

# GUIDE TO DOING BUSINESS IN THE BRITISH VIRGIN ISLANDS

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## PREFACE

The purpose of this Guide is to assist the reader in making a decision to establish an independent and physical office of a business in the British Virgin Islands (the **BVI**) by providing pertinent BVI legal advice.

We recognise that this Guide will not completely answer detailed questions which clients and their advisers may have; it is not intended to be comprehensive. If any such questions arise in relation to the contents, they should be addressed to any member of the team, using the [contact information](#) provided at the end of this Guide.

### **Appleby**

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## 1. INTRODUCTION

This Guide is aimed at non-BVI based persons who are looking to establish a physical presence in the BVI and does not address the position of BVI Belongers<sup>1</sup> looking to set up an office in the BVI. Further, this Guide does not deal with certain regulated businesses operating in the BVI (e.g. trust companies, banks, insurance businesses, persons carrying on investment business, funds) which are subject to additional requirements, including initial approval by the BVI Financial Services Commission (the **FSC**).

Other than a registered office for service of process, there is no requirement that a company registered in the BVI establish its own physical office in the BVI. Nevertheless, a number of companies either registered in or outside the BVI have chosen to establish a physical business office in the BVI for various reasons. In part this may have been done in order to further strengthen the company's independence and separate legal identity, or to confirm that the central management and control of the company actually resides in the BVI, or, indeed, simply to conduct business within the BVI itself.

## 2. INCORPORATION OR REGISTRATION

Usually a person or entity seeking to establish a business office in the BVI will incorporate a BVI company pursuant to the BVI Business Companies Act 2004 (the **Business Companies Act**), and this company will be the legal person that will conduct business in the Territory.

A BVI company must have a registered agent and registered office in the BVI. Further information on incorporating a BVI company is set out in Appleby's Guide to Companies in the British Virgin Islands, available from our website ([www.applebyglobal.com](http://www.applebyglobal.com)). There is an annual government licence fee of USD350 for a company authorised to issue up to 50,000 shares, and USD1,100 for a company authorised to issue more than 50,000 shares.

In some circumstances, however, a company incorporated outside of the BVI may choose to do business in the BVI without establishing a BVI company for this purpose. Under the Business Companies Act, such a company is referred to as a "foreign company" and may only "carry on business" in the BVI if it has first obtained the permission of the Registrar of Corporate Affairs (the **Registrar**) in the BVI. Once permission is granted by the Registrar, the foreign company's details are included in the BVI Register of Foreign Companies.

The Business Companies Act does not provide a definition of what it means to be "carrying on business", but does state that the definition does not cover any company:

- being or becoming party to legal proceedings (or settling a legal proceeding or dispute);
- holding a directors' or members' meeting or carrying on any other activity concerning its internal affairs;
- opening a bank account in the BVI;
- selling a property through an independent contractor;
- soliciting or procuring an order that becomes a binding contract, provided that the order is accepted outside the BVI;
- securing or collecting any of its debts or enforcing any security rights in relation to these debts;
- creating evidence of a debt, or creating a charge on property;

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<sup>1</sup> A 'Belonger' is a person who, under the BVI constitution, is deemed to belong to the BVI by virtue of birth and ancestry, or who is otherwise naturalised in the BVI. Full details of the definition of who qualifies as a Belonger can be found in section 2(2) of The Virgin Islands Constitution Order 2007.

- conducting an “isolated transaction” that is completed within a period of 31 days (meaning it is not one of a number of similar transactions repeated from time to time); or
- investing any of its funds or holding property.

An application for registration as a foreign company needs to be made to the Registrar and must include various documents proving that the company is validly incorporated, providing details of its directors, and identifying the person who will be acting as the company’s registered agent in the BVI. If the foreign company registers under a name other than its corporate name (e.g. a trading name), that company may only carry on business under that name. A foreign company that carries on business in the BVI without being registered, or under a name other than the name it is registered under, commits an offence and is liable upon conviction to a fine of USD10,000.

Registered foreign companies must file annual returns on or before 31 March each year, made up to 31 December of the previous year. The annual return must be certified as correct by a director of the foreign company or by its registered agent.

Foreign companies in the BVI must pay a registration fee of USD300 and an annual license fee of USD300 each year thereafter.

The Business Companies Act also contains provisions relating to continuation into, and discontinuation out of, the BVI for companies that wish to make a permanent redomiciliation to or from the BVI. Details of the process involved can be found in Appleby’s Guide to Companies in the British Virgin Islands, mentioned above.

### 3. PROFESSIONAL OR TRADE LICENCE

In order to conduct business in the BVI, all persons and companies must obtain a trade licence, under the Business, Professions and Trade Licences Act 1989 (the **Act**). Given how long it can take to obtain a trade licence, applying for this licence should be the first step taken to establish a physical office in the BVI (in conjunction with the application for a Non-Belonger Land Holding Licence mentioned below, if applicable).

A trade licence is obtained by first completing and submitting a Trade Licence Application Form (an **Application Form**) to the Trade and Investment Promotion Department (the **Department**). If the applicant is a company, the Application Form must be accompanied by:

- an outline of the operation and activities of the company;
- a copy of the company’s certificate of incorporation;
- a copy of the company’s Memorandum and Articles of Association;
- details of the company’s shareholdings;
- a copy of the register of directors (and, for each director, a 2 x 2 passport-sized photo, personal reference, business reference, financial reference in relation to an account maintained for not less than three years, police record or clearance certificate from each jurisdiction where the director has resided for more than 12 months, copy of the picture page of such director’s passport, along with general information on work history, qualifications and experience); and
- for BVI-owned companies, documentation to prove that at least 60% of the shareholders and at least 60% of the directors are Belongers.

Each of the above documents must either be submitted in original form, or as duplicate copies certified by either a notary public or justice of the peace from within the BVI.

Licenses are typically processed in six to eight weeks from the date of application. If the Department grants a license, it may impose conditions: for example, the business premises of a restaurant will typically need to be inspected before it can begin operations.

There is currently no application fee for a trade licence but a fee is payable when the licence is issued. Annual fees are typically between USD300 and USD600 (the licence to operate a professional services firm, such as an accounting or law firm, is typically USD600). A trade licence is granted for one year, and must be renewed annually at the end of each calendar year (each licence expires on 31 December, including in the first year of business). The fees for any new licence issued after 31 March in any year are pro-rated according to how many quarters (or parts thereof) remain in the year.

#### 4. IMMIGRATION, EMPLOYMENT AND ASSOCIATED ISSUES

##### 4.1 Work Permits

A work permit must be obtained for any expatriate who wishes to engage in employment in the BVI, whether it is paid or unpaid, full-time or part-time. Employers must advertise any position in a local newspaper in the BVI for two consecutive weeks, and under the BVI Labour Code 2010 (the **Labour Code**), employers must give preference to any Belonger or Virgin Islander who has applied and is qualified for the position.

Before the employment of an expatriate will be permitted, that individual's qualifications and experience must be proven to be necessary and sufficient for the position to be filled. Also, it must be proven that there is no Belonger who is able and available to fill that position. Work permits are obtainable for one-year periods although this is currently under review and is likely to be changed to a longer period for certain professions. Employees on work permits are generally prohibited from working for other employers although a secondary part-time permit may be granted in some cases

An application for a new work permit in the BVI must be filed with the Labour Department by the prospective employer on behalf of the expatriate seeking employment in the BVI. The application must include the following information in relation to the particular applicant:

- country of origin;
- training and experience;
- number, date and place of issue of passport;
- date of arrival in the BVI;
- period of stay granted by Immigration Authorities;
- intended employer;
- salary or wage; and
- business, trade, occupation or profession.

The following documents are required to be submitted in support of the application:

- one copy of the newspaper advertisement for the position;
- statement signed by the employer, or his representative, as to whether there were Belonger applicants and, if so, the reason why none was offered employment;
- copy of the letter to each unsuccessful Belonger applicant, if applicable;
- two recent full-faced passport-sized photographs of the applicant;

- copies of the applicant's qualifications, resume, and letters of reference;
- a copy of the work contract, or the completed "Notice of Employment and Statement of Working Conditions" form provided by the Department of Labour, signed by the applicant and employer;
- one professional reference and one character reference; and
- the completed work permit application form signed by both the employer and the employee.

The Minister of Labour and Natural Resources may prescribe different fees for different persons or categories of persons and for persons receiving different wages or salaries. The application process generally takes 8-12 weeks. Once a work permit is granted, the Labour Commissioner prepares a work permit clearance letter which is then submitted to the Immigration Department.

The Chief Immigration Officer will then review the work permit application to ensure that the applicant meets the Immigration Department's requirements for an entry permit. If approved by the Officer, the work permit clearance letter is stamped and sent to the applicant with a medical form attached. This process takes between 5-10 working days. On arrival in the BVI, the applicant must present the stamped work permit clearance letter, the completed medical form, a police certificate and a return ticket along with any other information requested by the Immigration Department to the Immigration Officer at the port of entry in the BVI. After entering the BVI, the applicant must then complete the work permit process with the Labour and Immigration Departments, before being issued with a work permit card and immigration stamp in their passport.

#### 4.2 **Renewal of Work Permit**

Work permits are typically issued for one-year periods. A work permit renewal application must be submitted four to six weeks prior to expiration of the current work permit. If the applicant has more than one work permit, i.e. in the case of a part-time employee, the permits should be renewed at the same time. The following documents are required to be submitted when applying for a work permit renewal:

- the completed application for renewal of work permit signed by both the employer and the employee;
- one passport-sized photo;
- the applicant's work permit card; and
- if the applicant is self-employed, a copy of his/her trade licence.

#### 4.3 **Employment Contract and Issues**

In establishing a physical office in the BVI, and employing people to work within that office, it is important to note that the business will be subject to the general labour law requirements of the BVI set down in the Labour Code. These requirements need to be taken into account when negotiating and drafting employment contracts with persons to be employed in the BVI.

##### (a) **Formalities**

Every employer in the BVI is required to provide each employee with a written statement setting forth such employee's working conditions, including:

- general responsibilities and related duties for which the employee is being hired;
- regular hours of work and rest periods;
- starting salary;
- term of employment if other than indefinite;

- probationary period (if any); and
- employee's leave and vacation privileges.

(b) **Probationary period**

A new employee's probationary period, if any, may not exceed four months unless the employee has the rank of supervisor or above, in which case the probationary period may not exceed six months.

(c) **Minimum wage**

The minimum basic wage payable for employment in the BVI is USD4.00 per hour.

(d) **Sick leave**

An employee (who has been employed for a continuous period of not less than four months), is entitled to a minimum of at least 12 sick days per year. However, any social security benefits received by the employee for illness or other physical incapacitation for those days may be deducted from the basic wage payable to the employee by the employer.

(e) **Vacation**

Employers must grant employees with less than ten years of service at least one vacation day per month (after they have successfully passed their probationary period, if any). Such vacation leave is in addition to any public holiday or sick leave. Any employee whose employment is terminated for any reason is entitled to be paid for any earned but untaken vacation days.

(f) **Public holidays**

Where an employee does not work on a public holiday, such employee is to be paid the basic wage he or she would have received for work performed on that day had it not been a public holiday, provided that the employee worked his or her scheduled workday immediately before and after the public holiday and the public holiday did not fall on one of the employee's scheduled workdays. In the event that an employer causes an employee to work on a public holiday, the employer is required to pay to the employee an hourly wage of at least one and one half times the employee's basic rate for each hour worked on that day.

## 5. TAXATION AND SOCIAL SECURITY

The BVI does not levy income taxes or any capital gains, capital transfer, inheritance or estate taxes or death duties.

The principal taxes that apply to businesses and their employees in the BVI are payroll tax and a social security levy.

### 5.1 Payroll Tax

In the BVI, payroll tax is payable in respect of earned income from employment and the total payroll tax-take is shared between the employee and the employer. An employee is generally liable to payroll tax of up to 8% of his remuneration with the employer being subject to up to 6% of such remuneration. The first USD10,000 of earnings are not subject to payroll tax and are therefore tax exempt.

### 5.2 Social Security

(a) **Registration**

Businesses in the BVI must arrange for all of their employees between the ages of 15 and 65 years to register with the Social Security Board and obtain a BVI Social Security card regardless of whether the employee is a Belonger or expatriate or whether the person is under a contract of service or is self-employed.

(b) **Contribution**

Social security is a compulsory insurance plan to which employers, employees and self-employed individuals must contribute and is designed to protect insured persons from financial distress by providing partial income replacement when particular contingencies arise. Sickness, maternity, invalidity, age, funeral grant, survivor and employment injury benefits are available to qualified persons. If an employee receives social security benefits for illness or other physical incapacitation, those payments may subsequently be deducted from the wages to be paid by the employer to the employee.

Contributions for employees in the private sector and self-employed persons amount to 8½ per cent of 'insurable earnings'. The value of insurable earnings is calculated and capped each year by the Social Security Board and is currently set at USD39,468. Employees contribute 4 per cent of that total and 4½ per cent is contributed by the employer. Social security contributions can also be voluntary for persons who have worked in the BVI and are living abroad or for persons who no longer work but have not reached the eligible age of 65 to collect benefits.

## 6. REAL PROPERTY ISSUES

In order for a Non-Belonger company<sup>2</sup> to purchase land in the BVI for the purpose of conducting business, it is necessary to obtain a Non-Belonger Land Holding Licence. An application for a Non-Belonger Land Holding Licence is made to the Ministry of Natural Resources (the **Ministry**) under the Non-Belongers Land Holding Regulation Act (Cap. 122) (the **Land Holding Act**).

If a Non-Belonger Company is renting office space in the BVI on an annual tenancy basis, a licence is not required. According to current practice, a licence is not required even if there is an option to renew the tenancy.

As a matter of practice, it is advisable to submit the application for a Non-Belonger Land Holding Licence and Trade Licence at the same time since if the Non-Belonger Land Holding Licence is granted, the Trade Licence will be granted automatically.

An application on behalf of a company for a Non-Belonger Land Holding Licence should be submitted to the Ministry and be accompanied by a USD500.00 application fee. Once the licence is approved, a further fee of USD1,000.00 plus USD600.00 for each shareholder and director is to be paid upon collection of the licence.

If the application is to purchase property, then the property needs to be advertised for four consecutive weeks prior to submission of the licence application, in order to provide Belongers with an opportunity to purchase the property.

The application for a licence must be accompanied by:

- two character references for each shareholder and director;

<sup>2</sup> Under the Land Holding Act, a non-Belonger Company is defined as a company, whether incorporated in or outside the BVI, in which, *inter alia*, any one of its directors is a non-Belonger or where any of the company's non-Belonger shareholders has an interest in more than one-third of its shares (a **Non-Belonger Company**).

- two financial references from the applicant's bank, employer or accountant, which must indicate that the applicant is able to purchase and develop the property (if that is why the licence is required);
- a police certificate evidencing that each director and shareholder is/are of good standing;
- a passport-sized colour photo of each director and shareholder;
- four consecutive newspaper advertisements for the property;
- a letter-sized cadastral survey showing the land and surrounding properties;
- a valuation report from a licensed surveyor; and
- additional supporting documentation (including a copy of the relevant Agreement of Sale, and copy of the company's Memorandum and Articles of Association, Certificate of Incorporation, current Certificate of Good Standing and register of members or a Certificate of Incumbency from the Company's Registered Agent).

The usual (and recommended) process is for a lawyer qualified in the BVI to be engaged to prepare and submit the application, and then deal with the Ministry during the consideration of the application.

Applications typically take between three and eight months to process. If an application is granted, the successful applicant needs to provide the Ministry with a registered copy of the licence and the registered instrument of the land transfer within three months of the date of the licence, for record keeping.

Stamp duty also needs to be paid by the purchaser of land in the BVI before a transfer can be registered. The present rate is 12% of either the consideration or the market value of the property, whichever is higher. In relation to a lease, the stamp duty payable for a term of 20 years or more is 1.5% of the total rent payable for 20 years under the lease. For a lease with a term of less than 20 years, the stamp duty is 1.5% of the total rent payable under the whole duration of the lease. It is worth noting that it is common practice in the BVI for leases of residential property to provide that any duties or other taxes payable are for the account of the landlord, rather than the tenant.

If property in the BVI is being purchased with a view to developing it, the Non-Belonger Company is typically required to enter into a financial commitment to develop the land. The commitment period will usually be three years or less. The development commitment is calculated by the government based on environment and planning considerations, and is usually at least USD250,000. Where the owner does not honour the development commitment, the government is entitled to fine the buyer up to 40% of the sales price. Additionally, the owner is only allowed to sell the property once the development commitment has been satisfied.

For more specific advice on doing business in the British Virgin Islands, we invite you to contact:

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For the convenience of clients in other time zones, a list of contacts available in each of our jurisdictions may be found [here](#).

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