



## Article

### Greening the Economy: ESG and BVI Companies

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**Institutional investors and regulators across the globe are increasingly focusing on environmental, social and governance (ESG) issues in terms of investment portfolio composition, corporate best practices and corporate disclosure requirements. British Virgin Islands (BVI) companies provide a flexible yet internationally recognised corporate regime to facilitate ESG investment.**

Active asset managers and financial investors have shown a significant shift towards ESG issues in recent years with a clear trend in favour of ESG growth, particularly in Europe. For example, ahead of the Cop26 climate conference in Glasgow scheduled for November 2021, 168 asset managers and financial investors from 28 countries (which together represent more than US\$17 trillion in combined assets) have signed up to support the Carbon Disclosure Project’s campaign to ensure that data on climate change, deforestation and water usage are properly reported by companies.

Developments such as “green bonds” are also gaining increasing traction to tap into this growing demand and provide investors with exposure to green assets. In 2020, US\$152 billion was invested in ESG-labelled products and US\$54 billion was invested in funds specialising in ESG issues in the first five months of 2021 alone. The proceeds from such bond issuances are used to fund eligible green projects complying with guidelines such as the “Green Bond Principles”, voluntary guidelines published by the International Capital Markets Association, promoting climate change mitigation, low carbon society and the achievement of the UN Sustainable Development Goals.

BVI companies provide issuers with a flexible and low cost vehicle, which can be tailored to meet the specific requirements of the proposed transaction while being internationally recognised and listed on exchanges around the world.

Some of the key features of BVI entities which may be of relevance to issuers of green bonds and other ESG products and in structuring ESG funds include:

#### Flexible corporate regime

There are no restrictions under BVI law on the objects of a BVI company, which can be unlimited or, in the case of a restricted purpose company, as specified in the memorandum of association of the company. The BVI Business Companies Act allows significant flexibility in how BVI companies are structured in terms of capital structure, management roles and required levels of shareholder involvement.

There are also no financial assistance restrictions or guarantee limitations applicable to BVI companies, with BVI companies having clear statutory power and capacity to grant guarantees regardless of corporate benefit.

#### No disclosure restrictions

BVI law imposes no specific disclosure requirements or restrictions on BVI companies in terms of offering documents. BVI companies are therefore free to tailor their disclosures to follow market practice and guidance, including with respect to ESG reporting.

#### Low cost and reduced administrative burden

Directors of BVI companies have wide discretion and management powers to carry on the business and affairs of the Company, subject to their fiduciary duties to the company and its shareholders and the memorandum and articles of association of the company.

BVI companies are also low cost and efficient vehicles, allowing invested funds to be directed to the intended green projects with minimal wastage. In particular:

- BVI companies are subject to low annual maintenance costs, with the annual government fees in respect of companies authorised to issue up to 50,000 shares being only US\$450 per year.
- There is no income, VAT or other tax of the BVI imposed on BVI companies by withholding or otherwise. In addition BVI companies are not subject to stamp duty in the BVI and no registration, documentary, recording, transfer or other similar tax, fee or charge is payable in the BVI in connection with the execution, delivery, filing, registration or performance of transaction documents (other than filing fees in respect of the public registration of security).
- For BVI companies not specifically regulated by the BVI Financial Services Commission, there are no annual audit or financial statement requirements in the BVI, limiting the administrative burden on the company.

## Bank accounts and exchange controls

There is no requirement for a BVI company to hold its bank account(s) in the BVI and therefore accounts may be opened in the jurisdictions where the proposed green projects and/or the investors are based and there is no exchange control legislation under British Virgin Islands law.

**Conyers Dill & Pearman signed the Green VI Green Pledge on Earth Day 2021 (22 April 2021) and are working toward formal accreditation for our sustainability programme with Green VI, a BVI not-for-profit organisation established in 2009 to combat climate change through environmental improvements.**

## We are here to help

Tailored professional advice should be sought in respect of the individual circumstances. Please feel free to reach out to your usual Conyers contacts with any questions regarding BVI companies and ESG investments.

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