

FOREIGN OWNED, U.S. REGISTERED?

How foreign corporations can register aircraft in the U.S.

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The law allows for foreign companies to register and operate corporate aircraft in the United States, but only under certain ownership conditions.

Foreign companies tend to look eagerly at the prospect of registering their aircraft in the United States. An N-number is considered desirable for a number of reasons, with resale value of the aircraft being one of the most compelling. Also, many large U.S. companies that operate corporate aircraft have foreign parent companies, and may not qualify as U.S. citizens for registration purposes. Sometimes, finance companies require U.S. registration for security purposes.

Fortunately for those companies, U.S. law provides for registration of foreign-owned aircraft in the United States. The following three methods are commonly available to foreign corporations desiring to obtain an N-number registration for their aircraft:

1. Transfer of ownership of the aircraft to a United States trustee, which would then lease the aircraft to the operator.

2. Transfer of ownership of the aircraft to a United States corporation which, through a voting trust, meets the requirements of a "U.S. citizen" corporation.

3. Transfer of ownership of the aircraft from a foreign corporation to a newly-formed United States subsidiary corporation of the foreign corporation, which meets the requirements of a "corporation not a citizen of the United States."

However, even though U.S. registration may be accomplished under FAA regulations, aircraft owners and operators who are not U.S. citizens may not operate aircraft to transport passengers or property in the U.S. for compensation. That is cabotage, according to the Department of Transportation.



AIRCRAFT REGISTRATION LAW

A private aircraft (as opposed to a public aircraft) may be registered in the United States only when the aircraft is not registered under the laws of a foreign country and is owned by either a citizen of the United States; an individual citizen of a foreign country lawfully admitted for permanent residence in the United States; or a corporation not a citizen of the United States when the corpo-

ration is organized and doing business under the laws of the United States or a State, and the aircraft is based and primarily used in the United States.

For a corporation to qualify as a U.S. citizen it must be:

“A corporation or association created or organized under the laws of the United States or of any State, Territory, or possession of the United States, of which the president and two-thirds or more of the board of directors and other managing officers thereof are such individuals and in which at least 75 percent of the voting interest is owned or controlled by persons who are citizens of the United States or of one of its possessions.”

If a foreign corporation is not incorporated in the United States, it would not qualify as a U.S. citizen corporation under the laws, nor as a non-citizen corporation. Therefore, the corporation's aircraft would not qualify for U.S. registration.

REGISTRATION OPTIONS

1. Transfer of ownership of the aircraft to a United States trustee, which would then lease the aircraft to the operator.

The first option involves a transfer of the aircraft from the foreign corporation to a trustee who is a “U.S. citizen” (usually a bank). The aircraft would be registered in the name of the trustee. The foreign corporation would be the grantor of the aircraft to the trust and may also be the trust beneficiary. If the trust beneficiary is not a U.S. citizen, measures must be taken to restrict the beneficiary's control over the trustee.

The trust requirements must be strictly followed for the FAA to accept the trustee's application for registration. A number of banks regularly enter into such trust agreements. They have standard agreements which have been acceptable to the FAA.

2. Transfer of ownership of the aircraft to a United States corporation which, through a voting trust meets the requirements of a “U.S. citizen” corporation.

Under this second option, the foreign corporation would set up a U.S. corporation which meets the requirements of a “U.S. citizen” (the president and two-thirds or more of the board of directors and other managing officers are U.S. citizens and at least 75 percent of the voting interest is owned or controlled by persons who are citizens of the United States or one of its possessions). If the for-

ign corporation is the sole or a major shareholder of the U.S. corporation, the voting interest requirement is met by creating a qualified voting trust, of which the trustees are “U.S. citizens.”

The FAA requirements for the voting trust must be strictly followed. There are reported FAA cases in which U.S. registration of aircraft was revoked for failure to follow the voting trust requirements. As with trust agreements, there are banks which regularly serve as trustees under a voting trust.

3. Transfer of ownership of the aircraft from a foreign corporation to a newly-formed United States subsidiary corporation of the foreign corporation which meets the requirements of a “corporation not a citizen of the United States.”

The law allows for ownership of an aircraft by a corporation that does not meet the definition of a “U.S. citizen.” However, even such non-citizen corporations must be incorporated in the United States. Further, even though a qualified non-citizen corporation may register an aircraft in the U.S., there are restrictions and reporting requirements imposed by the condition that the use be primarily in the U.S.

For the purpose of registration, an aircraft is based and primarily used in the United States if at least 60 percent of the total flight hours logged within each six-month reporting period are flown within the United States.

Under this option, because the foreign corporation is not incorporated in the United States, it would have to transfer ownership of the aircraft to a newly-formed United States subsidiary corporation owned by the foreign corporation which meets the requirements of a “corporation not a citizen of the United States.” The aircraft would then be registered in the subsidiary's name, and leased to a U.S. corporation. The operational and reporting requirements would have to be complied with in order for the registration to remain valid.

If the aircraft does not meet the U.S. base and use requirements during the first six months of registration, the FAA generally gives the owner a second six months to comply. If during the second six-month period after registration the aircraft does not meet the U.S. base and use requirements, the U.S. registration becomes invalid. □

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