

PRIVATE JET AIRCRAFT SALE AND PURCHASE: AN OVERVIEW

To help navigate the multiplicity of issues encountered in a private jet sale and purchase transaction, a strong team of aviation experts who specialise in private jet sale and purchase is needed.

A properly managed transaction will require specialist legal counsel, jet brokers, operators/managers, tax and customs advisors, corporate structuring advisors, insurance brokers, pilot (for test flight and delivery) and aircraft inspection facility (and others) all of whom must have expertise dealing with private jet sale and purchase transactions (which throw up different issues than, for example, commercial aircraft sale and purchase transactions).

Key points to consider when buying an aircraft

1. The aircraft's habitual base and the jurisdictions in which it operates.
2. Planned flight routes (including the longest envisaged journeys), destination airports/airstrips.
3. Intended registration.
4. Intended usage, whether for business, leisure, charter, or a blend of purposes.
5. Aircraft exportation.
6. Expected annual flight hours, indicative of usage intensity.
7. Passenger capacity and specific luggage requirements.
8. Financial aspects such as the purchase price, operational costs, and tax implications.
9. Ownership structure.

Once considerations have been worked through, the aircraft selected, and a letter of intent (“**LOI**”) agreed between a buyer and a seller, an Aircraft Purchase Agreement (“**APA**”) which sets out the finer details of the deal will be prepared and negotiated based on the more “high level” commercial terms agreed in the LOI.

Timeline

Assuming a smooth process, with minimal discrepancies found during the pre-buy inspection of the aircraft, a private jet sale can be completed within six to eight weeks from the signing of the LOI.

Structure of an APA

The broad structure of an APA contemplates the following elements:

1. Agreement to buy and sell the aircraft (terms set out in more detail than in the LOI), including a detailed description / specification of the aircraft.
2. Delivery Condition and Pre-buy Inspection.
3. Acceptance / Rejection.
4. Closing (procedure to deliver the aircraft).

1) Agreement to Buy and Sell

Lawyers will work closely with brokers and managers to include a comprehensive description of the aircraft (including its engines, auxiliary power unit, parts, loose equipment and aircraft documents).

A certain degree of negotiation may place as to the availability of aircraft documents and their requirements – a well-advised buyer should seek to obtain all aircraft documents which are required to be kept by the seller under applicable provisions of the relevant aviation authority and all those documents which are required to operate and maintain the value of the aircraft.

Deposit

A deposit is invariably transferred by the buyer into an escrow account held by an independent escrow agent on both parties’ instructions. The escrow agent’s fees are usually shared equally between seller and the buyer.

Assuming the transaction proceeds, the deposit is applied against the purchase price subject to the closing conditions being met. In the event of a dispute the deposit is paid into court.

2) Delivery Condition and Pre-buy Inspection

Buyers typically arrange for a pre-buy inspection at a mutually agreed facility to determine whether the aircraft aligns with delivery condition stated in the APA. Key delivery conditions include:

- Airworthiness (with valid certificate of airworthiness), all airworthiness directives and mandatory service bulletins complied with.
- All maintenance inspections up to date according to approved maintenance programme.
- All systems / components / equipment in working order.
- Title free and clear of liens/security/collateral or claims or right of others (other than those which will be discharged at closing).
- No leased or loaned equipment on aircraft.
- No material damage / history of material damage or material corrosion.
- No outstanding engineering dispositions or non-standard inspection intervals.
- With all aircraft documents.

Inspection facility and inspection report

A well-advised buyer would ensure that the inspection facility is familiar with the make and model of the aircraft. The inspection facility will verify aircraft documents and physically inspect the aircraft, prepare an inspection report and perform any necessary works to comply with the delivery conditions set out in the APA.

The outcome of the inspection report can significantly impact the negotiation process, the buyer may be able to negotiate for a reduced purchase price or enter into a holdback agreement, with payment being made contingent on specific repairs being completed before the aircraft's transfer.

Delivery condition cut-off date

From the buyer's standpoint, the APA should ideally incorporate a specified cut-off date by which the aircraft must attain delivery condition. This provision enables the buyer to exit the agreement while retaining their deposit, less any costs for which they are responsible, if the aircraft fails to meet the delivery condition by the stipulated deadline.

Conversely, a more seller-oriented APA might simply grant the buyer the right to reject the aircraft if it proves impossible to bring it to the required delivery condition, without imposing a specific cut-off date.

Sellers can enhance their position by presenting aircraft to the market with up-to-date maintenance records, or ideally, after completing a recent heavy check. This proactive approach maximises the chances of identifying only a limited number of discrepancies during the pre-buy inspection, streamlining the overall transaction process.

Tax/customs

It is important to note that whilst the inspection and any works on the aircraft occur in order to place the aircraft in the delivery condition the aircraft can be put into a “customs warehouse” structure (at buyer’s cost) so that the aircraft can be transferred to the buyer free of customs duty or VAT – advice should be sought from a tax or customs expert prior to works being undertaken to minimise tax/customs exposure.

3)Acceptance / rejection

Assuming the aircraft is placed into the delivery condition within any time limits specified under the APA, the buyer will typically be obligated to accept the aircraft by its execution of an acceptance certificate and proceed with closing, subject to the satisfaction (or waiver) of the closing conditions set out under the APA.

As mentioned above, if the aircraft has not been placed in the delivery condition within any specified time period, this usually allows the buyer to walk away from the deal without forfeiting its deposit.

4)Closing

Closing will only take place once the aircraft has been accepted by the buyer, and any discrepancies corrected (such that the aircraft is deemed released to service by the inspection facility) and the conditions to closing (including conditions precedent) having been satisfied or waived by the relevant party.

Typical conditions precedent to closing include:

- Aircraft being situated at the delivery location in the delivery condition.
- Escrow agent being in funds (holding deposit and the balance of the purchase price) and with relevant closing documents executed by the relevant parties (e.g. bill of sale, delivery receipt).
- Corporate authorisations and constitutional documents being delivered by each party.
- Export certificate of airworthiness (if applicable).

- Insurance covering third party liability, covering any exiting financier if applicable, as well as seller.
- Priority search certificates from the International Registry (“IR”).
- Bills of sale (including all historic bills of sale showing root of title to manufacturer) and any release of mortgage lien documents.

Closing mechanics

Pre-closing

- The balance of the purchase price (i.e. the purchase price minus the deposit) to be paid by buyer to escrow agent together with signed delivery receipt to be held in escrow.
- The seller lodges with the escrow agent originals bills of sale with the escrow agent and any mortgage lien release documents (if applicable) to be held in escrow.
- Escrow Agent confirms that it has performed searches on the IR and it shows no liens (other than liens to be discharged on closing) and that it holds originals of the bills of sale and mortgage lien release documents.

Closing day

- Escrow Agent / financier’s counsel files any mortgage lien / security release documents (if applicable). If the aircraft is subject to any financing, it is important to engage with the seller’s financier and its counsel to ensure the closing regime under the seller’s finance documents are complied with. A disconnect between the purchaser, the seller, and the seller’s financier (and the steps required to release security over the aircraft) could stall the transaction.
- Once security (if applicable) has been released, the balance of the purchase price is released to the seller by the escrow agent.
- Bills of sale (which warrant that the aircraft is conveyed by the seller to the buyer for good and marketable title, free from any encumbrances) and delivery receipt (which sets out the total time on the airframe, engines and auxiliary power unit and which acknowledges delivery of the aircraft) are dated and released.

Conclusion

The APA should protect the principals against potential risks inherent when navigating the complexities of private jet sale and purchase.

These insights highlight the importance for both parties receiving sound advice from private jet aviation experts and the key role played by a well-drafted and negotiated APA.



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