

BVI Corporations

Corporations incorporated in the British Virgin Islands ("BVI") are governed by the BVI Business Companies Act 2004.

Incorporation

A company is incorporated by the submission of a Memorandum by the proposed Resident Agent as the incorporator, and the issuance of a Certificate of Incorporation by the Registrar. A number of different types of companies can be incorporated under the act, such as companies limited by shares, companies limited by guarantee, unlimited companies, restricted purpose companies, and segregated portfolio companies.

Memorandum and Articles

The Memorandum must state the name and type of company, its registered office, and the name and address of the Registered Agent. Companies authorized to issue shares must state the maximum number of shares that can be issued as well as the classes of shares that the company is authorized to issue. Restricted Purpose Companies and Segregated Portfolio Companies must disclose their special status.

Capacity and Powers

A company is a separate legal entity, and has power and capacity to undertake any business or enter into any transaction, including issuing shares, debt obligations, and options to acquire shares and debt obligations, guaranteeing liabilities, pledging assets, etc.

Shares

Shares are personal property, and give the holders the right to vote, and receive an equal share in any dividend or distribution of the surplus assets of the company. The company may issue more than one class of shares, with or without par value, and for such consideration and on such terms as the directors may determine. Companies do not have a minimum share capital. Distributions can only be made if the company will meet the solvency test immediately after the distribution. A Register of Members must be kept.

Members

A company must have one or more members. A member of a limited liability company has no responsibility for the liabilities of the company, and any responsibility is limited to any amount unpaid on shares, any liability provided for in the memorandum and articles, and any liability to repay a distribution. Meetings of members may be called by the directors, and may be held outside the BVI. A quorum requires at least 50% of the votes.

Company Administration

A company must have a Registered Office in the BVI, and a licensed Registered Agent. The Registered Agent must keep: the Memorandum and Articles; the Register of Members; the Register of Directors; and copies of all notices filed by the company. A company must keep financial records sufficient to show the company's transactions and enable the transactions

to be determined with accuracy, and must retain the records and for at least 5 years. A company must have a seal, and imprint of which must be kept at the office of the Registered Agent. A company shall also keep the minutes of the meetings and resolutions of members and minutes of meetings and resolutions of directors.

Directors

The business of a company is managed by the directors. A company must have at least one director. The first director shall be appointed by the Resident Agent, and subsequent directors may be appointed and removed by the members. A company shall keep a Register of Directors. A director shall act honestly and in good faith and in what he believes to be in the best interests of the company. The directors may meet outside the BVI. A quorum requires one half of the directors.

Registration of Charges

A company may create a charge over its property by an instrument in writing. The company must keep a Register of Charges at its Registered Office or at the office of its Registered Agent. The charge may also be registered in a Register of Registered Charges maintained by the Registrar, evidenced by a Certificate of Registration. A registered charge takes priority over a subsequently registered charges as well as unregistered charges.

Merger and Consolidation

The directors of each company must approve a written Plan of Merger, which must be authorized by the members, and Articles of Merger must be executed by each company and filed with Registrar, following which a Certificate of Merger will be issued by the Registrar. A BVI company can merge with one or more BVI companies, or foreign companies, and the surviving company may be in the BVI or a foreign jurisdiction.

Continuation

A foreign company may continue to the BVI if the laws under which it is registered so authorize. The foreign company must file an Application to Continue, approved by a majority of its directors, and if approved the Registrar will issue a Certificate of Continuation. The continuation of a company does not affect the company as a legal entity, or the assets or liabilities of the company. A BVI company may redomicile or continue to another jurisdiction.

Liquidation and Dissolution

A company may file for voluntary liquidation if it has no liabilities or it is able to pay its debts as they fall due. If it is insolvent, it must go into insolvent liquidation under the Insolvency Act 2003. If a company fails to appoint a resident agent, fails to file documents, or fails to pay annual fees, it may be struck-off the Register.

Registrations and Filings

A company must file a copy of its Register of Directors with the Registrar on a private or public basis. The Register of Members is not required to be filed with the Registrar. However, the Beneficial Owner Secure Search System Act (2017), known as BOSS, requires the Resident Agent to register Beneficial Owner information on the Boss system. The BOSS is a non-public database for law enforcement. A company must also meet the Economic Substance rules if it conducts a “relevant activity”, and make the appropriate filings.