



U.S. Department  
of Transportation  
**Federal Aviation  
Administration**

Mike Monroney  
Aeronautical Center

P.O. Box 25082  
Oklahoma City, Oklahoma 73125

December 30, 1992

William C. Boston, Esquire  
William C. Boston & Associates  
1601 Northwest Expressway  
Oklahoma City, Oklahoma 73125

Dear Mr. Boston:

Blenheim Aviation, Inc., Boeing 727-200 Aircraft,  
Serial Number 22430, Somalian Registration  
Number 60-SCG

We have received and reviewed both your December 9, 1992 and your December 29, 1992 correspondence--requests for opinion, together with a copy of a Trust Agreement, dated December 20, 1992, between Blenheim Aircraft Holdings IV, Inc., (the "Beneficiary")("Blenheim") and First Security Bank of Utah, National Association (the "Trustee") and affidavits from James Tussing, Esquire, Raul R. Garcia, Esquire and Alena Soldatova, Vice President of Blenheim, each describing their efforts to accomplish aircraft deregistration in Somalia.

You request our opinion regarding whether the aircraft may qualify for registration with the Federal Aviation Administration Registry, in the name of the Owner Trustee, pursuant to Section 501(b)(1)(A)(i) of the Federal Aviation Act of 1958, as amended (the "Act") and 14 C.F.R. §47.7. Your request, in turn, raises the question of whether the Federal Aviation Administration (the "FAA") should accept an application for U.S. registration of an aircraft when the applicant cannot provide proof that the registration of that aircraft, in Somalia, has ended, or is invalid.

Deregistration of the aircraft, in Somalia, now appears to be impossible because of the apparent lack of any central governmental authority which can respond to a deregistration request. That lack of appropriate governmental authority has been acknowledged, at least informally, by the Secretary-General of the United Nations ("U.N.") in his November 30, 1992, letter to the U. N. Security Council, and by U.S. President George W. Bush, in a speech he delivered on December 5, 1992. Nevertheless, as you are aware,

An aircraft cannot be validly registered in more than one State, but its registration may be changed from one State to another.

Convention on International Civil Aviation art. 18 (the "Chicago Convention"), December 7, 1944, 61 Stat. 1180, T.I.A.S. No. 1591, 15 U.N.T.S. 295.

The United States has codified this principle of international law in Section 501(b) of the Act, 49 U.S.C. app. §1401(b)(West 1992), which provides that:

[an] aircraft shall be eligible for registration if, but only if...it is not registered under the laws of any foreign country....

(See also 14 C.F.R. §47.3)

The Chicago Convention, art. 19, also provides:

The registration or transfer of registration of aircraft in any contracting State shall be made in accordance with its laws and regulations.

Under FAA regulations implementing the terms of Section 501(b), an applicant for registration bears the responsibility for establishing that an aircraft, previously registered in a foreign country, is no longer registered in that country. An applicant is required to submit

evidence satisfactory to the Administrator that--

(i) If the country in which the aircraft was registered has not ratified the Convention on the International Recognition of Rights in Aircraft (4 U.S.T. 1830), the foreign registration has ended or is invalid; or

(ii) If that country has ratified the convention, the foreign registration has ended or is invalid, and each holder of a recorded right against the aircraft has been satisfied or has consented to the transfer, or ownership in the country of export has been ended by a sale in execution under the terms of the convention.

14 C.F.R. §47.37(a)(3)(1992). Satisfactory evidence of such deregistration may be either

(1) A statement, by the official having jurisdiction over the national aircraft registry of the foreign country, that the registration has ended or is invalid, and showing the official's name and title and describing the aircraft by make, model, and serial number; or

(2) A final judgement or decree of a court of competent jurisdiction that determines, under the law of the country concerned, that the registration has in fact become invalid.

14 C.F.R. § 47.37(b)(1992). As noted above, you have invited our attention to the fact that the aircraft is currently registered in Somalia. You have also pointed out that the current political and military chaos and governmental abyss in Somalia, together with United Nations intervention in that country, have thwarted Blenheim's efforts to deregister the aircraft in compliance with Section 501(b) of the Act, and with 14 C.F.R. §47.3. Given the current state of affairs in Somalia, we agree that the foregoing evidence of deregistration of Somali-registered aircraft does not now appear to be available.

Our independent inquiries confirm the conclusions of the U.N. Secretary-General and those of President Bush that there is no functioning government in Somalia, particularly no Somali Civil Aviation Authority ("CAA"), or ministry which would be responsible for the Somali aircraft registry. In addition, we have received reports that one or more individuals claiming to represent the Somali CAA have appeared at the International Civil Aviation Organization ("ICAO") regional office in Nairobi, Kenya. However, we have no information on the identity of these persons, or whether they have any official status. We have also learned that the ICAO regional office in Nairobi may have assumed some of the functions of the Somali CAA, but we have no information on whether those functions include the aircraft registry functions. We conclude that a reasonably credible deregistration statement by such an individual, or by the ICAO regional office, speaking for the Somali CAA, could suffice as evidence of deregistration. However, barring this, we conclude that Blenheim would not be able to obtain the Somali government evidence of deregistration necessary to satisfy the requirements of 14 C.F.R. § 47.37(b) or §47.3.

As a one time accommodation, we proffer the following requirement--solution to Blenheim's Somali deregistration quandary. In lieu of that evidence required by 14 C.F.R. §47.37(b)

Blenheim shall provide the FAA with evidence that it has attempted, without success, to obtain the deregistration of the aircraft in Somalia. Such evidence should include copies of any correspondence to the Somali CAA requesting the deregistration of the aircraft from the Somali registry, and an affidavit by the applicant that the Somali CAA did not respond to the request within a reasonable period of time. The affidavit should also recount any verbal efforts with Somali authorities to deregister the aircraft and the results.

It is our opinion that the affidavits of Mr. Tussing, Mr. Garcia and Ms. Soldatova sufficiently satisfy this requirement.

You are also informed that--should a Somali government, exercising civil aviation authority, appear in the future--it is Blenheim's responsibility to ensure that the aircraft is not dual registered. In any event, Blenheim is to ensure that the aircraft does not appear on the Somali registry, or if it does, that it is immediately removed from the Somali registry, preferably with retroactive effect to the date of U.S. registration. To this end, Blenheim is placed on notice of the consequences, under U.S. law, of dual registry.

This one time accommodation is base on the presumption that, if a Somali government existed, it would favorably respond to such a deregistration request.

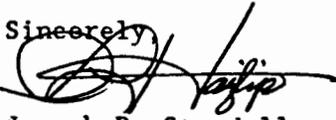
Article 21 of the Chicago Convention requires contracting States to supply, "on demand, information concerning the registration and ownership of any particular aircraft registered in that State" to any other State or the ICAO. Upon the registration of this aircraft by the FAA registry, the FAA will send notice of its action to the attention of the Somali CAA, in care of the ICAO office in Nairobi, will notify the ICAO Headquarters in Montreal, and will request any information they may have about the status of the aircraft on the Somali registry.

This opinion should not be construed as waiving or otherwise affecting any other requirement for the registration of an aircraft in the United States. In addition, the application of this opinion is limited to the U.S. aircraft registry and is not to be construed or interpreted as reflecting any other aspect of U.S. policy to, or relations with Somalia or any other foreign nation or state.

Our review and analysis of the Trust Agreement discloses that, Blenheim empowers the Owner Trustee, First Security Bank of Utah, National Association, to hold, manage and control the Trust Estate for the use and benefit of the Beneficiary, and to make application for U.S. registration pursuant to Section 501(b)(1)(A)(i) of the Act. (Sections 1.04 and 2.01) Our review and analysis of the Affidavit of Trustee (See Trust Agreement, Exhibit "B") discloses that the Trustee is a "citizen of the United States" as such term is defined in Section 101(16) of the Act. In turn, we conclude that the Affidavit complies with the requirements of 14 C.F.R. §47.7(c)(2)(iii).

Accordingly, it is our opinion that the affidavits of Mr. Tussing, Mr. Garcia and Ms. Soldatova, reflect Blenheim's compliance with the requirements proffered by FAA to resolve Blenheim's, one time, Somali deregistration quandary. In turn, it is our opinion that the Trust Agreement and the supporting Affidavit of Trustee support U.S. registration of the aircraft in the name of First Security Bank of Utah, National Association, as Owner Trustee, if submitted with the appropriate evidence of ownership. 14 C.F.R. §47.11.

Sincerely,

  
for Joseph R. Standell  
Assistant Chief Counsel  
Aeronautical Center