

September 16, 1968

AC-7.2

Request for opinion - validity of registration of aircraft under lease arrangement

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We refer to your letter of August 20, 1968 in which you request our opinion concerning the validity of the registration of certain aircraft under a proposed aircraft lease transaction.

You state that the U.S. manufacturer of the aircraft in question proposes to organize a wholly owned subsidiary corporation whose only asset will be these aircraft and in whose name the aircraft will be registered with the FAA Aircraft Registry. You also indicate that the subsidiary would lease the aircraft to a foreign lessee under a ten-year net lease which would not contain any option to purchase the aircraft. However, there would be a separate agreement between the manufacturer and the foreign lessee which would grant the lessee the right to purchase the stock of the lessor subsidiary corporation at the end of the lease term for a nominal sum. While the lease itself would be recorded with the FAA Aircraft Registry, the latter agreement would not.

We have been unable to discover any precedent directly on point concerning the basic question posed by your letter. However, based upon our review of the pertinent sections of the Federal Aviation Act of 1958, as amended, and Part 47 of the Federal Aviation Regulations, it is our tentative conclusion that the aircraft in question could validly be registered in the name of the subsidiary corporation provided that the legal arrangement satisfies two primary legal requirements. First of all, it is necessary that the transaction setting up the corporation not violate Section 47.43(a)(4) of the Federal Aviation Regulations. That section provides that the registration of an aircraft is invalid if, at the time it is made--

"The applicant is a citizen of the United States, but his interest in the aircraft was created by a transaction that was not entered into in good faith and was made to avoid (with or without the owner's knowledge) compliance with Section 501 of the Federal Aviation Act of 1958 (49 U.S.C. 1401), that prevents registration of an aircraft owned by a person who is not a citizen of the United States."

It is clear that the aircraft in question could not be registered in the lessee's name since the latter would not meet the citizenship requirements of Part 47. If the subsidiary was formed solely for aircraft registration purposes because of the ownership requirements of Part 47, then the transaction would probably violate Section 47.43(a)(4). However, if this is not a consideration or if there are other valid purposes for the formation of the subsidiary corporation, Section 47.43(a)(4) would not appear to be applicable. Since we are unable to determine the underlying purposes for the formation of the subsidiary corporation in your hypothetical case, it is impossible for us to give you a definite answer to this question.

The second requirement to be met is the statutory provision contained in Section 501(b) of the Act that an aircraft may only be registered if it is owned by a citizen of the United States. Section 47.5(c) defines the term owner as including a lessee of an aircraft under a contract of conditional sale which by the terms of Section 101(16) includes—

"any contract for the bailment or leasing of an aircraft, aircraft engine, propeller, appliance, or spare part, by which the bailee or lessee contracts to pay as compensation a sum substantially equivalent to the value thereof, and by which it is agreed that the bailee or lessee is bound to become, or has the option of becoming, the owner thereof upon full compliance with the terms of the contract."

Basically, the problem raised by the fact situation presented in your letter involves the question of whether the overall transaction would fall within this definition of conditional sale.

Such a determination is dependent upon the facts of each individual case and thus our opinion on this second question cannot be given without first examining the exact terms of both the lease and the separate agreement between the manufacturer and the foreign lessee. However, we do foresee a number of possible problem areas. First, the lease and separate agreement could be so worded that it would be necessary to consider both documents as constituting a single lease of the aircraft with an option to purchase at the close of the lease term. In addition, the terms of both instruments may be such that the foreign lessee would be paying a "sum substantially equivalent" to the value of the aircraft in question. If the answer to both of these questions is in the affirmative, it might well be necessary to conclude that the foreign lessee was actually the owner. In such case, the registration would be invalid under the provisions of Sections 47.43(a)(2) and (3).

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We regret that we are unable to render you a more definite opinion on this matter. However, we trust that the above guidance will be of benefit to you. We would be happy to meet with you personally at your convenience to discuss this registration problem. If you would desire such a meeting or if we can be of any other assistance, please feel free to contact us.

ORIGINAL SIGNED BY
R. R. HAGADONE

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cc:
AC-200
AC-250 ✓
GC-10
GC-20