

Article

Benefits of Registering Private and Corporate Aircraft in Bermuda

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No matter where you fly your personal or private jet, registering your aircraft in Bermuda can provide many advantages over other jurisdictions.

Why is Bermuda such a popular choice for registration?

- High quality international reputation and excellent service levels
- High regulatory standards
- Confidentiality and security
- Favourable tax regime
- Competitive and simple fee structure
- Recognised jurisdiction for aviation finance
- Secure mortgage register
- Stable legal and political environment
- Cape Town Convention jurisdiction
- No requirement that aircraft be based in or primarily used in Bermuda.
- Aircraft may be operated anywhere in the world (excluding war zones and similar areas)

The Bermuda Aircraft Register, in existence since 1931, is used by many multi-national companies and high net worth individuals. Currently there are approximately 867 aircraft on the Bermuda Register with approximately 100 of those registered in the private category.

Aircraft may be registered on the Bermuda Register using a company incorporated in Bermuda or anywhere in the Commonwealth or the European Economic Area.

The registration of corporate and private aircraft in Bermuda is sought for a number of purposes and Bermuda registered aircraft are based and operated throughout the world. The success of the Bermuda Register is reflected in the quality of the aircraft: many of the private registrations relate to large executive jets such as the Boeing 747SP, Boeing Business Jet, Gulfstream G650 and G5/550, Falcon 7X and 900B, Bombardier Global Express and Airbus Corporate Jetliner or

commercial type aircraft registered for private use such as the Boeing 727, 737, 747-800, 757, 767 and 787.

The Bermuda Civil Aviation Authority (“BCAA”)

A responsive and professional aviation authority

The BCAA is rated as a Category 1 Aviation Regulatory Authority by the US Federal Aviation Administration (“FAA”). The BCAA is prepared to accept more than one internationally recognised set of airworthiness requirements and various flight crew licences for validation without the imposition of further requirements.

The BCAA has an excellent reputation for its high level of responsiveness when dealing with enquiries and requirements. This is partly due to the absence of administrative bureaucracy often encountered when dealing with other key aviation jurisdictions. In addition, Bermuda offers the full range of professional and administrative services necessary to ensure that all legal and other requirements are properly met and to ensure that the BCAA and the Bermuda Register retain a high level of international respect and confidence.

Safe and neutral registration marks

The Bermuda registration marks VP-B and VQ-B with two subsequent letters is seen as a neutral, “low-profile” mark of high standard which is internationally accepted and its registered aircraft are accepted for operations worldwide. In a world where security considerations are becoming more and more important, the “low-profile” registration mark can be valuable when operating in areas of the world subject to security risks or political instability. The tail number is also nation-neutral and offers a level of anonymity.

Competitive and simple fee structure

The principal registration fee in Bermuda relates to the issue of the Certificate of Airworthiness, calculated by reference to the

maximum take-off mass of the aircraft. This fee is payable prior to the initial registration and annually thereafter.

This is unlike other jurisdictions which have a number of fees payable according to various fee schedules. For example, registries in many other jurisdictions are subject to a complex charges scheme which includes numerous layers of sub-charges related to licensing, airworthiness and operations.

Operational Oversight

Bermuda is an Overseas Territories of the United Kingdom and, as such, the legislative framework relating to the registration of aircraft emanates from the United Kingdom pursuant to the provisions of the *Air Navigation (Overseas Territories) Order, 2013* (the "Order"). Air Safety Support International ("ASSI"), a wholly owned subsidiary company of the Civil Aviation Authority of the United Kingdom, acts as the oversight regulatory body of the Overseas Territories of the United Kingdom in relation to aviation matters.

The BCAA implemented Article 134 of the Order as of 1 November 2009, requiring the operators of all aircraft who fall within the provisions of such Article to comply with the safety and other requirements set out in that Article. Aircraft approved under Article 134 are deemed to be operating at a higher safety level. This standard is fully compliant with ICAO Annex 6 Part 2 (all Sections) and is anticipated to be an acceptable means of compliance for the forthcoming European regulations for Non-commercial Third Country Operators. Also, in certain circumstances this can allow aircraft owners to negotiate a reduction in their annual aircraft insurance with their insurance companies.

The BCAA is subject to the Overseas Territories Aviation Requirements ("OTARs") which are similar to those of the EASA, the FAA and Transport Canada and based on ICAO standards. This means that air safety regulations in Bermuda conform to and in some instances surpass those of the three main aviation authorities. In the context of a resale of an aircraft registered on the Bermuda Register, a potential buyer would generally view such registration positively.

It should be noted that aircraft registered in the private category on the Bermuda Register may not be operated for hire and reward.

Privacy and Security

In today's world, privacy and security can be critical to the safety of the individuals concerned. The ability of a third party in the public domain to find out who owns an aircraft, when it is in flight and its flight path can cause security concerns. Aircraft ownership in the United States is a matter of public record and is available on the Internet; this is not the case in Bermuda.

In Bermuda, the name of the company in which the aircraft is registered only appears on the Certificate of Registration; however this information is not publically available on the BCAA website. The Bermuda Register and the Certificate of Registration issued in respect of the aircraft will record certain descriptive particulars relating to the aircraft, the date of its

registration and the name of the company in which the aircraft is registered. All other records relating to the owner and the aircraft are treated in confidence by the BCAA.

Aircraft Financing

Private aircraft are often purchased by a foreign owner using finance supplied by an international lender.

Bermuda meets, and in most cases surpasses, the risk threshold for financiers in today's environment who want to hold assets in international well respected jurisdictions which clearly recognise their ownership rights based on common law principles. Financiers involved in asset-based finance transactions require the possession rights of a borrower and security rights of a lender to be clearly and consistently applied. Financiers require that their rights in moveable equipment be registerable in a manner which is universally recognised and understood and wish to deal with a jurisdiction familiar with, and prepared for, sophisticated finance and leasing structures. Bermuda meets all of these needs.

The legal framework of Bermuda is based upon the common law and as such is known, stable, and consistent. The highest court of appeal in Bermuda is the Judicial Committee of the UK Privy Council.

Under the *Mortgaging of Aircraft and Aircraft Engines Act, 1999* and related regulations, a Register of Aircraft Mortgages and a Register of Aircraft Engine Mortgages is maintained to assist in the registration of security interests in both aircraft and aircraft engines registered on the Bermuda register. In both instances, the priority of a mortgage can be fixed by filing a priority notice with the BCAA, pursuant to which the priority of a yet to be executed mortgage can be fixed for a 14 day renewable period. Fees are reasonable and presently set on a sliding scale up to a maximum of US\$800.

Tax Neutrality

Many aircraft owners choose to use a Bermuda company to register their aircraft. There is presently no Bermuda income or profits tax, withholding tax, capital gains tax, capital transfer tax, estate duty or inheritance tax or stamp duty payable by a Bermuda exempted company or its shareholders, other than by individual shareholders ordinarily resident in Bermuda. The government will issue a tax assurance undertaking valid until 2035 that, in the event of there being enacted in Bermuda any legislation imposing tax computed on profits or income, or computed on any capital assets, gain or appreciation, or any tax in the nature of estate duty or inheritance tax, such tax shall not be applicable to the exempted company which is the registered owner or lessee of the aircraft on the Bermuda Register.

In the past few years, there have been various changes to the charging of VAT on aircraft being imported into the European Union. An aircraft which is owned by a non-EU citizen or company and registered in Bermuda should have access to the temporary importation regime, which under current EU rules allows for a zero-rating for VAT purposes, subject to all the

relevant rules regarding temporary imports of aircraft¹. In addition, the BCAA will issue a document titled "Certificate of Commercial Use" which is intended to enable private operators to reclaim the EU VAT on jet fuel, on the basis that the private owner is using the aircraft solely in the pursuit of his legitimate business.

Cape Town Convention

The Cape Town Convention on International Interests in Mobile Equipment and the Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment (together colloquially known as "the Cape Town Convention") was extended to Bermuda by the United Kingdom and came into force as of January 1, 2018 with the *Bermuda International Interests in Mobile Equipment (Cape Town Convention) Act, 2016*. This has further enhanced Bermuda as a jurisdiction for aircraft finance and registration.

¹ It should be noted that the applicable tax regulations are complex and subject to change and appropriate tax advice should be obtained prior to attempting to import an aircraft into the European Union.

Conyers Support

Conyers Dill & Pearman regularly provides clients with advice relating to the registration of aircraft on the Bermuda Register and any related financing. In addition, Conyers' affiliates Conyers Corporate Services (Bermuda) Limited and Conyers Management (Bermuda) Limited can provide support with the incorporation and ongoing administration of a Bermuda company and any necessary accounting and book-keeping services in Bermuda, respectively.

Conclusion

The Bermuda Register operates substantially as an adjunct to the wide range of services provided by Bermuda to international business. Bermuda registration enjoys global acceptance and respect and operations on the Bermuda Register are conducted with a high standard of regulatory safeguards to ensure that this position continues.

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