



## Aviation Finance & Aircraft Registration in Bermuda

By Kit Cunningham, Corporate Attorney

Aviation finance, particularly aircraft leasing and aircraft lessor securitisation, are experiencing a boom on a global scale. These transactions provide the opportunity to employ innovative mechanisms for several different financings.

Bermuda is currently enjoying a resurgence in this arena and playing an active role in these transactions. Home to the largest offshore aircraft registry, Bermuda is also the world's 10<sup>th</sup> largest aircraft registry. Bermuda, unlike the majority of the top 10 aircraft registries, requires that a certificate of airworthiness be issued annually. These certificates create a paper trail for the mechanical and physical history of the aircraft, which is beneficial because it allows for monitoring various parts of the aircraft and determining how they age. This monitoring enables mechanical teams to more accurately predict when specific parts may need to be replaced. Moreover, this paper trail can be vital to proving and supporting the condition of an aircraft if it is placed on the market for sale.

Bermuda special purpose vehicle (**SPV**) funding and leasing arrangements are popular in Bermuda and may provide certain tax, regulatory and capital restriction relief. Introduction of the SPV into the structure depends upon financing and leasing regulations in the jurisdictions of the participant airlines, lessors or sub-lessors. The SPV's role in each structure is tailored to fit the particular transaction.

There are numerous benefits in establishing the SPV in Bermuda. Bermuda is a tax neutral jurisdiction (meaning there are no additional taxes in Bermuda that will affect or be harmful to the transaction) with appropriate, but not overly onerous, regulation. The legal framework of Bermuda is based on common law principles with English common law being persuasive authority. Furthermore, Bermuda is a British Overseas Territory and has a stable political system. In some instances, an airline is based in a country without a stable political and legal system thus, it is beneficial to the structure to establish the SPV in Bermuda.

In the typical financing structure, a Bermuda SPV is formed to act as owner and lessor or as lessee and sub-lessor of the aircraft. The location of the company in a tax neutral and flexible jurisdiction may offer certain protections against the bankruptcy of other involved parties and facilitates innovative and cost-effective methods of asset finance, often utilising cross-back tax benefits.

### Recent Legislative Changes

Previously under Bermuda's Mortgaging of Aircraft and Aircraft Engines Act 1999 (**Act**), an aircraft or aircraft engine was required to be owned by, leased or chartered to, or otherwise in the lawful possession of a company duly incorporated in Bermuda in order to become the security of a loan (the "**Requirement**"). In January 2015 amendments to the Navigation (Overseas Territories) Order (**Amended ANOTO**) came into effect, which widened the list of eligible corporations and persons that could register an aircraft or aircraft engine on the Bermuda register. However, notwithstanding the Amended ANOTO, the Requirement remained and thus gave little affect to the Amended ANOTO.

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Subsequently in June 2017 the Mortgaging of Aircraft and Aircraft Engines Amendment Act 2017 (**Amending Act**) came into effect, amending the Act to remove the Requirement. The Amending Act now allows for corporations and persons to register an aircraft on the Bermuda register who are: (i) bodies incorporated in any other part of the Commonwealth and having their registered office or principal place of business in the United Kingdom or any other part of the Commonwealth; (ii) Commonwealth citizens or nationals of any European Economic Area state; or (iii) undertakings formed in accordance with the European Economic Area state having their registered office, central administration or principal place of business within the European Economic Area.

The Royal Assent was received in July 2016 for Bermuda International Interests in Mobile Equipment (Cape Town Convention) Act 2016 (**Cape Town Convention**). The international Institute for the Unification of Private Law has confirmed that the Cape Town Convention will be extended to Bermuda, effective January 2018. The Cape Town Convention is designed to facilitate aircraft finance by standardizing transactions involving moveable property with respect to aircraft objects (e.g. airframes and aircrafts) by the creation of an electronic international registry of international interests that are recognized by those states that have implemented the Cape Town Convention and provide default remedies, when needed, to a creditor.

## **Aircraft Registration**

The use of a Bermuda SPV also enables the aircraft to be registered on the Bermuda Aircraft Register. Furthermore, its use in the structure depends upon the financing, legal and regulatory requirements in the home jurisdiction of the airline thus, each transaction will be structured differently. Nonetheless, Bermuda offers the aircraft industry a commercially flexible approach with considerable expertise.

The policy of the Bermuda Civil Aviation Authority (**BCAA**) is to avoid the Bermuda Register of Civil Aircraft being used as a *flag of convenience* therefore, applications are carefully scrutinised. The BCAA require an application for registration of an aircraft in the private category to be accompanied by certain documentation.

These include:

1. Copies of certain corporate documents and records showing capacity and authority to own or lease the aircraft;
2. Evidence as to ownership of the aircraft;
3. A statement attesting that the aircraft is not on a similar register of any other state or territory and confirmation of deletion of the aircraft from its previous registry by direct communications from the country or state of such registry;
4. Statements in relation to the ongoing management and maintenance of the aircraft;
5. Export Certificate of Airworthiness covering the export of the aircraft to Bermuda;
6. Evidence that the aircraft is adequately insured; and
7. Documents relating to the application for an aircraft radio licence.

It should be noted that registration in any other category will require the submission of additional documentation.



Having your aircraft registered on an international register provides the benefit of a solid reputation due the civil aviation authority's oversight. The BCAA focuses on providing a diligent and efficient service, as well and carrion out its duties and operations in a timely manner. Anyone who has dealt with the large civil aviation authorities such as the in the US and UK, knows it can be months before you get a response, if ever, from one of these authorities. Furthermore, the neutrality of Bermuda as a jurisdiction in combination with the low-profile of the registration mark, tax neutrality, being part of the Cape Town Convention, streamline registration process and annual airworthiness survey assuring the pedigree of an aircraft is beneficial to many aircraft owners, and makes the Bermuda registry a lucrative registry to consider.

This article is intended for informational purposes only and is not a substitute for legal advice.



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