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Client Advisory: Aircraft Registration and Non-U.S. Citizen Trust Issue

April 27, 2011

As many of you may recall, in May of 2010, the Federal Aviation Administration (“FAA”) imposed a brief moratorium on the issuance of FAA Aeronautical Center Counsel Office opinions regarding aircraft registration under trusts with non-U.S. citizen beneficiaries where such beneficiaries would maintain operational control of the registered aircraft. Following a concerted industry response, on May 13, 2010, FAA Chief Counsel, David Grizzle, issued a letter stating that the moratorium had been lifted with respect to the issuance of non-U.S. citizen trust opinions regarding aircraft registration. This letter further confirmed that the FAA would resume its past practice of issuing opinions regarding the validity of aircraft registration under non-citizen trusts and refrain from challenging the registration of aircraft currently registered under such trusts. However, at such time, the FAA also indicated that it would continue its review of the non-U.S. citizen trust issue in order to ensure compliance with existing law, as well as work toward a meaningful resolution of any issues it had with aircraft registration under non-U.S. citizen owner trusts.

Presumably as a result of its continued review, on April 26, 2011, the FAA issued a [Notice of Public Meeting](#) to be held on Wednesday, June 1, 2011 (the “Notice”) at the Marriot Renaissance Convention Center Hotel in downtown Oklahoma City, OK. The meeting is scheduled to occur between 9:00 A.M. and 5:00 P.M., Central Time. At such meeting, the FAA intends to solicit input from interested members of the public regarding the use of owner trust arrangements, with non-U.S. citizen beneficiaries, for registration of aircraft in the United States.

The meeting will be divided into two parts according to the Notice. First, the FAA will review the relevant statutory and regulatory sections, specifically 49 U.S.C. § 44102 and 14 CFR 47.7(c), concerning aircraft registration under trusts with foreign beneficiaries and pinpoint issues that may arise when seeking compliance

thereunder. Second, the FAA will open the floor to discussion regarding application of such laws with respect to aircraft registration under non-U.S. citizen trusts.

Specifically, the FAA seeks public comment on how an owner trust arrangement can continue to be structured and utilized for purposes of aircraft registration in accordance with statutory and regulatory provisions regarding ownership and U.S. citizenship. The Notice states that the FAA is prepared to seek comment and foster a “robust and productive discussion” regarding the following questions and scenarios:

1. What are the appropriate obligations to impose on a trustee of a trust with beneficiaries who are neither U.S. citizens nor resident aliens in order to satisfy the statute and regulations?
2. In the case of a trust with beneficiaries that are neither U.S. citizens nor resident aliens, which rights and actions must be prohibited on the part of the beneficiaries in order to satisfy the statute and regulations
3. Which forms of granting possession, use, or operational control of an aircraft by a trustee to its beneficiaries that are neither U.S. citizens nor resident aliens, are permitted and which are prohibited under the statute and regulations?
4. What are the specific elements of "the trustee's authority" (14 CFR 47.7(c)(iii)) about which the FAA should be concerned and what are the forms of influence or limitation the FAA should proscribe?
5. How may a beneficiary that is neither a U.S. citizen nor a resident alien participate in the decision to remove a trustee in accordance with the statute and regulations?
6. To what extent, if any, are the FAA interpretations cited above in need of amendment?
7. Which, if any, knowledge and information requirements (*e.g.*, address of operator, location of maintenance records, principal hangar location) are appropriate for the FAA to impose on trustees of trust beneficiaries that are neither U.S. citizens nor resident aliens?

In an effort to keep our clients updated as to what transpires, members of the Crowe & Dunlevy aviation department plan to attend and participate at this meeting

The FAA has further indicated that after its consideration of the comments and responses received from attendees at the meeting, it will notify the public of any action it intends to take regarding registration of aircraft under owner trust arrangements with non-U.S. citizen beneficiaries. Accordingly, we will continue to monitor the progress of any further developments and keep you informed on any

proposed changes to existing law or practice.

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