

Importing Used Business Aircraft

(Part 2 of 3)

How to Deal with Commonly Encountered Issues.

Attorneys Keith Swirsky and Chris Younger continue their examination of importing into the USA a business aircraft that does not have an N-registration.



Keith Swirsky is president of GKG Law, P.C., and Chairman of the firm's corporate aircraft and tax groups. A founding member of NBAA's Tax Committee, he is a regular speaker at tax conferences.

Email: kswirsky@gkglaw.com

When importing a non-US registered aircraft from another country, the purchasing company must consider the timing of aircraft deregistration from the foreign registry. The deregistration process sometimes takes several days or longer, depending upon the country where it is registered.

The FAA will not register the aircraft in the United States until it receives confirmation directly from the foreign registry that the aircraft has been deregistered. Consequently, a buyer usually wants the aircraft to be deregistered from the foreign registry and the notice of deregistration to be delivered to the FAA prior to the closing, so that the aircraft can be registered in the US at the time of closing and delivery.

The seller may also be required to obtain governmental/regulatory approvals to sell and export the aircraft. Obtaining these approvals can be time-consuming and add additional unanticipated

expense for both the buyer and the seller.

Foreign sellers may refuse to deregister their aircraft until the buyer has paid the purchase price in full at closing. This is most likely to occur if the seller is concerned that the buyer may default or back out of the deal after the aircraft has been deregistered or if the aircraft is currently subject to commercial financing.

In the event of a buyer default after deregistration, the seller could be unable to move the aircraft until it is re-registered in its foreign home country, which can take several days or longer, depending on the country. In such cases, an acceptable compromise could be to have the entire purchase price placed in escrow prior to deregistration, together with an irrevocable escrow instruction letter, jointly executed by buyer and seller, requiring the escrow agent to deliver the purchase price to the seller as soon as the foreign registry delivers a notice of deregistration to the FAA.

“...the ability to receive financial disclosure to ensure that the buyer may rely on such a guaranty and enforce it is difficult.”



Determining Ownership/Title

Also of significance, determining the ownership and status of clear title to a foreign-registered aircraft can be tricky.

In one transaction, a client was purchasing an aircraft that was:

- i) Owned by a company formed in one country, which was owned by other companies that were formed in several different countries;
- ii) Registered in a third country; and
- iii) Based in yet another country.

Needless to say, the process of verifying the identity of the aircraft owner, confirming that the aircraft owner (and its owners) were all bona fide individuals or companies in good standing (and were not on any United States governmental blocked persons lists) and that the aircraft was completely free of liens at closing, was challenging, time consuming and expensive. The process required the assistance of attorneys based in several countries.

Moreover, if the buyer is financing the purchase of the aircraft, the lender may impose requirements regarding title and authority to sell that are expensive or possibly impossible to meet.

Still More Challenges

A related problem, which may be remote but costly if it occurs, emanates from the inability to recover damages from a foreign seller after an aircraft is purchased if a title or transfer issue arises. As in most aircraft transactions, the seller is typically a special purpose entity that has no assets other than the aircraft it is selling.

Obtaining a guaranty from a financially solvent affiliated party is usually difficult, and obtaining a personal guaranty from a wealthy individual principal is nearly impossible. Furthermore, the ability to receive financial disclosure to ensure that the buyer may rely on such a guaranty and enforce it is difficult.

Although title insurance is available to mitigate some of this exposure, there is no title insurance policy currently available that covers all of the risks associated with these issues. Furthermore, the seller and its affiliates may be in a location where there is no recourse to normal legal remedies.

Therefore, a company needs to have advisors with close connections to competent foreign advisors who are able to conduct all the necessary due diligence regarding these issues and render advice or an opinion regarding them. ■

Are you looking for more Business Aviation Tax articles? Visit www.avbuyer.com/articles/category/business-aviation-tax/

Business Aviation leaves nothing to chance.

- Analysis
- Planning
- Procedures
- Backup
- Debrief
- Feedback
- Benchmarking

Fred Haap and his team at Aviation Solutions, Inc. can help. With over 40 years of aviation experience, including management of a major corporate Aviation Department, Chairmanship of the National Business Aviation Association and accreditation as an IS-BAO auditor, Fred brings specific knowledge that relates to aircraft acquisition and operations. His expertise is a valuable resource that assures nothing will be left to chance.



These are the staples of Aviation Department management.

Aviation Solutions, Inc.

Tel: +1 603 355 2380 Email: fhaap@aol.com