

Details on purchasing land in the British Virgin Islands -

Non Belonger Land Holding License

With a high concentration of expatriate residents, as well as potential overseas buyers seeking to acquire luxury homes and investors in search of next big opportunity in the property market, the British Virgin Islands, Nature's Little Secrets, represents the ideal environment for property buyers to capture a bit of paradise by owning a piece of land. However, non-nationals seeking to acquire property in the BVI confront special requirements in order to do so.

It is a prerequisite that Non-Belongers and Non-Belonger Companies receive a Non-Belonger Land Holding Licence (NBLHL), in order to own land in the British Virgin Islands. What are the requirements for obtaining a Non-Belonger Land Holding Licence? What are the processes and steps involved? This article seeks to outline the requirements, procedures and steps involved in obtaining a Non-Belonger Land Holding Licence.

Who is a Non-Belonger?

The Non-Belongers Land Holding Regulation Act (the Act) defines a Non-Belonger by reference to persons excluded from the category of persons defined as a Belonger under section 2(2) of the Virgin Islands Constitution and section 3 of the Immigration and Passport Ordinance (Cap. 130). Belongers include, inter alia, anyone born within or outside the BVI of a mother or father born within the BVI or a naturalized person.

Similarly, a Non-Belonger Company is defined as any company incorporated outside the BVI or any company incorporated in the BVI in which any one of the directors is a Non-Belonger or where anyone of its shareholders, being a Non-Belonger, holds more than one-third of its shares. Section 6 of the Act sets out the criteria used to determine companies under the control of Non-Belongers and thus requiring a Licence to hold land.

Any individual other than a person falling within the ambit of section 2(2) of the Constitution or section 3 of the Immigration and Passport Ordinance is categorized as a Non-Belonger and would therefore be required to obtain a Licence in order to hold land in the BVI. Conversely, a Non-Belonger Company would be any company which meets any of one of the conditions prescribed by section 6 of the Non-Belongers Land Holding Regulation Act.

Applying for a Non-Belonger Land Holding Licence

For the most part, purchasing property in the British Virgin Islands follows a pattern which is common to other English Common Law jurisdictions. The main feature of the process that will be unfamiliar to most purchasers from overseas is the Non-Belongers Land Holding Licence.

A buyer, having identified a parcel of land that he or she is desirous of purchasing, and having determined the need to obtain a Licence, must now consider the process involved in obtaining a Licence, the prerequisites and the procedures involved.

Firstly, individuals who intend to apply for a Licence, having identified the property, must enter into an agreement for sale with the land owner. It should be noted however, that the property must be advertised for four (4) consecutive weeks in a local newspaper. This is required in order to give Belongers ample notice of the sale of the property and a first opportunity to negotiate a purchase.

Proof of advertisement is required as part of the application process and the onus is on the seller of the property to provide such. Additionally, applicants must submit a completed application form together with the following supporting documents:

- Two personal references, for each individual or each shareholder and director. In the case of individual applicants, one reference must support the applicant's ability to purchase and develop the property
- Two character references for each individual or each shareholder and director
- In the case of individuals, a financial report/statement from a financial institution evidencing a banking relationship for no less than one consecutive year is required
- A recent police certificate for each individual applicant or each shareholder and director
- One passport size photograph (coloured) of each applicant or shareholder and director
- A copy of the applicant's Trade Licence (if self-employed) or a copy of the company's Memorandum and Articles of Association, Certificate of Incorporation, current Certificate of Good Standing and Annual Summary of Members or a Certificate of Incumbency from a Registered Agent
- A recent valuation report of the property
- A non-refundable application fee of Two Hundred Dollars (\$200) per person for individuals and Five Hundred Dollars (\$500) in the case of a company
- A copy of the Agreement for Sale
- A copy of the record(s) reflecting existing ownership of the land
- A letter sized copy of the Cadastral Survey Plan

The application is submitted to the Ministry of Natural Resources and Labour. Provided the application is in order, it will be processed by the Ministry and submitted to Cabinet for determination. The applicant will be informed by the Ministry whether or not approval has been granted. This will take anywhere from twelve (12) to fifteen (15) weeks.

Post Approval Requirements

Provided an approval has been given for the grant of a Non-Belonger Land Holding Licence by Cabinet, the Ministry will request that the applicant submit four copies of an engrossed Licence for signing by the Governor.

In order to collect the signed Licence, a fee separate and apart from the application fee, will be required. The applicable fee is Six Hundred Dollars (\$600) for each individual, One Thousand

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Dollars (\$1,000) for a company plus Six Hundred Dollars (\$600) for each shareholder and director.

The applicant will be required to register the Licence at the Land Registry Department and provide the Ministry with a registered copy of the document and the registered Instrument of Transfers within three (3) months of the date of the Licence, for record keeping purposes.

Licences may be granted with conditions for development within a specified period of time. A breach of these conditions may result in a restriction being registered against the property by the Government or a penalty on the sale of un-developed property. However, an extension of time may be granted to fulfill development commitments, upon application to the Ministry and the fulfillment of the necessary requirements.

The pride, pleasure and excitement associated with acquiring a piece of paradise in the BVI by a Non-Belonger, whether as a first or second home or an investment, can be frustrated unless prospective purchasers acquaint themselves with the requirements and processes involved. The process can be complex and takes time, which may result in delays or a rejected application if not accurately done in the first instance. It is prudent that potential applicants seek the advice and guidance of a competent legal professional regarding obtaining a Non-Belonger Land Holding Licence as well as other aspects of purchasing or selling property in the British Virgin Islands.

BVI Companies

IBC - an 'International Business Company' - is the most commonly used official name for what is more popularly known as an "offshore company". IBC's are the basic building blocks of the offshore financial services industry.

Essentially, a modern IBC is a private corporation which is exempt from tax, suitable for virtually any international business activity, has a flexible organizational structure, is not burdened by excessive reporting and record-keeping requirements, and maintains strict confidentiality provisions.

Since the adoption of the British Virgin Islands International Business Companies Ordinance in 1984, the BVI IBC has attained a model status in the offshore services industry. With more than 600,000 total incorporations and more than 5000 new companies registered every month, BVI is by far the most popular offshore tax haven. Such is the dominance of the British Virgin Islands as an offshore corporate domicile, that in many regions of the Far East International Business Companies are called simply as "BVI's".

In January 1, 2005 a brand-new version of the BVI Business Companies Act came into force. The new Act represents a further development in the already outstanding BVI offshore corporate legislation. The new law successfully addresses the challenges faced by the offshore financial industry in the 21st century, in particular the pressures against 'illegal discrimination' between domestic and offshore companies. Thus the new BVI Business Companies Act removes any former distinction between a local company (operating in the domestic market) and an

offshore company (restricted only to international business). According to the new Act, there is now only one, unified type of company - a BVI Business Company, which continues to be exempt from tax and continues to enjoy all the substantial benefits afforded by the previous legislation.

The Premier of the BVI, Dr. the Hon. D. Orlando Smith, said at the announcement of the new legislation: "The new BVI Business Companies Act was designed to safeguard the attributes that have made the BVI the world's premier offshore company domicile. The collaborative effort to draft this new Act has resulted in legislation that not only retains all the virtues of the current IBC Act, but makes the BVI even more attractive to clients by including new features that have become desirable since the enactment of the current Act."

A full text of the consolidated BVI Business Companies Act is available in our "Downloads" section.

CORNERSTONES OF SUCCESS

These are some of the general advantages of the British Virgin Islands over many other offshore financial centers:

US dollar is the official currency in the BVI - therefore, by definition, there can be no currency controls and no artificial manipulation of money supply by the local government.

BVI are a British Overseas Territory, which provides for an outstanding political stability. The country also maintains a low international profile and a clean reputation, thus avoiding the pitfalls experienced by some more publicized and less scrupulous offshore tax havens.

BVI has an independent judicial system based on English Common Law. Laws and regulations are routinely developed in consultation with the private sector. Offshore financial services sector contributes a very significant part to the country's gross domestic product. Therefore, an inherent and pronounced interest exists both with the government and with the general public to maintain and develop the country's status as a competitive offshore financial center.

BVI is an independent country with a fairly high standard of living. Therefore, it avoided entering any information-sharing agreements with foreign countries or organizations for exchange of financial aid. Client confidentiality is robustly enshrined in the BVI corporate and business legislation.

BVI is easily accessible by sea and air, has modern telecommunications and is on US Eastern Standard Time (1 hour behind EST in winters).

THE MOST IMPORTANT CHARACTERISTICS OF A BVI BC IN DETAIL

Exemption from tax

A BVI Business Company is exempt from the BVI income tax, the same exemption applies to all dividends, interest, rents, royalties, compensations and other amounts paid by a company, and all capital gains realised with respect to any shares, debt obligations or other securities of the company. No estate, inheritance, succession or gift tax is payable with respect to any shares, debt obligations or other securities of a BVI BC. All transactions and instruments relating to transfers of any type of property of assets, shares, debt obligations or securities to or by a BVI BC are exempt from the stamp duty, with a sole exception for land-ownership transactions in the British Virgin Islands, in which case stamp duty remains payable.

Legal personality

A British Virgin Islands Business Company has separate legal personality and the same powers as a natural person.

Secrecy

Confidentiality is one of the key features of the BVI Business Company as details of the company beneficial owners, directors and shareholders are NOT part of public record. Register of Members, Register of Directors and all Minutes and Resolutions by the Company are kept only at the offices of the Registered Agent in complete confidentiality. Certainly, though, these files are available for inspection to Company shareholders.

The only documents held on public record are the Memorandum and Articles of Association, but these normally do not contain any indication as to the actual shareholders, directors or the beneficial owners of the company.

At the same time, if the owners of the company so wish, the Register of Directors and/or the Register of Members may be filed with the Registrar of Companies. Such step may be desirable if a complete certainty must be achieved and showed publicly as to the actual identities of the Company managers or members - but, again, this is purely optional.

Structural flexibility

A BVI Business Company requires a minimum of only one owner, one shareholder, and one director. All of them can be one and the same person. Apart from the director, the company need not appoint any operating officers. The management structure of the BVI Business Company may be designed in accordance with the widest variety of requirements.

The shareholders, directors and officers of a BVI Business Company may be individuals or corporations and of any nationality. The shareholder's or director's meetings need not be held in the British Virgin Islands and there is no requirement for an Annual General Meeting.

Meetings can be held by telephone or other electronic means; alternatively, directors as well as shareholders may vote by proxy.

Where a Business Company has only one member who is an individual and that member is also the sole director, such sole member / director may specifically appoint a reserve director to act in his place in the event of his death.

Provisions against confiscation

If a foreign Government or authority seizes Company shares, or any other interest in the Company in connection with nationalization, expropriation, confiscatory tax, other governmental charge or with a similar cause the Company or a shareholder may apply to the BVI court for an order that the Company disregard the seizure and continue to treat the person from whom the shares were seized as continuing to hold the shares.

No reporting

BVI Business Companies does not have an obligation to prepare or file financial accounts. However, records must be kept that are sufficient to show and explain the Company's transactions; and will, at any time, enable the financial position of the Company to be determined with reasonable accuracy. Such records do not have to be kept in the British Virgin Islands and the location for keeping such records can be freely determined by the owners of the Company, and there is no requirement whatsoever to file or otherwise make public any commercial or financial records of the Company.

Bearer shares

Shares of a BVI Business Company may be issued in bearer form. However the bearer shares may not be issued to their actual owner but may only be kept in custody of a licensed custodian in the BVI, or with such custodian outside BVI, together with a written indication as to the actual identity and address of the owner of such shares. The schedule of Government fees for BVI Business Companies contains a clear negative incentive against utilising bearer shares in the structuring of the Business Companies, as the Government fees for such companies will be considerably higher.

Various types of incorporations

A BVI Business Company may be incorporated as a company limited by shares, a company limited by guarantee (with or without authorization to issue shares), an unlimited company (with or without authorization to issue shares), a segregated portfolio company and a restricted purpose company.

No requirement to state operational objects

Since 2005, there is no requirement to specify the operational objects of the BVI Business Company in the foundation documents of the Company (Memorandum and Articles of Association). However, the company may choose to do so and, indeed, a specific type of a "restricted purpose company" is envisaged by the Business Companies Act.

Company names

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A BVI Business Company may not be registered under a name that is identical to the name of an existing BVI company, or is so similar to the name of an existing BVI Company, that, in the opinion of the Registrar, such name would be likely to confuse or mislead. As the BVI Registrar of Companies has a name-reservation system, a reserved name would also be considered as an already existing name.

Without obtaining a prior written consent of the Financial Services Commission, a BVI Business Company may not be registered under a name that contains a "restricted" word or phrase (according to a published list of such restrictions) - such as the words "Assurance", "Bank", "Building Society", "Chamber of Commerce", "Chartered", "Cooperative", "Imperial", "Municipal", "Royal", "Trust" or any word conveying a similar meaning, as well as any name suggesting the patronage of the British Royalty, British, BVI or any other government or its department.

The Registrar may also refuse the registration of any particular name if, in the opinion of the Registrar, such name is offensive or, for any other reason, objectionable.

The name-endings denoting the type of company

The name of a limited company, shall end with the word "Limited", "Corporation" or "Incorporated"; the words "Societe Anonyme" or "Sociedad Anonima"; the abbreviation "Ltd", "Corp", "Inc" or "S.A."; or such other word or words, or abbreviations thereof.

The name of an unlimited company shall end with the word "Unlimited" or the abbreviation "Unltd".

The name of a restricted purposes company shall end with the phrase "(SPV) Limited" or the phrase "(SPV) Ltd".

The name of a segregated portfolio company shall end with one of the phrases "Segregated Portfolio Company Limited"; "Segregated Portfolio Company Ltd"; "SPC Limited"; "SPC Ltd"; or, in the case of a segregated portfolio company that is a restricted purposes company, one of the phrases specified in this paragraph with "(SPV)" inserted immediately before that phrase or immediately before "Limited" or "Ltd".

Quite uniquely for BVI, the name of a BVI Business Company may comprise the expression "BVI Company Number" followed by its company number in figures and the ending required, as specified above - for instance "BVI Company Number 987654 Ltd". A company name expressed in such fashion may also contain additional foreign characters between the company number and the ending.

Appointment of Agents

The directors of a BVI Business Company may appoint any person (including an existing director), to be an agent of the Company. Subject to the Memorandum and Articles of Association such agent has such powers and authority as the directors may prescribe, except that no agent shall have no authority to amend the Memorandum or Articles; to appoint

directors or agents; to approve a plan of merger, consolidation or arrangement; or to make a declaration of solvency or approve a liquidation plan. Fixed Government fee

A BVI Business Company must pay the following annual license fees to the BVI Government:

FOR COMPANIES WITH REGISTERED SHARES ONLY:

USD 350 for Company with up to 50,000 shares, with or without par value.

USD 350 for Company limited by a guarantee or an unlimited company without shares.

USD 1100 for Company with more than 50,000 shares, with or without par value.

USD 5000 for a Restricted Purposes Company.

FOR COMPANIES WITH, OR AUTHORIZED TO ISSUE BEARER SHARES:

USD 800 for Company with up to 50,000 shares, if all bearer shares are kept with a BVI Custodian.

USD 1100 for Company with more than 50,000 shares, if all bearer shares are kept with a BVI Custodian.

USD 1100 for Company with up to 50,000 shares, if some of the bearer shares are not kept with a BVI Custodian.

USD 1350 for Company with more than 50,000 shares, if some of the bearer shares are not kept with a BVI Custodian.

(Apart from these Government fees, Registered Agent and Address fees will normally be payable, as well as another professional fees for Company Management and Administration. These are set forth in full detail in our Schedule of Fees.)

A SHORTLIST: MAIN CHARACTERISTICS OF THE BVI BUSINESS COMPANY

FACTOR	DESCRIPTION
Income tax in BVI	None
Conduct business internationally	Yes
Conduct business within BVI	Yes

Formally considered as resident in BVI	Yes
Official language / language of documents	English
Operational objects	No requirement to specify
Authorized capital	Not required as a concept
Minimum paid-up capital	No specific requirements
Considerations to the capital	In any currency or in kind
Most effective number of shares (maximum amount at minimum state fee)	50,000 shares (with or without par value)
Bearer shares	Yes (but to be held by a custodian only)
Registered Agent in BVI	Required
Registered Address in BVI	Required
Minimum number of directors	One
Non-resident directors	Allowed
Corporate directors	Allowed
Register of Directors	To be kept by the Registered Agent
Register of Directors filed for public record	No, but may choose to do so
Minimum number of Members (shareholders)	One
Register of Members	To be kept by the Registered Agent
Register of Members filed for public record	No
Holding of Annual General Meeting	Not required

Convention of Meetings of Directors / Members

Anywhere in the world, also by proxy

Corporate Seal

Mandatory

Imprint of Corporate Seal

To be kept by the Registered Agent

Corporate Minutes and Resolutions

To be kept by the Registered Agent

Disclosure of beneficial owners to Registrar

No

Disclosure of beneficial owners to Agent

Yes (confidential due diligence)

Keeping of accountant

Internally, only to enable a reasonably accurate determination of financial position

Auditing of accounts

Not required

Filing of accounts

Not required

Double-tax avoidance treaties

Switzerland, Japan

Currency controls / restrictions

None

Available special types of company

Restricted purpose company
Segregated portfolio company

Redomicile a foreign company into BVI

Yes

Redomicile a BVI company abroad

Yes

Net time to incorporate

3-5 days

Ready-made (shelf) companies

Available

Steps needed for any structured deal with client -

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1. Meeting walk through of site/s.

2. **Deposit** – 10% minimum required (only refundable if Land License is denied). Wiring instructions to mutually agreed escrow and legal agent will be given at that time.

3. Legal docs – Taxes / Stamp duties, freehold, crown lease, sub-lease, annual tenancy

The main application of the stamp duty legislation relates to transfers of real estate, or transfers of shares in companies which own real estate. The rate of stamp duty on such transactions varies according to the status of the transferee;

- if the transferee is a Belonger, then stamp duty on land transfers is assessed at 4%;
- if the transferee is a Non-Belonger, it is assessed at 12%.

The above stamp duties apply to only freehold and leasehold land –

- **Freehold Land** – This is land that is owned free and clear of Government hindrances where only land and house taxes apply. On vacant land Government will require non-belongers to build or 'break ground' within a finite period of time. Generally within one year of license approval.
- **Leased Land** – this is a direct agreement between the purchaser/owner and the Government. Every agreement with Government (or the Crown) is different but all leases generally come with some elements of restriction. There are also ground rents that apply that must be paid to the Government/Crown annually. If not the buyer/owner will be held in default and technically forfeit the land. Government will allow the land lease holder to divide their land into lots and then sell those off as sub-leased land.

Stamp duties on Sub-Leased land -

- On **sub-leased land** (land that is leased from an entity that already has a lease on the land) Stamp Duty is assessed at 1.5% of the totals lot sales price plus 20 years of the ground (each sold lot has a ground rent that is paid to the 'Master Crown Lease' holder). In the case of Nail Bay, the individual lots are assessed at a rate of \$1500 per half acre. So on a lot sale that is half an acre in size and sold for \$100,000 the purchaser would pay a stamp duty to the Government of 1.5% of the sales price plus the 20 years ground rent which equals \$100,000 plus (20 x \$1500) \$30,000 totaling \$130,000 at 1.5% which equals \$1,950.
- **Real estate in the British Virgin Islands is subject to nominal taxation.** Because the amounts payable are so small, it is not uncommon for householders to not pay the tax at all, and then discharge all back taxes and penalties when

they come to sell their property. The total tax on residential properties rarely exceeds US\$100 per annum. The tax costs more to collect than it raises. During the Territory's last review of taxation, considerations were made to amend the law to reduce the amount of taxation collection due to a perception that it penalized second home owners (but not to abolish the taxes).

- As with stamp duty, land tax rates are considerably higher for foreigners than for Belongers. Belongers pay annually: US\$3.00 for the first acre, or part thereof, and US\$1.00 for each subsequent acre, or part thereof.
- Non-Belongers pay annually: US\$50 for the first half acre, or part thereof, US\$150 for the second half acre, or part thereof, and US\$50 for each subsequent half acre.
- **House tax** is paid at the same rate for all persons, and is assessed at 1.5% of the annual rental value of the house. There is a general perception that rental values for owner-occupied homes tend to be assessed as being lower than their actual true market rental value.
- **Annual Tenancies** – These are more complex legal documents that essentially allow one to acquire land before a land holding license is granted while giving the buyer all the right of ownership. It is an annual document that can continue indefinitely. It allows people to start and build their home sooner so that when their license is granted then they are ready to move in. It can also be used as a 'quick sale' mechanism for gift tax purposes or other options.

4. Closing

- Closing is a very simple process – the complex part of any structured deal is getting all the legal documents done and having a clear understanding of what it is your purchasing and what it is that you can do with your purchased land.
- The closing will be handled through a mutually agreed 'escrow agent' in the BVI who will hold all documents and monies until both parties have satisfied their agreements – at that time all monies will be distributed including government stamp duties and land transfers will be completed to individuals or companies.