



Shipping and the British Virgin Islands

The British Virgin Islands (“BVI”) are the yachting destination of choice in the Caribbean. The BVI is a member of the British Red Ensign Group. The jurisdiction is one of only 10 Category One Red Ensign (British) Registry centres around the world and is able to register all types of yachts, including mega yachts and super yachts up to 3000 gross tons and general cargo ships of unlimited tonnage. The Virgin Islands Shipping Registry (“VISR”), established in 2006, is responsible for ship registration in the BVI.

Ships flying the Red Ensign Flag are entitled to the protection of the British Royal Navy.

For the purposes of the Merchant Shipping Act, 2001 (the “Act”), the following are persons qualified to be owners of ships registered under the Act: citizens of and companies registered in the BVI, the UK, and all British Territories and those of the European Union or European Economic Area, a member state of the Caribbean Community or the Organisation of Eastern Caribbean States. The Act provides that other nationals (including companies) may own a minority interest in a BVI registered ship where the majority interest (33 or more of the 64 shares into which the property in the ship is divided) is held by a qualified owner(s) and an authorised representative (“Authorised Representative”) being either an individual resident in the BVI or a body corporate incorporated in the BVI and having a place of business here in the BVI is appointed to the ship.

Every ship must be surveyed before registration by a surveyor of ships. The following seven classification societies are authorised by VISR on behalf of the BVI: Lloyds Register of Shipping, American Bureau of Shipping, Bureau Veritas, Det Norske Veritas, Germanischer Lloyd, Registro Italiano Navale and Nippon Kaiji Kyokai. When the tonnage of the ship has been ascertained, the tonnage and official number must, before registration, be marked permanently on a main part of the ship’s permanent structure that is readily visible and accessible as specified by the

surveyor. The ship's name is marked on each of her bows and the name of her port of registry on her stern. The ports of Road Harbour, Virgin Islands, Gorda Sound in Virgin Gorda and White Bay in Jost Van Dyke are the ports of registry of a ship registered under the Act. A pleasure boat of less than 24 meters in length complies with the marking requirement if her name and the port of registry are marked on her stern.

Application for registration is made to the Registrar of Shipping (the "Registrar"). Prescribed forms are available which may be obtained from VISR. To ensure no duplication of names on the register, a ship's name must be officially approved by the Registrar.

An owner to be registered as owner of a ship must produce satisfactory evidence of title to ownership in the form of:

- a builder's certificate with descriptive details of the ship showing the full name and address of the person for whom the ship has been built; and/or
- a bill of sale or transfer;
- a declaration of eligibility (the "Declaration of Eligibility") containing i) a statement of his qualifications to own a BVI ship, ii) in the case of a foreign ship, a statement of her foreign name, iii) a statement of the number of shares in the ship vested in him whether alone or jointly and iv) a declaration that, to the best of his knowledge and belief, a majority interest in the ship is owned by persons qualified to be owners of BVI ships and the ship is otherwise entitled to be registered;
- (for companies), a form entitled "Appointment of Authorised Officer" which entitles an individual to sign the Declaration of Eligibility;
- an undertaking to act as Authorised Representative if an Authorised Representative is required.

When the Registrar is satisfied that the ship is eligible to be registered, a carving and marking note is issued which shows the ship's name, port of registry, official number and registered tonnage. When the carving and marking note is returned, after carving and marking as prescribed by the Act, and the required fees have been paid, the ship is formally registered and a certificate of British registry ("Certificate of British Registry") is issued. The Certificate of British Registry contains particulars of the ship and its owners.

The Act governs the granting and registration of mortgages over ships. As noted above; ownership of a ship is divided into 64 shares and mortgages may be taken over a registered ship itself or over a share in any such ship.

Registration of a mortgage is effected by completing the pro forma deed issued by the Registrar which is signed by the mortgagor. That mortgage is filed with VISR for registration by the Registrar. Mortgages are registered in the order in which they are produced to the Registrar for the purposes of registration and he shall enter and sign on each mortgage a statement to the effect that it has been registered by him, stating the date and time of registration. Where two or more mortgages are registered in respect of the same registered ship or share, the priority of the mortgages between themselves are determined by the order in which the mortgages were registered and not by reference to any other matter. Mortgages are registered against the registered ship or the share using a letter of the alphabet to denote their priority. Thus, the first mortgage so registered will be mortgage priority A, the second will be mortgage priority B, the third will be mortgage priority C and so on.

A mortgage can be discharged by the mortgagee executing the discharge on the original mortgage which attests to the receipt of money or the discharge of the obligation secured



Audrey Robertson
Counsel

1 (284) 852 1111
audrey.robertson@conyersdill.com

This article is not intended to be a substitute for legal advice or a legal opinion. It deals in broad terms only and is intended to merely provide a brief overview and give general information.

About Conyers Dill & Pearman

Founded in 1928, Conyers Dill & Pearman is a world-class legal services firm advising on the laws of Bermuda, the British Virgin Islands, the Cayman Islands and Mauritius. With a global network that includes 140 lawyers spanning eight offices worldwide, Conyers provides responsive, sophisticated, solution-driven legal advice to clients seeking specialised expertise on corporate, company and commercial, litigation, restructuring and insolvency, and trust and private client matters. Conyers is affiliated with the Codan group of companies, which provide a range of trust, corporate, secretarial, accounting and management services.