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legibly, preferably
in black type or
bold block
lettering

* Insert full name
of company

COMPANIES FORM No. 395

Particulars of a mortgage or charge

Acc 40007/

395

A fee of £13 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)

For official use Company number

159

00464648

Name of company

*British Midland Airways Limited (the *Obligor*).

Date of creation of the charge

24 July 2009

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

An aircraft mortgage dated 24 July 2009 between Deutsche Lufthansa Aktiengesellschaft (the *Lender*) and the Obligor (the *Mortgage*).

Amount secured by the mortgage or charge

Any and all moneys, liabilities and obligations (whether actual or contingent, whether existing on 24 July 2009 or thereafter arising, whether or not for the payment of money, and including, without limitation, any obligation or liability to pay damages) which were on 24 July 2009 or which may at any time and from time to time thereafter be due, owing, payable or incurred or be expressed to be due, owing, payable or incurred from or by the Obligor to the Lender under any Finance Document (including the Mortgage), and shall include any expenses together with interest thereon payable to the Lender pursuant to the terms of the Mortgage.

All capitalised terms used in this Form 395 shall have the meaning given to them in Continuation Sheet Number 2 unless defined elsewhere in this Form 395.

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

Deutsche Lufthansa Aktiengesellschaft, Von-Gablemz - Strasse 2-6,
Cologne, Federal Republic of Germany.

Postcode D-50679

Presenter's name, address and
reference (if any):

FRESHFIELDS BRUCKHAUS
DERINGER LLP
65 FLEET STREET, LONDON
ENGLAND
UNITED KINGDOM EC4Y 1HS

Time critical reference

RFM/RFW 111519/0104

For official use (02/2006)
Mortgage Section

Post room

TUESDAY



L341SBXT

LD3

28/07/2009

210

COMPANIES HOUSE

COM395/1

Short particulars of all the property mortgaged or charged

For particulars of all the property charged, see Continuation Sheet Number 1 attached to this Form 395.

Please do not write in this margin

Please complete legibly, preferably in black type or bold block lettering

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

† Delete as appropriate

Particulars as to commission allowance or discount (note 3)

Signed Freshfields Bruckhaus Kershaw LLP Date 27 July 2009

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

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. A fee of £13 is payable to Companies House in respect of each register entry for a mortgage or charge. 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.

CONTINUATION SHEET 1

This Continuation Sheet 1 is in respect of a Form 395, submitted on 27 July 2009 on behalf of Deutsche Lufthansa Aktiengesellschaft regarding a deed of mortgage in respect of the Aircraft dated 24 July 2009 between Deutsche Lufthansa Aktiengesellschaft and British Midland Airways Limited (the *Mortgage*).

Those capitalised terms used in this Continuation Sheet 1 without definition are defined in Continuation Sheet 2.

1. Particulars of all the property mortgaged or charged are contained in clauses 3.1 (*Mortgage*) and 3.2 (*Replacement of Engines and Parts*) of the Mortgage:

“3.1 As a continuing security for the payment, performance and discharge of the Secured Obligations, the Obligor mortgages to the Lender all its interest, present and future, in and to the Aircraft, with full title guarantee (save that as regards freedom from encumbrances, the Obligor warrants that the Mortgaged Property is free from all Security Interests other than Permitted Liens).

3.2 If any Engine or Part is removed or replaced upon title to any replacement engine or part being vested in the Obligor:

(a) such substitute Engine or Part shall thereupon become subject to this Mortgage; and

(b) the Engine or Part which shall have been replaced by such substitution shall at the request of the Obligor be released from this Mortgage by the Lender.”

2. The Mortgage contains the following further assurances provision in clause 4.2 (*Perfection of Security and Further Assurances*) of the Mortgage:

“4.2 The Obligor shall, at its own cost and expense and at the request of the Lender, promptly execute, deliver, acknowledge, file, register and perfect all such assurances, documents, instruments, agreements, certificates and consents and do any and all such acts and things as may be reasonably necessary or desirable or as the Lender may reasonably request from time to time in order to: (a) perfect the security interest intended to be created by this Mortgage; or (b) establish, maintain, protect or preserve such security interest or the rights of the Lender under this Mortgage; or (c) enable the Lender to obtain the full benefits of such security interest and this Mortgage and exercise and enforce its rights and remedies under this Mortgage in respect of the Mortgaged Property.”

3. The Mortgage contains a negative pledge in clause 7.2 (*No Sale or Encumbrance of Mortgaged Property*):

“7.2 The Obligor undertakes that throughout the Security Period it shall not without the prior written consent of the Lender (but subject to and without prejudice to the provisions of the Facility Agreement and the other Finance Documents) sell, assign, transfer or otherwise dispose of any of the Mortgaged Property or create or suffer to exist any Security Interest upon or with respect to any of the Mortgaged Property except for this Mortgage.”

CONTINUATION SHEET 2

This Continuation Sheet 2 is in respect of a Form 395, submitted on 27 July 2009 on behalf of Deutsche Lufthansa Aktiengesellschaft regarding a deed of mortgage in respect of the Aircraft dated 24 July 2009 between Deutsche Lufthansa Aktiengesellschaft and British Midland Airways Limited (the *Mortgage*).

Advance means the amount so advanced or as the context requires the outstanding amount thereof from time to time;

Affiliate means, in relation to any person, a subsidiary of such person or the ultimate holding company of such person or any subsidiary of such ultimate holding company.

Aircraft means the Embraer 135 with manufacturer serial number 145431 (which term includes, where the content admits, a separate reference to all Engines, Parts and Aircraft Documents).

Aircraft Documents means, from time to time, all the documents, data, aircraft manuals and technical records relating to the Aircraft (including, without limitation, all additions, renewals, revisions and replacements from time to time made thereto).

Delivery Date means the date of the Advance under the Facility Agreement.

Dollars and *\$* means the lawful currency for the time being of the United States of America.

Embraer means Embraer-Empresa Brasileira de Aeronautica S.A.

Engine means, whether or not from time to time installed on the Aircraft:

- (a) each of the two (2) Allison Engine Company, Inc., AE3007A engines with engine serial numbers 311785 and 311786 (respectively) furnished with the Aircraft on the Delivery Date; or
- (b) any engine which has replaced any of those engines in accordance with the Facility Agreement, title to which has passed to the Obligor and which has become subject to the Mortgage,

and in each case includes all modules and Parts from time to time belonging to or installed in that engine but excludes any engine which has been released from the Mortgage.

Equipment Cost means the amount in Dollars (excluding any value added tax and Manufacturer's credits) payable or paid in respect thereof by the Obligor under the relevant Purchase Agreement and evidenced by the Manufacturer's invoice.

Facility means the facility in the maximum aggregate amount of \$11,500,000 granted by the Lender to the Obligor in the Facility Agreement and available to be utilised as therein provided.

Facility Agreement means the facility agreement dated 16 July 2009 between the Obligor and the Lender in relation to the Aircraft.

Finance Document means the Mortgage, the Facility Agreement, the Relevant Documents and any Security Documents.

Manufacturer means Embraer and, where the context so requires in relation to an Engine, Allison Engine Company, Inc.;

Mortgaged Property means the property, assets and rights for the time being and from time to time comprised in or subject to this Mortgage; and references to Mortgaged Property include references to any part of such Mortgaged Property.

Part means, whether or not from time to time installed on the Aircraft:

- (a) any component, furnishing or equipment (other than a complete Engine) furnished with the Aircraft on the Delivery Date; and
- (b) any other component, furnishing or equipment (other than a complete Engine) title to which has passed to the Obligor and which has become subject to the Mortgage in accordance with the Facility Agreement,

but excludes any such items which have been released from the Mortgage.

Permitted Lien means any Security Interest which falls within any one or more of the following categories, that is to say:

- (a) such Security Interest is expressly created by or pursuant to or arises under the terms of any Relevant Document and/or is granted in favour of the Lender;
- (b) liens for Taxes not yet assessed or, if assessed, not yet due or being contested in good faith by appropriate proceedings (and for the payment of which adequate reserves are held or, when required in order to pursue such proceedings, an adequate bond has been provided) so long as such proceedings do not involve the likelihood of the sale, forfeiture or loss of any Aircraft, Engine or any other major part thereof or any interest therein;
- (c) materialmen's, mechanic's, workmen's, repairmen's, employee's or other like liens arising in the ordinary course of business for amounts the payment of which is either not overdue or is being contested in good faith by appropriate proceedings (and for the payment of which adequate reserves are held or, when required in order to pursue such proceedings, an adequate bond has been provided) so long as such proceedings do not involve the danger of the sale, forfeiture or loss of any Aircraft, Engine or any other major part thereof or any interest therein;
- (d) liens (other than liens for Taxes) arising out of judgements or awards with respect to which at the time (i) an appeal proceeding for review is being prosecuted in good faith (and for the payment of which adequate reserves are held or, when required in order to pursue such proceedings, an adequate bond has been provided) and (ii) a stay of execution shall have been secured (and remains in force) pending such appeal or proceedings for review;
- (e) any other Security Interest the creation of which has been expressly permitted in writing by the Lender; or
- (f) such Security Interest is created by the Lender or exercised, asserted or claimed in respect of a debt, liability or other obligation (whether financial or otherwise) of the Lender having no connection with the Facility or with the operation of such Aircraft or any part thereof by the Obligor or any Affiliate of the Obligor or any lessee or sub-lessee permitted by the terms of the Relevant Documents.

Purchase Agreement means an agreement between the Obligor and the Manufacturer whereby the Obligor agrees to buy and the Manufacturer agrees to sell the Aircraft.

Relevant Documents means the Facility Agreement, each Utilisation Document and any other document at any time entered into pursuant to any of the above to which the Lender is party.

Secured Obligations means any and all moneys, 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) which are now or which may at any time and from time to time hereafter be due, owing, payable or incurred or be expressed to be due, owing, payable or incurred from or by the Obligor to the Lender under any Finance Document (including the Mortgage), and shall include any expenses together with interest thereon payable to the Lender pursuant to the terms of the Mortgage.

Security Documents means, in relation to any Utilisation, all the documents executed or to be executed by the Obligor in favour of the Lender in relation to a Utilisation to provide security therefore.

Security Interest means any encumbrance or security interest whatsoever, howsoever created or arising including (without prejudice to the generality of the foregoing) any right of ownership, security, mortgage, pledge, charge, encumbrance, lease, lien, statutory right in rem, hypothecation, title retention, attachment, levy, claim, right of possession or detention or right of set-off (but excluding any right of set-off arising in favour of a banker by way of operation of law).

Security Period means the period commencing on the date 24 July 2009 and terminating on the date upon which all of the Secured Obligations have been unconditionally and irrevocably paid, performed and discharged in full.

Taxes means all present and future taxes, imposts, levies, duties or charges of whatsoever nature including without limitation any penalty payable in connection with any failure to pay or any delay in paying any of the same and any interest thereon.

Utilisation means the amount in Dollars applied by the Obligor, pursuant to Clause 6 of the Facility Agreement, to finance or refinance part of the Equipment Cost of an Aircraft.

Utilisation Documents means, in relation to a Utilisation, all the documents executed pursuant to Clause 6.2 of the Facility Agreement in relation to such Utilisation and any documents subsequently executed in relation to such Utilisation and/or the relevant Aircraft in accordance with the provisions thereof and/or of any other Relevant Document.



CERTIFICATE OF THE REGISTRATION OF A MORTGAGE OR CHARGE

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

**COMPANY NO. 464648
CHARGE NO. 159**

**THE REGISTRAR OF COMPANIES FOR ENGLAND AND WALES
HEREBY CERTIFIES THAT AN AIRCRAFT MORTGAGE DATED
24 JULY 2009 AND CREATED BY BRITISH MIDLAND AIRWAYS
LIMITED FOR SECURING ALL MONIES DUE OR TO BECOME
DUE FROM THE COMPANY TO DEUTSCHE LUFTHANSA
AKTIENGESELLSCHAFT UNDER THE TERMS OF THE
AFOREMENTIONED INSTRUMENT CREATING OR EVIDENCING
THE CHARGE WAS REGISTERED PURSUANT TO CHAPTER 1
PART XII OF THE COMPANIES ACT 1985 ON THE 28 JULY 2009**

GIVEN AT COMPANIES HOUSE, CARDIFF THE 1 AUGUST 2009

PO
JEL



Companies House
— for the record —



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