

## Article

### Need a Better, More Cost Effective Way of Owning Multiple Aircraft?

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**Traditionally, aircraft leasing companies incorporate a separate company in respect of the purchase and lease of each aircraft in their portfolio. For larger leasing companies this could mean that they have dozens of companies which they then need to manage and administer, with the accompanying associated costs.**

What options are there? One that is often considered is the use of a trust, but that can create issues as the concept of a trust itself may not be familiar in jurisdictions where their lessees operate and is subject to common law and statutory law quite different from company law.

Bermuda has two options that could offer more cost efficiency and administrative ease.

The first is a segregated account company. Bermuda segregated account companies (SACs) are well known and widely accepted structures used by Bermuda insurance companies and investment funds. The benefits they offer include operational efficiency, flexibility and the secure ring-fencing of assets and liabilities between segregated accounts. Such benefits can be equally advantageous to the aviation sector, with the Bermuda SAC a useful vehicle for aircraft holding.

#### What is an SAC?

A segregated accounts company is a company that has the statutory power to create an unlimited number of accounts which are legally segregated from the other accounts within the SAC and from the SAC's general account (which comprises the assets and liabilities that are not otherwise linked to a segregated account). The establishment of a segregated account does not create a separate legal entity distinct from the SAC. Any asset linked by the SAC to a segregated account is held exclusively for the benefit of the segregated account owners and any counterparty to a transaction linked to that segregated account. Similarly any liabilities arising from a transaction in respect of a particular segregated account may only be satisfied out of the assets linked to that segregated account. When entering into contracts, SACs must state specifically that they are acting in respect of the relevant segregated account.

#### Separation and protection

The legal segregation of assets and liabilities is an important feature of SACs. The failure of one account will not affect the solvency or viability of another. The Bermuda Supreme Court has consistently upheld the ring-fencing of the segregated accounts in the face of insolvency and ensured that the assets of an individual segregated account are only available for the creditors and account owners of that particular segregated account.

#### Efficiency and flexibility

One of the primary benefits of an SAC is that it renders it unnecessary to incorporate multiple entities with limited liability to hold separate assets. This provides substantial efficiencies in terms of legal and incorporation fees. One corporate administration structure with minimal assessable capital can support multiple holdings, but only one incorporation fee is payable to establish the entity, with much smaller fees per account. Bermuda also offers an advantage in that it only charges an annual fee for the first four segregated accounts. There is no additional government fee for any additional accounts. Centralising administrative control in the same entity also provides cost savings with respect to ongoing company secretarial fees (which are usually payable per company) and general operating costs.

Each segregated account can be tailor-made as necessary for the individual circumstances of the separate assets, while also taking into account the interests of the company at large.

#### SAC aircraft holding structure

A Bermuda SAC for aircraft leasing companies offers significant cost reductions and the streamlining of administration. A leasing company could incorporate a Bermuda exempted company and then create a separate segregated account for each aircraft. For a leasing company that owns 20+ aircraft, the monetary savings and the reduction in the amount of time required to effectively manage and attend to the affairs of 20 individual companies versus one Bermuda SAC with 20 segregated accounts is quite substantial. As the Bermuda SAC is well known and respected internationally, this type of structure should be acceptable to lenders, who typically are involved with the financing and re-financing of aircraft. The legal segregation of the assets and liabilities by the SAC provides lenders

with the comfort they need that other lenders who contract with the SAC in respect of the general account and/or another segregated account in respect of a different aircraft, will have no claims on the asset of their subject segregated account.

### **Incorporated Segregated Accounts Companies**

The second option is an incorporated segregated accounts company (ISAC) formed under Bermuda's recently passed Incorporated Segregated Accounts Companies Act 2019 (ISAC Act).

ISACs are segregated accounts companies which create incorporated accounts with separate legal status, providing the advantage of being severable from the ISAC core entity. This may be an attractive feature for members looking to create legally distinct governance for their accounts. The ISAC Act was intended to attract investors who wish to own and run their own separate incubator businesses or projects, while sharing back-office functions and costs with the core ISAC until they are ready to take it to the next level, whereby accounts can be spun-off into separate companies. However, an ISAC could also be useful for a leasing company that utilises financing for different aircraft, when the financier involved wants the certainty that the account they are dealing with has separate legal status.

### **Conclusion**

SACS or ISACs are a robust and cost effective alternative to traditional corporate structures. They are a useful tool for aircraft leasing companies that own multiple aircraft. Such a structure allows them to customise a bespoke structure which ring-fences the assets of each individual account from creditors of other accounts. With Bermuda on the European Union's list of fully cooperative tax jurisdictions and having been given a top rating from the Caribbean Financial Action Task Force (FATF) for its anti-money laundering and anti-terrorist financing regime, an SAC or an ISAC in Bermuda offers an optimal, cost effective solution for holding multiple aircraft.

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