

Registration of rights to aircraft and transactions with them in Russia

As an aircraft is an asset that is constantly transferred from one jurisdiction to another, it is important to understand what law is applicable to its status.

Russia ratified the 1944 Chicago Convention on International Commercial Aviation, which, among other things, established a principle that an aircraft cannot have two nationalities, and Russia further provided that in order to a Russian airline to be able to operate an aircraft in Russia, such aircraft shall be registered either in the State Register of Civil Aircraft of the Russian Federation (the "**Civil Aircraft Register**") or in a register of a country with whom Russia concluded an agreement on maintenance of continuing airworthiness (the "**Foreign Register**").¹

If an aircraft is registered in the Civil Aircraft Register, it acquires Russian nationality, and thus Russian law will be applicable to ownership right and other proprietary rights to such aircraft². If an aircraft is registered in the Foreign Register of some country, then the aircraft will acquire the nationality of that country, and ownership and proprietary rights to such aircraft shall be determined in accordance with law of that country.

Until recently, very few foreign owners/lessors registered aircraft in the Civil Aircraft Register. One of the grounds for this was that although Russia provided that aircraft are immovable property³, and right to them and transactions with them shall be registered in a title register, the latter did not exist⁴. This situation (along with some other structural issues, e.g. tax/customs) created uncertainty for foreign owners/lessors, and they usually preferred not to give aircraft Russian nationality.

On 14 March 2009 President of the Russian Federation signed the Federal Law "On state registration of the rights to aircraft and transactions with them" (the "**Law**"), which has significantly changed the situation regarding the registration of aircraft and transactions with them.

The Law came into force on 16/17 September 2009⁵. Starting from this moment all other Russian laws and regulations in relation to the registration of rights to aircraft and transactions with them shall apply to the extent such laws and regulations do not contradict to the Law.

Key Issues

Nationality and title registration of aircraft

Adoption of the Law and establishment of the Aircraft Title Register

Rights and transactions to which the Law is applicable

Issues remaining open

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¹ Article 33 of the Air Code of the Russian Federation (the "**Air Code**").

² Article 1207 of the Civil Code of the Russian Federation (the "**Civil Code**").

³ Article 130 of the Civil Code.

⁴ The Civil Aircraft Register is not a title register, and serves only for the purposes of determining nationality of aircraft and their airworthiness.

⁵ Upon 180 days from official publication; the Law was published in two sources having the same status of official publication on 16 and 17 March 2009.

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Some of the Law's provisions are blanket provisions, and further regulation is expected to be established by the relevant state authorities to apply the Law in practice.

The Law requires that the occurrence, transfer, termination of ownership and other property rights, as well as encumbrances over such rights with respect to (i) the civil aircraft subject to state registration in accordance with the Air Code⁶ and (ii) the state aircraft used for commercial purposes in accordance with the Government regulation⁷ (the "**Registered Aircraft**") shall be registered when provided by the Civil Code.

In the absence of relevant practice and additional regulations some technical questions in registration of rights to aircraft in accordance with this law are currently unclear. Particularly it is not clear to what extent the Law is applicable to aircraft registered in the Foreign Register.⁸ Further clarifications in more detailed regulations and on practice will be required in this respect.

Transactions with the Registered Aircraft, including a mortgage and transfer of the rights to the Registered Aircraft (for example, under the sale and purchase agreement) are subject to state registration. Mortgage as encumbrance and seizure are also subject to state registration. The transaction and the right are to be considered registered and are to become effective from the date they are recorded in the Aircraft Title Register.

It is not clear whether a lease agreement as a transaction requires state registration. There is a strong argument that an aircraft being classified as a transportation vehicle should be excluded from the general registration requirement of the Civil Code in this respect. In the meantime the Law provides that the lease shall be reflected in the Aircraft Title Register (as defined below) as an encumbrance of right to aircraft and not as a separate transaction therewith. We believe, following the above arguments, that absence of such state registration should not alter the effectiveness of the lease and registration of lease as encumbrance should be made for informational purposes only.

⁶ As pointed out above, article 33 of the Air Code provides for two places of registration: the Civil Aircraft Register and the Foreign Register. Therefore it is unclear whether the Law refers to both places of registration and is therefore applicable to aircraft registered in jurisdictions other than Russian, or whether the reference to the Air Code should be constructed limited and relate only aircraft registered in Civil Aircraft Register. Further official clarification is required.

⁷ It is unclear whether superlight aircraft are to be registered in the Aircraft Title Register (as defined below) according to this Law or whether any special regulation should apply to them. According to the Air Code, superlight aircraft are those whose maximum take off weight is not more than 495 kg, and mostly they are not the subject of commercial deals.

⁸ See footnote 6.

The rights to the Registered Aircraft and transactions with it will be registered in the Unified state register of the rights to aircraft and transactions with them (the "**Aircraft Title Register**"). Responsibility to maintain the Aircraft Title Register was imposed by the Government on the Federal Agency of Air Transport of the Russian Federation (Rosaviacia), that started actual registration of rights to aircraft and transactions with them in spring 2010.

The state registration of the rights to Registered Aircraft, their existence, occurrence or transfer of the rights must be confirmed by a certificate of the state registration of rights to aircraft issued by Rosaviacia. The state registration of the transactions with the Registered Aircraft (if such registration is required) must be certified by a special registration endorsement made on the transaction documents.

Rosaviacia is obliged to register the rights to the Registered Aircraft within 1 (one) month from the date of filing all necessary documents to Rosaviacia.

The state registration of the rights to the Registered Aircraft is obligatory for the Registered Aircraft in cases where the title documents have been executed after the Law came into force. In accordance with the Law, state registration of rights to aircraft is the only evidence of existence of such registered right. State registered right to an aircraft may be further challenged only through court.

Those rights to aircraft that arose and those transactions that entered into before the Law came into force are not subject to compulsory registration (while can be registered discretionally) and are considered valid without such registration. At the same time the transfer of rights to the Registered Aircraft, encumbrances over such rights and transactions with such aircraft that will occurred or that will be entered into after the Law comes into force and are subject to state registration in accordance with the Law can be registered only if the underlying rights to such Registered Aircraft have been registered.

Among other things, the Law and relevant regulation also establishes the procedure of registration of rights to Registered Aircraft and transactions with them, as well as the requirement for documents to be filed for such registration. However some practical details should be further clarified while establishing the registration practice.

The Law is new and our interpretation of this Law may be subject to review. In any event, specific advice needs to be sought in each particular transaction in order to determine whether such right or transaction is subject to registration and which steps are to be taken in this respect.

This publication does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice.

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