

## **Incorporation of BVI Business Companies under the BVI Business Companies Act, 2004**

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### **1. Introduction**

The following is a brief summary of the main features of the BVI Business Company (“BVI BC”) and an outline of the incorporation procedures under the BVI Business Companies Act, 2004, as amended (“the BC Act”). We provide incorporation, company management and Registered Agent services through our affiliated company, PFD Corporate Services (BVI) Limited.

### **2. Main Features of BVI BCs**

- Subject to any provisions in its Memorandum of Association or Articles of Association (which together form the constitutional documents of the BVI BC), a BVI BC has full power and capacity to carry on or undertake any lawful business or activity, to do any act or enter into any transaction, irrespective of corporate benefit.
- A BVI BC is required to have a Registered Agent. The Registered Agent is a licensed service provider located in the British Virgin Islands which acts as the BC’s liaison to the BVI Financial Services Commission. PFD Corporate Services (BVI) Limited acts as Registered Agent to all BVI BCs that we incorporate.
- A BVI BC may be incorporated as a company limited by shares, a company limited by guarantee (either authorised to issue shares or not) or an unlimited company (either authorised to issue shares or not). In the most cases, a BVI BC will be incorporated as a company limited by shares.
- The BC Act makes no distinction between private and public BVI BCs.
- A BVI BC may be incorporated as a restricted purposes company.
- A BVI BC may have a single shareholder and nominee shareholders may be used. A BVI BC may also have a single director. The shareholder/s and/or director/s may be corporate and non-resident. No company secretary is required by law. Resolutions of shareholders or directors may be consented to in writing in the manner provided for in the BVI BC’s Articles of Association.
- A BVI BC may issue registered shares or bearer shares. If a BVI BC issues bearer shares, they must be delivered to or deposited with an authorised or recognised custodian. In addition, the incorporation fee and the annual licence fees payable by a

BVI BC that is authorised to issue bearer shares or convert or exchange registered shares for bearer shares are higher. We generally do not incorporate BVI BCs with bearer shares.

- A BVI BC may purchase its own shares.
- Shares and other securities of a BVI BC may be issued for consideration in any form, including money, services rendered, a contract for future services, personal property (including goodwill, know-how, other shares, debt obligations or other securities in the BC), an estate in real property, a promissory note or other written obligation to contribute money or property, or any combination thereof, provided that the consideration of a share with par value may not be less than the par value of the share. No shares may be issued for a consideration other than money unless a resolution of the directors has been passed stating the amount to be credited for the issue of the shares, the directors' determination of the reasonable present cash value of the non-money consideration for the issue and that, in the directors' opinion, the present cash value of the non-money consideration for the issue is not less than the amount to be credited for the issue of the shares.
- The directors of a BC may authorise a distribution (including a dividend) by the BC to shareholders/members if they are satisfied, on reasonable grounds, that, immediately after the distribution, the value of the BC's assets will exceed its liabilities and the BC will be able to pay its debts as they fall due (known as the "solvency test").
- No public record is maintained of the identity of the shareholders/members or the directors of a BVI BC unless the company elects to do so. It is a requirement of BVI law that a register of shareholders/members and a register of directors be maintained, that copies of each be kept at the Registered Office and that any changes be reported to the Registered Agent within 15 days of any such change.
- It is a requirement of BVI law that the BC keep copies of all minutes and resolutions of the directors and shareholders at some place (which may be at the Registered Office) and must advise the Registered Agent of the place where the records are kept and any change of location within 14 days of any such change.
- A BC must also keep records that are sufficient to show and explain the BC's transactions and that will, at any time, enable the financial position of the BC to be determined with reasonable accuracy.
- Any shareholder/member may request inspection of the registers of shareholders/members or directors and the minutes of meetings and other resolutions of shareholders/members. If the BC refuses access to such records to a shareholder/member or attempts to place limitations on such access, an application may be made to the court for an order to allow inspection.
- A BVI BC does not have to file annual returns or accounts, but an unlimited company not authorised to issue shares must file a return of directors and most regulated companies will have to file returns and/or accounts with the BVI Financial Services Commission.

- Public records of BVI BCs are generally limited to the Certificate of Incorporation, the Memorandum of Association and Articles of Association (see Section 3 below), the name and address of the Registered Agent and the record of payments of the annual fees and may contain details of any security created by the BC over its property.
- A company incorporated under the laws of a jurisdiction outside the British Virgin Islands may be converted to BVI BC, if the laws of the jurisdiction under which it is incorporated permit this.
- A BVI BC may change its domicile to another jurisdiction.
- A BVIBC may merge or consolidate with other BVI BCs, and with foreign companies (if permitted by the laws of the jurisdiction in which such foreign companies are incorporated).
- Companies incorporated under the British Virgin Islands International Business Companies Act that did not apply for re-registration as BVI BCs during 2005 and 2006 were automatically re-registered as BVI BCs with effect from 1 January 2007. Local BVI companies incorporated under the British Virgin Islands Companies Act (Chapter 285 of the Laws of the Virgin Islands) that did not apply for re-registration as a BVI BC during 2005, 2006 and 2007 will be automatically re-registered as BVI BCs with effect from 1 January 2009.
- A BVI BC is not required to pay any income, withholding or capital gains taxes in the British Virgin Islands under the current laws of the British Virgin Islands. Interest dividends and gains payable to the BVI BC on any investments it makes will be free of all British Virgin Islands taxes. The BVI BC must pay annual fees to the British Virgin Islands Financial Services Commission. Provided that the BC has no employees in the British Virgin Islands, the BC will have no liability to British Virgin Islands payroll taxes. Furthermore, shareholders/members will not be subject to any tax on profits, income, gains or appreciation or any taxes in the nature of gift, estate, succession or inheritance taxes in the British Virgin with respect to shares of the BC owned by them
- A BVI BC is exempt from British Virgin Islands tax and stamp duty on documents in respect of transactions carried out by it or relating to its shares or debt obligations, with the exception of the transfer of interests in land in the British Virgin Islands or transactions in respect of the shares, debt obligations or other securities of a company owning land in the British Virgin Islands.
- A BVI BC may fully indemnify its directors, officers and liquidators from corporate funds provided that such persons have acted honestly and in good faith and in what they believe to be in the best interests of the BVI BC.
- Subject to the provisions of the Memorandum of Association and Articles of Association, the shareholders/members of a BVI BC may by a majority vote amend the Memorandum of Association and Articles of Association, change the BC's name and go into voluntary liquidation (if the BC is solvent). Subject to certain provisions to protect shareholders/members, the power to amend the Memorandum of Association and Articles of Association may be given to the directors.

- The directors may protect the assets of a BVI BC for the benefit of the BC, its creditors and its shareholders/members and for any persons having direct or indirect interests in the BC by transferring the assets of the BVI BC in trust to trustees, or to another company or to another legal entity.
- A BVI BC may apply to a judge in chambers, without the necessity of joining any other party, for a declaration on any question of interpretation of the BVI BC Act or of its Memorandum of Association or Articles of Association.

### 3. Formation

A BVI BC is formed by filing a Memorandum of Association (“Memorandum”) and Articles of Association (“Articles”) with the Registrar of Corporate Affairs of the BVI Financial Services Commission. The Articles, which are similar to By-Laws in the United States, must (except in the case of an unlimited company not authorised to issue shares) be filed simultaneously with the Memorandum, which is similar to a Certificate of Incorporation in the United States.

#### Memorandum of Association

The Memorandum must contain the following information:

- Name

The proposed name of the BVI BC can be in any language. However, it must end with one of the following:

“Limited” or “Ltd.”;  
 “Corporation” or “Corp”;  
 “Incorporated” or “Inc.”;  
 “Société Anonyme” or “S.A.”; or  
 “Sociedad Anónima” or “S.A.”

A company that is a restricted purposes company must end with the phrase “(SPV) Limited” or “(SPV) Ltd.”. A BC that is a segregated portfolio company, which is not also a restricted purposes company, must include the designation “segregated Portfolio Company” or “SPC” immediately before one of the above endings. Additionally, a BC that is also a private trust company must include the designation “(PTC)” immediately before one of the above endings.

A company name may consist of the expression “BVI Company Number” followed by its company number in figures and a required ending. A BC may also have a foreign character name approved by the Registrar of the Corporate Affairs.

The name of a BVI BC must not contain any of the following words or expressions:

Assurance	Municipal
Bank	Reinsurance
Building Society	Royal

Casualty	Savings
Chamber of Commerce	Savings and Loans
Chartered	Surety
Co-operative	Trust
Fiduciary	Trust Company
Guarantee	Trust Corporation
Indemnity	Trustee
Imperial	Trustee Company
Insurance	Underwriting

unless special written permission is granted by one of the Registrar of Corporate Affairs, the Financial Services Commission or the Governor with the advice of the Cabinet.

The name of a BVI BC must not suggest or imply the patronage of Her Majesty or any member of the Royal Family or any connection with Her Majesty's Government or any department thereof or any connection with a municipality or other local authority or with a society or body incorporated by Royal Charter.

The name of a BVI BC must not be, in the opinion of the Registrar of Corporate Affairs, offensive or otherwise objectionable.

The name of a BVI BC must not be identical or so similar so as likely to confuse or mislead as the name of another company incorporated in the British Virgin Islands.

A name intended for future use may be reserved for 10 days without charge and for an additional 90 days at a modest fee.

- **Type of Company**

The Memorandum must state the type of company, which in most cases will be a company limited by shares.

- **Registered Office Address**

This must be address in the British Virgin Islands. For companies we incorporate, PFD Corporate Services (BVI) Limited will provide this.

- **Registered Agent's Name**

For companies we incorporate, PFD Corporate Services (BVI) Limited will act as Registered Agent.

- **Authorised Number of Shares**

The maximum number of shares that the BC is authorised to issue must be set out in the Memorandum or the Memorandum must include a statement that the BC is authorised to issue an unlimited number of shares. No concept of authorised capital is employed by the BVI BC Act and so it is not necessary to attribute par value to shares. The concept of authorised capital can be built into the constitution of the BC if required but serves no legal purpose under BVI law.

- **Classes of Shares**

A statement must be included as to the classes of shares that may be issued and, if the BC is authorised to issue two or more classes of shares, a statement must be included setting out the rights, privileges, restrictions and conditions attaching to each class of shares.

### **Articles of Association**

The Articles must prescribe regulations for the BC and must be submitted for registration (filing) together with the Memorandum except in the case of an unlimited company not authorised to issue shares. The Articles set out in detail the procedures for corporate governance.

### **Directors**

A minimum of one director is required. Directors may be corporations or individuals. PFD Corporate Services (BVI) Limited may provide directors in suitable cases. Directors' meetings can be held anywhere in the world and can be conducted by telephone. Annual meetings are not required.

### **Timing**

A BC can be incorporated within a day of our receiving all of the information necessary to structure the company, our signed Terms and Conditions form and all of the "Know Your Client" materials that we must maintain as part of our anti-money laundering regime. These requirements are set out in our client acceptance form.

Once the Memorandum and Articles are filed at the Registry of Corporate Affairs, a Certificate of Incorporation is issued by the Registry of Corporate Affairs and stamped copies of the Memorandum and Articles are provided by the Registry of Corporate Affairs, usually within 48 hours.

For further information or to incorporate a BVI BC, contact:

**Susan V. Demers  
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Barristers, Solicitors & Notaries Public**

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**Affiliated with PFD Corporate Services (BVI) Limited**