



IEAG INSIGHTS

IMPORTING AND EXPORTING A BUSINESS JET

ISSUE #4 • JULY 2021



Our goal with this feature is to showcase our knowledge and expertise for the benefit of our readers. We've been serving a vast roster of aviation industry clients for more than 60 years – and we are looking forward to sharing various key lessons learned with you. Our Insights series will offer best practices and gained know-how, practical guidance and advice, and will help educate and inform in various areas of interest to our aviation community as we move forward. Please don't hesitate to reach out with comments and feedback at insights@innotech-exECAIRE.com so that we can serve you better.

EVERYTHING YOU NEED TO KNOW ABOUT IMPORTING AND EXPORTING A BUSINESS JET – AND MORE

If you are thinking of buying a pre-owned aircraft that has been owned and operated in another country, there are many aspects to consider.

So IEAG Insights talked with Innotech-ExECAIRE's resident expert, **Harald Maron, Director – Aircraft Sales**, to get his point of view. A flight instructor by trade, Harald has been managing various aspects of IEAG's aircraft sales for the past 13 years. His in-depth advice will prepare any serious buyer – or seller – for the



complexity of such a transaction. From understanding the best jurisdictions from which to import to Transport Canada deregistration, from aircraft modifications to pre-purchase evaluations, from airworthiness checks to taxes, fees and legal considerations and much more, Harald walks us through the process.

Importing a pre-owned aircraft from elsewhere – What to consider

According to Harald, buying a pre-owned business jet in Canada is probably the easiest course of action. But it might not be the best opportunity. So he explores the options for us.

“Before you even begin, it's important to know that standards for keeping maintenance records for private and commercial operation

vary depending on the country,” he points out. As a matter of fact, Canadian standards for maintenance record-keeping are very high for both private and commercial, and what that means is that you might have to increase your due diligence when you do your research on the aircraft you're interested in, to make sure you have access to a full set of maintenance records. “Maintenance records in Europe are kept to a very high standard, so buyers can be comfortable with aircraft from European countries,” he adds. In the U.S., the standards for maintenance record-keeping for commercial aircraft line up

with the standards for private jets in Canada. And because commercial standards in Canada are different from U.S. standards, due diligence is indeed necessary.

Harald explains that what you will use your newly-purchased aircraft for is just as important as where you're getting it from – and obtaining complete aircraft maintenance records is the most important aspect of all. What does that mean exactly? “Well, it means that you need to know what modifications have been made to the aircraft. Some models are not certified in Canada, and need modifications to operate here,” he says. Maintenance records will tell you exactly what has been done to the aircraft, which will help you make an informed and educated decision about purchasing such an asset. “For example,” says Harald, “the Beechjet and the Hawker 4000 have not been certified in Canada. Early Gulfstreams and older Falcons need specific modifications to operate here – and these are just a few cases in point.”

Dealing with modifications when exporting an aircraft

Harald is very clear on this point: if modifications have been made to the aircraft, make sure that they are approved in the country you are exporting to – and don't have to be removed first. “It's always a good idea to spend the extra money on Service Bulletins or Supplemental Type Certificates (STC) so that any modifications you make are approved in Canada – as well as by the FAA or EASA. This way, when it comes time to sell the aircraft, it will save you time and money during the exportation process,” he explains.

Deregistration with Transport Canada for an out-of-country sale

Exporting an aircraft once it has been deregistered by TC is tricky. Harald recommends working with an escrow agency



that is knowledgeable about cross-border transactions. “Problems arise because the buyer wants proof that the aircraft has been deregistered before paying, and the seller wants to be paid before deregistration – so there is a tight dance between the parties,” he explains. If an intermediary like an escrow agency manages this process, the transaction can be authenticated harmoniously. “The money sits with the agency and the purchaser can’t claw it back. In addition, the deregistration request has to be done by the seller because deregistration cannot be requested after the closing of the sale,” he clarifies.

So what’s at stake if the process is not harmonized? “A lot, actually,” says Harald. “If the deregistration doesn’t happen before closing, the aircraft could be without a valid certificate of airworthiness. And if that happens, the process of importing the aircraft on the buyer side could become longer and more complicated. The ideal window for this process is about three days,” he said.

Harald advises buyers to follow the process to the letter. “Don’t take it lightly. Don’t fall in love with an airplane and decide that’s the one you want at any cost. What’s important here is how the aircraft was maintained, what modifications were made and what records are available. Your purchase offer for an aircraft should be based on due diligence and on eligibility for importation into the country where you reside.”

Dealing with foreign registrations and different makes and models when importing an aircraft

According to Harald, foreign registrations do not necessarily complicate the process of importation. “Nothing matters as much as the condition of the aircraft and the fact that it’s been deregistered properly – not where it’s imported from,” explains Harald. And in terms of modifications, if they are not certifiable in the country of importation, it’s moot. “You won’t even go there,” he said.

In-service modifications on U.S.- and the EU-registered aircraft – What to look out for

Harald emphasizes that the difference between record-keeping in the U.S. and the EU could be “night and day.” EU aircraft generally have better maintenance records, which establishes great credibility on the part of the company or individual that owns the aircraft. “It doesn’t mean you shouldn’t be considering the U.S. market for your purchase,” says Harald. “What really matters is who you are buying from and how diligent they are about keeping records.” It’s also important to know that importing an aircraft from the EU is likely more expensive, including added expenses and repositioning costs, which might weigh in the balance.

The value of a pre-purchase evaluation

A pre-purchase inspection helps you understand import requirements and Harald always recommends one. “Often you can piggyback an import inspection on your pre-purchase inspection,” he says. “You need to understand the maintenance status now and what the requirements are – before you buy. And on top of this, you need to make sure the seller approves of all the requirements and will take responsibility for any discrepancies before the purchase.”

Deregistration and registration – Considering all the angles

When it comes to deregistration in the country you’re importing from and registration in your own country, there are sometimes specific sets of circumstances that can complicate the process. “You need to make sure that the person you are buying from is authorized to sell it,” Harald says. There are complex ownership structures that can get in the



way. For example, an aircraft might be registered in the U.S. but based in Germany – and held under trust. “You might be buying an airplane from a company that is not the end-user of it. You need to ensure free and clear title of the aircraft and gain proof that there are no liens on the asset. This would come from the trust that is the registered owner – but you need to remember that the beneficiary of that trust might be in a different country.”

Harald points out that once again, you have to do your due diligence on the ownership structure of the aircraft prior to purchase so that you can arrange deregistration and registration accordingly.

Airworthiness checks when importing a pre-owned aircraft from the U.S. and obtaining an FAA Certificate of Airworthiness

Indeed, you can get an Export Certificate of Airworthiness from the FAA but it is not absolutely necessary. You can import the aircraft without it, but it can make the process more complicated. Harald states that “A Designated Airworthiness Representative (DAR) from the FAA can provide an Export Certificate of Airworthiness prior to purchase of the aircraft from the U.S. While this document is useful

because it indicates whether the aircraft was in a condition eligible for export and meets the Canadian Type Certificate (TC Data Sheet) requirements, Transport Canada will always have the final requirements for the minimum level of inspection the aircraft needs (ideally as part of pre-purchase inspection). The Minister’s Delegate from Transport Canada will only then issue a Certificate of Airworthiness (C of A.)” But Harald is clear: if this is not coordinated in advance of the pre-purchase inspection, it can add time and money to the transaction even once the aircraft sale is closed – and until the aircraft is imported and issued a CofA.

Taxes and fees – Getting the right advice

There are certainly myriad considerations when it comes to taxes – and this often influences where the sale will close. For example, a U.S. seller will not want to close the sale in Canada to avoid exposure to Canadian tax rules. This said, tax implications vary from state to state and it’s important to be aware of these variances. Of course, there are also tax implications for the Canadian buyer importing the aircraft – and these also need to be well understood. For Harald, it’s simple: “Tax advice needs to be provided by tax experts – but a reputable and experienced acquisitions team



will draw attention to any tax risks,” he explains. “Tax implications are based on where the sale is closed, whether the aircraft will be used commercially or privately – and in what province – and who the importer of record is.”

Importing a new aircraft vs. a pre-owned aircraft

According to Harald, some of the process is simplified as pre-purchase inspections are not required for new aircraft. Nevertheless, you do need to be sure that manufacturing standards are met – and you still need to engage with the Minister’s Delegate to ensure that the model of aircraft is importable. “There is less involvement from a technical standpoint if the aircraft is brand new,” says Harald.

Legal considerations

There are significant legal considerations when importing an aircraft. In the purchase agreement, the specific stages of buying an aircraft must be addressed: submitting a non-

binding offer that requires a deposit with an escrow agency once accepted; taking the aircraft off the market for two to three weeks during this process; examining and analyzing maintenance records; and undertaking an inspection. Once the purchase agreement is completed, the due diligence of the language must be done.

Harald explains that standard purchase agreements exist for new aircraft and there is a section for special amendments. However, for used aircraft, there are no real standards for such agreements. “These change based on the transaction and it’s very important to work with a knowledgeable lawyer as legal considerations can involve lost deposits.”

Harald explains that when working for the buyer, the idea is to be able to get out of the transaction for the least possible monetary requirement – and when working for the seller, the idea is to develop a deal where the seller can keep the deposit if the transaction doesn’t go through.

“The acquisitions team should always act on the client’s best interest based on the purchase agreement,” he adds.