

**DOING
BUSINESS
IN**

**BRITISH
VIRGIN ISLANDS**



Trinity Financial Services Ltd

*doing business
in the British Virgin Islands*

foreword

This booklet has been prepared for the use of clients, partners and staff of HLB International member firms. It is designed to give some general information to those contemplating doing business in the British Virgin Islands and is not intended to be a comprehensive document. You should consult us, therefore, before taking further action. **Trinity Financial Services Ltd** and HLB International cannot be held liable for any action or business decision taken on the basis of information in this booklet.

Trinity Financial Services Ltd
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about HLB International

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Up-to-date information and general assistance on international matters can be obtained from any of the member firm partners of Trinity Financial Services Ltd listed in this booklet or from the Executive Office in London.

HLB International
Executive Office
21 Ebury Street
London SW1W 0LD
UK
Telephone +44 (0)20 7881 1100
Fax +44 (0)20 7881 1109
Email: mailbox@hlbi.com
Website: www.hlbi.com

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general information

Location and Climate

The British Virgin Islands are located in the Eastern Caribbean 180 miles north of Antigua and 60 miles East of Puerto Rico. The climate of the Islands is subtropical with high humidity. The temperatures are moderated by trade winds.

Constitution and Population

The British Virgin Islands is an economically and politically stable British Overseas Territory. The constitution of the British Virgin Islands gives executive and legislative powers to the Governor, the Cabinet of Ministers and the Members of the House of Assembly. The House of Assembly is comprised of thirteen members each of whom are elected at general elections held in the Territory once every four years. The Speaker of the House is selected by the party that gains the majority of seats in the House of Assembly. The Governor is the representative of the British Crown and is responsible for the civil service, external affairs, internal security, and the local police force and for the administration of justice and normally acts on the advice of the Cabinet of Ministers. The judicial system is under the direction of the Eastern Caribbean Supreme Court of justice, which includes the High Court of Justice and the Court of Appeal. The ultimate appellate court is the Privy Council in London.

The British Virgin Islands has a population of 31,900 (July 2013 estimated).

Currency and Language

The United States dollar was adopted as the sole legal currency of the British Virgin Islands in 1967. English is the official language of the British Virgin Islands.

Legal System

The British Virgin Islands' legal system is based on the English legal system incorporating English common law and principles of equity together with Acts of the Virgin Islands House of Assembly and subsidiary legislation made pursuant thereto.

Economy and Economic Arrangements

The economy, one of the most stable in the Caribbean, is highly dependent on tourism generating an estimated 45% of national income. The British Virgin Islands is also one of the region's foremost international financial services centres. There are approximately 430,000 active business companies on the Companies Register. Revenue earned from financial services accounts for over 40% of national income.

investment factors

Special Features

The principal activities include corporate domicile, trust and estate planning, mutual fund administration and management and captive insurance companies.

Government Incentives

The Government provides incentives to foreign investors to stimulate the growth of tourism and to attract new industries by providing relief from customs duties. The Hotel Aid Act provides relief from customs duties on the building materials, equipment and furniture for hotels to the applicant for a licence. If there is a change in ownership the new owner can apply for the transfer of the existing licence.

An industry that is not being conducted in the British Virgin Islands on commercial scale can be declared a pioneer industry by the Government under the Encouragement of Industry Act. In those cases relief from customs duties on the materials for the construction of the pioneer factory can be obtained for five years.

The Government can also declare any enterprise as a pioneer enterprise under the Pioneer Services and Enterprise Act if it is expedient and in the public interest to do so and the enterprise is providing a product or service that is in general demand but not currently produced in the British Virgin Islands.

Foreign Exchange Controls

There is no restriction on remittances and other currency transactions.

Employment Regulations

Non-nationals and persons not naturalised in the British Virgin Islands require immigration approval and a work permit before they can take up employment. Work permits are only approved if there are no

local employees with equal qualification and the required skills who are willing and able to take up the particular employment opportunity. A work permit is issued for one year but can be renewed on similar terms. Work permits are not transferrable to another employer. All employment contracts are subject to the provisions of the British Virgin Islands Labour Code.

Employers and employees are required to make social security contributions to the Social Security Board at amounts calculated based on relevant earnings, which is the smaller of the actual employee's remuneration and the pre-determined maximum insurable earnings. Non-Government employees contribute at 4% and employers at 4.5% of relevant insurable earnings. The self-employed contribute at 8.5% of insurable earnings. Government employees contribute at 3.5% while the Government contribute at 4.5% of insurable earnings.

types of business organisations

Principal Forms of Business

The principal forms of business structures in existence are business companies, sole proprietors, partnerships, trusts, banks, insurance companies, investment businesses and mutual funds.

The British Virgin Islands Business Companies Act 2004 (BVI BCA) provides for the incorporation of seven types of companies: 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 purpose companies and segregated portfolio companies. Foreign companies wishing to operate in the British Virgin Islands may register subject to approval of the Financial Services Commission (FSC) or the Trade Licence Department.

Where a company is incorporated in the British Virgin Islands shares (or fractions of shares) may be issued with or without par value in any currency. Every company must have a registered office in the British Virgin Islands and must have a registered agent licensed by the FSC.

Each company must have a minimum of one director (either an individual or a company) and a register of directors must be maintained by the registered agent. There is no requirement to appoint directors that are resident in the British Virgin Islands. Meetings of directors can be held by telephone or other electronic means or they can vote by proxy. The directors can convene meetings of members.

The fees for incorporating a standard BVI Company is highlighted in the formation procedures and costs section below.

Partnerships can be either general partnerships or limited partnerships. The distinguishing feature between a general and a limited partnership is the liability of the partners. In a general partnership every partner is jointly liable with all other partners for the liabilities of the partnership when he was a partner.

In a limited liability partnership which consists of both limited and general partners, the liability of the limited partner only extends to the debts and obligations, up to the amount, which the partner had invested or contributed.

Formation Procedures and Costs

A British Virgin Islands registered agent, such as Trinity Management and Corporate Services Limited, can incorporate a BVI Business company through registration of its memorandum and articles of association and consenting to act as registered agent. Filing is done electronically and the process can be completed in as little as one day. The Registrar of Corporate Affairs issues the company with a unique number and a Certificate of Incorporation. The standard fees for the formation of a BVI Company inclusive of disbursements are \$1,480. There is an annual licence fee of US\$350 for a company with up to 50,000 shares and US\$1,100 for a company with more than 50,000 shares. The registered agent will also charge an annual registered agent's fee of \$400. The first directors of the company are appointed by the registered agent. Other directors can subsequently be elected by the members or directors of the company.

The law on partnerships in the British Virgin Islands is governed by the Partnership Act 1996 and provides for general and limited partnerships. The requirements for both partnerships are

substantially the same with the exception that limited partnership must be specified as such in the memorandum of the partnership.

Two or more persons are required to execute articles of partnership and submit them 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 the end the words "limited partnership" or "L.P." for a limited partnership), the objectives and purpose of the partnership, the address of the registered office, the full names and addresses of the general partners, a statement that the partnership is limited (if that is the case), 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 business prohibited by the Act.

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

The standard fees for formation of a Limited Partnership is \$1,600 inclusive of disbursements. The registered agent will also charge an annual registered agent's fee of \$500. The Government will also charge an annual licence fee of \$500.

The British Virgin Islands trust law is based on English common law concepts enhanced by statutory provisions. The main statutes that provide the framework for the law of trust in the British Virgin Islands are: The Trustee Act; the Virgin Islands Special Trust Act; The Bank and Trust Companies Act and the Trust Corporation (Probate and Administration) Act. A trust may be formed by declaration or settlement. There is a fee of US\$200 levied as stamp duty at the time the trust is created. There is no requirement to register a trust or any details of it in the

public domain in the British Virgin Islands.

Legal, Accounting and Audit Requirements

There is no statutory requirement to file a copy of the financial statements of the company with the Registrar of Companies, the Commissioner of Inland Revenue or any other public official in the British Virgin Islands unless the company operates under special licensing requirements of the Securities and Investment Business Act, the Bank and Trust Companies Act, the Company Management Act, the Financing and Money Services Act and The Insurance Act. Only in cases such as these are audited financial statements required to be prepared and submitted. The directors decide on the financial reporting standards to adopt for the preparation of financial statements but accounting standards such as International Financial Reporting Standards, US GAAP and Canadian GAAP are common.

Note however, that there is a requirement in the BVI Business Companies Act that says a company shall keep records that

- (a) are sufficient to show and explain the company's transactions; and
- (b) will, at any time, enable the financial position of the company to be determined with reasonable accuracy.

The duty to comply with this provision rests with the Directors of the Company.

Certain information must be kept at the office of the registered agent including a copy of register of members, register of directors, register of mortgages and charges, details of where the original registers are kept, and an imprint of the company seal. The registered agent is required to comply with very strict anti-money laundering and counter terrorist financing legislation and regulations and must be able to reproduce the information on the identity and proof of address of the ultimate beneficial owner of the company when requested by competent regulatory authorities.

There is no requirement to file an annual return or other information related to the shareholders and directors other than that required by the Foreign Account Tax Compliance Act (“FATCA”) unless the company is operating under a special licence. Such companies have to prepare financial statements prepared under generally accepted accounting standards, appoint auditors and file audited financial statements with the British Virgin Islands Financial Services Commission within a certain period after the end of the company’s financial year end which is usually six months. However as a general rule companies incorporated originally under the BVIBC Act must keep such records and accounts as the directors consider necessary to reflect the financial position of the company at any time.

taxation

Fiscal Year

The fiscal year runs from 1st January to 31st December of each year.

General Structure

Under current legislation there is no capital gains tax, wealth tax or inheritance tax. Income tax is currently zero-rated for individual and businesses. Businesses operating in the British Virgin Islands, individuals working in the British Virgin Islands and self-employed persons are subject to payroll tax.

Business Taxation

Since 2005 the British Virgin Islands has a zero-rated income tax regime for business entities. In addition the BVI Business Companies Act 2004 provides specific exemption from all provisions of the Income Tax Act for BVI business companies and for all dividends, interest, rents, royalties, compensations and other amounts paid by a BVI business company. All capital gains realised with respect to any shares, debt obligations or other securities of a business company are exempt. The BVI Business Companies Act also provide that no estate, inheritance, succession or gift tax is payable with respect to any shares, debt obligations or other securities of a BVI business company and that the company is exempt from stamp duty. The stamp duty exemption does not apply where the instrument of transfer relates to the transfer of an interest in land situated in the British Virgin Islands, or the transfer of the securities in a land owning company with the land owned being situated in the British Virgin Islands. Every employer who carries on business in the British Virgin Islands is liable to pay payroll tax.

Personal Taxation

Income tax on personal income is currently zero-rated. Persons employed in the British Virgin Islands are subject to payroll tax.

Payroll Taxes

Every employer is expected to register with the Inland Revenue Department and to pay payroll taxes on behalf of each employee. Payroll tax is levied on actual remuneration paid or deemed remuneration paid by them to every employee or deemed employee earned 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 required to pay payroll tax on his or her deemed remuneration. A partner in a partnership, which carries on business in the British Virgin Islands is a deemed employee of the partnership if he/she renders services to the partnership and, otherwise than as an employee, participates in income of the partnership. Similarly a shareholder of a company, which is carrying on business in the British Virgin Islands is a deemed employee of the company if they render services to the company and otherwise than as employee, participate in the income of the company.

Remuneration is defined as the payment of any kind paid to an employee for services rendered to his or her employer. The deemed remuneration of the employee or self-employed person represents the fair and equitable valuation of his or her services to the business.

The rate of payroll tax depends on the size of the employer measured by specific criteria defined in the Payroll Taxes Act, which categorises an employer as Class 1 or Class 2. Class 1 employers are smaller businesses, which satisfy two of the following three criteria:

1. Payroll cost not exceeding US\$150,000.
2. Annual turnover not exceeding US\$300,000.
3. Total employees not exceeding seven.

Every employee or self-employed person

who does not fall within the Class 1 category is automatically a Class 2. Class 1 employers are liable to payroll tax at 10% of the tax base and Class 2 employers at 14% of the tax base.

Please see the below chart:

Employer Category	Class 1	Class 2
Payroll	US\$150,000 or less	More than US\$150,000
Annual Turnover	US\$300,000 or less	More than US\$300,000
Number of employees (including part-time and deemed)	1 to 7	8 and more
Total percentage applied to remuneration liable to payroll tax	10%	14%
Percentage applied to remuneration due by employer	2%	6%
Percentage applied to remuneration due by employee	8%	8%

The tax base for an employee of a single employer for the financial year is calculated by subtracting the annual payroll tax exemption from the employee's total remuneration. The current tax exemption is US\$10,000. The tax base for any individual who becomes the employee of more than one employer is the gross remuneration paid to him or her by the secondary and subsequent employers. An employer may opt to deduct from the remuneration paid to an employee 8% of the remuneration to cover the payroll taxes liability. The balance of the payroll tax liability for each

employee or deemed employee is paid by the employer. This is 2% in the case of a Class 1 employer and 6% in the case of a Class 2 employer.

Other Taxes

There is a hotel accommodation tax which is levied at a rate of 7% on all charges made in respect of accommodation or services rendered to persons on behalf of the proprietor of accommodations in the British Virgin Islands.

Withholding Taxes

There are no withholding taxes on dividends or interest paid by British Virgin Islands business companies. However the British Virgin Islands like other overseas territories has applied the European Union (EU) Savings Directive. A withholding tax of 20% is applied to interest payments to natural persons residing in the EU. The withholding tax is not compulsory in that a depositor can avoid the tax by providing full information about their account to the Department of Inland Revenue.

Double Tax Relief and Treaties

The British Virgin Islands has signed twenty five (25) Tax Information Exchange Agreements ("TIEAs") with each of the following countries: Ireland, the Netherlands, Curacao, St Maarten, Aruba, the United States, the United Kingdom, Australia, New Zealand, France, Sweden, Norway, Finland, Denmark, Iceland, The Faroes, Greenland, China, India, Germany, Portugal, the Czech Republic, the States of Guernsey, Canada and Poland. The TIEAs are based on a model agreement developed by the Organisation for Economic Cooperation and Development (OECD). The TIEAs will allow exchange of information by request on criminal and other tax matters in accordance with the procedures agreed.

The United Kingdom's double tax treaties (DTAs) with Japan and Switzerland have been extended to the BVI, although these treaties are not used in practice.

Indirect Taxes

There is no Value Added Taxes ("VAT") or sales tax in the British Virgin Islands. However the

Customs Duty Act (Cap 205) imposes customs duty ranging from 5% to 20% on the cost of goods imported into the British Virgin Islands. Certain goods which are considered to be of special value to the British Virgin Islands are exempt from duty.

Capital Taxes

The BVI Business Companies Act exempts all capital gains realised in respect of any shares, debt obligation or other securities of a BVI business company. Similarly no estate, inheritance, succession, gift tax, duty, levy or other charges is payable with respect to any shares debt obligations or other securities of a BVI business company.

Land and House Taxes (Property Tax)

Land Taxes are levied at higher rates for Expatriates than for a British Virgin Islander or BVI Company. The British Virgin Islander or BVI Company pay: US\$10 for the first acre of land or part thereof; and US\$3 for each subsequent acre or part thereof. Expatriates pay annually: US\$50 for half acre or less; US\$150 for greater than half acre but not in excess of one acre; and US\$50 for any additional acre or part thereof.

British Virgin Islander means:

- (1) A person who is deemed to belong to the Virgin Islands under the Immigration and Passport Ordinance 1969; or
- (2) A British Virgin Islands company or settlement; or
- (3) A person who has owned land in the British Virgin Islands for a continuous period of not less than 20 years immediately prior to the commencement of the land and house tax ordinance

British Virgin Islands Company means:

- (1) All the directors are British Virgin Islanders; or
- (2) At least 2/3 of the votes exercisable or would be exercisable at any meeting of the company are beneficially vested in persons who are British Virgin Islanders; or

- (3) A company having a share capital, at least 2/3 of the shares are beneficially vested in persons who are British Virgin Islanders; or
- (4) A company not having a share capital, at least 2/3 of the members are British Virgin Islanders.

House tax is paid at the same rate for all persons and is assessed at 1.5% per annum on the notional annual income value of the house.

Notional Annual Income Value means:

An amount not in excess of the rent, which that property might be reasonably expected to yield from year to year.

Stamp Duties

Certain limited transactions in the British Virgin Islands are subject to stamp duty. The main application relates to the transfer of real estate, or the transfer of shares in companies which own real estate located in the British Virgin Islands. The rate of stamp duty on such transaction varies according to the status of the transferee. If the transferee is a British Virgin Islander (Belonger) then the stamp duty on the land transfer is assessed at 4%; if the transferee is an Expatriate (Non-Belonger), it is assessed at 12%.

HLB in the British Virgin Islands

how to contact us

International contact partners

Kenneth M. Hodge - khodge@trinitybvi.com
Anghel R. George - ageorge@trinitybvi.com
Everton Knight - eknight@trinitybvi.com

Trinity Financial Services Ltd
2nd Floor Hewlett Building
197 Main Street
P.O. Box 260
Road Town, Tortola
British Virgin Islands

Tel: +1 284 495 5130
Fax: +1 284 495 6805
Email: mail@trinitybvi.com
Web: www.trinitybvi.com



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Trinity Financial Services Ltd · 2nd Floor Hewlett Building · 197 Main Street · P.O. Box 260
Road Town · Tortola · British Virgin Islands
Tel: 284 495 5130 · Fax: 284 495 6805
Email: mail@trinitybvi.com · Web: www.trinitybvi.com