



EXPORTING A US-REGISTERED AIRCRAFT

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Due to the large US private aircraft market and high US standards for aircraft maintenance, many buyers plan to buy and import previously-owned United States-registered aircraft into their own country. Before they do, here is what they should know about exporting business aircraft from the USA.

In order to export an aircraft from the US, the aircraft's US registration must be canceled by contacting the US Federal Aviation Administration (FAA) and filing a registration cancellation request.

This document may be submitted by the aircraft's last registered owner, the last owner of record, the foreign purchaser (when supported by evidence of ownership), or by the authorized party under an Irrevocable De-registration and Export Request Authorization (IDERA).

Requests to cancel a US aircraft registration for export must include:

- A complete description of the aircraft (including manufacturer name, model designation, serial number and registration number);
- the reason for cancellation (export to foreign country);
- the name of the country to which the aircraft is being exported;
- the signature and appropriate title of the requester;
- releases, discharges, or consents to export for all outstanding interests, security instruments and unexpired leases; and
- a copy of the International Registry Search Certificate (if the aircraft is subject to the Cape Town Treaty).

If the buyer is financing the purchase of the aircraft, the de-registration of the aircraft from the US and the re-registration in the buyer's country must be coordinated. The lending bank will require a perfected mortgage on the aircraft, which

cannot occur until after the aircraft is de-registered in the US and re-registered in the buyer's country.

The seller usually will not allow its aircraft to be de-registered until receiving payment for the aircraft, but the lender will not want to release those funds until after the filing of a mortgage on the aircraft under the buyer's home country registry. In many cases, the time difference between the selling and buying locations precludes a smooth, continuous de-registration and re-registration of the aircraft. In these cases, the careful use of independent escrows of money and registration documents is the best option for protecting the parties' interests.

As discussed below, the conduct of these transactions requires the use of ▶



an experienced escrow agent as well as coordinating filings in the US and the nation of subsequent registration in order to address the concerns of the buyer, seller and lender(s).

In addition to US registration with the FAA, some states require that aircraft based in their jurisdiction be registered or licensed in the state. State de-registration of aircraft within the US is a minor concern, but a US aircraft seller may be required to collect state sales tax from the buyer on the sale of the aircraft unless there is a state sales tax exemption.

Certificate of Airworthiness for Export

Under US law, registration and airworthiness are separate issues administered by the FAA, and both need to be addressed to export an aircraft. Assuming the buyer follows the above procedure on deregistration, the buyer must also pursue airworthiness authority in the jurisdiction

where the aircraft will be registered.

The new nation of registry must be satisfied that the aircraft is safe and suitable for use. For an aircraft being exported from the US, that means obtaining a "Certificate of Airworthiness for Export" from the FAA. This document tells the subsequent nation of registration that the FAA finds the aircraft airworthy. In most cases, that will be sufficient.

Closing

It is important to establish early in a transaction where the aircraft will be when the various steps take place, and what will be the order of those steps. This sequence may require coordination with the seller's and buyer's banks, and use of an experienced escrow agent.

The established escrow agent will govern the release of documents and funds, and the filing of lien releases, deregistration, registration and new liens. It is not unusual for the entire transaction

to occur while the aircraft remains in the US, in which case the purchaser would need to have a representative of the new nation of registration in the US to perform any technical inspections required to issue the applicable certificate of airworthiness.

Transactions all vary, but a typical closing sequence is as follows:

- US liens/leases terminated;
- International Registry liens/leases terminated;
- Title documents released;
- US de-registration;
- New national registration;
- New national liens/leases established;
- New International Registry liens established; and
- Physical possession and control to purchaser.

Anti-Money-Laundering

The US seller of a private aircraft may have to perform a due diligence investigation of the buyer in order to comply with US

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anti-money-laundering (AML) laws and regulations. Under AML, US financial institutions must identify their customers, establish risk-based controls, keep records and report suspicious activities.

US businesses engaged in aircraft sales are considered “financial institutions” that are subject to AML compliance. Therefore, any US person or entity engaged in the regular or recurring sale of aircraft will have some level of due diligence to comply with AML. At a minimum, the US seller of an aircraft may evaluate each buyer (including entities known to be affiliated with the buyer) on a scale of low, medium or high risk for money-laundering abuse.

As part of AML compliance, the US seller may check the “Specially Designated Nationals List” of the Office of Foreign Asset Control – Department of the Treasury (OFAC) and other US Government lists. OFAC’s programs are either list-based or country-based. Country-based programs target a particular government and include complete trade embargos. List-based

programs target persons (individuals or entities) involved in activities that threaten the national security, foreign policy or economy of the United States. Accordingly, US sellers of aircraft may have procedures to evaluate and check-up on the buyer for AML compliance.

US Export

In addition to the AML rules, US export control laws administered by the US Department of Commerce and US Department of State prevent the sale of certain technologies to certain foreign countries and end-users. Under these laws, US sellers cannot sell aircraft to individuals or companies from prohibited nations (e.g. Cuba or Iran). Accordingly, US sellers will likely perform an investigation of the buyer for US export control law compliance.

If the buyer of the aircraft plans to resell it in a back-to-back transaction, US export laws may treat this as a sale by the

US person directly to the aircraft’s end-user. For example, if a US person sells an aircraft to an Indian citizen who then sells the aircraft to an Iranian citizen, US export laws may treat this as a sale by the US person directly to the Iranian citizen. Therefore, the US seller will want to investigate both the intermediate buyer and the end-user buyer to comply with US export control and AML laws.

Note: The buyer of a US aircraft exporting the aircraft out of the United States and into its home country will need to deal with a US seller that must comply with several US laws as well as the requirements of several US Governmental agencies. Ultimately, the US seller just wants to sell the aircraft, but must manage these US legal obligations or risk penalties and fines for non-compliance on the sale and export of the aircraft.

More information from

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