

# BVI Companies: A guide

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The British Virgin Islands (**BVI**) is a leading offshore financial centre, providing robust yet flexible corporate structures within a politically safe and low cost jurisdiction. The most popular BVI corporate vehicles are companies and this guide gives a general overview of the advantages of using BVI companies\*, the types of BVI companies available as well as the key characteristics and ongoing maintenance of BVI companies.

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## Advantages of using a BVI company

BVI companies are used for a variety of purposes, such as group holding companies, asset-holding SPVs (often real-estate or luxury goods) and investment funds and other regulated businesses. The key advantages of using BVI companies are as follows:

- political stability of the BVI;
- tax neutrality, meaning the BVI does not add any extra layer of taxes, ie no income tax, corporation tax or capital gains tax;
- the reputation of the BVI as a mature offshore financial centre;
- the BVI's developed common law legal system and well respected commercial court, with ultimate appeal to the Privy Council;
- straight forward administrative processes and low ongoing costs of maintaining a company within the BVI;
- modern and flexible companies legislation; and
- save for certain specific industries, the fact regulatory approval is not required for a company to conduct its affairs.

## Types of BVI companies

The BVI Business Companies Act 2004 (**Act**) makes provision for several types of companies (as follows):

### Company limited by shares

- the most common type of company incorporated in the BVI;
- has the ability to issue shares, the holders of which are its shareholders (owners);
- its directors manage the day to day affairs; and
- its shareholders enjoy separate legal personality, meaning that shareholder liability is (generally) limited to the amount (if any) unpaid on such shares.

### Restricted purpose company

- a company limited by shares;

- a special purpose vehicle with limited corporate capacity to undertake certain specific purposes;
- typically used in securitisation and structured finance transactions to hold certain assets; and
- must be registered as a restricted purpose company at the time of incorporation.

#### Segregated portfolio company

- a company limited by shares; and
- legal segregation (or ring fencing) of the assets and liabilities of each individual portfolio from the other portfolios, and from those of the company itself.

#### Company limited by guarantee

- both the guarantee members and shareholders enjoy separate legal personality;
- a company limited by guarantee is available as both authorised to issue shares or not authorised to issue shares; and
- typically (but not always) used for non-profit organisations.

#### Unlimited company

- the company may issue an unlimited amount of shares;
- these companies are available as both authorised to issue shares or not authorised to issue shares; and
- at least one of the members must be an unlimited member, who has unlimited liability for the liabilities of the company.

#### Key characteristics

A company is a legal entity, separate from its shareholders, which can sue and be sued in its own right, and which has the full capacity of a natural person. In practice, the most commonly used BVI entity is the company limited by shares. For this reason, the rest of this guide focuses on BVI companies limited by shares, the key characteristics of which are set out below.

#### Company name

- the word 'Limited', 'Corporation', 'Incorporated', 'Societe Anonyme' or 'Sociedad Anonima' or the abbreviation 'Ltd', 'Corp', 'Inc' or 'S.A.' must be a part of the name of every company, and an unlimited company's name must end with 'Unlimited' or 'UnLtd';
- if the company is a restricted purpose company, the name of the company must end with the words '(SPV) Limited' or '(SPV) Ltd';
- a company may be registered with an additional foreign character name approved by the BVI Registrar of Corporate Affairs (**Registrar**);
- indecent or objectionable names are not permitted, such as names that suggest royal patronage or that the entity is regulated (eg 'Trust Company' or 'Bank'); and
- the Registrar has a name reservation system for a set period of time.

#### Registered agent

- every company must have a registered agent that is located in the BVI, regardless of its company type and business operations;
- registered agents must be licensed in the BVI;
- registered agents act as an intermediary between the Registry of Corporate Affairs (and, for the purpose of the BVI economic substance regime (see 'BVI economic substance regime' below), the BVI International Tax Authority (**ITA**)) and the company;
- registered agents will provide services such as incorporation, nominee directors and/or shareholders and company secretaries, company administration (such as filing certain documents and making annual fee submissions) and management (such as maintaining corporate registers); and

- usually, the registered office of a company will be that of its registered agent.

### Constitution

- a company's memorandum and articles of association act as its rulebook and regulate the rights and obligations of its directors and shareholders;
- a company's memorandum of association sets out matters such as the type of company, registered office of the company, registered agent, the company's maximum authorised share limit as well as the company's objects and powers; and
- the content of a company's articles of association can be 'off the shelf' or tailored for a specific purpose (including to conform with a foreign or BVI law governed shareholders' agreement), but often regulate matters such as the issue, transfer and charging of shares, shareholder proceedings, director powers and proceedings, conflicts of interest, record keeping and distributions.

### Management

- subject to the memorandum and articles of association, the directors of a company have the power to manage the day to day business and affairs of the company and almost all decisions can be taken by the board of directors;
- a company director is required to act:
  - in accordance with the Act;
  - in accordance with the company's memorandum and articles of association;
  - honestly, in good faith and in what the director believes to be the best interests of the company (save that a director of a wholly owned subsidiary may, if permitted by the company's memorandum or articles of association, act in the best interests of that company's parent company (even though it may not be in the best interests of that company)); and
  - in accordance with common law duties;
- subject to a company's memorandum and articles of association, company directors don't need to be a natural person and don't need to be a resident of the BVI;
- companies are required to file (and keep updated) a copy of its register of directors with the Registrar, which is not publically available; and
- the number of directors can be prescribed in the company's articles of association, but must (from incorporation) be at least one.

### Shareholders

- the shareholders of a company are its owners, typically enjoying voting and dividend rights (subject to the company's memorandum and articles of association) in the proportions (%) in which they hold shares in the company;
- no minimum share capital requirements are prescribed;
- every company must keep a register of shareholders in the BVI (typically kept at the office of its registered agent) containing (amongst other things) details of its shareholders, the shares they hold and when they became/ceased to be shareholders (the original register of shareholders may also be maintained elsewhere, but the registered agent must keep an up to date copy);
- shares may be issued as fully paid, partly paid or unpaid and consideration for shares can be money, services rendered, property, a promissory note or other binding obligation to contribute money or property to the company;
- the transfer of a registered share is effective only when the name of the transferee is entered in the register of shareholders;
- a company is not required to hold AGMs (annual general meetings), but may do so if its memorandum and articles of association so prescribe;

- the Act codifies the traditional common law basis for shareholders' remedies, and goes further to provide sophisticated remedies for shareholders who object to certain corporate actions, such as a merger involving another BVI company;
- the Act includes statutory pre-emption rights on the issue of shares in a company, but these only apply where a company expressly provides that such rights will apply in its memorandum or articles of association; and
- subject to a company's memorandum and articles of association, a company may hold shares in treasury.

### Distributions and disposals

- distributions may be declared by the directors of a company, subject to a cash flow and balance sheet solvency test;
- a company may buy back the shares of a shareholder, subject to the solvency test; and
- if a company disposes of more than fifty per cent in value of its assets, this must be approved by its shareholders unless the disposal is made in the usual or regular course of the company's business.

### Continuance and discontinuance

- where permitted to do so under its domestic jurisdiction, a company incorporated outside the BVI can generally apply to be continued into the BVI, subject to certain restrictions;
- once complete, the company continues as a body corporate under BVI law and all rights, assets and obligations (including any existing claims) continue;
- subject to its memorandum and articles of association, a company can continue out of the BVI provided the relevant foreign jurisdiction permits this; and
- continuing out of the BVI will not release any existing claims or debts against a company or its directors.

### Other points to note

- US dollar is the official currency in the BVI;
- there are no exchange control laws in the BVI; and
- there are no statutory financial assistance restrictions.

### Incorporation and ongoing maintenance

#### Incorporation of a company

- only a BVI registered agent can apply for the incorporation of a company; and
- incorporation is straightforward and quick, however all BVI registered agents must undertake customer due diligence and adhere to anti-money laundering legislation, including (among other obligations) obtaining the names, dates of birth, residential addresses and nationality of all beneficial owners.

#### Maintenance and ongoing obligations of a BVI company

Companies have few ongoing obligations, the most notable of which being:

- a 'minimum local presence' is required in the BVI, which means having a registered agent and a registered office (typically provided by the registered agent) in the BVI;
- companies are obliged to maintain, at the office of the registered agent, various mandatory documents including its memorandum and articles of association, registers of directors and shareholders and copies of all documents filed by the company in the last ten years;
- a company is not required under the Act to file accounts or returns, but must maintain financial records sufficiently detailed enough to explain the company's transactions;
- ongoing filing with the Registrar for a company is done electronically;
- each company is required to pay an annual fee to the Registrar (or risk being struck off);

- a company is required to file a copy of its register of directors with the Registrar, this will not be publically available, but could be available to competent authorities or pursuant to a court order; and
- neither a company's register of shareholders nor register of charges is required to be filed with the Registrar, however:
  - where a shareholder creates security over shares in a company, the secured party may require the company to file a copy of its register of shareholders with the Registrar (annotated to record the security created by the shareholder to give third parties notice of the secured party's security over the shares); and
  - where a company creates security over any of its assets, a secured party may require the company to file particulars of the security with the Registrar (failure to do so will not invalidate the security, but priority of the security interest may be affected, and most lenders will insist on it being done).

### **BVI economic substance regime**

The Economic Substance (Companies and Limited Partnerships) Act, 2018 came into force on 1 January 2019 and imposes economic substance requirements on companies and limited partnerships in the BVI. The regime applies to legal entities carrying on a 'relevant activity' during any applicable period, with such entities being required to comply with the economic substance requirements in respect of that (or each, as the case may be) activity. The BVI economic substance regime also imposes reporting obligations to allow the ITA to assess whether (among other things) an entity has complied with the relevant substance requirements based upon the information required to be filed by each entity, via its registered agent.

A full consideration of the BVI economic substance regime, including meeting the economic substance requirements and reporting obligations (and penalties for failing to do so), is beyond the scope of this guide. Please refer to our Guides on [BVI economic substance legislation](#) and [BVI beneficial ownership legislation](#) for more information, or speak to your usual Mourant contact.

#### **\* Scope of this guide**

This guide considers Business Companies incorporated under the Act. It does not cover International Business Companies incorporated under the International Business Companies Act 1984.

### **Contacts**

A full list of contacts specialising in BVI corporate law can be found [here](#).

This guide is only intended to give a summary and general overview of the subject matter. It is not intended to be comprehensive and does not constitute, and should not be taken to be, legal advice. If you would like legal advice or further information on any issue raised by this guide, please get in touch with one of your usual contacts. © 2018 MOURANT OZANNES ALL RIGHTS RESERVED