

Non-Citizen Trusts and FAA Registration of Aircraft

- Generally, to register an aircraft with the Federal Aviation Administration (FAA), the owner must be a US citizen or a resident alien (49 U.S.C. §44102), however there are additional, highly regulated options available to non-citizens.
- One FAA-regulated option permits the use of a non-citizen trust (NCT). This is a trust arrangement where a US citizen trustee holds aircraft assets in trust on behalf of a beneficiary that is not a US citizen for FAA purposes under a trust agreement with prescribed strict requirements so that the trustee can register the aircraft with the FAA (14.C.F.R. §47.7(c)).
- NCTs are necessary to allow the following types of companies to register an aircraft in the US:
 - Publicly traded US companies;
 - US companies with >25% foreign ownership or a foreign president, officers and/or directors;
 - Non-US leasing companies;
 - Non-US lenders that have foreclosed on a US registered aircraft;
 - Non-US citizen purchasers of aircraft from US manufacturers;
 - Non-US citizen owners of aircraft being repaired, modified or stored in the US.
- NCTs are an integral and highly beneficial tool of the aviation industry, and elimination or significant curtailing of NCTs would have an adverse effect on the US airline and general aviation industry and the US economy.
- The 2013 FAA Policy Clarification enhanced requirements for NCTs to clarify control of the trust by US citizen trustees and strengthen FAA access to information about the beneficial owners and operators of aircraft registered through NCTs, including:
 - Limitations on control by the non-citizen beneficiary (trustee acts in the interest of US);
 - Requirements for the beneficiary and trustee to rapidly provide information requested by FAA such as:
 - Contact details for the person operating the aircraft,
 - Location of maintenance records,
 - Location of normal base and operation for aircraft, and
 - Information about operations and personnel on specific dates; and
 - The non-citizen beneficiary can only remove the trustee for cause, which would not include the refusal to act in violation of laws, or outside the scope of authority, or contrary to the obligations under the Trust Agreement, or mere disagreement.
- During the FAA Policy Clarification process from 2010 – 2013, an industry consultative group consisting of 12 industry associations (including A4A, AWG, GAMA and NBAA) and 70 companies (including manufacturers, airlines, leasing companies, banks, trust companies and law firms) worked collaboratively with FAA to develop a solution that enhanced the NCT requirements.
- That group, and this currently forming group, are not supportive of the use of NCTs to conceal the true ownership of an aircraft from FAA or any other US governmental agency, but we believe that information made available to FAA today is sufficient, and that action such as HR 3544, the Aircraft Ownership Transparency Act of 2017, will result in unintended consequences and potential harm to the aviation industry.
- The majority of trust service providers that act as trustees for NCTs follow know your customer protocols to vet potential NCT beneficiaries for purposes of the Patriot Act, anti-money laundering, watchlists, and other nefarious activities.
- The industry participants in this group want to work constructively with FAA and other US government agencies and Congress to preserve the use of NCTs so that aircraft can continue to be registrable in the US for legitimate purposes when a non-citizen is involved.