

Avoiding the bizav flytrap



Richard Pearson

From a legal standpoint, owning and operating an N# aircraft is fraught, risking fines, license revocation, insurance issues and more, as Richard Pearson, founder of Avion Law, explains.

Citizenship aside, the FAA isn't concerned how the *ownership* of an N# aircraft is structured.

It does care, though, about who has operational control, which the Federal Aviation Regulations (FAR) define as the person who exercises *authority over initiating, conducting or terminating a flight*. Not to be confused with the authority of the pilot.

An aircraft is a liability asset, so you took professional advice and put ownership into a specially created limited liability company (LLC) and carry liability insurance. Operating under FAR Part 91, the non-commercial provisions, you know not to accept reimbursement for flights because that would require a charter certificate under the more restrictive Part 135.

The problem is that the LLC is *operating* the aircraft and if it has no other business, the FAA says that it is in the business of providing transportation to you. Accordingly, you just got caught in the so-called *flight department company trap*.

But surely there is no compensation or hire involved? You're flying on your own aircraft and you know for a fact that the



FAA permits you to own and operate an aircraft in your own name, so is there any difference just because you created a wholly owned LLC to own and operate the aircraft?

Unfortunately not.

With no other business, how is the LLC's cost of owning and operating the aircraft funded? You pay capital contributions as and when needed, or occasionally share the expenses of a particular flight, without any profit motive. The FAA says those capital contributions or shared expenses represent compensation for the provision of transport by a company in the business of air transportation. And that requires a charter certificate.

There is certainly a lack of logic here. The FAA's primary concern is safety and it's difficult to see how safety concerns are triggered when an individual owns and

operates an aircraft through an LLC instead of in his or her own name. It's the same individual (and family) on board, so from a public policy perspective, how could the owner be better motivated as far as safety is concerned?

You've likely never heard of this being an issue. An FAA inspector carrying out a ramp check will enquire who has operational control, but it's almost certain he won't ask about the ownership of the aircraft. So is it a real problem?

Consider this:

- violation of the FAR is subject to a fine of up to \$11,000 for each flight violation;
- the IRS may assess those unlawful commercial flights for Federal Excise Tax regardless that they were unlawful as far as the FAA was concerned. That would mean a tax of 7.5% against your capital contributions, plus late penalties;
- a pilot's license is revocable for a flight in breach of the FAR;
- your unlawful operation of the aircraft will likely entitle the insurance company to deny coverage in the event of a claim;
- loan provisions that say you are in default if you breach applicable laws or regulations will be triggered;
- the corporate veil that you created is much more easily pierced when the SPV is engaged in unlawful activity.

See FLY TRAP page 2

Number 1 on The Great Circle Route



- Closest US port of entry from Europe
- CAT III, 11,440 ft. (3,486 m.) runway
- Excellent weather record—renowned worldwide for its ability to stay open
- 24 hour on-field Customs & Border Protection
- 24 hour FAA ATC Tower
- Custom catering

- Contract fuel arrangements
- Full service above & below wing
- Complete cargo handling
- US Department of Agriculture, Public Health and Animal/Plant quarantine services
- Low cost all inclusive/all aircraft ground and cargo handling services

- No restrictions, surcharges, Canadian NAV/User fees, or other "hidden costs"
- 12 million sq. ft. of ramp space
- 20,000 sq. ft. of heated cargo storage space
- FAA/EASA aircraft maintenance
- Uncongested access—air and land

Half million landmark approaches



Tony Caruso
Airport Director

To mix traveling metaphors, owning and operating a private aircraft is by no means plain sailing, requiring deft navigation around the tax, federal aviation and other

legislation, as our lead article by business aviation lawyer Richard Pearson makes clear.

Born in the United Kingdom and now running his own specialist practice in Newport Beach, California, Richard's contribution to this issue of *'Contrails'* offers some practical guidance on how to avoid the potential pitfalls when buying and structuring ownership of private aircraft.

Elsewhere we report on further improvements to the airport, including a new passenger gate and jet bridge, a computer upgrade to the runway lighting system and new services to Charlotte-Douglas International in North Carolina and New York's JFK.

We are also delighted to report record passenger numbers, bringing the half-million landmark ever closer. The greater connectivity that these routes provide can only help.

Our back page feature looks at Bar Harbor, one of Maine's key attractions and just an hour's drive from BGR for those tempted to explore the local area. I can assure readers that Mount Desert Island's best-known town is well worth a visit.

If there are any subjects that you would like to see included in future issues of the newsletter, please contact me or a member of my team.



Photo by Tony DelMonaco

Lighting system upgrade keeps pilots in control

BGR's pilot-controlled runway lighting system has been upgraded with the installation of new computers.

Installed four years ago to compensate for FAA budget cuts, which, at that time, risked operating restrictions by airports across the US, the \$20,000 system continues to allow approaching aircraft to illuminate the runway lights simply by switching on their cockpit microphone.

The \$637 million reduction in the FAA's 2013 budget was challenged in the US Senate, where hastily revised legislation put an end to furloughs that delayed thousands of flights across the US in the first week alone.

Aerospace exports from Maine reach record high

Exports from Maine of civilian aircraft, aviation engines and parts rose by 30 percent to \$312 million last year, according to the World Institute for Strategic Economic Research (WISERtrade), making it the second most valuable sector after seafood.

Much of the growth is attributed to Pratt & Whitney's North Berwick plant, which has some 1,400 employees and is the state's largest manufacturing facility under one roof, producing world-class modules, components and parts for military and commercial aircraft engines.

Other aviation companies contributing to Maine's record aerospace exports include C&L Aviation Group, headquartered at BGR, just a few hundred feet from the terminal and providing a wide range of corporate aviation services, from maintenance and interior refurbishments to aircraft management and sales, more than half of it overseas.

More than 5,100 state workers were directly employed in the aerospace sector in 2015, according to Maine's Portland Press Herald, adding \$700 million to the state's GDP.

FLY TRAP cont. from page 1

The solution?

- Take ownership directly, or "dry" lease the aircraft from the LLC, so that you operate it yourself. The LLC can own the aircraft and pay for maintenance, insurance and fuel; it just can't operate it. Yes, you will have personal liability for the operational control, but that's unavoidable if you want to comply with the FAR and liability coverage is available in significant excess of the highest business aviation damage ever awarded.
- Best practice is to put ownership into a company that is engaged in a trade or business that can absorb the tax deductions from the ownership and usage. It's not enough simply to add

some random business into the LLC so that there is some business in addition to the ownership of the aircraft. There needs to be a connection between the business and the aircraft. The aircraft operations should be *within the scope of and incidental* to the company's other business.

The potentially costly irony is that instead of isolating liability of ownership, you are risking hundreds of thousands of dollars of fines, revocation of licenses, FET assessments, and denial of insurance coverage by placing ownership in an LLC.

Avion Law is a dedicated aviation law firm headquartered in Newport Beach, CA (avionlaw.com)

BGR reports record numbers

Last year's passenger traffic set a new BGR record, with over 492,000 travelers using the airport, representing a 3% increase over 2015. In addition to the annual high, there were also four record-breaking months – July through October.

"We are very pleased with the 2016 numbers," says Airport Director Tony Caruso. "The increase in the available seats and greater passenger demand both contributed to our success.

We had increased service from American to La Guardia during the summer and the holidays, the new service to Newark on United, up gauged equipment on Delta and continued strong traffic on

Allegiant in 2016, all of which played a part," he added.

Mr. Caruso went on to say that the airport continues to work to add more seats and more connectivity. The recent completion of the \$14 million remodel of the Peter R. D'Errico passenger terminal and the addition of a new gate and jet bridge gives BGR more capacity for growth and provides a better experience for passengers.

New routes

A new route to New York's JFK on Delta starts in April, along with the return of United's seasonal service to Newark

and Chicago in May and June respectively. Also in June, American Airlines is introducing a new summer service to Charlotte-Douglas International in North Carolina.

Commenting on these changes Airport Director Tony Caruso said: "Charlotte has been one of the hubs in our strategic plan, so we are delighted that American is adding it to their routes from BGR. American's summer service will give our customers the chance to use another hub for their summer travels, plus Charlotte is a great destination city."



Photograph by Mackenzie Mazur

BGR lends a snowy hand

Had the East Coast Snocross taken place just two weeks later, when Bangor experienced 21.5 inches of snow in 24 hours, tripling the existing 40 year-old one-day record, there would have been no need for BGR's involvement.

As it was, the Snocross tour returned to the city at the end of January, when there was insufficient snow for the event, which involves motocross racing using high performance snowmobiles instead of dirt bikes. The airport was happy to answer the call for help from the organizers, Eastern Maine Community

College Foundation (EMCC), sending trucks of snow cleared from the runway to compensate for Mother Nature's failure.

Commenting on this unusual 'donation' Snocross organizer Jennifer Khavari, EMCC's Director of Advancement and Business Services and Executive Director, said: "We are always appreciative of the City of Bangor and their willingness to help EMCC with our fundraising efforts. A special thank you to Tony Caruso, BGR Airport Director, for sharing his resources and partnering with us in our endeavors."

New gate and jet bridge

The airport has installed a new passenger gate and state-of-the-art jet bridge, costing almost \$2 million, to cope with increased passenger numbers. The jet bridge has many advanced features, including enhanced safety measures such as backup camera and aircraft proximity sensors.

Commenting on the new facilities Airport Director Tony Caruso said: "Our passenger growth has been very strong – up from 372,220 in 2009 to last year's record high of 492,000.

"Additionally, gate congestion on the airfield side became an issue a couple of years ago. We built a temporary connector to the international terminal, but the new gate has better passenger amenities with new seating, proximity to restrooms and the café, as well as the new jet bridge."





Top destination bar none

Settled in 1763, when it was aptly known as Eden, this paradise on Maine's scenic Atlantic coast, barely an hour's drive from Bangor International, is better known today as Bar Harbor and is a magnet for visitors year round.

Situated on Mount Desert Island and reached after crossing the Trenton Bridge from the mainland, Maine's number one destination makes a great base for exploring the nearby 47,000 acre Acadia National Park, which occupies nearly half the island.

But there is far more than woodland, rocky beaches and a rich variety of wildlife to the best known town on Mount Desert Island. Bar Harbor has a unique ambiance that blends seashore community, 'Down East' character and the world-renowned Maine lobster, of which more than five million are eaten here every year.

Known for its stunning coastal beauty, its many yachts and lobster boats and its breath-taking view of islands and ocean in settings that can range from glistening sunlight to thick fog and mist, more than 125 cruise ships call at Bar Harbor every year. They come for far more than the scenic views, though. With its year-round population of around 5,300, the town is the center of activity for visitors seeking a rich variety of shops, restaurants (said to number

more than 70), taverns, hotels, or bed and breakfasts, as well as easy access to the forests and shores of Acadia National Park.

Culture

For those interested in delving into the town's fascinating history, including its rebuilding after the devastating fire of 1947, Bar Harbor is also home to several art galleries, nature centers and museums, including the Abbe Museum, a Smithsonian affiliate, showcasing Wabanaki pieces and celebrating Native American culture and history.

Monthly art walks during the summer see local stores and restaurants become art exhibits and performance stages.

The region's 'Down East' epithet has a long history dating back over 200 years when large schooners, filled with goods on their way back to England or elsewhere in Europe, had to sail downwind to the east. Visitors to Bar Harbor may often hear the tell-tale sound of a 'Mainer' speaking with a distinctive Down East accent, referring to the town as "Bah-hah-bah" and the state's most famous export as "lob-stah!"

Whatever the pronunciation, though, most visitors agree that Maine's number one destination is well worth a visit. 🐞



Main Street, Bar Harbor

Bangor International Airport • 287 Godfrey Blvd, Bangor, ME 04401, USA • I.207.992.4600 • fax: I.207.945.3607 • www.flybangor.com

If you have any questions or comments regarding this newsletter or story suggestions for the next edition, please contact Risteen Bahr: rbahr@flybangor.com or I.207.992.4610.

Publication of third party content is for general informational purposes only and does not constitute an endorsement or recommendation by Bangor International Airport (BGR). Such content is provided by sources believed to be reliable, though no guarantees are made by BGR as to its accuracy or completeness.