

Corporate migration to the British Virgin Islands

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The British Virgin Islands (BVI) still boasts almost 400,000 active companies incorporated in the Territory, testament to the fact that no other offshore jurisdiction offers a comparable corporate vehicle. It is then not surprising that each year a number of companies incorporated in other jurisdictions choose to change their corporate domicile to the BVI.

Companies that have been incorporated in other jurisdictions may 'continue' or 'migrate' to the BVI if the laws of that other jurisdiction so permit. This article highlights some popular reasons for doing so, corrects some common misconceptions, and summarises our statutory process.

Why migrate to the BVI

Companies often migrate to the BVI from other jurisdictions in order to take advantage of the BVI's tax neutrality, significantly lower annual maintenance fees, the flexibility of the BVI's legislation (which facilitates a wide range of corporate transactions) and the BVI's superior global reputation in the business world. It is not uncommon for multiple companies that have been incorporated in a variety of other jurisdictions, but which comprise a single group, to migrate to the BVI together, in order to simplify the group's audit process or to streamline a proposed reorganisation. Additional reasons to migrate to the BVI include the BVI's progressive regulatory embrace of start-up investment fund structures and new economy Fintech and digital asset businesses, as well as the expertise and quality of the BVI's service providers, legal, fiduciary, accounting and other financial services.

Business continuity

It is a commonly held misconception that the process of continuing to another jurisdiction may be disruptive to the company's business operations or otherwise. In fact, continuation to the BVI does not affect the continuity of the company as a legal entity and similarly, any assets, rights, obligations or liabilities of the company are not affected in any way under BVI law.

Simple process

The BVI's statutory procedure is very straightforward. A corporate migration to the BVI can be effected in a short time frame.

Pursuant to Part X of the BVI Business Companies Act, 2004 (the **Act**), the company's proposed BVI registered agent must submit an application, which must include the following documents, to the BVI Registry of Corporate Affairs (the **Registry**):

- - a certified copy of the company's certificate of incorporation (or equivalent); the form of the BVI law compliant memorandum and articles of association to be adopted;
- - evidence that the application to continue and the proposed form of memorandum and articles of association have been approved by a majority of the directors (or other persons who exercise the power of the company) or in such other manner as may be established by the company for exercising the powers of the company; and
- - evidence that the company is not prohibited from migrating to the BVI (see below).

If the Registry is satisfied that the requirements for continuation have been complied with, the company shall be registered, allocated a BVI company number and issued with certificate of continuation. Such certificate of continuation shall be conclusive evidence that the company is continued as a BVI Business company under the Act on the date specified in the certificate of continuation.

Once the company is recognised as a company continued under the Act, that company is treated as a company incorporated under the Act and is therefore capable of exercising all relevant powers applicable to BVI business companies under the Act.

Restrictions on migrating to the BVI

There are some limited circumstances where a company that has been incorporated in another jurisdiction cannot continue as a BVI business company as follows:

- - the laws of the jurisdiction in which the company is registered do not explicitly permit it to do so;
- - the company is in liquidation, or subject to equivalent insolvency proceedings, in another jurisdiction;

- - a receiver or manager has been appointed in relation to any of the company's assets;
- - the company has entered into an arrangement with creditors that has not been concluded; or
- - an application made to a Court in another jurisdiction for the liquidation of the company, or for the company to be subject to equivalent insolvency proceedings, has not been determined.

As noted above, the Registrar will require evidence that a company is not prohibited from continuing on account of any of the above disqualifications. Under the Act this evidence may be provided in the form of a simple certificate signed by a director of the company and notarised, which attests to the company's compliance with the applicable foreign law procedure for continuation out and the non-application of the disqualifications set out above

Conclusion

If your corporate vehicle is economically inefficient, overly expensive to maintain, or unsuitable for your business needs, corporate migration to the BVI may be the solution. Many jurisdictions permit corporate migration out of the jurisdiction of incorporation, and a corporate migration to the BVI can be effected in a short timeframe.^[1]

^[1] Note that the undertaking certain business activities by a BVI company may cause that company to become subject to the BVI's economic substance laws, while this should not present an impediment to migration in most cases, you should consult with your BVI legal advisers prior to any migration as to whether or not such laws might apply.

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