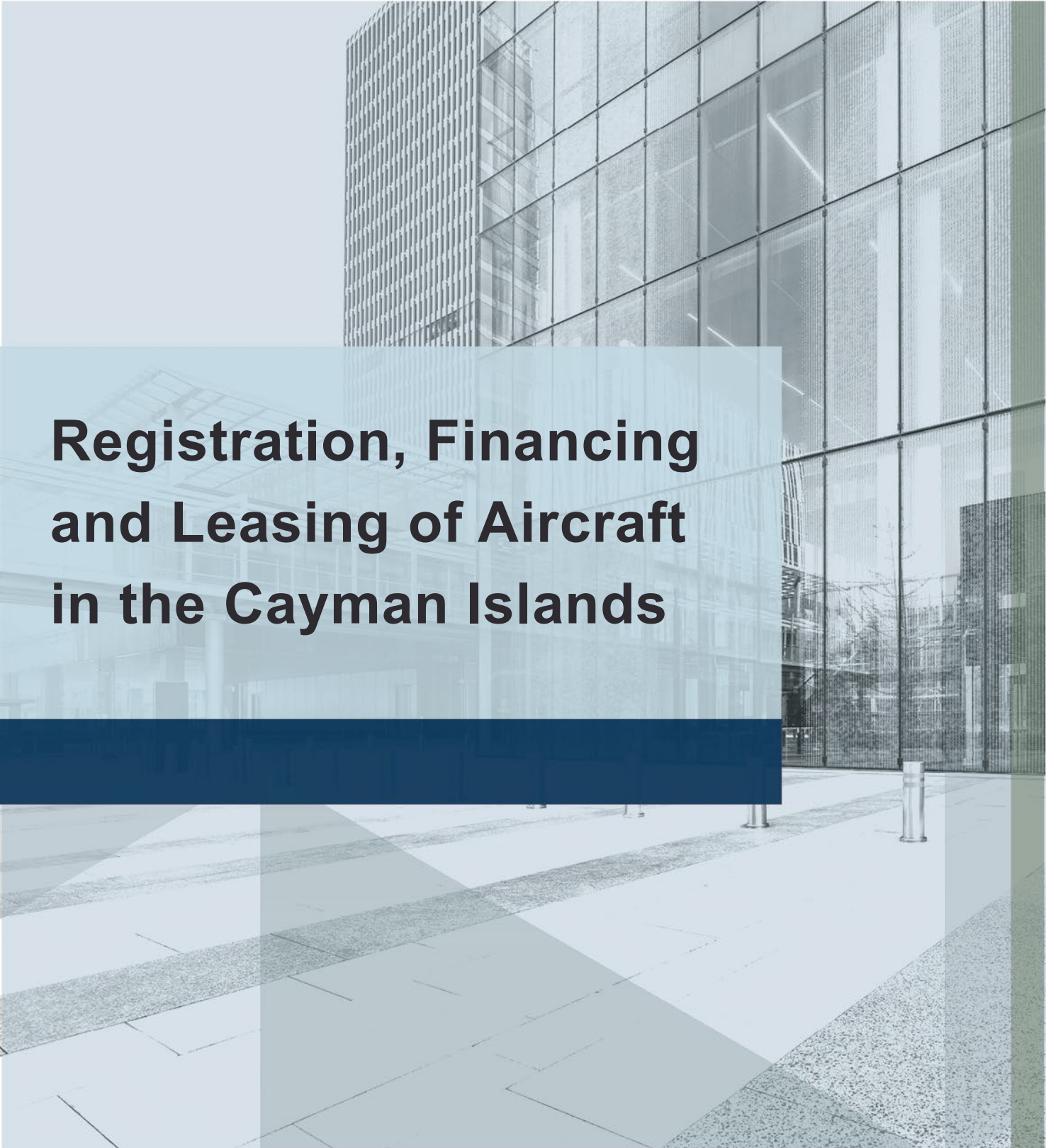


CONYERS

A photograph of a modern glass skyscraper with a grid-like facade, reflecting the sky and surrounding environment. The building is partially obscured by a semi-transparent blue rectangle containing the title text. The foreground shows a paved plaza with geometric patterns and a few small, cylindrical metal bollards.

Registration, Financing and Leasing of Aircraft in the Cayman Islands

Preface

This publication has been prepared for the assistance of those who are interested in the registration, financing and leasing of aircraft in the Cayman Islands (sometimes herein referred to as “**Cayman**”). It deals in broad terms with the requirements of Cayman law. It is not intended to be exhaustive but merely to provide brief details and information which we hope will be of use to our clients. We recommend that our clients and prospective clients seek legal advice in Cayman on their specific proposals before taking steps to implement them.

Before proceeding with the incorporation of a company in Cayman, persons are advised to consult their tax, legal and other professional advisers in their respective jurisdictions.

Persons considering establishing companies to carry on insurance or mutual fund business should request separate publications prepared by this Firm on these topics.

Conyers

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1. INTRODUCTION

Company, trust, banking, insurance and related laws have made the Cayman Islands a leading offshore financial centre. The government's attitude towards and open communication with the private sector encourages the promotion and maintenance of Cayman's offshore business. Cayman enjoys a sophisticated telecommunications system, an abundance of professional service providers, and economic and political stability.

2. REGISTRATION OF AIRCRAFT IN THE CAYMAN ISLANDS

2.1. Uses of Aircraft Registered in Cayman

The Civil Aviation Authority of the Cayman Islands (the "**CAACI**") is the statutory body responsible for aviation regulatory oversight throughout the Cayman Islands and for aircraft registered in the Cayman Islands. Due to its high standards and exacting specifications, the Cayman Islands Aircraft Registry maintained by the CAACI, together with its associated aircraft register (the "**Aircraft Register**"), are highly respected and recognised throughout the international aviation industry. The Aircraft Register has been in existence since 1976 and there are presently more than 320 aircraft registered on it. The vast majority of those are private executive aircraft, mainly large jets such as Boeing Business Jets, Airbus ACJ320, Gulfstream G1500s, G550s, G600s, G650s and G700s, Falcon 900LX, Falcon 6X/7X/8X, Bombardier BD-700 and Embraer Legacy and Lineage aircraft.

The Aircraft Register is primarily a "private use" register, and is not open to aircraft being operated for hire or reward in return for "valuable consideration" unless the owner holds a Cayman Islands air operator certificate ("**AOC**").

In many instances the aircraft registered on the Cayman are owned by high net worth individuals or large multinational corporations who view Cayman as the jurisdiction of choice for registration of such aircraft.

In recent years, the CAACI has been successful in opening up the Cayman Aircraft Register to commercially operated aircraft. For example, the CAACI has a longstanding article 83 bis arrangement in place with the General Authority of Civil Aviation of Saudi Arabia, enabling registration of a number of Saudi Arabian operated aircraft on the Cayman Aircraft Register. The CAACI have also issued a small number of Cayman Islands AOCs to operators wishing to register their commercial aircraft on the Cayman Aircraft Register.

In addition, the CAACI have recently established a "transition register" allowing for the temporary registration of aircraft which are transitioning between owners or leases, or which have been repossessed and are pending sale or transfer. This offers lessors and financiers the opportunity to register their aircraft with a reputable and high quality registry that provides a high level of oversight and access to experienced surveyors.

Aircraft eligible to be registered in the private category include all turbo-jet aircraft, all others above 5700 kg and helicopters that are based on Cayman Islands registered yachts. There is no formal age restriction for Cayman Islands registered aircraft, but before accepting an aircraft onto the Aircraft Register, the CAACI will consider a number of different factors including the year of manufacture of the aircraft, its operating history and its current state of registration.

2.2. Benefits of Registration in Cayman

(a) Sensible Regulation

Owners and operators enjoy an administration (rated as a Category 1 Aviation Regulatory Authority by the US Federal Aviation Administration) which is prepared to accept more than one internationally recognised set of airworthiness requirements, various flight crew licences for validation and a “low-profile” registration mark which some operators consider of value when operating in areas of the world which may be subject to certain security risks or political instability. The Cayman Islands “VP-C” registration mark is seen as a neutral mark as opposed to a major European mark or the American mark.

The Cayman Islands also offers a full range of professional and administrative services necessary to ensure that all legal and other requirements may be properly met and to ensure international respect for the Aircraft Register.

Further, owners and operators have expressed satisfaction with the responsiveness of the CAACI in dealing with their enquiries and requirements. This is made possible by the absence of the degree of administrative bureaucracy encountered in some other major jurisdictions. For example, some jurisdictions may impose requirements that an aircraft registered in that jurisdiction must be based and primarily used in that jurisdiction. Registration in Cayman is not subject to any such requirements and Cayman registered aircraft may be operated anywhere in the world (excluding of course war zones and similar areas).

(b) Tax Neutrality

On an aircraft finance transaction, it is imperative that there is no tax leakage in the deal. With the increasing size of recent transactions, even a small number of basis points of tax can amount to a large overall tax charge. In Cayman, however, there is currently no corporation or other tax on any company carrying business in or outside Cayman. Cayman companies are entitled to receive an undertaking from the government exempting them from future taxation (if any). Additionally, access to a pool of highly experienced professional managers and administrators in Cayman means that Cayman companies may be centrally managed and controlled in Cayman, giving on-shore tax counsel comfort that the company will not be taxable in the relevant on-shore jurisdiction (except in certain cases where it is purposely tax resident in Ireland or elsewhere). In relation to payments made by a Cayman company, there is no tax withheld by the Cayman government on any payment (of principal, interest or otherwise) made by it.

Also, stamp duty is not an issue for a carefully structured transaction where the issuer is incorporated in Cayman. Stamp duty of up to CI\$500 (US\$610) may accrue in connection with any instrument that creates a security interest, and while stamp duty may also apply to other documents executed in connection with the transaction, all other applicable stamp duty is *de minimis*. Stamp duty only arises in Cayman where the

relevant instrument is fully executed in, or physically brought into, Cayman (usually for enforcement purposes). Typically, security documents are executed by power of attorney outside Cayman. If it is preferred that documents are executed by directors of the relevant Cayman company, the signatures are generally held in escrow until the documents have been dispatched out of the jurisdiction.

(c) **The Cape Town Convention**

Following the ratification by the UK government of the Convention on International Interests in Mobile Equipment as modified by the Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment (the “**Convention**”), and its subsequent extension to the Cayman Islands on 1 November 2015, the Cayman Islands are now recognised as a territorial unit of a contracting state for the purposes of the Convention.

The Convention establishes international standards for registration of ownership of and security interests in certain aircraft (including many twin-engine and most jet aircraft) and aircraft objects (i.e. engines). It provides for an internet-based International Registry of Mobile Assets (the “**International Registry**”) which allows individuals and organisations to electronically register interests on a first-to-file priority basis. Persons can perform an electronic search of the International Registry to determine the priority of interests in any particular aircraft or object. The Convention also standardizes legal remedies for defaults in financing arrangements, particularly repossession. There are currently 81 contracting parties, to the Convention (“**Contracting States**”), including 27 states and the European Union.

The Convention will apply when an agreement is concluded in respect of an aircraft meeting the applicable size and power requirements to qualify as an “aircraft object” under the Convention which creates or provides for an ‘international interest’ or a contract of sale and either the debtor or seller is situated in a Convention State (including the Cayman Islands) or the aircraft is otherwise registered in the Cayman Islands. Further, a ‘prospective international interest’ can be registered to establish priority of interest prior to the closing of a transaction, such interest automatically becoming a perfected international interest on execution and delivery of the financing documents.

The primary benefits of the Convention are the certainty created by the International Registry and the clarity brought to matters of international enforcement. As a result, creditors involved in financing an eligible Cayman Islands registered aircraft now have the additional comfort of knowing they can protect their security interests in that aircraft by making a filing in respect of any validly created and existing international interest with the International Registry.

(d) VP-C Online

The CAACI use an online portal, VP-C Online, to process applications for the registration of aircraft. This is intended to simplify and streamline the application process as far as possible, eliminating the need for physical delivery of paper documents. Instead, the parties proceed with the registration using electronic copies of documents which can be uploaded to and stored in the CAACI's secure electronic portal.

(e) Other Benefits

Other reasons why an aircraft, even if it is US or European manufactured and financed, may be registered in the Cayman Islands, include the following.

- A particular aircraft may not be type-certificated in the US and, rather than undergo the expense of a first such certification, it may be preferable to register the aircraft in a jurisdiction where the aircraft is already type-certificated.
- If a private aircraft is acquired by a foreign entity using finance supplied by an international lender, the foreign entity may understandably wish to register the aircraft in its own jurisdiction where the aircraft will be based and operated, using its own pilots who are licensed by the aviation authority of that jurisdiction. Again, this assumes that the aviation authority will be of a standard acceptable to the financiers. If not, one option is to use a neutral jurisdiction such as Cayman which is seen as being of an acceptable standard to the financiers.

As noted earlier, there may be circumstances when it may not be desirable to have a US or European registration if the aircraft is to be operated in certain unfriendly countries. In such circumstances, a neutral registration mark such as the Cayman Islands mark "VP-Cxx" may be a significant advantage.

3. GENERAL REGISTRATION PROCEDURES**3.1. Overview**

The registration process is initiated by requesting an electronic registration application and completing and submitting the electronic registration application, together with the required financial and legal due diligence for the owner, through the [VP-C Online](#) portal. The application form must be accompanied by (i) a signed affidavit; (ii) a certified true copy of the company's certificate of incorporation (or equivalent); (iii) a transparent overview by a beneficial owner or authorised officer of the company's business operations and source of wealth of its beneficial owners; (iv) appropriate due diligence documentation evidencing the legal and beneficial ownership of the aircraft (including, where the owner is a company, a copy of the register of members, a list of authorised company signatories with a signature sample of each; and (v) confirmation of main base of aircraft operations and geographical areas. A statement must also be included that states the aircraft will only be operated within the definition of "Private Category". Private Category is defined as being "any purpose other than public transport or aerial work", and therefore, an aircraft registered in the Private Category may not be used for the purposes of "hire and reward".

Persons wishing to register an aircraft in the Private Category must first prove eligibility in accordance with the Air Navigation (Overseas Territories) Order 2013 (“**ANOTAO**”). The following persons are qualified to hold a legal or beneficial interest by way of ownership in an aircraft registered in Cayman (or a share therein):

- (a) The Crown in right of Her Majesty’s Government in the United Kingdom or the Government of the Cayman Islands;
- (b) United Kingdom nationals
- (c) Commonwealth Citizens (which includes citizens of the Cayman Islands);
- (d) Nationals of any European Economic Area State;
- (e) Bodies incorporated in any part of the Commonwealth and having their registered office or principal place of business in any part of the Commonwealth; or
- (f) Undertakings formed in accordance with the law of a European Economic Area State and which have their registered office, central administration or principal place of business within the European Economic Area.

Subject to receipt of an acceptable “Due Diligence” report and payment of a 50% deposit in respect of the Certificate of Airworthiness fees (subject to a minimum of US\$2,439.02) an airworthiness survey will then be scheduled after which, subject to the surveyor making a recommendation for the issue of a Certificate of Airworthiness and receipt of an Export Certificate of Airworthiness or similar document, the de-registration process from the existing state of registry may be initiated. However, an applicant is cautioned not to initiate the de-registration process from the existing state of registry until such time as the application has been formally approved by the Director of Civil Aviation or his delegated representative.

Once accepted for registration, a registration mark prefixed with “VP-C” will be assigned or the applicant may request a specific registration mark which (if available) will be allocated.

Upon receiving notification from the existing state of registry that the aircraft has been removed from that register, a Cayman Certificate of Registration, Certificate of Airworthiness and all other required documentation will be issued.

3.2. Certificate of Airworthiness

The initial issue and annual renewal of a Certificate of Airworthiness requires that the aircraft undergo a survey by a surveyor authorised by the CAACI. The CAACI currently operates under the Overseas Territories Aviation Requirements and the European Safety Agency maintenance standards.

3.3. Maintenance

A “Maintenance Programme” which is in compliance with the aircraft manufacturer’s recommended maintenance programme (such as Cestum, etc.) must be submitted for approval. In the alternative, maintenance must be conducted in compliance with a schedule developed by an approved

maintenance organization. The CAACI has issued guidance, along with a template, to assist in drafting a suitable Maintenance Programme (CIAC 11-12 dated August 2015).

An “Approved Maintenance Organization” acceptable to the CAACI shall be certified under one of the following:

- JAR 145 Approval or Acceptance
- FAR 145 Repair Station Approval
- Transport Canada CAR 573 Approval

An application from a non-recognized maintenance organization will be assessed on an individual basis and approved at the discretion of the DCA.

3.4. Flight Operations

Prior to placing an aircraft on the Aircraft Register, the CAACI must be satisfied that flight operations will be conducted in a manner consistent with internationally recognised safety standards and recommended practices. Although the ANOTAO does not specifically address operational standards for aircraft registered in the “Private Category”, it is expected that the operator will ensure that initial and recurrent crew training is conducted annually, and that some form of control is exercised in respect of flight and duty time limitations. Where an operator requests authority to operate in “Required Navigation Performance” airspace, it is also expected that appropriate training will be completed. The same holds true for “Single Pilot Operations” and “Steep Approach and Landing Authority”.

Authorisations and approvals are normally granted, subject to meeting an acceptable means of compliance for the following types of flight operations: (i) Single Pilot Authority, (ii) Steep Approach and Landing Authority, (iii) MAPS (RVSM), (iv) RNP 10, and (v) RNP 5 (BRNAV).

Note: The Aircraft Flight Manual shall be available for inspection with current revisions and any applicable supplements.

3.5. Aircrew Validations

Licence validations are normally issued to the holder of an aviation document which has been issued by an International Civil Aviation Organisation (“ICAO”) State or by any other state which is in compliance with ICAO Annex 1. The licence must be appropriately endorsed for the type and class of aircraft/helicopter to be operated or in the case of a request for P2 authority where a type endorsement is not required, certificates of currency must be submitted. (i.e.: certificate of experience or biannual flight check). A current medical certificate must also be submitted along with a completed Licence Validation application form. The validation is granted for a period of one year. Note: The validation is contingent upon the continued validity of the licence submitted.

3.6. Maintenance Authorisation

A maintenance authorisation is normally issued to the holder of an “Aircraft Maintenance Engineers Licence” issued by an ICAO State or any other state which is in compliance with ICAO Annex 1. In some cases, such as an FAA A&P license, the applicant may be required to submit additional information.

3.7. Radio Licensing

All aircraft registered in Cayman are required by law to obtain a radio licence in respect of the communication transceivers installed in the aircraft. This licence is issued by the Utility Regulation and Competition Office of the Cayman Islands (“OfReg”). Application forms can be provided upon request or are available on-line at <https://www.ofreg.ky/forms-and-fees>.

4. FINANCING AIRCRAFT IN THE CAYMAN ISLANDS

4.1. Overview

Financiers of a Cayman Islands registered aircraft can draw comfort that the Cayman Islands offers the opportunity to take a registered security interest over the aircraft in a strong, stable and creditor friendly jurisdiction.

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.

A mortgage may cover any store of spare parts (including engines) for the aircraft but does not include a mortgage created as a floating charge or a mortgage of spare parts on their own. Parts which in the future may become attached to the aircraft can be part of a registered mortgage provided they are sufficiently identifiable when acquired by the mortgagor and value is given.

4.2. Procedure

Following the ratification by the UK of the Convention, and its extension to the Cayman Islands in November 2015, the Cayman Islands now have a two-tier system for registration, perfection and priority of security interests over Cayman Islands registered aircraft.

Where the aircraft is of a type that would qualify as an aircraft object under the Convention and the mortgage gives rise to a registrable “international interest” under the Convention, then that international interest will be registrable on the International Registry in accordance with the provisions of the Convention. In that case, once the interest has been registered on the International Registry, no further registrations would be required at the local Cayman Islands level with the CAACI in order to perfect or secure recognition or priority of the security interest.

If, however, the Convention does not apply to the aircraft (for instance because it is not of a sufficient size or weight to meet the minimum requirements) and a registrable “international interest” does not therefore arise, then a separate local mortgage registration will be required with the CAACI to perfect the security interest and secure priority.

In this case, the procedure to effect registration of a mortgage on the mortgage register ("**Mortgage Register**") maintained by the CAACI pursuant to the Mortgaging of Aircraft Regulations 2015 and the AN(OT)O is a simple and straightforward one, requiring nothing other than the consent and direction of the mortgagee. The mortgagee must provide the CAACI with a short registration form summarising the salient points of the mortgage (i.e. date, aircraft description, mortgagor contact details and confirmation of sum secured) and an original of the registration form signed by either the mortgagee or his agent/legal counsel must be submitted to the CAACI together with a copy of the mortgage certified by the applicant to be a true and correct copy. The mortgage registration fee should also be submitted upon registration.

Once registered, the mortgage registration remains valid for the duration of the mortgage without the need to comply with any renewal requirements. The mortgage itself need not be governed by Cayman Islands law nor is there a statutory format with which the mortgage must comply. The original mortgage deed need not be provided to the CAACI and, indeed, it is advisable that the original mortgage not be brought to the Cayman Islands in order to avoid the possibility of an applicable stamp duty (which, as noted above, may be up to CI\$500 / US\$610) having to be paid on the original mortgage document.

The mortgage deregistration procedure is a simple one: submission of a short confirmation from the mortgagee or its agent, countersigned by the mortgagor, together with evidence of discharge of the mortgage debt will be sufficient to enable the CAACI to record the mortgage as having been discharged from the Mortgages Register. Notification of the discharge will be provided by the CAACI to the mortgagor and the mortgagee.

4.3. Benefits

The registration of an aircraft mortgage on the Mortgage Register provides protection to mortgagees in a number of different ways. The AN(OT)O provides that the registered mortgagee must provide its consent to removal of the aircraft in question from the Aircraft Register before such removal can take place and the registered mortgage will continue to exist despite removal of the aircraft from the Aircraft Register. Moreover, by law the Cayman Islands Government is required to indemnify a mortgagee for loss suffered due to an error or omission in the Mortgage Register or any inaccuracy in any entry which is made.

Although registration of a mortgage on the Mortgage Register does not constitute evidence of its validity, it does constitute express notice of all facts appearing on the Mortgage Register.

One further advantage for financiers following the extension of the 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 Convention, including the right to request the deregistration of the aircraft

4.4. Priority

Where the Convention applies, 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 recorded on the Mortgage Register in respect of that aircraft, any mortgage validly recorded with the international registry over a Cayman Islands registered aircraft would automatically take priority over any local Cayman Islands registration on the Mortgage Register.

Where the Convention does not apply, and a local mortgage has been registered on the Mortgage Register, priority of the aircraft mortgage will be determined by the date and time of registration of the mortgage on the Mortgage Register, and registered priority is given statutory priority over subsequently registered mortgages and unregistered mortgages. The priority of the registered mortgage will not be affected by the bankruptcy of the mortgagor and the security interest will rank in preference to any right, claim or interest of other creditors. It should be noted, however, that possessory liens for work done on the aircraft (whether before or after the mortgage was created), or over persons lawfully entitled to possession of the aircraft, or with a right to detain the aircraft, do have priority over a registered mortgage. In addition, a previously registered mortgage or a mortgage created prior to 9 October 1979 would have priority over a subsequently registered mortgage.

Registration of the mortgage cannot take effect until the aircraft is registered but the mortgagee may secure its interest prior to registration of the aircraft by submitting a Priority Notice to the CAACI. Lodging of a Priority Notice will prevent any other security interests over the aircraft being registered in advance of registration of the mortgage which is the subject of the Priority Notice.

The Priority Notice is a simple form, along the same lines as the mortgage registration form, and the CAACI has taken a policy decision not to require payment of the mortgage registration fee upon submission of the Priority Notice.

5. LEASING OF AIRCRAFT IN THE CAYMAN ISLANDS

5.1. Overview

In recent years there has been an increasing use of vehicles organised in Cayman, such as exempted companies, exempted limited partnerships, charitable trusts and trusts under the Special Trusts (Alternative Regime) Act (“**STAR Trusts**”), created for the purpose of financing and leasing aircraft (as well as ships and other major capital equipment such as power and water plants).

5.2. Special Purpose Vehicles

Cayman Islands exempted companies are commonly incorporated as special purpose vehicles (“**SPVs**”) to play a particular role within a financing or leasing transaction. The rationale for introducing the SPV into the structure will depend upon financing and leasing regulations in the jurisdictions of the participant airlines, lessors or sub-lessors and therefore the SPV’s role in each structure will be tailored to fit the particular transaction.

Unlike other offshore jurisdictions where there can be a need for an “in principle” consent from the local regulator, setting up a Cayman Islands SPV is extremely flexible, quick and relatively inexpensive. The SPV can be formed in as little as 24 hours.

The SPV is usually structured as an orphan company with the shares held in trust for either a charitable purpose, or for the benefit of the transaction itself as a STAR Trust. By separating the beneficial

interest in the shares from their legal title, the SPV's accounts do not have to be consolidated in the accounts of either the share trustee or the promoter.

In aircraft financing, the transaction will involve the transfer of ownership of the asset to a SPV which will acquire it with a loan from the lender. The aircraft is then leased by the SPV to a third party such as an airline, via an operating lease. For the lender, the off balance sheet structure has several advantages, and the structure established in Cayman is entirely tax neutral. The suitability of Cayman SPVs for structures such as these is well established. The share capital of a Cayman company may be denominated in any currency in order to simplify the accounting requirements, and there are no minimum requirements in respect of issued or paid up capital.

5.3. Transition Register

The CAACI have the power to permit the temporary registration of an aircraft on the 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. This “transition register” offers lessors the opportunity to register aircraft which are between leases with a reputable and high quality registry with a high level of oversight and access to experienced surveyors. The requirements for registration of an aircraft on the Transition Register are broadly the same as for registration on the main Aircraft Register, and the application is made through the VP-C Online portal, although the CAACI have introduced certain additional features for lessors to make the registration process more streamlined, particularly where multiple aircraft are being registered.

6. TAXATION

Cayman has no corporation tax, income tax, capital gains tax, inheritance tax, gift tax, wealth tax, or any other tax applicable to a company conducting off-shore business. Certain documents are subject to stamp duty which is generally nominal. All exempted companies are entitled to receive from the government a “Tax Exemption Undertaking” exempting them from any possible future Cayman taxes for a period of twenty years. Ordinary non-resident companies are not able to take advantage of the Tax Exemption Undertaking.

7. CONCLUSION

In summary, the Cayman Islands continue to offer the aircraft industry a commercially flexible and adaptable approach, against a bedrock of stability. This, combined with its depth of expertise keeps Cayman at pace with the current demands of its international clientele and at the head of the field of off-shore jurisdictions.

This publication should not be construed as legal advice and is not intended to be relied upon in relation to any specific matter. It deals in broad terms only and is intended merely to provide a brief overview and give general information.