



WHY BVI?

The British Virgin Islands (“BVI”) are home to 488,339 active business companies.

This article considers the reasons for the BVI’s popularity as a jurisdiction to structure international transactions.

BVI COMPANY LAW

The first reason is the flexibility of our company law – the BVI Business Companies Act, 2004 (“BVIBC Act”) which came into full force and effect on January 1, 2007. The BVIBC Act is based on Delaware law but it has been anglicised to take account of the fact that the BVI is a common law jurisdiction.

Incorporation

A business company is incorporated by the filing of the company’s memorandum and articles of association with the Registrar of Corporate Affairs (the “Registrar”) together with a document in the approved form signed by the first registered agent satisfying his consent to act in that capacity. Unlike other jurisdictions, there is no requirement to publicise an intention to incorporate, nor is there any pre-approval by any regulatory body. The process is swift and typically is completed within 24 hours. The memorandum of association (the “Memorandum”) and the articles of association (the “Articles”) of a business company together form its constitution. Both documents are a matter of public record and available for inspection at the offices of the Registrar.

Capital Structure

The capital structure of a business company is simple. The BVIBC Act did away with the legal concept of share capital and premium. A business company is authorised to issue either a specific number of shares or an unlimited number of shares.

Distributions

The absence of the legal concept of share capital and premium has simplified the distributions process. The directors may by resolution authorise any form of distribution by the company to its members at such time and of such amount, as they think fit if they are satisfied, on reasonable grounds that the company, will immediately after such distribution, satisfy the solvency test. The solvency test is both a balance sheet and cash flow test.

Directors

A business company is managed by its board of directors which may consist of one or more persons who can be individuals or companies. The number of directors is determined by the Articles. None of the directors need to be BVI residents. A business company must maintain a register of directors setting forth the names and addresses of the directors. The register is not available for inspection by the public.

Directors meetings may be held within or outside of the BVI and a director participating in the meeting by electronic means will be deemed to be present if all the directors can hear each other.

Directors' Fiduciary Duties

Under the BVIBC Act a director of a company, in exercising his powers or performing his duties shall act honestly and in good faith and in what the director believes to be in the best interests of the company. If expressly provided in the Memorandum or Articles, it is possible to vary these fiduciary duties so that the directors owe their fiduciary duties to the nominating shareholder as opposed to the company as a whole. This is an extremely useful provision in the context of joint ventures as the respective parties will have a person on the board representing their interests.

Audit

A business company must keep such accounts and records as are sufficient to show and explain the company's financial transactions and will, at any time, enable the financial position of the company to be determined with reasonable accuracy. There is, however no requirement in the BVIBC Act to set a date as the company's year end, for an annual audit or for the appointment of auditors.

Squeeze Outs

Under the BVIBC Act there are a range of corporate mechanics which enable business companies to merge, consolidate, restructure and effect squeeze outs. On a merger or consolidation, members holding 90% of the shares may direct the company to redeem the shares of the minority at fair value. Squeeze outs may also be effected by members holding 51% of the votes on a merger or consolidation or such lesser percentage as may be ordered by the court under a scheme of arrangement. A member dissenting from a merger or consolidation is entitled to payment of the fair value of his shares.

To highlight the flexibility of the BVIBC Act, it is possible for the parties to structure a transaction so that the minority members are immune from squeeze outs.

Lender Protection

The BVIBC Act requires a company to maintain a register of all relevant charges created by the company. The business company or the chargee under a charging document may elect to register the charge with the Registrar. Whilst there is no concept of perfection in the BVI, the BVIBC Act provides that in the event a relevant charge on property is registered under the BVIBC Act, it has priority over a relevant charge subsequently registered under the BVIBC Act and a relevant charge on property that is not registered under the BVIBC Act.

Financial Assistance

The BVI has no restrictions on a company providing financial assistance.

COMMERCIAL CONFIDENTIALITY

The BVI regime affords parties a high degree of commercial confidentiality. As noted above the register of directors is not publicly available, nor is the register of members and there is no requirement to publicly file accounts.

STABLE POLITICAL ENVIRONMENT

The BVI is a British Overseas Territory and offers a stable political environment, which provides consistency and certainty. It is on the Organisation for Economic Co-Operation and Development's ("OECD") "White List".

TAXATION

The BVI has no corporation tax, capital gains tax, wealth tax, or any other tax applicable to a business company. Business companies are specifically exempted from income tax. The Income Tax Act also exempts a business company from the provisions of the Stamp Act and the Registration and Records Act in respect of all instruments or deeds relating to the business of the business company, including the transfer of all property to or by the business company and transactions in respect of its securities.

LEGAL FRAMEWORK

The BVI is a common law jurisdiction with English common law having a persuasive role. The BVI has a commercial court dedicated to corporate and commercial matters. The ultimate court of appeal is to the Privy Council in London.

CONCLUSION

The quality and flexibility of the BVIBC Act, tax neutrality, the BVI legal framework and the stable political environment offered by a British Overseas territory, together with its elevation to the OECD White List have all contributed to the BVI becoming the leading offshore jurisdiction to structure international transactions.



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This article is not intended to be a substitute for legal advice or a legal opinion. It deals in broad terms only and is intended to merely provide a brief overview and give general information.

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