

READY FOR TAKE OFF

BERMUDA OFFSHORE AIRCRAFT REGISTRATION

All aircraft must be registered with a national aviation authority in accordance with the Convention on International Civil Aviation ("ICAO") for the purposes of identifying the nationality assigned to the aircraft, and designated by the registration mark appearing on the aircraft. Careful consideration should be given to the choice of jurisdiction for registration of an aircraft due to a variety of factors, including, but not limited to, political stability, the reliability and flexibility of the legal remedies available, the reputation of the civil aviation authority and its regulatory standards, and financial and tax considerations.

Why register in Bermuda

Bermuda has established itself as a leading jurisdiction in a number of international business sectors, including insurance, reinsurance and aviation and shipping. Bermuda has a history of political stability and an active, business friendly Government, committed to transparency and global compliance standards. The legal system is based on the common law of England & Wales and disputes may be settled by way of arbitration or litigation, having a final right of appeal to the Privy Council in London. Additionally, Bermuda is a tax neutral jurisdiction, with no corporation, profit, or capital gains tax. An exempted undertaking, including one which owns or leases aircraft on the Bermuda register of aircraft (the "Register"), may apply to the Bermuda Government for an undertaking valid until 2035 that, in the event such tax is implemented, it shall not be applicable to the relevant undertaking.

The Bermuda registration marks, VP-B or VQ-B with two subsequent letters, are considered to be a neutral or "low-profile" mark and are accepted internationally. Information pertaining to the registered owner of an aircraft will only appear on the certificate of registration but will not otherwise be made publicly available.

Bermuda is a well-known jurisdiction for aviation financing. Institutional lenders are familiar with a variety of Bermuda special purpose vehicles used in conjunction with aircraft acquisitions and/or fleet renewals. Institutional lenders are confident that Bermuda's strong legislative structure will ensure that the security rights of the lender are recognised and that the Bermuda courts will consistently apply such rights.

The Aircraft Register

The Register was created in 1931 and has established itself as a Class 1 register under the FAA's Flight Standard Service International Aviation Safety Assessment Programme. The Register is currently ranked 10th in size amongst the 191 signatory States to the ICAO. As of September 2016, there are approximately 760 aircraft on the Register, categorised as either public or private. Bermuda presently holds ICAO Article 83 bis agreements ("83 bis Agreements") with the Russian Federation, the Republic of Azerbaijan and the Republic of Uzbekistan.

Regulation and Oversight

Effective from 1 October 2016, the responsibility for aircraft registration and the issue of permissions and validations for aircraft and flight crew was transferred to the Bermuda Civil Aviation Authority (a quango) ("BCAA"). The Board of Directors of the BCAA is responsible for the general administration of its affairs and business under the oversight of the Ministry of Tourism, Transport & Municipalities.

The BCAA was established with a view to making the Register more competitive globally by increasing the autonomy and flexibility of the regulating authority to make decisions on a sound business footing. The BCAA is recognised as a mature civil aviation authority that offers a pragmatic and adaptable approach to its clients.

The BCAA is regulated by the United Kingdom's Department for Transport, with the primary legislation being the Overseas Navigation (Overseas Territories) Order 2013 (the "Order") and the Overseas Territories Aviation Requirements (OTARs). The BCAA requires the operators of all aircraft who fall within the scope of Article 134 of the Order to comply with the safety and other requirements set out therein. Such aircraft are deemed to be operating at a higher safety level and may, therefore, be eligible to negotiate reduced insurance fees with their insurance companies. As a result, air safety regulations in Bermuda are the equivalent of, and in some cases exceed, those of the three main aviation authorities.

Aircraft Registration

The Order sets out the list of "qualified persons" who may register an aircraft in Bermuda. A qualified person is deemed to be:

- an individual or corporate entity incorporated in Bermuda;
- an individual or corporate entity incorporated in the Commonwealth; or
- an individual or corporate entity incorporated in the European Economic Area (an EEA State).

Potential applicants that are qualified persons are not required to incorporate a Bermuda exempted company for the purposes of acting as the registered owner of the aircraft.

Registration of aircraft in Bermuda commences by filing a preliminary application for approval in principle and a subsequent formal application. We can provide a copy of the guidance issued by the BCAA in connection with the application process upon request.

The Application Process

The preliminary application for approval in principle is submitted online via the Aircraft Information and Records System by an authorised user (such as CHW). Once approval in principle has been granted, a designated registration mark and the Mode S Codes (the transponder codes used for detection and reporting purposes) will be assigned to the aircraft.

Following approval in principle, the BCAA will assign an airworthiness inspector to inspect the aircraft (either in person or by delegating an approved airworthiness inspector in the physical location where the aircraft is located) and circulate an invoice for the initial certificate of airworthiness. Fees for a certificate of airworthiness are calculated according to the weight of the aircraft and are renewed annually. The BCAA's current fee schedule can be found in the Air Navigation (Fees for Certificates and Services) Order 2012.

The formal application will be satisfied on receipt of the information listed in the Detailed Requirements. Responsibility for submission of the application is usually split between the Continuing Air Maintenance

Officer and Bermuda counsel, who attend to Section A – corporate documentation requirements, Section B – registration requirements and Section E – miscellaneous general requirements.

Further information as to the registration, airworthiness and flight operations is available on the BCAA's website at <http://www.bcaa.bm>.

An application for a Class Six Radio licence must also be made to the Regulatory Authority of Bermuda ("RAB"). This may be submitted in advance of registration, along with the fee. The RAB will issue the requested radio licence on receipt of a copy of the certificate of registration in respect of the aircraft from the BCAA.

On completion, the BCAA will enter the aircraft onto the Register.

Aircraft Mortgages and Security

As part of the aircraft financing arrangements, lenders usually require that their interests in the aircraft and aircraft engines to be secured by way of legal or equitable mortgage. Currently, aircraft mortgages granted over an aircraft and aircraft engines are registered in the mortgage registry at the Department of Civil Aviation (the "Mortgage Registry") pursuant to the Mortgaging of Aircraft and Aircraft Engines Act 1999.

Prior to entering into an aircraft mortgage, both parties should give consideration to the effects of *Blue Sky One Limited & Others v Mahan Air & Another* [2010] EWHC 631 (Comm) in which the English court held that the law of the jurisdiction of the physical location of an aircraft at the time the mortgage is entered into would determine if a mortgage has been validly created. The effect of this ruling (which is likely to be followed in Bermuda) has resulted in lenders insisting that the aircraft must be physically located in the airspace of the jurisdiction of the choice of law of the mortgage as at the time and date that the mortgage is entered into.

Following ratification by the United Kingdom of the Convention on International Interests in Mobile Equipment and the related Protocol regarding Aircraft Equipment (the "Cape Town Convention"), Bermuda has enacted legislation to ensure that the Cape Town Convention can be extended by the United Kingdom to Bermuda. The Bermuda International Interests in Mobile Equipment (Cape Town Convention) Act 2016 received final approval from the Senate on 25 July 2016 and it is expected that the Cape Town Convention will be extended to Bermuda in late 2016/early 2017. The Cape Town Convention is expected to strengthen Bermuda's appeal as a jurisdiction of choice for aviation asset-backed securitisations and to facilitate the new purchase of aircraft by airlines operating in jurisdictions with existing 83 bis Agreements.

CHW was an active participant of the Aviation Working Group led by the BCAA in connection with the adoption of the Cape Town Convention and are members of the Bermuda Business Development Agency's Aviation Focus Group in Bermuda. As one of Bermuda's leading commercial law firms, we pride ourselves on offering top-tier corporate services with an efficient team of attorneys.

For further information on the registration of aircraft in Bermuda, please contact Ernest Morrison or Janice Gutteridge.

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