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Bringing Business Aircraft Into China

(A study worth understanding)

Attorneys Cooling and Breckenridge illustrate how one country - China - deals with overseeing the registration and placement into service of business aircraft. For decision makers, the differences between China and the USA are enlightening.

The British have a saying, "Different horses for different courses." China's approach to allowing the operation of N-registered business aircraft in China, as well as assigning "B" registry to business aircraft and placing them in service, reflects the approach the government of the world's second largest economy takes toward Business Aviation.

China is relatively new to Business Aviation, and its regulations and procedures

may evolve as its government refines ways that business aircraft can facilitate economic growth domestically as well as globally. For the present, however, bringing a business aircraft into China either for occasional or for prolonged operations is a sophisticated process.

A company or entrepreneur desiring to operate a business aircraft in China must consider several issues in anticipation of flying into the country or registering its aircraft in China and structuring its flight operations accordingly. If the use of the aircraft will be mainly on international business trips with occasional flights between large Chinese cities, offshore registration may be desirable, particularly since China imposes nearly 23% Importation and VAT on aircraft placed on the Chinese registry. There are several convenient offshore aircraft registries, including Hong Kong, Macau or the US.

FOREIGN-REGISTER OPERATIONS

As a foreign-registered civil aircraft, operations become subject to limitations in mainland China under China's 'Rules Governing Foreign Civil Aircraft'.





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Foreign civil aircraft operating in China must submit applications for both non-scheduled and private flights at least 10 days prior to departure on any given trip. Air Traffic Control in large cities such as Beijing, Shanghai and Guangzhou set strict limits on landing slots, so applying early for a flight permit is recommended. The Civil Aviation Administration of China (CAAC) is very specific regarding permit dates, times and routes.

Once a permit has been issued, it is advisable to avoid any changes to your planned journey, since the CAAC may deny requests for changes and require the issuance of a new permit which would require additional application time.

Application for a permit also requires a sponsor letter from a China-based business willing to accept responsibility for the flight. Be aware that private tourism flights are not permitted, and sponsorship by a China-based hotel or tourism company does not qualify for a foreign flight permit. There are three additional requirements for foreign-registered aircraft:

- (1) A foreign civil aircraft must carry Chinese crew members assigned by the CAAC (Chinese navigator and radio operator) to guide the flight unless otherwise stipulated in the clearance,
- (2) Flight plans must be filed at least one hour prior to departure, and
- (3) Airports designated for foreign civil aircraft operations must have customs, quarantine and frontier inspection offices available (limiting the number of Chinese airports where foreign

aircraft may operate). Other fees and charges for takeoff, landing, parking and air navigation are up to 10 times higher for foreign civil aircraft than they are for Chinese registered aircraft operating in China.

B-REGISTER OPERATIONS

Should a business jet buyer need to operate predominantly within China and/or need to operate to smaller cities not generally available to foreign civil aircraft, then Chinese ('B') registration of the aircraft should be considered.

The process of 'B' registration may be long and involved (up to two years if the aircraft is not type certified in China (for example, if the authorities in China have not approved a specific aircraft model to operate within the country's airspace) and a minimum of four-12 months if it is). There are advantages to B-registration, such as less operating restrictions for the aircraft owner, less expensive fees and fuel, no sponsor requirements, and access to many more domestic, or even some military airports.

Additional registration requirements in mainland China include a citizenship test and the stipulation that the business operator engage a Chinese management company and use Chinese pilots. The citizenship test requires the company to be at least 65% Chinese-owned and have a Chinese citizen as chairman of the Board of Directors (which can disqualify many Chinese joint ventures).

The requirement to engage a Chinese management company and Chinese pilots also presents a serious obstacle. Currently there are only a handful

What the Boardroom needs to know about Business Aviation

of Chinese management companies that meet all the requirements for managing B-registered aircraft in China, and there is a shortage of Chinese pilots. There are approximately 150 business aircraft registered in China, and the CAAC is processing approximately 25 new applications per year.

THE LEASING OPTION

There is a third path to accomplish broad access to Chinese cities via business aircraft. A B-registered aircraft owned by an offshore entity may be leased to a Chinese charter operator for use in their charter operations. This path also reduces the impact of the VAT/import tax because the business jet owner is able to amortize the VAT/import tax over the life of the lease.

The Chinese charter operator must qualify for Chinese B-registration under the citizenship test and must have an Air Operating Certificate (AOC) issued by the CAAC. Furthermore, the aircraft must meet the requirements of B-registration and qualify for placement on the Chinese operator's AOC.

The owner's flights would be flown as charter flights (non-scheduled rather than private operations), and the VAT/import fees would be paid on the lease payments rather than the fair market value of the aircraft. There are currently only a few charter companies that qualify to engage in these types of arrangements, and most are associated with one of the large Chinese airlines.

AIRCRAFT IMPORTATION INTO CHINA

If the business jet owner plans to register its aircraft in China, the importation of the aircraft into China is another important consideration. There are three major areas that will affect the transaction:

- (1) Bilateral Agreements between China and various foreign countries provide guidance on the export of a foreign manufactured product into China.
- (2) Chinese validation of a type certificate (TC) and all supplemental type certifications (STCs) for a particular model of aircraft are a pre-requisite for the issuance of a Chinese certificate of air worthiness. The process of applying for type certification can be quite complicated, expensive and take a year or more to complete. Currently there is at least one interior STC validation required by the CAAC for pre-owned aircraft. It is important to understand the status of the TC and any STCs prior to committing to purchase any aircraft.
- (3) The Chinese laws on Foreign Exchange also limit a Chinese buyer's ability to move funds overseas for purchase of a foreign-manufactured aircraft. Chinese buyers are required to obtain government permission to own and import a business aircraft.

The usual amount of time to accomplish the tasks outlined above is four–18 months, but can take longer if the aircraft is not type certified in China. Aircraft manufacturers that regularly do China

transactions are aware of the various operational, transactional and regulatory requirements. They often are willing to work with a Chinese buyer to address these issues and to start the petition process for type certification well before the anticipated delivery date for a new aircraft.

Generally speaking, sellers of used aircraft are not aware of these issues and will not be willing to wait 12–18 months to complete a sale. For Chinese buyers who want to purchase pre-owned aircraft, a better route may be to place the aircraft temporarily in an offshore registry and operate as a foreign civil aircraft in China until the Chinese import and registration is completed.

More information about CAAC Laws and Regulations that apply can be found at: <http://www.caac.gov.cn/B1/B5>.

Do you have any questions or opinions on the above topic? Get them answered/published in World Aircraft Sales Magazine. Email feedback to: Jack@avbuyer.com

"A B-registered aircraft owned by an offshore entity may be leased to a Chinese charter operator..."

