

# Aircraft Acquisition from the Buyer's Perspective

Overview of legal considerations  
focusing on the U.S. market.

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# 從買主的立場 來瞭解對民用航空器之收購

## 在美國交易的基本法律商榷

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# Overview

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1. Financing
2. Letter of Intent
3. Contract Protections
4. Tax Issues
5. Closing
6. U.S. Registration
7. Export & Deregistration
8. Conclusion

# 1. Financing

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## a. Review of loan document

- Accountants and financial advisors.
- Experienced aviation counsel.
- Terms to note.
  - i. Usage restrictions.
  - ii. Maintenance.
  - iii. Return conditions.
  - iv. Right to sublet.

# 1. Financing

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## b. Going Rate.

- Market dependant.
- Currently, it is a strong buyers' market.
- Banks becoming more stringent.
- Rates vary (e.g. loan vs. lease).
- Aircraft based outside the U.S. might require additional covenants, security filings, legal opinions, etc.
- Experienced brokers and aviation counsel.

## 2. Letter of Intent

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### a. Negotiate Price and Terms Up Front If Possible

- Prevents future disagreements.

### b. Other Terms

- Deposit (buyers prefer money refundable until after the pre-buy inspection).
- Visual inspection and/or test flight before execution of the purchase agreement.
- Deadline for executing the purchase agreement.
- Removal of aircraft from market.
- Delivery conditions.

# 3. Contract Protections

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- a. Deposit
- b. Pre-Purchase Inspection
- c. Damage History/Corrosion
- d. Sole Recourse and Liquidated Damages
- e. Warranty and Maintenance Programs Assignments
- f. Delivery Delays
- g. Assignments
- h. Closing

## 3. Contract Protections (cont'd.)

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### a. Deposit

- Standard industry practice.
- Amount dependant upon purchase price.
- Refundable v. Nonrefundable.
- Timing: when does the cash go “hard?”



## 3. Contract Protections (cont'd.)

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### b. Pre-Purchase Inspection

- Test flights.
- Right to reject at sole discretion for any reason.
- Seller's obligation to correct discrepancies.
- Used aircraft typically sold "as is."

### c. Damage History

- Include damages up until the point of delivery.
- Example: hail damage.
- Inspect for corrosion in the pre-buy inspection.

## 3. Contract Protections (cont'd.)

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### d. Sole Recourse and Liquidated Damages

- If you can't close, it's nice to know that all you're going to lose is your deposit.

### e. Warranties and Maintenance Programs

- Included in new aircraft.
- Engine, airframe, and others.
- Current?
- Assignment of warranties from seller to buyer.
- Transfer fees may apply.

## 3. Contract Protections (cont'd.)

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### f. Delivery Delays

- Penalties for seller's delay.
- Depends on new vs. used aircraft.

### g. Assignment of the Aircraft

- Financing institution (lease-back).
- Owner Trust (For non U.S. citizen buyers).
- Wholly-owned affiliate.

## 3. Contract Protections (cont'd)

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### h. Closing

- Aircraft meets all delivery conditions.
- Warranty of title.
- Insurance.
- Closing location (preferably a tax-free location).

# 4. Tax Issues

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## a. State Sales & Use Taxes

- States are becoming more aggressive in assessments.
- Sales tax-free location (e.g. Oregon, or Connecticut if aircraft > 6,000 lbs., etc.).
- Tax rates vary from state to state.
- May be subject to state and local sales taxes (e.g. property tax).

## 4. Tax Issues

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### b. Exemptions From State Sales & Use Tax

- Fly-away exemptions.
- Sale for resale.
- Casual/occasional sale.
- Common carrier exemptions.
- Certificates of exemption.

### c. Like-Kind Exchange for Deferral of U.S. Income Tax (Trade-In).

# 5. Closing

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## a. International Registry

- Applies to parties with contacts to countries that are party to the Cape Town Convention.
- Registration of parties as TUEs and PUEs if applicable.
- Perfecting title.

## b. Filing FAA Documents

- Instruct escrow agent to file on behalf of parties at closing.

## 6. U.S. Registration

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### a. Process

- Registration application ready at closing (FAA Form 8050-1).
- Perfecting title on both U.S. registry and I.R.
- If not registering in U.S., consult counsel in country of registry.
- U.S. Dept. of Transportation rules apply to foreign civil aircraft for flights into, out of, and within the U.S.



# 6. U.S. Registration

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## b. Advantages

- U.S. FAA has airworthiness agreements with most nations.
- U.S. is one of the world's largest markets of business aircraft.

## c. Ownership and Citizenry

- Non-Citizens cannot register (“citizen” defined at 14 C.F.R Part 42.7).
- Owner-Trustee.
- “Based and Primarily Used.”

# 7. Export and Deregistration

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## a. Customs

- Parties must comply with U.S. Export Administration Regulations (EAR) and Int'l Traffic in Arms Regulations (ITAR).
- Buyer to cooperate with seller in complying with export regulations.
- Buyer may have to apply for license to export (along with seller).
- Owner trust may need to be involved.
- Buyer will want this to take place at closing.
- Consult an experienced customs broker.

# 7. Export and Deregistration

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## b. Export Certificate of Airworthiness

- Buyer will want seller to allow for modifications prior to closing.
- Buyer will want export C. of A. to be issued at closing with seller's assistance.
- Supplemental Type Certificates ("STC") - make sure they transfer to the country of export.

# 7. Export and Deregistration

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## c. Deregistration

- FAA Form 8050-124E.
- Buyer will want this to take place at closing.

## 8. Conclusion

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When a buyer is considering the acquisition of an aircraft in the U.S., or anywhere else in the world, we would suggest that the buyer utilize an experienced aviation broker and knowledgeable aviation counsel.

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