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REGISTRATION OF AIRCRAFT

It is permissible for a Bermuda company to be formed solely for the purpose of owning, leasing and/or operating an aircraft on the Bermuda Register and any income or profits from such operations would be free of taxation and exchange controls under Bermuda law. If a Bermuda exempted company is formed for this purpose the ultimate ownership and control of the aircraft to be registered must be disclosed to the Director of Civil Aviation. Such disclosure is treated in the strictest confidence and does not form part of the public record regarding the registration.

Bermuda Register of Aircraft

The Governor of Bermuda is required by the provision of the Air Navigation (Overseas) Territories Order, 1977 to maintain a Register of Aircraft and to accept applications to register aircraft from qualified persons.

A person holding a legal or beneficial interest by way of ownership in an aircraft or a share in it may still obtain registration if he or his company resides in or has a place of business in Bermuda, and the Governor is satisfied that the aircraft is properly registered.

The Director of Aviation examines each application carefully to determine its acceptability and appropriateness with regard to statute and Bermuda Government policy. Therefore, prior to proceeding with the incorporation of the company, prospective applicants should make a preliminary application setting out brief details of ownership, the aircraft itself, the maintenance and crewing arrangements, the main geographical areas of intended

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**Reasons For Incorporating
In Bermuda**

◦ Respected International
Business jurisdiction
(built on the principle
of “know your
customer”);

◦ Tax Neutral Business
Environment (no

use and any other facts helpful in enabling a decision to be made.

The registration requirements for aircraft are detailed in Article 4 of the Air Navigation (Overseas Territories) Order 1989. An aircraft shall not be registered in Bermuda if:

- (a) The aircraft is registered outside of Bermuda;
- (b) An unqualified person holds a legal or beneficial interest by way of ownership in the aircraft or share thereof;
- (c) The aircraft could more suitably be registered in some other part of the Commonwealth; or
- (d) It would be inexpedient in the public interest for the aircraft to be registered in Bermuda.

The Order defines persons who are qualified to be owners of a legal or beneficial interest in aircraft registered in Bermuda as:

- (a) The Crown;
- (b) British Subjects;
- (c) Citizens of the Republic of Ireland;
- (d) British protected persons;
- (e) Bodies incorporated in some part of the Commonwealth and having their principal place of business in any part of the Commonwealth (including Bermuda);
- (f) Firms carrying on business in Scotland;
- (g) Persons who reside or have a place of business in Bermuda;
- (h) If aircraft is chartered by demise to a qualified person.

An aircraft registered under (g) or (h) above may not be used for the purpose of public transport or aerial work.

It should be noted that by Bermuda Government policy an application to register an aircraft is normally only accepted from a

income, capital gains, transfer or withholding taxes);

◦ Business sensitive and well established Legal System (based upon English common law);

◦ Minimal Government Annual Reporting except for Restricted Businesses;

◦ Access to Capital Markets (through Bermuda Stock Exchange listings);

◦ Access to one of the most successful Insurance/Reinsurance Markets in the world;

◦ Reliable Banking System;

◦ Efficient Support Services (legal, accounting, management, corporate and trust services);

◦ State-of-the-Art Global Internet Services and Telecommunications (connecting Bermuda to the world); and

◦ Friendly yet efficient business environment for holding Company Meetings.

person residing in Bermuda or a body incorporated in Bermuda and having its registered office on the Island.

Ownership by a Bermuda Body Corporate

It is customary practice in Bermuda to incorporate a company to own and operate an aircraft on the Bermuda Register; and the ultimate ownership and control of an aircraft must be disclosed to the Director of Civil Aviation.

The Director of Civil Aviation examines each individual application carefully to determine its acceptability and appropriateness with regard to Bermuda Government policy and statute law applicable.

Prior to proceeding with the incorporation of a company, applicants make a preliminary written application to the Director of Civil Aviation setting out the following details:

- (a) The name under which the aircraft is to be registered;
- (b) The name and nationality of the individual person enjoying ultimate ownership;
- (c) Particulars of the aircraft, including correct designation, constructor's serial number and year of manufacture;
- (d) Name of law firm in Bermuda acting in the matter;
- (e) The base and main geographic area of operation;
- (f) The proposed maintenance arrangements;
- (g) The proposed operations and crewing arrangements;
- (h) Any additional facts which may be helpful in enabling a determination to be made;

Aircraft being accepted on the Bermuda Register will be subject to various technical directives with regard to their maintenance and operation. A physical inspection of the aircraft prior to Bermuda Registration will normally be undertaken by the Department of Civil Aviation.

Nationality and Registration Marks

Upon registering an aircraft, the Director of Civil Aviation will assign a nationality and registration mark. (This mark consists of five letters commencing with the nationality mark VR-B and followed by the two letters assigned to the specific aircraft).

Users of Aircraft Registered in Bermuda

The majority of aircraft registered are corporate and private executive types and aircraft leased to public transport undertakings (where the State of the Operator has agreed to accept a formal delegation of a substantial portion of operational and airworthiness oversight responsibilities) and “white-tailed” aircraft awaiting leasing or sale.

Benefits of Registration in Bermuda

Owners and operators enjoy an administration which is prepared to accept more than one international recognized set of airworthiness requirements, various flight crew licenses for validation and a “low profile” registration mark.

ENFORCING FOREIGN JUDGMENTS IN BERMUDA UNDER THE JUDGMENTS (RECIPROCAL ENFORCEMENT) ACT 1958

Bermuda’s Judgments (Reciprocal Enforcement) Act 1958 (the “1958 Act”) allows for the registration and enforcement of judgments in Bermuda of judgments obtained in certain other jurisdictions. Those other jurisdictions include England, Scotland, Northern Ireland, The Bahamas, Barbados, Guyana, Gibraltar, Granada, Hong Kong, Leeward Islands, St. Vincent, Jamaica, Nigeria, Dominica, St. Lucia and most of the states and territories of Australia.

In order for a foreign judgment to be registered and enforced in Bermuda it must satisfy the following criteria: it must be given by a Superior Court of the relevant jurisdiction (including an Appellate Court, on appeal from a Superior Court); it must be final and conclusive as between the parties thereto; the judgment must be in respect of a sum of money, which sum must not be in respect of taxes or other charges of a like nature or in respect of any fine or other penalty; and the application for registration must be made within 6 years after the date of judgment (or, where there have been proceedings by way of appeal, the date of the last judgment).

It is open to a judgment debtor to apply to the Supreme Court of Bermuda to set aside any judgment registered pursuant to the 1958 Act on any one or more of the following grounds:

1. that the judgment is not one to which the 1958 Act applies;
2. that the judgment was registered in contravention of the 1958 Act;
3. that the court purporting to give the judgment registered had no jurisdiction to give the judgment;
4. that the judgment debtor did not receive notice of the proceedings giving rise to the judgment in sufficient time to enable him to defend the proceedings and that he did not appear at those proceedings;
5. that the judgment was obtained by fraud;
6. that the rights under the judgment registered are not vested in the person who applied for registration; or
7. that the proceedings giving rise to the judgment registered had previously been litigated as between the parties and that a prior final and conclusive judgment by a court having competent jurisdiction was rendered in that matter.

It should also be noted that the ability of the Supreme Court of Bermuda to enforce a judgment registered pursuant to the 1958 Act is limited by the inherent jurisdiction of the Court.

It is possible under the 1958 Act to register a judgment a portion of which satisfies the provisions of the 1958 Act and a portion of which does not. In such a case, the registrant could only enforce the registered judgment to the extent that the sum sought to be enforced does not offend the 1958 Act.

It must, of course, be remembered, that provided the applicant

satisfies the provisions of the 1958 Act, the foreign judgment will be registered in Bermuda as a matter of course. In any application to set aside registration of the judgment, the burden of proof will be on the judgment debtor to show that the foreign judgment offends, or at least does not comply with the 1958 Act.

The information contained in this article represents general principles and is not intended to be exhaustive. Legal advice should be obtained in respect of any particular foreign judgment sought to be enforced in Bermuda.

For further information on the enforcement of foreign judgments in Bermuda please contact Paul A. Harshaw, Senior Associate: PAHarshaw@Milligan.bm

The contents of this newsletter are not intended to be a complete statement of the law on any subject and should not be used as a substitute for legal advice in specific fact situations. If you require more detailed information or advice concerning a specific fact or situation, you are invited to contact one of the above named for that purpose. Lynda Milligan-Whyte & Associates cannot accept any liability or responsibility for loss occurring as a result of anyone acting or refraining from acting in reliance on any material contained in this newsletter.