Choosing between BVI and Cayman for going offshore

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How to choose between the British Virgin Islands (BVI) and the Cayman Islands for a corporate structure has been one of the most frequent questions among businesses planning to establish an offshore company. This is a complex matter that requires consideration of all of the client's circumstances, including the proposed nature of the business of the offshore company, any expansion and financing plans, and the client's specific structuring objectives.

To a certain extent, market practice also plays an important role with respect to certain types of transactions such as IPOs, captive insurance, institutional investment funds, special purpose acquisition companies (SPACs) and collateralised loan obligations.

Considerable similarities

There are many similarities between the advantages that BVI and Cayman companies offer, as follows:

- **Stability and reliability.** The BVI and the Cayman Islands are autonomous British Overseas Territories that apply English common law rules and principles. There is a well tested and efficient judicial system in both jurisdictions, with a final right of appeal to the Privy Council.
- **Tax neutrality.** There are no income, corporate, capital gains or wealth taxes, withholdings or other similar taxes imposed on BVI and Cayman companies as a matter of local law.
- **Corporate flexibility.** The objects, capacity and powers of a BVI and a Cayman company are generally unrestricted. Most decisions can be taken by the board of directors of the relevant company, with only certain matters requiring shareholder approval. There are also no exchange controls and restrictions on financial assistance as a matter of BVI and Cayman Islands law.
- **Regulation is light touch.** Most BVI and Cayman companies do not need any regulatory approvals to complete corporate and finance transactions as a matter of local law.

Key differences

There are also significant differences between BVI and Cayman companies. For example:

- **Incorporation and maintenance costs.** In terms of the government fees charged for incorporation and annual maintenance, BVI companies are cheaper to incorporate and maintain in good standing than Cayman companies. Therefore, a BVI company may be a more appropriate vehicle for a straightforward corporate holding structure. This most likely explains why there were more than 370,000 active BVI companies at the end of 2021, compared to 117,000 Cayman companies at the end of the same period.
- **Confidentiality.** Although both jurisdictions offer a high level of confidentiality, there are differences in approach. While the constitutional documents of a Cayman company are confidential, the memorandum of association and articles of association of a BVI company are a matter of public record. Clients that need to include commercially sensitive provisions in the constitutional documents of a company, such as pursuant to a shareholders' agreement, may therefore wish to incorporate a Cayman company. Clients that wish to safeguard the names of the company directors may wish to incorporate a BVI company.
- **Joint ventures.** A BVI company may, and typically does, adopt specific provisions in its articles of association to abrogate the fiduciary duties that are generally imposed on directors to act in the best interests of all of the shareholders in a joint venture, and instead permit them to act for the benefit of the party appointing them.
- **IPOs and SPACs.** Traditionally, Cayman companies have been the vehicle of choice for listings in Asia. For example, more than 60% of all companies listed on the main board of the Stock Exchange of Hong Kong are incorporated in the Cayman Islands. This compares with only a handful of companies that are BVI incorporated. The dominance of Cayman companies with respect to listed entities has also manifested itself with respect to SPACs. For example, Temasek-backed Vertex Technology Acquisition Corporation, a SPAC incorporated in the Cayman Islands, was the first SPAC listed on the Singapore Exchange.
- **Structured finance products.** BVI and Cayman companies are widely utilised as special purpose vehicles in structured finance transactions due to the off-balance sheet and bankruptcy-remote advantages that they offer. Both jurisdictions are also recognised as creditor friendly due to the range of self-help remedies available to secured creditors in enforcement. However, there are important differences. The BVI has a public security registration system, whereas security interests that are granted by a Cayman company are a matter of private record. Recent changes in European regulations make it impermissible to market certain collateralised loan obligation deals to European investors using a Cayman special purpose vehicle, so a BVI company may be more appropriate.

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