



Alert

Cayman Islands Transition Register – A Safe Landing Spot in Turbulent Times

Author: Matthew Stocker, Partner

The COVID-19 pandemic has severely impacted the aviation industry. With many international borders closed, thousands of aircraft are currently grounded and, even when flying resumes, social distancing measures, international quarantine requirements and a downturn in business and leisure travel will all continue to take their toll. We have already seen a number of airlines enter into bankruptcy protection, and more are likely to follow over the coming months. This leaves financiers and lessors seeking to enforce their rights under lease and loan, or security documentation, with the issue of what to do with aircraft which have been repossessed during any remarketing period until a purchaser or new lessee can be found. Thanks to a relatively new initiative, the Civil Aviation Authority of the Cayman Islands may now be able to offer a solution to those financiers and lessors considering enforcement and repossession action through a temporary registration of the aircraft on the Transition Register.

The Cayman Aircraft Register, maintained by the Civil Aviation Authority of the Cayman Islands (the CAACI), is primarily a private use register, and the majority of the aircraft registered on the Cayman Aircraft Register are private aircraft in private use (i.e. not being used for reward or hire). In recent years, however, the CAACI has been successful in opening up the Cayman Aircraft Register to commercially operated aircraft. In addition to the longstanding Article 83bis arrangement in place between the CAACI and the General Authority of Civil Aviation of Saudi Arabia, enabling registration of a number of Saudi Arabian operated aircraft on the Cayman Aircraft Register, in recent years the CAACI have also issued a small number of Cayman Islands air operators certificates (AOC) to operators wishing to register their Commercial aircraft on the Cayman Aircraft Register. This has been facilitated by the establishment of Cayman Maritime and Aviation City, a collaboration between the CAACI and Cayman Enterprise City, which offers commercial operators a cost effective and streamlined solution to establishing a physical presence in the Cayman Islands in connection with their AOC application.

Lessors with aircraft coming off lease and/or financiers considering enforcing their security and repossessing an aircraft are often faced with the issue of what to do with the aircraft until they can place it on a new lease and/or transfer title to a new owner. It is not always feasible, and may not be desirable, to keep the aircraft in its existing jurisdiction of registration while the aircraft is out of operational service. In response to these concerns, the CAACI is now able to offer a solution in the form of a temporary title registration on the Transition Register.

Registration on the Transition Register

Under the Air Navigation (Fees) Regulations, 2010, the CAACI have the power to permit the temporary registration of an aircraft on the Cayman Aircraft Register for the convenience of an owner desiring to store or sell the aircraft, for a limited period and for a fee to be agreed between the CAACI and the owner.¹

The CAACI's Transition Register offers lessors and financiers the opportunity to register their aircraft with a reputable and high quality registry with a high level of oversight and access to experienced surveyors. The CAACI applies high standards of safety and airworthiness that are based on the regulatory codes applied by the UK Civil Aviation Authority, the US FAA, EASA and Transport Canada. This means that even when in storage the aircraft will continue to meet the most stringent international standards for maintenance and certification. Therefore, when the time comes to transfer the aircraft to its new registry there should be no issues with the acceptability of its certification and documentation.

¹ The Air Navigation (Fees) Regulation 2010, s. 10(2)

In order to take advantage of this facility, the owner (i.e. the lessor or financier holding title to the aircraft) will need to be qualified to do so under the Air Navigation Overseas Territories (Amendment Order) 2015 (the ANOTO). Categories of qualified persons include the following:

- The Crown in right of Her Majesty's Government in the United Kingdom or in right of the Government of the Territory (Cayman Islands)
- United Kingdom nationals
- Commonwealth citizens (which includes citizens of the Cayman Islands);
- Nationals of any European Economic Area State
- Bodies incorporated in any part of the Commonwealth and which have their registered office or principal place of business in any part of the Commonwealth (which would include companies incorporated in the Cayman Islands, the BVI or Bermuda) or
- Undertakings formed in accordance with the law of an European Economic Area State and which have their registered office, central administration or principal place of business within the European Economic Area

The CAACI use an online portal, VP-C Online, to process applications for aircraft registrations, which is intended to simplify and streamline the application process as far as possible. Where a lessor or financier wishes to apply for a temporary title registration this can be made through VP-C Online. Likewise, the deregistration process is also managed through the VP-C Online portal, making it a quick and efficient process.

Taking security over an aircraft temporarily registered on the Cayman Aircraft Register

One distinct advantage for financiers in registering an aircraft on the CAACI's Transition Register is that the Cayman Islands offers the opportunity to take a registered security interest over the aircraft in a strong, stable and creditor friendly jurisdiction.

Following the ratification by the UK of the Cape Town Convention, and its extension to the Cayman Islands in November 2015, the Cayman Islands now has a two-tier system for perfection and priority of security interests over Cayman Islands registered aircraft. This means that:

- Where the aircraft is of a type that would qualify as an aircraft object under the Cape Town Convention and the mortgage gives rise to a registrable "international interest" under the Cape Town Convention, then that international interest will be registrable on the international registry in accordance with the provisions of the Cape Town Convention. In that case, priority in respect of the mortgage will be determined solely by reference to the filings on the international registry. No additional filings are required with the CAACI in order to perfect or secure priority in respect of the mortgage, and although it would still be possible for a mortgage to be separately registered with the CAACI in respect of that aircraft, any mortgage validly recorded with the international registry over a Cayman Islands registered aircraft would automatically take priority over the local Cayman Islands registration; and
- Where the Cape Town Convention would not apply to the aircraft, a separate local mortgage registration will be required with the CAACI, and priority of the aircraft mortgage will be determined by the date and time of registration of the mortgage on the Aircraft Mortgage Register.

One further advantage for financiers following the extension of the Cape Town Convention to the Cayman Islands is that the CAACI are now required to record any irrevocable de-registration and export request (IDERA) issued in respect of the aircraft which is presented to the CAACI for filing. As a result of any such filing, any "debtor" in whose favour the IDERA is issued will be entitled to certain rights under the Cape Town Convention, including the right to request the deregistration of the aircraft.

There is no prescribed form which a mortgage over a Cayman Islands registered aircraft must take, and no requirement that it is governed by Cayman Islands law. Typically, the security interest over the aircraft will be created by a mortgage document governed by either an English or New York law, and this will generally be recognised and upheld by a Cayman Islands court.

Author:

Matthew Stocker
Partner, Head of Cayman Corporate Practice
 Matthew.stocker@conyers.com
 +1 345 814 7382

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For further information please contact: media@conyers.com