



BUSINESS AVIATION AND THE BOARDROOM



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Acquiring A Business Aircraft 101 (Part 1)

Legal advice and tax planning support are essential in every business aircraft acquisition, notes attorney Keith Swirsky. In all aircraft transactions, documentation should clearly detail the rights and obligations of the individual parties involved.

Tax planning, conducted in advance of the closing, is essential to minimizing the effective costs of aircraft ownership and operations.

Similarly, aircraft financing transactions, which often have the longest lead times of all the components in aircraft transactions, need to be planned and commenced in the earliest stages of the aircraft acquisition process.

Finally, operational considerations, such as whether the aircraft will be managed in-house, or by an external management company, must be addressed in an orderly fashion during the acquisition process (see David Wyndham's article on *Aircraft Management considerations*, p38 of this issue).

This two-part article will provide a broad brush overview of the process for acquiring an aircraft, starting with identifying those areas where legal expertise is needed and following next month with a basic roadmap.

TIMING CONSIDERATIONS

Once the mission profile and acquisition criteria have been determined and the purchaser's acquisition consultant has been engaged, it is likely that he or she will soon identify and present to the buyer for consideration one or more available aircraft. It is certainly possible that in just a few short weeks the consultant and the buyer together will identify the specific aircraft that the buyer will target for acquisition.

Buyers rarely involve legal and tax planning experts during this early stage in the acquisition process. However, in the event that the buyer desires financing, ideally, the buyer will have already commenced the process of soliciting loan proposals. While most lenders generally request specific information on the aircraft to be acquired, they are nonetheless able to provide general financing terms in the event that certain specific aircraft >

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parameters can be met (such as model year, price range and aircraft type), and certainly the lenders are able to commence the due diligence process and credit committee approval.

The timetable to select a lender among competing proposals can take two or three weeks, and the time required to finalize the loan proposal, submit all financial information, and get the application through the credit committee approval process can take another two or three weeks. Thereafter, up to two more weeks may be necessary to negotiate and finalize the loan agreement and all related documentation.

Overall, the buyer should allow at least seven weeks for the process of lender selection through loan document execution. Aviation counsel should be knowledgeable of the “niche” of each aircraft lender to help narrow the field initially and should be able to provide guidance concerning commercially competitive terms for loan proposals. Therefore, counsel should be involved in the entire process.

Based on 22 years of aircraft acquisition experience (and thousands of transactions), we know that the timetable to acquire an aircraft can proceed far more quickly than seven weeks. Once an offer letter is executed, it is likely that the process of negotiating an aircraft purchase agreement and inspecting an aircraft will proceed in no more than four weeks. Of course, once the aircraft inspection is completed and repairs are finalized, the seller expects the buyer to proceed to closing expeditiously. Nevertheless, there can be a multi-week “gap” when financing the purchase, in the event the financing process is not commenced early in the process.

OFFER LETTER AND PURCHASE AGREEMENT

With respect to documentation, it is always advisable to engage counsel to prepare the aircraft offer letter (letter of intent). While many aircraft brokers will provide forms for this purpose, these are often “cut and paste” documents, cobbled together by the broker from prior aircraft transactions. An aviation attorney is skilled at preparing a comprehensive and clearly thought-through document, appropriately harmonized with the attorney’s purchase agreement.

The offer letter should identify several specific items, including:

- Parties to the transaction
- Aircraft, price and deposit amounts
- All aircraft movements and the cost to the buyer related to those movements
- Identity of the inspection facility and inspection commencement timing
- Required condition of the aircraft at the time of closing



- Whether the purchaser is permitted to reject the aircraft after the inspection
- Any business deal points that may require clarification.

Although an offer letter is usually legally non-binding (except perhaps for a confidentiality obligation and reimbursement for aircraft movement costs), the offer letter helps commit the parties to the transaction and avoids any ambiguity on important business points.

Once the offer letter is executed, it is customary for buyer’s counsel (not seller’s counsel) to prepare the purchase agreement. The purchase agreement sets forth the commercial terms of the purchase and sale transaction. It expands upon the offer letter provisions, clearly defines circumstances where the deposit becomes non-refundable, provides for conditions upon which each party is obligated to perform in proceeding to closing, and sets forth detailed closing procedures. The purchase agreement also governs the resolution of disputes and the rights and remedies of the parties. The typical time frame to negotiate the purchase agreement is two weeks, although, in an import or export transaction, this timeline can be extended and oftentimes doubles that period.

Do you have any questions or opinions on the above topic? Get them answered/published in World Aircraft Sales Magazine. Email feedback to: Jack@avbuyer.com

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