



While it won't come as news to anyone reading this bulletin, Ireland has been identified as one of four jurisdictions to watch in Aviation. "It is no secret that Ireland is the natural registration destination for most lessors and financiers. This is not primarily because of any tax benefit, but as a natural extension of a companies existing business – most companies register their aircraft as well".¹ [1] Source July/August 2008 Airfinance Journal.

With a significant number of Aircraft currently registered on the Irish Aviation Authority ("IAA") Aircraft Register, it is timely to remind readers of the advantages of Irish registration and the enforcement tools available under the Cape Town Convention particularly when we are facing into a period of economic uncertainty and change.

Recently published data from the IAA, demonstrates the growth of and demands made on the IAA by the industry – evidenced by the growing number of leasing companies operating in Ireland and the significant increase in private ownership of aircraft and helicopters.

The IAA (Operating Standards Department) is currently responsible for the registration and certification of:

- 475 large commercial transport aircraft;
- 469 small aircraft;
- 159 helicopters;
- 70 approved facilities for training, maintenance manufacturing and store of aircraft;
- Licences of 1436 aircraft maintenance engineers.

Of these aircraft approximately 210 are leased worldwide, in Europe, Asia and the Americas. In addition the IAA Operating Standards Department oversees the operating standards of 18 airlines, oversees the training standards of flight and cabin crew, licences 2673 commercial and airline pilots as well as 2240 student and private pilots. It also provides permits and approvals for sport aviation, aerial work aircraft, airshows, balloons and parachuting activities.²

[2] <http://www.iaa.ie> www.iaa.ie 23/07/2008].



Maximising Benefits of Cape Town in Ireland – use an IDERA !

Ireland acceded to the Cape Town Convention in August 2005³ and with effect from March 2006 the IAA will accept IDERAs (Irrevocable De-registration and Export Request Authorisation) in respect of Aircraft registered on the Aircraft Register.

In response, the IAA issued Aeronautical Notice (NR A.98 Issue 1 Date 30.04.06) outlining its interim position and requirements for such instruments – these remain current. Since March 2006 filing and recordation of IDERAs has become an integral part of the standard procedure in financing and leasing transactions - replacing transaction specific deregistration/cancellation powers of attorney (whose efficacy was always questionable in Ireland).

In an increasingly uncertain environment, with the credit crunch, operator vulnerability to bankruptcy and moratoriums, an IDERA is available to lessor and financier as a valuable instrument to facilitate enforcement and remedial action.

Even where an aircraft was first leased and/or financed and registered with the IAA prior to March 2006, the IAA is required to accept and record a properly completed IDERA in 2008. This is an obvious benefit particularly as recording of pre-March 2006 leases and financing documents is not encouraged or recommended by the International Registry. As the IAA aircraft register is not a title based register the IDERA must be

completed in duplicate by the registered owner, (person named on the Aircraft Register who may or may not be the legal titleholder). A.98 states that "the IAA will process the applications as required by law".

Given the issues surrounding the IAA response to requests to act on receipt of de-registration powers of attorney submitted to it on or prior March 2006 or any form of cancellation or deregistration power other than an IDERA post March 2006, it is clear that the use of an IDERA is of direct significant benefit to aircraft lessors and financiers. All parties should now take the opportunity to carry out an audit of their existing Irish registered aircraft portfolios and where possible arrange and submit IDERAs in respect of aircraft registered with the IAA.⁴

From a practical perspective, the IAA's aim is that IDERAs which meet all of the requirements, including using the correct format will be returned to the registered owner duly annotated within ten working days. Non-compliant IDERAs will not be processed but will be returned to the registered owner at his or her risk. The main attraction and benefit of using an IDERA is that the revocation and/or any attempt to cancel the registration will require the written consent of the "Authorised Party" as named therein (i.e. owner, lessor, lender/bank) or the authorised party may initiate de-registration. While the IAA has indicated that a fee for the registration of IDERAs may apply as prescribed by the IAA no such fee applies at present (July 2008) and the ultimate savings of time and effort will reward those who take the time now to arrange, execute and file IDERAs.

The IAA have also issued revocation guidelines in Aeronautical Notice (NR. A102 Issue 1 Date 08.02.08) which stipulate that a recorded IDERA may only be revoked at the request of the authorised party in whose favour the IDERA has been made, but not otherwise.

[3] International Interests in Mobile Equipment (Cape Town Convention) Act 2005.

[4] The IAA requests that form A.98 IDERA is downloaded from the IAA website,


Mason Hayes+Curran
 Christine O'Donovan
 Partner
 South Bank House, Barrow Street, Dublin 4, Ireland
 T +353 1 614 5082
 F +353 1 614 5001
 E codonovan@mhc.ie
www.mhc.ie



IAA policing of Third-Country Registered Aircraft

Aviation is a global business and safety is paramount. In order to establish and maintain a high uniform level of civil aviation safety in Europe, EASA and national aviation authorities have the responsibility of ensuring that aircraft operating in, to and from EU member states comply with the international safety standards contained in the Chicago Convention 1944 and Directive 2004/36/EC of the European Parliament and Council of 21st April 2004⁵ as amended by European Parliament and Council Regulations no. 2111/2005 on the safety of third country aircraft using EU airports⁶ (the "Directives"). The EU continues to promote and strives to introduce harmonised rules and procedures for ramp inspections of third-country aircraft landing at airports located in EU Member States.

In Ireland, the European Communities (Safety of Third-Country Aircraft Using Community Airports) Regulations (S.I. 754 of 2007) (the "Regulations") was signed into law in mid-November 2007. The Minister for Transport, in exercise of powers conferred on him by s.30 European Communities Act 1972 (No.27 of 1972) and for the purpose of giving full effect to the EU Directive 2004/36/EC introduced the Regulations to give effect to and to empower the IAA having regard to aircraft which are not used or operated under the control of a competent authority of an EU Member State. Third-country aircraft includes aircraft registered with the FAA (USA), South America, Russia and CIS, Asia and Australasia.

The onus is now on the IAA to put mechanisms and procedures in place to satisfy the requirements of the EU Directives and further to report to the European Commission on the operational measures taken to implement the Directives.

While the Regulations do not apply to aircraft of a maximum take off weight of less than 5700 kg which are not engaged in commercial air transport (s.3(3) S.I. 754 of 2007), the IAA is not restricted or limited in its powers as the Regulations are without prejudice to the State's right to carry out inspections not covered by the Regulations and, in accordance with EU Community and International law, to ground, ban, or impose conditions on any aircraft landing at airports within Ireland (s.3(4) S.I. 754 of 2007).

Pursuant to the Regulations the Minister for Transport gave the IAA wide discretion and entitlement to carry out inspections with consequential right to ground and/or detain aircraft where such aircraft is suspected of non-compliance with International Safety



Standards. In particular where non-compliance is clearly hazardous to flight safety, it may and shall be required to ground the aircraft until the hazard is removed. The Regulations empower the IAA as international safety police for Irish registered and non-Irish and non-EU registered aircraft operating to from or in the State.

The IAA is permitted to establish rules in order to carry out ramp inspections in accordance with the spot check procedure in the absence of any particular suspicion, provided such rules comply with EU Community and International law. Such rules, and spot checks conducted in accordance with such rules, are required to be of a non-discriminatory nature (s.6(2) S.I. 754 of 2007).

A recent posting on the IAA website (June 2008) demonstrates this further in respect of FAA Aircraft operating in Ireland stating that the IAA has agreed new surveillance procedures for FAA registered aircraft operating in Ireland. These surveillance procedures apply to Federal Aviation Administration (FAA) licence holders. The FAA and IAA inspectors have reached agreement whereby the FAA has agreed that IAA inspectors may now check all "N" registered aircraft and licence holders as part of the IAA national programme. The published notice did not make any reference to the Directive or Regulations referred to above but clearly demonstrate the willingness of the IAA to be pro-active in surveillance of all aircraft operating in and to and from Ireland. The notice advises the public that all ATC incidents, airspace violations, airworthiness and operating issues and discrepancies relating to N registered aircraft will be reported by the IAA on a monthly basis to the FAA New

York office for follow up and the IAA will review follow up actions with the FAA periodically. The IAA also drew attention to the fact that notwithstanding the entitlement for non-Ireland and non-EU registered aircraft to operate to and from Ireland, it is the IAA policy that aircraft based substantially in Ireland should be on the Irish (EI) register.

It is apparent from a recent joint publication of the IAA and Commission for Aviation Regulation (July 2008) "Is your air carrier licensed?" that these bodies are gearing up to respond to the increase in private use aircraft and helicopters operating in Ireland. This particular notice highlights the issue of owners of private aircraft and helicopters allowing their aircraft to be used for hire/reward without the appropriate licenses and certificates and the potential resulting consequences.

[5] OJ L 143, 30.4.2004, p.76.

[6] OJ L344,27.12.2005,p.18

Recent and Upcoming Events:

Euromoney Legal Training recently conducted the Aviation Finance Training Course, Dublin (2nd - 4th July 2008).

Farnborough International Air show takes place from 14th -20th July 2008

Airfinance Journal, Operating Lease Training, two day intensive master course will take place on September 4th & 5th of 2008, Dublin.

Irish Heli Expo '08 PuncHESTOWN Exhibition Centre, 1st -3rd October 2008