

Aviation

Contributors

Recent developments and trends

Recent developments

Are there any notable recent developments or trends in the aviation sector in your jurisdiction?

British Virgin Islands

The British Virgin Islands is becoming an increasingly popular jurisdiction for aviation finance not only in the private and corporate jet sectors, but also in the commercial sector.

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Regulatory framework

Domestic law

What is the primary domestic legislation governing the aviation industry in your jurisdiction?

British Virgin Islands

As the British Virgin Islands is an overseas territory of the United Kingdom, registration of aircraft in British Virgin Islands is governed by UK law: the Air Navigation (Overseas Territories) Order 2013. Air Safety Support International, a wholly owned subsidiary company of the UK Civil Aviation Authority, acts as the oversight regulatory body for the United Kingdom's overseas territories in relation to aviation matters.

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International law

What international aviation agreements has your jurisdiction concluded?

British Virgin Islands

N/A.

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Regulatory authorities

Which government bodies regulate the aviation industry and what is the extent of their powers?

British Virgin Islands

Air Safety Support International regulates under the UK Air Navigation (Overseas Territories) Order 2013. In addition, the BVI Airports Authority – a statutory organisation of the BVI government – was incorporated in 2005 to oversee the effective and efficient operation of all airports in the British Virgin Islands. The objectives of the authority include the following:

- to acquire, own, operate, control, manage, develop, administer and maintain the international airport and any extension thereof, and any designated airport in the territory as a commercial undertaking in a manner which recognises its role in the first instance as an international airport and for the benefit of the economy of the territory;
- to provide and maintain on a commercial basis facilities and services for air transport and such other facilities and services as are necessary or desirable for, or in connection with, the international airport or any designated airport;
- to collect such dues and charges as the company may be authorised to collect by an enactment; and
- to use, develop and manage on a commercial basis all lands vested in, transferred or leased to the company.

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Air carrier operations

Operating authorisation

What procedural and documentary requirements must air carriers meet in order to operate in your jurisdiction?

British Virgin Islands

Aircraft can be registered in the British Virgin Islands. There are currently only five aircraft registered in the British Virgin Islands, all in the names of locally registered corporations. Requirements for registration of aircraft are fully set out in the Air Navigation (Overseas Territories) Order 2013. Aircraft registered in the British Virgin Islands can be operated commercially within the geographical boundaries specified in its air operating certificate. For the issue of an operator's certificate, the organisation must have its principal place of business in the British Virgin Islands.

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Ownership and control

Do any nationality or other requirements or restrictions apply to ownership or control of air carriers operating in your jurisdiction?

British Virgin Islands

N/A.

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Financial requirements

Insurance coverage

What is the required level of insurance coverage for air carrier operations?

British Virgin Islands

N/A.

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Safety requirements

What safety requirements apply to air carrier operations, including with regard to professional and technical certifications?

British Virgin Islands

The relevant European Aviation Safety Agency (EASA) approvals and Overseas Territories Aviation Requirements (OTARs) under the UK Air Navigation (Overseas Territories) Order 2013 apply.

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Environmental obligations

What environmental obligations apply to air carrier operations?

British Virgin Islands

The relevant EASA and OTARs under the UK Air Navigation (Overseas Territories) Order 2013 apply.

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Air traffic control

How are air traffic control services regulated in your jurisdiction?

British Virgin Islands

The relevant EASA and OTARs under the UK Air Navigation (Overseas Territories) Order 2013 apply.

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Routes

Do any licensing requirements apply to specific routes?

British Virgin Islands

N/A.

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Are any public service obligations in place with respect to remote destinations?

British Virgin Islands

N/A.

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Charter services

Do any special provisions apply to charter services?

British Virgin Islands

N/A.

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Taxes

What taxes apply to the provision of air carrier services?

British Virgin Islands

N/A.

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Consumer protection and liability

Airfares

Are airfares regulated in your jurisdiction?

British Virgin Islands

N/A.

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Passenger protection

What rules and liabilities are air carriers subject to in respect of:

(a) Flight delays and cancellations?

British Virgin Islands

N/A.

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(b) Oversold flights?

British Virgin Islands

N/A.

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(c) Denied boarding?

British Virgin Islands

N/A.

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(d) Access for disabled passengers?

British Virgin Islands

N/A.

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(e) Lost, damaged or destroyed luggage?

British Virgin Islands

N/A.

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(f) Retention and protection of passenger data?

British Virgin Islands

N/A.

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Cargo

What rules and liabilities apply to the air carriage of cargo?

British Virgin Islands

N/A.

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Marketing and advertising

Do any special rules apply to the marketing and advertising of aviation services?

British Virgin Islands

N/A.

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Do any special rules apply to consumer complaints handling in the aviation industry?

British Virgin Islands

N/A.

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Aircraft

What are the requirements for entry in the domestic aircraft register?

British Virgin Islands

Aircraft can be registered in the British Virgin Islands. At present, only five aircraft are registered in the British Virgin Islands, all in the names of locally registered corporations. Requirements for registration of aircraft are fully set out in the UK Air Navigation (Overseas Territories) Order 2013, including who is considered to be a qualified person for registration. Such qualified persons are:

- the crown in right of the UK or BVI government;
- UK nationals;
- commonwealth citizens;
- nationals of any European Economic Area (EEA) state;
- bodies incorporated in any part of the commonwealth and which have their registered office or principal place of business in any part of the commonwealth; or
- undertakings formed in accordance with the law of a EEA state and which have their registered office, central administration on principal place of business within the EEA.

The UK government permits and supports the establishment and running of aircraft registers in overseas territories provided that:

- the full cost associated with the register, including providing safety regulation, is met by the territory concerned;
- the territory makes provision to cover in full all liabilities which arise, or could arise, from the running of the register, both directly and indirectly; and
- the territory establishes a safety regulatory body empowered to regulate against legislation and requirements designed to implement the annexes to the Chicago Convention which:
 - has an appropriate and sustainable level of funding; and
 - meets, in the view of the UK Department for Transport and its technical advisers, the requirements and guidance laid down by the International Civil Aviation Organisation.

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Is there a domestic register for aircraft mortgages, encumbrances and other interests? If so, what are the requirements and legal effects of registration?

British Virgin Islands

A BVI business company must keep a register of all relevant charges created by the company. Where a company creates a relevant charge, an application to register the charge may be made to the Registrar of Corporate Affairs in the British Virgin Islands pursuant to Section 163 of the BVI Business Companies Act. Under BVI law there is no concept of 'perfection' of a charge but, to the extent that such law governs priority of the charge, a charge registered under Section 163 of the act has priority over any subsequently registered and unregistered charges. Third parties are deemed to have notice of any publicly registered charge.

The British Virgin Islands offers competitive pricing compared to other jurisdictions. The fee in respect of filing a charge for registration is \$100.

The Mortgaging of Aircraft and Aircraft Engines Act 2011 and the Mortgaging of Aircraft and Aircraft Engines Regulations create a framework for registration of security over aircraft, and separately aircraft engines, in the British Virgin Islands.

Aircraft registered in the British Virgin Islands or capable of being so registered, as well as aircraft engines owned by or in the lawful possession of a BVI company, may be made the subject of a mortgage for the purposes of registration. The application for registration of the mortgage must be in the prescribed form and must be made to the registrar by or on behalf of the mortgagee in question. It must be accompanied by a certified true copy of the mortgage and the prescribed fees. A mortgage entered on the register has priority over any other mortgage or charge on that aircraft or aircraft engine. It is also possible for the priority of a mortgage to be fixed by filing a priority notice with the registrar pursuant to which the priority of a yet-to-be executed mortgage can be fixed for a 14-day period. When entered in the register within the 14-day period, that mortgage will be deemed to have priority from the time when the priority notice was registered.

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Detention

What rules and procedures govern the detention of aircraft?

British Virgin Islands

As well as aircraft liens, various statutory rights of detention are exercisable over aircraft. Under BVI law, persons are granted a right to detain and, in some cases, to sell (or cause to be forfeited) aircraft in certain circumstances such as:

- contravention of certain licensing and air navigation provisions of the UK Air Navigation (Overseas) Territories Order 2013;
- forfeiture under BVI customs law, which may occur if an aircraft has been adapted and used for the purpose of smuggling or concealing goods; and
- criminal actions:
 - drug trafficking – if an aircraft is used for drug trafficking or purchased from the proceeds of crime, a court can order that it be forfeited under the Drug Trafficking Offence Act, the Drug Trafficking Offences (Designated Criminal Conduct Countries and Territories Order) and the Proceeds of Criminal Conduct Act 1977; and
 - judgment enforcement rights.

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Safety and maintenance

What rules and procedures govern aircraft safety and maintenance?

British Virgin Islands

The relevant European Aviation Safety Agency (EASA) approvals and Overseas Territories Aviation Requirements (OTARs) under the UK Air Navigation (Overseas Territories) Order 2013 apply.

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Drones

What is the state of regulation on unmanned aerial vehicles (drones) in your jurisdiction?

British Virgin Islands

The relevant EASA and OTARs under the UK Air Navigation (Overseas Territories) Order 2013 apply.

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Accidents

Investigation

How are air accidents investigated in your jurisdiction?

British Virgin Islands

The relevant European Aviation Safety Agency (EASA) approvals and Overseas Territories Aviation Requirements (OTARs) under the UK Air Navigation (Overseas Territories) Order 2013 apply.

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Liability

What liability regime governs death, injury and loss arising from air accidents?

British Virgin Islands

The relevant EASA and OTARs under the UK Air Navigation (Overseas Territories) Order 2013 apply.

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Regulatory notification

What are the reporting requirements for air accidents?

British Virgin Islands

The relevant EASA and OTARs under the UK Air Navigation (Overseas Territories) Order 2013 apply.

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Airports

Ownership

What rules govern the ownership of airports (both public and private)?

British Virgin Islands

The BVI Airports Authority owns and operates the three airports and various helipads within the British Virgin Islands.

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Operation

What is the authorisation procedure for the operation of airports?

British Virgin Islands

The operation of airports is overseen by the BVI Airports Authority.

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What ongoing operating requirements apply (including obligations relating to safety, security and facilities maintenance)?

British Virgin Islands

The ongoing operating requirements that apply are those considered necessary by the BVI Airports Authority.

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Airport charges

What airport charges apply and how are they regulated?

British Virgin Islands

Fees are set by the BVI Airports Authority under the Airports Act 2003.

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Access

What regulations govern access to airports?

British Virgin Islands

Regulations made under the Airports Act may govern access to airports.

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Slot allocation

What regime governs the allocation of airport slots (including slot transfer, revocation and disputes)?

British Virgin Islands

N/A.

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Ground handling

How are ground handling services regulated?

British Virgin Islands

These will be subject to such regulations promulgated under the Airports Act.

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Competition issues

Governing regime

Do any sector-specific competition regulatory/legal provisions apply to the aviation industry in your jurisdiction?

British Virgin Islands

N/A.

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Code sharing and joint ventures

What (if any) competition concerns arise in relation to code sharing and air carrier joint ventures?

British Virgin Islands

N/A.

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State aid

What rules govern state aid in the aviation industry? Do any exemptions apply?

British Virgin Islands

N/A.

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Notable cases

Have there been any notable recent cases or rulings involving competition in the aviation industry?

British Virgin Islands

N/A.

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Dispute resolution

Disputes

What aviation-related disputes typically arise in your jurisdiction and how are they usually resolved?

British Virgin Islands

N/A.

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