AT COMPANIES HOUSE, CARDIFF THE 23rd APRIL 1999.



THE OFFICIAL SEAL OF THE  
REGISTRAR OF COMPANIES



C O M P A N I E S H O U S E