

VP-L** : AIRCRAFT REGISTRATION IN THE BVI

Robert Briant – June 2008

Historically, the British Virgin Islands has been an incorporation jurisdiction, often incorporating the holding company for an aircraft registered in another jurisdiction. The aircraft itself has typically not been registered in the British Virgin Islands. In fact, only one aircraft to date has been registered in the British Virgin Islands, which is the local police aircraft. This is about to change. The British Virgin Islands is about to compete head to head with other offshore jurisdictions for the registration of both private and commercial aircraft.

Offshore Aircraft Registration

As a preliminary point, it is worth considering why aircraft are registered offshore in the first place. The answer to this question is similar to why companies are incorporated in offshore jurisdictions – neutrality. Persons do not (or should not) choose to register their aircraft in an overseas territory to avoid regulation. The overseas territories are regulated to ICAO standards as a minimum, and often to higher United Kingdom standards.

However, aircraft are often leased or financed. The person providing the lease or financing is often in a jurisdiction other than the jurisdiction of the borrower or lessee. As a result, it is possible to make a decision as to where to register the aircraft.

The person providing the financing or lease will often not want to use the home jurisdiction of the borrower or lessee. In the event of the insolvency of the borrower or lessee, the lender may not feel sufficiently protected with the home jurisdiction as a result of an inadequate legal system to enforce security. Alternatively, the person providing the financing or the lease may simply feel that the home jurisdiction does not have adequate regulation governing civil aviation or may fear an act of nationalism, war or other extraordinary event. A neutral jurisdiction, such as the BVI, fits the bill perfectly.

Another reason a person may not wish to register in their home jurisdiction is that unfortunately in this day and age, they may not want the registration of their home jurisdiction to show up on their aircraft. For example, an N registration for the United States is not always welcome around the world.

Benefits of the British Virgin Islands

The overseas territories have a strong legal history. It is this legal strength that gives lenders the comfort that they require in order to be certain that they will be able to realise on their assets if necessary.

The British Virgin Islands is particularly well known for its international business companies (recently renamed BVI business companies). The British Virgin Islands is the offshore equivalent of Delaware. It is expected and encouraged that an aircraft be owned by a British Virgin Islands business company. In fact, this is a necessary precondition unless the aircraft will be owned by an individual or company meeting certain specified requirements. Further, BVI companies do not pay any tax in the British Virgin Islands, and aircraft and their parts may be imported into the British Virgin Islands free of duty.

An important feature is the ability to delegate aircraft inspection to a competent authority in a competent jurisdiction. This contrasts with many onshore jurisdictions which require that an inspection of an aircraft be carried out in their home territory.

Mechanism to register in the British Virgin Islands

The Register of Aircrafts is managed and maintained by the Governor of the British Virgin Islands. These responsibilities have been delegated to the Director of Civil Aviation in the British Virgin Islands (the “Director”) as overseen by Air Safety Support International (“ASSI”), a not-for-profit wholly owned subsidiary of the United Kingdom Civil Aviation Authority (the “CAA”). As such, the CAA is indirectly responsible for ensuring aircraft safety in the British Virgin Islands including with respect to such registry.

There is a four step process to register an aircraft in the British Virgin Islands. ASSI recommends that prospective applicants seek BVI legal advice before proceeding with any application.

Step One (Due Diligence):

The process to register an aircraft in the British Virgin Islands starts with a written request to the Director. Upon receipt of the request, the Director will send the applicant an Aircraft Registration Application Form (BVI Form 001) which forms part of the due diligence process undertaken by the Director. The Director will ensure the applicant is eligible to register an aircraft in the British Virgin Islands. In particular, the aircraft must be owned by certain specified types of individuals or companies. The Director encourages the applicant to incorporate a British Virgin Islands business company for the purposes of owning the aircraft.

After the Director reviews the Aircraft Registration Application Form and determines that the applicant is suitable to proceed, the Director will send to the applicant a registration package which includes all the necessary application forms and additional guidance material as applicable to the applicant’s operational and aircraft certification requirements.

Step Two (Operation of the Aircraft):

The registration package will contain information required for the applicant to comply with the operational requirements and flight crew licencing and validation requirements. The applicant will need to demonstrate compliance with overseas territory navigation requirements (“OTARs”)

parts 91 and 125 for an aircraft being used for private or corporate use, and OTARs parts 119 in conjunction with OTARs parts 121 and 135, as applicable, in connection with an aircraft being used for commercial use. Further, the applicant will need to demonstrate compliance with the flight crew licencing requirements under OTARs part 61.

Step Three (Certificate of Airworthiness & Supporting Maintenance):

Once the operation of the aircraft is established, an application for a certificate of airworthiness is made on BVI Form 002. When sent to the applicant, BVI Form 002 will be accompanied by guidance material as to the documentation, manuals and minimum equipment levels which will be required. In this regard, I note that the Director will accept type certificates from the FAA in the USA, Transport Canada, a full member state of the Joint Aviation Authorities (JAA) or the European Aviation Safety Agency (EASA) for any aircraft which is the first of its type on the BVI register.

The applicant will need to submit a BVI Form 003 to have a Technical Coordinator approved by the Director. The Technical Coordinator is the person responsible for ensuring suitable arrangements have been made for continued airworthiness management.

Step Four (Continuing Requirements):

The owner (applicant) has the ultimate responsibility for continuing airworthiness of the aircraft, with the Technical Coordinator being responsible on a day to day basis. Reference is made to OTARs Part 39 in this regard.

The registration mark for British Virgin Islands aircraft will be prefixed with VP-L**.

Conclusion

While ASSI is in the process of finalising the various supporting documents and determining fees, it is anticipated and hoped that aircraft registration in the British Virgin Islands will become effective over the next several months.

The British Virgin Islands is a competitive jurisdiction for offshore incorporation and transactional work. In fact, it is the leading jurisdiction for offshore incorporations and has recently become the second most popular jurisdiction to launch an offshore hedge fund. With the introduction of aircraft registration in the British Virgin Islands it is anticipated that the British Virgin Islands will soon be a world leader in this regard as well.

This article is not intended to be a substitute for legal advice or a legal opinion. It deals in broad terms only and is intended to merely provide a brief overview and give general information.

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