



Conyers Dill & Pearman

Registration, Financing and Leasing of Aircraft in the Cayman Islands

Foreword

This memorandum has been prepared for the assistance of those who are interested in the registration, financing and leasing of aircraft in the Cayman Islands (sometimes herein referred to as “Cayman”). It deals in broad terms with the requirements of Cayman law. It is not intended to be exhaustive but merely to provide brief details and information which we hope will be of use to our clients. We recommend that our clients and prospective clients seek legal advice in Cayman on their specific proposals before taking steps to implement them.

Before proceeding with the incorporation of a company in Cayman, persons are advised to consult their tax, legal and other professional advisers in their respective jurisdictions.

This memorandum has been prepared on the basis of the law and practice as at the date referred to below.

Persons considering establishing companies to carry on insurance or mutual fund business should request separate memoranda prepared by this Firm on these topics.

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8 July 2011

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1. INTRODUCTION

Company, trust, banking, insurance and related laws have made the Cayman Islands a leading offshore financial centre. The government's attitude towards and open communication with the private sector encourages the promotion and maintenance of Cayman's offshore business. Cayman enjoys a sophisticated telecommunications system, an abundance of professional service providers, and economic and political stability.

2. REGISTRATION OF AIRCRAFT IN THE CAYMAN ISLANDS

2.1 Uses of Aircraft Registered in Cayman

The Civil Aviation Authority of the Cayman Islands (the "CAACI") is the statutory body responsible for aviation regulatory oversight throughout the Cayman Islands and for aircraft registered in the Cayman Islands. The Cayman Islands Register (the "Aircraft Register"), with rigid standards and exacting specifications, is highly respected and recognised throughout the international aviation industry. It has been in existence since 1976 and there are presently more than 177 aircraft registered. The vast majority of those are private executive aircraft, mainly large jets such as Boeing Business Jet, Airbus A320, Gulfstream GIV and GVs, Falcon 900B, Falcon 2000, Hawker 900XP and Bombardier Global Express. In recent years there has been a growing use of the Cayman Register in relation to commercial aircraft. On occasion, the Register will also include "white-tailed" aircraft awaiting leasing or sale.

In many instances these aircraft are owned by high net worth individuals or large multinational corporations who view Cayman as the jurisdiction of choice for registration of such aircraft.

Currently, Cayman will only register an aircraft in the private category but the register has now been expanded to include all turbo-jet aircraft, all others above 5700 kg and helicopters that are based on yachts.

2.2 Benefits of Registration in Cayman

Sensible Regulation

Owners and operators enjoy an administration (rated as a Category 1 Aviation Regulatory Authority by the US Federal Aviation Administration) which is prepared to accept more than one internationally recognised set of airworthiness requirements, various flight crew licences for validation and a “low-profile” registration mark which some operators consider of value when operating in areas of the world which may be subject to certain security risks or political instability. The Cayman Islands registration mark “VP-C” is seen as a neutral mark as opposed to a major European mark or the American mark.

The Cayman Islands also offers a full range of professional and administrative services necessary to ensure that all legal and other requirements may be properly met and to ensure international respect for the Aircraft Register.

Further, owners and operators have expressed satisfaction with the responsiveness of the CAACI in dealing with their enquiries and requirements. This is made possible by the absence of the degree of administrative bureaucracy encountered in some other major jurisdictions. For example, some jurisdictions may impose requirements that an aircraft registered in that jurisdiction must be based and primarily used in that jurisdiction. Registration in Cayman is not subject to any such requirements and Cayman registered aircraft may be operated anywhere in the world (excluding of course war zones and similar areas).

Tax Neutrality

On an aircraft finance transaction, it is imperative that there is no tax leakage in the deal. With the increasing size of recent transactions, even a small number of basis points of tax can amount to a large overall tax charge. In Cayman, however, there is no corporation or other tax on any company carrying business in or outside Cayman. Cayman companies are entitled to receive an undertaking from the government exempting them from future taxation (if any). Further, the ready availability of professional managers and administrators in Cayman means that Cayman companies

may be centrally managed and controlled in Cayman which helps on-shore tax counsel gain comfort that the company will not be taxable in the relevant on-shore jurisdiction (except in certain cases where it is purposely tax resident in the United Kingdom or elsewhere). In relation to payments made by a Cayman company, there is no tax withheld by the Cayman government on any payment (of principal, interest or otherwise) made by it.

Also, stamp duty is not an issue for a carefully structured transaction where the issuer is incorporated in Cayman. Stamp duty is charged at US\$600 on the instrument that creates a security interest and with that exception, all other applicable stamp duty is de minimis. Stamp duty only arises in Cayman where the relevant instrument is physically brought into Cayman (usually for enforcement purposes). Usually security documents are executed by power of attorney outside Cayman. If it is preferred that documents are executed by directors of the relevant Cayman company, the documents are generally to be held in escrow by the directors until the documents have been dispatched out of the jurisdiction.

The Cape Town Convention Law, 2009

Certain provisions of the Cape Town Convention on International Interests in Mobile Equipment as modified by the Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment (the "Convention") have been given domestic effect in the Cayman Islands by virtue of the Cape Town Convention Law, 2009, which came into force on July 7, 2009.

The Convention establishes international standards for registration of ownership of and security interests in certain aircraft (including many twin-engine and most jet aircraft) and aircraft objects (i.e. engines). It provides for an internet-based International Registry of Mobile Assets (the "International Registry") which allows individuals and organisations to electronically register interests on a first-to-file priority basis. Persons can perform an electronic search of the International Registry to determine the priority of interests in any particular aircraft or object. The Convention also standardizes legal remedies for defaults in financing arrangements,

particularly repossession. There are currently 36 countries that have signed the Convention (“Contracting States”).

The Cape Town Convention Law will apply when an agreement is concluded that creates or provides for an ‘international interest’ or a contract of sale and the debtor or seller is situated in a Convention State or is a Cayman exempted company or exempted limited partnership that has made an irrevocable election in writing to ‘opt in’ to the Cape Town Convention Law (either generally or in respect of any particular interest). Further, a ‘prospective international interest’ can be registered to establish priority of interest prior to the closing of a transaction, such interest automatically becoming a perfected international interest on execution and delivery of the financing documents. The Cape Town Convention Law does not apply to a pre-existing right or interest, which retains the priority it enjoyed previously. Parties are at liberty to re-constitute a pre-existing right or interest as an international interest and thereby bring it into the scope.

We note that even if a Cayman entity has not opted in, an international interest or prospective international interest in an aircraft (not engines) may still be registered in the International Registry if either (a) the aircraft in question is registered in a Contracting State or (b) the debtor is situated in a Contracting State.

The primary benefits of the new law are the certainty created by the International Registry and the clarity brought to matters of international enforcement.

CAACI Comfort Letter

The CAACI provides comfort in the case of an aircraft which is registered by the operator in its capacity as a charterer by demise. The CAACI will, if requested, provide the lessor/owner of the aircraft with a ‘comfort letter’ whereby the CAACI acknowledge the ownership and leasing structure of the aircraft and confirms that it will not remove the aircraft from the Aircraft Register without receiving written authorisation from the lessor/owner. The CAACI will place a notation on the Aircraft Register of the undertaking so provided and of the ownership/leasing structure.

Other Benefits

Other reasons why an aircraft, even if it is US or European manufactured and financed, may be registered in the Cayman Islands, include the following.

A particular aircraft may not be type-certificated in the US and rather than undergo the expense of a first such certification, it may be preferable to register the aircraft in a jurisdiction where the aircraft is already type-certificated.

If a private aircraft is acquired by a foreign entity using finance supplied by an international lender, the foreign entity may understandably wish to register the aircraft in its own jurisdiction where the aircraft will be based and operated, using its own pilots who are licensed by the aviation authority of that jurisdiction. Again, this assumes that the aviation authority will be of a standard acceptable to the financiers. If not, an option will be to use a neutral jurisdiction such as Cayman which is seen as being of an acceptable standard to the financiers.

As noted earlier, there may be circumstances when it may not be desirable to have a US or European registration if the aircraft is to be operated in certain unfriendly countries. In such circumstances, a neutral registration mark such as the Cayman Islands mark "VP-C" with two subsequent letters may be a significant advantage.

3. GENERAL REGISTRATION PROCEDURES

3.1 Overview

The registration process may be initiated by completing and submitting all of the relevant application forms, and returning them to the CAACI for the approval of the Director General of Civil Aviation. The application forms must be accompanied by the company's certificate of incorporation or comparable document, a list of authorised company signatories with a signature sample of each, a general description of the company's activities, main base of aircraft operations and geographical areas. A statement must also be included that states the aircraft will only be operated within the definition of "Private Category". Private Category is defined as being "any

purpose other than public transport or aerial work”, and therefore, an aircraft registered in the Private Category may not be used for the purposes of “hire and reward”.

Persons wishing to register an aircraft in the Private Category must first prove eligibility in accordance with the Air Navigation (Overseas Territories) Order 2007 (AN(OT)O). The following persons are qualified to hold a legal or beneficial interest by way of ownership in an aircraft registered in Cayman (or a share therein):

- (a) The Crown in right of Her Majesty’s Government in the United Kingdom or the Government of the Cayman Islands;
- (b) Commonwealth Citizens;
- (c) British Protected Persons; and
- (d) Bodies incorporated in some part of the Commonwealth and having their principal place of business in any part of the Commonwealth.

Subject to receipt of an acceptable “Due Diligence” report, an airworthiness survey will then be scheduled which, subject to the surveyor making a recommendation for the issue of a Certificate of Airworthiness and receipt of an Export Certificate of Airworthiness or similar document, the de-registration process may be initiated. However, an applicant is cautioned not to initiate the de-registration process from the existing state of register until such time as the application has been formally approved by the Director of Civil Aviation or his delegated representative.

Once accepted for registration, a registration mark prefixed with “VP-C * **” will be assigned or the applicant may request a specific registration mark which (if available) will be allocated.

Upon receiving notification from the existing state of registry that the aircraft has been removed from that register, a Cayman Certificate of Registration, Certificate of Airworthiness and all required documentation will be issued.

3.2 Certificate of Airworthiness

The initial issue and annual renewal of a Certificate of Airworthiness requires that the aircraft undergo a survey by a surveyor authorised by the CAACI. The CAACI currently operates under the Overseas Territories Aviation Requirements (OTARS) and the European Safety Agency (JAR/EASA) maintenance standards.

3.3 Maintenance

A “Maintenance Schedule” which is in compliance with the aircraft manufacturer’s recommended maintenance programme (such as Cestum, etc.) must be submitted for approval. In the alternative, maintenance must be conducted in compliance with a schedule developed by an approved maintenance organization.

An “Approved Maintenance Organization” acceptable to the CAACI shall be certified under one of the following:

JAR 145 Approval or Acceptance
FAR 145 Repair Station Approval
Transport Canada CAR 573 Approval

An application from a non-recognized maintenance organization will be assessed on an individual basis and approved at the discretion of the DCA.

3.4 Flight Operations

Prior to placing an aircraft on the Cayman Aircraft Register, the CAACI must be satisfied that flight operations will be conducted in a manner consistent with internationally recognised safety standards and recommended practices. Although the AN(OT)O does not specifically address operational standards for aircraft registered in the “Private Category”, it is expected that the operator will ensure that initial and recurrent crew training is conducted annually, and that some form of control is exercised in respect of flight and duty time limitations. Where an operator requests authority to operate in “Required Navigation Performance” airspace, it is

also expected that appropriate training will be completed. The same holds true for “Single Pilot Operations” and “Steep Approach and Landing Authority”.

Authorisations and approvals are normally granted, subject to meeting an acceptable means of compliance for the following types of flight operations: (i) Single Pilot Authority, (ii) Steep Approach and Landing Authority, (iii) MAPS (RVSM), (iv) RNP 10, and (v) RNP 5 (BRNAV).

Note: The Aircraft Flight Manual shall be available for inspection with current revisions and any applicable supplements.

3.5 Aircrew Validations

Licence validations are normally issued to the holder of an aviation document which has been issued by an ICAO State or by any other state which is in compliance with ICAO Annex 1. The licence must be appropriately endorsed for the type and class of aircraft/helicopter to be operated or in the case of a request for P2 authority where a type endorsement is not required, certificates of currency must be submitted. (i.e.: certificate of experience or biannual flight check). A current medical certificate must also be submitted along with a completed Licence Validation application form. The validation is granted for a period of one year. Note: The validation is contingent upon the continued validity of the licence submitted.

3.6 Maintenance Authorisation

A maintenance authorisation is normally issued to the holder of an “Aircraft Maintenance Engineers Licence” issued by an ICAO State or any other state which is in compliance with ICAO Annex 1. In some cases, such as an FAA A&P license, the applicant may be required to submit additional information.

3.7 Radio Licensing

All aircraft registered in Cayman are required by law to obtain a radio licence in respect of the communication transceivers installed in the aircraft. This licence is

issued by the Cayman Islands Government, Information and Communications Technology Authority (ICTA). Application forms can be provided upon request or are available on-line at www.icta.ky.

4. FINANCING AIRCRAFT IN THE CAYMAN ISLANDS

4.1 Overview

In circumstances where the financial institution providing financing is located in one country and the buyer wishes to register the aircraft in another country, the financial institution must normally be satisfied that the specific laws of the country of register will recognize the mortgage agreement in the event of default of payment by the mortgagor. A party taking a mortgage over an aircraft registered or to be registered on the Cayman Islands Aircraft Register is able to register that mortgage with the CAACI on its mortgage register (“Mortgage Register”). The CAACI is able to maintain its Mortgage Register pursuant to the Mortgaging of Aircraft Regulations 1979 and the Air Navigation (Overseas Territories) Order 2007 (as amended) (“AN(OT)O”).

A mortgage may cover any store of spare parts (including engines) for the aircraft but does not include a mortgage created as a floating charge or a mortgage of spare parts on their own. Parts which in the future may become attached to the aircraft can be part of a registered mortgage provided they are sufficiently identifiable when acquired by the mortgagor and value is given.

Unlike the Aircraft Register, the Mortgages Register is a public register which is capable of being searched by third parties for a nominal fee.

4.2 Benefits

The registration of an aircraft mortgage on the Mortgage Register provides protection to mortgagees in a number of different ways. The AN(OT)O provides that the registered mortgagee must provide its consent to removal of the aircraft in question from the Aircraft Register before such removal can take place and the registered

mortgage will continue to exist despite removal of the aircraft from the Aircraft Register. Moreover, by law the Cayman Islands Government is required to indemnify a mortgagee for loss suffered due to an error or omission in the Mortgage Register or any inaccuracy in any entry which is made.

Although registration of a mortgage does not constitute evidence of its validity, it does constitute express notice of all facts appearing on the Mortgages Register.

4.3 Procedure

The procedure to effect registration of a mortgage is a simple and straightforward one, requiring nothing other than the consent and direction of the mortgagee. The mortgagee must provide the CAACI with a short registration form summarising the salient points of the mortgage (i.e. date, aircraft description, mortgagor contact details and confirmation of sum secured) and an original of the registration form signed by either the mortgagee or his agent/legal counsel must be submitted to the CAACI together with a copy of the mortgage certified by the applicant to be a true and correct copy. The mortgage registration fee should also be submitted upon registration.¹

Once registered, the mortgage registration remains valid for the duration of the mortgage without the need to comply with any renewal requirements. The mortgage itself need not be governed by Cayman Islands law nor is there a statutory format with which the mortgage must comply. The original mortgage deed need not be provided to the CAACI and, indeed, it is advisable that the original mortgage not be brought to the Cayman Islands in order to avoid the possibility of an applicable duty (which may be up to US\$610) having to be paid on the original mortgage document.

The mortgage deregistration procedure is a simple one: submission of a short confirmation from the mortgagee or its agent, countersigned by the mortgagor, together with evidence of discharge of the mortgage debt will be sufficient to enable

¹ Additional information regarding the requisite fees is available upon request.

the CAACI to record the mortgage as having been discharged from the Mortgages Register. Notification of the discharge will be provided by the CAACI to the mortgagor and the mortgagee.

4.4 Priority

A registered priority is given statutory priority over subsequently registered mortgages and unregistered mortgages. The priority of the registered mortgage will not be affected by the bankruptcy of the mortgagor and the security interest will rank in preference to any right, claim or interest of other creditors. It should be noted, however, that possessory liens for work done on the aircraft (whether before or after the mortgage was created), or over persons lawfully entitled to possession of the aircraft, or with a right to detain the aircraft, do have priority over a registered mortgage. In addition, a previously registered mortgage or a mortgage created prior to 9 October 1979 would have priority over a subsequently registered mortgage.

Registration of the mortgage cannot take effect until the aircraft is registered but the mortgagee may secure its interest prior to registration of the aircraft by submitting a Priority Notice to the CAACI. Lodging of a Priority Notice will prevent any other security interests over the aircraft being registered in advance of registration of the mortgage which is the subject of the Priority Notice.

The Priority Notice is a simple form, along the same lines as the mortgage registration form, and the CAACI has taken a policy decision not to require payment of the mortgage registration fee upon submission of the Priority Notice.

5. LEASING OF AIRCRAFT IN THE CAYMAN ISLANDS

5.1 Overview

In recent years there has been an increasing use of vehicles organised in Cayman, such as exempted companies, exempted limited partnerships and charitable and

“STAR” trusts, for the purpose of financing and leasing aircraft (as well as ships and other major capital equipment such as power and water plants).

5.2 Special Purpose Vehicles

Cayman exempted companies are commonly incorporated as special purpose vehicles (“SPVs”) to play a particular role within a financing or leasing transaction. The rationale for introducing the SPV into the structure will depend upon financing and leasing regulations in the jurisdictions of the participant airlines, lessors or sub-lessors and therefore the SPV’s role in each structure will be tailored to fit the particular transaction.

Unlike other offshore jurisdictions where there can be a need for an “in principle” consent from the local regulator, setting up a Cayman SPV is extremely flexible, quick and relatively inexpensive. The SPV can be formed in as little as 24 hours.

The SPV is usually structured as an orphan company with the shares held in trust for either a charitable purpose, or for the benefit of the transaction itself (an innovation of the Special Trusts (Alternative Regime) Law (“STAR trust”), which introduced purpose trust legislation in 1997). By separating the beneficial interest in the shares from their legal title, the SPV’s accounts do not have to be consolidated in the accounts of either the share trustee or the promoter.

In aircraft financing, the transaction will involve the transfer of ownership of the asset to a SPV which will acquire it with a loan from the lender. The aircraft is then leased by the SPV to a third party such as an airline, via an operating lease. For the lender, the off balance sheet structure has several advantages, and the structure established in Cayman is entirely tax neutral. The suitability of Cayman SPVs for structures such as these is well established. The share capital of a Cayman company may be denominated in any currency in order to simplify the accounting requirements, and there are no minimum requirements in respect of issued or paid up capital.

6. TAXATION

Cayman has no corporation tax, income tax, capital gains tax, inheritance tax, gift tax, wealth tax, or any other tax applicable to a company conducting off-shore business. Certain documents are subject to stamp duty which is generally nominal. All exempted companies are entitled to receive from the government a “Tax Exemption Undertaking” exempting them from any possible future Cayman taxes for a period of twenty years. Ordinary non-resident companies are not able to take advantage of the Tax Exemption Undertaking.

7. CONCLUSION

In summary, the Cayman Islands continue to offer the aircraft industry a commercially flexible and adaptable approach, against a bedrock of stability. This, combined with its depth of expertise keeps Cayman at pace with the current demands of its international clientele and at the head of the field of off-shore jurisdictions.

This publication is not a substitute for legal advice nor is it a legal opinion. It deals in broad terms only and is intended merely to provide a brief overview and give general information.

About Conyers Dill & Pearman

Conyers Dill & Pearman advises on the laws of the Cayman Islands, British Virgin Islands, Bermuda, Mauritius and Cyprus. Conyers' lawyers specialise in company and commercial law, commercial litigation and private client matters.

The combination of Conyers' structure, culture and expertise enables the highest quality, responsive, timely and thorough legal advice. Conyers' strategic global presence in major international business centres allows a seamless 24 hour service.

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