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— ADVOCATES —



Aircraft registration

Aviation

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AIRCRAFT REGISTRATION IN MALTA

Aircraft registration in Malta is regulated by the Aircraft Registration Act (Cap. 503 of the laws of Malta) (the "Act"). The Act is a robust legislative instrument regulating, inter alia, the registration of aircraft and aircraft mortgages, and the leasing and operation of aircraft. It also served to transpose the Cape Town Convention and the Aircraft Protocol (the "Convention") and brought about other legislative amendments to the fiscal regime applicable to aircraft registration and financing. The Convention was ratified on 1 October 2010 and came into force on 1 February 2011.

The Authority for Transport in Malta is the authority responsible for the registration of aircraft in Malta. In respect of aviation, the Authority's mission statement may be said to be the promotion of civil aviation facilities in Malta, the registration of aircraft and private jets under the Maltese flag and the development of civil aviation and ancillary services. The Authority has earned a reputation for its efficient and pro-active approach and for its accessibility. All registration powers have been delegated to the Director General responsible for Civil Aviation in Malta (the "Director General"), who is responsible for maintaining the National Aircraft Register.

WHAT CAN BE REGISTERED IN THE NATIONAL AIRCRAFT REGISTER?

The following can be registered in the National Aircraft Register:

- (i) aircraft (classified as lighter than air and heavier than air aircraft and further classified into either non-mechanically driven or mechanically driven excluding aircraft used in the military, customs or police services of any state); and
- (ii) an aircraft under construction as soon as it is uniquely identifiable – a manufacturer serial number (MSN), name of manufacturer and its model designation would suffice to render it uniquely identifiable. With regards to aircraft under construction, unless expressly agreed with the buyer, the manufacturer is deemed to be the owner and is entitled to register the aircraft.

Engines of a registered aircraft, as well as any replacement engines, may also be noted in the National Aircraft Register, provided that engines may only be registered by the owner (or with the consent of the owner).

An aircraft will not be registered or continue to be registered in Malta if:

- (i) the aircraft is registered in a foreign registry and such registration does not cease by operation of the law upon the aircraft being registered in Malta;
- (ii) a person who is not a qualified person (as defined below) holds an interest, above the applicable threshold, by way of ownership in the aircraft or a share therein;

- (iii) the operator of the aircraft, being the registrant, is no longer a qualified person;
- (iv) in the opinion of the Director General, the aircraft could be more suitably registered elsewhere;
- (v) it would be inexpedient in the public interest for the aircraft to be or to continue to be registered in Malta;
- (vi) the registrant has made a written request to cancel registration;
- (vii) the aircraft is no longer airworthy or the safety and operation of the aircraft are no longer in accordance with the relevant laws;
- (viii) the aircraft is not compliant with any applicable statutory aircraft registration conditions in respect of aircraft noise or exhaust gas emissions.

The National Aircraft Register includes information on:

- (i) the manufacturer, serial numbers and other details on the aircraft and engines attached to the aircraft and any replacement engines, to the extent that they are designated for use on the aircraft;
- (ii) the registrant and the capacity in which the registrant registered the aircraft;
- (iii) details of any mortgages and other security interests on aircrafts and engines as well as any transactions relating to such mortgages and security interests;
- (iv) details of any irrevocable de-registration and export request authorization;
- (v) other relevant details.

The following information can also be registered, in certain circumstances:

- (i) the ownership rights in the aircraft or an engine including when held by a trustee, for a single interest or more, by one or more owners or divided into fractional shares or otherwise;
- (ii) the lessor rights to an aircraft or an engine when lessor is a person different from the owner;
- (iii) the lessee rights to an aircraft or an engine;
- (iv) details of the resident agent where the registrant is an international registrant;
- (v) information on any international interest registered in the International Registry and the debtor thereof.

WHO IS ELIGIBLE TO REGISTER AN AIRCRAFT (QUALIFIED PERSONS)?

Any aircraft	Aircraft Under Construction or Aircraft not Used to Carry Passengers, Cargo or Mail for Remuneration (Private Aircraft)
The Government of Malta	A citizen of a qualifying state not having a place of residence or business in a qualifying state
A citizen of Malta or a citizen of an EU Member State, an EEA State or Switzerland (each a 'qualifying state') having a place of residence or business in a qualifying state	A citizen of, or an undertaking established in, an approved jurisdiction (each an 'international registrant')
An undertaking established in a qualifying state having its registered office, central administration and principal place of business within a qualifying state, whereof not less than 50% of the undertaking is owned and effectively controlled by the Government of Malta or by citizens of qualifying states	An undertaking formed and existing in accordance with the laws of Malta, but with less than 50% of its shares held by citizens of a qualifying state, having its effective control carried out in a qualifying state, provided however, that each of the shareholders and directors of the undertaking are citizens of, or an undertaking established in, an approved jurisdiction ¹

INTERNATIONAL REGISTRANTS

An international registrant may only register an aircraft if it complies with certain requirements, including the appointment of a resident agent who is habitually resident in Malta and is capable of carrying out the functions set out in the Act.

An original Declaration of Appointment of Resident Agent (which serves as a power of attorney) in the prescribed form, duly notarised and legalised by apostille, must be filed with the Director General.

The main function of the resident agent is to act as a channel of communication between the international registrant and the Director General and other authorities, to act as the judicial representative of the international registrant in judicial proceedings in Malta and to sign and file any declarations and forms required in terms of Maltese law.

International registrants who register or have registered an aircraft in Malta are deemed to have submitted to the jurisdiction of the Maltese courts for any action in connection with the aircraft while it is or was so registered.

FRACTIONAL OWNERSHIP AND TRUSTS

Fractional ownership of an aircraft and ownership by a trustee are, subject to the satisfaction of certain conditions, also permitted under the Act. Nationality or residence of trustee is irrelevant. In the case of registrations by owners, at least 50% of the owners of the shares or beneficiaries of the trust, as applicable, must be eligible to register the relevant type of aircraft as indicated in the previous table. If an aircraft is being registered by aircraft operators of an aircraft, which operation is carried out by more than one person, all the operators must be eligible to register such aircraft. Every ownership interest or share in an aircraft may be annotated in the National Aircraft Register by the Director General.

QUALIFIED PERSONS

An aircraft may be registered by the following qualified persons:

- (i) an owner of the aircraft who operates the aircraft;
- (ii) an owner of an aircraft under construction or temporarily not being operated or managed;
- (iii) an operator of an aircraft under a temporary title;
- (iv) a buyer of an aircraft under a conditional sale or title reservation agreement who is authorized to operate aircraft; or
- (v) a trustee (subject to what is stated in the previous section).

The Director General has the discretion to determine whether the operator's agreement qualifies to register an aircraft in terms of (iii) and (iv).

¹ Each OECD member state, as well as Albania, Algeria, Aruba, Bahamas, Bahrain, Barbados, Bosnia and Herzegovina, Brazil, Bermuda, British Virgin Islands, Cayman Islands, China, Croatia, Egypt, Georgia, Gibraltar, Guernsey, Honduras, India, Indonesia, Iraq, Isle of Man, Kosovo, Jersey, Jordan, Kazakhstan, Kuwait, Lebanon, The Former Yugoslav Republic of Macedonia, Malaysia, Marshall Islands, Monaco, Montenegro, Morocco, Oman, Panama, Philippines, Qatar, Russia, Saint Lucia, San Marino, St. Kitts and Nevis, St. Vincent and the Grenadines, Saudi Arabia, Serbia, Singapore, South Africa, Syria, Tunisia, Ukraine, United Arab Emirates, are the approved jurisdictions as at the date hereof.

PROCESS OF REGISTRATION

The first step in the registration process is the filing by the prospective registrant of an application in the prescribed form. The application must include particulars and evidence relating to the aircraft, the ownership, acquisition, chartering and operation thereof, and qualifications of the registrant, to enable the Director General to determine whether the aircraft may be registered under the Act and to enable the Director General:

- (i) to issue a Certificate of Registration; and
- (ii) to determine the classification of the aircraft for the purpose of application under the Act.

During the registration process the applicant would also be required to submit documentation substantiating the information included in the application. This documentation would normally include the following:

- (i) a bill of sale or other proof of ownership of the aircraft (if this is signed outside Malta, it must be notarized and legalized by apostille);
- (ii) a copy of the lease or operating agreement if the aircraft is leased;
- (iii) a de-registration certificate or formal notification by the civil aviation authority of the previous state of registration if the aircraft was previously registered in another state;
- (iv) a statement on registered mortgages or similar encumbrances, as the case may be; and
- (v) a power of attorney, company resolution or evidence of authority for signatory/ies of application form.

Where an applicant seeking to register Maltese aircraft in its name is a body corporate which is resident outside Malta, it is required to produce the following documentation to the Director General:

- (i) a legal opinion in the prescribed form duly notarised and legalised by apostille, issued by a lawyer qualified in the jurisdiction where the international owner is established, and issued not earlier than 3 months prior to application;
- (ii) an original certificate of good standing issued by the competent authority, as of recent date, in relation to the international owner; and
- (iii) a copy of the memorandum and articles of association (M&A) of the international owner, duly certified by a lawyer or notary public as a true copy of the original M&A.

Following receipt of a duly completed application and after being satisfied that the aircraft may be registered under the Act, the Director General will register the aircraft, wherever it may be, and issue a non-transferable certificate of registration.

AIR OPERATOR CERTIFICATE

An aircraft registered in Malta may only fly for the purpose of carriage of passengers or cargo in accordance with the terms of a certificate granted to the operator of the aircraft.

FEES

The following fees are applicable to aircraft registered for the purposes of air transport (i.e. the business includes the carriage by air of passengers or cargo for the payment or reward).

Fees payable upon filing an application for the issue of an operator licence:

Maximum authorised seating capacity	Initial issue fee	Annual fee
Less than 20 seats	€1,397.62	€465.87
More than 20 seats but less than 49 seats	€2,329.37	€1,397.62
More than 50 seats but less than 99 seats	€3,494.06	€2,329.37
More than 100 seats but less than 199 seats	€5,823.43	€3,494.06
More than 200 seats	€8,152.81	€5,823.43

The fees are based on the maximum authorised seating capacity of the largest aircraft which is used by the applicant and listed in its Air Operator Certificate or which is operated by it under a wet lease agreement.

For the issue of an approval to operate a specific route in relation to an air service licence, the holder of that licence shall pay the Director General a fee of €1,164.69.

The following charges are payable to the Director General by an applicant for the issue of a Certificate of Registration in respect of an aircraft:

Aircraft having an empty weight not exceeding 150 kg, a wing area of not less than 10 square metres, and a wing loading not exceeding 10 kg per square meter at empty weight and which are designed to carry not more than 2 persons	€58.23
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Any other aircraft whose maximum take-off mass is:

<750 kg	€69.88
>750 kg <2730 kg	€139.76
>2730 kg < 5700 kg	€209.64
>5700 kg < 15 tonnes	€279.52
> 15 tonnes < 50 tonnes	€419.29
> 50 tonnes	€698.81

Upon making an application for a revised Certificate of Registration, the registered owner of the aircraft shall pay:

- (i) if the revised Certificate of Registration is applied for due to change of address, a fee of €46.59;
- (ii) if the revised Certificate of Registration is applied for due to change of legal ownership, a charge equal to 50% of the fee as would be payable for the initial issuance of the certificate.

Additional fees are applicable for issuing of certificates of air worthiness and air operator's certificates (depending on weight of aircraft).

BENEFITS ASSOCIATED WITH MALTA

The procedure for registration of aircraft in Malta is considered to be expeditious and efficient. The costs associated both with company formation and with registration are considered relatively low. The Maltese flag is respected worldwide, not least for its outstanding reputation in the maritime sector.

There are several factors which make Malta an attractive jurisdiction for the setting up of aircraft operations, including:

- Malta is an EU jurisdiction, politically stable, at the centre of the Mediterranean with good weather almost all year round. Its geographical position in the centre of the Mediterranean renders it an ideal aero hub which is well connected to major destinations and retains good ties with the Middle East and North African countries;
- Malta is an EASA-certified state and has an FAA Category 1 rating, adopting the highest standards of safety and security;
- a well established legal infrastructure sensitive to the rights of financiers with a mature law on trusts;
- an efficient, skilled, cost-effective multi-lingual workforce, with English being an official language;
- operational costs are generally lower than those of most other European states;
- a strong body of professional legal and financial expertise;
- a clear political vision and national policy supporting business, the aviation industry and its clusters;
- a proven track record in the shipping industry having one of the largest registers in the world coupled with an efficient and cost-effective enforcement regime applicable to both vessels and aircraft;
- an award-winning airport open 24 hours a day, seven days a week – Malta International Airport has topped charts in Europe on a number of occasions.

IMPORTANT NOTICE

This document is intended to provide general information only, and is not intended to serve as legal advice or as a substitute for legal counsel. Providing competent legal advice requires the evaluation and analysis of the specific facts and circumstances in a particular matter and the application of the law to those facts and circumstances. No analysis or evaluation of any particular facts or circumstances has been undertaken in the preparation of this document and no application of the law thereto has been made. Accordingly, the reader is cautioned that if legal advice is required, the reader should consult a person duly qualified under the laws of Malta to provide such advice and should not rely on any matter set out herein.



MALTA

- Robust legal system, based on UK and EU law and in tune with the business world
- Member of the EU: easy access to 28 member states through the EU marketing passport
- Reputable regulator while being easily accessible and sensitive to the particular requirements of applicants
- Tax efficiency: favourable tax regime and extensive double tax treaty network
- Skilled and highly qualified workforce and service providers
- English is an official language
- Currency is the Euro

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