

Trends and Developments - Aviation Finance & Leasing 2022: Cayman Islands

UPDATE

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Introduction

The Cayman Islands (**Cayman**) is widely recognised as having a world-class aircraft registry with robust legal and regulatory regimes that adhere to international standards. The Civil Aviation Authority of the Cayman Islands (**CAACI**) is the statutory body responsible for aviation regulatory oversight in Cayman and maintaining the Cayman aircraft register.

In this article, we take a look at the trends and developments in the Cayman aircraft industry since the COVID-19 pandemic, which has drastically impacted the global aviation industry.

Cayman Islands Register – Growth in Popularity

There has been an upward trend over the past five years in the number of aircraft being registered in Cayman. This number grew from 251 Cayman registered aircraft in 2019 to 313 aircraft as at 30 April 2022. Indeed in 2021 alone, Cayman registered 103 new aircraft registrations, compared to just 40 in 2019. This impressive growth demonstrates the popularity of Cayman as an aircraft registry of choice for aircraft owners.

Cayman has long been recognised as a leading jurisdiction for cross-border aircraft financing and registration, with a stable “neutral flag” jurisdiction while boasting a highly developed legal and regulatory system committed to compliance with anti-money laundering, tax information and financial regulation.

CAACI has a reputation of being one of the most highly respected, user-friendly and recognised aircraft registries across the aviation industry, providing high-quality support through a mission of “safety first” with a dedicated team of professionals for over 30 years.

Change in Ownership of Cayman Registered Aircraft

Since the COVID-19 pandemic began, there has been a surge in private jet ownership and private flyers, as businesses and travellers respond to concerns with commercial flights – most notably health safety, privacy and efficiency. Indeed, the type of private jet customer has diversified over the past two years, from traditional business travellers to families and pets.

We have observed notable activity in change of ownership of Cayman registered aircraft, as sellers dispose of aircraft to meet their liquidity needs, while first-time buyers are able to come onto the market to acquire second-hand aircraft with competitive pricing. Cayman continues to be a registration of choice for many first time buyers, with CAACI’s pragmatic and service-driven approach throughout the pandemic.

Since the onset of the pandemic, we have also noticed an increase in the popularity of PDP financing for private jets, as buyers look to free up cash, financiers look for alternative opportunities and manufacturers seek a valuable source of income prior to completion of the manufacturing of the aircraft.

The CAACI's bespoke electronic document management system – "VP-C Online" – has been an invaluable tool for changes in ownership of Cayman registered aircraft, particularly with the ongoing restrictions of movement caused by the Covid-19 pandemic. This system enables CAACI to electronically manage all aircraft registration applications, certificates and authorisations. This user-friendly and streamlined system has made it easier for CAACI clients to apply for various approvals and allows licensed users access to their aircraft documents at anytime.

Cayman as a Temporary Registry for Transition Aircraft

As the aviation industry has been trying to manage its way through the pandemic, we have observed an increase in the number of temporary aircraft registrations with CAACI.

There are various reasons why an aircraft may require temporary registration. Since the pandemic, one of the main reasons seems to be the result of aircraft repossessions. This has been the case particularly, in respect of leasing arrangements, which have been affected by the pandemic, with lessors receiving requests for relief in different forms from lessees who have fallen behind on their rental obligations, including rent deferral arrangements and, in some cases, the aircraft being returned to the lessor prior to the scheduled lease expiry date. In the case of the latter, lessors have been putting their aircraft on short-term temporary aircraft registries, such as CAACI, during that interim period between finding a new operator or selling the aircraft to a new owner.

Whilst CAACI has seen an upward trend in aircraft registrations over the past five years, the biggest net growth occurred in 2020 during the height of the pandemic when aircraft all over the world were grounded. CAACI had just launched its lease transitioning business in 2019, in which aircraft could be maintained under strict oversight guidelines while parked awaiting a new lessor.

The growth rate for transition aircraft on the Cayman aircraft register for the year 1 January 2021 to 31 December 2021 was 95%. Transition aircraft made up approximately 27% of the total aircraft on the Cayman aircraft register at 30 April 2022.

CAACI has been a welcome solution to lessors and financiers looking to park title to aircraft during repossessions. CAACI has risen to the demands of lessors and offers lessors more than just a place to park an aircraft. It offers a quick and efficient registration service that is cost-competitive. However, the focus is not just on the registration but on the deregistration activity. The deregistration process is also smooth and efficient, and having seamless transitions on and off the register is crucial to lessors and financiers alike. In addition, from the outset of aircraft registration, CAACI administers aviation regulation which takes into account the requirements under EASA, US FFA and Transport Canada Civil Aviation. This means that at the end of the transition period, the aircraft can efficiently return to service as CAACI is able to manage aircraft certification acceptable to those other regulatory authorities (and other authorities which have codes based on EASA, US FFA and Transport Canada Civil Aviation).

CAACI will not let the aircraft remain parked without effective management and will work proactively with the lessor or the financier to ensure that the aircraft is maintained and its certificates kept up to date thereby preserving the value of the asset. As a result, in the current climate, CAACI has successfully relocated many aircraft from various jurisdictions and is constantly adjusting its approach in managing transition aircraft.

Air Operator Certificates (AOCs) and the Cayman Islands' Special Economic Zone (SEZ)

In May 2019, CAACI issued the first Air Operator Certificate (AOC) for fixed wing commercial operations in the SEZ to Cayman Bellawings, an affiliate of Hong Kong Bellawings business jet management company. This marked a very exciting milestone for CAACI and Cayman Enterprise City (CEC), allowing internationally recognised aircraft operators and management companies, such as Bellawings, to operate commercially under Cayman jurisdiction.

Since the first AOC to Bellawings in 2019, CAACI has issued four more AOCs in the SEZ to Cayman special economic zone companies, including to global aviation services companies such as Phenix Jet, Gama Aviation, Global Wings and TAG Aviation. The total number of offshore AOCs is now at five as at May 2022.

The CEC is a special economic zone in Cayman designed to promote the easy and cost-efficient establishment of a genuine physical presence in Cayman for businesses in specific industries. The aviation services of the Cayman Maritime & Aviation City are focused on assisting aviation service businesses, such

as those involved in commercial air transport operations, manufacturing, aerospace-related activities, aircraft management, consulting and other specialised services to the aviation and aerospace development sector, to set up businesses in Cayman.

The growth and development of the Cayman aviation industry, together with the exceptional opportunities offered by the Cayman Maritime & Aviation City, will continue to attract businesses in the aviation sector to establish a physical presence in Cayman.

Aircraft Mortgage Enforcement

The COVID-19 pandemic has drastically impacted the global aviation industry, and inevitably, liquidity issues, travel restrictions and pressure on asset values amid financial market volatility have triggered more breaches across facility agreements than we would typically see. In our experience, while relationship-driven lenders have generally seemed willing (under the circumstances) to explore creative solutions to such defaults, others have resorted to enforcing their security package following an event of default, including the aircraft mortgage.

It is not uncommon to have a foreign law (e.g., English law or New York law) governed aircraft mortgage over a Cayman registered aircraft, and Cayman law would generally speaking, recognise the validity of such a security interest (assuming it creates a valid security interest as a matter of that foreign law). The most common method by which a mortgagee seeks to enforce an aircraft mortgage is to exercise the self-help remedy of repossession, usually with the end goal of selling the aircraft to recover outstanding amounts owed to the lender.

Taking physical possession of an aircraft is permitted under Cayman law. CAACI's permission is not required to pursue such remedy of repossession in an enforcement scenario, and CAACI has solid procedures in place to recognise aircraft mortgages registered with CAACI, together with any ancillary documents, such as an irrevocable deregistration and export request authorisation and deregistration power of attorney (each of which can also be registered with CAACI).

The Convention on International Interests in Mobile Equipment and the Protocol on Matters Specific to Aircraft Finance (the Cape Town Convention) has been extended to Cayman. In exercising enforcement rights, a lender can exercise standard default remedies under security agreements to take possession or control of the aircraft and (among other things) to sell and procure the deregistration, export and physical transfer of the aircraft from the territory in which it is located. These remedies are available under the Cape Town Convention (and under Cayman law) without a court order.

The aircraft mortgage enforcement and deregistration process can be carried out relatively quickly from a Cayman perspective, and the CAACI team have continued to be flexible, commercial and co-operative, especially throughout the prevailing global crisis where normal procedures and practices may not have been practicable.

Conclusion

Although the COVID-19 pandemic has drastically impacted the global aviation industry, Cayman has continued to be an aircraft registry of choice for aircraft owners – whether for efficient changes in ownership with CAACI's bespoke electronic document management system or to serve as a short-term temporary aircraft registry with CAACI's quick, efficient and cost-competitive registration service and smooth and efficient deregistration process, or the exciting ability to obtain an AOC in the SEZ or CAACI's relatively quick and smooth enforcement and deregistration process.

CAACI has remained flexible, commercial and pragmatic throughout the pandemic, and we believe it will continue to go from strength to strength as a world-class aircraft registry.

Our Asset Finance Team

Mourant has an international reputation for having one of the leading offshore asset finance practices, advising on the laws of the British Virgin Islands, Cayman Islands, Jersey and Guernsey. We act for a diverse set of arrangers, banks, non-bank lenders and borrowers on asset based lending transactions, including aircraft finance and shipping finance. Our team has a deep knowledge and experience across a broad range of assets advising across the lifecycle of transactions from structuring and negotiation through to restructurings and insolvency.

We specialise in advising on the financing and leasing of commercial aircraft, corporate jets and other related assets, including engines and helicopters. Our team have advised the world's leading financial institutions, airlines, operating lessors and private equity investors on a variety of structures, including debt financing, pre-delivery payment financing, cross border leasing, operating leasing, sale and leasebacks, export-import and export credit financings. We offer a 'one stop shop' service, providing clients with a single point of contact for access to an integrated suite of legal and global corporate and SPV management services for the transaction, including registered office, professional directors, share trustee and Cape Town Convention services.

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