

Five Reasons to Register an Aircraft in the Cayman Islands

1. The Cayman Islands:

"In all my contacts with the Cayman Islands I have never met a more professional, courteous group of folks than the Cayman Civil Aviation Authority and their administrative support team. We encourage all of our aviation clients who are thinking of an offshore registration to consider the Cayman Islands because of the positive experiences we've had when doing business there and the confidence we have in the jurisdiction... and to date everyone we know who has placed their aircraft on the Cayman Register is totally and completely satisfied. Our clients look forward to a Cayman closing as it is always a very enjoyable experience."

- James Cooling, Partner, Cooling & Herbers,
Kansas City, MO, U.S.A.,
<http://www.coolinglaw.com/>

The Cayman Islands provide a safe, stable and 'friendly flag' for registration of an aircraft and a developed system for perfecting a security interest over that aircraft.

The Cayman Islands enjoy a stable system of government, consisting of a 15 member Legislative Assembly elected by the people every 4 years, which enables the Cayman Islands largely to self-govern on local affairs, and a Governor who is formally appointed by the Queen every 3 years to act as a representative of the U.K. government and to exercise power over certain domestic issues (for example, controlling the Islands' internal security matters, dissolving the legislature, assenting to laws and acting as a delegate between the Islands and the British government.)

The Islands' main industries are financial services, tourism, and real estate sales and development. The Government's primary source of income is indirect taxation, such as import duty on certain goods and licensing fees for institutions operating in the Islands. The absence of any form of direct taxation in the Cayman Islands (income, sales or otherwise) has generated a favourable tax regime which has made the Cayman Islands an attractive offshore financial centre. The Cayman Islands Government has been credited with an AA3 rating by Moody's, the highest in the Caribbean, and in 1997 the Cayman Islands Stock Exchange was opened with over 900 issues approved for listing and a market capitalisation of approximately US\$70 billion at present.

The Cayman Islands are involved in no international disputes and have entered into various treaties and implemented legislation to meet with internationally accepted anti-money laundering and due diligence standards. These advances have been balanced against preserving the privacy of clients wherever possible and it should be noted that confidentiality of client information is protected under applicable common law and by local statutes.

For these reasons the Cayman Islands provide the assurance and peace of mind sought after when selecting the jurisdiction that is right for registration of an aircraft.

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2. The legal system:

"The Cayman Islands are an offshore jurisdiction of choice for us. On the aviation side we do a considerable amount of international aircraft financings which involve a Cayman Islands element and we have also participated in a number of aircraft registrations (and the related financing arrangements) where the aircraft and mortgage over the aircraft were registered in the Cayman Islands with the CAACI. The high quality of legal advice and assistance we receive from the Caymans form a real incentive for us and for our clients to do business there and we have always found the Cayman Island authorities very responsive and co-operative and their procedures user-friendly. The flexibility that the CAACI offers in terms of registration of business jets has been particularly useful in our experience".

- Rebecca Garner, Associate Attorney,
Freshfields Bruckhaus Deringer, Paris, France,
<http://www.freshfields.com/>

The Cayman Islands are renowned as a leading offshore jurisdiction. This status has been achieved through its tax neutral environment within which a highly developed legal system based on English legal principles flourishes. A professional infrastructure complements the legal system well by servicing and supporting a wide range of transactions, many of which involve the major players in fields such as the international aircraft finance industry for whom the Cayman Islands are a preferred jurisdiction for the incorporation of special purpose vehicles to own aircraft and/or to act as finance or leasing entities for their international asset financing transactions.

The laws of the Cayman Islands are derived from statutes approved by the elected Legislative Assembly and assented to by the Governor, statutory instruments passed by the U.K. Parliament and extended by Order in Council to the Cayman Islands and English common law (which is of persuasive authority).

The Air Navigation (Overseas Territories) Order 2007 (as amended) (the "**AN(OT)O**") is a U.K.

statutory instrument which has been extended to the British overseas territories and is the primary legislation applicable to aviation in the Cayman Islands, containing regulations on the operational and airworthiness requirements of locally registered aircraft. A number of local statutes (many of which mirror the applicable legislation in the U.K.) have also been enacted, for example the Mortgaging of Aircraft Regulations 1979 which sets out the local regime for registering aircraft mortgages. The Civil Aviation Authority of the Cayman Islands ("**CAACI**") (discussed further below) is the regulatory authority and is mandated by law, *inter alia*, to ensure that civil aviation in the Cayman Islands conforms to the standards and recommended practices of the International Civil Aviation Organisation established by the Convention on International Civil Aviation, (ICAO) signed in Chicago on the 7 December, 1944.

Although legal proceedings in the Cayman Islands relating to locally registered aircraft and aircraft mortgages are rare, it bears noting that the Cayman Islands legislature is able to deal competently with claims which may arise, for example: the enforcement of aircraft mortgages and the detention of a mortgaged aircraft or of other property of the mortgagor situated within the Cayman Islands in lieu of the detention of that aircraft.

The British based system of registration for both aircraft and aircraft mortgages, within a stable British based legal system, is another compelling reason to choose to register an aircraft and any associated aircraft mortgage locally.

3. The Cayman Islands Civil Aviation Authority:

"We worked with the Cayman Islands Civil Aviation Authority on several occasions in connection with the registration or the re-registration of aircraft and mortgages in the Cayman Islands. The time line was most of the times very tight, but the Cayman Aviation Authority did a superb job for all parties involved. We were able to meet our deadlines and were

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always very pleased with the service provided by the Cayman Aviation Authority throughout the process."

- Dr. Iur. Hans-Ruedi Grob, LL.M., Partner, Rosenow Grob Schilling, Zurich, Switzerland, www.rgslaw.ch

Implemented in 1987, the CAACI is a statutory body with the powers and duties set forth in the Civil Aviation Authority Law (2005) exercised on its behalf by its Director-General (the "DGCA"). The CAACI is made up of 4 sections: Director of Air Safety Regulation, Director of Air Navigation Services Regulation, Director of Commercial Affairs Regulation & Administration. It fulfils its duties effectively through a developed structure and a team of 15 highly qualified employees. Regulation and, as the case may be, licensing of aerodromes, aviation personnel and aircraft maintenance organisations fall under its responsibility, as do conducting aircraft airworthiness surveys and providing commercial and economic regulation and maintenance of the Cayman Islands Aircraft Register (the "**Aircraft Register**").

The CAACI has a subsidiary office in London, U.K., servicing the interests of registrants and potential registrants located in Europe, and its head office in Grand Cayman services registrants and potential registrants in the Cayman Islands and, primarily, North America. The opening hours of the CAACI are 8:30am to 5:00pm, Monday to Friday (save for local public holidays), though it should be noted that the CAACI has shown a willingness to work with registrants outside regular business hours where this may be necessary.

The average time taken to effect an aircraft registration is between 6 to 8 weeks and an aircraft mortgage registration can be effected within 24 hours. The CAACI has proven itself to be one of the most 'hands on' of aviation authorities by routinely working closely with applicants to assess and complete the registration requirements in order to meet deadlines set. In addition, wherever possible the CAACI will deploy its expertly qualified airworthiness surveyors to inspect an aircraft in

its home base in order to fulfill the initial and annual registration requirements.

The CAACI has contracted with Brac Informatics to provide electronic storage and a disaster recovery plan implementation for the CAACI, thereby ensuring continuity of services and the ability to recover from natural disasters in a time efficient and seamless manner.

The CAACI also actively seeks feedback and will attempt where possible to accommodate the needs of clients, whilst preserving the standards it has been charged with following. For example, the CAACI was told that the requirement that registrants wait 2 years before assigning its Cayman Registration Mark of VP-C[*][*] to any new aircraft purchased was an unnecessary and unpopular rule. It was pointed out that the U.S. FAA did not impose such a period and that an 'N' number can in fact be changed in about 90 days. The CAACI considered this and concluded that it was not legally necessary to require a 2 year waiting period and, in order to effectively compete and to satisfy the desires of registrants, decided to eliminate the policy.

The CAACI has proved itself to be a responsive Registry which gives due consideration to the wishes of clients, initiating change where this is deemed feasible, but remaining objective enough not to bow to pressures when not in its best interests. The high standards set by the CAACI have caused the Cayman Islands' Aircraft Register to be internationally respected and recognised throughout the industry. It is evident that a quality product is the end result of its hard work and efficiency.

4. The registration procedure and continuing requirements:

"Our experience with doing business in the Cayman Islands has been as pleasant and uncomplicated as the lifestyle of the people who live there".

- Ralph L. Bowman II, Fearer Bowman Consulting LLC, Pittsburgh, PA, U.S.A.

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(This article is not intended to provide an exhaustive summary of the registration requirements but if you would like to find out more about the procedure we will be happy to provide you, free of charge, with Maples and Calder's Legal Guide on Aircraft Registration in the Cayman Islands which gives a detailed summary of the process and sets out the relevant application documents.)

As mentioned above, the AN(OT)O governs the operational and airworthiness requirements by which aircraft are registered on the Cayman Islands' Aircraft Register.

The CAACI's Aircraft Register is primarily a "Private Register" which means that, other than Cayman Airways (the national flag carrier of the Cayman Islands) and airlines mainly servicing the public of the Cayman Islands on a regular basis, the Aircraft Register is not open for commercial aircraft activity. Therefore, despite the fact that the AN(OT)O does permit registration of aircraft in various commercial and non-commercial categories, in practice if an aircraft is to be operated otherwise than in the 'Private' category the CAACI's rule is that registration will not generally be permitted. 'Generally' is used here because the CAACI will in certain circumstances allow registration and/or operation of an aircraft in categories other than the 'Private' category where the application merits this; such applications will be assessed on a case by case basis.

The AN(OT)O sets out the category of persons who are eligible to be registered on the Aircraft Register as follows:

- i. the Crown in right of Her Majesty's Government in the United Kingdom or in right of the Government of the Territory;
- ii. Commonwealth citizens;
- iii. British protected persons;
- iv. bodies incorporated in some part of the Commonwealth and having their principal place of business in any part of the Commonwealth;
- v. firms carrying on business in the Cayman Islands; or

- vi. unqualified persons residing or having a business in the Cayman Islands.

Either the owner of the aircraft or a charterer by demise of the aircraft may be registered on the Aircraft Register. In the majority of cases, a Cayman Islands exempted company will be established as a special purpose vehicle in order to meet the qualified applicant requirements (i.e. (e) above). The CAACI has determined that neither the directors nor the shareholders of such company need to be resident in the Cayman Islands in order for the Cayman Islands company to qualify here. The procedure to establish a Cayman Islands exempted company is quick and easy: the incorporation is effected on the day the registration documents are filed with the Cayman Islands Registrar of Companies and the incorporation costs are normally under US\$1000, with annual government fees as low as US\$573.

In terms of the aircraft which may be registered, it should be noted that the CAACI will not normally consider applications for piston powered aircraft below 5,700 kg take-off weight that are based outside the Cayman Islands. Note also that the CAACI will entertain applications for registration of helicopters below the above weight category where such helicopters are based on board Cayman Islands registered vessels.

A summary of the registration procedure is outlined below. Note that the CAACI requires that certified or notarized documents be submitted and although faxed copies or PDF files will be accepted to initiate the process, they will not normally be accepted thereafter.

The registration procedure begins with submission of a copy of the signed application for registration of the aircraft from the applicant, which provides the CAACI with information on the proposed applicant and the aircraft to be registered. The CAACI require payment of 50% of the cost of the Certificate of Airworthiness when the registration application is submitted. This enables the CAACI to commence its due diligence procedures and to request any further

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information that it may deem necessary at this stage.

Although the Aircraft Register and application documents associated with a registration are confidential, by law the CAACI will need to see certain identification evidence in respect of the applicant in order to complete its internal due diligence requirements, i.e. identification evidence on the applicant or, where the applicant is a company, its corporate documents and identification evidence for the directors and beneficial owner(s). The CAACI will also need to receive information on who will be operating the aircraft and in what geographic locations, confirmation of the intended use of the aircraft and, if applicable, a declaration of use in the 'Private' category. An outline of the applicant's business should also be given. Submission of this information enables the Authority to consider the merits of the application and then to determine whether the aircraft may be accepted on to the Aircraft Register.

Once it has been determined that the aircraft may be registered, a Cayman Islands registration mark of VP-C[*][*] will be assigned to the aircraft as a preliminary measure. The applicant must then submit a request for a survey of the aircraft in order to enable a CAACI surveyor to make a recommendation for the issue of a Certificate of Airworthiness. Note that if an applicant requests a specific registration mark prefixed by VP-C, it will normally be assigned, subject to availability.

In order for a Certificate of Airworthiness to be issued the applicant must comply with stipulated airworthiness requirements, provide aircraft flight manuals, secure licensing of aircrew and maintenance and servicing arrangements acceptable to the CAACI (e.g. at a recognised maintenance facility that has been granted approved maintenance organisation status by a national aviation authority such as European JAR/EASA 145, US FAA 145 or Canadian CAR 573), comply with ICAO Chapter 3 noise requirements and apply for a local Radio License (a very straightforward process). The applicant should also provide to the CAACI proof of ownership or lease, evidence of adequate

aircraft insurance, an export Certificate of Airworthiness from the aircraft's previous country of registration, together with evidence of deregistration, and if the aircraft has been U.S. registered and will be flying over the U.S. with assigned registration markings of another country, then a Foreign Civil Aircraft Special Flight authorisation must be obtained from the FAA. Any other information the CAACI may request in order to process the application should also be submitted.

Once the surveyor is satisfied that there are no outstanding airworthiness issues and the relevant documents/confirmations have been provided, a recommendation will be made for the issue of a Certificate of Airworthiness and all other associated aircraft documents (i.e. Certificate of Registration, Certificate of Airworthiness, Noise Certificate, Acceptance of Maintenance Arrangements, Maintenance Schedule Acceptance, Radio Station Installation Approval, Designated Airspace Approval, Maintenance Authorisation(s) and Pilots – License Validation Certificates).

The fees payable under the Air Navigation (Fees) Regulations 2006 (as amended) on registration of an aircraft and the issue of a Certificate of Registration are based on the maximum weight of the aircraft. If the registration application is approved the payment made at the outset of the application process is applied to the cost of the Certificate of Airworthiness. However, if the application is not approved, the CAACI will deduct an administration fee from the initial payment and refund the balance.

The fees for the initial issue of a Certificate of Airworthiness are a charge of US\$244 in respect of each 500 kg or part thereof of the aircraft for the investigation required by the CAACI and, for the issue of the Certificate, a charge of US\$366 in respect of each complete year of validity applied for in respect of the certificate.

In terms of the continuing requirements, the appointed Technical Coordinator for the aircraft will be responsible for the continuing airworthiness of the aircraft and all associated

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operational matters. The Technical Coordinator will act as a liaison with the CAACI in coordinating, among other things, annual renewals of the Certificate of Airworthiness (a procedure similar to the initial issue). The fees for the renewal of a Certificate of Airworthiness are set out in the Air Navigation (Fees) Regulations, 2006 in respect of each complete year of validity applied for in respect of the certificate. The CAACI must also abide by the ICAO's universal safety oversight program and ensure that adequate levels of safety oversight are being exercised.

The procedure to deregister an aircraft is a very straightforward one, requiring submission of the original Certificate of Registration with Section I on the reverse completed, a certified copy of the title transfer or bill of sale, the US\$183 deregistration fee plus any other fees owed to the CAACI. Note also, as discussed below, the consent of those registered as mortgagees on the Register of Aircraft Mortgages (the "Mortgage Register") maintained by the CAACI, or those to whom a comfort letter has been issued by the CAACI, must be obtained before the deregistration may be effected.

The CAACI procedures are not unduly complicated and the fees involved are competitive. However it is the CAACI's assistance and professionalism in abiding by and ensuring adherence to the standards set which make the real difference and which have afforded the CAACI the excellent reputation it enjoys internationally today.

5. Protection of third party interests:

"In our experience, lenders have been agreeable to using the Cayman Islands as a country of registry as they are comfortable that their aircraft mortgage will be recognised and enforced due to the fact that the applicable Cayman Islands' laws generally follow the aircraft registration and mortgage registration scheme of the United Kingdom".

- Chad Nelson, Associate Attorney, Klenda, Mitchell, Austerman & Zuercher, L.L.C., Wichita, KS, U.S.A., www.kmazlaw.com

A party taking a mortgage over an aircraft registered or to be registered on the Aircraft Register is able to register that mortgage with the CAACI on its Mortgage Register. 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, further, the applicable statute provides that 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 because of an error or omission in the Mortgage Register or any inaccuracy in an entry which is made.

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, an ad valorem fee of 1/10 of 1% of the sum secured, subject to a cap of US\$30,488, should also be submitted upon registration. 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 Cayman Islands law governed and there is no statutory format that the mortgage must comply with. 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)

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having to be paid on the original mortgage document.

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.

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.

A registered mortgage is given statutory priority over subsequently registered mortgages and unregistered mortgages and 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. You should however note 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 and a previously registered mortgage or mortgage created prior to 9 October, 1979 would have priority over a subsequently registered mortgage.

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

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 the CAACI to record the mortgage as having been discharged in the Mortgages Register and notification will be provided to the mortgagor and the mortgagee by the CAACI.

The CAACI also 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 acknowledges the ownership and leasing structure of the aircraft and confirms that it will not remove the aircraft from the Cayman Islands 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.

We are pleased to confirm that the Cayman Islands Cape Town Convention Law, 2009 (the "**Law**") is in effect. Although the timing for ratification of the Convention on International Interests in Mobile Equipment ("**CIIME**") as modified by the protocol to the CIIME specific to aircraft equipment (being the "**Cape Town Convention**") is outside the control of the Cayman Islands, the effect of the Law is that various obligations are now imposed on the Cayman Islands as if the Cayman Islands were a party to the Cape Town Convention.

It is easy to see why financiers do recommend that the Cayman Islands be chosen as the jurisdiction of registry for transactions where they may wish to take a mortgage of the aircraft as security: financiers are well protected under the applicable legislation and the policies adopted by the CAACI.

Summary

The security of the Cayman Islands, its developed British based legal system and supporting infrastructure, the efficiency and

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professionalism of the CAACI, the ease with which an aircraft and aircraft mortgage can be registered and the resultant security for a mortgagee who records his security interest locally are all very persuasive reasons to register aircraft in the Cayman Islands.

We invite you to choose the Cayman Islands for registration of your aircraft and any associated aircraft mortgage.

The status quo suggests you will not be disappointed.

If you would like any further information please get in touch with your usual contact or please contact the author:

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