



Comparison of Laws in the British  
Virgin Islands and the Cayman  
Islands Relating to Offshore  
Companies

## Preface

This publication has been prepared for the assistance of those who are considering the formation of a company in an offshore jurisdiction for the conduct of business outside such jurisdiction, such as a business company (“BC”) in the British Virgin Islands established under the BVI Business Companies Act (the “BVI Act”), or an exempted company in the Cayman Islands (“Cayman”) established under the Companies Act of the Cayman Islands (the “Cayman Act”).

This publication does not deal with all types of companies that may be formed in either of the above jurisdictions, or with the laws and regulations which may be applicable to certain business activities. It deals principally with the more common corporate forms and activities. Certain procedures are summarised but they may require a number of intermediate steps. For the sake of convenience, certain abbreviations are used, such as referring to “governmental approvals”, without specifying the particular body or its function.

This publication deals in broad terms with the requirements of each jurisdiction for the establishment and operation of a company. It is not intended to be exhaustive, but merely to provide brief details and information which we hope will be of use to our clients. We recommend that our clients seek legal advice in relation to each jurisdiction on their specific proposals before taking steps to implement them.

Before proceeding with the incorporation of a company in any of the jurisdictions, persons are advised to consult their tax, legal and other professional advisors in their respective jurisdiction.

For current listings of the government fees for each jurisdiction, please contact Conyers.

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BRITISH VIRGIN ISLANDS	CAYMAN
<b>1. TYPES OF COMPANIES</b>	
A business company (“BC”) may be incorporated as a company limited by shares with perpetual existence. In addition, a company may also be limited by guarantee (with or without shares), unlimited, or a segregated portfolio company.	Companies are generally incorporated with limited liability and perpetual existence. An exempted company may also take the form of a limited duration company, a company limited by guarantee, a company limited by shares and guarantee, an unlimited liability company, and a segregated portfolio company.
<b>2. INCORPORATION APPROVALS</b>	
No governmental approval is required for the incorporation of a BC. Certain business activities may require licensing.	No governmental approval is required for the incorporation of a company. Certain business activities may require licensing or registration.
<b>3. INCORPORATION PROCEDURE</b>	
There is no requirement to publicise an intention to incorporate. A BC is incorporated by the filing of its memorandum and articles of association with the Registrar. Included with the incorporating documents must be a confirmation by the company’s first registered agent. The incorporation process can generally be completed within 24 hours.	There is no requirement to publicise an intention to incorporate. A company is generally incorporated by delivery of two signed copies of the memorandum of association and articles of association, if any, to the Registrar. A proposed director of the relevant exempted company must submit to the Registrar a signed declaration to the effect that operation of the proposed exempted company will be conducted mainly outside Cayman. The incorporation process can be completed on an express basis within 24 hours.
<b>4. CONTINUATIONS AND DISCONTINUATIONS</b>	
BVI law provides that companies may continue into and discontinue out of the BVI.	Cayman law provides that companies may continue into and discontinue out of Cayman.
<b>5. BUSINESS RESTRICTIONS</b>	
Subject to other requirements herein, there are no restrictions on a BC carrying on business within the BVI although certain activities may require a licence from the Financial Services Commission.	An exempted company is not entitled to trade in Cayman with any person except in furtherance of business “carried on outside” Cayman unless the exempted company holds a licence to carry on business in Cayman under any applicable law and it may not offer any of its securities to the public in Cayman, unless it is listed on the Cayman Islands Stock Exchange. Shares of an exempted company may be acquired by other Cayman exempted companies, Cayman non-resident companies and exempted limited partnerships in Cayman.

BRITISH VIRGIN ISLANDS	CAYMAN
<b>6. ECONOMIC SUBSTANCE</b>	
<p>A “corporate and legal entity” which carries on a “relevant activity” during any financial period and is not resident for tax purposes in a jurisdiction outside the BVI (other than a jurisdiction on Annex 1 of the European Union list of non-cooperative jurisdictions for tax purposes) must comply with the economic substance requirements in relation to that activity. “Corporate and legal entities” include BCs, foreign companies, limited partnerships and foreign limited partnerships. “Relevant activities” mean any of the following activities:</p> <ul style="list-style-type: none"> <li>• banking business</li> <li>• insurance business</li> <li>• fund management business</li> <li>• finance and leasing business</li> <li>• headquarters business</li> <li>• shipping business</li> <li>• holding business</li> <li>• intellectual property business</li> <li>• distribution and service centre business</li> </ul>	<p>“Relevant entities” carrying on a “relevant activity” will need to comply with economic substance requirements in Cayman. “Relevant entities” include companies (other than domestic companies), partnerships (other than local partnerships) LLCs, LLPs, ELPs, and foreign registered companies and partnerships unless they are tax resident outside Cayman, or an investment fund, or a not-for-profit.</p> <p>“Relevant activities” include:</p> <ul style="list-style-type: none"> <li>• banking</li> <li>• distribution and service centre</li> <li>• financing and leasing</li> <li>• fund management</li> <li>• headquarters</li> <li>• holding company</li> <li>• insurance</li> <li>• intellectual property</li> <li>• shipping</li> </ul>
<b>7. NAMES</b>	
<p>The proposed name of the BC can be reserved with the Registrar. The name reservation can usually be confirmed within 24 hours. The name may, however, be reserved for a further period of 90 days upon payment of a nominal fee. One of the words “Limited”, “Corporation”, “incorporated”, “Societe Anonyme” or “Sociedad Anonima” or any of their respective abbreviations must appear at the end of the company’s name.</p>	<p>The proposed name of the company can be reserved with the Registrar on a monthly basis for a maximum of 3 months at a time. A small fee is payable for each month the name is reserved. The Cayman Act contains certain restrictions on names. An exempted company need not have the word “Limited” or “Ltd” at the end of its name. A company may have a dual foreign name in something other than Roman script.</p>
<b>8. REGISTERED OFFICE</b>	
<p>A BC must have a registered office in the BVI. The address of the registered office is a matter of public record. A post office box cannot be used as a registered office.</p>	<p>Every company must have a registered office in Cayman recorded by the Registrar and published by public notice. The situation of the registered office is a matter of public record. On request, members of the public are entitled to be informed of the location of the registered office of any exempted company registered under the Cayman Act. A post office box cannot be used as a</p>

BRITISH VIRGIN ISLANDS	CAYMAN
	registered office.
<b>9. DIRECTORS, OFFICERS AND REPRESENTATIVES</b>	
<p>The minimum number of directors of a BC is one. There is no requirement that any of the directors be resident in the BVI. Corporate directors are permitted. There is no express requirement to appoint any particular officer. The directors may appoint any person, including a person who is a director, to be an officer or agent of the company. A BC must have at all times a licensed registered agent in the BVI. The name of the registered agent is a matter of public record.</p>	<p>The minimum number of directors of a Cayman company is one. There is no requirement that any of the directors be resident in Cayman. Corporate directors are permitted. An exempted company may in its articles provide that a director must hold at least one share in the company. An exempted company must have such officers as are prescribed by its articles.</p>
<b>10. SHAREHOLDERS</b>	
<p>Generally, a BC must have at least one shareholder. Nominee shareholders are permitted. A BC must maintain a register of members, a copy of which must be kept at the registered office of the BC, but the register need not be made available for public inspection.</p>	<p>An exempted company must have at least one shareholder. Nominee shareholders are permitted. The names of all shareholders of an exempted company must be maintained in a register of members. The register of members of an exempted company need not be kept at the registered office, and need not be available for inspection by the public or any governmental authority, save in the case of a notice or order under the Tax Information Authority Act.</p>
<b>11. BENEFICIAL OWNERSHIP</b>	
<p>Unless exempted by, for example, being listed or regulated, a BC is required to collect, maintain and keep up to date information on the beneficial owner of the BC, which it shall file with its registered agent. Any changes in the beneficial owner or information relating to its interest in the BC must, within 15 days of the change, be notified to the registered agent.</p>	<p>Unless an alternative route to compliance is available, for example, being listed or licensed under a Cayman regulatory law, each company's corporate service provider has an obligation to establish and maintain a register of its beneficial owners to be kept at its registered office. Each company is required to take reasonable steps to identify any registrable beneficial owners which include individual beneficial owners or the company and all Cayman incorporated, formed or registered legal entities that would be beneficial owners if they were individuals.</p>
<b>12. CONSTITUTIONAL DOCUMENTS</b>	
<p>The constitutional documents of a BC are its memorandum and articles of association. The memorandum must include: the BC's name; address of the registered office; the name and address of the registered agent; whether the company is limited by shares, whether the company is a guarantee company, whether the company is an unlimited liability company, the maximum number of shares that the company is authorised to issue, the classes of shares, whether the company is a segregated portfolio company and whether or not the company may issue fractional shares. A licence is required for certain types</p>	<p>The constitutional documents of an exempted company are its memorandum and articles of association. The memorandum of association must specify the name and registered office of a company. It may specify the objects and may provide that business shall be restricted to furtherance of the specified objects. Unless expressly restricted by its memorandum of association, an exempted company can have unrestricted powers. An exempted company is capable of exercising all the functions of a natural person, irrespective of any question of corporate benefit. If no objects are specified, or if the objects are specified but</p>

BRITISH VIRGIN ISLANDS	CAYMAN
<p>of business activities. The memorandum and articles are binding as between the company and each member, and between each member of the company. The articles must be included when the memorandum is submitted for registration with the Registrar. Both are available for inspection by the public.</p>	<p>the business of the company is not restricted to the furtherance of those objects, then the company shall have full power and authority to carry out any object not prohibited by law. An exempted company may register articles. The articles only bind the company and its members when registered. If no articles of association are registered with the Registrar, the regulations of Table A of the Cayman Act will apply as the company's articles. Table A will also apply to any articles registered to the extent that the regulations in Table A are not specifically excluded or modified by the articles. In either case, the applicable regulations of Table A apply as the company's articles in the same manner and to the same extent as if contained in duly registered articles. The articles of association provide for the regulation of a company's affairs and will set out the rights and duties as between the company, the shareholders and the directors. The articles of association are not available for inspection by the public. Where articles have been registered, a copy of every "special resolution" must also be filed with the Registrar either annexed to or embodied in the articles.</p>
<b>13. AUDITORS</b>	
<p>There are no provisions in the BVI Act for either an annual audit or the appointment of an auditor.</p>	<p>Generally, unless licenced or registered under a regulatory act in Cayman, there is no requirement that an exempted company appoint an auditor or file financial statements with the Registrar or any other governmental authority. Standard articles may provide for the presentation of financial statements and a directors' report at annual general meetings and may provide that this requirement may be waived by the shareholders.</p>
<b>14. BOOKS OF ACCOUNT AND OTHER RECORDS OF THE COMPANY</b>	
<p>A BC is required to keep its records and underlying documentation at the office of its registered agent or at such other place as the directors may determine. The records must be sufficient to show and explain the company's transactions and must enable the financial position of the company to be determined with reasonable accuracy. Such records must be kept for at least five years from the date of completion of the transaction in question or the date the company terminates the business relationship to which the records relate. If such records are kept at a place other than the office of the registered agent, the company is required to provide the registered agent with a written record of the physical address of the records.</p>	<p>An exempted company must keep proper records of account with respect to all monies received and expended and the matters in respect of which the receipt and expenditure takes place, all sales and purchases of goods, and the assets and liabilities of the company, as necessary to give a true and fair view of the state of the company's affairs and explanation of its transactions. Articles may provide that the company must keep books of account at its registered office or such other place as the directors decide. If kept outside Cayman, such books and records must be made available at the registered office annually and if an order for production of same is made under the Tax Information Authority Act.</p>
<b>15. DIRECTORS' MEETINGS</b>	
<p>Subject to specific regulatory requirements, the BVI Act provides that subject</p>	<p>Where a meeting is to be held, voting may be undertaken by proxy where the</p>

BRITISH VIRGIN ISLANDS	CAYMAN
<p>to any limitations in the memorandum or articles, the directors may meet within or outside the BVI as they deem necessary or desirable. Subject to the memorandum or articles, each director must be given reasonable notice of a meeting of the directors. Any action that may be taken by the directors at a meeting may also be taken by them by resolution consented to in writing, without the need for notice. If the articles permit, a written resolution of the board may be passed by such majority of directors as is specified. If the articles do not specify a particular majority, unanimity is required.</p>	<p>articles permit. Notice of a meeting of the directors must be given in accordance with the articles. A meeting of directors or any committee thereof may be validly convened, subject to the articles, with only one director present in person.</p>
<b>16. INDEMNIFICATION OF DIRECTORS AND OFFICERS</b>	
<p>The BVI Act provides that a BC, subject to any limitations in its memorandum or articles, may indemnify against all expenses, including legal fees, and against all judgements, fines and amounts paid in settlement and reasonably incurred in connection with proceedings any person who is or was a party or is threatened to be made a party to any threatened, pending or completed proceedings, whether civil or criminal, administrative or investigative, by reason of the fact that the person is or was a director of the BC or who is or was, at the request of the BC, serving as a director of, or in any other capacity is or was acting for another company or partnership, joint venture, trust or other enterprise provided that such indemnification shall only extend to directors who acted honestly and in good faith and in what he believed to be in the best interests of the BC, and in the case of criminal proceedings, the person had no reasonable cause to believe his conduct was unlawful.</p>	<p>The Cayman Act does not limit the extent to which a company's articles of association may provide for the indemnification of officers and directors, except to the extent that such provision may be held by Cayman courts to be contrary to public policy (for instance, for purporting to provide indemnification against the consequences of committing a crime). As such, an officer or director may not be indemnified for his own dishonesty or wilful neglect or default. If the memorandum of association of an exempted company so provides, the liability of its directors, managers and the managing director may be unlimited.</p>
<b>17. SHAREHOLDERS' MEETINGS</b>	
<p>The BVI Act does not require that a BC hold an annual general meeting of its shareholders. The BVI Act provides that the minimum notice with respect to the calling of a shareholders' meeting is seven days. The memorandum or articles may further extend the notice period. Subject to a provision in the memorandum or articles of association for a lesser percentage, upon the written request of shareholders holding at least 30% of the votes of the outstanding voting shares in the company, the directors of a BC are required to convene a meeting of shareholders. Shareholders' meetings need not be held in the BVI.</p>	<p>An exempted company is not required to hold an annual general meeting. A meeting of shareholders, or a class of shareholders, may be validly convened and business conducted, subject to the memorandum and the articles, with only one shareholder present in person, or as the articles provide, on such notice to shareholders as the articles prescribe. Articles may provide for general meetings of shareholders to be called only by the directors or at the written request of shareholders in accordance with the articles. Where there is no contrary provision in the articles, a meeting shall be duly summoned where 5 days' notice is served on every member, 3 members are competent to summon the meeting, and any person elected by the members present is competent to preside as chairman. Shareholders' meetings need not be held in Cayman.</p>
<b>18. VOTING</b>	
<p>Shareholders may vote at general meetings in person or by proxy. The holder</p>	<p>Shareholders may vote at general meetings in person. In so far as the</p>

BRITISH VIRGIN ISLANDS	CAYMAN
<p>of a proxy may, but need not, be a shareholder. Unless the memorandum or articles provide otherwise, resolutions of shareholders are generally required to be approved by a simple majority. A resolution that may be passed by the shareholders may be approved by consent in writing without the need for notice of a meeting.</p>	<p>company's articles provide, shareholders may vote by proxy; the holder of a proxy may, but need not, be a shareholder and a corporate shareholder of the company may appoint such person as it thinks fit to be its representative at any general meeting of the company or class of shareholders of the company. The Cayman Act requires that certain decisions of the shareholders in general meeting must be approved by a "special resolution". A resolution will be a special resolution when passed by at least two-thirds (or such greater number as specified in the articles) of the shareholders who vote in person or by proxy at a general meeting and notice of the meeting specified the intention to propose a special resolution. The articles may specify a higher threshold for certain special resolutions. A special resolution will also be made when, if authorised in the articles, a special resolution in writing is approved and signed by all shareholders entitled to vote at a general meeting. Except as aforesaid, resolutions require to be approved by simple majority. Where no regulations are made as to voting, every member has one vote.</p>
<p><b>19. PUBLIC RECORDS</b></p>	
<p>The following documents are of public record: (1) the memorandum and articles of association (including the name of the registered agent and registered office); (2) the certificate of incorporation; (3) the names of current directors (upon payment of a fee); and (4) the register of registered charges kept by the Registrar. A BC may elect to submit the register of shareholders to the Registrar for registration and thus make it available for public inspection.</p>	<p>The notice of registered office is a public record. The register of mortgages is open to creditors and shareholders. A list of the name of the current directors may be inspected at the Registry upon payment of a fee. A register of companies maintained by the Registrar and containing certain required company particulars under the Cayman Act is also available for inspection by any person on payment of a fee, subject to any conditions the Registrar may impose.</p>
<p><b>20. REGISTER OF MORTGAGES AND CHARGES</b></p>	
<p>A BC must maintain a register of charges over any of its worldwide assets. A charge will bind the BC in accordance with the governing law of the charge. The BC or the chargee may elect to register a charge with the Registrar. Any registered charge will have priority over any subsequently registered charge, and any earlier created but unregistered charge (except a charge created prior to: (a) in the case of a pre-BVI Act company, the date that it is re-registered as a BC, (b) in the case of a BC that is continued under the BVI Act, the date of its continuation, or (c) in any other case, 1 January 2005). Priority is based upon the date of registration and not the date of creation of the charge. There is no time period within which a charge must be registered in order to be effective.</p>	<p>An exempted company must maintain at its registered office a register of all mortgages, charges and other securities over the assets of the company. The register of charges is open to inspection by shareholders and creditors at all reasonable times. Common law provisions apply to priority.</p>
<p><b>21. SHARE CAPITAL</b></p>	
<p>There is no minimum authorised or issued share capital. Fractional shares and</p>	<p>There is no minimum authorised or issued share capital. The minimum annual</p>

BRITISH VIRGIN ISLANDS	CAYMAN
shares of no par value may be issued. Shares may be issued fully, partly or nil paid. Bearer shares are not permitted.	government fee is payable on an authorised share capital of up to \$50,000. Fractional shares and shares of no par value may be issued. Shares may be issued fully, partly or nil paid. Bearer shares are not permitted.
<b>22. PROSPECTUSES AND PUBLIC OFFERS</b>	
The BVI Act does not require the issue or publication of a prospectus where a BVI company offers shares to the public (legislation on this issue has been drafted but not yet come into force). However, where a BC carries on business as a public fund, it will be required to register a prospectus with the Financial Services Commission and make such prospectus available to its investors.	The Cayman Act does not require the issue or publication of a prospectus where an exempted company offers shares to the public. However, in the context of regulated mutual fund companies, a prospectus may be required under the Mutual Funds Act and, if required, then a copy of the same must be filed with the Cayman Islands Monetary Authority. An exempted company (other than one which is listed on the Cayman Islands Stock Exchange) is prohibited from making any invitation to the “public” in Cayman to subscribe for any its securities.
<b>23. TRANSFER OF SHARES</b>	
Subject to any limitations in the memorandum or articles, registered shares of a BC may be transferred by a written instrument of transfer signed by the transferor and containing the name and address of the transferee. In the absence of a written instrument of transfer because it has been lost or destroyed, the directors may accept such evidence of a transfer of shares as they consider appropriate.	An exempted company can transfer its shares if a transfer is expressly or impliedly permitted by the company’s articles and any restriction or condition on the transfer set out in the company’s articles is observed. The articles may provide for transfers to be effected by a standard instrument of transfer signed by or on behalf of the transferor and the transferee. Paperless transfers of listed shares are permitted.
<b>24. REDEMPTION AND RE-PURCHASE OF SHARES</b>	
Subject to its memorandum or articles, a BC may purchase, redeem or otherwise acquire its own shares. No purchase, redemption or other acquisition of its own shares, with limited exceptions, is permitted unless the directors determine that immediately after the purchase, redemption or acquisition (i) the value of the company’s assets will exceed its liabilities and (ii) the company will be able to pay its debts as they fall due. The acquired shares may be cancelled or held as treasury shares.	An exempted company may, if authorised by its articles, issue shares which are to be redeemed or are liable to be redeemed at the option of the company or the shareholder, and it may purchase its own shares, including any redeemable shares. A redemption or purchase may be made out of profits, share premium, the proceeds of a fresh issue of shares made for the purpose of the redemption or purchase or, under certain circumstances, out of capital. No redemption or purchase may take place unless the shares are fully paid, or if as a result of the redemption or purchase, there would no longer be any other member of the company holding shares. Shares redeemed may be held in treasury or may be cancelled and are available for reissue.
<b>25. INCREASE OF SHARE CAPITAL</b>	
Subject to the memorandum or articles, a BC may by resolution of its members or directors, amend its memorandum of association to increase the number of	A company can increase its share capital if authorized by its articles. The articles may provide that this be done by ordinary resolution of the shareholders

BRITISH VIRGIN ISLANDS	CAYMAN
shares it is authorised to issue or the par value of its shares. Any such increase must be notified to the Registrar.	in general meeting.
<b>26. REDUCTION OF SHARE CAPITAL</b>	
A BC may by resolution of its members or directors amend its memorandum of association to reduce the number of shares it is authorised to issue or the par value of its shares. Any such reduction must be notified to the Registrar.	Subject to the provisions of the Cayman Act and to confirmation by the court, a company, if so authorized by its articles, may reduce its share capital by special resolution of its shareholders. After the resolution is passed, the company must apply to the court for an order confirming the reduction. A copy of the order of the court and a minute approved by the court setting out particulars prescribed in the Cayman Act must be registered with the Registrar. A notice of the registration must be published in the manner directed by the court.
<b>27. DIVIDENDS</b>	
A BC may declare and make a distribution (which term includes a dividend), provided that the directors are satisfied that immediately after the payment of the dividend, (i) the value of the company's assets will exceed its liabilities and (ii) the company will be able to pay its debts as they fall due.	Subject to any contrary provisions in the articles of association, a company may pay dividends out of profits or its share premium account. No dividend may be paid out of the share premium account unless immediately following the payment the company is able to pay its debts as they fall due in the ordinary course of business.
<b>28. STAMP DUTY</b>	
The BVI Act exempts a BC from the provisions of the BVI Stamp Act and the Registration and Records Act in respect of all instruments or deeds relating to the business of the BC, including the transfer of all property to or by the BC and transactions in respect of its securities except that instruments relating to the transfer to or by a BC of an interest in BVI land or transactions in respect of securities of a BC that has, or whose subsidiaries have, an interest in any BVI land, are subject to BVI stamp duty.	Certain documents are subject to stamp duty which is generally a nominal amount. Generally, stamp duty is only payable if the document in question is executed in the Cayman Islands or brought into the Islands.
<b>29. TAXATION</b>	
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. Individuals residing and working in the BVI are subject to a modest payroll tax.	No taxes are imposed in Cayman upon an exempted company or its shareholders. An exempted company is entitled to apply for upon payment of a fee and receive an undertaking from the Cayman government such that no law enacted in Cayman imposing any tax to be levied on profits, income, gains or appreciation or which is in the nature of estate duty or inheritance tax shall apply to an exempted company, or its shares or by withholding for a period of up to twenty years, which is usually renewable for a further ten years upon expiry.

BRITISH VIRGIN ISLANDS	CAYMAN
<b>30. EXCHANGE CONTROL</b>	
There are no exchange controls in BVI.	There are no exchange controls in Cayman.

*This publication should not be construed as legal advice and is not intended to be relied upon in relation to any specific matter. It deals in broad terms only and is intended merely to provide a brief overview and give general information.*

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