



Tips for Importing a Business Jet

A Guide to the US Importation of Foreign-Registered Business Aircraft

(Part 3 of 3).

US importations involve special considerations, and it is vital that a Buyer coordinate the aircraft export, import and closing procedures to properly conclude the transaction and commence US operations, and even to plan for future sale of the aircraft, advises attorney Jessica L. Pownell.



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Though a Seller will likely not complete the customs export of the aircraft from its foreign country until after closing, it is usually advisable for the parties to review applicable export requirements and begin export preparations prior to closing.

In particular, if the aircraft will be ferried to the US prior to closing, the Seller may need to comply with various outbound customs procedures before departing for the US (such as a touchdown in, or other export flight out of, the exporting country). Thus, the parties may need to consider such requirements when preparing the ferry flight plan.

Similarly, if the parties agree to close in the US, the parties will likely begin US importation procedures prior to closing and upon entry of the aircraft into the US. It is often helpful to hire a customs broker to assist with the importation planning and requisite documentation and inspections. As well, regardless of the selected US delivery location (as discussed further below), the

parties should be aware that the aircraft will likely have to first enter the US and go through US Customs at a specified airport of entry.

Further, if the Buyer desires to assign a particular FAA registration number to the aircraft at closing, so long as the number is available or is reserved in the Buyer's name, the Buyer can file an affidavit with the FAA requesting that such number be assigned to the aircraft upon importation into the US.

Closing Logistics & Final Delivery

The closings of US importations often involve unique factors for which the parties must prepare. For instance, selecting the right delivery location is key, and the best location from a Buyer's perspective is often the US for several reasons other than convenience. For instance, as the jurisdiction in which the aircraft is located at closing may impose taxes on the aircraft sale, the Buyer will want to review the tax law of any potential delivery location.

Many US states have "fly-away" or other sales tax



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exemptions for aircraft transactions (provided the parties comply with the particular law's requirements). Reviewing the tax law of a foreign closing jurisdiction can be more burdensome for a US Buyer, and a Buyer will likely want to obtain a tax opinion from counsel in the foreign closing jurisdiction (and, perhaps, as noted in Part 2, an indemnity from the Seller against any foreign taxes) before agreeing to close in a foreign locale.

As well, in order for the Buyer's crew to remove the aircraft from a foreign delivery location after closing, a US Buyer will need to ensure that it is familiar with foreign operating procedures and may have to obtain additional flight permits and pilot certifications not required for a US delivery (all of which can be potentially difficult and time consuming). Thus, the simplest arrangement for the Buyer is to have the Seller transport the aircraft to, and deliver the aircraft in, the US.

Proper planning of other closing logistics is equally important. Placing all closing documents and funds with a mutually agreeable escrow agent – which agent can file all documentation and release funds at closing in the agreed sequence – minimizes risk for all parties.

Even if, as detailed in Part 1, the Buyer confirmed that the aircraft's title was clear on all applicable registries prior to closing, such registries should be checked again on the day of closing for any new liens. Indeed, in addition to the future title issues posed by outstanding liens on any registry, liens on the current foreign registry can also have an immediate impact, as the foreign registry may reject the Deregistration Application until either all liens are released or all lenders consent to deregistration.

The escrow agent can examine the FAA and International Registries on the closing date, and a Buyer can ask the counsel who provided the foreign registry title searches to similarly confirm clear title on the foreign registries.

As noted in Part 2, a Buyer in a US importation may want to require that the Seller agree to certain closing procedures, including receipt of a Deregistration Confirmation prior to the Buyer's release of funds. Further, when choosing the actual closing time, the parties should consider the time zones involved, the expected deregistration processing time, and any nuances (such as an

informal cut-off time for same-day deregistrations) of the foreign registry.

In particular, as the FAA will not accept the title transfer and registration documents until deregistration is confirmed, the Buyer will likely not want to be in a position where it releases funds and then must wait overnight for the deregistration request to be processed. Thus, it is usually best that the closing occur during the business hours of the foreign and US registries and the escrow agent's bank (and the Seller's bank, if the parties have agreed that Seller's confirmation of receipt of funds is a prerequisite to other closing actions).

Once the closing is complete and the Buyer's Registration Application has been filed with the FAA, a previously-engaged DAR or FAA airworthiness inspector (as detailed in Part 2) will likely be able to promptly issue an FAA Airworthiness Certificate. Then, if the aircraft was delivered in the US, when the Aircraft's registration mark is physically changed to the applicable FAA registration number, the Buyer can commence US operations under the Registration Application's temporary authority; upon receipt from the FAA of either a “fly wire” or the aircraft's permanent Certificate of Registration, the Buyer can also operate internationally.

However, if the aircraft is delivered outside of the US, the Buyer cannot fly under such temporary authority and, as noted above, will likely have to obtain additional permits and certifications before operating the aircraft.

Post-Closing Considerations

A proper importation will likely be important during any future aircraft resale. That is, the new Buyer will likely scrutinize all aircraft documentation, certificates and the chain of title. Thus, the importing Buyer should ensure that all aircraft and importation documents are accurate and complete and that any title or other issues are addressed prior to closing, as correcting such years later can prove challenging.

Although US importations can involve unique issues, with thorough preparation a US Buyer can take advantage of the international aircraft market while also protecting against pitfalls. ■

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