

ASBAA: DOES BREXIT MATTER FOR CORPORATE JET OWNERS AND LESSORS IN ASIA?

News / Business aviation



Predicting the full impact of Britain’s exit from the European Union is the million dollar question which governments, economists and businesses are asking on a global scale following the Brexit referendum. Opinions vary significantly, and the full effect is unlikely to be known for years to come.

While it is too early to reach any definitive conclusions in predicting the outcome of Brexit negotiations, we have highlighted some issues which may be relevant to Asian corporate jet owners and lessors in the wake of the Brexit vote.

Contracts

In many aircraft financing and leasing transactions, there is no nexus to the UK, other than the choice of English law to govern the transaction documents, with its clear and robust legal system. While the substance of English contract law (as well as the laws of the British Virgin Islands (**BVI**) and the Cayman Islands, as British Overseas Territories) will not be affected by a UK withdrawal from the EU, such contracts may have references to EU Regulations, EU Directives or EU sanctions. While there has not (yet) been any change in law in the UK following the Brexit vote and there is no need for immediate action, as negotiations regarding the UK’s exit from the EU evolve, it will become important to review the interpretation provisions of financing and leasing agreements and identify references to EU law for closer examination.

In the event that Article 50 of the Treaty of Lisbon is triggered (which is the mechanism governing the legal and political process for the withdrawal of a member state from the EU), in addition to analysing points of EU law, it will also be necessary to assess whether any “change in law”, “illegality” or “material adverse effect” provisions in a contract are triggered.

While the negotiations between Britain and the EU are unpredictable, and the process will require a lengthy and complex untangling of applicable EU law, we anticipate that English law will continue to remain a sensible choice for commercial parties in corporate jet financing and leasing.

Cape Town Convention

The Cape Town Convention on International Interests in Mobile Equipment and the associated Protocol on matters specific to Aircraft Equipment (the **Cape Town Convention**) provides an international legal framework for the creation and registration of international interests in helicopters, airframes and aircraft engines which fall within the meaning of “aircraft objects” under the Cape Town Convention. Last year, the UK Government ratified the Cape Town Convention and designated it as an EU Treaty pursuant to the European Communities Act 1972. Following the UK’s ratification of the Cape Town Convention, this was extended to the Cayman Islands through the implementation of local legislation.

While the legal effect of the UK’s EU treaty obligations following an exit from the EU are uncertain, given that the UK Government and the Cayman Islands have implemented secondary domestic legislation in respect of its Cape Town Convention obligations, we expect that the rights and protections afforded under the Cape Town Convention will not be affected by the Brexit referendum result.

Ownership

The Cayman Islands and BVI are jurisdictions of choice for ownership of corporate jets. They offer creditor friendly, cost effective and low-risk structures in aircraft acquisition, financing and leasing. While the BVI and the Cayman Islands are British Overseas Territories of the UK, they have their own separate legal systems and are not directly subject to EU law. While it is still early days for Brexit, we do not anticipate that BVI or Cayman Islands law will be directly impacted by the departure negotiations between UK and the EU.

In contrast to the uncertain outcome of the Brexit negotiations, the BVI and Cayman Islands’ robust legal framework and political stability provides certainty to financiers and borrowers. We expect that the BVI and Cayman Islands will continue to maintain their positions as leading international finance centres for corporate aircraft ownership, financing and leasing.

Access to UK and Europe

Non-EU nationals and corporate aircraft registered outside of the EU do not have automatic access to the internal EU aviation market, and the UK leaving the EU is unlikely to change this. However, the UK’s exit from the EU may lead to restrictions being placed on corporate jet owners or lessees looking to fly between the UK and an EU country.

With London being the busiest city for private jet aviation in Europe, Brexit negotiations will need to address continued access either by signing up to bilateral agreements with the EU or with individual countries, or by joining the European Common Aviation Area (ECAA). For non-EU registered private aircraft travelling between the UK and the rest of the EU, post-Brexit changes will need to be monitored to flag any changes to the treatment of eligibility of aircraft for temporary importation and variation on fees including VAT and tariffs on imports.

Outside of Europe, the UK has operated under the EU-US Openskies agreement, which facilitates an open door policy on flights between the EU and the US. The unrestricted access between the UK and the US aviation market is important, and if the UK exits from the EU, the UK will be sure to negotiate continued unfettered access to the US.

Opportunity

While the Brexit referendum may not yet have had a direct and obvious impact on the corporate jet market in Asia, the global aftershock caused by the referendum has left many speculating. Some believe that the UK's exit from the EU would give the UK more freedom to re-evaluate its approach to regulatory red tape in business aviation. For many in Asia, the market volatility triggered by the Brexit referendum signifies opportunity. In the short term, Asia has already seen an increase in private jets being chartered to London as high net worth individuals and corporate investors take advantage of the weakened pound, buying luxury goods and London property.

The spotlight continues to focus on growth in Asia, particularly amidst the political unpredictability of Brexit as well as the upcoming US presidential elections. For the business jet market, the demand for corporate jets in Asia are on a steady rise as they become an essential business tool for companies pushing aggressively for expansion internationally, as well as for China and South East Asia's ever increasing number of billionaires.

Watch this space

The Asian business jet market is in a good position to ride the wave of Brexit, though if there is one lesson that the Brexit referendum has imparted, it is to prepare for the unexpected. As the UK's exit negotiations unfold in the months and years to come, it is vital for those in the Asian corporate jet industry to continue to monitor and assess the evolving impact of UK's exit from the EU.

AsBAA has created **#AsBAAinthecommunity** as a new sharing platform for its members, the media, and those interested in business and general aviation in Asia. A series of members' benefits are offered through #AsBAAinthecommunity including: complimentary listing and promotion of your company's training programmes, internships, scholarships, and events. #AsBAAinthecommunity aims to live up to its title: to create a meaningful new #bizav community in which its members can share ideas, network, best practise, thought leadership content and obtain advice.

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