

Client Alert

Finance Practice Group

December 14, 2017

What Is ADS-B and What Do Lenders and Lessors Need to Know About ADS-B?

While compliance with the upcoming ADS-B requirements is primarily an issue for those responsible for maintenance and operation of aircraft, lenders and lessors should understand ADS-B compliance requirements and plan accordingly.

What is ADS-B?

Automatic Dependent Surveillance – Broadcast, or ADS-B, is a satellite-based tracking system that increases the safety of flight operations. The technology provides precise location information for aircraft, including coverage in remote areas (such as the Gulf of Mexico) that do not have radar coverage. ADS-B In (the receiver part of the system), which is not mandated in the U.S., provides air traffic controllers and pilots of equipped aircraft enhanced location and weather information. ADS-B Out (the broadcast part of the system) uses satellites to determine location and broadcasts that to air traffic controllers and pilots with the ADS-B In receiver.

The FAA has mandated that by **January 1, 2020**, ADS-B Out capabilities are required for aircraft operation in most U.S. airspace. Some aircraft have ADS-B Out installed, but many do not. Industry commentators are warning that installation slots and equipment for the installation will be in short supply as the deadline approaches. Duncan Aviation president, Aaron Hilkeman, estimates that forty percent (40%) of the U.S. business aircraft fleet will not meet the January 1, 2020 deadline for ADS-B Out.

Why is this important to lenders and lessors?

Although the ADS-B upgrade is likely covered by the loan or lease documents that require the operator, whether the borrower or lessee, to comply with mandated modifications, lenders and lessors should consider the effects of this regulation. Lenders and lessors should review their aircraft fleet and determine which aircraft are required to have ADS-B Out installed, confirm that the borrower or lessee is required to make the mandated modification, send notice to the borrower or lessee regarding the requirement, and request information regarding how the borrower or lessee is intending to comply. Lessors should review the terms of the lease regarding mandated modifications carefully, especially if the aircraft will be returned prior to

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January 1, 2020. The lease agreement may require that the lessee perform the modification even if the compliance date is after the expiration of the lease term. However, depending on the lease termination date and the mandated modification requirements in the lease documents, the lessee may not be required to make modifications to comply with the ADS-B Out standard. Lenders and lessors should be prepared for the borrower or lessee being unable to comply with the regulation by the deadline and consider alternatives such as extending the term until the borrower or lessee is able to comply. Industry experts do not expect the January 1, 2020 deadline to be extended and flights in the affected airspace may be limited to inbound flights to a maintenance facility for installation of ADS-B Out equipment.

If the lessor is responsible for making the ADS-B Out upgrade, it may want to begin discussions with the lessee to perform the upgrade or reserve a slot with a maintenance provider for the upgrade well in advance of the deadline. Maintenance shops are recommending scheduling the ADS-B Out installation with other maintenance to reduce the amount of time the aircraft is out of service.

Recovering the expense of the ADS-B Out upgrade will become more difficult as the deadline approaches and aircraft without the upgrade will become more difficult to sell after the deadline. Joseph Zulueta, a Managing Partner of Aeronautical Systems, has stated that the current rate of return on investment of ADS-B retrofits is about fifty percent (50%) on resale and further stated that after January 1, 2020 “pre-owned aircraft without ADS-B are unlikely to sell, and having it will bring no extra value otherwise.”

Lenders and lessors should also pay attention to the type of ADS-B Out equipment installed on the aircraft. While a borrower or lessee may only be required to install equipment that complies with the FAA requirements, if the aircraft is U.S. registered, that equipment may not permit operation in ADS-B airspace outside of the U.S. As of August 2017, only the U.S. has approved the 978UAT datalink. Operation in certain ADS-B airspace outside the U.S. will require 1090ES. There are also other technical points in the regulations, such as whether a Mode S transponder or an Extended Squitter is required based on the operation of the aircraft. Not surprisingly, different countries have varied dates and requirements for ADS-B equipment and some have not adopted an ADS-B standard. Parties may want to review the ADS-B requirements of countries outside of the U.S. where the aircraft may be operated.

While the FAA mandate covers ADS-B Out, some aircraft owners or operators may also want to add ADS-B In. Lessors may want to consider the installation of ADS-B In to increase the resale value of the aircraft or to make the aircraft more attractive to the next lessee.

Compliance with the ADS-B requirements requires careful planning by lenders and lessors in transactions involving the affected aircraft.

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