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MEMORANDUM

TO: Mr. David Colindres, The Registry of Aruba

FROM: David H. Coburn
Carol Gosain

RE: Aruban-Registered Aircraft Principally Based in the United States

You requested our views on (1) whether an aircraft registered in Aruba may, consistent with U.S. Federal Aviation Administration (“FAA”) operating rules, be principally based in the United States and (2) if so, whether there is any time limit with respect to how long the aircraft may remain principally based in the United States. In our judgment, given certain circumstances, the answer to (1) is yes and the answer to (2) is no. We explain below.

We assume that the aircraft at issue is directly owned by an Aruban entity, registered in Aruba and dry leased to a U.S. operator. We also assume that the aircraft is used in civil operations.

Based on the above assumptions, we believe the dry lease arrangement could be authorized pursuant to Part 375 of the regulations of the U.S. Department of Transportation (“DOT”), and more specifically 14 C.F.R. § 375.36. The aircraft would operate in the United States under the applicable provisions of Part 91 of FAA’s Federal Aviation Regulations (“FARs”), 14 C.F.R. Pt. 91, and applicable Aruban Civil Aviation Regulations.

Section 375.36, entitled “Lease of foreign civil aircraft without crew” provides: “Foreign civil aircraft that are leased without crew to an air carrier or citizen or permanent resident of the United States, and used by the lessee in otherwise authorized air transportation or commercial air operations, may be operated into, out of, and within the United States in accordance with any applicable regulations prescribed by the Federal Aviation Administration.” As you can see, this section contemplates that the foreign-registered aircraft will be leased to a U.S. entity (and thus presumably based in the United States). Section 375.36 does not impose any limit on the amount of time the dry lease arrangement may remain in effect.

From an FAA standpoint, such an aircraft would have to be operated in the U.S. pursuant to FAA's "General operating and flight rules" in Part 91 of the FARs (except those Part 91 rules that apply only to U.S.-registered aircraft), as well as applicable Aruban safety requirements. No time limit on such operations is imposed by the FARs.

If the aircraft is operated in commercial air operations or otherwise used for compensation or hire, additional DOT and FAA regulations and requirements might apply. Of course, each particular case would require careful consideration of the pertinent facts to determine whether the above regulations and/or other regulations are applicable.

If you have any questions or need any additional information, please call us at (202) 429-8063 (David) or (202) 429-6461 (Carol), or email us at dcoburn@steptoe.com or cgosain@steptoe.com, respectively. Best regards.