

# BVI Shipping and Aircraft Registries

When one thinks of the British Virgin Islands (BVI), other than the glorious beaches, the tranquil waters and the sparsely populated islands of “Nature’s Little Secrets”, one thinks of the hundreds of thousands of companies that call Road Town, Tortola their home.

The jurisdiction is seeking to extend the scope of the work done here, not only with a move over the last few years to focus more on transactional work than merely company incorporations, but with shipping and aircraft registrations at the forefront of new business initiatives.

## Virgin Islands Shipping Registry (“VISR”)

Over the last few months, delegations from the BVI have attended the high profile boat shows in

Monaco and Fort Lauderdale, keen to promote the territory’s promotion in June of this year to Category One Shipping Registry status. This new status means the VISR can now register general cargo ships of unlimited tonnage and mega yachts of up to 3000GT. The only vessels that the territory will, for the time being, not be able to register are specialist vessels such as oil tankers, ore carriers and cruise-liners, since specialised professionals would have to be recruited at the VISR to ensure that the relevant expertise is available within the BVI. There is no VAT on yachts registered in the territory and European tax laws do not apply.

With its political stability as a British overseas dependent territory whose court of last resort is the House of Lords sitting as the Privy Council, the availability of sophisticated legal, corporate and



banking services on the doorstep and modern, flexible statutory and regulatory framework for doing business, it is no surprise that the BVI is a leading offshore jurisdiction. When coupled with the fact that ships registered in the BVI fly the Red Ensign Flag, making them entitled to the support of the British Consular and High Commission and Royal Naval protection, and have the attraction of the low initial registration and annual maintenance fees, the fully computerised fleet management system and database at the VISR and the speed with which a registration can be completed, the reasons to choose the BVI for ship registration are compelling.

To register a ship, one needs to provide to the VISR:

- the name of the ship;
- the name and address of its owner;
- a marine survey of the vessel by a marine surveyor (the surveyor must be qualified to provide the survey);
- the builder's certificate or foreign bill of sale;
- in the case of a new vessel, the name and address of builder and yard number allocated to the vessel;
- the deletion certificate where the vessel was previously registered, if it was;
- a declaration of ownership;
- in the case of ownership by a company, the certificate of incorporation and memorandum and articles of association and certificate of good standing; and
- the appointment of an authorised officer.

It is important to note that only UK persons (including those of its crown dependencies of the Isle of Man, Guernsey and Jersey and overseas dependent territories of Anguilla, Bermuda, British Virgin Islands, Cayman Islands, Falkland Islands, Gibraltar, Montserrat, St Helena and the Turks & Caicos Islands) may register a vessel in the BVI. The usual way for foreign nationals to register a vessel in BVI is to form a BVI business company

for this purpose which, as a limited liability vehicle and owner of perpetual existence, owns the vessel. The BVI business company is a modern, flexible corporate entity perfect for such purpose.

## **Aircraft Registration**

For many years, the British Virgin Islands have been seen as the jurisdiction of choice in which to incorporate the holding company for an aircraft registered in another jurisdiction. The aircraft itself has usually not been registered in the British Virgin Islands itself, but now the British Virgin Islands are about to challenge other offshore jurisdictions for the registration of both private and commercial aircraft.

As aircraft are often leased or financed, with the entity providing the lease or financing regularly based in a jurisdiction other than the jurisdiction of the borrower or lessee, it is possible to make a decision as to where to register the aircraft. The entity providing the financing or lease may not want to use the home jurisdiction of the borrower or lessee over concerns that, in the event of the insolvency of the borrower or lessee, it has an inadequate legal system to enforce security or due to its inadequate regulation governing civil aviation or even due to fears of an act of nationalism or war in a politically unstable environment. This is where a neutral, politically stable and legally advanced jurisdiction such as the BVI comes in. Its legal strength gives lenders the reassurance that they require in order to be confident that they will be able to realise on their assets, should this prove necessary.

For BVI aircraft registrations, the norm will be for an aircraft to be owned by a BVI business company (it actually has to be, unless the aircraft will be owned by an individual or company meeting certain specified requirements). BVI companies do not pay any tax in the BVI, and aircraft and their parts may be imported into the BVI free of duty. Another factor in the BVI's favour is the ability to delegate aircraft inspection to a competent authority in a competent

jurisdiction, which contrasts with many onshore jurisdictions which require that inspection of an aircraft be carried out in their home country.

The Register of Aircrafts will be 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. The registration mark for BVI registered aircraft will be prefixed with VP-L\*\*.

We understand that ASSI is in the process of finalising the various supporting documentation and determining fees, with initial drafts in this regard already with the Director for review. As a consequence, it is hoped that aircraft registration in the BVI will become a reality within the next few months. ASSI recommends that, once registration is possible, prospective applicants seek BVI legal advice before proceeding with any application.

There will be a four stage process to register an aircraft in the BVI, as follows:

### **1. Due diligence**

The process to register an aircraft in the BVI 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). The Director will ensure the applicant is eligible to register an aircraft in the BVI. In particular, the aircraft must be owned by certain specified types of individuals or companies. The Director encourages all applicants to incorporate a BVI business company for the purposes of owning an 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 required application forms and additional guidance material as applicable to the applicant’s operational and aircraft certification requirements.

### **2. Operation of the Aircraft**

The registration package will include information necessary for the applicant to comply with the operational requirements and flight crew licensing and validation requirements. The applicant will need to demonstrate compliance with the overseas territory navigation requirements (“OTARs”), as applicable, in connection with aircraft being used for private or commercial use. Further, the applicant will need to demonstrate compliance with the flight crew licensing requirements under the OTARs.

### **3. Certificate of Airworthiness & Continuing 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.

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.

### **4. Ongoing Requirements**

The owner has the ultimate responsibility for continuing airworthiness of the aircraft, with the Technical Coordinator being responsible on a day to day basis.

## Conclusion

The BVI is a major player in the offshore world for company incorporations and, increasingly, for complex transactional work and hedge funds. There is little doubt that the territory's promotion to Category One Shipping Registry status and the eagerly anticipated introduction of aircraft registration in the BVI will see it at the forefront of these fields as well in the not too distant future.

Should you have any questions or requests for further information please contact Jeremy Leese in the BVI office or by email at [jleese@applebyglobal.com](mailto:jleese@applebyglobal.com)

This publication is intended only to provide a summary of the subject matter covered. It does not purport to be comprehensive or to provide legal advice. No person should act in reliance on any statement contained in this publication without first obtaining specific professional advice.

November 2008 © Appleby

**The Right People. The Right Places.**

### Bermuda

Canon's Court  
22 Victoria Street  
PO Box HM 1179  
Hamilton HM EX  
Bermuda

Tel +1 441 295 2244  
Fax +1 441 292 8666

### British Virgin Islands

No 56 Admin Drive  
Wickhams Cay 1  
PO Box 3190  
Road Town  
Tortola VG 1110  
British Virgin Islands

Tel +1 284 494 4742  
Fax +1 284 494 7279

### Jersey

PO Box 207  
13-14 Esplanade  
St Helier  
Jersey JE1 1BD  
Channel Islands

Tel +44 (0)1534 888 777  
Fax +44 (0)1534 888 778

### Cayman Islands

Clifton House  
75 Fort Street  
PO Box 190  
Grand Cayman KY1-1104  
Cayman Islands

Tel +1 345 949 4900  
Fax +1 345 949 4901

### London

2nd Floor  
2 Royal Exchange Bldgs  
London EC3V 3LF  
United Kingdom

Tel +44 (0)20 7283 6061  
Fax +44 (0)20 7469 0540

### Hong Kong

8<sup>th</sup> Floor  
Bank of America Tower  
12 Harcourt Road  
Central  
Hong Kong

Tel +852 2523 8123  
Fax +852 2524 5548

### Mauritius

8<sup>th</sup> Floor  
Medine Mews  
La Chaussée  
Port Louis  
Mauritius

Tel +230 203 4300  
Fax +230 210 8792