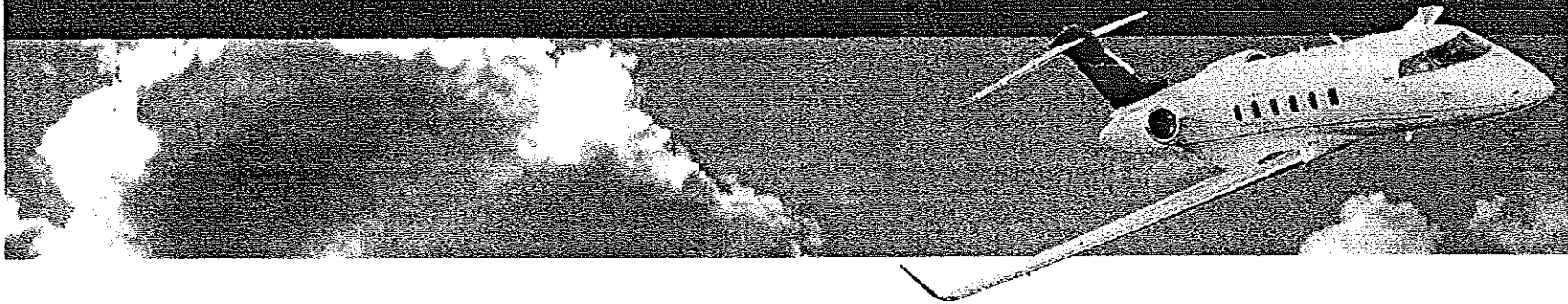


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JOANNAH BODDEN SMALL, MAPLES AND CALDER (CAYMAN)

## FIVE POINTS TO CONSIDER WHEN CHOOSING AN AIRCRAFT REGISTER

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# MAPLES

February 2011

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## 5 TALKING POINTS:

## MAPLES

- 1. The Aircraft
- 2. Ownership Structuring
- 3. Use and Operation
- 4. Cost and Service
- 5. Financing

### Popular Private/Corporate Jet Aircraft Registers (*NON-EXHAUSTIVE LIST*):

- Bermuda
- Cayman Islands
- Isle of Man
- U.S.A.

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## TALKING POINT 1: THE AIRCRAFT

## MAPLES

- **Automatic bar from certain Aircraft Registers?**
  - *Weight*
  - *Type*
  - *Age*
- **Registry discretion?**

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## TALKING POINT 1 cont.: THE AIRCRAFT

## MAPLES

|                | Weight  | Type   | Age  | Notes  |
|----------------|---------|--|------|--|
| <b>Bermuda</b> | None    | None   | None | BDCA will assess aircraft on a case by case basis.   |
| <b>CI</b>      | 5700 kg | None   | None | Restriction not applicable to CI residents.  |
| <b>IoM</b>     | 5700 kg | None   | None | Restriction not applicable to IoM residents.   |
| <b>U.S.A.</b>  | None    | Must be US type registered<br>– Supplemental Type<br>Certificates must be<br>acceptable to FAA | None | Certain categories of aircraft such as experimental, light-sport and former military aircraft may qualify for special airworthiness certificates which may be for limited purposes and/or with use restrictions. |

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## TALKING POINT 2: STRUCTURING

## MAPLES

**What ownership structure will you/your client implement for the purposes of the aircraft's registration?**

- Holding company - acquire, own, finance and register the aircraft. Benefits:
- *Limited liability*
- *Shared arrangement – direct beneficial entitlement to aircraft*
- *Privacy - name of the company + registered address disclosed on Aircraft Register*

**Qs for Aircraft Registry + local counsel:**

- Nationality requirements for ownership?
- Type of structures available?
- Cost of set up and annuals?
- Corporate governance laws, company set up requirements (e.g. due diligence + continuing requirements), duties of directors and obligations of shareholders, etc.?
- Privacy afforded to owners/directors?

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## TALKING POINT 2 cont.: STRUCTURING

## MAPLES

|                | Nationality requirements  | Typical structure        | Cost: Initial Government and Annual   | Requirement for local SH/Dir and meetings | Requirement for local office                 | Privacy and due diligence                                       | Continuing requirements                       |
|----------------|---|--------------------------|---|---|--|---|---|
| <b>Bermuda</b> | <p>- Person residing in Bermuda; or<br/>- body incorporated in Bermuda and having its registered office in Bermuda.</p> <p>Where aircraft is chartered by demise (leased) to a Bermuda company, registration in the name of the charterer during the period of the charter may be permitted, whether or not an unqualified person is entitled as owner to a legal or beneficial interest in the aircraft.</p> | Bermuda exempted company | Sliding scale with minimum of US\$1,995 per year (for a company with a share capital of up to \$12,000) and varies depending on number of shareholders etc. | No  | Registered office only, no physical presence | "KYC" required on 5%+ voting shareholders. No KYC on directors. | AGM. Annual Government Fee. No local filings. |

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## TALKING POINT 2 cont.: STRUCTURING

## MAPLES

|        | Nationality requirements  | Typical structure | Cost: Initial Government and Annual   | Requirement for local SH/Dir and meetings | Requirement for local office                 | Privacy and due diligence   | Continuing requirements                           |
|--------|---|-------------------|---|---|--|---|---|
| Cayman | <p>Qualified persons:</p> <ul style="list-style-type: none"> <li>- the Crown in right of Her Majesty's Government in the United Kingdom or in right of the Government of the Territory;</li> <li>- Commonwealth citizens;</li> <li>- British protected persons;</li> <li>- bodies incorporated in some part of the Commonwealth and having their principal place of business in any part of the Commonwealth;</li> <li>- firms carrying on business in the Cayman Islands; or</li> <li>- unqualified persons residing or having a business in the Cayman Islands.</li> </ul> <p>Where aircraft is chartered by demise (leased) to QP, registration in the name of the charterer during the period of the charter may be permitted, whether or not an unqualified person is entitled as owner to a legal or beneficial interest in the aircraft.</p> | Exempted Company  | Sliding scale with minimum of US\$731.71 per year (for a company with a share capital of under US \$50,000) | No  | Registered office only, no physical presence | "KYC" required on 10%+ voting shareholders and at least 2 Directors (or sole director). | Annual fees and filings due January of each year. |

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## TALKING POINT 2 cont.: STRUCTURING

## MAPLES

|     | Nationality requirements  | Typical structure         | Cost: Initial Government and Annual | Requirement for local SH/Dir and meetings | Requirement for local office                                   | Privacy and due diligence  | Continuing requirements                         |
|-----|---|---------------------------|-------------------------------------|---|--|--|---|
| IoM | <p>Qualified persons:</p> <ul style="list-style-type: none"> <li>- the Crown in right of the Isle of Man or the United Kingdom;</li> <li>- Commonwealth Citizens;</li> <li>- Nationals of any EEA State;</li> <li>- British protected persons;</li> <li>- Bodies incorporated in some part of the Commonwealth and having their principle place of business in some part of the Commonwealth</li> <li>- Undertakings formed in accordance with the Law of an EEA State, and having their registered office, central administration or principle place of business within the EEA</li> </ul> | Company Limited by Shares | App. GBP£2000                       | No.                                       | Registered office/registered Agent only. No physical presence. | "KYC" Required on all transactions, including "one off transactions" | Annual fees and filings due April of each year. |



# Corporate Jet & Helicopter Finance 2011

## TALKING POINT 2 cont.: STRUCTURING

## MAPLES

|        | Nationality requirements   | Typical structure  | Cost: Initial Government and Annual  | Requirement for local SH/Dir and meetings | Requirement for local office                         | Privacy and due diligence   | Continuing requirements            |
|--------|--|--|--|---|--|---|------------------------------------|
| U.S.A. | <ul style="list-style-type: none"> <li>- Owned by a citizen of the United States<sup>1</sup> or by an individual citizen of a foreign country who has lawfully been admitted for permanent residence in the US; or</li> <li>- Owned by a corporation (other than a corporation which is a citizen of the United States) lawfully organized and doing business under the laws of the United States or any State thereof so long as such aircraft is based and primarily used in the United States.</li> </ul> | Where citizenship test not met:<br>- Owner Trust Agreement with a Bank under FAR 47.7 and 49 USC 44102 or<br>For non US citizen corporations based and primarily used in US under FAR 47.9 | App. \$7000 initial/1 <sup>st</sup> year and \$5000 in subsequent years for Owner Trust. | No.                                       | No (Bank will forward correspondence from FAA, etc.) | Yes, Bank Trustee will require due diligence-incorporation/incumbency documentation per U.S. Patriot Act. | Annual fees for Trustee due yearly |

<sup>1</sup> US Citizenship test – Definition of United States Citizen:

- a. An individual who is a citizen of the US or one of its possessions
- b. A partnership of which each individual is a citizen of the US.
- c. A corporation or association created or organized under the laws of the US or of any State, Territory or possession of the United States, or 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% of the voting interest is owned or controlled by persons who are citizens of the United States or one of its possession.

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## TALKING POINT 3: USE AND OPERATION

## MAPLES

### What are you/your client using it for?

- Transport of family, business associates exclusively?
- Element of charter when aircraft is not in use?
- Charter exclusively?

*Is your desired use permitted by the Aircraft Registry you are considering? Consult Registry and local counsel.*

### Who is operating your/your client's aircraft?

- Pilot/crew used for existing operations?
- Existing maintenance company?

*Are the existing designations, systems and procedures suitable to the Aircraft Registry in question? Consult technical advisors.*

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## TALKING POINT 3 cont.: USE AND OPERATION

## MAPLES

|         | Private use | Charter use               | CofA requirements   | Operation requirements   | Notes\   |
|---------|-------------|---------------------------|---|--|--|
| Bermuda | Yes         | Not permitted (see Notes) | Initial and annual survey required to ensure conformity to any ICAO recognized certification standard, approved by a National Aviation Authority (from State of Design/ Manufacture). | <p>A "Maintenance Program" must be submitted for approval that is in compliance with the aircraft manufacturer's recommended maintenance schedule, which has been customised to reflect the specific aircraft equipment and scope of operations. The Program must reflect the specific aircraft serial number and address any modifications embodied in the aircraft.</p> <p>The Maintenance Programme should be approved in accordance with OTAR Part 145 and approved by the Governor.</p> | <p>Bermuda currently has agreements under Art. 83bis with:</p> <ul style="list-style-type: none"> <li>* Russian, Minister of Transport,</li> <li>* Austrian, Austro Control,</li> <li>* Republic of Uzbekistan, Flight Safety Oversight, and</li> <li>* Republic of Azerbaijan, State Concern</li> </ul> |

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## TALKING POINT 3 cont.: USE AND OPERATION

## MAPLES

|        | Private use | Charter use               | CofA requirements   | Operation requirements   | Notes   |
|--------|-------------|---------------------------|---|--|---|
| Cayman | Yes         | Not permitted (see Notes) | Initial and annual survey required to ensure conformity to any ICAO recognized certification standard, approved by a National Aviation Authority (from State of Design/ Manufacture). | <p>A "Maintenance Program" must be submitted for approval that is in compliance with the aircraft manufacturer's recommended maintenance schedule, which has been customised to reflect the specific aircraft equipment and scope of operations. The Program must reflect the specific aircraft serial number and address any modifications embodied in the aircraft.</p> <p>An "Approved Maintenance Organisation" acceptable to the Civil Aviation Authority of the Cayman Islands ("CAACI") must be certified to OTAR Part 145 based on one of the following codes:</p> <ul style="list-style-type: none"> <li>(i) JAR/EASA 145 Approval or Acceptance</li> <li>(ii) FAR 145 Repair Station Approval</li> <li>(iii) Transport Canada CAR 573 approval</li> </ul> <p>A "Continuing Airworthiness Management Organisation" acceptable to the CAACI must be certified to OTAR Part 39 based on EASA Part M or may be approved as a stand alone organisation.</p> <p>Note: At the request of the operator, the CAACI may also grant maintenance authorisation to additional maintenance organisations in order to facilitate international flight operations.</p> | <p>Public Transport/Aerial Application Aircraft – where aircraft servicing the public of the Cayman Islands or exceptions whereby CAACI have entered into Art 83 Bis agreements to allow commercial operation in other countries.</p> <p>CI currently has agreement under Art. 83bis with:</p> <ul style="list-style-type: none"> <li>* Saudi Arabia</li> </ul> |

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## TALKING POINT 3 cont.: USE AND OPERATION

## MAPLES

|     | Private use | Charter use               | CofA requirements   | Operation requirements  |
|-----|-------------|---------------------------|---|---|
| IoM | Yes         | Not permitted (see notes) | <p>Yes (Air Navigation (Isle of Man) Order 2007) -</p> <p>Initial and annual survey required to ensure conformity to any ICAO recognized certification standard, approved by a National Aviation Authority (from State of Design/ Manufacture).</p> | <p>Yes (Air Navigation (Isle of Man) Order 2007) -</p> <p>Requirement for annual Certificate of Release to Service for Aircraft.</p> <p>An aircraft shall not fly unless there is in force a certificate or release to service issued under the Order if the aircraft or such of its equipment as is necessary for the airworthiness of the aircraft has been overhauled, repaired, replaced, modified, maintained.</p> <p>A Certificate of Release to Service shall certify that the aircraft or any part thereof or its equipment has been overhauled, repaired, replaced, modified or maintained, in a manner and with material of a type approved by the Department either generally or in relation to a class of aircraft or the particular aircraft and shall identify the overhaul, repair, replacement, modification or maintenance to which the certificate relates and shall include the particulars of the work done.</p> <p>A Certificate to Release to service may be issued only by –</p> <p>(a) The holder of an aircraft maintenance engineers licence rendered valid under the Order;</p> <p>(b) A person approved by the Department as being competent to issue such certification and in accordance with the approval;</p> <p>(c) A person whom the Department has authorised to issue the certificate in a particular case, and in accordance with that authority;</p> <p>(d) A person approved in accordance with Part 145 whose approval is rendered valid under the Order, and in accordance with that approval; or</p> <p>The holder of an aircraft maintenance licence under Part 66 rendered valid under the Order, in accordance with the privileges endorsed on the licence</p> |

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## TALKING POINT 3 cont.: USE AND OPERATION

## MAPLES

|     | Private use   | Charter use  | CofA requirements   | Operation requirements  | Notes   |
|-----|---|--|---|---|---|
| USA | Yes, use under Part 91 generally aircraft may not be operated for remuneration or hire. | Yes, aircraft may be used in charter or leased to a charter certificate holder by Owner. | Any registered owner of a US registered aircraft may apply. Standard airworthiness certificates are effective as long as the maintenance preventative maintenance and alterations are performed in accordance with Parts 43 and 91 of the FARs and the aircraft registered in the US. | Charter use requires that aircraft and its equipment meet the applicable regulations of the FAR Part 135. | Exception for large turbine powered multi-engine powered aircraft (<12,500 lbs MTOW) allowing limited payments of costs in certain circumstances under FAR 91.501 |

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## TALKING POINT 4: COST AND SERVICE

## MAPLES

### Cost:

- Initial and annual cost of registration on desired Aircraft Register? Other costs?

### Service:

- What exactly are you/your client getting for \$?

### Consider mandate of the Aircraft Register in question:

- In place to fulfill local legislative requirements, not to generate profit?
- Operated privately as profit generating businesses?
- Quasi-Governmental agency expected to sustain operations and generate a profit?
- Government financial support available/provided?

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TALKING POINT 4 cont.: COST AND SERVICE

MAPLES

**Identify your/your client's needs and that of your aircraft:**

- Personal relationship with Registry staff important?
- Requirement for prompt service, willingness to pay for it?
- Does Registry have resources to survey aircraft at home base or will transport arrangements have to be made for annual survey, where applicable?
- Approach taken by Registry towards survey of the aircraft?



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## TALKING POINT 4 cont.: COST AND SERVICE

## MAPLES

- Registration of a Bombardier Global Express XRS with MTOW of 44,452 kg

| Registration Fee – US\$  | Bermuda   | CI         | IoM       |
|--|-----------|------------|-----------|
| Survey costs per day   | 1,600.00  | 2,439.02   | 1,270.94  |
| Travel costs per day - x 2   | 1,600.00  | 2,439.02   | 1,588.67  |
| Travel & Subsistence   | 3,000.00  | 3,000.00   | 2,383.01  |
| Certificate of Registration  |           | 609.76     | 174.75    |
| Certificate of Airworthiness Initial Issue -<br>Sample Aircraft Bombardier Global Express XRS MTOW 98,000lbs / 44,452 kg | 17,705.00 | 21,683.90  | 10,644.09 |
| Certificate of Airworthiness - Cost of Issue   |           | X 365.85   | 206.53    |
| Noise Certificate  |           | X 304.88   | 206.53    |
| Technical Co-ordinator (Annual)  |           | X 1,219.51 |           |
| Engineers / mechanics for line maintenance   |           | X 243.90   | 111.21    |
| Designated Airspace Approval   |           | X 487.80   | 794.34    |
| Pilot License Validation - x 2   |           | X 609.76   | 238.30    |
| Radio Installation Approval  | 310.00    | 365.85     | 206.53    |
| AN(OT) Article 85 Approval (3 year validity)   | 3,000.00  |            | X X       |
| Approximate Initial Cost of Registration   | 27,215.00 | 33,769.25  | 17,824.88 |

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TALKING POINT 4 cont.: COST AND SERVICE

MAPLES

| Renewal Fees- US\$                         | Bermuda   | CI        | IoM       |
|--|-----------|-----------|-----------|
| Survey costs per day                       | 1,600.00  | 2,439.02  | 1,270.94  |
| Approval of Overhaul                       | X         | X         | 242.00    |
| Travel costs per day - x 2                 | 1,600.00  | 2,439.02  | 1,588.67  |
| Travel & Subsistence                       | 3,000.00  | 3,000.00  | 2,383.01  |
| Certificate of Registration                | X         | X         | 174.75    |
| Certificate of Airworthiness Renewal       | 17,705.00 | 15,764.10 | 5,654.29  |
| Noise Certificate                          | X         | X         | 206.53    |
| Technical Co-ordinator (Annual)            | X         | 1,219.51  | X         |
| Engineers / mechanics for line maintenance | X         | 243.90    | 194.50    |
| Designated Airspace Approval               | X         | X         | 794.34    |
| Pilot License Validation - x 2             | X         | 609.76    | 238.30    |
| App. Cost of Annual Airworthiness renewal  | 24,115.00 | 26,081.16 | 13,018.40 |

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## TALKING POINT 4 cont.: COST AND SERVICE

## MAPLES

### U.S.A.:

| Initial cost                                |   | Annual cost                              |           | Notes |
|---|---|--|-----------|-------|
| Issue of C of A<br>Registration Certificate | \$ 5.00   | No C of A renewal                        | N/A       |       |
| C of A Travel Day Costs                     | Varies  | Renewal of Registration<br>(every 3 yrs) | \$5.00    |       |
| C of A Inspection costs                     | FAA inspectors,<br>if available, will<br>inspect for no<br>cost. Designated<br>Airworthiness<br>Representatives'<br>costs vary. | Pilot License validation                 | 61.19 N/A |       |
| RVSM Costs                                  | No charge   | RVSM                                     | N/A       |       |
|   |   | Engineers/Mechanics License<br>Renewals  | N/A       |       |

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## TALKING POINT 5: FINANCING

## MAPLES

How will you/your client finance the new aircraft?

- Equity injection? or
- Bank financing?

**General rule for choice of Aircraft Registry:**

- Owner financing, Owner choice
- Bank financing, Bank choice

**Bank's considerations:**

- Collateral: aircraft mortgage - properly documented, publicly registered, duly perfected in accordance with all relevant laws
- Holding company incorporated in a tried and tested, creditor friendly jurisdiction in terms of legislative regime and Government
- Aircraft registered in a tried and tested, financier friendly jurisdiction in terms of legislative regime and Government

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## TALKING POINT 5 cont.: FINANCING

## MAPLES

|                | Gov law of mortgage | Priority Notice                    | Public registration  | Perfection  | Cost of reg                        |
|----------------|---------------------|------------------------------------|--|---|------------------------------------|
| <b>Bermuda</b> | No restrictions     | Yes, 14 day renewable, \$80        | Mortgages Register + Engine Mortgages Register (BDCA)  | Yes, see Mortgaging of Aircraft and Aircraft Engines Act 1999 + regs  | Sliding scale up to \$800          |
| <b>CI</b>      | No restrictions     | Yes, 14 day renewable, \$305       | Mortgages Register (CAACI) + Cape Town Convention Law of the Cayman Islands, 2009 (Intl Registry) ("CT Law") | Yes, see Mortgaging of Aircraft Regulations 1979 (as amended)/CT Law.   | Sliding scale up to \$6,098        |
| <b>IoM</b>     | No restrictions     | Yes, 14 day renewable, \$64        | Mortgages Register ( <i>IoM Aircraft Register</i> )  | Yes, see Mortgaging of Aircraft Order 1972 (as amended).  | \$336                              |
| <b>U.S.A.</b>  | No restrictions     | No, 1 <sup>st</sup> in time filing | <i>FAA registry/Intl Registry</i>  | Law of the place of delivery of conveyance determines whether acknowledgment for the validity of the lien for FAA filings | FAA: \$5.00<br>Intl Registry fees. |

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TALKING POINT 5 cont.: FINANCING

**MAPLES**

|                | Requirements for Deregistration  |
|----------------|--|
| <b>Bermuda</b> | Discharge of registered mortgage notice, together with an executed copy of the termination agreement. No fee.  |
| <b>CI</b>      | Submission of the original Certificate of Registration with the relevant section of the reverse side completed + copy of the title transfer or bill of sale + US\$610 deregistration fee + clearing of account with the CAACI+ prior consent of registered mortgagee or recipient of a comfort letter (if applicable).   |
| <b>IoM</b>     | Deregistration fee of \$144 together with Form 11 stating purpose of deregistration.   |
| <b>U.S.A.</b>  | Written request for cancellation of Certificate of Aircraft Registration stating make, model s/n and r/n and country of export + Evidence satisfactory to FAA that each holder of a recorded right has been satisfied or consented to the transfer + Written certification that all registered interests ranking in priority to requestors have been discharged or have consented to the cancellations for export purposes + If Cape Town registered and IDERA is filed registry will honor only if the authorized party has made the request + Registry notifies country of export of cancellation. |

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## THANKS + QUESTIONS

## MAPLES

### THANKS TO:

- **Bermuda:** Conyers Dill & Pearman Limited; **Julie McLean**, Director, +1 (441) 299 4925, [julie.mclean@conyersdill.com](mailto:julie.mclean@conyersdill.com); **Jason Piney**, Associate, +1 (441) 299 4993, [jason.piney@conyersdill.com](mailto:jason.piney@conyersdill.com)
- **CI:** The Civil Aviation Authority, **Jane Panton**, Director of Finance & Compliance, (345) 949-7811 ext 236; [jane.panton@caacayman.com](mailto:jane.panton@caacayman.com); **Nicoela (Nikki) McCoy**, Director of Commercial Affairs Regulation, (345) 949-7811 ext 224, [nikki.mccoy@caacayman.com](mailto:nikki.mccoy@caacayman.com)
- **Isle of Man:** Appleby, **Simon Cain**, Partner, 0044 (0) 1624 647 642, [scain@applebyglobal.com](mailto:scain@applebyglobal.com); **John McCann**, Trainee Advocate, +44 (0)1624 647 953, [jmccann@applebyglobal.com](mailto:jmccann@applebyglobal.com)
- **U.S.A.:** Cooling & Herbers P.C., **James Cooling**, Partner, 816-474-0777, [jcooling@coolinglaw.com](mailto:jcooling@coolinglaw.com); **Kate Breckenridge**, Attorney, 816-474-0777, [KBreckenridge@coolinglaw.com](mailto:KBreckenridge@coolinglaw.com)

### QUESTIONS?