

Thoughts for the European Business Leader:

The acquisition of a Business Jet in the U.S. market



Jim Cooling is a partner at Cooling & Herbers, P.C., based in Kansas City, Missouri, and is a specialist in international transactions.
Email: jcooling@coolinglaw.com

Demand for business jets in Europe is growing, Jim Cooling observes. Over one-half of the world aviation market for business jets is in the U.S. With the U.S. economic downturn there has never been a better time to purchase a business jet from the U.S. market.

Demand for Business Jets within Europe is growing because more and more E.U. business leaders have recognized that the business aircraft is a valuable business tool - a time machine that allows them to pursue aggressively their business goals and arrive anywhere in the world ahead of their competition.

The purchase of an aircraft in the United States, while complex, proceeds through a number of predictable steps. In this article and in subsequent additions to this subject, we will outline important considerations for before you initiate the negotiation process and after you have identified an aircraft and initiated the acquisition process. This month, we will look at some preliminary considerations.

OPERATIONAL

How will the aircraft be used? Will it operate predominantly over long distances (trans-oceanic flights), or will it tend to fly medium- or short-range distances? What number of passengers will typically be on board? What budget constraints apply to the expected operating costs? Will it be new or used? The purchaser's answers to these questions will influence the type of aircraft to be chosen.

Whether the aircraft will fly a significant number of international flights may also affect the decision about the country of registration for the aircraft, which in turn affects the most desirable brand or model of aircraft.

Other operational considerations include the location and availability of manufacturer service centers and other maintenance providers. The location of pilot training facilities should also be considered when choosing the aircraft make and model, as well as the country of registration.

REGULATORY

A purchaser's freedom of usage of its business aircraft may be limited by regulatory issues. Within the U.S. there are few restrictions as to where business aircraft may operate, whether the aircraft is registered in the U.S. or overseas. More stringent restrictions are in place in other countries. For example, in Europe the cabotage rules make European registration advantageous for an aircraft to facilitate operations within the E.U.

Equally important, before a particular make and model of aircraft can be operated, the purchaser may have to obtain governmental approval, known as type certification, by the local country's regulating authority. If the purchaser selects an aircraft type not yet approved for operation in that country, the initial type certification can be very expensive and time-consuming.

FINANCING

If the purchaser will use financing, it is very important to investigate the requirements of the potential



"The country of registration for the aircraft merits serious consideration."



lenders. Many lenders require the aircraft to maintain a particular country's registration.

There may also be lender restrictions on the use of the aircraft (such as geographical areas or use for charter operations). A lender's requirements to register the aircraft in a particular country may also result in additional use restrictions on aircraft, since some registries only allow operations in the private category, or may not provide for type certification for all makes of aircraft.

For U.S. lenders financing a purchase of a U.S. aircraft by an E.U. business, basing the aircraft outside the U.S. may subject the borrower to additional undertakings from the lender - including covenants, security filings, legal opinions and personal guarantees, among others.

Lenders may also impose restrictions like minimum maintenance requirements, limited rights of the owner to lease or sub-lease the aircraft - and if the aircraft is leased there may be additional requirements for return of the aircraft at the end of the lease.

The purchaser must rely upon experienced financial advisors and aviation counsel to review loan or financing lease documents to identify these issues in advance of any negotiations.

REGISTRATION OPTIONS AND OWNER TRUSTS

The country of registration for the aircraft merits serious consideration. There may be several countries which seem suitable for registration. Most national registries impose citizenship requirements upon aircraft owners, but in some countries the regulatory authority may have some discretion in granting registrations for owners who do not otherwise meet the citizenship requirement (or registration

may be in the name of the operator rather than the owner).

Citizenship requirements for registration of aircraft are very stringent in the United States, to the point that some companies based in the U.S. do not themselves qualify as U.S. citizens. The FAA has provided a registration vehicle for owners who do not otherwise qualify for U.S. citizenship. This is known as an owner trust.

An owner trust is created with a bank in the U.S. which qualifies as a U.S. citizen. That bank is known as the owner-trustee, and the aircraft is registered in the name of the owner-trustee. The overseas purchaser retains its rights in the aircraft as a "beneficial owner" through the trust. The bank owes its fiduciary duty to the purchaser in accordance with the trust document. In addition, the purchaser executes an Operating Lease Agreement with the bank (owner-trustee) which permits the purchaser to use the aircraft.

Advantages of this structure to an overseas purchaser of a U.S. aircraft include ease of international operation, a wider availability of financing options, anonymity of the purchaser through "beneficial ownership," and avoiding any need to obtain a non-U.S. Certificate of Airworthiness for the aircraft.

At the same time, U.S. registration of the aircraft may present some disadvantages to the purchaser. There may be greater restrictions on operations in the purchaser's home country. There may be some difficulty of obtaining manufacturer-approved maintenance or trained pilots overseas. In addition, a U.S. registration for an overseas-based aircraft may trigger additional tax issues. This must be weighed carefully.

Next month we will address typical issues that arise during the acquisition process.

Email feedback to editorial@avbuyer.com