

**ELECTRONIC COMMERCE IN BRITISH VIRGIN ISLANDS
“A KEY TO ECONOMIC GROWTH”**

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1. INTRODUCTION:

What is Electronic Commerce?

Electronic Commerce or in short “e-commerce” is any form of business transaction in which the parties transact electronically rather than by physical exchange or personal contact.¹

Through the revolution in telecommunications and information technology, Electronic Commerce, aided by Globalization, is impacting business and it is playing a key role as the digital economy rounds into shape. It is rapidly becoming one of the principal means of conducting business and financial transactions. E-commerce has the potential to provide small economies with improved means and ease of communications business contact, lower priced products, reduction of barriers to entry to world markets, reduce transaction costs and improved potential for delivery of service.

E-commerce is a direct result of the Information Age and it is likely to be the principal means for transacting business in a short time to come. While information technology was able to boost productivity, reduce costs and cut inventories in a transcendent way, electronic commerce is the vehicle by which enterprises will narrow the space between buyer and seller. More importantly, e-commerce supported by worldwide telecommunications presents the potential for rapid expansion into global markets. Also, e-commerce presents a full range of opportunities and threats for developing countries to get on a more level playing field.

The essence of e-commerce is the capacity to enter into and delivery upon the details of a binding contract between buyer and seller in confidence and privacy. This means the ability to send payments over the Internet and to conduct legally binding business transactions in a secure manner. However, this is not sufficient for the successful establishment of a sustainable e-commerce industry. A legal framework capable of instilling confidence that business transactions are private and secure is one of the primary prerequisites. Further, there must be the confidence that systems of contract dispute resolution are fair, sure and clear. This suggests a legal system to accommodate international trade and global commerce accepted by most countries in the world to ensure a good range of markets.

2. E-COMMERCE AND ECONOMIC GROWTH IN BVI.

The benefits of e-commerce will be readily apparent to the countries that choose to embrace it. As noted by the Organisation for Economic Co-operation and Development (OECD), the **phenomenal** expansion of the Global Electronic Marketplace has led to remarkable growth and productivity in the information and communication technology industry. E-commerce encourages economic growth and increases employment in those countries that are able to take advantage of the opportunities it offers.²

In order to promote e-commerce in the British Virgin Islands, we need to have a clear policy on e-commerce and to develop infrastructure that will facilitate the growth of e-commerce. Such a policy requires a coordinated approach between the government and private sector. Which means, the development of a successful policy on this, requires a coordinated approach, government, business and industry must work together to build awareness, trust and infrastructure, which support the seamless creation and operation of an e-commerce system.

3. CONNECTIVITY WITH THE REST OF THE WORLD.

E-commerce success in the British Virgin Islands will depend on how we are connected with the rest of the world. Economic globalization requires connectivity with the rest of the world in terms telecommunications and other technological links. This means that the British Virgin Islands should ensure that it is properly connected to the rest of the world in the most effective way, if at all we want to compete in global economy with other countries. Because of connectivity more nations are benefiting from global economy and have better greater opportunities for business for their countries. It should be noted that, the whole world is now our market. Companies in our offshore financial services sector serve client from all over the world. Globalization and New Age of Information have no age or gender qualifications. Together they constitute an economic tidal wave of which we are unmistakably a part, since most of our national income comes from abroad and is generated substantially by Information Technology.

The British Virgin Islands Government should facilitate and enhance connectivity with the rest of the world. This can be done by identifying BVI's connectivity requirements, and by allocating adequate resources to facilitate this exercise. Therefore the government should make necessary investment in Information Technology sub-sector. Also the focus should be on the formulation of National Information Policy and establishment of appropriate information infrastructure to link the British Virgin Islands with the rest of the world. In this case it is necessary for the government to facilitate the participation of private sector by building a conducive environment for private investors.

4. CONDUCTING BUSINESSES THROUGH E-COMMERCE.

The combination of e-commerce and low tax rates, offered by countries such as the British Virgin Islands, is irresistible to many businesses. Conducting e-commerce through an offshore tax location can improve tax performance at all stages of the value chain. By having web sites in offshore jurisdictions carrying out the functions previously performed in countries with higher tax rates, business can pay tax at lower rates for significant portions of their business operations. Some companies may be able to replace all of their operations with e-commerce facilities in tax havens, significantly reducing their operating overhead. Accordingly, companies that are able to take advantage of this technology can reach more customers and offer more selection at better prices, thereby increasing their profits, while at the same time reducing their tax liability by locating their e-commerce business in an offshore tax haven. However the traditional security of investment and readily access to returns still hold.

If the territory is able to develop and improve infrastructures and policies that facilitate the growth of e-commerce, the country will enjoy an influx of new businesses. Businesses that can operate over the Internet without needing to establish a physical presence in a country with higher tax rates will naturally gravitate to lower tax jurisdictions, such as the British Virgin Islands. As there are numerous tax havens throughout the world, what is needed to set the British Virgin Islands apart is the existence of an environment, both technological and legal, that makes it easier, and hence more profitable, for business to locate in the British Virgin Islands than in another country with comparable tax laws. But it must be an environment that is built on the principles of jurisprudence and market economy.

5. INFRASTRUCTURE, THE KEY TO E-COMMERCE DEVELOPMENT.

The growth and the development of e-commerce in the British Virgin Islands will depend on the existence of and affordable access to a legal and technological infrastructure. This means that, the British Virgin Islands must develop a high-quality global telecommunication network (**Refer paragraph 3 above**) if it is to attract e-commerce clients. Issues of bandwidth, service, fault tolerance and security must be considered. The British Virgin Island's e-commerce infrastructure must be globally interoperable, in other words, they must be able to work with the infrastructures of other countries. Interoperability will allow interconnection, increase market acceptance of e-commerce, and reduce costs. This highlights the importance of a good telecommunications.

The basic requirements for a viable e-commerce industry must be the existence of Internet Service Providers (ISPs) and local Network Access Providers (NAPs) in the British Virgin Islands. Bermuda, for example, already has two ISPs, with the

promise of more to come.³ If the British Virgin Islands wants to compete with tax havens such as Bermuda, it must ensure that it has similar or superior resources.

It should be noted that, the mere existence of ISPs in the British Virgin Islands will not be decisive. It is not enough to just have the necessary infrastructure, services must be available at reasonable cost. BVI's technological infrastructure must therefore be cost-effective and competitive. To this end, public and private partnerships, joint ventures and other similar arrangements with high-tech companies should be examined. If the British Virgin Islands is able to conclude such arrangements, it may be able to gain an edge over other Caribbean tax havens, such as Bermuda, where services are still very expensive. Restrictions on the amount of foreign investment in BVI's telecommunications services and infrastructure should also be reduced. Such restrictions may impede the growth of the e-commerce industry and are counterproductive.

6. THE HUMAN RESOURCES COMPONENT IN E-COMMERCE.

There is also a human component to e-commerce infrastructure. The British Virgin Island's success is also dependent on having a workforce that possesses the necessary digital literacy and business skills. The government should encourage educational institutions in the territory to develop and offer courses to provide the skills needed for e-commerce. From a governmental point of view the labour market will have to produce the managerial skills for the policy development, administration and regulatory segments for the e-commerce industry. On the private sector side, the demand for high technology and services management skills for enterprises will be a critical layer of labour needed for e-commerce. The skills required here are multi-disciplined and multi-dimensional.

The next major grouping of skills will be the ones, which are to provide for and maintain the digital infrastructure. Essentially these would be engineering skills in the areas of computer hardware, telecommunications, computer software and Internet Service providers. Clearly this group of workers is highly digital, very knowledge based and must be kept up to date with the rapid changes in digital technology globally. For this group of skills, worldwide connectivity and connectedness is critical; hence, language skills become critical to permit world communications capability.

The next large skills group will be needed to design, develop and manage the legal framework around which the e-commerce sector will be oriented. There will be the need for legal knowledge in international commerce, commerce in the major markets from which we are trying to attract business and in countries, which have political control over our development policies. There will also be demand for legal skills in the area of e-commerce and intellectual property. Legal skills in demand will be for the development and articulation of a competition policy, which keeps the confidence

of the markets we aspire to serve. The e-commerce industry will also demand legal skills in contract management and resolution related to sales. These skills will be especially critical since sales whether be they business-to-business or business to consumer, will be the fundamental activity in e-commerce. In sales contracts quite naturally there will be disputes and disagreements, which will have to be resolved by courts, arbitrators or adjudicators. Therefore, there will be demand for a set of skills in commercial law.

In the millions of transactions, which will take place daily, there is bound to be issue of security and illegality. Transactions will of necessity involve the handling of highly confidential and personal financial information. In these activities the opportunity for theft, misallocation and misuse of resources or information will be present. In this connection, therefore, the skills to mitigate against, identify, capture and eradication illegality in financial matters will be in high demand. These skills will be very integrated with those of software design, hardware selection, legal management and business management.

The business skills required will also include ordinary behind the sales counter support skills, administrators, and high volume data handlers. The government group must of necessity include skills in the areas of international relations, international business and international business monitoring and analysis. Electronic commerce will impact significantly on almost every labour market segment existing either in terms of upgrading, extending its volume or adding to its flexibility.

The skills set required for e-commerce is an integration of business, international business relations, commerce, computers, telecommunications, electronic security, finance and illegality. The skills set requires workers to be high knowledge, trained in and kept abreast in the areas of digital technology. The workers and management personnel must be able to communicate easily and effectively worldwide in addition to being knowledgeable of the history and culture of the world, which we are aspiring to serve. The key here is to workers empowered through knowledge and skills.

It is obvious that the skills indicated above are not normally developed in the short-term and they are presently not available in the British Virgin Islands without disruptions to existing sectors. This suggests importation of a substantial portion of labour based on the speed of the development of the industry. Further, it implies that an accommodating and proactive **labour** and **immigration policies** must be the centerpiece of the public sector effort to facilitate the development of the e-commerce sector in the British Virgin Islands.

If the British Virgin Islands is able to offer excellent service at competitive rates, combined with a highly-skilled labour-force, it should be able to attract e-commerce clients. Such an approach will help e-commerce in the British Virgin Islands to grow, as more businesses means more money that can be spent on services, increasing their quality while lowering their costs.

7. E-COMMERCE AND EDUCATION.

Like in any other development strategy aimed at international trade, education has a most vital role to play in the long-term development and support of electronic commerce in the British Virgin Islands. However, there are some specific and urgent issues, which the education sector as a whole must address if we are to establish e-commerce. First, education must understand that its product must be world class, that is highly competitive, diverse, efficient and bench marked against the best. Secondly, there must be a concentration on digital disciplines, cultural history and commercial knowledge in its product. In addition, the product must be consistent and sustained in order that the confidence of the business community worldwide will be maintained.

Fundamentally the education and training sector must educate the BVI community about the benefits, costs, opportunities and threats associated with electronic commerce. However, the immediate objective for education should also be to train the present workforce and those who will soon enter the workforce to satisfy that anticipated demand of e-commerce. As an objective for the longer term, the education sector must prepare the resident workforce for the wide range of integrated skills essential for the e-commerce industry.

Education has a key role to play in the development of a national e-commerce attitude with its concomitant commitment to serving people outside our border in essentially faceless transactions. Education must teach our population about electronic commerce and its potential economic, social, political, spatial and environment impact on the British Virgin Islands. Electronic commerce in our context means a further globalization of the British Virgin Islands in terms of immigration, culture, commerce and economy. The opening up of our people to the rest of the world increases vulnerability and by necessity forces us to development wider and more effective ways and means of coping.

In terms of preparing the present and potential labour force, education must consider the needs of workers who want to extend their range of skills to enhance their flexibility and marketability for electronic commerce and related occupations. The present school population needs to be grounded in the fundamentals of electronic commerce such as commerce, law, computerization and telecommunications in order to prepare them to satisfy the potential labour market demand as it arises. Education programmes must focus on related e-commerce occupational flexibility and cross training of workers to allow easy cross over. The education curricula may have to re-arrange priorities and focus on areas that prepare for globalization of the British Virgin Islands society at a much faster pace.

To train the future labour force for electronic commerce, education has a tremendous challenge in terms of its product range, its worldwide focus on language communications, international business skills, international legal skills, country specific commercial skills, electronic security and illegality and worldwide cultures. The focus of education must be on a product benchmarked against the best in the work, highly competitive and consistent, extremely digital and very knowledge about the area of the world in which we have a commercial interest. World-class language skills and computer training programmes are fundamental to the e-commerce industry. A business and commercial attitude in our service programmes must be the fundamental orientation. While it is understood that our capacity to deliver total education and training for e-commerce locally might not be economical or possible, we must develop strategy which lays the foundation of an integrated digital, commercial, business, legal and international framework under which an e-commerce worker may be developed. Of course it is a tremendous to challenge for such a small and recently developed education sector to develop another related set of skills for another workforce to satisfy the demands of another industry in a country already involved in two other highly competitive, international trade areas such as tourism and financial services. But, in what is a cloud, there is always a silver lining. The range of skills required for e-commerce, tourism and financial services are similar.

For education, recruitment of teachers and instructors in the areas above-mentioned is a priority. There is no time to train the teachers needed. The strategy must be a combination of upgrading or re-training the present instructors and add-up other skills via importation of persons from countries where these skills are world class. In this connection the Education Review is timely in terms of development an overall strategy to recruit current teachers and instructors.

8. REGULATION AND CO-OPERATION.

Regulation and co-operation is an essential element for the success of e-commerce. The British Virgin Islands must have practical and clear rules to assist both businesses and consumers. Such rules should provide both clear options and guidance in this area of telecommunications. Effective regulation requires the development of self-regulatory codes, which can provide important protections and assurances to businesses and consumers in the areas of competition, security and intellectual property. These assurances will increase the confidence the international telecommunications community will have in doing business in the British Virgin Islands.

i. Competition:

Excessive government regulation of e-commerce may not be a desirable policy for the British Virgin Islands to pursue. Potential clients are likely to view such a policy as placing them in a difficult position, creating excessive **red tape** and circumscribing their ability to do business. Excessive regulation may also inhibit

the ability of companies to be competitive, which will increase the cost of doing business in the British Virgin Islands. Rather than dealing with what may be perceived as unnecessary hassles, businesses may choose another country in which to do business.

ii. Self-Regulation- Option.

As an alternative to excessive regulation, the government of the British Virgin Islands should consider encouraging private sector self-regulation. By working to remove barriers and to establish e-commerce “ground rules”, including, **market entry rules, code of conduct, best practice guidelines, model contracts and enforcement mechanisms.**

BVI’s e-commerce industry should be able to regulate it self. Consideration should be given to limiting the role of the government to encourage self-regulation, either through policy statements in favour of it, or through making legislative changes that simplify the procedure.

iii. Security and User Confidence

Clients and consumers must have confidence in the BVI’s e-commerce system if they are to do business here. The system should be both transparent and effective and should provide measures to ensure the security, reliability and safety of network services. Specifically, steps must be taken to ensure the reliability of electronic signatures, to maintain user privacy, and to protect consumers.

- **ELECTRONIC SIGNITURES.**

The successful development of e-commerce depends on the development of technologies and regulations enabling cross border transactions in both the private and public sectors. The British Virgin Islands should participate in or be party to the development of a global framework that supports the recognition of electronic transactions, signature authentication methods and certification practices. To this end, it should respect the UNICTRAL Model Law on Electronic Commerce⁶.

The Government should consider allowing the parties to e-commerce transactions to determine the procedures they wish to use to authenticate signatures and other elements of the transaction. This deference to the wishes of the parties ties in with the hands-off approach to regulation noted earlier. Finally, the British Virgin Islands should be willing to accept the authentication procedures adopted by other countries, thereby ensuring seamless transactions wherever possible.

- **PRIVACY.**

Consumers want to have control over the collection and use of their personal data. The British Virgin Islands must ensure that all steps are taken to protect the privacy of personal data processed through e-commerce. Government and businesses must be sensitive to the concerns of individual consumers and take steps to meet them. To this end, the Government should encourage businesses to develop effective standards for consumer and data privacy protection. Legislation should also be formulated to ensure that any misuses of confidential information will be dealt with.

- **CONSUMER PROTECTION.**

Consumers must be assured that they will have the benefit of the same consumer protections if they do business with the e-commerce businesses based in the British Virgin Islands, as they would in a traditional transaction. Accordingly, the British Virgin Islands should consider extending legislation limiting fraudulent, misleading and unfair conduct to cover electronic transactions and should educate both businesses and consumers about the protections available. Policies should also be developed to cover electronic money, payment systems and the trans-border movement of goods purchased through e-commerce. The establishment of effective e-commerce consumer protection will do much to increase consumer confidence.

- **ILLEGALITY.**

In order to ensure that businesses and individuals use BVI's Internet facilities responsibly, an acceptable uses policy should be developed. This policy should contain provisions relating to illegal uses, such as the unauthorized distribution of copyrighted software, net abuses, such as spamming and mail-bombing, tortuous conduct, such as posting defamatory information about individuals, and misuses of system resources, such as the resale of access to CGI scripts installed on servers.

iv. Intellectual Property.

The protection of intellectual property is essential if creativity, investments are to be encouraged, leading to the availability of what the OECD refers to as "a critical mass of content necessary to enable electronic commerce."⁴ Chief among intellectual property concerns in e-commerce are the issues of domain names and copyright protection of

materials and information. The British Virgin Islands should consider encouraging the establishment of a private sector regulatory body to ensure that the global Domain Name System (DNS) is managed in an equitable fashion. This body must work with the World Intellectual Property Organisation (WIPO) and the World Trade Organisation (WTO) to address the issues of domain names and trademarks, to ensure the development of a system that is responsive to both national and international needs in this regard.

9. CONCLUSION.

From the overview of this paper, no doubt if the British Virgin Islands wants to develop e-commerce industry, there should be a clear policy on e-commerce and develop infrastructure that will facilitate the growth of the industry. In this regard the British Virgin Islands has a lot of work to do if it is to become involved in the e-commerce business. Immediate action is crucial. The British Virgin Islands must act now, or risk missing the first wave of industry expansion, leaving it to play “catch-up” to countries with established telecommunications industries. The prospect of developing e-commerce in the British Virgin Islands is not as daunting as it appears, however, owing to the country’s relatively small size. As it was pointed by the Minister of Public Enterprise in Ireland, a country which has begun a comprehensive campaign to attract e-commerce business,

“Because we’re a small country, we can move quickly. A large country wouldn’t be able to provide the rapid response time that’s needed in a high-tech world.”⁵

The British Virgin Island’s size therefore gives it an important edge over other, larger countries. However, it must still move rapidly if it is to keep pace with other tax havens, such as Ireland and Bermuda, in the pursuit of e-commerce business. If the British Virgin Islands as a whole, its government, business community, and workforce, are equal to the challenge, it is possible for the country to become a major force in the e-commerce industry and reap all the economic rewards that this entails.

¹ APEC and Electronic Commerce, www.draft.gov.au/apec/ecom/apec_news2.html

² OECD Forum on Electronic Commerce. Report SG/ EC(99)12 of November 24, 1999.

³ Storie, Bill and Claire Green, Will E-commerce Succeed in Bermuda?

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⁴ OECD Ministerial Conference, A Borderless World: Realising the Potential of Global Electronic Commerce.

⁵ Marks, Debra, Ireland going full-tilt for E-commerce, Supra.

⁶ This law was passed OECD Forum on Electronic commerce and endorsed by FTAA Joint Government and Private Sector Committee of Experts on E-Commerce November 1999.

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