

# A Business Aircraft Acquisition Checklist

(Part 2)

Additional Terms Buyers Should  
Consider Carefully.



## Following last month's article, Chris Younger concludes his list of items to be covered by Board Members and their advisors when acquiring the benefits of Business Aviation.



Chris Younger is a partner at GKG Law, P.C., practicing in the firm's Business Aircraft Group. He focuses his legal practice on business aircraft transactions as well as issues relating to federal and state taxation and regulation of business aircraft ownership and operations. Mr. Younger can be contacted at [cyounger@gkglaw.com](mailto:cyounger@gkglaw.com)

Last month we emphasized the need to address the areas in aircraft acquisition that were particularly time-consuming and had an impact of subsequent aspects of the transaction. Specifically we covered the need to assemble a knowledgeable team of professionals well-versed in the specialized field of Business Aviation.

Our checklist continued with Aircraft Management and Operations, followed by Structuring and Tax Planning, concluding with Aircraft Financing. This month the following items complete the Acquisition Checklist.

### 5. Proposal, Negotiations and Documentation

When a suitable aircraft has been identified, the Board should engage its aviation counsel to prepare an offer letter, carefully drafted and negotiated to protect the company. Although the terms of an offer letter are usually not legally binding, it nonetheless commits the parties to the transaction and helps to avoid ambiguity regarding important business points.

Furthermore, it helps to prevent the aircraft seller from "sandbagging" the buyer by presenting issues in the purchase and sale agreement that were not considered by the Board when it made the offer to purchase a particular aircraft.

Once the offer letter is executed, typically the buyer's counsel prepares the aircraft purchase agreement setting forth the commercial terms of the purchase and sale transaction. This document:

- Expands upon the offer letter provisions,
- Clearly defines circumstances where the deposit becomes non-refundable,
- States the obligations of the seller regarding the delivery condition of the aircraft,
- Describes the inspection scope and procedure,
- 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 may be lengthened substantially.

### 6. Aircraft and Seller Due Diligence

As soon as an aircraft purchase agreement has been negotiated and signed, the Board must engage with the company's team of aviation experts to conduct its due diligence of the aircraft, aircraft documents and the aircraft seller. This process typically includes the completion of a pre-purchase inspection of the aircraft and the aircraft documents.

The scope of the pre-purchase inspection is typically outlined in the purchase and sale documentation, and the inspection facility is chosen as part of the process of negotiating purchase and sale documentation. The inspection timetable typically is from one to four weeks, depending on the age and condition of the aircraft, the level of inspection to be performed, and the discrepancies discovered during the course of the inspection.

Once the pre-purchase inspection begins, the Board should have its technical consultants, its flight department or management company personnel and hopefully its future flight crew involved in the process of reviewing the aircraft and its documents.

The Board must also engage its aviation counsel to conduct due diligence regarding the status of the aircraft's seller and the status of its title to the aircraft as well as verification of the seller's authority to sell the aircraft. These are especially important issues when an aircraft is being imported into the US.

### 7. Closing

If all of the steps in last and this month's articles are followed properly, the Board should be able to complete the closing process relatively smoothly. For the closing, the Board will need to ensure that the aircraft is in a jurisdiction that is sales-tax friendly, that all the foregoing steps have been followed, that all required documentation is in escrow to proceed, and that the aircraft can be operated following closing in the manner and to the destinations desired.

It is imperative that all of the steps relating to an aircraft acquisition be carefully orchestrated to achieve the mission critical planning objectives in the most efficient manner possible. The preparation of a detailed checklist that includes each of the foregoing items is an indispensable aid in guiding the Board through the aircraft acquisition process.

**Note:** If you missed Part 1 to this article, email [editorial@avbuyer.com](mailto:editorial@avbuyer.com) to obtain an online link. ■  
Are you looking for more Business Aviation Ownership articles? Visit [www.avbuyer.com/articles/category/business-aviation-ownership/](http://www.avbuyer.com/articles/category/business-aviation-ownership/)

"The Board must also engage its aviation counsel to conduct due diligence regarding the status of the aircraft's seller and the status of its title to the aircraft."