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Cabotage And International Operation Of Corporate Aircraft

By Greg Reigel

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Most countries have laws regulating the airspace over their lands. Each time an aircraft enters a foreign country's airspace, the aircraft operator must comply with that country's regulations affecting flight operations and the carriage of passengers. Particularly with respect to passengers, the majority of countries have rigid limitations on who may be carried within their borders and how.

Specifically, the rules and regulations relating to carriage of passengers and goods within the same foreign country are referred to as "cabotage". Cabotage regulations are not uniform or necessarily consistent from one country to another. They usually apply to both commercial and private operators. However, as we will discuss shortly, whether a foreign country considers a corporate aircraft operator to be a commercial or private operator will also vary by country.

Regardless of which country the corporate aircraft operates within, the pilot in command of a corporate aircraft is responsible for knowing and complying with that country's cabotage restrictions. Failure to comply can, and has, resulted in six-digit fines and penalties imposed against the corporate aircraft operator, and corporate aircraft have been impounded by foreign governments until such violations have been resolved to the satisfaction of the governing authority.

Examples Of Cabotage Regulations Applicable To Corporate Aircraft Operators

United States. The United States does not currently have any regulations that prevent private (not for compensation or hire) foreign corporate aircraft from carrying U.S. passengers between points within the U.S. 14 CFR 375.30 provides that "civil aircraft which are not engaged in commercial air operations into, out of, or within the United States may be operated in the United States and may discharge, take on, or carry between points in the United States any nonrevenue traffic."

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Canada. After clearing customs, Canada allows a corporate aircraft operator to engage in unlimited operations within Canada as long as the U.S. registered aircraft is carrying U.S.–boarded passengers and the aircraft is not operating for "hire or reward". Canada also allows unlimited international operations where passengers are being transported across the border between Canada and any other country. This includes stops within Canada to pick up or drop off passengers who are traveling internationally.

Canadian–boarded passengers may be transported within Canada by a U.S. registered aircraft provided that the transportation is incidental to the intended purpose of the flight. That is, a corporate aircraft operator could fly its U.S. registered corporate aircraft into Canada, pick up Canadian personnel, customers, etc. and fly on to another destination in Canada for a meeting or event. As long as the sole purpose of flight was not transporting the Canadian passengers, then the carriage of the Canadian passengers would be considered incidental and should not violate the cabotage regulations.

European Union. Cabotage regulations in the European Union are more complex than in Canada. The difficulty results from the European Union's definition of commercial transportation. In the U.S., the U.S. Customs service defines commercial transportation as transportation "for compensation or hire". However, the European Union defines "commercial use" as "the use of means of transportation for the transport of persons or of goods for remuneration or in the framework of the economic activity of an enterprise".

Unfortunately, the European Union definition means that a U.S. registered corporate aircraft operating within the European Union for corporate or other business purposes can be considered to be engaging in commercial use or transportation. As a result, if a corporate aircraft flies into a European Union country, picks up a citizen of that country and then travels on to another destination within that country, it is likely that the second flight would be in violation of the European Union cabotage regulations.

The Importation Alternative To Cabotage Compliance

An option for removing the cabotage restraints on international operations is importation of a U.S. registered aircraft into the foreign country (e.g. Canada, a European Union country etc.) in which the corporate aircraft owner wishes to operate. Importation then makes the aircraft an aircraft of the country into which it is imported (e.g. an aircraft of Canada or a European Union aircraft). The aircraft can usually be imported on a temporary or permanent basis and does not usually require that the aircraft be re–registered.

For importation into most countries, the corporate aircraft owner will be required to pay the "Value–Added Tax" (VAT) on the value of the aircraft. Two exceptions are the European Union countries of the United Kingdom and Denmark. Both countries have a zero valuation of aircraft weighing over 24,000 pounds and are frequently used to import corporate aircraft into the European Union. Once the aircraft is imported into the foreign country, for purposes of regulation it becomes an aircraft of that country and is no longer subject to the cabotage restrictions.

Locating Cabotage Regulations

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If importation is not an option, a corporate aircraft operator will need to research the cabotage restrictions and regulations for the particular country of intended travel. The first place to consult is the Aeronautical Information Publication (AIP) published by the country to which the operator wishes to travel. How do you get the AIP for a particular country? Well, the best place to start is the International Flight Information Manual (IFIM). The IFIM is published by the FAA and has information regarding the civil aviation authority for each country and the respective contact information and addresses to which you can direct your request for the country's AIP.

However, you should be aware that many countries' AIP's may not contain all of the applicable rules and regulations relating to cabotage and its enforcement. Often times a country's customs and/or revenue officials responsible for enforcement are not always on the proverbial same page and may interpret the regulations inconsistently.

Fortunately for corporate aircraft operators, the IFIM contains a section for each country titled "Corporate Aircraft Constraints" that includes information prepared by the U.S. Department of State. This section specifically addresses cabotage and similar regulations as they may apply to operation of corporate aircraft within the foreign country.

Conclusion

At the end of the day, the pilot in command is responsible for the operation of the flight in compliance with all applicable regulations. However, in the context of a corporate operation, the corporation is also responsible for the operation of its aircraft. Violations of cabotage regulations can subject both the pilot and the corporation to some nasty consequences.

To avoid these consequences, as a corporate aircraft operator you should find out about the applicable

regulations before you fly. Consult the AIP for the country in which you wish to travel. Review the corporate restraints for that country in the IFIM. If you are a member of the

, review the feedback for the country in the NBAA's International Operators Bulletin

or on the NBAA's website. Also, check with your point of entry handler/FBO/flight planning organization. Finally, for final, "official" confirmation, contact the applicable governing authority within the country to obtain current regulations and interpretations.

Proper planning and current information are essential for international operations by corporate aircraft. Don't leave home without them.

Aircraft Mechanic's Liens In

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Aircraft Mechanic Liens In Minnesota

By Gregory J. Reigel

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If you provide storage, repair, maintenance or other services to aircraft, you have the ability to assert a lien on that aircraft and retain possession until you have been paid. This is commonly referred to as a mechanic's lien.

What isn't as commonly known is that, in Minnesota, you don't necessarily lose your lien rights if you no longer have possession of the aircraft. The situation arises when an owner pays you with a check and leaves with the aircraft. Later, the bank dishonors the check. Now what?

Under Minnesota Statute § 514.221, you can re-assert your mechanic's lien against an aircraft by filing a verified statement and description of the aircraft and the work done or material furnished. The Statement must be filed with the "appropriate office under the Uniform Commercial Code." This would be the FAA's Aircraft Registry in Oklahoma City, OK.

The verified statement must include N-number, make and model of the aircraft, amount owed for the services and date of last work. The statement must be signed in ink, with title if on behalf of a corporation or limited liability company and must be accompanied by the \$5.00 filing fee.

Also, if the owner of the aircraft is located in Minnesota, you may want to file the statement with the Secretary of State. Although it is not necessary to perfect your lien, it will provide notice to anyone who doesn't know to check with the Aircraft Registry.

This is called "perfecting" your mechanic's lien and must be done within 90 days after you provide the work, materials or service. Once perfected, you now have a lien on the aircraft.

Perfection secures the amount you are owed with the aircraft. You then have several options. First, in

order to sell the aircraft, the owner will need to pay you and obtain a release before the owner can give a buyer clear title to the aircraft.

Second, you also have the ability to repossess and foreclose on the aircraft. This means you can force a sale of the aircraft and then receive payment out of the proceeds of the sale. Any excess money is given to the owner.

Under the first option, you run the risk of having to wait until the owner attempts to sell the aircraft. The second option gives you more control, but is also more costly than simply waiting. However, under either option you are definitely in a better position to get paid than you would be without the lien.



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