

**Structuring the Purchase of a Russian-Owned Business Aircraft  
in the Current Circumstances**

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**Introduction**

For the year and a quarter since the start of the Ukraine Special Military Operation, many Russian aircraft owners have taken a wait and see attitude. They waited to come to a personal opinion whether they believe things are going to get better and they could resume using their aircraft in Europe. Or are things likely to get worse or stay the same? In these cases, their aircraft would remain grounded and denied parts and services by the original equipment manufacturers and EU maintenance facilities.

Also, since the start of the Ukraine Special Military Operation, EU airspace has been closed for any aircraft under the control of a Russian national. In the U.S., the denial of use of airspace has been narrower, limited to Russian nationals who are under sanctions, not all Russian citizens.

Now in the spring of 2023, it appears more Russian owners who have had their aircraft grounded since the start of the Ukraine Special Military Operation are coming to the conclusion to sell the aircraft. Grounded aircraft that are not receiving parts and services are rapidly declining in their resale value.

If an aircraft previously valued at \$20 million may now only be resold at a 20% discount from the value of the aircraft if it were in an airworthy condition a year ago, as appears to be the market reality, then the aircraft has lost \$4 million of resale value in a year, which is a loss of value of \$10,000 - \$11,000 per day, on average.

The rate of loss in resale value of grounded aircraft will accelerate going forward because the cost of long-range aircraft that are airworthy and marketable is declining in 2023 as compared to 2022, due to factors unrelated to Russia, such as the reduction of accelerated depreciation for aircraft in the United States in 2023 which negatively affects aircraft value globally. More aircraft elsewhere in the world are coming to the market for sale, with price reductions. And the cost of restoring a grounded aircraft to an airworthy condition will rise substantially as aircraft remain grounded for a second year, and possibly a third year. Accordingly, there is some urgency for Russian owners of aircraft, who can choose to sell

their aircraft because they are not under sanctions, to take the decision to sell their aircraft and reduce their growing losses in their aircraft's resale value. Waiting to see if things will get better is very costly, and there is no indication that things will get better for Russian owners of aircraft in the foreseeable future.

The following is an answer to the question how to structure a sale of a business aircraft in the current circumstances. Brokers are prepared to purchase aircraft from Russian nationals who are not under sanctions in the following type of transaction.

### **1. Initial Due Diligence Investigation**

An initial due diligence investigation is required to determine whether a buyer can buy a particular aircraft from a particular Seller. The data bases need to be searched of the United States and the European Union and Canada where all persons and legal entities and specific aircraft that are subject to sanctions are listed to determine that a selling legal entity and its ultimate beneficial owner are not subject to sanctions in any of these jurisdictions in order for a broker to make a go or no go decision. See:

- (1) The U.S. Office of Foreign Assets Control (OFAC) maintains a searchable "Sanctions List Search"
- (2) The EU list of persons subject to European Union sanctions.
- (3) The Canadian list of persons subject to sanctions by Canada.

### **2. Review Public Announcements by the OEM**

Bombardier, for example, is still imposing a refusal to provide parts and services to any aircraft that is controlled by a Russian national, according to its Bombardier Advisory Wire. The Bombardier position is consistent with an EU regulatory position that an aircraft controlled by a Russian national may not be operated in EU airspace, and no repair station in the EU may provide parts and services.

In the recent case, this was the issue - Bombardier would not provide parts and services for the Aircraft due to its UBO being a Russian national, and not because Bombardier believes the UBO to be subject to sanctions – because the UBO was, as of the date of that due diligence investigation, not subject to sanctions.

### **3. Discuss the Buyer's Willingness to Buy the Aircraft in the Face of Uncertainty whether Parts and Services Will Be Restored**

Initially, a Buyer's position may be that an aircraft purchase agreement (an APA) must make it a condition to closing that the Buyer must have received from Bombardier, prior to closing, confirmation that, if the Buyer purchases the aircraft while it is grounded in Europe, Turkey or the Middle East or elsewhere, Bombardier will resume providing parts and

services for the Aircraft, allowing the Aircraft to be returned to service and resold by the broker.

It would be too much risk for the Buyer to pay the entire purchase price and purchase the aircraft not knowing for certain that the original equipment manufacturer (the “OEM”) will resume providing parts and services. This risk could lead to an impasse in negotiations.

**4. Discuss the Seller’s Willingness to Sell the Aircraft in the Face of Uncertainty whether Parts and Services Will Be Restored**

The Seller’s initial position is likely to be that a Buyer must pay 100% of the purchase price and take the risk itself whether the Buyer can obtain a restoration of services post-Closing.

The Buyer will initially request that, in exchange for a price reduction to compensate the Buyer for taking the risk of buying the aircraft before the OEM has committed to restore services, the deal should close like any conventional deal. Clear title would be conveyed for a low price. However, this position by a Seller could lead to an impasse in negotiations.

**5. Engage with the OEM**

The OEM’s are willing to help to make a deal go. However, the OEM’s will take no risk of non-compliance with any sanctions regime. Bombardier, as an example, gave our proposed transaction a lot of administrative attention over a couple of days and then advised us what it needs:

Bombardier will perform its due diligence review only once a purchase of an aircraft has been completed by a new owner. After the closing of a purchase, Bombardier will require numerous documents for its KYC investigation:

- Fully completed due diligence questionnaire for Buyer, executed by a duly authorized signatory of the company purchasing the aircraft.
- Fully completed end user certificate, executed by a duly authorized signatory of the Buyer
- Passport copies of Buyer’s ultimate beneficial owners (“UBOs”).
- Passport copies of Seller’s UBO(s).
- Fully Completed Buyer certification, executed by the UBO of the Buyer
- Information on Seller:

- Corporate organization chart of Seller showing corporate ownership structure all the way to the UBO(s) prior to sale.
- Corporate organization chart of Buyer showing corporate ownership structure all the way to the new UBO.
- Description of relationship between Buyer and Seller.
- Intended use of the aircraft.
- Aircraft Purchase Agreement.
- Bill of sale.
- The purchase price of the aircraft, as well as evidence of the transfer of funds
- Aircraft registration certificate in the name of the Buyer.
- Complete flight logs since January 2022.
- Complete maintenance records since January 2022.

## **6. Negotiations between Buyer and Seller to Divide the Business Risks**

To make a deal go, work toward:

Payment of part of the purchase price in exchange for title.

Provision for a holdback of the balance of the purchase price until after the OEM has agreed to restore services

A detailed Escrow Agreement

Detailed Certificates from the Seller and from its UBO presenting the facts needed for presentation to the OEM

An agreed form of Post-Closing Application to the OEM

Provisions for rescission of the deal if the OEM reaches a negative conclusion

Provisions for continued operation and management of the aircraft in Europe while the OEM review is underway after title transfer

Provisions for insurance of the aircraft in Europe while the OEM review is underway, after title transfer

Provisions for registration of the aircraft in the same European jurisdiction in the Buyer's name while the OEM is reviewing the transaction

Provisions for deregistration and re-registration in the US if the OEM reaches a positive conclusion

#### **7. Negotiations with the Buyer's Bank**

The Buyer's bank will have its own due diligence questions, including an initial desire for the Seller to agree to a broad due diligence investigation and sign a waiver of any recourse for damage caused to the Seller by any inquiries the bank may make.

What is the bank's willingness to provide full funding before the OEM reaches a positive conclusion? When can a prospective international interest be filed in the International Registry? When can a security interest be filed in the FAA Registry considering the Seller will not allow any liens until it has been paid in full?

#### **8. Negotiations with the Escrow Company**

The escrow company wants irrevocable instructions to send the holdback amount to the Seller and for the purchaser to have no rights to instruct the escrow company. The escrow company does not want to get caught in a dispute between the Buyer and the Seller; yet the Escrow Company's risk aversion may not affect the fine points in the division of risk between the Buyer and the Seller

#### **9. Draft the Transaction Documents and Get Them Signed**

Once the transaction documents are drafted and agreed, getting them signed is the easy part. Then, the transaction must be presented by the Buyer to the OEM. Many transactions have passed this test and been closed successfully.