

# Importing Used Business Aircraft

## (Part 3 of 3)

### How to Deal with Commonly Encountered Issues.

Attorneys Keith Swirsky and Chris Younger conclude their analysis of challenges facing companies and individuals desiring to import business aircraft registered outside the US.



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Purchasers of aircraft imported from outside the US for the purpose of entering on-demand service for hire must consider whether the aircraft has been maintained and its records documented in such a manner as to permit it to be placed on a Part 135 certificate.

If the buyer desires to allow the aircraft to be operated in Part 135 charter post-closing, the buyer needs to involve the Part 135 certificate holder's Director of Maintenance in the acquisition process during the pre-purchase inspection, to determine that there are no equipment issues or deficiencies in the aircraft's records preventing it from being placed on the certificate holder's Part 135 certificate.

Several other issues may arise in the course of negotiating the purchase agreement. For example, foreign sellers customarily require that buyers insure the seller for a two or three year period post-closing.

In other words, the seller requires the buyer to

place the seller on the buyer's insurance policy, as an additional insured, to cover the potential that the buyer's operations post-closing could lead to litigation that names the seller as a defendant. In addition, the amount of coverage may be relevant. In our experience, foreign sellers often want more coverage than US buyers customarily place on their aircraft.

If the delivery location is outside the United States, the purchasing company must engage foreign advisors to address legal and tax issues relating to delivery in the foreign location. Additionally, the choice of governing law under the purchase agreement is contentious.

Also, all parties to the transaction must agree upon which country's courts will have jurisdiction to hear a case in the event of a dispute, or whether an arbitration clause will require arbitration in a distant foreign location. Naturally, each party will want the laws of their own country to apply, and each party



“The company will need knowledgeable advisors who are experienced in the field of international transactions...”

will want the convenience of local courts in the event of a dispute. There is no easy resolution to this issue.

#### Still More

Finally, we have occasionally seen currency fluctuation issues affect a pending transaction. In particular, if the transaction is denominated in US Dollars, and the US Dollar weakens relative to the foreign currency, the foreign seller will be yielding a lower purchase price for the aircraft. This situation provides an incentive for the seller to default and refuse to deliver title to the aircraft.

As it is most common that a seller's default will only cause the seller to be liable to reimburse the buyer for its out-of-pocket expenses, the seller may be financially compelled to default on a contract. However, if the transaction is denominated in US Dollars and the US Dollar strengthens against the foreign currency, there will be no added cost to the buyer.

Nevertheless, a sophisticated buyer will realize that the seller is yielding a higher purchase price

than anticipated, and might desire to 'negotiate' the deal further prior to closing. Other variations on this theme are clearly possible.

#### In Summary

This three-part series on importing used business aircraft has addressed some of the issues that may arise. Certainly there are other issues not addressed, and as the used aircraft import (and export) market continues to mature, custom and usage between and among the US and other countries will converge.

Until such time, however, US buyers will experience these and other difficulties in negotiating a purchase agreement, and coordinating the logistics of inspection and closing.

The company will need knowledgeable advisors who are experienced in the field of international transactions, thereby increasing the likelihood of a successful foreign-based aircraft acquisition. ■

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