



Client Advisory Regarding U.S. Aircraft Registration and Non-U.S. Citizen Trust Policy Clarification with September 16, 2013 Effective Date

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[William E. van Egmond](mailto:will.vanegmond@crowedunlevy.com), Director
will.vanegmond@crowedunlevy.com

[J. Robert Kalsu](mailto:bob.kalsu@crowedunlevy.com), Director
Aviation/Aircraft Practice Group Chair
bob.kalsu@crowedunlevy.com

[Cynthia L. Andrews](mailto:cindy.andrews@crowedunlevy.com), Director
cindy.andrews@crowedunlevy.com

[Julia Stein Dittberner](mailto:julia.dittberner@crowedunlevy.com), Associate
julia.dittberner@crowedunlevy.com

[Preston G. Gaddis II](mailto:preston.gaddis@crowedunlevy.com), Director
preston.gaddis@crowedunlevy.com

[Jeffrey T. Hills](mailto:jeffrey.hills@crowedunlevy.com), Director
jeffrey.hills@crowedunlevy.com

[Brett D. Liles](mailto:brett.liles@crowedunlevy.com), Associate
brett.liles@crowedunlevy.com

[Gary R. McSpadden](mailto:gary.mcspadden@crowedunlevy.com), Director
gary.mcspadden@crowedunlevy.com

[John M. Thompson](mailto:john.thompson@crowedunlevy.com), Director
john.thompson@crowedunlevy.com

On August 28, 2013, members of the Association of Aircraft Title Lawyers ("AATL") met with representatives of the Federal Aviation Administration ("FAA") in Oklahoma City, Oklahoma, regarding the Notice of Policy Clarification for the Registration of Aircraft to U.S. Citizen Trustees in Situations Involving Non-U.S. Citizen Trustors and Beneficiaries dated June 18, 2013 (the "Policy Clarification"). The purpose of the informal meeting was to gain clarity on several practical issues with respect to the Policy Clarification and the continued use of Non-U.S. Citizen trusts for registration of aircraft in the United States. Subsequent to such meeting, we obtained additional input and feedback from the FAA regarding the Policy Clarification. Accordingly, below please find some important practical information for those parties intending to utilize Non-U.S. Citizen trusts for United States aircraft registration subsequent to the effective date of the Policy Clarification on September 16, 2013 (the "Effective Date").

As a result of the informal meeting, and subsequent discussions, the AATL, various Owner Trustee representatives and the FAA worked to modify the form of Trust Agreement contained in the Policy Clarification. Specifically, the Trust Agreement form contemplates revised provisions with respect to removal of the Owner Trustee by the non-U.S. citizen beneficiary/trustor and limitations on control of the Owner Trustee by the non-U.S. citizen beneficiary/trustor. Moreover, in any situation where an Operating Agreement is not filed with the Trust Agreement and registration documents, the Affidavit of Citizenship required from the Owner Trustee must contain an additional representation that "no Operating Agreements, other side agreements or arrangements exist between the Owner Trustee and Trustor" – or similar language to that effect. If an Operating Agreement is submitted along with the Trust Agreement and registration documents then the Affidavit of Citizenship need not include this representation.

A vital point made during the informal meeting is that the FAA civil aircraft registry (the "FAA Registry") will no longer simply accept non-U.S. citizen Trust Agreements, and the corresponding Affidavit of Citizenship, with the Aircraft Registration Application in the name of the Owner Trustee. Such documents will be sent to the Office of Aeronautical Center Counsel (the "ACC") for review and approval before the FAA Registry will process the relevant aircraft's registration documents. The FAA Registry will also rely on a favorable ACC opinion regarding valid aircraft registration under a non-U.S. citizen trust if such opinion is submitted along with the aircraft registration documentation. In order to obtain a favorable ACC opinion, the parties seeking to register an aircraft under a non-U.S. citizen Trust Agreement must submit a copy of the relevant Trust Agreement, Affidavit of Citizenship and Operating Agreement (that comport with the agreed upon forms of Trust Agreement, Affidavit of Citizenship and Operating Agreement) to the ACC prior to the transaction closing. Submission of a favorable ACC opinion to the FAA Registry along with the aircraft registration documentation will allow for faster processing of the

registration documents and will be especially relevant in those transactions necessitating international operation immediately following submission of the aircraft registration documents.

Furthermore, we point out that any favorable ACC opinions obtained prior to the Effective Date, with respect to non-U.S. citizen Trust Agreements, shall not be effective following the Effective Date. Accordingly, even if a party submitted a non-revised form of Trust Agreement and Affidavit of Citizenship prior to the Effective Date, and obtained a favorable ACC opinion regarding aircraft registration, if the transaction does not close by the Effective Date, the prior favorable opinion will not be accepted by the FAA Registry. In this instance, the parties would need to utilize the revised forms of Trust Agreement, Operating Agreement and Affidavit of Citizenship and obtain another favorable ACC opinion that contemplates the revised documentation.

An Operating Agreement between the Owner Trustee and non-U.S. citizen trustor must be filed with the FAA Registry using one of the following methods: (i) file an originally executed version, along with applicable fees, for recordation in the aircraft records maintained by the FAA Registry; (ii) file a copy of the executed version that is attached to the Trust Agreement; or (iii) file a copy of the executed version with a request that it be returned to the submitter. With the first option, the Operating Agreement would be given a Conveyance Number and recorded in the FAA Registry records for the aircraft. This option would then necessitate an originally executed Lease Termination by the Owner Trustee and non-U.S. citizen trustor at the time the Operating Agreement is no longer in effect. With respect to the second option, the Operating Agreement would be placed in an ancillary Trust Agreement file maintained by the FAA Registry, rather than in the aircraft record. A Disclaimer executed by the Owner Trustee and non-U.S. citizen trustor may be required when the Operating Agreement is no longer in effect. With the third option, the Operating Agreement would be filed with the FAA Registry and returned to the submitter subsequent to the FAA Registry generating a summary of the Operating Agreement. This summary would then be maintained in the administrative files of the FAA Registry – generally inaccessible to the public. Please note that for aircraft qualifying as “large” civil aircraft (more than 12,500 lbs.), a copy of the executed Operating Agreement would need to be filed with the FAA Technical Division in order to satisfy the truth-in-leasing requirements contained in 14 FAR 91.23(c)(1).

Finally, the ACC provided some guidance regarding the need to file Amendment, Assignment and Supplement documentation with respect to existing Trust Agreements approved and filed with the FAA Registry prior to the Effective Date of the Policy Clarification. Specifically, (i) with respect to Amendments, a filing requirement would depend on the nature and revised terms of the Amendment; (ii) with respect to Assignments, a filing would likely not be required, but the ACC reserved the right to reconsider this issue; and (iii) with respect to Supplements adding aircraft to an existing Trust Agreement, an Amended and Restated Trust Agreement would need to be approved and filed along with the Supplement adding an aircraft. Due to the current uncertainty in the answers provided with respect to Amendments and Assignments, we would recommend that parties request, in advance, an ACC opinion regarding the requirement to file Amendment and Assignment documentation relating to an existing Trust Agreement.

For further information regarding the Policy Clarification and United States aircraft registration under a non-U.S. citizen Trust Agreement, and what the proposed changes will mean to you and/or your company, please contact one of our aviation department attorneys.

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Oklahoma City

20 North Broadway
Suite 1800
Oklahoma City, OK 73102
(405) 235-7700

Tulsa

500 Kennedy Building
321 South Boston Avenue
Tulsa, OK 74103
(918) 592-9800

crowedunlevy.com