



# AVIATION MALTA

A hub for international commerce and travel throughout history and arguably the most important strategic aviation base in WWII, Malta is no stranger to the world of flight. Surrounded by the Mediterranean sea, Malta relies on the aviation industry for its important and lucrative tourism industry, as well as for importing and exporting of goods.

Entry to the European Union and recent changes in the legislative framework has changed the Maltese position in the Aviation sector with new rules saw the increase in the introduction of players in the aviation sector relocating to Malta.

The small island has already attracted various major players to its jurisdiction, the most prestigious of all being Lufthansa.

The leading aviation company Lufthansa Technik has become the world's leading OEM-independent provider of aircraft maintenance, repair and overhaul services of optimal quality and reliability.

Malta's location, at the junction between three continents, also means that companies such as Lufthansa Technik are attracting customers from the Middle East and Eastern Europe.

Such a geographical advantage has been publicly advocated by other companies which have set-up in Malta, particularly Comlux Aviation, a company incorporated in Zurich in 2003 and operating VIP charters with top of the line business jets.

Malta's success in attracting such prestigious companies has been further reinforced through the coming into force of the Aircraft Registration Act on the 1<sup>st</sup> October 2010. This Act has amended the Civil Code and the Code of Organisation & Civil Procedure.

The Act also implements the provisions of the Cape Town Convention on International Interests in Mobile Equipment and its Aircraft Protocol which is well known for its benefits to banks and aircraft lessors.



During the last decade Malta has built a strong regulatory infrastructure to enable it to establish itself as the aviation centre par excellence within the EU. Malta already vaunts a success story in the maritime field and it is riding on this experience by mirroring its techniques & advantages to the aviation sector too.

## The Regulator

The Aviation Affairs Committee regulates the Civil Aviation Directorate which ensures that the Maltese air transport industry, in all its aspects, continues to develop in a safe and efficient manner. The Civil Aviation Directorate is responsible for:

- aircraft safety;
- aircraft and aerodrome operators;
- air navigation services providers;
- the licensing of aeronautical personnel;
- the conclusion of international air services agreements.

## Qualifying Registrants

Under the Act, any type of aircraft can be registered in Malta, including private and corporate jets, helicopters, aircraft used by airline operators and aircraft which are still under construction.

Maltese legislation provides that any aircraft whether used to provide commercial air services or used for private purposes may be registered by the following persons:

- the Government of Malta; or
- a citizen of Malta or a citizen of a Member State of the European Union or an EEA State or Switzerland, having a place of residence or business in Malta, the EU, the EEA or Switzerland; or
- an undertaking formed and existing in accordance with the laws of Malta or of a Member State of the European Union or of an EEA State, or Switzerland and having its registered office, central administration and principal place of business within Malta, the EU, the EEA or Switzerland.

The following persons are solely eligible to register private aircraft, thereby excluding the possibility of registration of aircraft for commercial use:

- A natural person who is a citizen of or an undertaking established in, an approved jurisdiction, other than those enlisted above, provided that:
  - it enjoys legal capacity to own or operate an aircraft, to the satisfaction of the Director; and
  - it complies with the requirements established under the Aircraft Registration Act or any other guidelines and regulations; and
  - it satisfies the Director General that it can and will ensure due observance of the laws of Malta relating to civil aviation; and
  - it complies with the requirements laid down under the Aircraft Registration Act applicable to the international Registrant.

In the case of private aircraft, a special provision is included in the law whereby all that is required to register such an aircraft in Malta is the appointment of a resident agent. For such a registration to occur, the owner of the aircraft has to be a natural person who is a citizen of, or an undertaking established in an approved jurisdiction.

## Air Operator Certificate

Operators which fly aircraft used for commercial purposes require an Air Operator Certificate (AOC) which is issued by the Civil Aviation Directorate in terms of Maltese law and in terms of Regulation No 1008/2008 of the European Parliament and of the Council, after the attainment of such certificate through a thorough licensing process with the Civil Aviation Department. The period required for the Civil Aviation Directorate to evaluate the application for an AOC and carry out all the necessary inspections is 90 days.



## The Process

The Civil Aviation Directorate identifies five phases in the certification process:

### Phase 1- Pre-Application

In the first stage, the applicant will obtain information concerning appropriate legislation and advisory material and will be required to complete a pre-assessment statement.

### Phase 2- Formal Application

The applicant submits, a formal AOC application, manuals, qualifications, a compliance schedule and the appropriate fee.

### Phase 3 – Document Evaluation

During this phase the Civil Aviation Directorate reviews the applicants' documents for compliance, acceptance and approval.

### Phase 4 – Inspection and Demonstration

The Civil Aviation Directorate will evaluate the effectiveness of the applicant's procedures including management, training, maintenance, records and flight operations and would inspect station facilities and accommodation.

### Phase 5 – Certification

At the end of the last phase the Civil Aviation Directorate will prepare and issue the AOC and the associated Operations Specifications. The assigned inspector will establish a post-certification surveillance plan and the applicant can commence operating under a Malta AOC.

Chetcuti Cauchi enjoys a wealth of experience in this enticing and burgeoning field of law including the registration of aircraft in Malta, insurance, sales and procurement, aircraft chartering and leasing. In addition we offer negotiating and drafting services of aviation related service agreements and contracts such as maintenance and repair agreements and imperative legal advice on Bilateral Air Services Agreements, conditions of Carriage and Regulations of airlines.





## Security

### Registration in the National Register

The law has been amended in order to facilitate the possibility for owners and operators to attain finance for the purchase of aircraft. Under Malta's National Register aircraft constitutes a particular class of movables which is separate and distinct assets within the estate of their owners for the security of actions and claims to which the aircraft is subject. The different types of security rights which are recognised under Maltese law are the following:

- those which arise by agreement or by operation of law;
- those which are registerable special privileges; and
- security rights over engines.

### Registration in the International Register

On the 1st of October 2010 Malta ratified the Convention on International Interests in Mobile Equipment, also known as the Cape Town Convention. Such convention has come into force on February 2011 and is today fully applicable under Maltese law.

This Convention provides for more sophisticated cross-border and domestic financing of moveable assets in situations otherwise banks, lessors and other financiers funding assets not in their possession would risk losing their security position, especially if the asset moves across a jurisdictional border. By providing more security to the private sector, the Convention is reducing the cost of borrowing and in certain cases, facilitate such borrowing where otherwise it would not be possible in the absence of a strong Government guarantee. The main features of the Cape Town Convention include the following:

Registration of International Interests in an International Registry

Provision for the recognition of "international interests" in mobile equipment i.e. security interests in a uniquely identifiable object. These international interests can be registered in an International Registry which is currently established in Ireland. Once an international interest has been filed by a creditor, such an interest will have priority over all subsequent registered interests and all unregistered interests.

The Convention provides financiers with a number of key rights with respect to any aircraft financed in a country that has ratified this Convention and Protocol. These include:

- to take possession or control of any aircraft object charged to it;
- sell or grant a lease of any such aircraft object;
- collect or receive any income or profits arising from the management or use of any such aircraft object.

## Freedom of Movement within the EU

Aircraft operators, who want to establish a base within the EU will have to obtain an Air Operator Certificate in line with Regulation (EC) No 1008/2008. The issue of an AOC within a European Union country would regulate the licensing of Community air carriers and the right of Community air carriers to operate intra- Community air services. This means that aircrafts which are owned or operated by a company which has a European AOC will benefit from the freedom of movement within the EU.

## Fiscal Incentives

The Act has brought about also various fiscal incentives for aircraft owners and operators.

### Accelerated Depreciation

New rules have been introduced which amend the minimum period of wear and tear of an aircraft for income tax purposes. Prior to these amendments the minimum period for aircraft depreciation was 12 years. These new rules have been applied not only with regard to aircraft but also their engines.

With effect from basis year 2009, depreciation of aircraft and related parts will be spread over a minimum number of years as follows:

- Aircraft airframe, engine & engine or aircraft overhaul – 6 years;
- Interiors and other parts – 4 years.

### Aircraft Ownership / Leasing / Operation

An individual's income which arises from the ownership, lease or operation of aircraft or their engines which is used for or employed in international transport of passengers or goods is deemed to arise out of Malta; regardless of whether the aircraft may have called at, or operated from, any airport in Malta.

### Fringe Benefits

The private use of an aircraft by an individual who is not resident in Malta and is an employee/officer of an employer/company/partnership whose business activities include the ownership/leasing/operation of aircraft used for international transport does not constitute a taxable fringe benefit.

### Withholding Tax

In the case of lease agreements, the lease payments which are made on account of such an agreement shall be exempt from withholding tax, as long as the lessor is not a tax resident in Malta.

## HOW CAN WE HELP?

Whilst appreciating the complexity of this market, our aviation lawyers & consultants are also sensitive to the need for fast, yet high quality legal advice across this industry.

Our Aviation Unit offers a one-stop-shop service to operators seeking to relocate to Malta or seeking a back-up operation within an EU jurisdiction. Many of our services are provided in-house; other non-legal or financial services are provided through our network of trusted partners.

Our typical services would include advisory assistance in:

- Aircraft Registration
- Aircraft Finance
- Aircraft Leasing
- Aircraft Sale and Purchase
- Effective Tax Structures for Aircraft Importation
- Obtaining an Air Operator Certificate
- Malta office location
- Business plan drafting
- Recruitment and relocation services



### Testimonial

“A wealth of expertise”. An unfaltering commitment to providing optimal legal and accounting solutions to foreign clients worldwide and a level of professionalism and attention to detail that cannot be matched in the industry. Top qualities: Personable, On Time, High Integrity”

Alan Nee, Premier Aviation Services Ltd.

“It gives us great pleasure to recommend Chetcuti Cauchi in Malta. We have been cooperating for 3 and a half years. This company helped us to set up a daughter company in Malta and assisted in complying with all the procedures.

Chetcuti Cauchi have been consistently helpful, tackling all assignments with dedication. The companies have been assisting us in the area of corporate matters, accounting, taxation and contacts with the Maltese tax authorities and the Registrar of Companies

We highly recommend Chetcuti Cauchi as a trustworthy partner.”

Anna Polomska, President of the Board, POL-Euro Shipping Lines P.L.C. – S.A.



### Firm Overview

#### Our Advisory Team



Dr Jean-Philippe Chetcuti  
Managing Partner



Dr Maria Chetcuti-Cauch  
Senior Partner



Kenneth Camilleri  
Partner



Dr Priscilla Mifsud-Parker  
Partner



Michelle de Maria  
Manager, Tax



Dr Silvana Zammit  
Manager, Legal



Dr Charles Cassar  
Manager, Legal

#### Our areas of practice include:

##### LEGAL

Art & Cultural Property  
Aviation Law  
Banking & Finance  
Capital Markets  
Commercial Law  
Company Law  
Dispute Resolution  
Employment & Labour  
Gaming Law  
Immigration & Relocation  
Insurance Law  
Intellectual Property Law  
Investments Funds  
Investments Services  
Maritime Law  
Media & Entertainment Law  
Property & Development Law  
Public Service Law  
Technology & Telecoms Law  
Trusts & Estates Law

##### TAX

Tax Advisory  
Tax Compliance

##### CORPORATE

Corporate Services  
Accounting  
Fiduciary  
HR Management  
Technology Management  
Tendering Funding

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