



The Quintessential Question?

Why would a foreign company/operator want to own and operate a US Registered Aircraft?



COMMON REASONS WHY AIRCRAFT ARE REGISTERED IN THE U.S.

- The U.S. is a registry of choice. A significant majority of the aircraft owned worldwide are registered with the Federal Aviation Administration ("FAA")
- The FAA's rules and processes are relatively predictable compared to those of some other countries
 - Lenders sometimes prefer registration in the U.S. because of the well-developed system for recording liens, judicial system and case law, and access to the International Registry
 - Owner/operator may prefer US judicial system vs their home country.
- FAA standards are considered among the highest in the world (may help preserve the value of the aircraft and attract U.S. buyers)
- Aircraft may be used frequently in the U.S.



The Process Of Registration

- U.S. Registration Requirements for Aircraft
 - Owner registry
 - Who can register
 - Individual who is citizen or resident alien
 - Qualifying corporation
 - Qualifying partnership
 - Qualifying owner trustee



PRACTICAL USES OF FAA TRUSTS

- Permanent registration in the U.S. by non U.S. Citizen
- Permanent registration in the U.S. by U.S. Citizen who does not want their name associated with the aircraft for privacy reasons
- Temporary registration in the U.S. by non U.S. Citizen to permit ferrying to another jurisdiction where the aircraft will be permanently registered
- Registration in U.S. in preparation for sale in U.S.
- Lender repossessions




U.S. HAS AN OWNER REGISTRY SYSTEM

- Many other countries have operator or hybrid owner/operator registry systems
- Generally in the U.S. the "owner" for FAA purposes is the legal titleholder (exceptions include lessees under leases with nominal purchase price at end of term and synthetic leases)
- Aircraft can't be registered in the U.S. and another jurisdiction at the same time



WHO MAY REGISTER AN AIRCRAFT WITH THE FAA?

- Individual who is a U.S. Citizen or a resident alien (permanent legal resident of U.S.)
- U.S. Corporation or LLC, but only if:
 - President and at least 2/3rds of board of directors or managing officers are U.S. Citizens
 - Corporation is under the actual control of U.S. Citizens
 - At least 75% of voting interests are held or controlled by U.S. Citizens (see discussion of voting trust on later slide)
- Partnership in which all of the members are individual U.S. Citizens
- U.S. Citizen or resident alien serving as a trustee under an FAA owner trust



WHO MAY NOT REGISTER AN AIRCRAFT WITH THE FAA?

- Individual who is neither a U.S. Citizen nor a resident alien
- Non-U.S. corporation or other business entity
- U.S. corporation or LLC that fails the management, control or voting interest tests (There is a limited exception for certain U.S. corporations that base and operate their aircraft in the U.S.)
- Partnership that includes individuals who are not U.S. citizens
- Partnership that includes corporations or other business entities as partners
- A U.S. citizen acting as an agent for a non-U.S. citizen



The Process Of Registration

Registration Structures that Accommodate Non-Citizens

- Owner trust
- Voting trust
- Non-citizen corporation



The Process Of Registration


- FAA rules for Non-Citizen Trusts (NCTs)
 - General rules
 - Priority guidance



REGISTRATION STRUCTURES THAT ACCOMMODATE NON-CITIZENS

OWNER TRUST


- FAA permits a trustee under an owner trust to hold title to and register an aircraft for a non U.S. Citizen (such trusts are commonly known as "NCTs")
- Owner trusts are generally pass through entities for tax purposes so the beneficiary gets the tax benefits
- The non U.S. Citizen beneficiary may legally operate the aircraft under an operating agreement or operating lease
- The beneficiary hires flight crew, pays all expenses, etc.
- The beneficiary has power to direct trustee to sell the aircraft and to terminate the trust



REGISTRATION STRUCTURES THAT ACCOMMODATE NON-CITIZENS

OWNER TRUST


- Within the last few years, the FAA issued policy clarifications which contain additional requirements for NCT registrations, often referred to as the "priority guidance"
- Puts burden on trustee to provide information to the FAA about the operations of the aircraft
- Certain information including who normally operates the aircraft and where it is normally based must be provided within 2 days of the request
- Certain information relating to the use of the aircraft on particular dates, a maintenance and airworthiness status must be provided within 5 days of the request
- The trust documents must contain provisions relating to the above informational requirements and must be submitted to FAA Aeronautical Center Counsel for approval prior to filing with the FAA for recordation to confirm that the required provisions have been included



REGISTRATION STRUCTURES THAT ACCOMMODATE NON-CITIZENS

VOTING TRUST

- If a corporation or LLC would qualify as a U.S. Citizen, but for the fact that more than 25% of the voting interests are held by a non U.S. Citizen, a voting trust may be used
- A U.S. Citizen trustee needs to hold 75% or more of the voting interest in the corporation or LLC that holds title to the aircraft through a voting trust in order for the aircraft be registered in the name of the corporation or LLC



REGISTRATION STRUCTURES THAT ACCOMMODATE NON-CITIZENS


CORPORATION BASED AND PRIMARILY USED IN U.S.

- If a corporation would not qualify as a U.S. Citizen for any reason, it may still qualify for registration with the FAA under limited circumstances
- Requirements:
 - the aircraft must be "based and primarily used" in the U.S., meaning that the flight hours in the U.S. must continue to be at least 60% of the total flight hours
 - The corporation must be lawfully organized and doing business under the laws of a U.S. state
- A less flexible alternative than an owner trust



The Named Insured and Legal Issues

- Who is the Named Insured
- Corporation
- US Trust
- Beneficial Partnership
- Who is the Operator



Trust Agreement Insurance Requirements

Trust Agreement & Operating Agreement



Bank of Utah

<p>Trust Agreement:</p> <p>Section 3.09 – No Duties. <u>Owner Trustee will not have any duty (i) to see to any insurance on any Aircraft or maintain any such insurance, (ii) to see to the payment or discharge of any other governmental charge or lien or encumbrance...</u></p>	<p>Operating Agreement</p> <p><u>... All insurance policies will name both the Owner and Operator as insureds. Operator will cause the premiums for such insurance policies to be paid and will provide Owner with evidence of such policies of insurance reasonably satisfactory to the Owner. All insurance policies required hereunder will provide that Owner will be given 30 days prior written notice of the effective date of any alteration or cancellation of such policy, ...</u></p>
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Wells Fargo

<p>Trust Agreement</p> <p>Section 3.09 – No Duties. Owner Trustee shall not have any duty (i) to see to any insurance on the Aircraft or maintain any such insurance, (ii) to see to the payment or discharge of any tax, assessment, or other ...</p>	<p>Operating Agreement</p> <p>...other risks as are customarily insured against by such corporations. All insurance policies shall name: Owner, Operator and Beneficiary as insureds or loss payee...</p>
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TVPX

<p>Trust Agreement</p> <p>Section 3.09 – No Duties. Owner Trustee shall not have any duty (i) to see to any insurance on the Aircraft or maintain any such insurance, (ii) to see to the payment or discharge of any tax,...</p>	<p>Operating Agreement</p> <p>All insurance policies shall name both Owner and Operator as insureds or loss payees.</p>
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Wilmington Trust Company


<p>Trust Agreement</p> <p>Section 3.09 – No Duties. Owner Trustee shall not have any duties except those expressly set forth in this Agreement. Without limiting the generality of the foregoing, Owner Trustee shall not have any duty (i) to see to any insurance on the Aircraft or maintain any such insurance, (ii) ...</p>	<p>Operating Agreement</p> <p>... amount and type in accordance with the terms of the Operative Agreements. All insurance policies shall name Operator and Owner Trustee as named insured and Operator's lender shall be named as loss payee and additional insured under all such insurance policies as required under the relevant loan documents. Operator shall pay or cause to be paid...</p>
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The Named Insured and Legal Issues

TRUSTEE INSURANCE OBLIGATIONS AS A NAMED INSURED


- Make application for renewal annually
- Responsible for requesting changes to the policy
- Responsible for payment of premium
- Responsible to advise on any "Newly acquired aircraft"
- Approve pilots
- Approve use of aircraft



The Named Insured and Legal Issues

TRUSTEE INSURANCE OBLIGATIONS AS A NAMED INSURED

- Approve use of non-owned aircraft (in addition to the scheduled aircraft)
- Notify insurer in event of a loss
- Provide notice of intent in regards to "Cancelling this policy"
- Required to participate in the Loss adjustment process including assisting in providing documentation, invoices and other evidence during claim handling
- Loss Payee



The Named Insured and Legal Issues

TRUSTEE INSURANCE OBLIGATIONS AS A NAMED INSURED


- Attend trials and hearings
- Responsible for deciding on and offering of Voluntary Settlements
- Approve repairs to the aircraft
- Agree and participate on arbitration of hull claim amount as necessary
- Be the recipient for all notices from the insurer
- Obligation to submit contracts and agreements within 30 days of receipt



The Named Insured and Legal Issues

TRUSTEE INSURANCE OBLIGATIONS AS A NAMED INSURED


- Notify police if aircraft or parts are stolen
- Exposed to suits which can be filed against you by us for failure to pay premium or uphold the terms of the policy
- Payment of any deductibles
- Responsible to advise on any modification or addition of equipment to the aircraft within 60 days and pay any additional premium
- Notification to us in advance of any anticipated extra expense charges or layups



The Named Insured and Legal Issues

Insurance/Liability Risks Associated with Non-Citizen Aircraft:

- Improper registration
 - Invalid structure from inception
 - Example – non-citizen sets up LLC to hold title to and register aircraft
 - Lapse in requirements for non-citizen corporations
 - Failure to comply with use requirements or reporting requirements
 - Using "trustee" who is not a citizen
 - Using "trustee" who does not really have trust powers under state law



The Named Insured and Legal Issues

Insurance/Liability Risks Associated with Non-Citizen Aircraft:


- Letting registration lapse
- Losing track of trustor or operator
- Failing to maintain proper insurance
- Violation of insurance covenants by operator
- Possibility of claims and proceedings outside U.S.
- Theoretical concerns
 - FAA priority guidance + Vreeland



Evaluating and Rating the Risk

Underwriting Considerations/Concerns


- Obtaining proper and complete underwriting information on the Trustor
- Need to have all names associated with the Trustor to avoid an OFAC/SDN issue
 - What is OFAC/SDN issue
- (Trustee, Trustor, Operator/management Company, etc.) all names must be run through our system.
 - What does that do?



Evaluating and Rating the Risk


Underwriting Considerations/Concerns

- Underwrite the foreign exposure, not based on the Trustee address in US
 - Pilot information, training records, etc.
 - Confirm N# registry in FAA Database
 - Aircraft base of operations
 - Typical destinations travelled to
 - Business of Beneficiary owner
 - Typical passengers carried (employees, family, guests)
 - Who performs maintenance (minor/major)
 - Insurance requirements in country based




Evaluating and Rating the Risk
Underwriting Considerations/Concerns

- Trustee as “additional” not “named” insured (see slides for – Trustee Insurance Obligations as a Named Insured)
- Critical to have all documents reviewed before quoting
 - Trust Agreement
 - Lease agreement/management agreement
 - Any other agreement involved with the ownership or operation of the aircraft



Evaluating and Rating the Risk
Underwriting Considerations/Concerns

- Policy Documentation
 - Trustee is not to be the Named Insured/Policyholder
 - Use of trustee address is okay- make sure the Trustor address is in policy for notices
 - Confirm loss adjustable, loss payee
 - Confirm all insurance requirements in the Trust/Operating/Management agreements are properly endorsed
 - Issue with indemnities not asked to be covered via contractual liability



Evaluating and Rating the Risk

- **How does this differ from a US Operator**
 - On Behalf of a Foreign Operator.
- **US Or London Policy?**
 - What is the difference between a London Policy and a US Policy?
 - Advantage/Disadvantage of insuring in London?
 - US?



Broker Challenges of Servicing a Foreign Operator

- **Getting the Required Information**
 - Language and Communication barriers
 - Cultural issues and understanding significance of application process and Policy requirements
 - Time zones and Time Lapses
- **Getting Paid.**
 - Wire Transfer's and additional costs
 - Guaranteed Exchange Rates
 - Payment Plans




Adjusting the Claim

Challenges of adjusting an International claim

- Access
- Laws and Regulations
- Logistics

Cost Factors


There can be nightmares.



Adjusting the Claim

- **Challenges of adjusting an International claim**

If everything is done properly, in terms of satisfying the Policy Conditions in regards to Airworthiness, Geographical Limitations, Uses, Pilot Hours, Pilot Licensing, Recurrent Training, etc, there are no "issues". We respond and clean up the mess and try to contain the costs. Insurers pay for it.



When is Worldwide Coverage Not World Wide?

Worldwide is seldom ever worldwide, for a normal operator, because the usual places (Afghanistan, Libya, Colombia, Cuba, Haiti are perfect examples) are almost always excluded, unless specifically added back.



When is Worldwide Coverage Not World Wide?

LSW 617 G EN – KILN geographic area exclusion clause (03/08/11)

1. Notwithstanding any provisions to the contrary and subject to clauses 2 and 3 below, this Policy excludes any loss, damage or expense howsoever occurring within the geographical limits of any of the following countries and regions:

- (a) Algeria, Burundi, Cabinda, Central African Republic, Congo, Democratic Republic of Congo, Eritrea, Ethiopia, Ivory Coast, Liberia, Mauritania, Nigeria, Somalia, The Republic of Sudan, South Sudan.
- (b) Colombia, Ecuador, Peru.
- (c) Afghanistan, Jammu & Kashmir, Myanmar, North Korea, Pakistan.
- (d) Georgia, Nagorno-Karabakh, North Caucasian Federal District.
- (e) Iran, Iraq, Libya, Syria, Yemen.
- (f) Any country where the operation of the insured Aircraft is in breach of United Nations sanctions.




When is Worldwide Coverage Not World Wide?

LSW 617 G EN – KILN geographic area exclusion clause (03/08/11)

2. However coverage pursuant to this Policy is granted:

- (a) for the over flight of any excluded country where the flight is within an internationally recognized air corridor and is performed in accordance with I.C.A.O. recommendations; or
- (b) in circumstances where an insured Aircraft has landed in an excluded country as a direct consequence and exclusively as a result of force majeure.

3. Any excluded country may be covered by underwriters at terms to be agreed by the Slip Leader only, prior to flight.



Scenario 1

SIA, Inc. – a Delaware Corporation managed by an Attorney in Virginia. Based in US but 90% of time spent outside US. US Chief Pilot and PIC's- SIC' via OPW. Beneficial owner an Indian Company in the mining and ore exploration business with extensive ties in Nigeria, Central Africa.

- Registration and Ownership Issues
- Underwriting Issues
- Claims Issues
- Broker Issues



Scenario 2

Kuala Lumpur Aviation Holdings, Inc. (a Malaysian Holding Company owned by a Malaysian Oil and Gas Company) and TVPX Trust. Aircraft based in Malaysia with Malaysian crew. – Primary Operations: SEA/Pacific Rim to Mideast. Owner transition pilot.

- Registration and Ownership Issues
- Underwriting Issues
- Claims Issues
- Broker Issues



Scenario 3

Brasilia Aviation, Inc. – a US company which buys, sells, and manages aircraft for its owner, Brasilia Distribuidores International, an international products distribution company – Aircraft based in US but mostly flies internationally throughout Central and South America, using a mixed professional crew of Brazilian and US Pilots.

- Registration and Ownership Issues
- Underwriting Issues
- Claims Issues
- Broker Issues



Best Practices

Aircraft owner

- Use experienced aviation counsel and advisers
- Use recognized aviation trust providers and accepted structures
- Use experienced aviation insurance broker/agent
 - Provided full and complete information in a timely manner
 - Provide full documentation as requested by insurance companies.
- Use capable aviation operations professional to manage aircraft operations and maintenance
- Tickler system for aircraft reregistration and insurance renewals




Best Practices

Trust provider

- Due diligence on trustor and aircraft operator
- Review insurance certificates and endorsements carefully
 - Breach of warranty and other protections
- Need regular (annual or more frequent) check-ins with trustor
- Keep insurance broker of record in the loop.
- Tickler system for aircraft reregistration and insurance renewals
- Emergency Response Plan





That About Wraps It Up.
Any Questions or Concerns?

