

# ClientAlert

Energy, Infrastructure, Project and Asset Finance

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## FAA Proposes New Policy Governing Owner Trusts with US-Registered Aircraft

On February 9, 2012, the United States Federal Aviation Administration (FAA) published a proposed policy that, if adopted, would affect the rights and responsibilities of owner trustees of FAA-registered aircraft and their related trustors, owner participants and trust beneficiaries.

In order for an aircraft to qualify for registration with the FAA, the owner of the aircraft must satisfy certain citizenship requirements. Where those requirements cannot be satisfied, aircraft owners often establish owner trusts that meet the FAA's citizenship requirements, whereby the owner trustee becomes the legal owner of the aircraft and the non-citizen retains the beneficial interest in the trust estate. The FAA's proposed policy would clarify that the owner trustees of such trusts are obligated to comply with all FAA regulations imposed on owners of FAA-registered aircraft and would require an owner trustee to provide the FAA with certain information about its registered aircraft, such as the identity and contact details of the operator, the habitual location of the aircraft and the location of the aircraft's records within two business days, and more detailed information regarding the aircraft's flight schedule, airworthiness status and maintenance within five business days. It is not clear from the proposed policy whether the FAA intends to impose these obligations on the owner trustee in its individual capacity or solely in its capacity as owner trustee (i.e., whether the institution or person acting as owner trustee will be personally liable for noncompliance). There is nothing in the text of the proposed policy, however, that indicates any intention to hold the institutions or persons acting as owner trustees personally liable to the FAA.

The proposed policy also evidences the FAA's intention to focus more closely on situations where an owner trustee has entered into an operating agreement that permits the custody and use of the aircraft by a non-US citizen trustor, owner participant or trust beneficiary. Under the proposed policy, the FAA would require that the owner trustee either provide some assurance that no such agreements exist (for example, an affidavit to such effect) or register all such operating or similar agreements with the FAA. While the proposed policy is not directed towards commercial aircraft, where the operation and control of the aircraft is generally transferred to a commercial airline by way of a lease that is filed with the FAA, it does not exempt such structures from the requirements. In a significant footnote to the proposed policy, the FAA discusses a proposal to require the non-US operators of trust-owned aircraft used in general aviation or aerial works operations outside the United States to submit reports to local Flight Standards District Offices identifying themselves as operators of the subject aircraft.



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The proposed policy also includes changes to the standard form of trust agreement addressing, among other items, removal and resignation of the institution or person acting as owner trustee and new undertakings by the owner trustee to the trustor, owner participant or trust beneficiary to provide certain information about the aircraft and its operations to the FAA and to pass along to the aircraft operator any emergency airworthiness directives issued by the FAA.

The text of the proposed policy and the modified form of trust agreement are published in the *Federal Register* and can be accessed here:

<http://www.gpo.gov/fdsys/pkg/FR-2012-02-09/pdf/2012-2930.pdf>

The FAA has distributed this proposal in advance of the publication of the final policy to provide industry stakeholders notice and the opportunity to comment. Written comments are due by March 31, 2012. It is possible that a rulemaking on this topic may follow. However, the FAA has not announced that this will be the next step at this time. We are participating in the Non-Citizen Trust Aviation Working Group for the industry and would be pleased to discuss with you this proposal and any further publications by the FAA on this topic.

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