

GUIDE TO AIRCRAFT REGISTRATION AND FINANCE IN BERMUDA

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PREFACE

This Guide has been produced as an aid to those seeking general information with respect to aircraft registration and finance in Bermuda. It is designed to serve as the starting point for a more detailed and comprehensive discussion of the substantive legal and regulatory issues involved.

It is recognised that this Guide will not completely answer detailed questions which clients and their advisers may have; it is not intended to be comprehensive. If any such questions arise in relation to the contents, they should be addressed to any member of the Corporate Department, using the [contact information](#) provided at the end of this Guide.

Appleby

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1. THE BERMUDA REGISTER

Aircraft owners and operators view Bermuda as a jurisdiction of choice for aircraft registration and aircraft financing transactions. Bermuda's aircraft register (**Bermuda Register**) has an international reputation for high safety standards and regulatory oversight. Owners and operators may be in a position to take advantage of favourable tax treatment in their principal place of business from registering aircraft in Bermuda. There is no Bermuda income or profits tax, withholding tax, capital gains tax, capital transfer tax, estate or inheritance tax payable by a Bermuda company or its shareholders ordinarily resident in Bermuda.

The Bermuda Register is a Category I register under the United States Federal Aviation Administration's Flight Standard Service International Aviation Assessment Programme. That categorisation recognises that Bermuda complies with international standards in providing safety oversight of its air carriers that operate in the United States. Of course, aircraft registered in Bermuda operate in many countries around the world. While the majority of aircraft on the Bermuda Register are corporate or privately-owned jets, it is increasingly being used for the registration of commercial aircraft.

Arrangements to register aircraft in the public transport category on the Bermuda Register most often necessitate arrangements between Bermuda's Department of Civil Aviation (**DCA**) and the appropriate foreign civil aviation authority. The DCA is responsible for the registration and issuance of permissions and validations for aircraft and flight crew on the Bermuda Register. The agreement with the foreign civil aviation authority provides for the delegation of regulatory oversight of the air operator in that foreign jurisdiction, setting out the safety regulatory oversight responsibilities of both countries in relation to Bermuda registered aircraft.

Bermuda was the first country to register a safety regulatory oversight agreement with the International Civil Aviation Organisation (**ICAO**). The ICAO is a specialised agency of the United Nations that sets international standards for the safety, security, efficiency and regularity of air transport and serves as the medium for co-operation in all fields of civil aviation among its 185 contracting states.

2. WHY BERMUDA?

Companies or private individuals seeking to register their aircraft have many registers worldwide to choose from. Bermuda is mindful that it competes with a number of other jurisdictions, both "onshore" and "offshore", for aircraft registration business. We are confident that there are a variety of compelling reasons which point to Bermuda as the jurisdiction of choice for the registration and financing of aircraft.

Other benefits associated with Bermuda include:

- The favourable reputation of the Bermuda Register is particularly attractive to owners who require high standards of airworthiness and inspection record;
- The good reputation of the Bermuda Register helps to preserve high residual values for aircraft registered in Bermuda;
- Although the Bermuda Register is relatively small and operates as a niche registry, the DCA is staffed by highly qualified personnel, is commercially-minded and is thus able to respond efficiently to clients' needs;
- The DCA accepts internationally recognised airworthiness and operational standards of other jurisdictions, enabling the operation of Bermuda registered aircraft under a combination of such standards;
- The VP-B or VQ-B nationality mark is a low profile mark, which is often advantageous to operators;

- Bermuda offers a full range of supporting professional advisers to assist in meeting all legal, accounting, managerial and operational requirements associated with aircraft registration and financing;
- Companies incorporated in Bermuda pay no corporation, profit, capital gains or withholding taxes to the Bermuda Government. Profits can be accumulated and dividends need not be paid;
- Bermuda has been awarded “equivalent exemption status” in the United States. Consequently, Bermuda-registered operators may apply to the IRS for exemption from the freight tax that is normally applied to companies’ US-source gross transportation income, including income from the carriage of passengers as well as cargo;
- Multi-national aviation companies may wish to provide their employees with insurance cover as well as investment vehicles and incentive schemes. All of these products are available in Bermuda;
- Business disputes can be settled in Bermuda by arbitration or via the legal system which permits a right of appeal to the Supreme Court of the United Kingdom, its highest judicial body;
- International companies incorporated or licensed to carry on business in Bermuda are not subject to any exchange control regulations and are free to deal in any currency.

3. REGISTRATION REQUIREMENTS

3.1 Who may own an Aircraft Registered in Bermuda?

The Air Navigation (Overseas Territories) Order 2007 (**Order**) sets out a list of qualified persons who may hold a legal or beneficial ownership interest in a Bermuda registered aircraft.

As a matter of government policy, only Bermuda exempted companies are permitted to register an aircraft in Bermuda. There are some exceptions however where the proposed owner or charterer has another nexus with Bermuda.

An exempted company is so-called because it is established without a requirement for Bermudian ownership. Exempted companies may carry on business outside Bermuda or, in certain limited circumstances, in Bermuda with other exempted undertakings. We encourage you to read the Appleby Guide to Companies in Bermuda which explains the procedure for the incorporation of a company.

An application must be submitted to the Bermuda Monetary Authority (**BMA**) on behalf of anyone wishing to incorporate a Bermuda company, disclosing the beneficial ownership of the proposed company. The BMA is statutorily limited in disclosing this information to third parties.

Under the Order, an aircraft is not capable of being registered in Bermuda if:

- it appears that the aircraft is registered outside Bermuda and that the overseas registration would not cease by operation of law upon the aircraft being registered in Bermuda;
- an unqualified person holds a legal or beneficial interest by way of ownership in the aircraft;
- the aircraft could more suitably be registered in some other part of the Commonwealth; or
- it would not be in the public interest for the aircraft to be, or continue to be, registered in Bermuda.

3.2 Application for Registration

(a) Preliminary Application

The DCA requires all applicants to submit a preliminary online application for pre-approval, which will include *inter alia* the following particulars:

- company name under which the aircraft is to be registered;
- make, model and serial number of the aircraft, its intended base and its principal geographic areas of operation;
- maintenance, operations and crewing arrangements;
- intended use of the aircraft (i.e. in private or public transport); and
- name and contact information of the person who will be responsible for technical presentation of the aircraft to the DCA during the registration process.

Aircraft registered in Bermuda must be operated in accordance with the Order and aircraft operated for valuable consideration on a per flight basis in carriage of passengers or cargo is generally deemed under the Order to be flying for the purpose of public transport. If the issuance of an air operator's certificate is sought in order to permit aircraft to be operated in the public transport category, we would encourage you to contact us for further details and advice.

(b) **Formal Application**

Provided that the preliminary application is approved, the DCA will issue an approval in principle that lists the items which must be submitted to the DCA in support of the formal application.

The DCA will inspect the aircraft prior to its registration and the issuance of a Certificate of Airworthiness, which is renewable annually following further inspection.

Once all supporting documents and information have been submitted, reviewed and approved, the DCA will register the aircraft and include in the Register the following particulars:

- number of the Certificate of Registration;
- nationality mark and the registration mark given to the aircraft;
- name of the constructor of the aircraft and its designation; and
- serial number of the aircraft and the name and address of every person who is entitled as owner to a legal interest in the aircraft or in the case of an aircraft which is subject to a charter by demise, the name and address of the charterer by demise.

All of the above details are set out in the Certificate of Registration.

The DCA will also issue a Noise Certificate together with any other operational permissions as may be appropriate.

Simultaneous with the application to the DCA, application is made for a Class Six Radio (Aeronautical Mobile Services) Licence. The radio licence is issued once the aircraft has been registered by the DCA. A copy must be carried on board the aircraft together with all the registration and technical documents referenced above.

4. **DE-REGISTRATION OF AN AIRCRAFT**

The process of de-registering an aircraft, normally effected upon the sale of the aircraft, is uncomplicated.

The owner of the aircraft must make written application to the DCA requesting cancellation of the Certificate of Registration. In support of the application, the owner must enclose a resolution of the board of directors of the registrant company authorising the cancellation. The original Certificate of Registration and other documents issued at the time of registration must be returned to the DCA for cancellation.

Should the purchaser be re-registering the aircraft in a jurisdiction that requires an export certificate of airworthiness, we encourage you to seek further advice from us.

Save for any aircraft which is subject to an undischarged mortgage, the DCA will de-register the aircraft in accordance with the registrant's instructions, and will issue a letter of de-registration which confirms the deletion of the aircraft from the Bermuda Register. The aeronautical regulatory authority of the next intended state of registration will be informed of the deletion by the DCA. We encourage that you contact us for further advice where any aircraft is the subject of an undischarged mortgage.

5. OPERATIONAL OVERSIGHT

5.1 Approval for the Operation of an Aircraft

In addition to setting out the requirements for the registration of aircraft, the Order governs the operation of all civil aviation in Bermuda. No person shall operate an aircraft registered in the Territory unless he or she is the holder of an approval. The Order provides that the Governor of Bermuda may grant approval for the operation of an aircraft if he is satisfied that:

- the applicant is competent to operate the aircraft;
- the safety management system of the operation is appropriate to its size and complexity; and
- the operations manual is adequate.

5.2 Bilateral Transfers of Safety Oversight

Under the order contracting States are authorised to make bilateral transfers of safety oversight responsibilities related to the lease, charters, and interchange of aircraft. It gives States a basis and legal framework for entering into bilateral agreements transferring responsibilities.

The State of Registry typically transfers the responsibilities of safety oversight to the state in which the aircraft are to be based (**State of Operator**). This allows the placement of safety oversight responsibilities with the State that is in a better situation to discharge those responsibilities for safety oversight. Bilateral agreements for transfers of oversight responsibilities are recognised by all ICAO signatory States.

6. AIRCRAFT FLIGHT CREW AND VALIDATIONS

A registered and airworthy aircraft can be flown by flight crew holding a current validation issued by the DCA.

Flight crew members must hold an appropriate licence granted or rendered valid under the Order. The Order empowers the DCA to issue a Bermuda validation with respect to licences granted by any recognised and reputable aviation authority. Consequently, there is flexibility and convenience for the operator who is able to employ crew with licences issued by, for instance, the United States FAA, the United Kingdom CAA, or the French DGAC.

7. AIRCRAFT FINANCE STRUCTURES

7.1 Bank Financing

Institutional lenders involved in aircraft finance transactions are familiar with Bermuda vehicles being used for the purpose of acquisitions and/or fleet renewal programmes. Bermuda is accustomed to seeing a Bermuda exempted company used in a variety of structures including residual value and operating lease structures, tax based leasing, syndicated lending and export credit agency supported transactions.

7.2 Leasing

Bermuda is viewed as a favourable jurisdiction for a variety of cross-border lease financing structures. The use of tax-based finance leases is advantageous from the point of view of both the lessor and the airline (**lessee**) because both parties are often able to realise tax benefits by financing the purchase of an aircraft through a sale and leaseback structure. With lease financing there is a potential to achieve off-balance sheet treatment, tax savings with depreciation benefits taken in more than one jurisdiction. Where the role and return of ownership remains with a lessee, a finance lease will be capitalised on the airline's balance sheet. Often used operating lease structures, which do not appear on the lessee's balance sheet may increase the airline's effective borrowing capacity and lower its cost of capital though presenting a less geared balance sheet.

Other benefits of establishing lease financing structures in Bermuda include:

- benefits accruing through cross-border depreciation claims;
- a favourable legal environment where Bermuda insolvency laws do not prejudice lenders i.e. no provisions equivalent to US Chapter 11 provisions; and
- recognition by international financial institutions that Bermuda is a British common law jurisdiction known well and considered a reputable jurisdiction.

In addition, the parties may be entitled to receive preferential tax treatment by establishing a structure that utilises a special purpose vehicle (**SPV**) in Bermuda owned by a special purpose trust. Bermuda law allows purpose trusts to hold assets for a commercial purpose. This can make a multi-jurisdictional aircraft financing transaction less tax onerous.

For more detailed information regarding the use of trusts in a commercial setting, we recommend that you read the Appleby "Guide to Trusts in Bermuda".

7.3 Securitisation

A number of aircraft leasing companies and airlines have entered into securitisation programmes with a view to broadening the aircraft financing investor base. Securitisation operates by converting financial assets (e.g. a lease) into securities assets by which risks are packaged and distributed to investors. Such a programme allows for the pooling of aircraft owned by different lessees.

An SPV is typically a limited liability company with a purpose trust feature that is established to own the aircraft, leases and other securities. The purpose trust is used to ensure that the SPV is bankruptcy remote.

A securitisation programme typically has a variety of credit enhancement features built into the structure that are designed to ensure timely payment on the debt instruments which are issued by the SPV issuer.

8. THE BERMUDA MORTGAGE REGISTER

Financiers are able to register mortgages in Bermuda against Bermuda registered aircraft and aircraft engines which are either owned by or otherwise in the possession of a Bermuda incorporated company.

An aircraft mortgage is the key ingredient used by lenders in aircraft financing transactions, notwithstanding that other types of security are available. Such mortgages give the lender priority over unsecured creditors of the aircraft's owner, permit the lender to take possession of the aircraft in the event of a default by the borrower, and permit the lender to sell the aircraft to realise monies to pay the lender's debt.

There are two specialised registers, one for the registration of aircraft mortgages and the other for the registration of aircraft engine mortgages. The Minister responsible for aviation is empowered to make regulations in respect of the administration of the two registers, as well as in respect of fees and charges in relation to the services provided under the Act, and in respect of making provision for the rights and liabilities of the mortgagors and mortgagees.

For more specific advice on aircraft registration and finance in Bermuda, we invite you to contact one of the following:

Bermuda**Timothy Faries**

Managing Partner, Bermuda
Corporate
+1 441 298 3216
tfaries@applebyglobal.com

Clive Langley

Partner
Corporate
+1 441 298 3202
clangley@applebyglobal.com

Tammy Richardson-Augustus

Partner
Corporate
+1 441 298 3253
trichardson@applebyglobal.com

Cameron Adderley

Partner, Global Group Head
Corporate
+1 441 298 3229
cadderley@applebyglobal.com

For the convenience of clients in other time zones, a list of contacts available in each of our jurisdictions may be found [here](#).