



British Virgin Islands

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Doing Business in the British Virgin Islands

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INTRODUCTION

THE BVI AT A GLANCE

Population: 30,000

Language: English

Time zone: 4 hours behind Greenwich Mean Time

Currency: United States Dollar (\$)

Location

An archipelago situated in the north-eastern Caribbean some 60 miles east of Puerto Rico and directly adjacent to and forming a part of the same geographic group as the United States Virgin Islands. The BVI is served by 3 airports. The main airport, is the Terrence B. Lettsome International Airport, at Beef Island, immediately adjacent (connected via permanent bridge) to the main island and commercial centre Tortola. This facility is served by a number of commuter airlines, linking it with the nearby hub in San Juan, Puerto Rico which is 45 minutes away by connecting air links. San Juan is approximately 2 hours flying time from Miami. There are plans for expansion of the airport to provide for direct flights from the United States mainland. There is a small regional airport on Virgin Gorda, and the BVI is also accessible using the Cyril B. King International Airport on St. Thomas, USVI, via regular ferry connections.

Political System

The Territory is an economically and politically stable British Overseas Territory. Commonly referred to as the British Virgin Islands (BVI) since the 1800's, (distinguishing it from its neighbouring archipelago, the Virgin Islands of the United States), this is in fact a misnomer. Its official name is the Virgin Islands. The Territory is constitutionally autonomous of the United Kingdom and internally self-governing, with a Governor appointed by the UK as the representative of the British Crown.

The Governor is responsible for defence, external affairs, the civil service, the local police force and the administration of justice, and normally acts on the advice of the elected. This suggests a bicameral legislature local government. Elected representatives together with the opposition

members comprise and sit in the House of Assembly, a unicameral body comprising 13 elected members, a Speaker of the House, and the Attorney General as a non-voting ex officio member. The head of the Government is the Premier, who, with a Cabinet of Ministers, conducts the affairs of the Territory.

Legal System

The legal system is based on the English legal system, receiving and incorporating English common law and principles of equity together with certain elements of English statute law, along with Acts of the Virgin Islands House of Assembly, and subsidiary legislation made pursuant thereto. United Kingdom statute law does not generally apply in the BVI, except where specifically extended by the United Kingdom Parliament.

ECONOMY & FINANCIAL SUPERVISION

The economy is primarily comprised of two service industries: tourism and financial services. Although there are licensing requirements, the Territory operates a free enterprise system exemplified by low duties, tariffs, and taxes. This tax neutral environment coupled with incentive legislation such as the Pioneer Enterprises and Services Act and Hotel Aid Act are key elements which incentivise business activity.

Tourism is largely marine based, with the BVI boasting one of the largest yachting industries in the Caribbean despite its relatively small geographical size and population, an exclusive mega-yacht marina in Virgin Gorda's North Sound, and several annual mega-yacht regattas. Other attractions include world-class diving and sport fishing, and the Road Town cruise harbour is served by all major cruise lines.

An important corollary to this maritime industry is the ease and availability of first rate ships registration services. The Virgin Islands Shipping Registry is a Category 1 Red Ensign jurisdiction authorized to register passenger, commercial and recreational vessels as well as cargo vessels of unlimited tonnage. Ships registered locally enjoy the protection of the British Navy internationally. There are several 4 and 5 star resorts on the main islands of Tortola and Virgin Gorda, while the outlying cays host several private ultra high-end luxury resorts.

The financial services sector is the largest contributor to GDP. The BVI is the world's largest offshore corporate domicile with close to 500,000 active companies. It is also the world's second-largest offshore investment funds domicile, with close to 3,000 active investment funds. The various sub-sectors are supervised by the Financial Services Commission ("FSC"), an autonomous financial services regulatory authority with broad responsibility for management, regulation, promotion, supervision and inspection of all financial services in and from within the British Virgin Islands. The FSC is also tasked with the responsibilities of promoting public understanding of the financial system and upholding the integrity of the British Virgin Islands as a well-regulated international finance centre with a view to minimizing financial crime and preventing market abuse.

The Registry of Corporate Affairs (the "Registry") is responsible for ensuring that entities doing business in and from within the Territory are duly registered. The incorporation of BVI Companies can take place within one business day though the time required to process the

corporate books averages two – three days. The Registry also functions as the patents and trademarks registry, facilitating the registration of British Virgin Islands and UK trade and service marks and patents.

There are no controls on the import and export of currency, capital or profits, but these are subject to AML/CFT disclosure and reporting requirements. There are no taxes on profits or dividends, nor is there any capital gains tax or income tax.

The financial services sector is promoted by the BVI International Finance Centre, a department of the Premier's Office.

BUSINESS VEHICLES

BVI BUSINESS COMPANIES

The BVI Business Companies Act, 2004 (as amended) (the “Act”) is the sole corporate statute in the BVI and regulates all BVI companies. The Act has been internationally recognised for its flexibility and clarity on some typically uncertain or undeveloped areas of company law.

Types of companies

Seven different types of companies can be incorporated under the Act:

- companies limited by shares;
- companies limited by guarantee not authorised to issue shares;
- companies limited by guarantee authorised to issue shares;
- unlimited companies authorised to issue shares;
- unlimited companies not authorised to issue shares;
- restricted purposes companies; and
- segregated portfolio companies.

Company names

Companies regulated by the Act are required to use a corporate suffix. Limited companies (including companies limited by guarantee) must end their name with either “Limited”, “Corporation”, “Incorporated”, “Societe Anonyme”, “Sociedad Anonima”, and their respective abbreviations such as “Ltd”, “Corp”, “Inc” and “S.A.” Unlimited companies must end their name with either “Unlimited” or “Unltd”. Restricted purposes companies must end their name with the phrase “(SPV) Limited” or “(SPV) Ltd”, and SPCs must have either “Segregated Portfolio Company”, or its abbreviation “SPC”, in the name immediately before one of the endings specified for limited companies. The name of a limited company that is a private trust company must end with the designation“(PTC)” placed immediately before one of the required endings.

If required, the company number can be used as a name in the form “BVI Company Number 1234567 Limited”. A company can also have an additional name in foreign characters if approved by the Registrar.

Memorandum and Articles

The memorandum and articles of association are the company's corporate constitution and together with the Act regulate the relationship between the company, its members and its directors.

There is no requirement to state the objects or purposes in the memorandum of association. Whilst there is nothing to prevent a company from stating its objects or purposes, it is not required to do so. This is because the Act also provides that a company has, irrespective of corporate benefit, full capacity to carry on any business or activity, do any act or enter into any transaction. And for those purposes a company has full rights, powers and privileges. However, this latter provision is subject to the rest of the Act, any other statute, and the company's memorandum and articles. The only exception to the rule that a company need not state its object and purposes in the memorandum of association is where the company is a restricted purposes company. In that case, the company must state the purposes for which it is incorporated.

The concept of constructive notice of documents (including the memorandum and articles) filed with the Registry is abolished by the Act, except in relation to particulars of charges registered in the Register of Registered of Charges and with respect to documents relating to a restricted purposes company.

In addition to the name and type of company, its registered office, and the name and address of its first registered agent, there are certain matters that must be stated in the constitution for the different types of companies, for example,

- companies authorised to issue shares must state the maximum number of shares that can be issued or that the company is authorised to issue an unlimited number of shares (it should be noted that there is no longer a concept of authorised share capital or for that matter any concept of capital and surplus);
- companies limited by guarantee must specify the amount which a guarantee member must contribute to the assets on liquidation;
- restricted purposes companies must state that they are such companies; and

- SPCs must state that they are segregated portfolio companies. Beyond the specified compulsory matters, the Act gives great flexibility on what may be included in either the memorandum or articles.

Directors

A company must have at least one director and it must keep a register of directors. The requirement to appoint a director does not apply during the period between the incorporation of the company and the appointment of first directors. The Act specifically provides that the business and affairs of the company shall be managed by, or under the direction or supervision of, the directors, but subject to any modifications or limitations in the memorandum and articles. The directors can delegate most of their powers to committees of directors or agents but certain important powers cannot be delegated, e.g. the power to amend the memorandum or articles, the general power to delegate to committees (but certain powers can be sub-delegated if authorised by the directors), the power to appoint agents and the power to appoint directors.

A director's equitable duties of acting honestly, in good faith and in what he believes to be in the best interests of the company has a statutory footing, as is his common law duty of care and skill. He is also under a statutory duty to exercise his powers as a director for a proper purpose and he must not act in a manner that contravenes the Act or the memorandum or articles.

A director is required to disclose to the board any interest in a transaction to be entered into by the company. Where a director has an interest in a transaction, he may, subject to the memorandum and articles, vote on the transaction or attend a meeting relating to it and be counted for the purposes of a quorum.

Appointment of directors

The registered agent must appoint the first director(s) within six months of incorporation. Subsequent directors can be appointed by resolution of members (unless the memorandum or articles provide otherwise), or by the directors if permitted by the memorandum or articles, for such term as may be specified in the resolutions appointing them. A person cannot be appointed to act as a director unless they have consented in writing to be a director.

Reserve directors

Where an individual is the sole member and sole director of a company, that sole member/director may by written instrument nominate a person not disqualified from being a director as a reserve director to act in place of the sole director upon his death. The nomination of the reserve director ceases to have effect if the reserve director resigns, the sole member/director revokes the nomination before the death of the sole member/director or the sole member/director ceases to be the sole member/director other than by reason of death.

Members rights, liabilities and remedies

In general, members have the rights conferred on them in the memorandum. However, the Act specifies the rights that a shareholder has, namely, the right to one vote, the right to an equal share of any dividend, and the right to an equal share in the distribution of surplus asset. These rights can be varied by the memorandum.

In the case of limited liability companies, members are not liable for the debts and obligations of the company. The shareholders of a limited liability company are only liable for the amount unpaid on their shares and as may be specified in the memorandum. Guarantee members of a company limited by guarantee are only liable to contribute to the assets of the company on liquidation in the amount stated in the memorandum, and for any other liability provided in the memorandum or articles. Unlimited members have unlimited liability for the debts and obligations of the company.

Minority shareholders have a statutory right to bring a derivative action in exceptional circumstances. These circumstances would include where a company or a director of the company engages in, or proposes to engage in, conduct that contravenes the Act or the memorandum or articles of the company. The Act also permits a member who feels the affairs of the company have been or are likely to be conducted in a manner that is likely to be oppressive, unfairly discriminatory or unfairly prejudicial to him as a member, to apply to the Court for an order. The Court may, if it considers it just and equitable to do so, make one or more orders including appointment of a liquidator or receiver, requiring the company or another person to acquire the shares of the applicant, requiring the company or another person to pay compensation to the applicant, regulating the future conduct of the affairs of the company or setting aside any decision or action taken by the company or its directors in breach of the Act or the memorandum or articles of the company.

Class rights and pre-emption rights

The Act allows for the creation of classes of shares, but the rights, privileges, restrictions and conditions attaching to each class must be specified in the memorandum. The Act contains pre-emption provisions upon the issuance of shares which the company can “opt into” (i.e. they only apply if the memorandum specifically states that they are to apply) which is rarely done in practice.

Shares

There is no a concept of authorised share capital, or indeed of share capital, under the Act. The memorandum of such companies must state the maximum number of shares they are authorised to issue. One consequence of not having an authorised share capital is that the Act does not contain any specific provisions relating to capital. Instead, these matters are part of the provisions relating to the alteration of the memorandum and the purchase by the company of its own shares.

With respect to bearer shares, a company cannot issue bearer shares unless expressly authorised by its memorandum to do so and, similarly, registered shares cannot be converted to or exchanged for bearer shares unless specifically permitted in the memorandum. In addition, bearer shares must be deposited with a custodian authorised or recognised by the Financial Services Commission otherwise the shares are immobilised (any purported transfer of the certificate is void) and the rights normally attaching to them are disabled. Segregated portfolio companies are not allowed to issue bearer shares or convert registered shares into bearer shares.

Redemption of shares

The provisions relating to the acquisition of its own shares highlight the flexibility of the Act. It allows a company to purchase, redeem or otherwise acquire its own shares in accordance with two distinct regimes: either under provisions in the Act or in accordance with its own memorandum or articles, in which case the statutory provisions do not apply to the extent that they are varied in the memorandum or articles.

The acquisition of its own shares, whether under the statutory regime or in accordance with its own memorandum or articles, is treated as a distribution to members which places an important restriction on the company. In order to make a distribution, the directors must be satisfied on reasonable grounds that the company will satisfy the solvency test for distributions immediately

after the acquisition, i.e. that the value of its assets will exceed its liabilities and it will be able to pay its debts as they fall due, and a resolution authorising the distribution must contain such a statement. However, there is no need to satisfy the solvency test where the acquisition is pursuant to a shareholder's right whether under the statutory provisions or under the memorandum or articles.

Distributions and dividends

Distributions by a company can only be made if the directors are satisfied on reasonable grounds that the company will, immediately after the distribution, satisfy the solvency test. The term distribution is not confined to dividends but relate to any "distribution" to a member. The definition of distribution is wide, encompassing the direct or indirect transfer of an asset to or for the benefit of a member and includes the purchase of an asset, the redemption or other acquisition of shares, and dividends.

Registration of charges and priorities of charges

Under the Act, a company must keep a register of charges at its registered office or at the office of its registered agent. However, particulars of the charge may also be registered in a public Register of Registered Charges maintained by the Registrar in respect of each company. Either the company or the chargee can apply to the Registrar for registration, and there is no time limit for making such an application. Registration is not mandatory, and failure to register does not affect the charge's validity or enforceability even as against a liquidator or other creditors including secured creditors.

Registration will affect priority for charges created on or after the "relevant date", which is either:

- in the case of a company formed under older legislation, the date on which the company is re-registered under the Act;
- in all other cases, 1 January 2005.

After the relevant date, a registered charge takes priority over an unregistered charge, as well as over a charge subsequently registered. Charges created on or after the relevant date which are not registered rank in the order they would have done had the registration section in the Act not come into effect. Charges created before the relevant date will continue to enjoy the priority they did, and if they would have taken priority over a charge created on or after that date, they will continue to take such priority. The priority rules can be varied by agreement or consent. The

main exception to the order of priorities under the Act relates to registered floating charges: these rank after a subsequently registered fixed charge unless the floating charge contained a negative pledge clause.

Company records

A company regulated by the Act must at all times have a registered agent in the British Virgin Islands. Failure to do so can result in the company being struck off the register of companies.

The company must keep certain documents with the registered agent:

- the memorandum and articles;
- the register of members (or a copy of it);
- the register of directors (or a copy of it); and
- copies of all notices and other documents filed by it with the Registrar in the previous 10 years.

If the company provides the registered agent with copies of the register of members or directors instead of the originals, then it must notify the registered agent in writing within 15 days of any changes to those registers, and provide the registered agent with a record of the physical address where the originals are kept. Minutes of meetings and resolutions of members, classes of members, directors and committees of directors may be kept with the registered agent or at some other place in which event the registered agent must be given a written record of the physical address where they are kept. A company is required to have a seal, an imprint of which must be kept at the office of the registered agent.

Merger, consolidation, sale of assets, forced redemptions, arrangements and dissenters

Part IX of the Act regulates merger and consolidation of multiple BVI companies (i.e. the consolidation of two or more companies into a new company, or merger between parent and subsidiary companies) or merger or consolidation with foreign companies. It also regulates sale of more than 50% in value of the assets of the company otherwise than in the ordinary course of business; forced redemption of minority shares; and two types of court approved schemes of arrangement.

Continuation

A foreign company may continue (i.e. redomicile to the BVI) as a company incorporated under the Act but only if the laws under which it is registered authorize it to continue in another jurisdiction. A foreign company will be prohibited from continuing into the BVI, for example (i) if it is in liquidation, (ii) an application has been made in another jurisdiction for its liquidation, (iii) a receiver or manager has been appointed in relation to any of its assets, or (iv) it has entered into an arrangement with its creditors.

Subject to its memorandum or articles, a company may continue under the laws of another jurisdiction if the Registrar would issue a certificate of good standing in respect of it, but it does not cease to be incorporated under the Act unless the laws of the other jurisdiction permit continuation and the company has complied with those laws.

Dissolution of Companies

A liquidator may be appointed to wind up and dissolve a BC

1. voluntarily or
2. by the court.

Voluntary Liquidation

A solvent BC may voluntarily appoint a liquidator under the provisions of the BVI Business Companies Act. This must generally be done by resolution of shareholders. The Directors may pass a resolution setting out why liquidation is appropriate and recommend to the shareholders that a resolution for the appointment of a liquidator be passed, but the appointing resolution must be made by the shareholders (the "Resolution"), unless it is a liquidation upon the expiry of a time or occurrence of an event, specified in the Memorandum & Articles of the Company, or the Company has never issued shares. The following procedures are to be followed where a resolution is passed or to be passed for a voluntary liquidation -

- The directors are required to make a Solvency Declaration which must be dated no more than 4 weeks earlier than the date of the Resolution appointing a voluntary liquidator and must have a statement of assets and liabilities attached to it.
- The liquidator must be an individual and he/she must consent to the appointment in writing. A person who is at the time of the liquidation, or has been in the two years prior

to the liquidation, a director of the company, or in a senior management position of the company or of an affiliated company that has responsibility for the financial management of the company cannot act as liquidator.

- The Directors must approve a liquidation plan. The liquidation plan has no effect unless it is approved by the directors no more than six weeks prior to the date of the resolution to appoint a voluntary liquidator. The Directors must also approve the appointment of a voluntary liquidator.
- A notice of appointment of voluntary liquidator, the Declaration, and a copy of the liquidation plan must be filed at the Registry of Corporate Affairs within 14 days of the commencement of the liquidation.
- Liquidation commences upon the filing of the notice of appointment. From the commencement of the voluntary liquidation the liquidator has custody and control of the assets of the company and the directors of the company, though they remain in office, cease to have any powers, functions or duties other than those required or permitted by the Act.
- Notice of the liquidator's appointment must be advertised within 30 days of the commencement of the liquidation. The Liquidator is then to take steps to collect and realize the assets, pay off the debts, and distribute the remaining assets to the shareholders in accordance with their entitlement. However, the liquidation does not affect the rights of secured creditors over assets in which the creditor has a security interest.
- Upon completion of the liquidation, the Liquidator must prepare a statement, confirming that the liquidation has been completed, to be filed with a Notice of Completion of Liquidation at the Registry of Corporate Affairs. The Registrar will then strike the company off the Register of Corporate Affairs and issue a Certificate of Dissolution to that effect. A notice that the company has been struck off and dissolved must then be published.

If at any time during the liquidation the Liquidator forms the view that the Company is insolvent, he/she must notify the Official Receiver, and the liquidation must be brought under the provisions of the Insolvency Act 2003.

Court Ordered Liquidation

The Court may appoint a liquidator of a BC if it considers it just and equitable upon the application of a prejudiced member. Such a liquidation proceeds in accordance with the provisions of the Insolvency Act 2003.

See section 9 – **INSOLVENCY** for more information on the Insolvency At 2003.

PARTNERSHIPS

General

The law of partnership in the British Virgin Islands is governed by the Partnership Act 1996 (“the Partnership Act”) and provides for general and limited partnerships of which limited partnerships may be local or international.

The distinguishing feature between general and limited partnerships is the liability of the partners. In a general partnership every partner is jointly liable with all the other partners for all debts and liabilities of the partnership while he was a partner and after his death his estate is severally liable for such debts so far as they remain unsatisfied. The liability of the partner extends to the wrongful acts of other partners and for contractual obligations arising between the partners and third parties during the course of the partnership’s business. In a limited partnership which consists of both limited and general partners, the liability of a limited partner extends only to the debts and obligations up to the amount that partner invested or contributed.

Formation Requirements

The requirements for both partnerships are substantially the same with the exception that limited partners must be specified in the memorandum of the partnership as such. Also in regards to international limited partnerships there must be a statement that it may not carry on those businesses prohibited by the Act.

The actual formal requirements of a limited partnership are limited: two or more persons are required to execute articles of limited partnership. The articles equate with a partnership agreement. The articles must be submitted to a registered agent who is named in the articles. The partners are then required to submit a memorandum providing, the name of the firm (which must have at its end the words “Limited Partnership” or “L.P” denoting a limited partnership), the objects and purposes of the partnership, the address of the registered office of partnership in the British Virgin Islands, the name and address of the registered agent of the partnership, the full names and addresses of the general partners, a statement that the partnership is limited, a statement that every partner not named as a general partner is a limited partner, and in the case of an international limited partnership a statement that it may not carry on those businesses prohibited by the Act.

There is no requirement for the articles of the partnership to be filed and therefore these are not generally available for public inspection. However, the articles must be retained by the registered agent who must provide a statement to the effect that the articles have been received by him.

Dissolution of Limited Partnerships

Dissolution of a BVI limited partnership will take effect on the expiration of any term for which the partnership was fixed or the termination of the purpose for formation of the partnership, by notice given by any partner, by the death or bankruptcy of any of the partners, by illegality of the business purpose of the partnership, or by court order on the application of any partner on the grounds that a partner has become of unsound mind or otherwise incapable of performing his part of the partnership contract, by breach of agreement by another partner, that the partnership business can only be carried on at a loss, or on the grounds that it would be just and equitable for the partnership to be dissolved.

On dissolution, only the general partner(s) in the case of a voluntary dissolution may appoint a liquidator to wind-up the affairs of the partnership. The BVI courts have made it clear that dissolution does not flow from the appointment of the liquidator, despite the Partnership Act's procedural similarity to the provisions for voluntary liquidation of BVI Business Companies. The dissolution occurs as a matter of law by the methods set out above and the liquidator is simply an office holder stepping into the shoes of the general partner to wind up (or more appropriately wind down) the partnership's affairs.

TRUSTS

1. BVI Trusts Law

The BVI has enacted and regularly amended the main statute that provides the framework for the law of trusts in the jurisdiction. The majority of the applicable laws of the jurisdiction are contained in:

- The Trustee Act
- the Virgin Islands Special Trusts Act
- The Banks and Trust Companies Act
- The Trust Corporation (Probate and Administration) Act

2. Formation

A trust may be formed orally or in writing by declaration (a deed signed only by the trustee) or by settlement (a deed signed by both the trustee and the settlor). There is a fee of US\$100 levied at the time of creation. Failure to pay such a fee on creation of the trust will mean that the deed itself will not be recognised by the BVI Courts. If the fee is not paid at the time of creation it is possible to rectify this situation at a later date by paying the fee subject to penalties.

3. Registration

There is no requirement to register a trust or any details of it in the BVI so confidentiality is assured. Trust deeds are not presented on payment of the fee due on creation.

4. Trustees

Professional trustees in the BVI must hold a licence under the Banks and Trust Companies Act 1990 (as amended). Trustees not carrying on trust business (i.e. not receiving remuneration) do not necessarily need to be licensed. Specific advice should be taken as to whether a licence is required.

5. Perpetuity

For trusts other than purpose or charitable trusts the maximum perpetuity period has recently been extended to 300 years.

6. Purpose Trusts

BVI trust law provides for the creation of purpose trusts.

7. Private Trust Companies “PTCs”

A private trust company is a trust company formed on behalf of a company or a group of companies to be the trustee of one or more trusts for which no remuneration is received, directly or indirectly, by the trust company shall be regarded as not carrying on trust business for the purposes of the Banks and Trust Companies Act 1990. As such a private trust company does not require a licence.

8. Charitable Trusts

BVI trust law provides for the establishment of charitable trusts.

9. VISTA Trusts

The BVI has enacted cutting edge legislation – the Virgin Islands Special Trusts Act “VISTA” - that operates to remove the application of the ‘prudent man of business’ rule upon the trustees of a VISTA Trust. Essentially the VISTA legislation recognises that in some cases the retention of an asset is more important than the trustee’s duty to seek maximum financial advantage or diversification of the trust fund. A VISTA trust is a trust of shares of a BVI Business Company under the terms of which the trustee is disengaged from management responsibility.

A VISTA trust allows the company to be run by its directors, and limits the intervention of the trustee to the resolution of specified issues. A VISTA trust deed can set out the procedures for appointment and removal of directors, thus eliminating possibility of removal and replacement by the trustee. The legislation limits the right of the trustee and the beneficiaries to intervene in the company’s affairs or to seek relief from the court in relation thereto. The VISTA trust conforms to the traditional trust structure and allows for succession planning and tax planning, while enabling the settlor to retain control of the affairs of the Company, and thus the trust assets, during his lifetime, allowing broader scope for the pursuit of entrepreneurial goals without sacrificing these to asset preservation considerations which might restrain the potential for higher returns.

10. Tax

The BVI does not levy any local taxes in relation to trusts located in the jurisdiction (subject to what is written below). Individual beneficiaries resident in the jurisdiction should be advised to seek advice as appropriate.

INVESTMENT FUNDS

The primary legislation which regulates the investment funds industry is the Securities and Investment Business Act, 2010 (“SIBA”). SIBA regulates both funds and fund functionaries operating in or from within the BVI. SIBA came into effect on May 17, 2010 and along with the accompanying Mutual Funds Regulations, 2010 replaced the Mutual Funds Act, 1996.

Definition of investment fund

Under SIBA, the term “mutual fund” or “fund” is used to refer to what are commonly known as open-ended funds or hedge funds. Mutual funds are defined as a company incorporated, a partnership formed, a unit trust organised or other similar body formed or organised under the laws of the BVI or of any other country or jurisdiction which:

- (a) collects and pools investor funds for the purpose of collective investment; and
- (b) issues fund interests that entitle the holder to receive on demand or within a specified period after demand an amount computed by reference to the value of a proportionate interest in the whole or in a part of the net assets of the company, the partnership, the unit trust or other similar body, as the case may be, and includes:
 - (i) an umbrella fund whose shares are split into a number of different class funds or sub-funds, and
 - (ii) a fund which has a single investor which is a mutual fund not registered or recognised under SIBA.

Pursuant to the above definition, SIBA only regulates: (i) open-ended funds (whose equity interests are redeemable at the option of the investor), and (ii) administrators, managers and custodians of such open-ended funds. SIBA does not regulate closed-end funds.

Advantages of BVI investment funds

Some of the recognised advantages of setting up an investment fund in the BVI include:

- no regulatory restrictions on investment policies or strategies or on performance and other fee arrangements;
- no requirement to appoint local directors or local functionaries including auditors;
- various types of fund structures including, single class funds, multi-class funds and master feeder funds are facilitated;
- statutory segregated portfolio ring-fencing; and
- low start-up and ongoing fees and costs.

Categories of investment funds

Funds regulated by SIBA fall within three categories-

- Private funds – these funds whose constitutional documents specify that the fund will have no more than 50 investors or that the making of an invitation to subscribe for or purchase shares is made on a private basis.
- Professional funds – these are funds whose shares are only made available to professional investors and the initial investment by all of the investors (excluding exempted investors) is at least US\$100,000 (or equivalent). Exempted investors include, the manager, administrator, promoter or underwriter of the fund; or any employee of the manager of the fund.
- Public funds – these are funds that are neither private funds nor professional funds such as retail funds targeting members of the public.

All private and professional funds must be recognised under SIBA, whilst all public funds must be registered under the SIBA.

Recognition or registration of investment funds and acceptance of their functionaries

The FSC requires a fund wishing to be recognised or registered to submit an application which must include evidence of the fund's status together with details of each of the fund's functionaries (being the investment manager, administrator, custodian and auditor).

In considering an application for recognition or registration, the FSC will require that the manager, administrator and custodian of a BVI investment fund be incorporated in either the BVI, or a “recognised jurisdiction”, which, for the purposes of the SIBA, are currently as follows: Argentina, Australia, Bahamas, Bermuda, Belgium, Brazil, Canada, Cayman Islands, Chile, China, Curacao, Denmark, Finland, France, Germany, Gibraltar, Greece, Guernsey, Hong Kong, Ireland, Isle of Man, Italy, Japan, Jersey, Luxembourg, Malta, Mexico, Netherlands, New Zealand, Norway, Panama, Portugal, Singapore, Spain, South Africa, Sweden, Switzerland, United Kingdom and the United States of America.

In addition, functionaries incorporated in other jurisdictions may be acceptable if the jurisdiction is regarded by the FSC as having a prudent system of regulation and supervision of investment business including mutual funds business.

Types of investment fund vehicles

Investment funds in the BVI are usually set up using either: (a) a BVI business company, (b) a limited partnership, or (c) a unit trust. The BVI business company is the most popular of the three vehicles.

- BVI business company – this is a separate legal entity from the investing shareholders and would be structured as a limited liability company. BVI business companies are regulated by the BVI Business Companies Act, 2004 (“BCA”) which allows for a great deal of flexibility in terms of structuring funds. The BCA also specifically provides for the structuring of segregated portfolio companies, which are very useful for investment fund structures.
- BVI limited partnership – this can be established pursuant to the Partnership Act, 1996. A limited partnership is formed in the BVI by a general partner and at least one limited partner executing Articles of Partnership and by submitting a Memorandum of Partnership to the Registrar of Corporate Affairs.
- Unit trust – this can be established pursuant to a deed of trust. A unit trust arrangement is not a separate legal entity. It is the trustee who has legal capacity and who holds the assets of the fund on the terms of the deed of trust for the investors in the unit trust

scheme. Under BVI law, the holders of units in a unit trust scheme are the beneficial owners of the trust assets.

Notable changes introduced by SIBA

Notwithstanding the introduction of SIBA, the fundamental structure of the BVI investment funds regime has not changed and in many instances SIBA has merely codified existing FSC policies.

There are, however, some notable changes introduced by SIBA including the following:

- a codification of the requirement for BVI funds to have at least two directors;
- a requirement for all BVI funds to appoint an authorised representative resident in the BVI (being an agent licensed by the FSC to provide authorised representative services);
- a change in the minimum initial investment requirement which may be made by investors investing in professional funds, requiring, subject to limited exceptions, all investors to make an initial minimum investment of at least US\$100,000 (the previous requirement was that only a majority of the investors into professional funds were required to invest at least US\$100,000);
- a requirement for professional and private funds intending not to appoint either an investment manager, custodian to apply to the FSC for an exemption from the requirement to appoint such a functionary; and
- a general audit requirement for private and professional funds although funds may apply for an exemption from this requirement.

Approved Manager Regime

The Approved Manager regime permits a BVI company or partnership to conduct business as an investment manager or investment advisor to certain funds without the need for a lengthy approval process. It creates a fast-track for approval of fund managers and advisors and also provides a lighter touch regulatory regime for such managers and advisors. The Approved Manager regime has the following advantages for fund managers:

- Setup is quick: a fund manager can commence business 7 days after submitting an application

- Efficient approval process: an applicant for approved manager status can expect approval, typically within 30 days of submitting the application. The application procedure is easy and straightforward - the prospective fund manager must complete and submit a standard form application with the supporting documents; however the document burden is not onerous
- The Approved Manager is a regulated entity, but is not subject to burdensome regulations and filings
- It is a low cost regime and is ideal for startup managers as well as small to medium-sized managers

In order to become an Approved Manager, the manager must submit an application to the BVI Financial Service Commission (FSC) for approval at least 7 days prior to its intended start of business. Once a complete application is submitted and provided the manager meets the basic eligibility requirements, the manager can begin conducting business as an approved manager.

Once the complete application is submitted as set out above, the manager is deemed to be an approved manager and can conduct business for up to 30 days. This period can be extended for another 30 days by the FSC if necessary, however the FSC is committed to dealing with the application within the initial 30-day period.

Eligibility and Permitted Business of Approved Managers

To be eligible as an Approved Manager, the manager must:

- be a BVI company or partnership
- manage or intend to manage a BVI private or professional fund
- manage or intend to manage a BVI closed-ended fund
- manage or intend to manage a non-BVI equivalent fund that invests at least a substantial part of its assets in a BVI private, professional or closed-ended fund
- have assets under management of not more than US\$400 million in respect of hedge funds and of not more than U\$1 billion for closed-ended funds

An Approved Manager is permitted to act as an investment manager or investment adviser to any of the following:

- BVI private or professional funds
- BVI closed-ended funds (including trusts) with characteristics of a BVI private or professional fund
- An affiliate of any of the fund structures referred to in 3 (a) or (b) above
- Any entity approved by the FSC on a case by case basis
- A non-BVI entity that has equivalent characteristics to a BVI private, professional or closed-ended fund which also invests all or a substantial parts of its assets in any of the fund structures referred to in 3 (a) or (b) above

As a regulated entity the Approved Manager has the following obligations:

- To have two directors
- To maintain an authorised representative
- To submit financials annually
- To notify the FSC if its AUM exceeds \$400 million in the case of hedge funds or \$1 billion in respect of closed-ended funds
- To submit basic annual returns

However, the Approved Manager has no obligation to appoint an auditor or compliance officer.

Regulatory Status and Certain Obligations

The Approved Manager is subject to the oversight of the FSC and as such is to be treated like any other licensee for the purpose of the Financial Services Commission Act, 2001. The Approved Manager is therefore subject to the powers available to the FSC under that Act.

ESTABLISHING A BUSINESS

Trade Licence

Every person wishing to conduct business in the BVI must apply for and obtain a Trade Licence. The Applicant must apply on standard form and submit all supporting documents. There is no application fee but there is a collection fee following approval, which is dependent on the type of business being licensed.

Work Permits

A work permit must be obtained for every employee who is not a Belonger or Resident of the BVI, unless the employee possesses a work permit exemption. The Applicant Employer must submit its Trade Licence and organizational documents; i.e. M&A or equivalent, register of directors, register of members - along with the standard application form. Employees must submit resume's, evidence of qualifications such as degrees or certificates, medical records, and must submit to a medical examination upon entering the Territory.

Employers should allow up to 3 months for processing of standard work permit applications for full time employees. Work permits must be renewed on an annual basis on the anniversary date of issue. Processing times for work permits for temporary and occasional workers vary.

Immigration clearances are also required for all employees entering the Territory on a work permit. Nationals of certain countries also require visas.

Current work permit fees are as follows-

Employee's salary per annum -	
Less than \$6,000.00	\$50.00
\$6,000.00 to 9,999.00	\$100.00
\$10,000.00 to \$14,999.00	\$300.00
\$15,000.00 to \$19,999.00	\$500.00
\$20,000.00 to \$24,999.00	\$600.00
\$25,000.00 or more	\$1,000.00

Payroll Taxes

Every employer is required to register with the Inland Revenue Department and to pay payroll taxes in respect of each employee. There is an exemption for both employer and employee, in respect of the first \$10,000.00 of each employee's salary per annum.

Payroll taxes are levied as follows -

Class 1 - 10%: Employer 2%, employee 8%

Class 2 - 14%: Employer 6%, employee 8%

Social Security Contributions

All employers and employees in the Territory (with a few exceptions) must be registered with the Social Security Board. Employees in the private sector are required to contribute 4% of their salaries to Social Security, whereas employees in the public sector are required to contribute 3.5% of their salaries to Social Security up to specified wage limits. Private sector employers are required to pay 4.5% of their payroll expenses to Social Security, whereas the Government is required to pay 4% of its payroll expenses to Social Security, again up to specified wage limits.

Social Security benefits are available to all working people between the ages of 15 and 65 in the British Virgin Islands regardless of whether the person is a British Virgin Islander or a foreign national or whether the person is under a contract of service or self-employed. All workers in the British Virgin Islands are covered by social security for Employment Injury Benefit. Sickness Benefit, Invalidity Benefit, Maternity Benefit. Age Benefit is available for qualifying persons over the age of 65. Survivors Benefit and Funeral Grants are also available for certain relatives of insured employees.

Wage limits increase each year using the cumulative CPI as the index, or by 5% whichever is less. Wage limits for 2013 are –

Pay Period	Maximum Insurable Earnings	Contribution		Total
		Employee	Employer	
Weekly	729.70	29.19	32.84	62.02
Fortnightly	1,459.40	58.38	65.67	124.05

Semi-monthly	1,581.00	63.24	71.15	134.39
Four Weekly	2,918.80	116.75	131.35	248.10
Monthly	3,162.00	126.48	142.29	268.77
Annually	37,944.00	1,517.76	1,707.48	3,225.24

INTELLECTUAL PROPERTY

Trademarks

The much anticipated Trade Marks Act was passed by the House of Assembly on May 1, 2013 and is expected to be brought into force shortly by proclamation of the Governor. It introduces much needed change to the trademark industry in the BVI and places the Territory in line with other modern jurisdictions. It replaces the Trade Marks Act 1887, the Re-Registration of United Kingdom Trade Marks Act, 1946 and the Merchandise Marks Act.

One aspect of the new Trade Marks Act is that it seeks to provide certainty by providing a definition of a trademark. The TMA does not provide a statutory definition of trademarks but rather sets out the particulars that a trade mark must consist of or contain to be registered under the TMA. Such particulars include an invented word or invented words or a distinctive device, mark, brand, heading label or ticket. The Bill defines a trade mark as any sign that is capable of (a) being represented graphically, and (b) distinguishing the goods or services of one person from those of another person and unless excepted includes a certificate trade mark and collective trademark.

Until the new Trade Marks Act is brought into force, trademark registration takes place under the Trade Marks Act (Cap. 158) (the "TMA"). Although the BVI is not party to any international conventions on intellectual property, local protection is afforded under the Trade Marks Act as well as by means of local registration of a United Kingdom mark. Thus the registration of a United Kingdom registered trademark indirectly confers the advantages of convention protection on British Virgin Islands marks. Trademarks must be registered in respect of each relevant class of goods. Use is not a prerequisite to registration, so that a person may apply to register a mark which he is proposing to use.

The new Trade Marks Act very importantly allows for priority of a trademark that has been registered in a Paris Convention country or WTO member. It is important to note that the application to claim priority must be made within six months of the application in the other country. This right of priority was not afforded under the TMA and will be well received by those who seek to claim priority based on a previous registration.

Under the current TMA regime registration takes approximately 6 to 8 months to complete and lasts for a period of 14 years. Registration of a United Kingdom mark provides an expedited process in that the usual advertising requirements are dispensed with. Once a trade mark is registered, the registrant has exclusive right to use of the mark in respect to particular goods for which the mark has been registered.

Under the new Trade Marks Act the duration of a registration of a trade mark will be 10 years from the date of registration and may be renewed for additional periods of 10 years each. UK registered marks which have been reregistered in the BVI are registered for the term of the UK registration.

The Bill will allow for filings to be done electronically as opposed to physical filings at the Trade Mark Registry. This should allow for a more efficient filing process on the part of both the trademark agent and Registry. Trademark agents, which may be an individual, a partnership or a legal person, will be required to be licensed by the British Virgin Islands Financial Services Commission. The criteria for being licensed as a trade mark agent is provided for in the Bill but such agent must be deemed to have an appreciable knowledge of trademark law and be competent to perform the duties having regard to his qualification and experience.

Service Marks

The new Trade Marks Act will allow for the registration of service marks. Under the TMA service marks cannot be registered in the BVI unless they have first been registered in the United Kingdom.

Copyright

Copyright protection in the British Virgin Islands is derived under the Copyright (Virgin Islands) Act, which extends the provisions of the United Kingdom Copyright Act of 1956. However there is no local copyright registry.

Patents

Patents are registered under the Registration of United Kingdom Patents Act. Patents must first be registered in the United Kingdom before they can be registered in the Territory. Applications for grants of patent are made to the Registrar of Companies and must be accompanied by a

certificate of the Comptroller General of the United Kingdom Patent Office giving full particulars of the issue of the patent. Once obtained, the British Virgin Islands patent grant lasts for the period of the United Kingdom patent grant.

TAXATION

The BVI is a tax neutral jurisdiction. The most significant taxes are Customs Duties (the highest rate of which is 20%), Payroll Taxes, which have been dealt with above, and Property Taxes, and Stamp Duty.

Companies registered under the BVI Business Companies Act are exempt from British Virgin Islands income taxes and stamp duties on their documents. There are no taxes specific to Partnerships or Trusts.

The current rate of income tax is zero. There is therefore no personal or corporate income tax. In addition there is no inheritance tax, death duty, capital gains, capital transfer or estate tax.

Property Tax is comprised of two elements – Land Tax and House Tax. Land tax is charged on the unimproved value of land. British Virgin Islanders and Belongers pay \$10.00 per year on the first acre or part thereof and \$3.00 per acre on remaining acres or part thereof. Non-Belongers pay \$50.00 per year on one half acre or less land, \$150.00 per year on more than one half acre but not exceeding one acre of land and, \$50.00 on each additional acre or part thereof exceeding one acre of land. An annual house tax is levied on all privately owned buildings. The rate is 1.5% of the notional annual income valuation of the building.

Stamp Duty is charged on certain documents that effect dispositions of real or personal property. Certain dispositions, such as land transfers must be effected by written instrument only. Such documents must be “stamped” with payment of a duty charged at a fixed rate according to the type of disposition, or with an *ad valorem* imposition. Transfers of personal property which may be effected by delivery, such as chattels, incur no liability to stamp duty. The duty charged on transfers of real property range from \$5.00, to 12% of the consideration or assessed value of the property. The applicable duty is dependent on whether the transferee of the property is a British Virgin Islander or not, and whether the transaction is a commercial one or a close transfer for no value or for love and affection.

International Tax Agreements

The BVI has signed 24 Tax Information Exchange Agreements and Double Taxation

Treaties providing for the exchange of information as follows-

Aruba	TAX INFORMATION EXCHANGE AGREEMENT
Australia	TAX INFORMATION EXCHANGE AGREEMENT
China	TAX INFORMATION EXCHANGE AGREEMENT
Curaçao	TAX INFORMATION EXCHANGE AGREEMENT
Czech Republic	TAX INFORMATION EXCHANGE AGREEMENT
Denmark	TAX INFORMATION EXCHANGE AGREEMENT
Faroe Islands	TAX INFORMATION EXCHANGE AGREEMENT
Finland	TAX INFORMATION EXCHANGE AGREEMENT
France	TAX INFORMATION EXCHANGE AGREEMENT
Germany	TAX INFORMATION EXCHANGE AGREEMENT
Greenland	TAX INFORMATION EXCHANGE AGREEMENT
Guernsey	TAX INFORMATION EXCHANGE AGREEMENT
Iceland	TAX INFORMATION EXCHANGE AGREEMENT
India	TAX INFORMATION EXCHANGE AGREEMENT

Ireland	TAX INFORMATION EXCHANGE AGREEMENT
Netherlands	TAX INFORMATION EXCHANGE AGREEMENT
New Zealand	TAX INFORMATION EXCHANGE AGREEMENT
Norway	TAX INFORMATION EXCHANGE AGREEMENT
Portugal	TAX INFORMATION EXCHANGE AGREEMENT
Sint Maarten	TAX INFORMATION EXCHANGE AGREEMENT
Sweden	TAX INFORMATION EXCHANGE AGREEMENT
Switzerland	DOUBLE TAXATION CONVENTION
United Kingdom	TAX INFORMATION EXCHANGE AGREEMENT
United States	TAX INFORMATION EXCHANGE AGREEMENT

INSOLVENCY

The Insolvency Act, 2003 (in this section hereafter referred to as “the Act”) provides a comprehensive scheme for dealing with insolvent companies and individuals.

Insolvency Remedies

There are four procedures in the Act for dealing with insolvent companies:

1. **Creditor Arrangements** – A creditor’s arrangement is a voluntary arrangement by the creditors of a company canceling, varying or postponing their rights as creditors. The Arrangement is controlled by a Supervisor. If approved by the majority in value of the creditors it is binding on all creditors, including those that voted against it, and those that did not vote.
2. **Administration** - The Court can appoint Administrators to manage the affairs of the company with a view to the rehabilitation of the company, or to secure a better return for its creditors. During administration the rights of secured and execution creditors are suspended, and legal proceedings cannot be commenced or continued against the company. Administration is similar to the English style administration where the Administrator takes over the company’s business, and is unlike the US Chapter 11 procedure where the debtor continues to run the company. This part of the Act is not yet effective.
3. **Receiverships** – Receivers can be appointed by secured creditors or by the court. A Receiver’s primary duty is to obtain payment of the debt due to the creditor appointing him. On completion of the receivership the receiver hands the company back to the directors.
4. **Liquidation** – Liquidation, unlike the other insolvency procedures, results in the appointment of liquidators and the liquidation of the company.

Liquidation

There are two ways of applying for the appointment of liquidators-

1. Members can appoint a liquidator out of Court by a 75% qualifying resolution. His powers are not as extensive as a Court appointed liquidator, and he can be removed by the creditors.
2. Any of the persons listed in section 170 of the Act can apply to the court for an appointment.

The persons listed in section 170 are:

- the company
- creditors
- members (even if the company is insolvent)
- the supervisor of a creditors arrangement (appointed under Part 2)
- the Financial Services Commission
- the Attorney General

There are three grounds for applying to the Court for the appointment of liquidators, namely:

- the company is insolvent
- the Court is of the opinion that it is just and equitable that liquidators be appointed
- the Court is of the opinion that it is in the public interest that liquidators be appointed

The BVI courts have interpreted sections 8, 9 and 10 of the Act to hold that creditors include contingent or prospective creditors, and creditors with claims in damages. This represents a significant departure from previous BVI law because only creditors with claims that were currently payable could petition under the now defunct Companies Act. Another significant innovation is that members can now apply for the appointment of liquidators of an insolvent company, but they must first obtain the leave of the Court. Previously, members could only apply on the just and equitable ground, and had to allege and prove that the company was solvent.

The BVI Court can appoint liquidators of a foreign company provided the company has a connection with the BVI.

Once a liquidator is appointed, the control of the assets of the Company is vested in the liquidator, and the directors of the company, though they remain in office, cease to have any powers other than those required or permitted by the Act.

Part 5 deals with various matters including rules about set-off and subordination of debts, and the statutory demand.

The Act provides that a statutory demand that is served on a company requiring payment of a debt within the stipulated time can be disputed by an application to the Court to set aside the demand. If the demand is not set aside by the Court within the statutory period of 14 days it raises the presumption that the company is insolvent. This, of itself and in practice the BVI courts have allowed the debtor company to dispute the presumption of insolvency on the application to appoint liquidators.

Insolvency Practitioners and the Official Receiver

Part 20 deals with Insolvency Practitioners. The Act provides that Liquidators, Administrators, Administrative Receivers, and Supervisors under an Arrangement, must be licensed Insolvency Practitioners.

Persons residing outside the BVI can be appointed as Insolvency Practitioners, but they must be approved by the Financial Services Commission and act with a local Insolvency Practitioner. Insolvency Practitioners are licensed and regulated by the Commission. The Commission therefore has a direct say in determining the caliber of persons who can act as Liquidators and Administrators in BVI insolvency proceedings. Insolvency Practitioners are also subject to the Court's supervisory powers and the powers of the Creditors Committee. There are detailed provisions governing and regulating the remuneration of Liquidators and Administrators.

Part 21 establishes the office of Official Receiver. The Official Receiver is an employee of the Commission and, as such, is a further illustration of the Commission's increased role in insolvency matters in the BVI.

Voidable transactions and Malpractice

The Act contains extensive provisions for the conduct of the liquidation process by the liquidators and the Court, including, but not limited to the following:

- Liquidators have clear guidance in pursuing former directors and officers of the company for malpractice, fraudulent trading and insolvent trading.
- The list of voidable transactions includes unfair preferences, undervalue transactions, voidable floating charges and extortionate credit transactions. There are clear provisions for determining what are voidable transactions and how the liquidator should deal with them.

One of the more interesting aspects of the liquidator's powers to pursue these remedies is that recoveries are treated as "assets of the company available for distribution among the unsecured creditors". As a result secured creditors cannot recover their claims out of these recoveries, and it is the writer's view that the costs of recovery can be paid out of the assets of the company. This is important for Liquidators and Administrators in deciding whether to pursue delinquent officers and questionable transactions.

The Official Receiver can apply for an order disqualifying a person from acting as a director, liquidator, receiver, insolvency practitioner, or in any other way in the promotion, formation or management of a company ("prohibited activities"). Such persons can also give the Official Receiver an undertaking not to engage in any prohibited activities without the consent of the Court.

Secured Creditors

The Act goes a long way in preserving and enhancing the position of secured creditors. The following are some examples of specific provisions benefiting secured creditors:

- the appointment of liquidators does not affect the right of a secured creditor to take possession of and realise his security
- A Creditors Arrangement does not affect the rights of a secured creditor unless he consents to the Arrangement

- An Administrative Receiver (appointed by a secured creditor) can block the appointment of an Administrator by the Court
- **Section 211(1)(a)** preserves the secured creditor's right to value his security and prove in the liquidation for the difference between the value of the security and his claim. He can also apply to the Liquidator to revise the value he had previously placed on his security.
- The powers of a Court in making an order in and of foreign insolvency proceedings under S. 467 cannot be used to affect the rights of a secured creditor.

DISPUTE RESOLUTION

The Court System

The court system in the BVI is similarly structured to that of England and other Commonwealth jurisdictions. There are Magistrate's Courts of summary jurisdictions which deal with certain types of criminal disputes, and civil disputes up to certain monetary limits, all as prescribed by statute. Appeals lie from the Magistrate's Courts to the Court of Appeal.

Courts of original jurisdiction are the High Court of Justice and Court of Appeal, both of which form part of the regional Eastern Caribbean Supreme Court; while the highest court or final appellate body of the Territory is the Judicial Committee of the Privy Council, based in the United Kingdom. Appeals to the Privy Council are heard by five Law Lords of the British House of Lords.

The Court of Appeal is itinerant and sits in the Territory 3 times per year, but is available for hearings via teleconference or while sitting in other jurisdictions in the Eastern Caribbean, in urgent matters.

The High Court of Justice in the BVI has 2 divisions each with a resident judge - the High Court, which handles the entire range of civil and criminal cases; and a specialised Commercial Court, which exclusively handles high value commercial cases. Decisions are required to be rendered within 3 months but in many cases are rendered within 2 weeks.

The Commercial Court

The plethora of BVI companies operating in various parts of the world, including the United States, has produced a multitude of disputes ranging from corporate issues such as insolvencies and shareholder disputes, to operational issues such as breach of contract claims. In the last 20 years the BVI has seen a huge growth in the number of corporate disputes involving these international companies being resolved by the courts of the BVI. The general rule of private international law is that corporate issues are best resolved by the law of the place of incorporation. On the other hand operational issues are resolved by the proper law of the contract or dispute.

The types of corporate dispute that are most frequently resolved by the Territory's courts are:

- corporate insolvencies including multi-jurisdictional cross-border insolvencies
- shareholders disputes
- corporate capacity of directors and other officers
- schemes of arrangements

The BVI government's recognition of the need for a specialized court to deal with the demands of large and complex commercial litigation, led to the establishment of the Commercial Division in 2009. The Commercial Court is presided over by a specialist commercial judge. The current presiding judge is an experienced Queens Counsel with an extensive background in commercial practice at the English Bar.

The Commercial Division has jurisdiction to hear disputes with a subject matter value of over \$500,000 or commercial disputes without a monetary value that have a distinct commercial element.

Arbitration

Arbitration clauses are fairly common in international commercial contracts, construction agreements and other contracts entered into or requiring performance in the British Virgin Islands. International arbitration institutions commonly stipulated are the American Arbitration Association and the International Chamber of Commerce. Arbitration clauses are also a common feature in local contracts.

The New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards is applicable by virtue of the Arbitration Act of 1976. Under the provisions of the Arbitration Act, an arbitral award may, by leave of the High Court or a judge thereof, be enforced in the same manner as a judgement or order of the High Court to the same effect, and where leave is so given, judgement may be entered in terms of the award.

The Arbitration Act also sets out a straightforward and efficient framework for arbitration, including procedural rules for appointment of arbitrators and conduct of the arbitration.

The existence of an arbitration clause in a contract is often used as a basis to stay court proceedings. However, where the subject matter is not covered by the arbitration clause, or where there is no real dispute the courts have jurisdiction to allow the litigation to proceed.

Mediation

Many commercial agreements provide for mediation as a precursor to arbitration or litigation. The BVI courts will uphold mediation clauses where the procedure is specified. If the mediation clause is too vague or would require the court to prescribe provisions to make it workable, the mediation clause will not be held to be binding on the parties.

In addition, the Eastern Caribbean Supreme Court offers a structured court connected mediation system. The Mediation Co-ordinator, located at the Territory's High Court Registry maintains a roster of approved, trained and certified mediators, which is available at no cost upon request. The Mediator does not decide the case or impose settlements, but assists the parties in negotiation by identifying the issues, and clarifying the parties' goals and interests in a neutral confidential setting. Parties reach agreement freely, voluntarily and on the basis of informed consent. Court connected mediation can be used in a wide variety of disputes but has generally been employed in non-commercial disputes in the BVI. Proceedings must first be filed in one of the divisions of the High Court, before the parties can use the court connected mediation system. The mediation rules are established by Practice Direction No. 1 of 2003.

At any stage of the proceedings a case can be referred to mediation upon the order of a Master or Judge. The order can be requested by the parties. The parties will not be allowed to opt out of the mediation referral order except by order of a Master or Judge and upon adducing good and substantial justification. It is the joint responsibility of the parties to select a mutually agreeable mediator from the roster, or one will be selected by the Master or Judge. Scheduling of the mediation is done in conjunction with the Mediation Co-ordinator, and each session lasts 3 hours. A nominal fee is payable by each party to the mediator.

After a case is referred to mediation each party must submit a statement of that party's case to the mediator and sign a Confidentiality Agreement.

After the holding of a mediation session the case will be referred back to case management

where a Certificate of Non-Compliance (if a party fails to attend), or a Notice of Outcome of Mediation indicating that the parties have not settled, is filed. Thereafter the proceedings return to the trial track.

If the mediation session results in the parties settling, which is often the case, a confidential settlement agreement is executed at the end of the mediation which is transmuted to a court order, and a Notice of Outcome of Mediation indicating that the parties have settled, is filed. Thereafter the parties may only take proceedings to enforce the court order that incorporates the settlement.

APPENDIX – Useful Contact Information

British Virgin Islands Government

Ministry of Finance
Central Administration Complex
Wickham's Cay 1
Road Town, Tortola
British Virgin Islands
Telephone: 284-494-3701 ext.2144
Facsimile: 284-494-6180

Registry of Corporate Affairs
Wickham's Cay 1
Road Town, Tortola
British Virgin Islands
Telephone: 284-494-5355
Facsimile: 284-494-6331

Chamber Of Commerce
British Virgin Islands Hotel & Commerce
Association
Road Town, Tortola
British Virgin Islands
Telephone: 284-494-2947
Facsimile:284-494-6179

British Virgin Islands Financial Services
Commission
Pasea Estate, Road Town, Tortola
British Virgin Islands
Telephone: 284-494-1234
Facsimile: 284-494-5016
Website: <http://www.bvifsc.vg>
Email: commissioner@bvifsc.vg

Department of Trade and Consumer Affairs
Road Town, Tortola
British Virgin Islands
Telephone: 284-494-3701 ext. 2008
Facsimile:284-494-5676

Ministry of Natural Resources & Labour
Central Administration Complex
Wickham's Cay 1
Road Town, Tortola
British Virgin Islands
Telephone: 284-494-3701 ext. 2147
Facsimile: 284-494-4283

Tourism

British Virgin Islands Tourist Board
Wickham's Cay 1
Road Town, Tortola
British Virgin Islands
Telephone: 284-494-3134
Facsimile: 284-494-3866
Website: www.bvitourism.com
Email: info@bvitourism.com

Film Commission

British Virgin Islands Film Commission
Road Town, Tortola
British Virgin Islands
Telephone: 284-494-4119
Facsimile: 284-494-3866

BVI Electricity Corporation

Road Town, Tortola
British Virgin Islands
Telephone: 284-494-3911
Facsimile: 284-494-4291

Ports Authority

Port Purcell, Tortola
British Virgin Islands
Telephone: 284-494-4119
Facsimile: 284-494-3866

Local Banks

CIBC First Caribbean
Wickham's Cay 1
Road Town, Tortola
British Virgin Islands
Telephone: 284-494-2171
Facsimile: 284-494-4315

Scotiabank
Wickham's Cay 1
Road Town, Tortola
British Virgin Islands
Telephone: 284-494-2526
Facsimile: 284-494-4657

FirstBank
Wickham's Cay 1
Road Town, Tortola
British Virgin Islands
Telephone: 284-494-2662
Facsimile: 284-494-5106

Banco Popular
Road Town, Tortola
British Virgin Islands
Telephone: 284-494-2117
Facsimile: 284-494-5294

O’Neal Webster is a well-established law firm in the British Virgin Islands with an unsurpassed track record of providing superior service to local and international clients, with particular emphasis on corporate & finance, trusts, funds, real estate, admiralty, commercial litigation and corporate restructuring and insolvency. Our experienced team of lawyers provides insightful and practical advice to assist our clients in achieving their legal and strategic objectives, collaborating where necessary with international teams of lawyers and other professionals, to deliver the best value.

We are a member firm of **Lex Mundi**, the world’s largest association of independent law firms. We are also a member of **World Services Group (WSG)**, a global non-profit membership association whose members are leading local, national and international providers of professional business services in countries around the world. Our affiliated trust company, **Coverdale Trust Services Limited** provides a full complement of corporate and fiduciary services including company, trust and fund formation, and related services.

Our commitment to providing the best quality service to our clients is at the core of our existence. The roots of O’Neal Webster date back to 1989. The firm was founded by Paul Webster Q.C., Colin O’Neal and Barbara O’Neal. Their commitment to delivering a high level of legal service with a commitment to clients and the community, led them to form the partnership of O’Neal Webster O’Neal. In 1993, a strategic alliance was formed with leading Caribbean law firm and Lex Mundi member firm Myers Fletcher & Gordon of Kingston, Jamaica, to establish and develop what is now one of the leading commercial law firms in the British Virgin Islands (“BVI”), one of the world’s most important offshore financial services centres.

O’Neal Webster has grown with the British Virgin Islands and is recognized for its expertise in British Virgin Islands corporate and commercial law as well as litigation, where our attorneys have distinguished themselves at every level of the judicial system in the British Virgin Islands, the Caribbean and at the Privy Council in London. The firm’s litigation practice is led by 2 Queen’s Counsel, Mr. Paul Webster, Q.C. and Mr. Paul Dennis, Q.C. In addition, two of its partners are recognized City Wealth Leading Lawyers, Ms. Vanessa King, and Mrs. Willa Tavernier.

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