

# A General Overview of FAA Considerations in Corporate Aircraft Transactions

*By Frank L. Polk, Esq., McAfee & Taft*

## **I. Introduction to the Civil Aviation Registry**

### A. The Civil Aviation Registry

1. Location: Mike Monroney Aeronautical Center, 6425 South Denning, Oklahoma City, OK 73169
2. Manager: Julie Stanford, (405) 954-3131

### B. Office of the Assistant Chief Counsel for the Aeronautical Center

1. Joe Standell, (405) 954-3296
2. Counsel to the FAA Registry
3. Location: Aeronautical Center Counsel's Office, AMC7, Room 251 - Headquarters Building, 6500 South MacArthur Boulevard, Oklahoma City, OK 73169

### C. Registry Modernization Project

1. Background - The Drug Interdiction legislation of 1988 set requirements with regard to the modernization of certain procedures pertaining to the registration of aircraft.
2. Principal Components
  - a. New Registry Building. This project was completed several years ago.
  - b. Additional Staffing. This has never happened and, in fact, the number of experienced staff members of the FAA Registry has been reduced over the last few years.
  - c. Rulemaking (Drug Enforcement and Fees)
    - (1) Proposed amendments to Part 47 and 49 of the FAA Regulations. This project has been bogged down for over

ten years. A draft of proposed amendments was published in the Federal Register in the early 1990s and it created such an outcry that the FAA began a project to significantly modify the draft of proposed changes. At some point in the future the FAA will publish the revised draft of proposed amendments to the FAA Regulations and seek new comments from the industry and the general public. Please note that the proposed changes (as originally drafted) called for significant changes in the registration and operation of aircraft and it is important to stay informed on these issues.

(2) Conversion to Computer Systems. For several years now, the FAA has been working on the conversion of all title, lien and encumbrance records regarding aircraft and engines to a computerized optical storage and imaging system. This was initially to be "online" by October, 1996; later revised to October 1997, October 1998, and October 1999. New revision: undetermined date.

(a) "Online" does not necessarily mean online. Initially, "online" means that the computerized records will be available only on computers located in the Public Documents room in Oklahoma City.

(b) If and when the conversion from paper to computer is accomplished, you should plan on additional delays as all parties become adjusted to the new system.

## **II. Registration Requirements and Qualification – Who Can Register an Aircraft with the FAA? 49 U.S.C. §44102(a); FAR Part 47, §47.2)**

A. Aircraft registration is governed by the Act, the Regulations and Convention on International Civil Aviation (61 Stat.a) 1180 and Annex 7 (Aircraft Nationality and Registration Marks)

B. An aircraft must be registered to an applicant who falls in one of the following classes:

1. "citizen of the United States", as defined at 49 U.S.C. §40102(a)(15).
2. "resident alien", as provided at 49 U.S.C. §44102(a)(1)(B).
3. "non-citizen" United States corporation, as provided at 49 U.S.C. §44102(a)(1)(C).

C. Types of registration.

1. If the applicant falls into one of the classes set forth above, they can register the aircraft through any of the following methods:
  - a. Individual citizen of the United States
  - b. Individual resident alien
  - c. Corporation which qualifies as a citizen of the United States
  - d. Corporation which is a non-citizen United States corporation and the aircraft will be based and primarily operated in the United States
  - e. Limited Liability Company which qualifies as a citizen of the United States
  - f. Unincorporated association which qualifies as a citizen of the United States
  - g. Partnership which qualifies as a citizen of the United States
  - h. Co-owners of an aircraft in any combination of the above
  - i. Owner Trustee, who qualifies as a citizen of the United States
2. Each of these categories is examined in detail below.

**III. Registration of Aircraft in the Name of a Citizen of the United States**

A. The definition of "citizen of the United States" is located at 49 U.S.C. §40102(a)(15).

1. "United States" means: the states of the United States, the District of Columbia, and the territories and possessions of the United States, including the territorial sea and the overlying airspace

B. Individual Registration

1. Individual citizen of the United States.
2. If an individual is neither a U.S. citizen nor resident alien, registration can be made in the name of a trustee for the benefit of

the non-citizen. See discussion of Owner Trusts, below (FAR Part 47, Section 47.7)

C. Partnership Registration

1. All partners, general or limited, must be individual U.S. citizens (49 U.S.C. §40102(a)(15); FAR Part 47, §§47.2 and 47.7(d)). Thus, for example, a limited partnership with 1 corporate general partner and 10 limited partners, all of whom otherwise qualify as citizens of the United States, does NOT pass the citizenship test for a partnership and could not register an aircraft in the name of that partnership.
2. All general partners must be listed on the Aircraft Registration Application
3. If there are non-individual partners, the partnership can establish an owner trust under FAR Part 47, §47.7 to hold legal title for the benefit of partnership (see discussion of Owner Trusts, below).

D. Corporate Registration. Registration by a corporate U.S. citizen is described in this section. Registration by a "non-citizen U.S. corporation" is discussed at Part VII at pages 10-11, below.

1. Corporations and unincorporated associations are governed by a three-part citizenship test: formation, management and control.
  - a. Formation: the corporation must be organized and existing under laws of United States or any state, the District of Columbia, or a territory or possession of U.S.
  - b. Management
    - (1) The president must be a U.S. citizen.
    - (2) At least 2/3 of the managing officers must be U.S. citizens.
    - (3) At least 2/3 of the directors must be U.S. citizens.
  - c. Control: at least 75% of the voting interest must be owned or controlled by citizens of the United States (49 U.S.C. §40102(a)(15))
2. Note that a resident alien does not satisfy any of the management and control requirements set forth above. That is, a corporation with a president who is a resident alien

fails the U.S. citizenship test for a corporation.

3. If a corporation fails the citizenship test, it has the following options:
  - (1) establish a voting trust (note that this is only available to corporations who pass all of the citizenship tests, except ownership/control – see the discussion below at Section V)
  - (2) transfer title to the aircraft to an owner trustee, who holds for the benefit of the corporation
  - (3) register as a “non-citizen United States corporation”, if the aircraft will be based and primarily used in the United States (see the discussion below, at Section VII)

#### E. Limited Liability Company Registration.

1. LLCs are governed by the same basic tests applied to corporations (formation, management and control), however there are a few twists unique to LLCs
  - a. Formation: the LLC must be formed in one of the states of the United States.
  - b. Management: At least 2/3 of managers must be citizens of the United States. Management can be reserved to a corporation (as long as it qualifies as a US citizen). Note that if management of the LLC is reserved to traditional officers of the LLC, such as a president, vice president, etc., he or she must be an individual citizen of the U.S.
  - c. Ownership. At least 75% of voting interest must be owned or controlled by citizens of the U.S.
2. The FAA and Aeronautical Center Counsel's office also require the filing of a Statement in Support of Registration, in substantially the form attached hereto. You should also consider submitting the Certificate of Formation and the Operating Agreement.
3. The Aeronautical Center Counsel's office has taken the position that an LLC cannot register an aircraft under Section 47.9 of the Regulations (based and primarily used).
4. The Aeronautical Center Counsel's office has taken the position that the use of voting

trusts as provided in Section 47.8 of the Regulations is not available for use by an LLC to register an aircraft; however, there are circumstances under which an applicant can use a voting trust to qualify an LLC as a “citizen of the United States” (see the discussion on voting trusts, below).

5. Note that a resident alien does not satisfy any of the management and control tests for a limited liability company. That is, an LLC with a manager who is a resident alien fails the U.S. citizenship test for an LLC.

#### F. Co-Owner Registration

1. Two or more U.S. citizens, resident aliens or any combination thereof can register an aircraft, as co-owners.
2. All co-owners must sign Aircraft Registration Applications (FAR 47, §47.13(f))
3. Note that the “co-ownership” should not create a partnership to own the aircraft, unless you satisfy the partnership tests, discussed herein.

### IV. Registration in the Name of an Owner Trustee

- A. Any individual or entity which does not qualify to register an aircraft under the Act (because they fail the citizenship test) can transfer record title to a trustee who is a citizen of the U.S. and who will hold legal title for the benefit of the grantor/trustor/beneficiary. FAR Part 47 §47.7
- B. Who can act as a trustee?
  1. Any individual U.S. citizen or resident alien can act as owner trustee
  2. Any corporation, LLC or partnership can act as an owner trustee as long as it qualifies as a citizen of the U.S.
- C. Who can be a beneficiary?
  1. Anyone. The beneficiary can be a U.S. citizen or non-U.S. citizen. The beneficiary can be an individual, corporation, partnership, limited liability company, co-owners, etc.
  2. If the beneficiary is not a citizen of the U.S., the Trust Agreement must limit the rights of beneficiary to control the trustee. (FAR Part 47, §47.7(c))

D. Documents to be filed at the FAA:

1. Trust Agreement (and any supplements or amendments)
2. Affidavit by the Trustee as to the citizenship of beneficiaries
3. Evidence of ownership (i.e., a Bill of Sale) vesting record legal title in the name of the trustee
4. Aircraft Registration Application in the name of the Trustee (FAR Part 47, §47.7(c)(2))

E. Trust Agreement

1. If the beneficiaries are U.S. citizens there are few requirements
  - (a) The Trust Agreement must create a trust, the trust estate must include the aircraft, and the trust agreement must direct and authorize trustee to acquire title to aircraft and take steps necessary to register aircraft.
2. If non-U.S. citizen beneficiaries:
  - (a) The Trust Agreement must provide:
    - (1) That the non-U.S. citizen will not have more than 25% of the aggregate power to direct or remove the trustee (although they may have more than 25% of the beneficial interest in the trust) (FAR Part 47, §47.7(c)(2)(iii) & (3))
    - (2) That the trustee can be removed only for cause

F. Affidavits

1. If the beneficiaries are U.S. citizens, the affidavit simply has to describe the trust and the aircraft and state that the beneficiary is a citizen of the U.S. (FAR Part 47, §47.7(c)(2)(ii))
2. If beneficiaries are not U.S. citizens, the affidavit must state that the trustee is not aware of any reason, situation, or relationship (involving beneficiaries or other persons who are not U.S. citizens or resident aliens) as a result of which those persons together would have more than 25% of the aggregate power to limit or influence the exercise of the trustee's authority (FAR Part 47, §47.7(c)(2)(iii))

G. Obtain pre-approval from ACC

1. Before the closing, you should submit drafts of the Trust Agreement and Affidavit to Aeronautical Center Counsel's Office for their approval and opinion (approximately 3-5 days before closing)

**V. Use of Voting Trusts to Qualify a Corporation or Limited Liability Company as a U.S. Citizen (FAR Part 47, §47.8)**

A. To use a voting trust, the company must pass all U.S. citizenship tests except the ownership/control test (i.e., that at least 75% of the voting interest of the company must be owned or controlled by citizens of the U.S.)

1. That is, when you are using a voting trust, the corporation will:
  - (a) pass the formation test
  - (b) pass the management test
  - (c) fail the ownership and control test
2. Thus, if you fail the ownership/control test (i.e., if more than 25% voting interest of the corporation is under foreign control), the corporation can place stock in a voting trust with an independent U.S. citizen as voting trustee (stock in control of U.S. citizens must be equal to or greater than 75%)
  - (a) As a result, the corporation now passes the ownership/control test and the corporation now qualifies as a citizen of the United States for registration purposes.

B. The Voting Trustee and Voting Trust Agreement

1. Voting trustee must be a citizen of the U.S.
2. Parties to the voting trust agreement must include: the company, its shareholder(s) and the voting trustee
3. Voting trustee must be "disinterested party"
  - (a) The voting trustee must submit an affidavit that (1) it/he/she is not a past, present or prospective director, officer, attorney, agent, beneficiary, creditor, debtor, supplier or contractor of any party to the voting trust agreement, and (2) the voting trustee is not aware of any reason by which any other party to the voting trust might influence the

totally independent judgment under the voting trust agreement

- C. Documents to be filed at the FAA—
1. Voting trust agreement
  2. Voting trustee affidavit
  3. Evidence of ownership (i.e., a Bill of Sale) establishing record title in the name of the company (not the voting trustee)
  4. Aircraft registration application in the name of the company (not the voting trustee)
- D. Use of voting trusts for LLCs. Apply the same tests as noted above and if the LLC passes all citizenship tests except ownership and control, you may be able to use a voting trust to qualify the LLC or one of its owners to qualify as a “citizen of the United States” (however, if you obtain an opinion from the ACC, it will state that the LLC registration is not pursuant to Section 47.8 of the Regulations.

#### **VI. Aircraft Registration in the Name of a Resident Alien**

- A. Resident alien: an individual citizen of a foreign country lawfully admitted for permanent residence in the U.S. 49 U.S.C. §44102(a)(1)(B).
- B. The resident alien must check the appropriate box on the AC Form 8050-1 Aircraft registration Application and provide the FAA with the “alien registration No.”
- C. As noted above, although a resident alien can register an aircraft in her name personally, she does not qualify as a “citizen of the United States” when counting the presidents, managers, officers, directors and ownership/control in connection with the of application of the citizenship tests for corporations and LLCs.

#### **VII. Registration of an Aircraft by a Non-citizen U.S. Corporation. 49 U.S.C. §44102(a)(1)(C), FAR Part 47, §47.9.**

- A. This registration technique is available to—
1. a corporation organized under the laws of the U.S. or any state, territory, or possession of the U.S. but which fails U.S. citizenship tests with regard to officers, directors and/or control of stock; and
  2. the aircraft must be based and primarily used within the U.S. (60% of flight hours

during each 6-month period following the date of its original registration and during each 6-month period thereafter must be accumulated on flights between two points within the U.S.)

- B. Documents to be filed at the FAA—
- (i) evidence of ownership establishing record title in the name of the company
  - (ii) the Aircraft Registration Application, which must (a) identify the state of incorporation, (b) list the location where aircraft flight records are maintained
  - (iii) a certified copy of the corporation’s Certificate of Incorporation
  - (iv) statement of flight hours showing 60% of flight hours within the U.S. (must be submitted every six months)

#### **VIII. Current Issues at the FAA Civil Aircraft Registry**

- A. Dual Registration of Aircraft (a/k/a temporary registration, a/k/a provisional registration) is not allowed. That is an aircraft cannot be registered in the United States and any other country at the same time. This is a violation of the FAA Act and the Chicago Convention (an international treaty governing the registration of aircraft)
- B. Operational issues – operations under “pink copies” versus Flying time Wires
1. Operations outside the United States on a “pink copy” of the Aircraft Registration Application are not allowed. The United States is defined as extending beyond our borders and 12 miles beyond our shores.
    - (a) Pink copy operations to Hawaii (not allowed)
    - (b) Pink copy operations to oil rigs located greater than 12 miles outside the United States (not allowed)
  2. Obtaining Flying Time Wires is becoming more and more difficult.
    - (a) Plan to take 1-5 days. Submit Declaration of International Flight (see attached).
  3. The Aeronautical Center Counsel’s office has rendered an opinion that it is lawful to fly on a photocopy or a fax of the Temporary

Certificate of Registration (a/k/a Flying Time Wire).

### C. Registration and Recordation of Fractional Ownership Interests

1. Registration. Registration of an aircraft in a “fractional ownership” transaction is simply a variation of co-ownership and is clearly allowed under the FAA regulations.

(a) Bills of Sale and Aircraft Registration Applications should clearly state the fractional interests which are being transferred to each specific co-owner

(b) Note that each time a co-owner sells an interest in an Aircraft a complete Aircraft Registration Application, signed by all co-owners must be filed to support the re-registration of the Aircraft. (Therefore it is recommended that you obtain powers of attorney documents, including resolutions of the board of directors, if appropriate, from the various co-owners).

(c) Note that the parties who have joined together to own an aircraft should not form a partnership to own that aircraft. (1) Why?--because to qualify as a “citizen of the United States”, a partnership must be composed entirely of individual “citizen of the United States”. Thus, if one of the partners of the partnership is a corporation, the partnership does not qualify as a “citizen of the United States”; and, in turn, the partnership cannot register an aircraft in its name (again, there are many variations on this them and when in doubt, contact your favorite FAA counsel in Oklahoma City).

2. Recordation of interests (liens and leases) of fractional ownership interests.

a. Can one owner pledge her fractional interest in an aircraft?

(1) The FAA and the Aeronautical Center Counsel’s office have allowed the recordation of a security agreement which covers a fractional interest in an Aircraft. The security agreement should clearly state the debtor is a co-

owner of the aircraft, should identify the fractional interest owned by the debtor/grantor and should identify the fractional interest in the aircraft which is being pledged under the security agreement.

b. Leases of undivided fractional interests in aircraft have been allowed (with reluctance) by the FAA, but do not assume they will be allowed in the future. You should always submit any such leases to the Aeronautical Center Counsel’s office for a preliminary opinion.

3. Truth-in-leasing (FAR Part 91, §91.23) and fractional interests. Also covered at Section D, below. Under Truth-in-leasing, an Interchange Agreement, Time-Sharing Agreement or Dry Lease are considered leases which are subject to “truth-in-leasing” requirements.

(a) See Section D and Annex II, below, for a more complete discussion.

### D. Truth-in-leasing (FAR Part 91, §91.23)

1. Any lease or contract of conditional sale entered into after January 2, 1973 covering large aircraft (greater than 12,500 pounds) shall contain a truth-in-leasing clause in the last paragraph of the lease in large print in the paragraph immediately preceding the signature block.

2. The parties mail a copy of the lease within 24 hours of its signing to FAA, or arrange for filing of the lease with FAA (NOTE - this is not a filing for recordation--recordation of the lease at FAA does not satisfy truth-in-leasing.)

3. Maintain copy of lease on board the Aircraft

4. Report by telephone to FSDO before initial flight under the lease (consider faxing the following information to the FSDO)

(a) FSDO office nearest the airport where flight will originate

(b) 48 hours prior to flight (unless otherwise authorized)

(c) Information:

(1) location of airport

(2) departure time

- (3) registration number of the aircraft
- 5. Exceptions to Compliance
  - (a) Small aircraft (equal to or less than 12,500 lbs.)
  - (b) Where lessor or lessee is U.S. or foreign air carrier
  - (c) A contract of conditional sale covering a new aircraft which has not been previously registered
- 6. FAA takes the position that it can take the following actions for non-compliance
  - (a) Aircraft grounded
  - (b) Fines of up to \$1,000 per violation (indexed)
- 7. See Annex II for a more complete discussion of truth-in-leasing.

**IX. How do I Translate All of the Above into a Closing? Where Do I Turn for More Information?**

- A. You should use a professional in Oklahoma City, in any combination you deem to be best:
  - 1. Attorneys in private practice in Oklahoma City
  - 2. Title Companies in Oklahoma City
  - 3. Aircraft title insurance agency
- B. Deciding to use an attorney
  - 1. Advantages to using an attorney
    - a. The attorneys who practice in the area of aviation law have a deep understanding of the FAA Act and FAA Regulations, as well as how to structure deals and relevant documents to satisfy written and unwritten FAA rules, regulations and procedures.
    - b. Typically, the attorneys will spend more time on your transaction, both pre and post closing.
    - c. An attorney can provide legal advice on the FAA Act, FAA Regulations, and related documentation.
    - d. An attorney can render an opinion as to the FAA portion of the transaction
  - 2. Disadvantages of using an attorney
    - a. Well, then you have to deal with an attorney.
    - b. Expense
- C. Deciding to use a title company
  - 1. Advantages of using a title company

- a. Much less expensive than attorneys
- b. Well, then you don't have to deal with an attorney
- c. Generally, the people running the better title companies have years of experience in aircraft transactions.
- 2. Disadvantages of using a title company
  - a. It is unlawful for companies or individuals who are not lawyers to give legal advice on structuring transactions, the FAA Act, FAA Regulations, etc.
  - b. They cannot issue a legal opinion with regard to the transaction.
  - c. They generally spend less time reviewing the documents and structure of a transaction than attorneys (on the other hand, you are paying a title company significantly less money than you are paying an attorney).

- D. Attorney's Opinions and Aircraft Title Insurance.
  - 1. What can I do to protect myself and my interests in an aircraft transaction?
    - a. Three basic options:
      - (1) Highest level of protection: Aircraft Title Insurance--You should consider obtaining aircraft title insurance to insure title to the aircraft and the validity, priority and enforceability of your interest in an aircraft (among other items).
      - (2) Next level of protection: Attorney's opinion--You should consider obtaining a legal opinion from an attorney in Oklahoma City, who practices in this area.
      - (3) Third level of protection: Engage a title company to search records and file documents.
  - 2. What do the legal opinions cover?
    - a. An attorney's opinion does cover the following:
      - (1) Describes the relevant documents which are to be filed at the FAA.
      - (2) Confirms that the relevant documents have been filed with the FAA (by specific date and time)
      - (3) Opines that the relevant documents comply with the FAA Act and will be

- recorded by the FAA
- (4) Opines that the relevant aircraft will be registered by the FAA in the name of the applicant
- (5) Identifies the liens that the aircraft, engines and propellers are subject to (if any)
- (6) Opines that such liens are perfected by filing same at the FAA
- b. Special FAA counsel opinions are limited to the FAA Act, and do not cover matters under applicable local (i.e., state) law. As such, an attorney's opinion does NOT cover:
  - (1) title to the aircraft (title is governed by applicable local law, which is specifically not covered by the opinion)
  - (2) the validity of any of the instruments filed with the FAA (validity is governed by applicable local law, which is specifically not covered by the opinion)
  - (3) the enforceability of any of the instruments filed with the FAA (enforceability is governed by applicable local law, which is specifically not covered by the opinion)
  - (4) the priority of any of the instruments filed with the FAA (priorities are governed by applicable local law) which is specifically not covered by the opinion)
  - (5) and a host of other items
- 3. What about Aircraft Title Insurance?
  - a. While attorney's opinions are somewhat limited in their coverage, some aircraft title insurance policies are expansive in their coverage.
  - b. Aircraft title insurance issued by First American Transportation Title Insurance Company covers a broad range of risks, including:
    - (1) Title to the aircraft;
    - (2) Any defect in or lien or encumbrance on the title to the aircraft;
    - (3) Unmarketability of title to the aircraft;
    - (4) Forgery, fraud, undue influence, duress, incompetency, etc.;
    - (5) Priority of any lien or encumbrance over the lien of the insured mortgage;
    - (6) Certain mechanics liens;
    - (7) Invalidity or unenforceability of any assignment of the insured mortgage;
    - (8) Invalidity or unenforceability of the lien for any reason;
    - (9) Invalidity of any document as a result of problems with a power of attorney;
    - (10) Estate or inheritance tax liens;
    - (11) Others having rights affecting title to the aircraft arising out of leases, contracts or options;
    - (12) Forgery, after date of policy, of any release of the insured mortgage;
    - (13) State tax liens up to \$2,500.00;
    - (14) Federal tax liens up to \$250,000.00\*

(\*Note: At present, this coverage is for Lenders only. Additionally, although there is currently no charge for this coverage, the Company contemplates instituting a charge in the future.);

    - (15) Any failure to remove the aircraft from a foreign registry;
    - (16) Liens or encumbrances filed and recorded against the engines and propellers;
    - (17) And a host of other items.
  - c. Note that many policies differ in their coverage and you should carefully review a policy prior to a closing to make sure that the policy offered to you includes all of the coverage described above.
  - d. Also, as in any insurance policy, there are a number of exclusions, conditions and requirements and you should carefully examine any policy for exclusions from coverage as well as other conditions and limitations.

If you have any questions on any FAA matters, please feel free to contact me at any time:

Frank L. Polk, McAfee & Taft, 10th Floor, Two Leadership Square, Oklahoma City OK 73102; Direct Tel: (405) 552-2201; General Tel: (405) 235-9621; Fax: (405) 235-0439; E-mail: frank.polk@mcafeetaft.com.

If you need information on matters pertaining to Aircraft Title Insurance, please contact me at the following address:

Frank L. Polk, President, Global Aviation Title Insurance Agency LLC, 211 N. Robinson, 10th Floor, Oklahoma City OK 73102; Direct Tel: (405) 552-2201; Toll Free: (888) 235-7171; Fax: (405) 235-0439; E-mail: frank.polk@globalaviationtitle.com; Web: www.globalaviationtitle.com

# ANNEX I

To: Federal Aviation Administration  
 Civil Aviation Registry  
 Aircraft Registration Branch  
 Mike Monroney Aeronautical Center  
 Oklahoma City, Oklahoma

Date: \_\_\_\_\_, 2000

Re: Limited Liability Company Statement

Ladies and Gentlemen:

\_\_\_\_\_ (the "LLC"), is a citizen of the United States as defined in 49 U.S.C. § 40102(a)(15), and is eligible to register aircraft in its name. In this regard, we make the following representations:

I. The state in which the LLC is lawfully organized:

\_\_\_\_\_

II. The effective date of the LLC: \_\_\_\_\_

III. The name of each of the members of the LLC and the type of entity of each member (ie.: individual, corporation, partnership, etc):

Name	Type of Entity	U.S. Citizenship Verification	
_____	_____	Y _____	N _____
_____	_____	Y _____	N _____
_____	_____	Y _____	N _____
_____	_____	Y _____	N _____
_____	_____	Y _____	N _____

If additional space is required, please attach another page.

IV. This LLC is managed by \_\_\_\_\_ Manager(s) \_\_\_\_\_ Member(s) \_\_\_\_\_ Managing Member(s) \_\_\_\_\_ Officer(s)

V. The manager(s), member(s), managing member(s), or officer(s) referred to in Section IV above, may act independently:  
 Yes \_\_\_\_\_ No \_\_\_\_\_

VI. The name of each of the persons or entities in a management position with the LLC (i.e., managers, members, managing members, or officers) and the type of entity of each such person: (i.e., individual, corporation, partnership, etc.)

Name	Type of Entity	U.S. Citizenship Verification	
_____	_____	Y _____	N _____
_____	_____	Y _____	N _____
_____	_____	Y _____	N _____
_____	_____	Y _____	N _____
_____	_____	Y _____	N _____

If additional space is required, please attach another page.

49 U.S.C. Section 40102(a)(15): 'citizen of the United States' means (A) an individual who is a citizen of the United States (B) a partnership each of whose partners is an individual who is a citizen of the United States; or (C) a corporation or association organized under the laws of the United States or a State, the District of Columbia, or a territory or possession of the United States, of which the president and at least two-thirds of the board of directors and other managing officers are citizens of the United States, and in which at least 75 percent of the voting interest is owned or controlled by persons that are citizens of the United States.

If any of the manager(s), member(s), managing member(s), or officer(s) referred to in Sections IV and VI above are anything other than an individual citizen of the United States (e.g., a corporation, limited liability company, trust, or partnership), please attach a certificate to support the position that such entities qualify as a citizen of the United States as defined in 49 U.S.C. Section 40102(a)(15).

Additionally, if any member of the LLC is not a citizen of the United States as defined in 49 U.S.C. Section 40102(a)(15), please attach an explanation to support the certification that the LLC is a citizen of the United States as defined by 49 U.S.C. Section 40102(a)(15)(C).

Name of LLC: \_\_\_\_\_ Title: \_\_\_\_\_

By: \_\_\_\_\_ Address: \_\_\_\_\_

## **ANNEX II**

### **TRUTH IN LEASING 14 CFR §91.23**

#### **RELATES TO ANY LEASE OR CONTRACT OF CONDITIONAL SALE OF LARGE AIRCRAFT (MORE THAN 12,500 POUNDS)**

##### **A. WHAT IS A LEASE?**

“...any agreement by a person to furnish an aircraft to another person for compensation or hire, whether with or without flight crewmembers, other than an agreement for the sale of an aircraft...”

1. INTERCHANGE AGREEMENTS AND TIME-SHARING AGREEMENTS ARE LEASES WITHIN THIS DEFINITION.

##### **B. HOW DO I COMPLY?**

1. LEASE MUST BE IN WRITING.
2. LEASE MUST CONTAIN SPECIFIC LANGUAGE REGARDING OPERATIONAL CONTROL OF THE AIRCRAFT IN THE LAST PARAGRAPH IMMEDIATELY PRECEDING THE SIGNATURE BLOCK.
3. LEASE MUST BE FILED WITH THE FAA REGISTRY IN OKLAHOMA CITY WITHIN 24 HOURS AFTER IT IS SIGNED (OR MAIL TO: AIRCRAFT REGISTRATION BRANCH, ATT: TECHNICAL SECTION, P.O. BOX 25724, OKLA CITY OK 73125). COPY IS OKAY.
  - a. THIS FILING IS CONFIDENTIAL AND IS NOT A PUBLIC RECORD.
  - b. EVEN IF YOU HAVE FILED THE LEASE WITH THE FAA FOR RECORDATION, YOU MUST DO A SEPARATE TRUTH IN LEASING FILING.
4. COPY OF THE LEASE MUST BE KEPT ON THE AIRCRAFT.
5. DUTY TO NOTIFY LOCAL FSDO BEFORE FIRST FLIGHT UNDER LEASE
  - a. AT LEAST 48 HOURS PRIOR TO FIRST FLIGHT, NOTIFY FSDO NEAREST AIRPORT WHERE FLIGHT WILL ORIGINATE OF THE:
    - (1) LOCATION OF AIRPORT OF DEPARTURE
    - (2) DEPARTURE TIME

##### **(3) N# OF AIRCRAFT**

##### **b. SUGGESTIONS:**

- (1) SEND THE NOTICE BY FAX
- (2) 48 HR PERIOD CAN BE WAIVED
- (3) BEWARE: FAA IN OKC IS NOW FORWARDING COPIES OF LEASES FILED FOR TRUTH IN LEASING TO THE FSDO WHERE THE LESSEE IS LOCATED SO THERE IS A GREATER POSSIBILITY OF ENFORCEMENT ACTION BY FSDO FOR FAILURE TO COMPLY

##### **C. WHAT SHOULD BE IN THE TRUTH IN LEASING STATEMENT?**

1. IDENTIFY THE FAA REGULATION UNDER WHICH AIRCRAFT HAS BEEN MAINTAINED AND INSPECTED DURING THE 12 MONTHS PRECEDING THE EXECUTION OF THE LEASE.
2. CERTIFICATION BY THE PARTIES REGARDING THE STATUS OF COMPLIANCE WITH APPLICABLE MAINTENANCE AND INSPECTION REQUIREMENTS FOR THE OPERATIONS TO BE CONDUCTED UNDER THE LEASE.
3. NAME AND ADDRESS AND SIGNATURE OF THE PERSON RESPONSIBLE FOR OPERATIONAL CONTROL OF THE AIRCRAFT UNDER THE LEASE.
4. CERTIFICATION THAT EACH PERSON UNDERSTANDS THAT PERSON'S RESPONSIBILITIES FOR COMPLIANCE WITH APPLICABLE FAA REGULATIONS.
5. STATEMENT THAT AN EXPLANATION OF FACTORS BEARING ON OPERATIONAL CONTROL AND PERTINENT FAA REGULATIONS CAN BE OBTAINED FROM THE NEAREST FLIGHT STANDARDS DISTRICT.

##### **D. THE FAA TAKES THE POSITION THAT THE FOLLOWING CAN HAPPEN TO YOU FOR NON-COMPLIANCE.**

1. AIRCRAFT COULD BE GROUNDED UNTIL YOU DO COMPLY (i.e., AMEND THE LEASE TO ADD TRUTH IN LEASING STATEMENT AND FILE IT IN OKLAHOMA CITY).
2. FINES UP TO A MAXIMUM OF \$1,000 PER VIOLATION (now indexed and increasing

every year) (FAA takes the position that every flight may be a violation)

**E. EXCEPTIONS TO COMPLIANCE**

1. YOU DO NOT HAVE TO COMPLY WITH TRUTH IN LEASING IF:
  - a. SMALL AIRCRAFT (LESS THAN 12,500 pounds).
  - b. IF THE LESSOR OR LESSEE IS A U.S. OR FOREIGN AIR CARRIER.
  - c. CONTRACT OF CONDITIONAL SALE WHEN AIRCRAFT IS NEW AND HAS NEVER BEEN REGISTERED IN U.S. OR ANYWHERE ELSE.

**F. PROBLEMS RELATED TO FRACTIONAL OWNERSHIP AND OPERATIONS**

1. IN AN INTERCHANGE AGREEMENT, PAY ATTENTION TO DRAFTING LANGUAGE THAT IS CLEAR AS TO WHO HAS OPERATIONAL CONTROL OF AN AIRCRAFT.
2. NOTE REQUIREMENT TO KEEP A COPY OF THE LEASE ON BOARD THE AIRCRAFT.
  - a. COORDINATE WITH LOCAL FSDO IN ADVANCE AS TO WHAT IS ACCEPTABLE