Streamlining Documentation for Aircraft Financings

Successfully coordinating the various tasks associated with obtaining all of the necessary documentation to close an aircraft finance deal requires good organization and attention to detail. As an experienced provider of customized process agent, entity formation and other service solutions to airlines and other clients engaged in aviation financing, Cogency Global Inc. discusses in this article how to streamline documentation for these types of transactions.

Tasks Related to Structuring the Transaction: Timing is Critical

One common financing structure for an aircraft purchase is a sale-leaseback arrangement using a Special Purpose Vehicle ("SPV"), such as a Delaware limited liability company. Some of the tasks related to structuring this type of transaction include the formation of an SPV, appointing an independent manager, arranging for an agent for service of process and legalizing the documentation. While these tasks may seem straightforward, coordinating the timing of them often proves to be challenging.

Using pre-closing and post-closing checklists, such as the ones below, can help minimize delays and problems and keep your closing on schedule. Note the items listed below are only a sampling of what may be required. Requirements for each transaction need to be customized for each deal in accordance with what is agreed to among the parties.

Pre-Closing Checklist

1. Form a Delaware SPV, generally a limited liability company.
2. Obtain a certified charter document of the SPV from Delaware.
3. Obtain a certificate of good standing for the SPV from Delaware. Timing: In Delaware, Cogency Global can complete the above tasks same day. If your SPV is formed in a jurisdiction other than Delaware, Cogency Global will advise turnaround time.
4. Legalize Secretary's Certificate for use in foreign country certifying the (i) certificate of formation, (ii) limited liability company agreement and (iii) resolutions of the members/managers of the SPV. The steps and timeframes vary depending on whether or not the country is a member of the Hague Convention Abolishing the Requirement of Legalization and the state that issues the document or where it is notarized. Cogency Global will always check and communicate the timeframe and fees. Below are two examples illustrating the difference in steps and timing assuming the Secretary's Certificate is notarized in New York:



(a.) For Hague Member Countries (i.e., Spain):

- 2 Steps:

  Step 1: Notarize Secretary's Certificate

  Step 2: Submit to Secretary of State, then County Clerk, to authenticate/verify notary's signature;
  Apostile affixed and Secretary's Certificate can be presented in Spain.

  Timing: Cogency Global can complete this step either same day or within 24 hours

(b.) For Non-Hague Member Countries (i.e., China):

- 3 Steps:

  Step 1: Notarize Secretary's Certificate

  Step 2: Submit to Secretary of State (and, in some cases, the County Clerk) to authenticate/verify notary's signature.

  Timing: Cogency Global can complete this step either same day or within 24 hours

  Step 3: Submit to Chinese Consulate for authentication along with a completed G-1 Form (Cogency Global will provide this form for you to complete) and a color copy of a photo ID for the person submitting the documents. Once this step is completed the Secretary's Certificate can be presented in China.

  Timing: In New York, this is completed one week from the date of submission by Cogency Global.

5. Appoint an independent director or independent manager
   an independent manager is an independent third party appointed to act in a very narrow set of circumstances as set forth in an LLC agreement. Cogency Global is often appointed to vote on a material action, which is generally a request to file for bankruptcy, declare an LLC insolvent or sell all, or substantially all, of the LLC assets. The precise definition is contained within the LLC agreement.

   Timing: Engaging Cogency Global as early as possible in the transaction is recommended to allow us to review the LLC agreement ensuring our role

is clearly defined and limited. This also benefits the LLC by ensuring the independent manager does not need to be involved in any of the day-to-day operations of the LLC.

6. Appoint an agent to accept service of process (a/k/a Process Agent) parties to international cross-border financial transactions frequently select New York or U.K. law to govern their contract documents. New York and the U.K are both widely recognized as preeminent commercial and financial centers.

   Timing: Engaging Cogency Global as early as possible in the transaction is recommended. Cogency Global guarantees same-day or 24 hour delivery of our acceptance.

Post-Closing Checklist

After your transaction successfully closes, keep in mind the newly-created SPV has post-closing responsibilities that generally include (the following items are only a sampling of post-closing considerations, which can vary depending on the transaction):

1. Annual compliance with ongoing statutory requirements from state of formation, including reporting requirements and maintenance of good standing status
2. Independent manager services - fees are paid on an annual basis.

As illustrated above, handling the documentation to close an aircraft financing deal involves many tasks. Cogency Global can assist with coordinating service with Secretaries of State, County Clerks, Consulates and other agencies. By following logical, step-by-step processes as outlined above, you can minimize expensive closing delays and greatly increase the chances of the deal going smoothly.

If you have questions or would like assistance or a price quote for Cogency Global's process agent services, contact our process agent team at processagent@cogencyglobal.com