

British Virgin Islands - BVI Business Companies

Introduction

This note describes certain features of a BVI Business Company (a "**Company**" or "**Companies**") incorporated in the British Virgin Islands (the "**BVI**") under the BVI Business Companies Act, 2004 (as amended) (the "**BC Act**"). Further information can be obtained from your usual Walkers contact or any of the Walkers partners listed at the end of this note.

Types of companies

Almost all Companies are incorporated or continued into the BVI as a company limited by shares and this note consequently assumes that the Company incorporated or continued is or will be such a company.

It is possible to incorporate or continue a Company as a company limited by guarantee or an unlimited company (in each case whether authorised to issue shares or not) but in practice this is rarely done.

Timing of incorporation

A Company can usually be incorporated within 24 hours. A Company is incorporated by the proposed registered agent (as incorporator) signing the Memorandum and Articles of Association ("**Memorandum and Articles**") and filing them with the Registrar of Corporate Affairs (the "**Registrar**").

Incorporation/annual companies registry and registered agent's fees

A fee of US\$450 or US\$1,200 (depending on whether the Company is authorised to issue up to or more than 50,000 shares) is payable to the BVI Companies Registry (the "**Registry**") on incorporation and annually thereafter. In addition, the Company's registered agent will charge an annual fee for providing a registered office and maintaining the Company's books and records required to be kept in the BVI.

Nature of business permitted

Subject to a Company's Memorandum and Articles, the objects of a Company are usually unrestricted.

Government regulatory approvals

No governmental or regulatory approvals are required for incorporating a Company, unless the Company's business is one regulated in the BVI. There are no foreign exchange controls or investment restrictions in the BVI.

Name and foreign name

Generally, the name of a limited company, must end with the word 'Limited', 'Corporation', 'Incorporated', 'Societe Anonyme' or 'Sociedad Anonima'; or the abbreviation 'Ltd', 'Corp', 'Tnc' or 'S.A.'. If required, a name can be reserved.

A Company may also be registered with an additional name written in foreign characters which is approved by the Registrar. The foreign character name need not be an exact translation of the Company's English name.

Registered office and registered agent

A Company must have a registered office with a physical address in the BVI, and a registered agent. The registered office of the Company is invariably the office of the registered agent.

Shares

A Company may have any number of different classes or series of shares with different rights. Shares may have a par value expressed in any currency or no par value.

Directors

A minimum of one director is required (unless the Company is regulated as a fund under the BVI Mutual Funds Regulations, 2010 (as amended), in which case a minimum of two directors is required).

There are no residency or qualification requirements for directors or shareholders of a Company. Corporate directors are permitted.

Subject to a Company's Memorandum and Articles, the business of a Company is usually managed by the directors. Shareholders do not generally participate in the day to day management of a Company's business.

Directors owe fiduciary duties to the Company. Generally, BVI law requires a director of a Company, in exercising his powers or performing his duties, to act honestly and in good faith and in what the director believes to be in the best interests of the Company.

Shareholders

Once shares have been issued, a Company should have a minimum of one shareholder at any time. Subject to the Company's Memorandum and Articles, there is no maximum number of shareholders. There are no minimum paid-in capital requirements or thin capitalisation rules.

A shareholder's liability is limited to the amount, if any, unpaid on their shares.

Meetings and Resolutions

A Company is not required to hold any minimum number of board or shareholder meetings, unless so required by its Memorandum and Articles. Board and shareholder meetings can be held inside or outside the BVI. Resolutions of the board or shareholders can alternatively be passed by written resolution.

Distributions

Subject to a Company's Memorandum and Articles, a Company may make a distribution of cash or assets to its shareholders provided that following the distribution the value of the Company's assets exceed its liabilities and the Company is able to pay its debts as they fall due.

Books, records

A Company must keep the original or a copy of its register of shareholders and register of directors, together with copies of all notices and other documents filed by the Company with the Registrar in the previous ten years at the office of its registered agent. In addition, the Company must keep its financial records and underlying documentation either at the offices of its registered agent or at any other place inside or outside the BVI and retain these for a period of five years. The register of directors of Companies incorporated after 1 April 2016 is required to be filed with the Registrar from incorporation. Companies incorporated before 1 April 2016 had until 31 March 2017 to comply with this requirement. The register of directors does not, however, become publicly available as a result of such filing. The register of shareholders is also a private register, although a Company may elect to file a copy of its register of shareholders publicly with the Registrar. The Memorandum and Articles are publicly available from the Registrar by carrying out a company search.

A Company must keep a private register of any charges given by the Company over its assets at its registered office or at the office of its registered agent. A Company (or a security holder) may also elect to make a public security filing with the Registrar in the Company's register of registered charges. A public security filing generally gives priority to the security holder over any subsequent or unregistered interests.

With the exception of filings by a security holder, a Company's registered agent generally has responsibility for all filings with the Registrar, which are made through the Registry's sophisticated on line filing system.

Common Seal

A Company must have a common seal and an imprint of the seal must be kept at the office of the registered agent. If the Company has a foreign character name, the common seal may also contain its foreign characters. However, other methods of execution of documents by the Company are available so that in practice the seal does not have to be used.

Accounts and auditors

A Company must keep records that are sufficient to show and explain its transactions and enable its financial position to be determined with reasonable accuracy. Records may be kept inside or outside the BVI.

However, there is no requirement to appoint auditors or to file accounts with any BVI governmental authority (unless in certain cases where the Company's business is one regulated by the BVI Financial Services Commission).

Mergers and consolidations

Two or more Companies may either merge with one company surviving or consolidate to form a new company in accordance with the provisions of the BC Act. One or more BVI companies may merge or consolidate with one or more foreign companies, with the surviving company or consolidated company being either a BVI company or a foreign company.

Tax

A Company which does not conduct business in the BVI will not generally be subject to any BVI stamp duties, income taxes, corporate or capital gains taxes, withholdings, levies, registration taxes, estate duties, inheritance taxes or gift taxes or other duties or similar taxes or charges.

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For further information please refer to your usual contact or:

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