



Aircraft finance structures and Aircraft Registration in Mauritius

Introduction

Aircraft are capital intensive assets and as a result, the acquisition of an aircraft and its commercial benefits should be effected through a tax efficient structure.

This requires acquisition through a vehicle which is in a jurisdiction with a reliable legal system and a good legal regulatory framework coupled with advantages arising from tax treaties.

Mauritius positions itself as a jurisdiction of choice for aviation finance and leasing structures due to the following factors:

- It is a low tax jurisdiction.
- It enjoys a network of 43 tax treaties and a further network of 27 investment promotion and protection agreements.
- The ownership or leasing of an aircraft does not require licensing by the Mauritian Civil Aviation department.
- It has a dynamic financial services industry with qualified professionals in diverse fields such as accounting, law, banking and finance.
- There is no exchange control in Mauritius and free repatriation of funds is assured.
- Mauritius is a popular and sophisticated offshore finance centre especially for Asian and African investments.

Possible structures

The acquisition of an aircraft through a Mauritius vehicle is usually made through a global business company holding a category 1 (GBC1) or category 2 licence (GBC2). A GBC1 company is resident in Mauritius and can therefore take advantage of tax treaty benefits to optimise returns to investors. Such companies can be set up by foreign individuals or companies who can also be shareholders. A GBC2 on the other hand is a non-resident company in Mauritius for tax purposes and is therefore not liable to tax in Mauritius on its income. It does not however benefit from the network of tax treaties that Mauritius has signed. The ultimate decision on which vehicle to use will depend upon a number of factors, but the choice of the vehicle adds flexibility to the design of the ultimate structure.

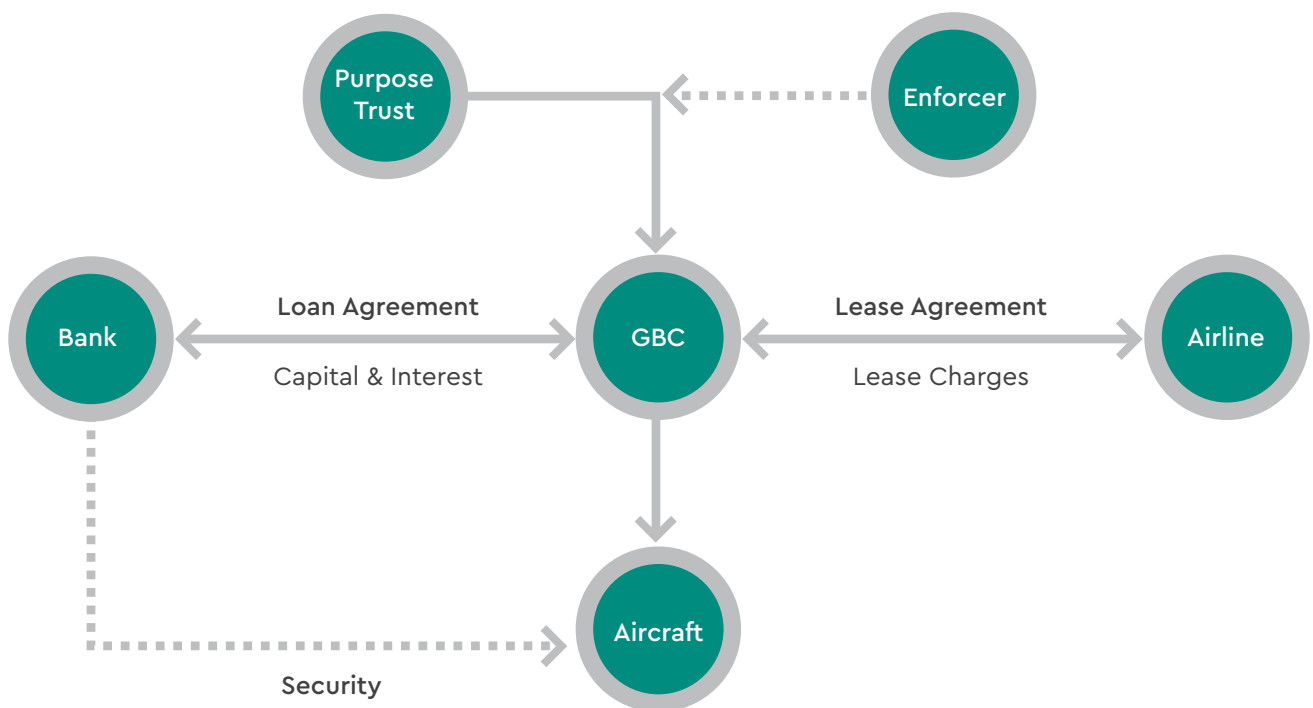
The acquisition of an aircraft is sometimes effected as an off-balance sheet transaction through an orphaned purpose trust holding the global business company which owns the aircraft. Off-balance sheet transactions are attractive to many clients due to the fact that, inter alia, liability in relation to the loan amount is not reflected in the balance sheet of the operating airline.

Lenders will have the ability of taking security and creating a charge on the aircraft directly and can structure this charge in such a way that they enjoy priority over other creditors. The credit risk associated with the airline is reduced whilst the secured loan is on the balance sheet of the borrower. This structure is common due to the restriction by banks on ownership of aircrafts which results in these structures being used.

Taxation

Whilst the corporate tax rate in Mauritius is 15%, GBC1 companies pay tax at a maximum effective tax rate of 3% on their foreign source income, whilst GBC2 companies, by virtue of not being tax resident in Mauritius, are exempt from Mauritian tax. It is worthwhile to mention that there is no capital gains tax in Mauritius and double taxation of income is avoided by means of credit for foreign taxes paid. In case of foreign income derived from countries with which Mauritius has entered into a tax treaty, this tax credit is granted in accordance with the provision in the relevant treaty. Tax sparing benefits are also available under the tax treaties or unilaterally under the regulations which provide that the credit will also be allowed for any tax spared by reason of available tax incentives.

Illustration of aircraft acquisition and leaseback



*GBC company can be a category 1 or 2 depending upon whether the company intends to take tax treaty benefits.

Aircraft registration in Mauritius

The Department of Civil Aviation of Mauritius ("DCA") is the regulatory body which is responsible for registration of aircrafts in Mauritius. The DCA also conducts other activities such as issuing air operation certificates, issuing certificate of air worthiness, licensing of cabin crew personnel and engineers, licensing of aerodromes and conducting safety and security audits. The Mauritius aircraft registry is a registry of title and registration of aircraft charges are recorded in a publicly available mortgage register.

Mauritius is signatory to several conventions, amongst others the Chicago ICAO Convention, the Geneva Convention on International Recognition of Rights in Aircraft and the New York Convention on the Recognition and Enforcement of Foreign Arbitration.

Aircraft ranging from helicopters and private executive jets to large commercial airliners, less than 25 years old, are eligible for registration. White tailed aircraft, engines, spare parts whether attached or not to an airframe and flight simulators are also eligible for registration.

Benefits of using Mauritius to register aircrafts

- The DCA recognises and accepts Type Certificates for aircraft already certified by any of the Airworthiness Authorities. There is, thus, no requirement for a new exercise for the aircraft when registered in Mauritius.
- The DCA does not require the aircraft to be physically present in Mauritius at any time except for repairs and maintenance.
- The DCA validates foreign flight crew licences subject to such licences being in accordance to ICAO standards.
- Mauritius allows for 100% accelerated depreciation rate in the first year of the aircraft. The registration fees and costs are competitive.

Our law firm YKJ Legal provides legal opinions and advice, as required, under the law of Mauritius and assist with registration of aircraft on the Mauritian registry.

This briefing is for informational purposes only and should not be construed as legal advice.

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