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COUNTRY

Doing Business in  
**the British Virgin Islands**



# Preface

This guide has been prepared by Baker Tilly (BVI) Limited, an independent member of Baker Tilly International. It is designed to provide information on a number of subjects important to those considering investing or doing business in the British Virgin Islands.

Baker Tilly International is the world's 8th largest accountancy and business advisory network by combined fee income, and is represented by 147 firms in 114 countries and over 26,000 people worldwide. Its members are high quality, independent accountancy and business advisory firms, all of whom are committed to providing the best possible service to their clients, both in their own marketplace and across the world.

This guide is one of a series of country profiles compiled for use by Baker Tilly International member firms' clients and professional staff. Copies may be downloaded from [www.bakertillyinternational.com](http://www.bakertillyinternational.com).

Doing Business in the British Virgin Islands has been designed for the information of readers. Whilst every effort has been made to ensure accuracy, information contained in this guide may not be comprehensive and recipients should not act upon it without seeking professional advice. Facts and figures as presented are correct at the time of writing.

Up-to-date advice and general assistance on British Virgin Islands matters can be obtained from Baker Tilly (BVI) Limited; contact details can be found at the end of this guide.


**April 2010**



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# 1 Fact Sheet

## Geography

Location	The British Virgin Islands are a group of approximately 40 islands and islets, of which about ten have permanent residents, situated in the eastern Caribbean, 90 miles east of Puerto Rico and 180 miles north-west of Antigua
Area	In total 35 square miles. The two largest islands are Tortola (21 square miles) and Virgin Gorda (eight square miles)
Climate	Tropical climate – tempered by a south-easterly breeze
Terrain	Steep hills, protected anchorages and sand beaches
Time zone	GMT -4

## People

Population	24,500 (est. 2009)
Ethnic groups	Predominantly West Indian
Religion	Christianity is the prevailing religion
Language	English is the official language

## Government

Country name	British Virgin Islands or Virgin Islands (British)
Government type	Today the British Virgin Islands (the Territory) are a self-governing British Overseas Territory. The 2007 Constitution gives executive and legislative power to the Governor, the Cabinet and House of Assembly. The Governor is Her Majesty's representative and, under the Constitution, is responsible for external affairs, defence, the judicial and legal departments of government, internal security and the civil service. On other matters, the Governor is normally bound to act in accordance with the advice of the Cabinet, which comprises the Governor as chair, the Premier, four other ministers and the Attorney-General as an ex-officio member. The House of Assembly consists of 13 elected members, one from each of nine electoral districts and four "at large" members. The judicial system is under the direction of the Eastern Caribbean Supreme Court, which includes the High Court of Justice and the Court of Appeal.

The Commercial Division of the High Court of Justice is based in the British Virgin Islands. The judicial system is based on English law and the ultimate appellate court is the Privy Council in London

Capital Road Town

Political situation Stable

**Economy**

GDP – per capita US\$51,273 (2007)

GDP – real growth rate 9.5% (2007)

Labour force 13,000 est.

Unemployment 3.6% (2007)

Currency (code) United States dollar (US\$)

## 2 Business Entities and Accounting

### 2.1 Companies

The British Virgin Islands Business Companies (BVIBC) Act consolidated the provisions of the International Business Companies Act and the local Companies Act under a single zero tax corporate statute. The BVIBC Act provides for the incorporation of seven types of company:

- Limited by shares
- Limited by guarantee that is not authorised to issue shares
- Limited by guarantee that is authorised to issue shares
- Unlimited that is not authorised to issue shares
- Unlimited that is authorised to issue shares
- Segregated portfolio companies
- Restricted purpose companies.

Every company must have a registered office in the British Virgin Islands and a registered agent, who must be licensed by the British Virgin Islands Financial Services Commission (FSC).

Shares may be issued with or without par value; shares with par value may be issued in any currency. Fractional shares are permitted, with the par value of a share being a fraction of the smallest denomination of the currency in which it is issued. The directors can authorise distributions to members at any time, provided the directors are satisfied that the company will continue to satisfy the prescribed solvency test – that the value of its assets exceeds its liabilities and it is able to pay its debts as they fall due. A company requires at least one member. The directors may convene meetings of the members. Members may participate by telephone or other electronic means, or alternatively members can vote by proxy.

The business and affairs of the company are managed by the directors, who can be either individuals or companies. The first directors are appointed by the registered agent and can subsequently be elected by the members or directors. A minimum of one director is required and a register of directors must be maintained. Meetings of directors can be held by telephone or other electronic means or alternatively directors can vote by proxy. There is no requirement to appoint directors that are resident in the British Virgin Islands.

Statutory provisions permit mergers and consolidations, as well as continuations into and also out of the British Virgin Islands.

Foreign companies wishing to operate in the Territory may register in the British Virgin Islands and are subject to approval of the FSC or Trade Licence Department.

## **2.2 Partnerships**

The Partnership Act provides rules governing:

- The existence of a partnership
- A partner's power to bind the partnership firm
- The rights and duties in relation to the partnership
- Procedures for dissolution of the partnership.

All partners in a general partnership have unlimited liability and there are no capital requirements. A general partnership is not required by statute to be registered or to have a formal or written partnership agreement.

A limited partnership includes one or more general partners, who have unlimited liability for all the debts and obligations of the business and are authorised to manage the business of the partnership, as well as one or more limited partners. Limited partners do not take part in the management of the business and their liability is limited. Limited partnerships are required to be registered and must have a formal written partnership agreement.

## **2.3 Trusts**

British Virgin Islands trust law is based on English common law concepts, enhanced by statutory provisions. The legislative framework permits discretionary, fixed interest, charitable and purpose trusts.

Trust structures are tailored to a settlor's individual needs and range from a simple trust to hold assets for one family generation, to a complex trust designed to last for multiple family generations. Private trust companies can also be set up as an integral part of the establishment of a private family office, a mechanism by which a high net worth individual may manage their family affairs and family businesses.

We recommend that specialist independent advice in the client's jurisdiction of residence and domicile is obtained before proceeding to establish any trust structure.

In general, the “prudent man of business rule” imposes an obligation on trustees to monitor the conduct of a business which is held in trust and to intervene on behalf of the beneficiaries where necessary. This rule is onerous on the trustees and makes them wary of accepting shares in a family business into trust. This rule does not, however, apply to trusts created under the Virgin Islands Special Trusts Act (VISTA), and VISTA trusts can provide an effective vehicle for holding shares in a family business.

## **2.4 Accounting and Reporting Requirements**

A company incorporated under the BVIBC Act is required to keep such accounts and records as the directors consider necessary or desirable in order to reflect the financial position of the company.

There is no statutory requirement to prepare financial statements, appoint auditors, or file a copy of financial statements with the Registrar of Companies, the Commissioner of Inland Revenue, or any other public official in the British Virgin Islands, unless the company is subject to specific licensing requirements laid down in other financial services legislation, such as the Banks and Trust Companies Act, Company Management Act, Insurance Act, Financing & Money Services Act or Securities and Investment Business Act.

The directors may decide on the most applicable accounting principles, depending on the users' requirements, including International Financial Reporting Standards, US GAAP and UK GAAP.

There is no requirement for an annual return or any other information relating to shareholders or directors to be filed with the Registry of Corporate Affairs or any other public official in the British Virgin Islands. Companies may choose to file copies of registers of members and/or registers of directors with the Registry of Corporate Affairs.

Statutory provisions require that the company must keep certain information at the office of its registered agent, including copies of registers of members, registers of directors and registers of mortgages and charges, details of where the original registers are maintained and an imprint of the company seal. The registered agent is also required to adhere to strict anti-money laundering procedures, including being able to produce evidence of identity and proof of address of those who own/control the entity.

## 3 Finance and Investment

### 3.1 Exchange Controls

In 1959 the United States dollar was introduced as legal tender in the Territory and in 1967 was adopted as the sole legal currency. There is no exchange control or restriction on the movement of funds into or out of the Territory or on their conversion into other currencies.

### 3.2 Financial Services

#### 3.2.1 Regulatory framework

The FSC was established in 2001 as an autonomous regulatory authority responsible for the regulation, supervision and inspection of all financial services in and from within the British Virgin Islands. This includes insurance, banking, trustee business, company management, financing and money services, investment and mutual funds business as well as the registration of companies, limited partnerships and intellectual property.

The British Virgin Islands enacted the Proceeds of Criminal Conduct Act in 1997. This legislation creates money laundering offences which range from assisting in the retention of the benefit of criminal conduct to the acquisition, possession, or use of proceeds of criminal conduct and concealing or transferring such proceeds. All financial services licensees are subject to strict anti-money laundering and terrorist financing regulations and codes, which include requirements for the licensee to be able to produce evidence of ownership and identification documents for the persons who own/control British Virgin Islands entities. The FSC monitors the activities of all licensees and conducts on-site inspections to test compliance with licensing requirements and the anti-money laundering requirements.

#### 3.2.2 Banking services

The British Virgin Islands is not recognised as a centre for offshore banking on the scale of other jurisdictions. The official policy concerning bank licensing has been based on the principles of banking supervision specified by the Basle Committee on Banking Supervision, most notably the principle of effective consolidated supervision.

Banks, trust companies and company managers have been regulated since 1990. The local banking sector is well established, with most institutions being subsidiaries or branches of US and Canadian banks. The sector provides a range of facilities including private banking and investment services, as well as corporate banking.

### 3.2.3 Insurance services

Both domestic and captive insurers are subject to licensing requirements under the provisions of the Insurance Act and the Insurance Regulations, as are insurance managers, intermediaries (agents and brokers) and loss adjusters. The Territory is viewed as a well regulated and cost effective jurisdiction in which to establish and administer captives.

### 3.2.4 Investment business and mutual funds

The Securities and Investment Business Act provides for the licensing, regulation and supervision of investment business, the registration of public mutual funds, the recognition of professional and private mutual funds and the control of offers of securities to the public in the British Virgin Islands, and creates offences relating to insider trading and market abuse.

Any BVI entity or person engaged in any of the following activities will be subject to the licensing requirements of the Securities and Investment Business Act:

- Dealing in investments
- Arranging deals in investments
- Investment management
- Investment advice
- Custody of investments
- Administration of investments
- Operating an investment exchange.

### 3.2.5 Trade licences

All local businesses which are not subject to licensing by the FSC under financial services legislation are required to obtain Government approval through trade licensing. Prospective investors are required to submit a comprehensive summary of their investment proposal and feasibility study to the Department of Trade & Investment Promotion.

### **3.3 Incentives for Investors**

The Government encourages development in non-polluting, water efficient and non-labour intensive industries. Recommended areas of investment include:

- Beverage production
- Computer data entry and processing
- Construction material manufacturing
- Hotel and marina operations
- Motion picture and television production
- Textile manufacturing
- Yacht construction and services.

Incentives are provided to encourage the growth of tourism and to attract new industry. Incentives are limited and mainly provide for relief from customs duty. The major incentives are contained in three Acts which are briefly described below.

#### **3.3.1 Encouragement of Industries Act**

The Governor may declare an industry which is not being conducted in the Territory on a commercial scale, or at all, and for which there are insufficient manufacturing facilities in the Territory to be a pioneer industry.

Relief from customs duty can then be obtained for five years on materials and articles imported for the construction and fitting out of the pioneer factory.

#### **3.3.2 Pioneer Services and Enterprises Act**

The Governor may declare any business as a pioneer service or a pioneer enterprise if satisfied that it is expedient and in the public interest to do so. The Governor will consider the number of businesses already established or about to be established for the purpose of supplying a product in general demand and not produced in the Territory or a service in general demand and not obtainable in the Territory.

The business can obtain relief from customs duty on materials and articles imported for constructing or equipping the pioneer works.

### 3.3.3 Hotel Aid Act

Application may be made for a licence for relief from customs duty on building materials and equipment for constructing and fitting out an hotel. On the transfer of ownership of an hotel, the purchaser may apply for the transfer of the existing licence from the vendor.

## 3.4 Purchasing Real Estate

All overseas investors, including citizens of the United Kingdom, require a non-belongers land holding licence to purchase property in the British Virgin Islands. Agreements to purchase property are, therefore, made contingent upon such a licence being obtained by the purchaser. A licence gives an entitlement to own a specific property. Application for a non-belongers land holding licence is made to the Government of the British Virgin Islands.

Sub-division of land is not encouraged, except as a part of a comprehensive development scheme. Government approval is required for such schemes and penalties may arise if property is sold before development commitments have been fulfilled.

Rental of properties subject to a non-belongers land holding licence requires the owner to obtain a trade licence. The Minister of Natural Resources and Labour is responsible for approval of the licence application, except applications in respect of sites of more than three acres, which are referred to the Cabinet. Typically approval may take between six and 24 months to obtain.

# 4 Employment Regulation and Social Security

## 4.1 Entry Visa and Work Permit Requirements

Anyone who is not born in the British Virgin Islands or not having been naturalised requires immigration approval to enter or remain in the British Virgin Islands.

Other nationals require both work permits and immigration approval. The Government controls immigration and employment of non-nationals by means of work permits. A work permit will only be granted if there are no local employees of equal ability and qualifications able and willing to take up the particular employment. A work permit will be issued to the holder for a specific job with an employer for one year. Permits are non-transferrable, but can be renewed on similar terms.

Employment contracts are subject to the requirements of the Labour Code Act.

## 4.2 Social Security

Social security is a compulsory insurance plan into which employers, employees and the self-employed contribute. Contributions are earnings-related, subject to a predetermined maximum insurable earnings rate. Effective 1 January 2010, the maximum insurable earnings rate was US\$35,490. The amount of the contributions is structured as follows:

- Private employees 8.5% of insurable earnings
  - Employees contribute 4%
  - Employers contribute 4.5%
- Civil servants 7.5% of insurable earnings
  - Civil servants contribute 3.5%
  - Government contributes 4%
- Self-employed persons contribute 8.5% of insurable earnings.

Social security is designed to protect insured persons from financial distress by providing partial income replacement when certain contingencies arise. The following benefits are awarded to qualified insured persons:

- Sickness
- Maternity
- Employment injury
- Invalidity
- Age
- Funeral
- Survivor's.

# 5 Taxation

## 5.1 General Principles

There are no capital gains, inheritance, wealth taxes, or income taxes levied in the British Virgin Islands. Only businesses operating in the British Virgin Islands and individuals employed in the British Virgin Islands are subject to payroll tax.

## 5.2 Corporate Taxation

The BVI Business Companies Act provides a specific exemption from all provisions of the Income Tax Act for:

- All BVI companies
- All dividends, interest, rents, royalties, compensations and other amounts paid by a BVI company.

Capital gains realised with respect to any shares, debt obligations, or other securities of a BVI company.

No estate, inheritance, succession or gift tax, rate, duty, levy, or other charge is payable with respect to any shares, debt obligations, or other securities of a BVI company.

Since 2005 the British Virgin Islands has adopted a zero rated income tax regime for all corporate entities.

Depending on the nature of the business activity undertaken, there may be tax implications in other jurisdictions, eg non-resident withholding tax on interest and dividend income deducted at source.

## 5.3 Individual Taxation

Since 2005 the British Virgin Islands has adopted a zero rated income tax regime for all individuals. Individuals employed in the British Virgin Islands will be subject to payroll tax.

## 5.4 Trust Taxation

The income received by any trust or beneficiary under a trust is not subject to the income tax regime.

## 5.5 Withholding Tax

There is no withholding tax on interest or dividends paid by British Virgin Islands companies.

There is no automatic requirement to withhold tax on any payment due to a non-resident under an agreement for services. If the services are performed in the British Virgin Islands, the service provider may be subject to work permit and payroll tax requirements.

## 5.6 Payroll Tax

Every employer who carries on business in the British Virgin Islands is liable to pay payroll tax in respect of:

- (i) Remuneration paid by them to every employee
- (ii) Deemed remuneration paid by them to every deemed employee for services rendered by the employee or deemed employee wholly or mainly in the British Virgin Islands whether or not the remuneration is paid in the British Virgin Islands.

A self-employed person is liable to payroll tax on their deemed remuneration. A partner in a partnership carrying on business in the British Virgin Islands is a “deemed employee” of that partnership if they render services to the partnership and, otherwise than as an employee, participate in income of the partnership. Likewise, a shareholder of a company which is carrying on business in the British Virgin Islands is a “deemed employee” of that company if they render services to the company and, otherwise than as an employee, participate in income of the company.

Remuneration includes wages, salary, leave pay, bonus, gratuity, money paid under a profit-sharing scheme, severance pay, residential rent and other benefits in-kind.

The rate of payroll tax depends on the status of the employer.

Class 1 Employers are smaller organisations satisfying the following three criteria in the relevant financial year:

- Payroll costs do not exceed US\$150,000
- Turnover does not exceed US\$300,000
- Total number of employees does not exceed seven.

Every employer or self-employed person who does not fall within the Class 1 Employer category is automatically a Class 2 Employer. Class 1 Employers are liable to payroll tax at 10% and Class 2 Employers at 14%.

An employer may opt to deduct and retain from the remuneration paid to an employee during any financial year 8% of the remuneration to cover the payroll tax liability. The balance of the payroll tax liability for each employee, deemed employee and the self-employed is paid by the employer – 2% in the case of a Class 1 Employer and 6% in the case of a Class 2 Employer. The first US\$10,000 of remuneration per employee is exempt from payroll tax liability for both employee and employer.

## **5.7 Indirect Tax**

### **5.7.1 Value added tax (VAT)**

There is no VAT or sales tax in the British Virgin Islands.

### **5.7.2 Import duties**

Import duties are levied on goods imported into the British Virgin Islands at rates up to 20%.

### **5.7.3 Stamp duty**

Stamp duty is payable on real estate at 4% for belongers and 12% for non-belongers.

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# Notes



# Notes





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