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### LEGAL GUIDE TO DOING BUSINESS IN THE U.S. VIRGIN ISLANDS

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**DISCLAIMER:** The information contained in this guide represents a general guide to certain laws of the U.S. Virgin Islands applicable to doing business in the U.S. Virgin Islands. This guide is intended for general reference only and should not be relied on in any specific factual or legal situation. This guide does not cover all laws or regulations that may be applicable to a specific situation and does not create an attorney-client relationship. If you have questions or specific issues to be resolved or intend to invest or do business in the U.S. Virgin Islands, you should contact an attorney authorized to practice law in the U.S. Virgin Islands.

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## **INTRODUCTION**

### **I. GEOGRAPHY, LOCATION, AND CLIMATE**

The islands were discovered by Christopher Columbus on his second voyage to the New World in 1493 and named after St. Ursula and her 11,000 virgins. Today the archipelago is divided into two political entities, the British Virgin Islands and the U.S. Virgin Islands. The U.S. Virgin Islands is an unincorporated territory of the United States of America in the Lesser Antilles of the Caribbean and consists of three main islands together with many smaller islands and cays. Located roughly 1,000 miles southeast of Miami and 60 miles east of Puerto Rico, St. Croix, St. John, and St. Thomas are the main islands. St. Thomas and St. Croix have large international airports that offer nonstop service from and to several major cities including Atlanta, Charlotte, Miami, Newark, New York, Philadelphia, and Washington. Charlotte Amalie on St. Thomas is the capital of the U.S. Virgin Islands.

The largest island, St. Croix, is 83 square miles and has flatter terrain than the other two islands. On St. Croix, Christiansted and Frederiksted are the main towns and Point Udall (named after former Secretary of the Interior Stewart Udall) is the easternmost point of the United States. St. Thomas, 31 square miles, has mountainous terrain with Charlotte Amalie, located on the St. Thomas harbor, being the commercial

center of the U.S. Virgin Islands. St. John, 20 square miles, also is mountainous, and Cruz Bay is the main town. Approximately two-thirds of St. John is owned by the United States National Park Service and held as a part of the Virgin Islands National Park.

Given its close proximity to the equator, the U.S. Virgin Islands has a relatively consistent length of daylight and moderate temperatures year round. Temperatures range from 70-90 degrees Fahrenheit throughout the year, and tropical breezes combat humidity. Though prolonged periods of rain are rare, hurricanes are common in the Caribbean and it is not unusual for the territory to experience one or more tropical storms each year.

## **II. DEMOGRAPHICS**

As of the 2000 Census, the total population of the U.S. Virgin Islands is 108,612, which is comprised of 51,864 males and 56,748 females. The racial breakdown of the population is 76.2% African-American, 13.1% Caucasian, 7.2% other, and 3.5% two or more races. The median age of Virgin Islanders is 33.4 years. Unemployment in the U.S. Virgin Islands, very low compared to many Caribbean nations, typically hovers slightly above the national unemployment rate in the United States.

English is the official and dominant language of the U.S. Virgin Islands, but Spanish is the native language for many immigrants, notably those immigrants from neighboring Puerto Rico and the Dominican Republic. Given the colonization by several European nations before the purchase of the islands by the United States, various cultures and religions flourish in the U.S. Virgin Islands. The U.S. Virgin Islands is a unique cultural mix of North American, African, Danish, French, East Indian, Latin American, and Middle Eastern peoples. Among others, Christianity, Hinduism, Islam, and Judaism are the religions practiced by Virgin Islanders.

## **III. INVESTMENT CLIMATE**

The rights and protections afforded under the Constitution and laws of the United States make the investment climate in the U.S. Virgin Islands unlike any other in the Caribbean. In addition to the idyllic setting and temperate climate, investors are assured enforcement of laws under a stable democratic government system.

As a territory of the United States, the U.S. Virgin Islands offers investment opportunities unavailable elsewhere. Regulation of banking, insurance, and financial services is governed by a combination of federal and territorial laws. The U.S. Virgin Islands is in good standing with the Convention of the Organization for Economic Cooperation. Although several tax incentive programs are available, the territory is not a typical offshore tax haven and is committed to transparency in its tax practices while stimulating economic development through tax incentives. Modern infrastructure and technology provide the resources for stable investing. Tourism and financial services are common investment opportunities. Light and heavy industry are an important part of the

economy: HOVENSA, LLC, a joint venture of Amerada Hess Corporation and Petroleos de Venezuela, S.A., operates one of the world's largest refineries on St. Croix.

The U.S. Virgin Islands Economic Development Authority strongly encourages the growth of hotel tourism, financial services, light manufacturing, and other industries by providing tax benefits to businesses in these industries through the Economic Development Program. The Virgin Islands Exempt Companies Act provides tax incentives to certain foreign investors. These programs have had a substantial, positive impact on the investment climate in the U.S. Virgin Islands.

Charlotte Amalie on St. Thomas is one of the busiest cruise ports in the world and has one of the best natural deep-water harbors in the Caribbean. Driven by a \$1,200 duty-free allowance for returning U.S. residents on their purchases in the U.S. Virgin Islands, the territory has the largest port for duty-free shopping in the Caribbean attracting approximately two million cruise ship visitors every year. The three main islands also are home to a number of hotels and guest houses containing approximately 5,000 hotel rooms. The territory has seen an influx of affluent American retirees choosing to become full- or part-time residents.

With its solid foundation of tourism, the U.S. Virgin Islands has a promising economic forecast as financial services and manufacturing become more prevalent. The combination of protection under United States law, strong infrastructure, and picturesque setting creates an ideal investment climate in the U.S. Virgin Islands.

#### **IV. RECENT EVENTS**

Infrastructure continues to improve in the U.S. Virgin Islands as high-tech telecommunications companies expand the availability and speed of broadband and DSL internet connectivity. In 2004, Innovative Telephone, the local telephone exchange, announced that it planned to spend \$100 million to improve high-tech services.

Construction began in 2004 on the \$150 million Yacht Haven marina and hotel project in Charlotte Amalie. Yacht Haven is an expansive property that lies directly between the West Indian Company cruise ship docks and the main shopping area downtown. Thus, the project will create fluidity from the cruise docks through Yacht Haven to downtown Charlotte Amalie and a much improved landscape. It is expected that over 1,000 jobs will be created by the Yacht Haven project, and the project seeks to reestablish St. Thomas as the center of the charter boat industry in the Caribbean.

St. Thomas continues to be a popular cruise ship destination. The Virgin Islands Port Authority has expanded the secondary cruise ship dock located in Crown Bay, St. Thomas to accommodate the new mega-ships. The renovated Crown Bay facility also includes a new tourist retail shopping complex that is nearing completion. The West Indian Company, which operates the primary St. Thomas cruise ship facilities, has completed an \$8 million dock upgrade to strengthen and improve the facilities and has plans to further enlarge the dock to accommodate the larger ships. St. Croix has

experienced a drop in its visiting cruise ship passengers in the recent past and the government is exploring measures to create passenger demand for St. Croix.

## **LEGAL SYSTEM**

### **I. INTRODUCTION**

The United States purchased the Virgin Islands from Denmark in 1917 for U.S. \$25 million. Under the Revised Organic Act of 1954, Congress granted the U.S. Virgin Islands self-governing powers typical of non-state territories as well as significant constitutional rights to Virgin Islanders. The Organic Act operates akin to a state constitution for the U.S. Virgin Islands. Though citizens of the United States, residents of the Virgin Islands cannot vote for President and have only a non-voting delegate in the United States Congress.

The U.S. Virgin Islands has three branches of government: the executive, legislative and judicial branches. The top executives are the Governor and the Lt. Governor, who are elected locally every four years on the same ticket. The unicameral legislature is comprised of fifteen locally-elected senators, seven of which are elected by the District of St. Croix, seven by the District of St. Thomas and St. John and one at large. Each senator serves a two-year term.

As an unincorporated territory of the United States, the U.S. Virgin Islands is not fully a part of the United States. Thus, situations may arise where specific federal laws may not be applicable in the U.S. Virgin Islands.

A notable and significant aspect of law in the U.S. Virgin Islands is the unique use of the Restatements of the Law and other publications of the American Law Institute. In the absence of an applicable Virgin Islands statute or case law, the Restatements act as default operative “common law” for the Virgin Islands. Due to the relatively limited body of territorial statutory and case law, the Restatements are of paramount importance to legal practice in the U.S. Virgin Islands.

Although territorial law differs in some ways from a typical state’s law, the basic system is similar to a state system and, therefore, U.S. Virgin Islands law will not be foreign to a common law-educated attorney given an appropriate primer.

### **II. FEDERAL AND TERRITORIAL COURT SYSTEMS**

The Superior Court of the Virgin Islands (formerly known as the Territorial Court of the Virgin Islands) has original jurisdiction over all civil and criminal matters which are not subject to exclusive federal jurisdiction. The Superior Court has two judicial divisions: the Division of St. Thomas and St. John, located in Charlotte Amalie, and the Division of St. Croix, located in Christiansted. Decisions of the Superior Court presently are appealed to the Appellate Division of the District Court of the Virgin Islands. The

Appellate Division consists of a three judge panel made up of two federal District Court judges and one Superior Court judge. Appeals from decisions of the Appellate Division are made to the U.S. Court of Appeals for the Third Circuit. Note that this appellate structure may change in the near future. In October of 2004, the Virgin Islands enacted Act. No. 6687, which creates a Supreme Court of the Virgin Islands. Once the Supreme Court of the Virgin Islands is funded and operational, appeals from the Superior Court will go to the Supreme Court of the Virgin Islands. The U.S. Court of Appeals for the Third Circuit will have jurisdiction to review by writ of certiorari final decisions of the Supreme Court of the Virgin Islands for a period of 15 years.

All cases which may ordinarily be brought in U.S. District Court arising from the court's federal question or diversity jurisdiction may be brought in the District Court of the Virgin Islands. The District Court has two divisions: the Division of St. Thomas and St. John, located in Charlotte Amalie, and the Division of St. Croix, located in Christiansted. The District Court of the Virgin Islands is effectively the same as a U.S. District Court, with an important distinction being that the judges of the District Court of the Virgin Islands are not Article III judges and do not enjoy life tenure. Although appointed by the President of the United States and confirmed by the U.S. Senate, judges of the District Court of the Virgin Islands are appointed for a term of ten years. Appeals from decisions of the District Court of the Virgin Islands are taken to the U.S. Court of Appeals for the Third Circuit.

Lastly, the United States Tax Court does not have jurisdiction in the U.S. Virgin Islands. Instead, the District Court of the Virgin Islands hears taxpayer appeals.

### **III. ALTERNATIVE DISPUTE RESOLUTION**

The role of alternative dispute resolution (ADR) has increased significantly in recent years in the U.S. Virgin Islands. The territorial legislature has enacted several statutes pertaining to dispute resolution, arbitration, and mediation.

#### ***A. Mediation***

Both the Superior Court of the Virgin Islands and the District Court of the Virgin Islands have promulgated rules intended to promote and facilitate the resolution of civil litigation through court-ordered mediation.

#### ***B. Arbitration***

In the Virgin Islands, there is a strong policy in favor of the resolution of disputes through arbitration. Further, the procedural, as well as the substantive, provisions of the Federal Arbitration Act are available to parties seeking to validate, enforce, modify, or vacate agreements to arbitrate in the Superior or District Courts of the Virgin Islands.

## **BUSINESS ENTITIES**

### **I. CORPORATIONS**

Types of corporations in the U.S. Virgin Islands include general corporations, nonprofit corporations, professional corporations and exempt companies. The majority of corporations organized or qualified to do business in the U.S. Virgin Islands are general corporations owned by a small number of shareholders.

There is no requirement to retain a local attorney or company manager to incorporate in the U.S. Virgin Islands. However, it is common practice to appoint an attorney resident in the U.S. Virgin Islands to act as resident agent, especially if none of the corporate officers is a full-time resident. Corporate service companies, which must be properly licensed, also are available in the U.S. Virgin Islands.

#### ***A. Administrative Agencies***

The mailing address for the Division of Corporations and Trademarks in the Office of the Lt. Governor, District of St. Thomas and St. John, is 18 Kongens Gade, Charlotte Amalie, St. Thomas, VI 00802, and the phone number is 340-776-8515. The mailing address for the Chamber of Commerce for St. Thomas and St. John is P.O. Box 324, St. Thomas, VI 00804, and the phone number is 340-776-0100.

The mailing address for the Division of Corporations and Trademarks in the Office of the Lt. Governor, District of St. Croix, is 1105 King Street, Christiansted, St. Croix, VI 00820, and the phone number is 340-773-6449. The mailing address for the Chamber of Commerce for St. Croix is 3009 Orange Grove, Suite 12, Christiansted, St. Croix, VI 00820, and the phone number is 340-773-1435.

#### ***B. Formation***

Any three or more natural persons may form a corporation for any business purpose not prohibited by the law. The incorporators need not be owners or intended officers or directors of the corporation and may be nonresidents of the U.S. Virgin Islands or persons who are not United States citizens. However, a resident agent must be designated at the time of incorporation, and the resident agent must be a U.S. Virgin Islands resident. Following approval of the corporate name and appointment of a resident agent, articles of incorporation executed by the incorporators must be filed with the applicable corporations division in the Office of the Lt. Governor.

Upon filing of articles of incorporation and payment of the required fee, the corporation legally exists. The amount of capital determines the fee for filing the articles of incorporation. The minimum filing fee is \$150.00 for minimum capital

of \$1,000.00. In addition to the filing fee, the corporation's annual franchise taxes for its first year are due in advance upon incorporation.

Every U.S. Virgin Islands corporation must maintain a principal office or place of business in the U.S. Virgin Islands and must have a resident agent on whom service of process against the corporation can be made. Changes in location of the principal office or transfer to a new resident agent must be filed with the appropriate corporations division in the Office of the Lt. Governor.

On or before June 30 of each year, all U.S. Virgin Islands corporations and foreign corporations qualified to do business in the U.S. Virgin Islands must file annual reports signed by the president or vice-president and treasurer and pay franchise taxes for the preceding fiscal year. The franchise tax is calculated at \$1.50 for each thousand dollars of capital stock, and the minimum annual franchise tax is \$150.00.

### ***C. Documentation***

Corporate documents filed at the Office of the Lt. Governor are available for public inspection, including the articles of incorporation, the appointment of resident agent, and annual reports. Each U.S. Virgin Islands corporation is required to maintain accurate accounts of business transactions and a stock ledger.

The articles of incorporation must include the following information for the corporation: (1) the name; (2) the purpose; (3) the number of authorized shares of stock, statement of par value or that shares are to be without par value, and a statement of classes of stock if more than one class is issued; (4) minimum amount of capital with which the corporation will commence business; (5) physical address of the principal office or place of business in the U.S. Virgin Islands; (6) name and address of the resident agent; (7) the term of existence of the corporation, if limited; (8) the number of directors, or a statement that the bylaws shall set the number of directors, which may not be fewer than three; and (9) names and places of residence of the incorporators.

The incorporators may adopt original bylaws. As an alternative, the articles of incorporation may authorize the board of directors to make and adopt bylaws, subject to the right of a majority of the shareholders to amend or repeal the bylaws.

### ***D. Governing Law***

The principal governing law applicable to U.S. Virgin Islands corporations is the General Corporation Law of the Virgin Islands, which is somewhat antiquated in comparison to Delaware or to states that have adopted various versions of the Revised Model Business Corporation Act.

### ***E. Merger***

Two or more U.S. Virgin Islands corporations may merge under territorial law. Further, one or more U.S. Virgin Islands corporations may merge with one or more corporations of other states. A merger agreement must be approved by a vote of shareholders holding at least two-thirds of the total number of shares. The certified merger agreement must be filed with the Office of the Lt. Governor.

## **II. LIMITED LIABILITY COMPANIES**

In addition to corporations, limited liability companies may be formed in the U.S. Virgin Islands. The Uniform Limited Liability Company Act has been enacted in the U.S. Virgin Islands. A limited liability company may be formed by one or more members and is a legal entity existing and distinct from its members upon filing of articles of organization with the Office of the Lt. Governor.

The merger of a limited liability company with another entity requires a merger plan, approval of the merger plan, written articles of merger, and filing of the articles of merger with the Office of the Lt. Governor. Property, debts, liabilities, and obligations of the merging limited liability company vest in the surviving entity.

## **III. PARTNERSHIPS**

### ***A. General Partnerships***

The Revised Uniform Partnership Act, enacted in the U.S. Virgin Islands in 1998, governs general partnerships. No filing, registration or written partnership agreement is required to create a partnership. If a written partnership agreement exists, it governs relations among the partners and between the partners and the partnership. To the extent the agreement does not otherwise provide, the Uniform Partnership Act governs such relations. Each partner of a general partnership is jointly and severally liable for all obligations and debts of the partnership.

### ***B. Limited Liability Partnerships***

A partnership may become a limited liability partnership upon approval by such vote of the partners as is necessary to amend the partnership agreement. Like limited partnerships, which are discussed below, limited liability partnerships must be registered. In general, no partner of a limited liability partnership is personally liable for the obligations of the partnership beyond his interest in the partnership. The partnership agreement of a limited liability partnership must contain the following: (1) the partnership name; (2) the address of the principal office and, if different, the address of a U.S. Virgin Islands office; (3) the registered agent if there is no office in the U.S. Virgin Islands; (4) an election to be a limited liability partnership; and (5) a deferred effective date, if any. The

name of a limited liability partnership must end with “LLP,” “RLLP,” “limited liability partnership” or “registered limited liability partnership.”

### ***C. Limited Partnerships***

The revised Uniform Limited Partnership Act, enacted in the U.S. Virgin Islands in 1998, governs limited partnerships. A limited partnership may be formed by two or more persons and must have at least one general partner and at least one limited partner. Partners may be either natural persons or entities. The general partner has the same liabilities as a partner of a general partnership: the general partner is liable for all of the debts of the partnership. A limited partner generally is not liable to third parties for the obligations of the limited partnership unless he also is a general partner, he participates in the control of the business, or he knowingly allows his name to be used in the partnership’s name in a manner that is prohibited by law.

Unlike general partnerships, limited partnerships must be registered with the appropriate Division of Corporations and Trademarks in the Office of the Lt. Governor by execution and filing of a certificate of limited partnership. The current filing fee for limited partnerships is \$150.00, and annual reports must be filed and annual fees paid. The name of a limited partnership must contain the words “limited partnership” or “L.P.” Both a registered agent for service of process and an office, which may but need not be a place of business, must be maintained in the U.S. Virgin Islands by a limited partnership.

### ***D. Limited Liability Limited Partnerships***

A limited partnership may become a limited liability limited partnership by a vote of the partners necessary to amend the partnership agreement and filing a statement of qualification. Neither general nor limited partners of a limited liability limited partnership are personally liable with respect to obligations of the partnership beyond their interests in this partnership.

### ***E. Advantages and Disadvantages***

The primary advantage in creating a limited partnership over a general partnership in the U.S. Virgin Islands is the limited liability offered by limited partnerships as discussed above.

## **IV. SOLE PROPRIETORSHIP**

A person may personally own a business and operate under a trade name rather than a separate legal entity. Liability for all debts and obligations of the business rests with the owner of the sole proprietorship.

## **V. JOINT VENTURES**

Absent an agreement creating a specific entity, joint ventures are considered partnerships in the U.S. Virgin Islands.

## **VI. NONPROFIT CORPORATIONS**

Residents of the U.S. Virgin Islands may form nonprofit corporations, and the nonprofit corporation's chief business must be located in the U.S. Virgin Islands. A nonprofit corporation formed under U.S. Virgin Islands law is not exempt from income taxes unless it applies for and obtains exempt status under the Internal Revenue Code. Upon dissolution of a nonprofit corporation, its assets must be distributed for a public purpose.

## **VII. LICENSING**

Individuals wishing to engage in business in the U.S. Virgin Islands must obtain a license valid for a term of one year. Fees for licenses are specific to individual occupations as delineated by statute. The Commissioner of the Department of Licensing and Consumer Affairs issues most licenses, and the Commissioner has the discretion to determine the commencement of the term of a license. Licensing of certain professions, such as attorneys, real estate brokers, and physicians, is regulated by special boards and other organizations.

## **FINANCING INVESTMENTS**

### **I. TAX-EXEMPT FINANCING**

Private activity bonds are available for qualified projects in the U.S. Virgin Islands under the Internal Revenue Code as applied in the U.S. Virgin Islands. Tax incentive programs are discussed at length below.

### **II. FINANCIAL INSTITUTIONS**

The U.S. Virgin Islands has a wide array of banking options. The U.S. Virgin Islands Banking Association assures quality in banking, and its members include Bank of St. Croix, Virgin Islands Community Bank, Banco Popular de Puerto Rico, FirstBank Puerto Rico, and Bank of Nova Scotia. With the exception of the Bank of Nova Scotia, each of the aforementioned banks is a member of the FDIC. The Banking Board, under the Division of Banking and Insurance of the Office of Lt. Governor, regulates and supervises all banking in the territory, including foreign banks. Banks may act as trustees following application to and licensing from the Banking Board.

Several international and local brokerage and investment firms also do business in the U.S. Virgin Islands, including Merrill Lynch and UBS.

### **III. SECURITIES**

Although the Securities and Exchange Commission (“SEC”) is the principal regulator of the securities laws of the United States, most states also have laws requiring registration of securities being offered in their jurisdiction, including statutes governing registration of broker-dealers. These state securities laws are commonly referred to as Blue Sky Laws.

As of 2005, the Virgin Islands also will have a Blue Sky Law called the Uniform Securities Act, which is modeled on the Uniform Securities Act of 2002 promulgated by the National Conference of Commissioners on Uniform State Laws (“NCCUSL”).

The Virgin Islands Blue Sky Law is administered by the Lieutenant Governor of the U.S. Virgin Islands and although no regulations have yet been published, the statute adopts the same scheme for Exempt Securities and Exempt Transactions recommended by NCCUSL as well as the provisions permitting notice filing on a coordinated basis of federal registration statements filed with the SEC. The Virgin Islands Blue Sky Law also provides for broker-dealer registrations as well as exemptions from registration in certain circumstances, again the same exemptions recommended by NCCUSL.

Finally, the Virgin Islands Blue Sky Law contains antifraud provisions for the protection of investors as well as broad enforcement powers for the Lieutenant Governor as Administrator of the statute, including the power to issue a stop order denying the effectiveness of a registration statement and the power to investigate any violations of the statute.

### **TRADE REGULATIONS**

#### **I. ANTITRUST LAWS**

The Virgin Islands Antimonopoly Law was enacted to promote growth of commerce and industry in the U.S. Virgin Islands by prohibiting restraints of trade. Under the Virgin Islands Antimonopoly Law, the courts must follow the construction of federal antitrust law by federal courts.

#### **II. FRANCHISE REGULATION**

The Virgin Islands Code defines franchises and permits their existence as a contract between two or more persons in a commercial relationship. Statutory provisions govern the regulation of franchises, including their termination.

### **III. CONSUMER PROTECTION LAWS**

The Consumer Protection Law of 1973 prohibits unfair trade practices and includes weights and measures provisions, which are intended to be sufficiently broad to include any consumer items subject to weight and measure. In addition, the Consumer Protection Law addresses the sale and purchase of new and used motor vehicles and requires plain language in consumer contracts. Regulations promulgated under the Consumer Protection Law may supplement but not be inconsistent with federal law pertaining to the Federal Trade Commission Act, the Uniform Commercial Code, and the Uniform Consumer Credit Code. The Department of Licensing and Consumer Affairs enforces consumer protection laws and regulations.

## **TAXATION**

### **I. INCOME TAX**

Application of federal income tax laws and regulations occurs in the U.S. Virgin Islands under a mirror system. The Virgin Islands Bureau of Internal Revenue is the taxing authority for the territory. Subject to certain exceptions, income tax rates are the same as federal rates for residents of the U.S. Virgin Islands. However, the U.S. Virgin Islands has the authority to (1) reduce certain tax liability, (2) levy a surtax, not to exceed ten percent, and (3) enact nondiscriminatory local income taxes. Presently, a surtax is levied only against corporations, and the U.S. Virgin Islands has never enacted local income taxes.

#### ***A. Personal Income Tax***

Bona fide residents of the U.S. Virgin Islands pay taxes on worldwide personal income to the territorial government under the mirror system. Because federal law is the basis for tax rates on U.S. Virgin Islands residents, the staged decrease in federal tax rates over recent years concurrently benefits Virgin Islands residents. Bona fide Virgin Islands residents report all income from all sources on their tax returns filed with the Virgin Islands Bureau of Internal Revenue and have no tax liability to the federal government. Individuals not residing in the U.S. Virgin Islands who have U.S. Virgin Islands source income are subject to territorial tax liability on such income.

#### ***B. Corporate Income Tax***

Like personal income taxes, U.S. Virgin Islands corporations pay income taxes on worldwide income to the U.S. Virgin Islands based on federal rates plus the corporate surcharge. A foreign corporation is subject to income tax liability on income that is effectively connected with a U.S. Virgin Islands business and

certain U.S. Virgin Islands source income. All corporations with U.S. Virgin Islands tax liability are subject to a ten-percent surtax in the U.S. Virgin Islands.

## **II. OTHER TAXES**

### ***A. Property and Stamp Taxes***

Tax on real property is levied annually at the rate of one and one-quarter percent of an amount equal to sixty percent of the actual value of the property.

Transfers of real estate are generally subject to a transfer tax of between two percent and three and one-half percent of the value of the property, even if transferred for no consideration. Transfers between certain family members, including husband and wife, and certain other transfers are exempt from stamp tax.

### ***B. Sales Tax***

There is no direct sales tax in the U.S. Virgin Islands.

### ***C. Gross Receipts Tax***

In general, every person and entity doing business in the U.S. Virgin Islands is subject to a four percent gross receipts tax. Though “doing business” is undefined by the governing territorial statute, courts have permitted gross receipts taxes when the business (1) benefits from services and protections of the government, (2) maintains offices or agents in the U.S. Virgin Islands, or (3) conducts activities that have a sufficient connection to the U.S. Virgin Islands so long as the tax is fairly apportioned to the activities. Gross receipts include all receipts of business activity without deductions. Monthly reporting is required when annual gross receipts exceed \$120,000.00.

The first \$5,000.00 of monthly gross receipts is exempt when annual gross receipts are less than \$150,000.00. The receipts of a “controlled group” are aggregated to determine the exempt amount; “controlled groups” roughly include sole proprietorships and entities with more than fifty percent individual or family ownership. Banks, franchised bus services, exempt insurers, affordable housing providers, and armed forces exchange services are exempt from the payment of gross receipts taxes. Other businesses that may be eligible for exemption include costume jewelry manufacturers, reverse osmosis water production plants, Economic Development Commission beneficiaries, and contractors on certain federally funded projects.

#### ***D. Tax Withholding***

The withholding tax provisions of the Internal Revenue Code apply in the U.S. Virgin Islands subject to certain exceptions and modifications. With respect to employment taxes, U.S. Virgin Islands employers must withhold income taxes from employees' wages. Federal social security must be withheld from wages and paid to the United States Treasury. Employers must pay territorial and federal unemployment taxes, though a partial credit is available for unemployment taxes paid to the territorial government. In addition, worker's compensation insurance is mandatory for U.S. Virgin Islands employers.

In general, certain payments made to a foreign person also are subject to withholding under the Internal Revenue Code as applied in the U.S. Virgin Islands. However, the U.S. Virgin Islands has reduced by statute the withholding rate from the federal rate of thirty percent to ten percent for U.S. Virgin Islands source income.

### **III. SUB-S STATUS**

A U.S. Virgin Islands corporation may elect Subchapter-S status by filing the appropriate election form with the Virgin Islands Bureau of Internal Revenue.

### **IV. CUSTOMS AND EXCISE DUTIES**

The U.S. Virgin Islands is a separate customs zone from the United States. Items imported from the United States but manufactured elsewhere are subject to a customs duty that, when added to the duty already paid to the federal government, equals six percent of the item's value. Many items are exempt from customs duty, including spirits, jewelry, concrete, perfumes, sweaters, shawls, scarves and ties.

Every person and entity doing business in the U.S. Virgin Islands is required to pay an excise tax on all items manufactured in or brought into the U.S. Virgin Islands for use in a business. The rate of excise tax depends upon the type of product and is based on the value, or, in certain cases, the volume, of the product. Exempt from excise taxes are educational materials, foodstuffs, jewelry, concrete, articles imported or manufactured for export, perfumes, spirits, tapestries, sweaters, shawls, scarves, ties, and other items.

### **V. TAX INCENTIVES**

Tax incentive programs are significant to the modern U.S. Virgin Islands economy. The Internal Revenue Code authorizes the reduction of income tax liability by territorial law under certain circumstances. Incentives established under this authority are available in the form of tax benefits and exemptions under the EDC Program and the Exempt Companies Act.

## **A. EDC Program**

Through the Economic Development Commission (the “EDC”), the U.S. Virgin Islands grants tax benefits to eligible applicants generally for ten-year periods. An EDC beneficiary receives a ninety percent reduction in its income tax liability attributable to income derived from the business for which the EDC benefits have been granted. Other benefits include one hundred percent exemptions from taxes on the following: real property used in the business for which the EDC benefits have been granted, gross receipts taxes attributable to such business, and excise taxes on building materials and supplies necessary for construction or alteration of the EDC beneficiary’s physical plant or facility. The customs duty for raw materials and component parts imported by the EDC beneficiary for use in production or processing of articles is reduced to one percent. Each member, manager, shareholder or other owner of an EDC beneficiary who is a bona fide U.S. Virgin Islands resident is entitled to a ninety percent exemption from income taxes attributable to dividends or distributions paid by the EDC beneficiary to such owner which are attributable to income derived from the business for which the EDC benefits have been granted.

An EDC beneficiary must make a minimum eligible investment in the U.S. Virgin Islands of \$100,000, exclusive of inventory. An EDC beneficiary must employ on a full-time basis not less than ten persons of which eighty percent must be U.S. Virgin Islands residents. A reduced investment may be allowed if the EDC finds that the applicant’s business will “provide sufficient employment to justify the lower investment.” Likewise, the statute provides that the required number of employees may be less than ten if the applicant demonstrates to the satisfaction of the EDC that greater employment is not economically feasible and that the other benefits of the applicant’s business compensate for the reduced employment. Other EDC requirements include management-training programs and scholarship funds or other educational assistance. Subject to certain exceptions, EDC beneficiaries are required to contract with local suppliers that have been licensed and have conducted business in the U.S. Virgin Islands for at least one year and maintain their principal place of business in the U.S. Virgin Islands.

Industries and businesses eligible for EDC benefits include the following, which are separated into four categories: “Category I - Rum Production, Milk/Dairy Production, Watch and Jewelry Manufacturing and Assembly; Category II - Product Assembly, Manufacturing (other than Jewelry and Watch Manufacturing and Assembly), Agriculture/Food Processing, Mari-culture/Food Processing, Marine Industry, Raw Materials Processing, Hotels/Guesthouses, Transportation and Telecommunications; Category IIA - Service Businesses, not limited to but including, Investment Managers and Advisors, Research and Development, Business and Management Consultants, Software Developers, E-Commerce Businesses, Call Centers, High Tech Businesses, International Public Relations Firms, International Trading and Distribution, and any other businesses serving

clients located outside the U.S. Virgin Islands; Category III - Utilities, Health Care Facilities, Recreation Facilities, and such other industries or businesses as may be deemed appropriate by the [Economic Development] Commission.” Application fees, activation fees and annual compliance fees, ranging from \$1,000 to \$7,500, are charged based on the category of the business.

If an EDC beneficiary fails to comply with the EDC law or regulations or the conditions of its EDC benefits, the Government has the power to revoke, suspend or modify its benefits and may require the refund of all benefits received under the EDC Program.

## **B. *Exempt Companies***

The Exempt Companies Act of 1986 allows tax benefits to certain corporations and limited liability companies, which, as a general rule, may not be engaged in a trade or business in the United States or the U.S. Virgin Islands. Qualifying companies are exempt from U.S. Virgin Islands income tax on exempt activities. “Exempt activities” are any activities undertaken by the exempt company outside the U.S. Virgin Islands, interest on bank deposits or amounts held by insurance companies under an agreement to pay interest thereon, interest or dividends from another exempt company and the sale of stock in another exempt company. With respect to an exempt insurer, exempt mutual fund or exempt international banking facility, however, exempt activities also include activities within the U.S. Virgin Islands that are a required part of the business of such entity. Exempt companies also are exempt from the U.S. Virgin Islands gross receipts tax and business licensing requirements. Shareholders and creditors of exempt companies are exempt from withholding tax on dividends and interest.

An exempt company is formed by filing articles of incorporation or articles of organization including or accompanied by an election to be considered an exempt company. As a general rule, a company is qualified to make the exempt company election only if less than ten percent of the total voting power and value of its stock is owned by one or more U.S. Virgin Islands or United States persons. Upon request of the exempt company, the Lt. Governor is authorized and directed to provide a written agreement of the Government of the U.S. Virgin Islands that the benefits shall remain available and shall not be reduced for a twenty-year period provided that the company is in compliance with all applicable U.S. Virgin Islands laws and current in the payment of taxes and fees.

There are two significant exceptions to these ownership restrictions: (1) an exempt insurer that is a United States corporation or that has made an election to be treated as a domestic corporation under the Internal Revenue Code is not limited with respect to ownership by United States persons, and (2) the restriction with respect to ownership by U.S. Virgin Islands persons does not apply to an exempt international banking facility owned in whole or in part by a U.S. Virgin Islands bank.

### **C. *Virgin Islands Foreign Sales Corporations***

Under prior federal law, a United States exporter was allowed to establish a foreign sales corporation in the U.S. Virgin Islands to reduce tax liability on sales of exports. Following a finding by the World Trade Organization that the federal law was an unfair trade subsidy in violation of the United States' trade agreements, it was repealed. In response to this repeal, the U.S. Virgin Islands enacted a local foreign sales corporation statute in 2000, the Virgin Islands Foreign Sales Corporation Act ("VIFSC Act").

Pursuant to the VIFSC Act, a U.S. Virgin Islands corporation, including an existing foreign sales corporation, may elect to become a Virgin Islands Foreign Sales Corporation. The VIFSC Act provides that Virgin Islands Foreign Sales Corporations are exempt from the following taxes: gross receipts taxes on non-U.S. Virgin Islands trading gross receipts and foreign trade related income; income taxes on net investment income and carrying charges; income taxes on foreign trade income and foreign trade related income; and excise taxes and customs duties on property imported for re-export. The VIFSC Act revised definitions of "foreign trade" by referring to the "extraterritorial income" provisions of the Internal Revenue Code that were enacted to replace the FSC provisions. The VIFSC Act is relatively untested and lacks authoritative interpretation or approval both with respect to its effect and its coexistence with federal law. In addition, with the recent repeal of the "extraterritorial income" provisions of federal law, the VIFSC Act will be difficult to apply without revision. The fate of the provisions enacted under the VIFSC Act also may depend on the reaction of the international community.

## **LABOR AND EMPLOYMENT**

### **I. EMPLOYMENT-AT-WILL**

The Virgin Islands is one of two jurisdictions under the American flag that has a Wrongful Discharge Act. The Virgin Islands Wrongful Discharge Act enumerates nine reasons for termination of employees in the Virgin Islands. As such, at-will employment does not exist as it relates to those employees covered by the Virgin Islands Wrongful Discharge Act. The Virgin Islands Wrongful Discharge Act excludes from its coverage those persons employed in a bona-fide executive or professional capacity and those persons who have been employed for less than six calendar months, amongst other exceptions.

### **II. GOVERNING LAW**

The following statutes also apply to labor relations: (a) The Virgin Islands Fair Labor Standards Act, V. I. Code Ann. tit. 24, § 1 et seq. (establishes the minimum wage

and maximum hour standards in the Virgin Islands); (b) The Virgin Islands Occupational Safety and Health Act, V. I. Code Ann. tit. 24, § 31 et seq.; (c) The Virgin Islands Labor Relations Act, V. I. Code Ann. tit. 24, § 62 et seq. (encourages the amiable adjustment of employer-employee disputes through the practice and procedure of collective bargaining; this Act includes the Virgin Islands Wrongful Discharge Act discussed above); (d) The Virgin Islands Workers' Compensation Administration Act, V. I. Code Ann. tit. 24, § 250 et seq.; (e) The Virgin Islands Unemployment Insurance Act, V. I. Code Ann. tit. 24, § 301 et seq.; and (f) The Virgin Islands Plant Closings Act, V. I. Code Ann. tit. 24, § 471 et seq.

## **INTELLECTUAL PROPERTY**

Law on copyright, patents, and trademark in the U.S. Virgin Islands is sparse. The Organic Act grants the District Courts jurisdiction for intellectual property matters. The majority of the references to intellectual property in territorial statutes concern judicial procedure. However, Virgin Islands Code does have a chapter pertaining to criminal penalties for trademark infringement. Several general statutes address trade secrets but mostly reference penalties for public employees.

It is important to recognize, however, that federal Copyright and Trademark law is applicable in the U.S. Virgin Islands and the Division of Corporations and Trademarks, a Division of the Lieutenant Governor's Office, acts as the agency that registers trademarks that originate in the U.S. Patent and Trademark Office ("USPTO") and are then registered in the U.S. Virgin Islands to protect against infringement locally. In addition, when control of the owner of a registered trademark changes hands, USPTO certifications of registration, assignment, renewal or merger, are submitted to the Division of Corporations and Trademark. Accordingly, the U.S. Virgin Islands is in essence a tag-along jurisdiction, maintaining a parallel registration system to that established by the USPTO for trademarks and making its District Court available for actions arising out of infringements of copyright and trademarks.

The lack of territorial law in the area of intellectual property may be advantageous for high-tech companies looking to expand or relocate: the relative absence of local law governing intellectual property could be seen as advantageous because federal intellectual property law is not complicated by local statutes.

## **REAL ESTATE**

### **I. OWNERSHIP**

#### ***A. Holding Title***

Individuals and entities may hold title to real property in the U.S. Virgin Islands subject to certain limitations. Of significant note, territorial law prohibits the

holding of title to any part of the U.S. Virgin Islands shoreline. The first fifty feet from the seaward line of low tide are considered shoreline, and as a general rule, all shoreline in the U.S. Virgin Islands is public property.

### ***B. Individual Property Ownership***

All adult individuals are entitled to the full and equal privilege to purchase or rent any item of real estate. Pursuant to statute, foreign individuals may own property in the U.S. Virgin Islands subject to certain registration requirements.

### ***C. Business Property Ownership***

All corporations and other entities in the U.S. Virgin islands may hold, purchase, convey, sell, and mortgage real property. Foreign entities may hold title to real property subject to certain registration requirements.

## **II. CONCURRENT OWNERSHIP**

Territorial law favors tenancy in common over joint tenancy. Therefore, only an expressed declaration in the conveyance or devise can create a joint tenancy. Title held by a husband and wife, however, is presumed to be held as tenancy by the entirety unless the instrument provides otherwise.

## **III. SPOUSAL RIGHTS**

The U.S. Virgin Islands is not a community property jurisdiction. However, land purchased by a married couple is presumed to create a tenancy by the entirety. Dower and curtesy were abolished in the U.S. Virgin Islands. Homestead rights and allowances exist for surviving children and spouses.

## **IV. PURCHASE AND SALE OF PROPERTY**

### ***A. Purchase***

#### **1. Elements/Deeds**

Only an instrument in writing may create or transfer an interest in real property. A deed must contain the signature of the person from whom the estate or interest is intended to pass or by her lawful agent or attorney; the deed must be witnessed by two witnesses and be acknowledged or proved. Deeds lawfully executed outside the territory will be recognized by the U.S. Virgin Islands.

## **2. Recording**

In order to be effective against third parties, a document affecting real property must be recorded. Proof that taxes on the property have been paid is required to record a deed. Deeds are recorded with the Office of the Recorder of Deeds, and the Department of Finance provides proof of payment of real property taxes.

## **3. Bill of Sale**

No specific execution or recording requirements exist for bills of sale transferring general personal property interests in the U.S. Virgin Islands.

## **4. Closing Statement**

Closing statements generally are prepared by the bank's attorney, if a transaction is financed, or by the seller or buyer's attorney.

## **5. Financing and Mortgage**

Banks in the U.S. Virgin Islands provide a variety of loan options. Mortgages in the U.S. Virgin Islands establish a lien against real property, rather than a title transfer. The U.S. Virgin Islands is a Uniform Commercial Code ("UCC") jurisdiction and has adopted the most recent UCC with minor variations. Borrowers should expect a typical lender to ask for the following documents for a mortgage loan transaction: (1) surveys; (2) appraisals; (3) title and other insurance; (4) flood zone documentation; (5) documentation of property tax payments; and (6) corporate or other entity documentation.

## **6. Antifraud**

The U.S. Virgin Islands provides protection against fraud when purchasing real property. Virgin Islands Code has several provisions that address fraudulent conveyances, and the U.S. Virgin Islands has ratified the Uniform Fraudulent Conveyances Act.

## **7. Taxes**

As discussed earlier, the U.S. Virgin Islands imposes a transfer tax on the transfer of real property.

## **V. FORECLOSURES**

Non-judicial foreclosure of mortgages covering real property is prohibited in the U.S. Virgin Islands. Instead, foreclosure actions in the territory are equitable proceedings subject to the same procedural requirements of most civil matters, e.g., the filing of a complaint and answer, entitlement to discovery, and entry of final judgment.

Most actions to foreclose real property mortgages are disposed of via entry of default or summary judgment. Upon entry of a judgment for debt and foreclosure of lien, the marshal's office will execute upon the judgment by way of attachment. The mortgaged property will be sold by the marshal's office at public auction. The owner or judgment debtor has a six-month period after confirmation of the sale within which to redeem the property.

## **VI. LAND CONTRACTS**

Installment sale contracts, also known as contracts for deed, are allowed in the Virgin Islands. If a seller under an installment sale contract attempts to enforce its right to title upon default by the buyer, however, a U.S. Virgin Islands court will treat the installment sales contract as a mortgage and require the seller to carry out a foreclosure action.

## **VII. EASEMENTS**

Easements may be granted by a written instrument executed in the same manner as a deed.

## **VIII. LEASES OF REAL PROPERTY**

The Virgin Islands forcible entry and detainer statute prohibits the use of self-help by a landlord to obtain possession of leased premises and provides a summary procedure for eviction proceedings. A tenancy at will for which the rent is payable monthly is terminable by either party upon one-month's notice. With respect to other interpretation and enforcement issues, applicable case law and the landlord and tenant provisions of the Restatement (Second) of Property govern leases in the U.S. Virgin Islands.

## **IX. ZONING**

The U.S. Virgin Islands contains eighteen zoning districts located throughout the islands. Certain uses are permitted as a matter of right in each zoning district. The Coastal Zone Management program is an integral part of real estate development in the U.S. Virgin Islands. Because many desirable properties are located along the coastline, Coastal Zone Management permits tend to be the largest administrative hurdle over which most developers must pass.

## **X. MINERAL RIGHTS**

The U.S. Virgin Islands does not extensively regulate local mineral rights. The Department of Planning and Natural Resources possess the authority to administer and enforce all laws pertaining to mineral and other resources. Under the Uniform Commercial Code applicable in the Virgin Islands, minerals fall under the definition of goods, instead of as real property, when extracted for sale or use.

## **XI. EMINENT DOMAIN**

The U.S. Virgin Islands may exercise its right of eminent domain for specific public uses, including local and federal projects on utilities and public works. Exercise of eminent domain, however, depends on the intended use of the property. The territorial government may take real property in fee simple when the use is for public buildings, public grounds, permanent buildings, reservoirs, dams, or permanent flooding; for all other uses, the government may only take an easement. Further, the government has the right to enter upon and occupy lands in order to remove earth, gravel, stones, trees, and timber relating to public use.

## **MISCELLANEOUS**

### **I. QUALIFICATION FOR DOING BUSINESS**

No foreign corporation or limited liability company may engage in business in the U.S. Virgin Islands unless it has qualified to do business by filing the necessary documents with, and by obtaining a certificate of qualification from, the Office of the Lieutenant Governor. Certain activities, which are listed in the corporation and limited liability company statutes, are not considered transacting business for purposes of the qualification requirement. Like individuals and domestic entities, a foreign entity engaging in business in the U.S. Virgin Islands is required to have the appropriate business license.

### **II. LICENSING AND REGULATORY REQUIREMENTS**

Any individual doing business in the U.S. Virgin Islands and any corporation or other entity doing business in a name other than its legal name must register a trade name. In addition, any person or entity doing business in the U.S. Virgin Islands must obtain a business license for each business activity at each location. The Department of Licensing and Consumer Affairs issues most business licenses. Obtaining certain types of licenses, including those for the legal and medical professions, building contractors, engineers and real estate brokers, requires the applicant to pass examinations and meet separate or additional licensing requirements supervised by a professional board.

### **III. APPLICABILITY OF STATE USURY LAWS**

Under territorial usury law, two types of loans are subject to maximum interest rate ceilings: loans under written contract of \$9,000 or less and first priority mortgage loans of \$100,000 or less. The maximum annual interest rate for written contracts of \$9,000.00 or less is 18.5%. All first priority mortgage loans of \$100,000.00 or less may only carry an annual maximum interest rate of 1.5% above the posted rate of the Federal Home Loan Mortgage Association. No maximum interest rate applies to written contracts in excess of \$9,000.00 that are not first priority mortgage loans. Irrespective of whether a maximum statutory rate applies, payment penalties on loans generally are prohibited. No corporation, partnership, limited liability company or other entity, however, may plead any law against usury or prepayment penalties as a defense in any action to enforce payment of the entity's indebtedness.

Special statutory usury rates apply to certain financing companies for loans up to \$7,500.00. Certain other restrictions apply to qualifying financing companies that utilize these statutory rates.

Usurious contracts forfeit the entire interest on a debt, and the borrower may bring an action against the lender to recover double the amount of interest paid. Borrowing in the U.S. Virgin Islands also is subject to federal statutes and regulations including the Truth in Lending Act.

### **IV. BUSINESS NAME REGISTRATION REQUIREMENTS**

U.S. Virgin Islands statutes restrict business names by prohibiting the registration of a corporation or partnership name that is deceptively similar to that of an already registered domestic or foreign corporation or partnership.