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# **The Legal 500**

## **Country Comparative Guides**

### **British Virgin Islands**

# **INTERNATIONAL ARBITRATION**

**Mark J. Forte**

Partner | [mark.forte@conyers.com](mailto:mark.forte@conyers.com)

**Jane Fedotova**

Associate | [jane.fedotova@conyers.com](mailto:jane.fedotova@conyers.com)

This country-specific Q&A provides an overview of international arbitration laws and regulations applicable in British Virgin Islands.

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## BRITISH VIRGIN ISLANDS INTERNATIONAL ARBITRATION



### 1. What legislation applies to arbitration in your country? Are there any mandatory laws?

Arbitration Act 2013 (the “**Act**”) applies to arbitration seated in the Virgin Islands (the “**BVI**”). The Act came into force on 1 October 2014.

Sections of the Act, which deal with court-ordered interim measures and enforcement of arbitral awards, apply to arbitrations seated in the Virgin Islands and outside. In addition, ECSC CPR 43.10 applies to enforcement of awards enforceable under the Act.

Subject to the observance of the safeguards that are necessary in the public interest, the parties to a dispute are free to agree on how the dispute should be resolved. Provisions set out in Schedule 2 to the Act apply automatically to some domestic arbitrations entered into prior to the coming into force of the Act.

### 2. Is your country a signatory to the New York Convention? Are there any reservations to the general obligations of the Convention?

Following a request from the BVI Government to the UK Government, the territorial application of the New York Convention was extended to the BVI on 25 May 2014. The United Kingdom made a reservation that it will apply the Convention only to the recognition and enforcement of awards made in the territory of another Contracting State.

### 3. What other arbitration-related treaties and conventions is your country a party to?

Although the BVI is not party to any other arbitration-related treaty or convention, any arbitral award made in or outside the BVI is enforceable in the BVI under the provisions of the Arbitration Act 2013.

### 4. Is the law governing international arbitration in your country based on the UNCITRAL Model Law? Are there significant differences between the two?

Yes, the UNCITRAL Model Law on International Commercial Arbitration 1985 with amendments as adopted in 2006. The Act adopts the UNCITRAL Model Law with minor modifications and supplements.

### 5. Are there any impending plans to reform the arbitration laws in your country?

There are no plans for any significant reform, save for minor amendments to further improve the law.

### 6. What arbitral institutions (if any) exist in your country? When were their rules last amended? Are any amendments being considered?

BVI International Arbitration Centre (“**BVI IAC**”) was established by the Act and was opened on 17 November 2016. The BVI IAC Arbitration Rules have been in force since 16 November 2016 and largely draw on the 2010 UNCITRAL Arbitration Rules. Under the Act, the BVI IAC has a function of an appointing authority. The BVI IAC Rules are currently being reviewed and amendments are expected to be announced in November 2021.

### 7. Is there a specialist arbitration court in your country?

Arbitration related proceedings are heard by the Commercial Division of the High Court of Justice of Virgin Islands. The Commercial Court has a long pro-arbitration and pro-enforcement of arbitral awards history. The pro-enforcement approach was confirmed in *Coty Hong Kong Distribution Limited v Peakstar Development Ltd* (unreported). The Commercial Court held that the applicant’s inability to supply the original or a certified

copy of the arbitration agreement was no bar to enforcement of the award. Recently, the Commercial Court enforced the ICC arbitral award for USD 646,445,986 in *PT Ventures SGPS SA v Vidatel Ltd* (BVIHC (COM) 2015/0017 and 2019/0067 (13 August 2020)).

### **8. What are the validity requirements for an arbitration agreement under the laws of your country?**

The Act adopts Option 1 of the UNCITRAL Model Law, which requires that the arbitration agreement shall be "in writing". S 17(1) of the Act provides: "Arbitration agreement" is an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not. An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.

### **9. Are arbitration clauses considered separable from the main contract?**

Yes.

### **10. Do the courts of your country apply a validation principle under which an arbitration agreement should be considered valid and enforceable if it would be so considered under at least one of the national laws potentially applicable to it?**

The Act does not contain provisions about a validation principle, nor to the best of our knowledge, has such principle been considered by the BVI Courts.

### **11. Is there anything particular to note in your jurisdiction with regard to multi-party or multi-contract arbitration?**

Paragraph 2 of Schedule 2 contains provisions empowering the Court, on the application of any party, to consolidate arbitral proceedings. These provisions are non-mandatory and can be amended by the parties' agreement.

### **12. In what instances can third parties or**

### **non-signatories be bound by an arbitration agreement? Are there any recent court decisions on these issues?**

Definition of a "party" under the Act means a party (a) to an arbitration agreement, or (b) to any arbitral or court proceedings. To the best of our knowledge there are no recent BVI Court decisions on these issues.

### **13. Are any types of dispute considered non-arbitrable? Has there been any evolution in this regard in recent years?**

Both contractual and non-contractual disputes can be arbitrated. Employment disputes which are within the jurisdiction of the Arbitration Tribunal established by section 29(1) of the Labour Code 2010 may, upon a party's request, be arbitrated under the provisions of the Act.

Traditionally trust disputes were not subject to arbitration, but currently the BVI Committee on Trust Legislation with the backing of the BVI IAC is working on a legislative proposal to facilitate trust arbitrations.

### **14. Are there any recent court decisions in your country concerning the choice of law applicable to an arbitration agreement where no such law has been specified by the Parties?**

Not to the best of our knowledge.

### **15. How is the law applicable to the substance determined? Is there a specific set of choice of law rules in your country?**

Section 62 of the Act applies Article 28 of the UNCITRAL Model Law, according to which the arbitral tribunal shall decide the dispute in accordance with such rules of law as are chosen by the parties as applicable to the substance of the dispute. Any designation of the law or legal system of a given State shall be construed, unless otherwise expressed, as directly referring to the substantive law of that State and not to its conflict of laws rules. Failing any designation by the parties, the arbitral tribunal shall apply the law determined by the conflict of laws rules which it considers applicable.

### **16. Have the courts in your country applied**

**the UNIDROIT or any other transnational principles as the substantive law? If so, in what circumstances have such principles been applied?**

Not to the best of our knowledge.

**17. In your country, are there any restrictions in the appointment of arbitrators?**

There are no restrictions as to nationality, age or practice licence of an individual to be appointed as an arbitrator. The arbitrator must be fit and proper. Where the parties fail to agree on composition of the arbitral tribunal and the BVI IAC is required to appoint an arbitrator, the BVI IAC will appoint the arbitrator from the list of arbitrators registered in the register. Any person who qualifies to be appointed as an arbitrator may apply to be registered. The register is kept and maintained by the BVI IAC.

**18. Are there any default requirements as to the selection of a tribunal?**

The parties are free to determine the number of arbitrators, failing which the BVI IAC shall make the determination on the number taking into account particular circumstances of the case.

**19. Can the local courts intervene in the selection of arbitrators? If so, how?**

The BVI IAC performs the function of an appointing authority if the parties or two arbitrators fail to reach agreement or to act in accordance with the procedure of appointing an arbitral tribunal. The limits of intervention of the BVI IAC in the appointment procedure are set out in Sections 21 and 22 of the Act.

**20. Can the appointment of an arbitrator be challenged? What are the grounds for such challenge? What is the procedure for such challenge?**

Yes, the appointment of an arbitrator can be challenged on the grounds of lack of impartiality and independence or if the arbitrator does not possess qualification agreed by the parties. The challenge can be only brought based on the reasons of which a party became aware after the appointment was made.

The parties are free to agree on a procedure for challenging an arbitrator, subject to the requirement that the BVI High Court shall be the ultimate authority to decide on the challenge if the challenge was rejected.

Failing parties' agreement, the challenge must be made in writing with reasons to the arbitral tribunal within 15 days after becoming aware of the constitution of the arbitral tribunal or after becoming aware of the above circumstances.

**21. Have there been any recent developments concerning the duty of independence and impartiality of the arbitrators**

Not to the best of our knowledge.

**22. Have there been any recent decisions in your concerning arbitrators' duties of disclosure, e.g., similar to the UK Supreme Court Judgment in Halliburton v Chubb?**

Not to the best of our knowledge.

**23. What happens in the case of a truncated tribunal? Is the tribunal able to continue with the proceedings?**

If an arbitrator fails to act without undue delay and does not withdraw from the office or if the parties are unable to reach an agreement about termination of his mandate, any party may request the BVI High Court to decide on termination of the mandate. The decision of the BVI High Court is not subject to an appeal. The substitute arbitrator must be appointed according to the rules that were applicable to the appointment of the arbitrator being replaced. The Act does not expressly stipulate whether the arbitral tribunal is able to continue with the proceedings in the interim. However, enforcement of an arbitral award may be refused if a person against whom it is invoked proves that the composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties.

**24. Are arbitrators immune from liability?**

Yes, the immunity extends to the arbitral tribunal, an employee or agent of the tribunal. The arbitrators are immune from liability unless it is proved that the act was done or omitted by the arbitrator acting in bad faith.

## 25. Is the principle of competence-competence recognized in your country?

Yes

## 26. What is the approach of local courts towards a party commencing litigation in apparent breach of an arbitration agreement?

The Court shall refer the parties to arbitration and stay the proceedings, unless it finds that the agreement is null and void, inoperative or incapable of being performed. Pending the Court order the arbitral proceedings may be commenced or continued and an award may be made. The Court decision to refer parties to arbitration is not subject to an appeal. Where the Court refuses to refer parties to arbitration, any party may apply for leave to appeal such decision of the Court.

In a recent case *RangeCroft Ltd v Lenox International Holdings Ltd* (BVIHC(COM) 2020/0037) Mr Justice Jack considered limits of BVI Court jurisdiction to appoint a liquidator over a debtor under a loan agreement containing arbitration clause. The debtor argued that it had a genuine and substantial defence within the meaning of the test set out in *Sparkasse Bregenz Bank AG v Associated Capital Corporation* (Civ Appeal No. 10 of 2002). The Court considered the interaction between Section 18 of the Act (Arbitration Agreement and Substantive Claim Before Court) and the BVI Insolvency Act 2013. Mr Justice Jack stayed the application and referred parties to arbitration in the BVI, in accordance with the parties' agreement. The approach was re-confirmed in another case *IS Investment Fund Segregated Portfolio Company v Fair Cheerful Ltd* (BVIHC(COM) 2020/0034). Despite this, in *A Creditor v Anonymous Company Ltd* (anonymized) the Court observed that the Court's decision to appoint a liquidation is an exercise of discretion and there can be instances where the defence is a "put up job" and is advanced without any real belief in its substance. In that case the Court declined to stay or dismiss the application, notwithstanding that an arbitration was already afoot.

## 27. How are arbitral proceedings commenced in your country? Are there any key provisions under the arbitration laws relating to limitation periods or time bars of which the parties should be aware?

The Act adopts Article 21 of the UNCITRAL Model Law,

which provides that the arbitral proceedings commence on the date on which a request for arbitration is received by the respondent. This is a non-mandatory provision, and the parties may agree to regard the arbitral proceedings to be commenced on a different date. This may cause issues when the respondent is avoiding receipt of the documents. The position is different under the BVI IAC Arbitration Rules, which state that the arbitral proceedings are deemed to commence on the date on which the notice of arbitration accompanied by a registration fee are received by the Secretariat.

BVI Limitation Act 1961 and any other enactment relating to the limitation of actions apply to arbitration as they apply to actions in the Court. For contractual and tortious claims the limitation period is 6 years from the date when cause of action has accrued.

## 28. In what circumstances is it possible for a state or state entity to invoke state immunity in connection with the commencement of arbitration proceedings?

Application of the UK State Immunity Act 1978 has been extended to the British Virgin Islands by virtue of the State Immunity (Overseas Territories) Order 1979 with minor modifications, as set out in Schedule 2 to the Order. In accordance with Section 9 of the UK State Immunity Act 1978 unless the arbitration agreement provides otherwise or the arbitration agreement is between the States, where the State has agreed in writing to submit a dispute which has arisen, or may arise, to arbitration, the State is not immune in relation to the BVI Court proceedings relating to that arbitration. However, such waiver of immunity against adjudication does not automatically result in waiver of immunity against enforcement of an arbitral award. The question of state immunity has been recently discussed by the Court in case *Tethyan Copper Company PTY Limited v Islamic Republic of Pakistan & Ors* (BVIHC(COM) 2020/0196) in relation to enforcement of an ICSID award in the BVI.

## 29. What happens when a respondent fails to participate in the arbitration? Can the local courts compel participation?

If the respondent fails to submit a response to arbitration request or its statement of defence, the arbitral proceedings may continue and such failure will not be treated as an admission of the claimant's allegations.

**30. Can third parties voluntarily join arbitration proceedings? If all parties agree to the intervention, is the tribunal bound by this agreement? If all parties do not agree to the intervention, can the tribunal allow for it?**

The Act does not regulate interrelationship between third parties and the arbitration agreement. Article 17(5) of the BVI IAC Arbitration Rules provide that arbitral tribunal may, at the request of any party, allow one or more third persons to be joined in the arbitration as a party, provided such person is a party to the arbitration agreement.

**31. Can local courts order third parties to participate in arbitration proceedings in your country?**

The Act does not give a power to the local court to order third party to participate in arbitration proceedings. The Court may compel a third party to attend the proceedings to give evidence or to produce a document.

**32. What interim measures are available? Will local courts issue interim measures pending the constitution of the tribunal?**

The Court may grant interim measures in support of arbitral proceedings commenced or pending in or outside the BVI. If the arbitral proceedings commenced outside the BVI, the Court may grant interim measures only if the interim measure sought belongs to a type of interim measure described in Article 17(2) of the UNCITRAL Model Law and the reference to the arbitral tribunal and/or arbitral proceedings in that article should be read as reference to the Court and/or court proceedings. In addition the Court will only grant interim measures in support of the arbitral proceedings seated outside the BVI if the arbitral proceedings are capable of giving rise to an arbitral award, whether interim or final, that may be enforced in the BVI.

Unlike in England, where the court would only grant interim measures if the tribunal is powerless to act, or after the permission has been sought from the tribunal or with the other parties' consent, the BVI International Arbitration Act 2013 has no equivalent limitations on the court's jurisdiction to grant interim measures (*PT Ventures SGPS SA v Vidatel Ltd* (BVIHC(COM) 2015/0117 (8 February 2016)).

The Court decision on interim measures is not subject to

appeal.

**33. Are anti-suit and/or anti-arbitration injunctions available and enforceable in your country?**

Yes

**34. Are there particular rules governing evidentiary matters in arbitration? Will the local courts in your jurisdiction play any role in the obtaining of evidence? Can local courts compel witnesses to participate in arbitration proceedings?**

Unless otherwise agreed by the parties, arbitral tribunal is not bound by the rules of evidence and may accept any evidence as long as it is relevant to the arbitral proceedings, and will determine its weight. A person is not required to produce in arbitral proceedings any document or other evidence that the person could not be required to produce in civil proceedings before a court.

Unless otherwise agreed by the parties, an arbitral tribunal may, when conducting arbitral proceedings, decide whether and to what extent it should itself take the initiative in ascertaining the facts and the law relevant to those arbitral proceedings.

Unless otherwise agreed by the parties, if without sufficient cause any party fails to appear at a hearing or to produce documentary evidence, the arbitral tribunal may continue the proceedings and make the award on the evidence before it.

The arbitral tribunal's specific evidentiary powers are set out in Section 54, this includes a power to direct discovery of documents or the delivery of interrogatories and give certain directions in relation to any relevant property (as defined in the Act).

The arbitral tribunal or a party with the approval of the arbitral tribunal may request from the BVI Court assistance in taking evidence. The BVI Court will be guided by its own rules on taking evidence, including the rules set out in the Evidence Act 2006. The Act provides that the Court may order a person to attend proceedings before an arbitral tribunal to give evidence or to produce documents or other evidence. The decision of the Court is not subject to appeal. Failure to attend the proceedings is a contempt of court. Other special evidentiary powers of the Court are set out in Section 58 of the Act.

### **35. What ethical codes and other professional standards, if any, apply to counsel and arbitrators conducting proceedings in your country?**

The Act provides that the BVI IAC may issue a code of conduct for arbitrators and mediators. Any legal practitioner whose name is entered on the Roll in the BVI is bound by the Code of Ethics, Schedule 4 to the Legal Profession Act 1925.

### **36. In your country, are there any rules with respect to the confidentiality of arbitration proceedings?**

Unless otherwise agreed, no party may publish, disclose or communicate any information relating to the arbitration proceedings or an award, unless it is under a legal duty to do so, or in order to protect or pursue a legal right or interest of the party, or to enforce or challenge the award, or the information is communicated to a professional or any other advisers of any of the parties.

The default rule is that the proceedings under the Act are “closed Court proceedings” and the file is sealed automatically. The Court may order the proceedings to be heard in open Court on the application of any party or if the Court is satisfied that those proceedings ought to be heard in open Court. The Court may make a direction permitting information about the proceedings to be published only if (i) all parties agree or (ii) the Court is satisfied that information will be published in anonymized way or (iii) the Court considers that the judgment is of major legal interest or it would be in the public interest to publish the judgment, in which case a party may apply for certain matters to be redacted.

### **37. Are there any recent decisions in your country regarding the use of evidence acquired illegally in arbitration proceedings (e.g. ‘hacked evidence’ obtained through unauthorized access to an electronic system)?**

Not to the best of our knowledge.

### **38. How are the costs of arbitration proceedings estimated and allocated?**

Unless otherwise agreed by the parties, the arbitral tribunal shall assess the amount of costs to be awarded or ordered to be paid and shall only allow costs that are

reasonable having regard to all the circumstances, and may allow costs incurred in the preparation of the arbitration proceedings.

The arbitral tribunal has a wide discretion to allocate the costs of the arbitration proceedings as between the parties having regard to all relevant circumstances, including the fact that a written offer of settlement has been made. The arbitral tribunal has discretion to order and allocate costs of application for an order or direction to be paid forthwith or at the time specified by the arbitral tribunal. The arbitral tribunal is not bound by the Court rules of assessment of the costs.

The parties’ agreement made after the dispute has arisen that the parties, or any of the parties, must pay their own costs in respect of arbitration proceedings is void.

The Act provides that unless otherwise agreed by the parties, the arbitral tribunal may either on its own initiative or on the application of any party direct that the recoverable costs of arbitration proceedings (defined as parties’ costs) before it are limited to a specified amount.

### **39. Can pre- and post-award interest be included on the principal claim and costs incurred?**

The arbitral tribunal has a wide discretion to award pre- and post-award interest on the principal claim and costs incurred.

### **40. What legal requirements are there in your country for the recognition and enforcement of an award? Is there a requirement that the award be reasoned, i.e. substantiated and motivated?**

Enforcement of a Convention award may be refused on the grounds set out in Article V of the New York Convention with minor modifications. The award must be made in writing and must be signed by the arbitrator or arbitrators. It must be dated and state the seat of arbitration. Unless the parties have agreed otherwise or the award is on agreed terms, the award must state the reasons.

### **41. What is the estimated timeframe for the recognition and enforcement of an award? May a party bring a motion for the recognition and enforcement of an award?**

**on an ex parte basis?**

The timeframe for the recognition and enforcement of an award depends on the particular facts of the case. A straightforward application for permission to enforce the award can take no more than couple of months. The application can be made ex-parte, thereafter, once served with the Court order, the respondent will have 14 days to set it aside.

**42. Does the arbitration law of your country provide a different standard of review for recognition and enforcement of a foreign award compared with a domestic award?**

In addition to the Article V grounds for refusing to enforce the award, the Court may refuse to enforce domestic award for any other reason if the Court considers it just to do so.

**43. Does the law impose limits on the available remedies? Are some remedies not enforceable by the local courts**

Unless otherwise agreed by the parties, an arbitral tribunal has the same power as the Court to order specific performance of any contract, other than a contract relating to land or any interests in land.

Otherwise, an arbitral tribunal may, in deciding a dispute, award any remedy or relief that could have been ordered by the Court if the dispute had been the subject of civil proceedings in the Court.

**44. Can arbitration awards be appealed or challenged in local courts? What are the grounds and procedure?**

Article 34 of the UNCITRAL Model Law, setting out the grounds for setting aside the arbitral award, has been adopted by the Act. In addition, the Act expressly provides that unless the parties have agreed to opt for application of Schedule 2, the Court does not have jurisdiction to set aside or remit an arbitral award on the ground of errors of fact or law on the face of the award.

**45. Can the parties waive any rights of appeal or challenge to an award by agreement before the dispute arises (such****as in the arbitration clause)?**

Yes.

**46. To what extent might a state or state entity successfully raise a defence of state or sovereign immunity at the enforcement stage?**

In *Gold Reserve Inc. v The Bolivarian Republic of Venezuela* [2016] EWHC 153 the English High Court enforced an ICSID arbitration award against Venezuela because it has agreed to submit the dispute with private investor to arbitration and was barred by Section 9 of the State Immunity Act 1978 from raising a defence of immunity at the stage of enforcement. Despite the State's consent to submit the dispute to arbitration, according to Sections 13(2)-(3) the relief against the State in a form of injunction or order for specific performance or for the recovery of land or other property is not available and the property of a State cannot be subject to any process for enforcement of an arbitration award.

**47. In what instances can third parties or non-signatories be bound by an award? To what extent might a third party challenge the recognition of an award?**

Any Convention Award is binding for all purposes on the persons between whom it was made. Only a party against whom the applicant seeks to enforce the award can set aside the enforcement of that award.

**48. Have there been any recent court decisions in your jurisdiction considering third party funding in connection with arbitration proceedings?**

Not to the best of our knowledge.

**49. Is emergency arbitrator relief available in your country? Are decisions made by emergency arbitrators readily enforceable?**

The BVI IAC Arbitration Rules Amendment Committee is currently working on draft provisions relating to an emergency arbitrator.

**50. Are there arbitral laws or arbitration**



**institutional rules in your country providing for simplified or expedited procedures for claims under a certain value? Are they often used?**

Not to the best of our knowledge.

**51. Is diversity in the choice of arbitrators and counsel (e.g. gender, age, origin) actively promoted in your country? If so, how?**

The BVI IAC is committed to diversity and claims to have a culturally, linguistically, age, origin and gender diverse list of arbitrators.

**52. Have there been any recent court decisions in your country considering the setting aside of an award that has been enforced in another jurisdiction or vice versa?**

Recently the BVI Court enforced the ICC arbitration award for USD 646,445,986 in the BVI despite the award being subject to on-going set aside proceedings at the seat of arbitration in France on identical grounds. See judgment of Mr Justice Jack in *PT Ventures SGPS SA v Vidatel Ltd* (BVIHC (COM) 2015/0017 and 2019/0067, (13 August 2020)). The analysis as to why the Court was obliged to continue with the enforcement proceedings in the BVI is set out in *PT Ventures SGPS SA v Vidatel Ltd* (BVIHC (COM) 2015/0017 and 2019/0067, (16 March 2020)). Although the decision turns on particular facts of the case, the Court did not stay the BVI proceedings because (i) the French proceedings would take several years to be determined and (ii) neither party would be irredeemably prejudiced if the BVI Court would determine whether the award was enforceable.

**53. Have there been any recent court decisions in your country considering the issue of corruption? What standard do local courts apply for proving of corruption? Which party bears the burden of proving corruption?**

Not to the best of our knowledge.

**54. Have there been any recent court**

**decisions in your country considering the judgment of the Court of Justice of the European Union in *Slovak Republic v Achmea BV* (Case C-284/16) with respect to intra-European Union bilateral investment treaties or the Energy Charter Treaty? Are there any pending decisions?**

Not to the best of our knowledge.

**55. Have there been any recent decisions in your country considering the General Court of the European Union's decision *Micula & Ors* (Joined Cases T-624/15, T-694/15 and T-694.15), ECLI:EU:T:2019:423, dated 18 June 2019? Are there any pending decisions?**

Not to the best of our knowledge.

**56. What measures, if any, have arbitral institutions in your country taken in response to the COVID-19 pandemic?**

All BVI IAC services are available virtually. The BVI IAC operates through a cloud-based, secured IT infrastructure, and from inception, has supported online dispute resolution remotely and seamlessly. As a result, the Centre can:

- support clients to transition their existing or new arbitrations to a virtual set-up;
- initiate appointing authority cases;
- provide practical and affordable fundholding services;
- provide expert determination services; or
- a combination of the above.

Whether clients need to move to fully integrated virtual proceedings or would rather adopt an hybrid model whereby they use BVI IAC's facilities and virtual tools, the BVI IAC provides technical support before and during CMCs, hearings, including technical rehearsals, monitoring, and enhanced cyber-security measures.

The BVI IAC partners with leading experts to offer users a comprehensive range of integrated virtual services, including live transcription, live translation, electronic presentation of evidence, e-bundles and document management. Said virtual services may be used for arbitrations administered by the BVI IAC and those that are not.

**57. Have arbitral institutions in your country implemented reforms towards greater use of technology and a more cost-effective conduct of arbitrations? Have there been any recent developments regarding virtual hearings?**

BVI IAC was designed from inception to be able to accommodate remote arbitrations and have hosted remote and hybrid hearings in the past. More recently, the Centre has become a signatory and an institutional supporter of the Campaign for Greener Arbitrations, an initiative to reduce the environmental impact of international arbitrations (and concomitantly its costs). As a proud signatory of The Green Pledge (<https://www.greenerarbitrations.com/green-protocols/complete-set>), BVI IAC stands committed to taking ongoing steps to:

- minimize the environmental impact of our daily operating procedures;
- reduce energy consumption and waste in arbitral proceedings;
- facilitate virtual hearings and meetings;
- adopt measures to reduce the environmental impact of arbitration events and conferences; and
- where possible, partner with organizations that are committed to reducing their environmental impact.

**58. In your country, does the insolvency of a party affect the enforceability of an arbitration agreement?**

Section 175 of the Insolvency Act 2003 states that with

effect from the commencement of the liquidation of a company, unless the Court otherwise orders, no person may commence or proceed with any action or proceeding against the insolvent company or in relation to its assets, or exercise or enforce, or continue to exercise or enforce any right or remedy over or against assets of the insolvent company. This does not affect the right of a secured creditor to take possession of and realise or otherwise deal with assets of the company over which that creditor has a security interest.

**59. Is your country a Contracting Party to the Energy Charter Treaty? If so, has it expressed any specific views as to the current negotiations on the modernization of the Treaty?**

The BVI is not a party to the Energy Charter Treaty.

**60. Have there been any recent developments in your jurisdiction with regard to disputes on climate change and/or human rights?**

Not to the best of our knowledge in the context of arbitration.

**61. Has your country expressed any specific views concerning the work of the UNCITRAL Working Group III on the future of ISDS?**

Not to the best of our knowledge. Application of the ICSID Convention has not been extended to the BVI.

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## Contributors

**Mark J. Forte**  
Partner

[mark.forte@conyers.com](mailto:mark.forte@conyers.com)



**Jane Fedotova**  
Associate

[jane.fedotova@conyers.com](mailto:jane.fedotova@conyers.com)

