

## Seven Reasons to Register an Aircraft in the Cayman Islands

We have highlighted below seven of the key reasons owners, financiers and operators regard the Cayman Islands as the jurisdiction of choice for aircraft registrations.

### 1. The Cayman Islands – Political Stability

The Cayman Islands provides a safe, stable and 'friendly flag' jurisdiction for registration of aircraft and boasts a highly developed legal system and a respected system for perfecting security over aircraft.

As an overseas territory of the United Kingdom, the Cayman Islands benefits from a high level of political, social, economic and judicial stability, whilst at the same time exercising a high degree of autonomy, having been a stable parliamentary democracy since 1831.

The Cayman Islands enjoys a stable system of government, consisting of an 18 member Legislative Assembly elected by the people every four years which enables the Cayman Islands largely to self-govern on local affairs, and a Governor who is the formal representative of the UK government. The Governor has power over certain domestic issues (for example, controlling the Cayman Islands internal security matters, dissolving the legislature, assenting to laws and acting as a liaison between the Cayman Islands and the British government).

The Cayman Islands' main industries are financial services and tourism. The government's primary source of income is indirect taxation, such as import duty on certain goods and fees obtained from the operation, licensing and regulation of various entities in the Cayman Islands. The absence of any form of direct taxation in the Cayman Islands (such as income, sales or capital gains tax) fosters a favourable tax regime which has made the

Cayman Islands an attractive jurisdiction in which to conduct cross-border global business.

Internationally, the Cayman Islands is ranked within the top 20 financial centres in the world. It boasts a GDP of US\$47,864 per capita<sup>1</sup> and is rated Aa3 by Moody's<sup>2</sup>.

The Cayman Islands is widely recognised as one of the leading non-OECD jurisdictions for compliance with, and cooperation on matters of anti-money laundering, tax information and financial regulation. It was one of the first jurisdictions to partner with the US and sign up to a Model 1 intergovernmental agreement with respect to FATCA, and was one of the early adopters of the OECD's Common Reporting Standard for the automatic sharing of tax information<sup>3</sup>. In addition, it is signatory to 36 bilateral agreements and arrangements on the exchange of tax information. In addition, it has entered into various treaties and implemented legislation to meet with internationally accepted anti-money laundering and due diligence standards. These advances have been balanced against preserving the privacy of clients wherever possible, and it should be noted that confidentiality of client information is protected under applicable common law and local statutes.

The political stability, highly developed legal system and infrastructure and its position as an international financial centre make the Cayman Islands the jurisdiction of choice for registration of aircraft.

<sup>1</sup> *Cayman Economy at a Glance 2016*

<https://www.eso.ky/caymaneconomyataglance.html>

<sup>2</sup> [https://www.moody.com/research/Moodys-Assigns-Aa3-local-currency-rating-to-the-Cayman-Islands--PR\\_369637](https://www.moody.com/research/Moodys-Assigns-Aa3-local-currency-rating-to-the-Cayman-Islands--PR_369637)

<sup>3</sup>

[http://tia.gov.ky/pdf/International\\_Exchange\\_of\\_Information\\_Instruments.pdf](http://tia.gov.ky/pdf/International_Exchange_of_Information_Instruments.pdf)

## 2. The Legal System

The Cayman Islands is renowned as a leading international financial centre. This status has been achieved in part through its tax neutral environment within which a highly developed legal system based on English common law flourishes, with the Privy Council in England being the jurisdiction's final court of appeal, thus affording certainty and confidence to both owners and financiers of aircraft. A professional infrastructure complements the legal system, servicing and supporting a wide range of sophisticated transactions which attracts many of the world's leading financial institutions to use its corporate structures to undertake international financing transactions, amongst other features. The Cayman Islands has thus become a preferred jurisdiction for the incorporation of special purpose vehicles to own aircraft, and Cayman Islands special purpose vehicles are often used as owning entities on international asset financing transactions.

The laws of the Cayman Islands are derived from three sources: (i) statutes approved by the elected Legislative Assembly and assented to by the Governor; (ii) statutory instruments passed by the UK Parliament and extended by Order in Council to the Cayman Islands; and (iii) English common law (which is of persuasive authority).

The Air Navigation (Overseas Territories) Order 2013 (as amended) (the "**AN(OT)O**") is the primary legislation applicable to aviation in the Cayman Islands. The AN(OT)O is a UK statutory instrument which has been extended to all British Overseas Territories (including the Cayman Islands). It contains regulations relating to operational and airworthiness requirements for locally registered aircraft.

The Overseas Territories Aviation Requirements ("**OTARs**") supplement the provisions of the AN(OT)O. The OTARs are not themselves law, although some of the requirements contained in the OTARs specifically include provisions of the AN(OT)O. Thus, failure to comply with the OTARs may result in adverse consequences such as a breach of the AN(OT)O. A number of local statutes (many of which mirror the applicable legislation in the UK) have also been

enacted, amongst other matters, to regulate aircraft registrations, air safety and mortgage registrations in the Cayman Islands.

The Civil Aviation Authority of the Cayman Islands ("**CAACI**") is the regulatory authority which is mandated by law to, *inter alia*, ensure that civil aviation in the Cayman Islands conforms to the standards and recommended practices of the International Civil Aviation Organization (ICAO) established by the Convention on International Civil Aviation, signed in Chicago on 7 December 1944.

Although legal proceedings in the Cayman Islands relating to locally registered aircraft and aircraft mortgages are not common, it bears noting that the Cayman Islands courts are able to deal competently with claims which may arise, such as the enforcement of aircraft mortgages, the detention of a mortgaged aircraft or the detention of other property of a mortgagor situated within the Cayman Islands (in lieu of the detention of an aircraft).

The British based system of registration for both aircraft and aircraft mortgages within a stable legal system based on English common law is another compelling reason to choose to register an aircraft and any associated aircraft mortgage in the Cayman Islands. This system of registration thus appeals to aircraft owners and financiers alike.

## 3. The Civil Aviation Authority of the Cayman Islands

Established in 1987, the CAACI is a statutory body with the powers and duties set out in the Civil Aviation Authority Law (2015 Revision) and exercised on its behalf by its Director General. The CAACI fulfils its duties effectively through a developed structure and a team of highly qualified professionals. Regulation and, as the case may be, licensing of aerodromes, aviation personnel and aircraft maintenance organisations all fall under its responsibility, as do conducting aircraft airworthiness surveys, providing commercial and economic regulation and maintenance of the Cayman Islands Aircraft Register (the "**Aircraft Register**").

The CAACI has a subsidiary office in London, UK, servicing Europe and the Middle East. The Cayman Islands office acts as head office servicing all other jurisdictions. Whilst the CAACI maintains conventional business hours of 8:30 AM to 5:00 PM (GMT -5), Monday to Friday (save for local public holidays), it should be noted that the CAACI is willing to accommodate transactions which take place outside regular business hours where this may be necessary.

It is also important to note that the technical experts in the Flight Operations and Airworthiness sections of the CAACI are available outside of regular business hours to provide guidance to operators. In addition, the CAACI is available on a 24/7 basis to approve extensions or approvals that are required for Aircraft on Ground (AOG) situations.

The average time taken to effect an aircraft registration is between six to eight weeks and an aircraft mortgage registration can be effected within 24 hours. The CAACI has proven itself to be one of the most attentive of aviation authorities by routinely working closely with applicants to assess and complete the registration requirements in order to meet established deadlines. In addition, wherever possible the CAACI deploys its highly qualified airworthiness surveyors to inspect aircraft at their home bases in order to fulfil the initial and annual registration requirements, thus preventing the need to reposition the aircraft.

The CAACI is also able to issue Letters of Authorisation (LOA) for operational and airworthiness approvals within a few days, as compared with other regulatory authorities where such approvals can take weeks or months.

The CAACI has developed a state-of-the-art electronic storage system and disaster recovery plan thereby ensuring continuity of the CAACI's services and the ability to recover in the event of natural disasters.

The CAACI provides an electronic document management system 'VP-C Online' which electronically manages all aircraft registration applications, certificates and authorisations. The

system makes it easier for CAACI clients to apply for the various approvals that are required for both initial aircraft registrations and for continuing airworthiness requirements, including the renewal of documents. It is designed to streamline processes within the CAACI and allows licensed users access to their documents around the clock.

Although it demands the highest standards from its owners and operators, the CAACI holds itself to similarly high standards by offering responsive and efficient service. This has allowed it to enjoy a place of respect and recognition within the aviation industry internationally.

#### **4. The Registration Procedure and Continuing Requirements**

As previously mentioned, the AN(OT)O governs the operational and airworthiness requirements pursuant to which aircraft are registered on the Aircraft Register.

The CAACI's Aircraft Register is primarily a 'private register' which means that, with the exception of airlines servicing the public of the Cayman Islands on a regular basis, the Aircraft Register is not open for commercial aircraft activity. Notwithstanding that the AN(OT)O permits registration of aircraft in various commercial and non-commercial categories, if an aircraft is to be operated otherwise than in the 'private' category registration will not generally be permitted. However, the CAACI will, in certain circumstances, permit registration and / or operation of an aircraft in categories other than the 'private' category where the application merits this. Such applications will be assessed on a case by case basis by the CAACI.

The AN(OT)O, as amended by the Air Navigation (Overseas Territories) Amendment Order 2014 (the relevant sections of which came into effect on 15 January 2015), sets out the category of persons who are eligible to be registered on the Aircraft Register as follows:

- (a) The Crown in right of Her Majesty's Government in the UK or in right of the Government of the Territory,

## Article

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- (b) UK nationals;
- (c) Commonwealth citizens;
- (d) Nationals of any European Economic Area State;
- (e) Bodies incorporated in any part of the Commonwealth and which have 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.

Either the owner of the aircraft or a charterer by demise of the aircraft may be registered on the Aircraft Register. In many cases, a Cayman Islands exempted company will be established as a special purpose vehicle in order to meet the qualified applicant requirements. The CAACI has determined that neither the directors nor the shareholders need to be resident in the Cayman Islands in order for the Cayman Islands company to qualify.

The procedure to establish a Cayman Islands exempted company is straightforward and can be effected quickly with the incorporation occurring on the day the registration documents are filed with the Cayman Islands Registrar of Companies. The incorporation costs are normally under US\$1250, with annual government fees as low as US\$853.66.

In terms of the aircraft which may be registered, it should be noted that the CAACI will not normally consider applications for piston powered aircraft below 5,700kg take-off weight that are based outside of the Cayman Islands. The CAACI will however consider applications for registration of helicopters below that weight if the relevant helicopter is based on board a Cayman Islands registered vessel.

The CAACI procedures are not complicated and

its fees are competitive. It is however the CAACI's responsiveness, willingness to assist and technical expertise which have afforded it the excellent reputation it enjoys internationally today.

### 5. Ease of Operation into US Airspace

An important point to note is that operators of Cayman registered aircraft are exempt from certain TSA Waiver Authorization requirements. This allows greater flexibility to operators who wish to operate flights within the US or over US airspace on short notice. If an operator did have to obtain a TSA Waiver Authorization to perform a flight to or over US airspace (13 Nautical Miles from US landmass) the process normally requires applications to be made five to seven business days in advance of flights as the request must be processed by multiple agencies and offices.

As failure to obtain the requisite TSA Waiver Authorization could result in the flight being diverted, grounded or cancelled, this is another reason that the Cayman Islands distinguishes itself as the jurisdiction of choice for aircraft registrations.

### 6. Protection of Third Party Interests

The UK government has ratified the Convention on International Interests in Mobile Equipment and the Protocol (the "**Protocol**") to the Convention on International Interests in Mobile Equipment on matters specific to aircraft equipment (which was concluded at Cape Town, South Africa on 16 November 2001) (together, the "**Cape Town Convention**") with UNIDROIT on 27 July 2015. The Cape Town Convention entered into force for the UK, and by extension the Cayman Islands, on 1 November 2015.

The Cayman Islands government passed enabling legislation entitling the Cayman Islands to international recognition as a territorial unit of a contracting state to the Cape Town Convention and to recognition of the declarations deposited by the UK government on behalf of the Cayman Islands government with the International Institute for the Unification of Private Law acting as depository pursuant to

## Article

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Article 62(1) of the Cape Town Convention and Article XXXVII(1) of the Protocol – UNIDROIT .

The extension of the Convention to the Cayman Islands does not eliminate the existing local regime of security interest registration as there will be circumstances where the Convention will not apply (for example, where the owner of an aircraft is located in a non-contracting state or the aircraft does not meet the weight qualifications to fall within the Convention). Indeed, some financiers opt for the protections available under the dual mortgage registration regime and make filings relating to mortgages under the Cape Town Convention as well as register the mortgages in the mortgage register maintained by the CAACI.

In circumstances where the Convention does not apply, a party taking a mortgage over an aircraft registered or to be registered on the Aircraft Register is able to register that mortgage with the CAACI on its mortgage register. The AN(OT)O provides that the registered mortgagee must provide its consent to removal of the relevant aircraft from the Aircraft Register before such removal can take place. It further provides that 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 an entry which is made therein. The procedure to effect registration of a mortgage is straightforward, requiring only the consent and direction of the mortgagee. 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 Cayman Islands law-governed and there is no 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 may be up to US\$610) having to be paid on the original

mortgage document.

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, similar to the mortgage registration form and preserves the priority of the mortgage for fourteen calendar days.

A registered mortgage is given statutory priority over subsequently registered mortgages and unregistered mortgages. The priority of a 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. Note, however, that: (i) certain possessory liens; and (ii) a previously registered mortgage or mortgage created prior to 9 October 1979 has priority over a subsequently registered mortgage.

The mortgages register is a public register which is capable of being searched by third parties for a nominal fee. Registration of a mortgage does not constitute evidence of its validity, but it does constitute express notice of all facts appearing on the mortgages register.

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 in the mortgages register. Notification of the discharge will be provided to the mortgagor and the mortgagee by the CAACI.

The CAACI also provides comfort in the case of an aircraft which is registered by the operator in its capacity as a charterer by demise. The CAACI will, if requested, provide the lessor / owner of the aircraft with a 'comfort letter' whereby the CAACI acknowledges the ownership and leasing structure of the aircraft

## Article

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and confirms that it will not remove the aircraft from the Aircraft Register without receiving written authorisation from the lessor / owner. The CAACI will place a notation on the Aircraft Register of any such undertaking provided and of the ownership / leasing structure.

The CAACI mortgage registration procedures are straightforward yet afford financiers with certainty of security, making the Cayman Islands the jurisdiction of choice for many financiers.

### 7. Cayman Maritime & Aviation City

The Cayman Enterprise City's ("**CEC**") special economic zone is designed to promote the economic and efficient establishment of a physical presence for businesses in specific industries in the Cayman Islands.

CEC has introduced the Cayman Maritime & Aviation City which provides, amongst other services, for companies seeking to obtain a Cayman Islands air operator's certificate ("**AOC**") with an efficient solution for setting up a principal place of business in the Cayman Islands.

More generally, the aviation services aspect of Cayman Maritime & Aviation City is aimed at assisting aviation services businesses, such as those involved in commercial air transport operations; aerospace-related activities; manufacturing, logistics planning and aircraft management; management consulting and other specialised services to the aviation and aerospace development sector to set up businesses in the Cayman Islands.

In order to set up in the special economic zone, an applicant will need to establish a Cayman Islands special economic zone company.

Once the company has been formed, an application is made to the Special Economic Zones Authority, which is a 'one stop shop' licensing authority that will consider applications for and grant approvals for the trade certificate (equivalent of business licence), the employment certificates for non-Caymanian employees (equivalent of work permit) and other approvals required to operate locally.

There are many advantages to setting up in the Cayman Maritime & Aviation City. Some of these include:

- (a) No corporate, income, sales or capital gains or payroll tax payable by the company or employees in the Cayman Islands;
- (b) 100% foreign ownership permitted;
- (c) A three to four week fast-track business licensing regime;
- (d) Single fee for operation of business within the special economic zone annually, which includes rent, licensing fees and work permit fees;
- (e) 'One stop shop' administration services;
- (f) Easy access and direct flights to the US, Canada and London;
- (g) CEC can obtain renewable five year work / residency visas for Cayman-based staff within five working days, irrespective of their country of origin or position they will hold within the company;
- (h) There is no maximum limit on the number of work permits a company is allowed; and
- (i) A company that is set up within the Cayman Maritime & Aviation City can hire local employees for the Cayman office.

The Cayman Maritime & Aviation City offers an exceptional opportunity for businesses in the aviation sector to leverage the outstanding features of the Cayman Islands business environment, particularly where a physical presence is required, for example in obtaining an AOC. This is yet another reason the Cayman Islands is the preeminent jurisdiction for aircraft registration.

## Article

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### Summary

The stability of the Cayman Islands, its developed English-based legal system and supporting infrastructure, the efficiency, professionalism and accessibility of the CAACI, the exemption of Cayman registered aircraft from certain TSA Waiver Authorization requirements, the ease with which an aircraft and aircraft mortgage can be registered and the resulting security for a mortgagee who records his / her security interest locally and the ability to leverage the efficiencies of setting up a business in the Cayman Maritime & Aviation City to amongst other matters obtain an AOC, are all very persuasive reasons to register aircraft in the Cayman Islands.

This article is not intended to provide an exhaustive summary of the registration and deregistration requirements and procedures for aircraft in the Cayman Islands or mortgages over them, nor does it purport to render legal advice.

If you would like further information, please get in touch with your usual Maples and Calder contact or:

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