

Non-owner Citizen Trust Comments

john

to:

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Cc:

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My name is John Clark. I am Chief Counsel for Jet RVSM Services, LLC. We provide FAA operational approval consulting services to many business jet buyers. Non-citizen trusts are a significant part of our two-person consulting business. I spoke at the public meeting but wanted to add some comments on behalf of my colleague, Christy DeYoung, Owner, Jet RVSM Services, LLC.

The great majority of our international clients are legitimate users of such trusts but it is reasonably obvious to us when we encounter a trust that deserves extra scrutiny. If we can't understand the ownership structure we generally caution the customer that the appropriate IFO or FSDO will need to see a copy of written documents establishing the operator's relationship to the owner (trustee). We find in our experience that although there is attention paid to determining who the "operator" is, once paperwork is provided that meets minimum requirements, the approvals are usually issued.

Let me provide a recent example of a trust where it would be very difficult for anyone to identify who is really operating the aircraft. This one is slightly different from the example I spoke of at the public meeting in Oklahoma City. In this case, the trustee was a finance company. The trustee delegated operational control to an offshore corporation in a jurisdiction that allows certain local corporations to serve as directors. So, the operational control agreement was signed by a representative of a 2nd offshore corporation that clearly offers its services to protect any "real" principals of the operator from having to disclose their identities.

The aircraft will no doubt be based outside the US in a country other than where the operator's offshore shell corporation is domiciled. In this case we have no idea what person or persons are in operational control of the aircraft. No individual name was typed on the agreement. There was instead an illegible signature of a representative of the "corporation director" of the offshore operator. We advise such clients that contracts that do not include the personal name of the individual executing the contract will not likely pass scrutiny of IFO or FSDO inspectors. But in reality, that isn't so certain. Some clients will insist that we submit the documents as written and there is a good chance such documents will go through.

The hypothetical I provided at the public meeting is worth repeating: 1) Aircraft purchased in South America; 2) Cash buyer located in Mexico; 3) Offshore Corporate "shell" Operator; 4) Strawman US trustee (not an attorney or professional fiduciary). Aircraft is inspected in Florida and a Certificate of Airworthiness issued. Registration is issued in the name of the trustee. Trustee has delegated operational control to the offshore corporation with a strawman executive signing documents. We had a

situation like this, but it didn't go through because the Mexican Chief Pilot did not have a commercial rating and this almost always raises a red flag within an IFO or FSDO. An inspector typically will want to speak directly to the "Accountable Executive" of the Operator and that scared the client off. But we feel there are plenty of part-time RVSM consultants, non-professional trustees and non-aviation attorneys that will take these types of clients. Working together, an approval can get issued in a case where it will be extremely difficult to know who the operator really is later on.

The IFO inspectors seek to mainly determine that there is a written contract relationship between the operator applying for RVSM and the owner/trustee. Typically that is accomplished by seeing a copy of signed documents without any review of the content. What would be the end result of an RVSM approval in this case? It seems to us it results in an operator legal to fly in international RVSM airspace without any principal of the operator ever having had to disclose his or her identity, and without disclosing the intended country of its foreign home base of operations.

The solution to this problem is not to eliminate non-citizen trusts. Consider how we at Jet RVSM Services, LLC identify the operator if need be: We always go to the "RVSM Rep" associated with the RVSM, other LOA, or OpSpecs. We have this information in our files for all customers and it usually includes the email address and cell phone for the RVSM Rep. The RVSM Rep is most often a foreign Chief Pilot with a US pilot's license. (If there has been a change of RVSM Reps, up-to-date information should be contained in the FAA's PTRS database.) In case of obsolete information in our files we would contact the inspector who approved the LOA or OpSpec to see if he or she is willing to supply the name to us (since we worked on the original approval). In a few cases, the RVSM Rep is a U.S. citizen, generally an attorney, with a US physical address. The RVSM Rep typically knows how to get in quick contact with the person(s) actually in "operational control" as such is defined by FAA regulations. Chief Pilot's these days carry smart phones and receive voice, text and email very quickly. The Chief Pilot generally has quick access to either an accountable executive of the Operator, or the person in the role of the flight department manager, etc.

In the case of trustees, we suspect they would never know who the RVSM Rep is for operational approvals, but maybe it would be a good idea to collect the name of the person acting as Chief Pilot or Flight Department Manager at the time of closing? Executives have many reasons not to want their names in public databases, and will continue to find ways to get around disclosure...but there may be little resistance to providing the name, cell phone and email address for a Chief Pilot or Flight Department Manager. Few executives are legal to act as pilot in command, and so there is usually someone else (less concerned about privacy) acting as the Chief Pilot when the deal closes.

As an additional note, we support the AWG Consultive Group papers, and simply wanted to make a few side comments that may be of help to the FAA's consideration of this issue. We also stand ready to help the FAA in determining efficient, inexpensive ways to identify problem trusts or to find ways to speed up the process of identifying and contacting the person or persons actually initiating, conducting and terminating flights of N-registered business jets held by trustees on behalf of non-citizens beneficiaries.

My apologies for the informality of these comments...I'm on vacation this week and not in "lawyer mode."

Respectfully,

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