

# Kluwer Arbitration Blog

## Paris Arbitration Week: Arbitration in the BVI, an up-and-coming hub in the Caribbean

Olusola Odunsi (Freshfields Bruckhaus Deringer LLP) · Friday, September 24th, 2021

When you think about the British Virgin Islands (BVI), you probably have a very good image of the sea, sand, beautiful views and maybe some very much needed vacation. There is however more to the BVI, particularly as relates to arbitration. It is possible that in the coming years, the BVI will be one of the preferred seats for arbitrations.

One of the sessions at the Paris Arbitration Week 2021 dealt with this topic. The event was moderated by [Raphael Kaminsky](#) (Vice President, Paris Arbitration Week and Partner, Teynier Pic) and [Hana Doumal](#) (Registrar at BVI International Arbitration Centre), who also wore the hat of a panellist. The other panellists were [Shan Greer](#) (Partner, Spencer West LLP), [Angeline Welsh](#) (Barrister, Essex Court Chambers) and [Nicholas Burkill](#) (Partner, Ogier).

The session focused on a general overview of the framework for arbitration in the BVI, the BVI International Arbitration Centre (BVI IAC), what advantages the BVI offers as a seat, and a discussion on confidentiality under the BVI Arbitration Act.

### Overview of the framework for arbitration in the BVI

The 2013 BVI Arbitration Act, which entered into force in 2014, is the principal legislation on arbitration in the BVI. The Act is based on the UNCITRAL Model Law and establishes the BVI International Arbitration Centre. To ensure the enforcement of awards obtained in proceedings seated in the BVI, the BVI acceded to the New York Convention in May 2014.

The 2016 BVI IAC Rules, which are modern UNCITRAL-based Rules, are the extant arbitration rules in the BVI. The BVI IAC is, however, working to amend the rules and is scheduled to release the updated rules during the BVI IAC Week in November 2021. The amended rules will introduce new provisions on pertinent issues including emergency arbitrators, expedited procedures, tribunal secretaries, joinder, and consolidation. They will also introduce an Arbitration Committee to ensure the application of the Rules.

The BVI as a seat also enjoys unwavering support from the judiciary. The courts in the BVI take a non-interventionist approach to arbitration and relying on the BVI Arbitration Act, provide the necessary support for arbitral proceedings – interim reliefs, enforcement of awards, and privacy of hearings. The court proceedings are also very quick. For instance, Mr Burkill shared the experience

of a proceeding that was commenced in October 2020, went to trial at the end of January, the trial concluded at the end of February, and the judgment was ready two days later.

## The BVI IAC

The [BVI IAC](#) is an independent not-for-profit institution established in 2013 by the BVI Arbitration Act to meet the demands of the international business community for a neutral, impartial, efficient and reliable dispute resolution institution in the Caribbean and Latin America. The centre officially opened for hearings in January 2017. It is a well-equipped state of the art centre that benefits from the acknowledged quality of the BVI legal framework and the stable political environment offered by a British Overseas Territory. The goal is to become a leading arbitration hub in the Caribbean and beyond.

It is expected that the BVI would be home to different disputes but more particularly those relating to tourism, M&A, joint venture, and oil & gas disputes. With the geographical consideration, the BVI is well placed as a neutral venue for disputes from South and Central America, North America, Europe, Russia, and neighbouring states. It is also possible that the BVI will see disputes from Asia since many companies set up corporate vehicles in the BVI.

## What advantages does the BVI offer?

The [White & Case and Queen Mary 2021 International Arbitration Survey](#) identifies ‘greater support for arbitration by local courts and judiciary’, ‘increased neutrality and impartiality of the local legal system’, and ‘better track record in enforcing agreements to arbitrate and arbitral awards’ as the key adaptations that would make arbitral seats more attractive. In 2015, the Chartered Institute of Arbitrators also introduced the [CIArb London Centenary Principles](#) – 10 principles for an effective, efficient and ‘safe’ seat for the conduct of international arbitration. The panellists agreed that the BVI meets these criteria and goes beyond them to provide additional advantages.

**Firstly**, even though the BVI is a new seat, the BVI piggybacks off the wealth of authority and experience of established jurisdictions, particularly England. It is a UK overseas territory and enjoys the political stability of the UK.

**Secondly**, the BVI has a dedicated commercial court and bar, very familiar with arbitration. The courts have taken an unflinching stance in support of arbitration, as noted by the court in the case of [Retribution Limited v L Capital KTD Limited BVIHC\(COM\) 2015/0078](#) where the BVI High Court confirmed that the BVI Arbitration Act signals the BVI’s commitment to create and provide a modern and comprehensive legal framework for attracting and dealing with arbitral disputes and, save only in limited circumstances, the court will not allow parties who have agreed to arbitrate their disputes to by-pass an arbitration agreement through the draconian threat of liquidation.

**Thirdly**, while the BVI is guided by its specific statutory provisions which may sometimes differ from the English statutory provisions, the BVI draws on the deep reservoir of English case law as the common law of the BVI derives from English common law and English cases. The approach adopted by the English courts generally guides the approach in the BVI.

With specific reference to the CIArb London Centenary Principles, the BVI IAC continues to show commitment to the education of arbitration practitioners, safeguards the right of the parties to be represented by legal counsel of their choice whether from within or outside the BVI, guarantees the immunity of arbitral tribunal for acts done in the performance of its functions, and respects international treaties and agreements including the UNCITRAL Model Law and the New York Convention.

Another imperative point to note is the ease of enforcement in the BVI. As noted earlier, the BVI acceded to the New York Convention which ensures the enforcement of the awards worldwide. More so, as a practical matter, where there is no challenge, enforcement proceedings could be concluded in a couple of weeks.

### **Confidentiality under the 2013 BVI Arbitration Act**

Of the pertinent points that make the BVI stand out are the provisions of the BVI Arbitration Act relating to confidentiality of court related proceedings. One of the oxymorons that have bedevilled arbitration practice is how parties usually lose every shred of confidentiality when any portion of the arbitral proceeding is referred to the courts – whether for interim reliefs, enforcement etc. Unlike other jurisdictions including the UK, the BVI Arbitration Act sets out a robust regime for maintaining confidentiality of court proceedings relating to arbitration. Specifically, the BVI Arbitration Act prohibits disclosure of information relating to arbitral proceedings and awards, subject to limited exceptions. The Court is required to not make an order for publication of a judgment unless the parties agree that it can or publication would not reveal information which the parties would reasonably consider to be confidential. The Court can still depart from this regime, but only where there is major legal interest or it is in the public interest to do so. But even then, the parties can apply for parts of the judgment to be redacted on the grounds of confidentiality.

### **Initiatives in the BVI: Caribbean ADR Initiative (CADRIIn)**

**CADRIIn** is an independent non-profit initiative co-founded by Ms Greer with a vision to establish a mechanism by which regional practitioners, ADR centres and potential users are brought to a discursive platform where international best practice can be analysed, distilled and appropriately disseminated in light of these domestic, regional, legal, cultural, and other dynamics. This vision is expansive and relies on significant engagement with a wide audience of stakeholders, and thus requires a well-structured methodology and approach. Its focus has been on SMEs and the initiative will be holding meetings in the next few months to discuss ways in which ADR can support the effective resolution of regional disputes with SMEs.

### **Conclusion**

The BVI is certainly an up-and-coming arbitration hub in the Caribbean. Its development is supported by legislation, the judiciary, and institutional infrastructure. The 2013 BVI Arbitration Act is the principal legislative instrument, supported by the 2016 BVI IAC Rules which will be amended with the new rules to be released in November 2021. Institutionally, the BVI IAC

provides the very much needed support for the BVI. It administers arbitration in the BVI and provides state-of-the-art facilities for arbitration hearings. The BVI courts, without a doubt, support arbitration in the BVI and appear to have shown that they will continue doing so in the future. The panellists agreed that arbitration practitioners may therefore want to consider the BVI when negotiating their arbitration clauses. On a final note, Mr Burkill who chairs the [BVI Arbitration Group](#) invited persons with interest in international arbitration to join the BVI Arbitration Group.


---

*To make sure you do not miss out on regular updates from the Kluwer Arbitration Blog, please [subscribe here](#). To submit a proposal for a blog post, please consult our [Editorial Guidelines](#).*


### **Profile Navigator and Relationship Indicator**


Includes 7,300+ profiles of arbitrators, expert witnesses, counsels & 13,500+ relationships to uncover potential conflicts of interest.

Learn how [Kluwer Arbitration](#) can support you.



Learn more about the newly-updated *Profile Navigator and Relationship Indicator*



 Wolters Kluwer

This entry was posted on Friday, September 24th, 2021 at 8:00 am and is filed under [BVI](#), [Caribbean](#), [Paris Arbitration Week](#)

You can follow any responses to this entry through the [Comments \(RSS\)](#) feed. You can leave a response, or [trackback](#) from your own site.

