

OFFSHORE REGISTRATION -
BERMUDA, BAHAMAS, THE CAYMAN ISLANDS, ARUBA
PICKING A NATIONALITY FOR YOUR AIRCRAFT

There are more corporate jets registered in the U.S. than any other country in the world, but there may be reasons why U.S. registration doesn't work for you. In recent years, Bermuda, the Cayman Islands, the Bahamas, and Aruba have become recognized business addresses for corporate aircraft for many multi-national companies; and the number of Gulfstream IVs and Boeing Business Jets registered in these countries is increasing.

The location of these offshore countries makes them geographically accessible for U.S. multi-national corporations. The Cayman Islands, for example, is about 90 minutes south of Miami and in the same time zone as Kansas City (U.S. Central Time). The aviation authorities in these offshore countries are knowledgeable, friendly, and fluent in English. While Bermuda, the Bahamas, and the Cayman Islands all operate under the purview of the British CAA, Aruba became constitutionally autonomous from the Netherlands in 1986. The Aruba Aviation Act is in the Dutch language, but an English translation is available upon request.

There are many considerations in determining whether registration in an offshore country works for international aircraft operations. Generally they fall into the following categories:

Citizenship Requirements

In order to register an aircraft in the United States, the owner must be a "citizen of the United States" as defined in 49.U.S.C. §4012(a)(15). There are numerous U.S. corporations that have historically operated U.S. registered aircraft that have either merged with or have been acquired by multi-national companies. These U.S. corporations may be surprised to learn that they now must check the box "non-citizen" on the U.S. Registration Application and confirm that their aircraft is based and primarily used in the U.S. If following registration the airplane doesn't fly at least 60% of the time within the U.S., the airplane does not qualify for continued U.S. registration under this exception. U.S. registration for an aircraft owned by a non-citizen corporation and not based and primarily used in the U.S. is not available without an owner trust or voting trust (see "Foreign Owned, U.S. Registered?", Business Aircraft Management Journal, Volume 4, 1997, page 27).

U.S. subsidiaries of multi-national corporations facing the issue of whether to comply with the “based and primarily used” rule or set up an owner trust or a voting trust in the U.S. often consider offshore registration. Offshore registration permits you to form a corporation in the registering country to own and operate the aircraft without any requirement that the aircraft be based and primarily used in the country of registration.

Confidentiality

Aircraft ownership in the United States is a matter of public record and is available on the internet. Offshore registration is generally confidential and not available as a matter of public record.

Security

There are times when a lower profile flag than U.S. registration is needed for political reasons. Security considerations are very important and will only become more important in the future.

Tax

Depending on the citizenship of the aircraft owner and where the aircraft will be operated in the world, there may be tax advantages to offshore registration. A VAT tax of 20.5% in Europe on a Boeing Business Jet is a lot of money in any currency. An aircraft owner should consult with their tax counsel regarding the tax implications of any aircraft registration. The tax climate, however, for countries such as the Cayman Islands is favorable in that there is no income or profit tax and no sales or use tax imposed by the Cayman Islands.

Certification Regulations

Aircraft that have not been certified to JAA standards may not be able to be registered in an EEC country but could be registered in an offshore country because they have been certified by the FAA and are eligible for an FAA Certificate of Airworthiness. An example of this type of aircraft is the Lear 35.

Noise Restrictions

There are countries today that do not allow Stage I and Stage II aircraft over 75,000 MGW on their aircraft registry, and these regulations are being expanded. The European Union has proposed to ban future registration of certain large commercial hushkitted and re-engined aircraft. The International Civil Aviation Organization (ICAO) is considering adopting a new “Stage 4” standard. Countries such as Aruba, located 12 miles off the northern coast of South America, do not have the same noise regulations as the U.S. or European community.

Liability

If aircraft owners have liability concerns, they should study the liability aspects of offshore registration. If they are an offshore corporation that owns an offshore registered aircraft, they may reduce their liability exposure. Aruba states in its registration marketing material that it believes that U.S. registration of a U.S.-manufactured aircraft may create jurisdiction for an aircraft accident or incident for litigation purposes in the United States even if an incident took place in another country, thus exposing the aircraft owner to U.S. punitive damage laws. Aircraft owners should consult with their own liability counsel regarding their individual circumstances.

Maintenance and Resale in the United States

Aircraft registered on an offshore registration are required to meet either FAA or CAA standards and maintenance is required to be done by an FAA-approved Part 145 or JAA-approved Part 145 maintenance facility. Aircraft maintained to FAA standards and in a condition acceptable for issuance of a U.S. Certificate of Airworthiness may be imported and re-registered in the United States in the event of sale to a United States citizen.

Easy Access

An aircraft owner can pick up the phone and review any registration or airworthiness issue with the individual inspector; and if there is some problem, they can review it directly with the Director of Aviation. If for some reason you need to have a face-to-face conference to resolve an issue, there are worse things than having to meet in one of the most beautiful places on earth; but then somebody has to do it.

Offshore Registration Options

Aircraft owners have numerous options for offshore registration. The following is a brief review of registration information for Bermuda, the Cayman Islands, the Bahamas, and Aruba. Aircraft owners considering registering their aircraft with an offshore country should investigate the current and effective registration process for that country.

Bermuda Registration of Aircraft

Bermuda law regarding the registration of aircraft is contained in the Air Navigation (Overseas Territories) Order 1989 as amended. The provisions of the order apply to Bermuda-registered aircraft wherever located. An application to register an aircraft in Bermuda is normally accepted from persons residing in Bermuda or a Bermuda corporation having its registered office on the island. Many of the aircraft on the Bermuda registry are owned or leased by Bermuda companies formed solely for the purpose of owning and operating an aircraft on the Bermuda Registry. They are generally referred to as “exempted companies” because they are exempted from local ownership requirements. Registration of the aircraft requires the identification of the beneficial owner of the aircraft; however, such disclosure is treated in confidence and is not part of the public record.

Prior to registration of an aircraft in Bermuda, the aircraft must undergo a physical examination to determine if the aircraft is suitable for issuance of a Certificate of Airworthiness in Bermuda. The Director of Civil Aviation will generally accept type certification, which has been done either by the British CAA, the U.S. FAA, or meets Joint Airworthiness Requirements (JARs). The Certificate of Airworthiness must be renewed annually. The fee is based on the weight of the aircraft. For example, a Certificate of Airworthiness for a Gulfstream IV would be approximately US\$10,130. The Certificate of Airworthiness must be renewed annually for the same fee. If an FAA management agreement is in place, a copy of the agreement must be provided to the Director of Civil Aviation for approval (absent financial details) to ensure that the aircraft is not going to be operated for “hire or reward.” “Hire or reward” is generally construed to mean carriage of members of the public for compensation; and the Director of Civil Aviation generally grants exemptions for cross-accounting among related companies for corporate charges. A Bermuda-registered aircraft may be purchased and based outside of Bermuda. The registration marks for the aircraft are prefixed VP-B and followed by the two letters assigned to the specific aircraft.

The Bermuda Department of Civil Aviation address is:

Department of Civil Aviation
Bermuda International Airport
2 Kahaw Way
St. George's GE CX
Bermuda
PH: (441) 293-1640
FX: (441) 293-2417
EM: info@dca.gov.bm

Cayman Islands Registration of Aircraft

The registration process for the Cayman Islands is very similar to the process in Bermuda. The Cayman Islands accept aircraft only operated in the “private category,” which is very similar to the FAR Part 91 operation. The application process takes two to three weeks; and prior to the registration of the aircraft, the Civil Aviation Authority performs an airworthiness inspection at the place where the aircraft is located. The aircraft does not have to be inspected in the Cayman Islands.

The initial fee for a Certificate of Airworthiness for a Gulfstream IV would be approximately US\$12,285 plus \$450 for the cost of the certificate. The fee for renewal of the Certificate of Airworthiness for a Gulfstream IV would be US\$450.

Cayman Islands-registered aircraft must be maintained by an approved maintenance facility, generally any FAA or JAA Part 145 facility. The Cayman Islands Civil Aviation Authority validates the pilot certificates and ratings issued by ICAO member states such as the United States. The registration marks for the aircraft are prefixed VP-C and followed by the two letters assigned to the specific aircraft.

The Cayman Islands contact is:

Director of Civil Aviation
Owen Roberts International Airport
P.O. Box 10277 APO
Grand Cayman
Cayman Islands BW1
PH: (345)949-7811
FX: (345-949-0761

Bahamas Registration of Aircraft

The registration requirements in the Bahamas are coordinated between the Civil Aviation Authority and the Department of Civil Aviation. The registration process and aircraft requirements are very similar to Bermuda and the Cayman Islands except for the amount of fees for registration. The fee to register a Gulfstream IV in the Bahamas would be approximately US\$100 and the fee for a Certificate of Airworthiness would be about US\$2,250, which are renewed annually at the same cost. The registration marks for the aircraft are prefixed C6 and followed by the three letters assigned to the specific aircraft.

The Bahamas Department of Civil Aviation address is:

Director of Civil Aviation
Nassau International Airport
Box N795
Nassau, Bahamas
PH: (242) 377-7117
FX: (242) 377-2010

Aruba Registration of Aircraft

The Department of Civil Aviation in Aruba operates very similar to the other offshore countries discussed herein. The Aruban government has gone so far as to open an office in Miami, Florida, to advise aircraft owners of the advantages of aircraft registration in Aruba and to assist them with the registration process. The fee to register an aircraft such as a Gulfstream IV would be approximately \$20,000. The registration marks for the aircraft are prefixed P4 and followed by the three letters assigned to the specific aircraft.

The Aruba Registry address in Miami is:

The Registry Aruba
International Air Safety Office
Administrators of the International Aviation Program of Aruba
8750 NW 36 Street, Suite 210
Miami, Florida 33178
PH: (305) 471-9889
FX: (305) 471-8122
EM: admin@airsafetyfirst.com

Conclusion

Offshore registration may work for your international aviation operation, but you should be aware of a few limitations. Foreign-registered aircraft operating in the United States must comply with U.S. D.O.T. regulations, which limit or prohibit charges even between related companies (cabotage regulations). Most other countries also have their own cabotage rules with which an aircraft owner must comply. The offshore country of registration may not have a provision similar to FAR 91.501 which permits time share, interchange, and joint ownership agreements. While the U.S. registration and recording system is still the best in the world, there may be many reasons why your particular ownership structure, citizenship, or use of the aircraft would make offshore registration an intelligent choice.

James E. Cooling is an attorney with the law firm Cooling & Herbers, P.C. in Kansas City, Missouri. The firm represents United States and foreign business aircraft owners and operators in aircraft transactions and regulatory compliance. A graduate of the Notre Dame Law School, Cooling is a pilot, aircraft owner, and member of the NBAA Tax Committee.