



Structuring in a Time of Recovery



As the world takes notable and promising steps forward out of the pandemic, Walkers is pleased to see strong positive trends in aviation transactional activity in recent months. The industry has already seen a resurgence of activity this year in the capital markets with several aviation asset backed note issuances, involving, among others, Castlake, Air Lease Corporation, Falko and Sky Leasing. Together with the ongoing new investments in joint venture platforms, there is a growing sense of optimism for the future.

A common feature of the structuring of these types of transactions is the use of Cayman incorporated, Irish tax resident special purpose vehicles. For the purposes of this note we will refer to such a vehicle as KY-IRE SPV. In the context of an asset backed note issuance, the KY-IRE SPV will typically act as issuer of the senior notes to the capital markets investors and, where relevant, equity notes to the equity investors. For a joint venture or warehouse financing structure, the KY-IRE SPV may act as the holding or parent company to the aircraft owning entities ("AOEs"). In each case the KY-IRE SPV will typically sit above Irish incorporated, Irish tax resident AOEs.

In this note, we set out some of the many advantages of using a KY-IRE SPV and how Walkers can be of assistance.

Advantages of a Cayman Islands SPV

Incorporating an SPV in the Cayman Islands is flexible and fast; it can be set up in as little as 24 hours. This is of particular advantage when time is of the essence and multiple counterparties must complete 'Know Your Customer' due diligence processes. The cost of incorporating and maintaining an SPV in the Cayman Islands is comparatively low to other jurisdictions allowing transaction budgets to be better allocated for other costs and expenses. There are a number of other advantages for incorporating an SPV in the Cayman Islands, for example:

- » **Similarity of laws** – Cayman Islands law is based on the English common law, so the central issues of corporate power, directors' fiduciary duties, corporate personality, limited liability and corporate benefit are substantially similar to the position under English common law;
- » **Taxation** – it is key in structured and asset finance transactions that there is no tax leakage. In the Cayman Islands there are no corporation taxes on any company carrying out either domestic business or offshore business and there is no tax withheld by the Cayman Islands' Government on any payment of principal or interest (subject to nominal stamp duty which may arise in limited circumstances). A Cayman Islands' exempted company may apply for an undertaking from the Financial Secretary to the effect that, for a period of 30 years from the date of such undertaking, no tax will be imposed;
- » **No restrictions on business** – in a structured or asset finance context, there are generally no relevant restrictions on the business an SPV can do from a Cayman Islands perspective, for example, it can lend, borrow or issue debt securities without any requirement to become licensed and no government or regulatory approvals are required for incorporation;
- » **No foreign exchange controls** – money and securities in any currency may be freely transferred to and from the Cayman Islands;
- » **Creditor-friendly legislation** – the Cayman Islands does not have any system of corporate rehabilitation where a creditor's rights can be 'frozen' and there is no concept of an automatic stay of proceedings. Non-petition provisions, contractual subordination and netting and set-off arrangements are each recognised by express statutory provision;



- » **Non-consolidation** – as a matter of Cayman Islands law, a true sale will remove the underlying asset pool from the originator's bankruptcy estate and it is only in very specific cases that the separate corporate personality of a SPV will be ignored so as to allow creditors access either to the SPV or its shareholders; and
- » **Ratings** – structured and asset finance transactions are often rated by the leading international rating agencies to increase their marketability. The status of the Cayman Islands as a United Kingdom Overseas Territory means that the sovereign ceiling for the Cayman Islands is high and so a Cayman incorporated SPV will not be the 'weakest link' in a rated transaction.

Advantages of Irish tax residency

Ireland has been at the center of the global aircraft leasing industry for decades and currently holds a share of approximately 65% of the global leasing market. Ireland is a very attractive jurisdiction for the structuring of aircraft financing and leasing transactions and is the location of choice for all major lessors. There are many reasons for this including Ireland having a deep pool of industry expertise, being a signatory to the Cape Town Convention and having a common law system offering a Chapter 11 type restructuring regime known as examinership.

However, the primary reason to use Ireland as a jurisdiction is tax:

- » Ireland has an enviable and extensive double tax treaty network which is unparalleled in terms of both quality and quantity. Ireland has 74 double tax treaties mostly reducing withholding tax on lease rentals to zero. This ability to eliminate or reduce foreign withholding tax on lease rentals is critical to the commercial success of a lessor leasing to lessees in multiple jurisdictions;
- » Ireland has a low corporate tax rate of 12.5% on trading profits, which is one of the lowest corporation tax rates in Europe; and
- » Ireland's tax regime also facilitates the quick depreciation of aircraft, has favourable tax planning opportunities, liberal capitalisation rules, a securitisation regime extending to aircraft assets, and broad exemptions from interest and dividend withholding tax.

Practical implications

In practice, to be Irish tax resident, the central management and control of the Cayman incorporated SPV must be in Ireland. Management and control relates to the high-level strategic decisions of the SPV (i.e. where the "head and brains" of the company are) as opposed to the day-to-day administration of the SPV. Accordingly, to achieve Irish tax residence, the board of directors of the Cayman incorporated

SPV would have to meet regularly in Ireland and have a majority of Irish resident directors on the board. From a Cayman perspective, the registered office provider for the SPV in the Cayman Islands will hand over the responsibility for maintaining the Register of Members to a corporate services provider in Ireland to support the residency analysis. The SPV will also be required to register as an external company with the Irish Companies Registration Office and with Irish Revenue.

How can Walkers help?

Walkers aims to not only help our clients get 'the deal closed' but to partner with our clients for the life of a transaction. Walkers' integrated legal and professional services offering is ideally suited to supporting transaction structures involving a KY-IRE SPV. The combination of legal, professional, tax, listing agent, managing agent, share trustee, accounting and cash management services can truly provide a comprehensive solution for the establishment and ongoing operation of aviation transaction structures. This combined service offering results in notable operational and transaction execution efficiencies as well as cost savings.

Legal support

Our cross-office multi-disciplinary asset finance legal team has advised on a number of award winning and first of their kind transactions including the Thunderbolt II, JOL Air and AASET asset backed note issuances as well as the establishment of many new leasing platforms including the PIMCO/GECAS JV, Dunas Capital, Lease Corporation International/SMFL and Stratos. The global team maintains deep relationships with leading market participants in this space, including financial institutions, lessors, fund managers, airlines and arrangers and can additionally provide Bermuda, BVI, Guernsey and Jersey law advice on a broad range of aircraft finance transactions.

Professional services

Walkers Professional Services ("WPS") set a best in class provider of professional services. WPS has dedicated and experienced aviation finance directors and corporate services teams located in Ireland, Cayman and Dubai. The director bench and corporate services team consists of professionals with legal, accounting, company secretarial and tax backgrounds who have extensive knowledge of the different financing and leasing structures regularly utilized for aviation transactions supported by significant industry experience. WPS work alongside the Walkers legal team, and is well equipped and resourced to provide the highest quality service at closing and support clients throughout the operating life of the transaction.



Conclusion

In the expectation that increased levels of stability will return to the market in the coming months and funds being directed towards lessors, consolidation and the capital markets, we all look forward to a continuing increase in deal activity. Walkers understand that appropriate structuring will be key and having market leading advisors to provide dedicated support for both the establishment and ongoing operation of a transaction will also be of critical importance. Our extensive experience together with our global network makes Walkers perfectly placed to provide the specialist teams required as the market recovery continues. For advice or further information, please reach out to the authors below or your usual Walkers contact.

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