



**HUNTE & CO.**

**LEGAL FRAMEWORK OF  
THE BRITISH VIRGIN ISLANDS**

**Presenter: Paul Edwards**

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# Paul Edwards

## Senior Associate Lawyer - Hunte & Co.

- Joined the firm in 2019
- Concentrates his practice in the areas of commercial and civil litigation
- Spent several years as the most senior associate at a litigation firm in Jamaica.
- Has been lead counsel in numerous multimillion-dollar judgments in favor of his clients.



### Education

- Norman Manley Law School,  
Legal Education Certificate (2014)
- University of London,  
Bachelor of Laws with Honours (2012)



### Bar Admissions

- Jamaica
- British Virgin Islands

# Presentation Overview

- 1 History and Background
- 2 Belonger Status and the Right to Work
- 3 Registering a Business in the BVI
- 4 Contracts and Operations
- 5 Legal Fees
- 6 Summary

## HISTORY AND BACKGROUND

The British Virgin Islands (the **BVI**) is a small archipelago of approximately 60 islands and cays.

It is an Overseas Territory of Great Britain.

The BVI has a population of roughly 37,891 people.

Despite its small size, and only three stop lights, it is home to the Caribbean's most robust financial activity with over 1 million registered corporate vehicles, limited partnerships, and trusts. BVI companies are used to conduct business on every continent (save perhaps Antarctica) and perhaps in every industry, certainly construction, engineering, architecture and ICT.

## HISTORY AND BACKGROUND

Income tax in the BVI is zero rated.

No individual is taxed unless gainfully employed in the BVI, in which case, there is a payroll tax.

Self-employed persons and employers and employees are required to pay payroll tax and make contributions to the National Health Insurance scheme and Social Security.

## HISTORY AND BACKGROUND

The Territory is on par with first world democracies, with an elected House of Assembly, an active Government, an equally active Opposition, and a first-class Judiciary.

The BVI is also home to the famed BVI Commercial Court which is a signatory to the Eastern Caribbean Supreme Court. The BVI Commercial Court deals with matters which are no less in value than US\$500,000.00. BVI Commercial Court Judges are persons with prior experience in the High Court of England & Wales and Canada.

The Territory boasts a modern high-tech Arbitration Centre and its newly revamped Labour Tribunal appears to be hitting the right strides with timely and thorough decisions.

The Courts have been able to make a smooth transition to remote and contactless services in response to the COVID 19 pandemic.

## HISTORY AND BACKGROUND

The Territory's Financial Services Commission is a leader in the region and has very capable laws protecting intellectual property.

The BVI Constitution was revised in 2007 and further amendments are now being discussed.

There is an open acknowledgment of fundamental human rights.

## **Belonger Status and the Right to Work**

A citizen of the BVI is known as a British Overseas Territories Citizen (BOTC).

Citizens of the BVI are also British citizens with a right to hold British passports and to work in the United Kingdom.

In addition to citizenship, there are two categories of status: BVI Islanders, and those who are deemed to belong to the Territory (Belongers).



## **Belonger Status and the Right to Work**

A BVIlander has native ties to the Territory, with at least one grandparent having been born in the Territory.

The definition of "Belonger" is complex and is set out in article 2(2) of the Constitution. Belonger status can be obtained by descent *or* marriage. It can also be obtained if one has acquired residency through immigration.

The two forms of status overlap to some degree, although it is possible to be a Belonger without being a BVIlander.

A non-Belonger is anyone who is not a Belonger/BVIlander.

## **Belonger Status and the Right to Work**

BVI Islanders and Belongers have an automatic right to work in the Territory. Non-Belongers, as a rule, require work permits.

A work permit will not be issued to a person, where a qualified Belonger is available and willing to be employed to the position in question.

For this reason, employers who wish to employ a non-Belonger must first advertise the vacancy/position for at least two consecutive weeks in a newspaper of general circulation.

Evidence of the advertisement and confirmation that there is no Belonger is available to fill the post must be submitted with work permit applications.

## REGISTERING A BUSINESS IN THE BVI



The BVI Government protects local enterprise – for example, international franchises such as KFC, McDonalds, or Starbucks are not permitted.



However, the BVI Government *is* keen to welcome foreign investors and legislation is currently being tabled that will provide lucrative incentives for foreign investment.



An individual or entity seeking to conduct business in the BVI must secure a Trade Licence from the Department of Trade.



The Government's website provides a helpful overview of what is required to apply for a trade but belies the practical details having to do with policy and business culture that is involved in the process.

## REGISTERING A BUSINESS IN THE BVI



What the Government's website does not reflect, but is the guiding principle for applicants, is that a foreign applicant for a trade licence has a greater chance for approval if partnered with a BVIlander or Belonger. The fees and documentation for foreign investors who are not partnered with Belongers or BVI Islanders are more onerous.



There is a mechanism for a foreign business to be registered directly to do business in the BVI. However, such applications are far more successful when a BVIlander or Belonger partner is involved. Joint venture agreements are the norm for foreign direct investment.



In the areas of Architecture, Construction, and Engineering there is no express policy on what is required to satisfy the Trade Department when seeking a licence. However, standard industry skills, recognized qualifications and international certifications, and a documented history of experience should be demonstrated. The Department of Trade has discretion to request additional information.



Any provider of telecommunications who intends to operate in the BVI must first obtain a licence from the Telecommunications Regulatory Commission.

## REGISTERING A BUSINESS IN THE BVI

We always encourage that our clients who are considering business opportunities in the BVI engage reputable and connected local consultants who can help navigate the myriad norms and policies and match foreign applicants for business with BVI Islander/Belonger partners.

## CONTRACTS AND OPERATIONS

Operators of businesses in the BVI are encouraged to incorporate BVI entities.

The BVI offers a wide range of corporate entities and partnerships. The 'limited liability company', where liability is limited by shares, is the most common.

Business and investment arrangements between local and foreign partners are typically governed by joint venture structures.

It is essential that all agreements are in writing and the contracts are vetted by a BVI lawyer.

Our law firm has particular expertise in structuring joint ventures for local business and cross-border transactions over a variety of disciplines and industries.

Our cross-border contract work includes contracts for foreign governments, entities, and individuals.

# CONTRACTS AND OPERATIONS

## **Our local business expertise covers:**

- ❖ Bespoke corporate structures
- ❖ Joint Venture Agreements
- ❖ Shareholder Agreements
- ❖ Financing Documents
- ❖ Trade Licence Applications
- ❖ Work Permit Applications
- ❖ Employer Registrations

# Legal Fees

Our attorneys have decades of experience both regionally and locally.

As a smaller firm we can position ourselves at much more affordable price points – which larger firms cannot afford to do. Our flexibility and autonomy allow us to quote competitively.

Ultimately, our fees depend on the variables involved in a specific matter. We therefore give quotations on a case-by-case basis.

A retainer is usually expected to commence matters.

We adhere to local and international standards of compliance and “know your client” principles.



# Summary

Much of BVI market practice will not be set out in BVI statute.

We recommend hiring a team of professionals (local consultant, attorney, accountant) who are well-versed in BVI policies and practices to assist in navigating the business landscape, including:

Trade Licences and other business registrations (for example, Social Security, Payroll Tax, and National Health Insurance)

Work Permits applications for non-Belongers

Compliance and other regulatory requirements

Having representatives on the ground in the BVI who are fully abreast of changes in practice and regulations and who have cultivated a broad and top-tier network will be invaluable.

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