Business Aircraft Acquisition Checklist

(Part 1)

Items Buyers Should Consider Carefully.

Identifying the steps involved with acquiring and using a business aircraft will reduce the likelihood of surprises and lead to a more successful experience with Business Aviation, notes attorney Chris Younger. Here are some tips...

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A Board of Directors evaluating the purchase of a business aircraft must consider a multitude of issues in conjunction with the aircraft acquisition process. Many of these items require long lead times to complete.

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.

Board Members must 'run the traps' (or insist that their advisors do their homework) early to ensure that all necessary issues are spotted and addressed prior to the company making a commitment to acquire. It makes sense to approach the process by utilizing the concept of a business aircraft acquisition 'checklist' that includes the following…

1. Business Aviation Experts

The Board should first and foremost assemble and retain an experienced team to address the acquisition. Experts knowledgeable in brokering, taxes and technical subjects related to Business Aviation are essential. Be advised that Business Aviation has unique requirements, thus the team the company used to acquire land for a new factory is not the best choice for advising on aircraft acquisition.

In addition, the Board may need to retain other specialists, such as a customs broker, depending on the nature of the transaction and the specific aircraft to be acquired.

By hiring an experienced aviation team, the Board will receive the best advice regarding selecting the aircraft make/model that fits the company's mission profile; identifying the pool of target aircraft available; narrowing the list to those aircraft that are most appealing based on technical specifications, layout, price, maintenance history and cosmetic appearance; and spotting potential legal and tax issues that may exist depending on where the aircraft is currently located, where it will be based, and how it will be owned and operated.

2. Aircraft Management & Operations

The Board and its aviation team will need to decide if the aircraft will be managed "in-house" or by an external management company, and whether it will be available for lease to a charter operator to offset aircraft ownership and operating costs.

If the Board and its aviation team decide that the company will hire an outside third party to manage the aircraft or allow a charter operator to lease the aircraft, much focus will shift to selecting the appropriate service providers since they will have a significant impact on a successful outcome. Thus it is best for the Board to decide in advance how the aircraft will be managed and the flight department structured.

If the aircraft will be added to a charter operator's air carrier operating certificate to be flown in FAR Part 135 commercial operations, it is also ideal to involve the management company in the aircraft inspection process for the purpose of identifying all equipment requirements, and to confirm that the aircraft meets all requirements for its operation under FAR Part 135.

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3. Structuring & Tax Planning

The structuring of the company's use of Business Aviation should be determined prior to the acquisition of the aircraft to ensure that all open items are addressed in connection with making an offer on a specific aircraft.

The Board must access relevant sales tax, federal excise tax and income tax issues as well as FAA regulatory considerations. Furthermore, certain tax planning opportunities, particularly relating to sales tax, should be explored.

Implementing the recommended tax planning may take considerable time due to the potential need to form a new entity to acquire the aircraft and to procure applicable tax-related registrations for the purchasing entity.

4. Aircraft Financing

If the company plans to finance the aircraft's purchase, the Board should immediately engage in the process of soliciting loan proposals and identifying a preferred lender. The process of negotiating the loan terms is often an arduous and time-consuming exercise. While most lenders generally request specific information on the aircraft to be acquired, they are typically able to provide general financing terms in advance if certain specific aircraft parameters are provided (such as model year, price range and aircraft type).

A lender will also be able to commence the lender's due diligence process regarding the borrower and credit committee approval of the loan prior to the identification of a specific aircraft.

If the Board is in a position to purchase the aircraft without financing, it may be useful to negotiate the terms of the loan during the time that the aircraft is in its pre-purchase inspection but fund the loan after the aircraft is acquired. This will allow the Board to focus on the key elements of each stage of the aircraft acquisition process. It also provides the lender greater comfort regarding the status of the collateral securing the loan, which often allows the lending process to proceed more smoothly. However, there is a drawback to this approach since the incentive to finalize the financing may not be as strong on either side of the table once the aircraft is purchased.

Next month, we will conclude our study with a discussion of additional terms an aircraft buyer should consider carefully. ▌

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