

New Development concerning Registration of a Russian Owned Aircraft in the United States

By: Derek A. Bloom
Atlantic Aviation Legal Services, LLC
Mobile: +1-202-230-9443
Email: DerekBloom@AtlanticAviationLegal.com

June 20, 2022

Owners of aircraft who desire to sell their aircraft commonly consider registering their aircraft in the United States prior to a planned sale. Re-registration of an aircraft in the U.S. facilitates the aircraft's sale and maximizes its value by making it easier to conduct the closing of the sale of the aircraft.

The question of how best to register an aircraft in the US depends on a couple of factors. As background, the legislative framework is that the relevant U.S. federal law on aircraft registration provides:

An aircraft may be registered [in the U.S.] ... only when the aircraft is—

- (1) not registered under the laws of a foreign country and is owned by—
 - (A) a citizen of the United States;
 - (B) an individual citizen of a foreign country lawfully admitted for permanent residence in the United States; or
 - (C) a corporation not a citizen of the United States when the corporation is organized and doing business under the laws of the United States or a State, and the aircraft is based and primarily used in the United States; ... See:
<https://www.law.cornell.edu/uscode/text/49/44102>

In order for a non-U.S. citizen to register an aircraft in the U.S., the most common practice has been that title to the aircraft is registered in the name of a U.S. trust company. The trust company qualifies as a citizen of the U.S. that may register aircraft here in the U.S. These are called non-citizen trusts, and have been a conventional way for a Russian citizen to register an aircraft in the U.S.

However, a new rule came into effect as of June 7, 2022 as part of broad sanctions on Russia. It is now prohibited for a U.S. lawyer or trust company to form a trust or corporation for the benefit of a Russian who is in Russia.

ATLANTIC AVIATION LEGAL SERVICES, LLC
1629 K Street, N.W., Suite 300, Washington, D.C. 20006 USA

See: https://home.treasury.gov/system/files/126/determination_05082022_eo14024.pdf and <https://home.treasury.gov/news/press-releases/jy0771> and <https://home.treasury.gov/policy-issues/financial-sanctions/faqs/added/2022-05-08> (Q&A 1038, 1037 and 1036).

The new rule raises the question whether an aircraft is owned by a Russian person who is in Russia? If yes, then a non-citizen trust may most likely not be formed to hold title to the aircraft and register it in the U.S. since June 7.

However, in this case, it may be possible to submit a request to the relevant U.S. federal agency, the Office of Foreign Assets Control (OFAC), a branch of the Department of Commerce, and request a clarification whether a waiver of the rule may be permitted for the purpose of a Russian person who is not under sanctions registering an aircraft in the U.S. pursuant to use of a non-citizen trust. There appear to be good reasons why registration of an aircraft in the U.S. should continue to be allowed if it is incident to the sale of the aircraft.

Or (a better case), is the aircraft owned by a Russian person who is not in Russia, i.e., has a permanent residency or citizenship outside of Russia and, in fact, resides outside of Russia? If yes, then it appears that the new rule that came into effect on June 7 may not apply, and a non-citizen trust may be formed to hold title to the aircraft in the U.S., assuming also the Russian beneficial owner is not under sanctions.

If a Russian person who is in Russia owns an aircraft that is to be sold, then Section 44102(a)(1)(C) above still may apply. Title to the aircraft to be sold may be registered in the U.S. by a corporation formed in the U.S. if the aircraft is to be based and primarily used in the United States prior to its resale.

For example, I was recently involved in the sale of a Russian owned aircraft beneficially owned by a Russian citizen who was not under sanctions. The aircraft was grounded in Switzerland due to EU sanctions. The aircraft was bought by a U.S. corporation that belongs to a broker and was resold. Upon its purchase, the aircraft was re-registered in the U.S. and then was sold as a U.S. registered aircraft.

If a Russian seller does not have a U.S. corporation to use for such a purpose, or a broker with such a U.S. corporation, then there are certain other existing corporations in the U.S. that may be used for this purpose. An aircraft may be sold to an existing corporation, for example formed under Delaware law, and the intermediary corporation should be registered for an exemption from sales tax as a broker or dealer of aircraft.

The U.S. corporation could issue a promissory note as part or all of the consideration, together with an aircraft security agreement, and an enforceable lien on the aircraft when title to the aircraft is transferred to and held by the U.S. corporation, The aircraft may be registered in the U.S. upon its purchase by this corporation. Upon the resale of the aircraft, title would be conveyed by this U.S. corporation to the ultimate buyer. The promissory note would be paid

ATLANTIC AVIATION LEGAL SERVICES, LLC
1629 K Street, N.W., Suite 300, Washington, D.C. 20006 USA

off with the cash proceeds. The resale and the payoff of the promissory note would happen in quick succession during a closing conducted by one of the major escrow and title service companies.

In sum, Russian persons who desire to sell an aircraft may take steps to re-register the aircraft in the U.S. prior to its sale, and to remove the aircraft from the European Union, in order to access the largest market in the world for used aircraft and to obtain the best possible price for the aircraft.