

# Snapshot: Section 175 of the BVI Business Companies Act

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Under BVI law, directors have wide ranging powers to act on behalf of a BVI company without the need to obtain separate member approval.

An example of this wide ranging power is that, subject to a company's memorandum and articles of association (**M&A**), directors can generally approve the sale of assets by a BVI company without the need for member approval.

However, Section 175 of the BVI Business Companies Act 2004 (as amended) (**Section 175**) contains an important statutory protection for members where there is a proposed disposal of 50% or more in value of the assets of the company.

## When does Section 175 apply?

Section 175 applies where there is a proposed sale or other disposal (other than a mortgage or charge) of more than 50% in value of the assets of the company (a **50% Disposition**), which is outside of the company's ordinary course of business.

In that case, Section 175 provides that:

- details of the 50% Disposition must be provided to members; and
- the 50% Disposition must be authorised by a resolutions of members

## What kind of member approval is required?

The passing of a "resolution of members" is required. Subject to any bespoke provisions in the M&A, a resolution of members is generally passed by a simple majority of members either by written resolution or at a duly quorate meeting of members.

## Can a company disapply Section 175?

Yes, Section 175 can be disapplied in the M&A.

## **What happens if a member does not consent?**

If a member chooses not to approve a 50% Disposition, such member has a statutory right to dissent from the proposed transaction. In that case the member is entitled to receive "fair value" for their shares in accordance with Section 179 of the BVI Business Companies Act.

For more information on this topic, please contact our BVI corporate team.

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## Meet the Author



Marie-Claire Fudge

Partner

British Virgin Islands

E: [marie-claire.fudge@ogier.com](mailto:marie-claire.fudge@ogier.com)

T: [+44 1534 514307](tel:+441534514307)

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