Why Wouldn't You Arbitrate There?
The British Virgin Islands International Arbitration Centre Has Just Opened For Business

ABOUT THE AUTHOR
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ABOUT THE COMMITTEE
The International Arbitration Committee serves all members involved or interested in international arbitration as in-house and outside counsel and/or as arbitrators. This extends to actions for or against the enforcement of arbitral awards in their jurisdiction and actions aiming at setting aside arbitral awards. Members publish newsletters and journal articles and present educational seminars for the IADC membership-at-large, offering expertise on drafting arbitration provisions, choosing arbitral institutions and rules, and the do’s and don’ts in international arbitration. The Committee presents significant opportunities for networking and business referrals. Learn more about the Committee at www.iadclaw.org. To contribute a newsletter article, contact:

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Introduction to the BVI

A half hour ferry from the US Virgin Islands and 20 minutes' flight from Puerto Rico lies the UK Overseas Territory of the British Virgin Islands. Popular as a tourist destination for its world class sailing, Caribbean charm and as a cruise ship destination, over a million visitors came to the BVI in 2016, of whom about four fifths were from the United States. Tourism contributed roughly half the territory's GDP in 2016, and the business and financial services sector about a third. But for a territory with only 30,000 inhabitants, it is in the global market that the BVI has an extraordinary impact. This impact is unlikely to be affected by the damage caused to the BVI by Hurricane Irma in September 2017.

BVI companies own some $1.5 trillion worth of assets around the world. Roughly a third are located in Europe, and another third in Hong Kong and China. Some $87 billion are located in the USA and $114 billion in Latin America including the Caribbean. Some 1600 BVI companies are part of the group structure of over 140 major listed companies around the world including the Hang Seng Index, FTSE 100 and S&P 500.

According to the US-China Economic and Security Review Commission, in 2012 Chinese investment through the BVI was about $31 billion. As the report identifies, that investment did not stay in the BVI and it can be anticipated that a significant proportion ended up in the US, where Chinese investment topped $100 billion in 2016. Other figures suggest that by 2015 some $13 billion or 10% of foreign direct investment in China was through the BVI.

The BVI's success in achieving its place in the world economy is derived from getting the basics for investment right. The June 2017 report Creating Value: The BVI's Global Contribution identified these basics as follows:

- There is a simple company law with one statute governing and regulating companies
- The territory benefits from legal expertise rooted in English law
- There is no BVI corporate or capital gains tax on transactions relating to activity outside the jurisdiction making use of the territory tax neutral
- The BVI is politically stable and benefits from its links with the UK
- The BVI's law of confidence is based on the English common law and provides effective and appropriate protection
- The US dollar is the territory's only currency, providing a stable base for the economy

The BVI's Legal System

As the 2017 Capital Economics Report identified, a jurisdiction's legal system is important to its economic success. Those

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2 www.uscc.gov/sites/default/files/Research/Staff%20Report_China-Caribbean%20Relations.pdf
used to the English legal system will recognise many features of the BVI law and its practice. BVI law is founded on the English common law, but with its own statutes and procedural rules. One difference from England is that there is a fused legal profession in the BVI, as in the US, and unlike the split between barristers and solicitors in England and Wales.

The BVI established a specialist Commercial Court in 2009 that hears significant international disputes and, amongst other things, is the court from which relief is sought in support of arbitrations or to enforce arbitral awards. A number of the judges who have sat in the Commercial Court have previously sat as either full or part time judges in England, although the court has also benefitted from distinguished judges from the eastern Caribbean.

The Commercial Court forms part of the High Court, and appeals from it are to the Eastern Caribbean Court of Appeal. There is then a right of appeal to the Privy Council in London, which is the final court of appeal for a number of Commonwealth countries and UK dependent territories. Accordingly, whilst the BVI has its own law, its final arbiters are Privy Council judges who also sit in the UK’s Supreme Court.

This framework has been successful in supporting investment through BVI corporate vehicles around the world. Disputes centred on BVI corporate vehicles but involving parties in many parts of the world form the basis of many high value cases before the BVI Commercial Court. Despite the effects of Hurricane Irma, the Commercial Court is operating and its 2 judges are hearing cases.

It is against this background that the BVI International Arbitration Centre has taken its place.

The BVI Arbitration Framework

The BVI has long enforced foreign arbitral awards, but made that a two way street when the New York Convention was fully extended to the BVI in May 2014.

The BVI Arbitration Act 2013 is based on the UNCITRAL Model Law as amended in 2006: much of the Act reads in the form "Article [ ] of the UNCITRAL Model Law, the text of which is reproduced below, has effect". Section 43 of the Act provides for the court to grant interim measures in support of arbitration proceedings commenced or to be commenced in or outside the BVI, subject to a discretion to decline to act in favour of the tribunal if that is more appropriate and subject in the case of foreign arbitrations to the availability of the type of relief sought in the BVI. A decision, order or direction made by the court under s43 is not subject to appeal.

On enforcement of awards, the Act distinguishes between Convention and non-Convention awards: in the case of the latter, the court has the same limited grounds for
The BVI IAC rules specifically track the UNCITRAL Model Rules, to the extent that the Centre’s website contains a version of its rules showing the limited differences between its rules and the UNCITRAL Model Rules. The services that the Centre offers are set out in Article 1 and range from the provision of fund holding services to live streaming and assistance with travel arrangements. The BVI IAC Rules provide for approval of draft awards by the Secretariat as to their form.

The BVI IAC

The BVI IAC is led by a board appointed by the BVI Cabinet and a CEO, Francois Lasalle. Its global panel of arbitrators is available for appointment by the BVI IAC, or the parties are able to choose their arbitrators. The Centre’s impressive facilities include 4 modern hearing rooms and 6 breakout rooms.

No doubt readers will question the effect of Hurricane Irma on the BVI IAC’s ability to deliver. In fact, whilst many buildings in the BVI were damaged by Hurricane Irma in September 2017, the IAC building was unaffected, such that parts of it are temporarily used by government precisely because of the facilities that it continues to offer; and other parts continue to be used by the IAC: it is open for business, and in fact never closed. Its Registrar and staff continue to operate and support the IAC.

The BVI IAC identifies its mission as to become the go-to institution for international arbitration in the Caribbean, Latin America and beyond. Commercial disputes with parties in Latin America and North America may well find the BVI a convenient neutral arbitration centre. The ICC reported a 20% increase in its caseload between 2015 and 2016, with a 15% rise in cases from Latin America. This increase will no doubt serve to encourage the BVI IAC. Of course, the BVI’s historic popularity in China and Hong Kong, where it has been a natural choice for international corporate vehicles, may also fuel arbitrations from that region.

A New Force in Arbitration?

The BVI has the solid foundation of its Arbitration Act and Rules and accession to the New York Convention. The attractions of the BVI as a forum for international litigation apply equally as an explanation as to how it can be an attractive seat for arbitrations. On top of that, its geographic location gives it an edge in seeking to fulfil its ambitions in the Caribbean and Latin America; and its historic links with Asia suggest that commercial disputes arising out of North American/Asian investments will also come to the BVI.

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4 http://bviiac.org/Dispute-Resolution-Services/Rules/BVI-IAC-2016-Rules
5 http://bviiac.org/Facilities/Inside-BVI-IAC
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