



Legal Briefings

Migrating a Company to the British Virgin Islands

The British Virgin Islands' Business Companies Act, 2004 (As Revised) (the “**Act**”) permits a company incorporated in a jurisdiction outside the British Virgin Islands (a “**Foreign Company**”) to migrate to and continue operations in the British Virgin Islands (“**BVI**”) as a company incorporated under the Act if the laws of the foreign jurisdiction in which it is registered permits it to continue in another jurisdiction, including the BVI. This process is governed by Part X of the Act and is often referred to as “continuation”, “migration” or “re-domiciliation”. This Legal Briefing summarises the key eligibility requirements and outlines the process for applying to continue as a company in the BVI.

1. Why Migrate to the BVI?

Migration (or continuation) allows a company to maintain its existing legal identity while changing its jurisdiction of incorporation. As a result, the company continues as the same legal entity and retains its name (subject to availability in the BVI), assets, rights, liabilities, and obligations. The advantages of migrating to the BVI include:

- i. there are no taxes on income, profits, or gains of the company or its shareholders in the BVI;
- ii. the annual maintenance fees applicable in the BVI are very competitive when compared with many other jurisdictions;
- iii. BVI laws afford more flexibility to facilitate a wide range of corporate, finance and investment transactions, for example in the digital assets space or fintech industry;
- iv. BVI has a reputation as an international offshore financial centre and migrating there can enhance the company's reputation, for example, as part of a fundraising effort or to consolidate, rationalize or reorganize a group structure under one BVI holding company.

2. What are the Pre-Application Requirements?

Before submitting an application for continuation of the Foreign Company to the BVI, several statutory requirements under the Act must be satisfied:

- i. There must be no provision under the laws of the jurisdiction from which the Foreign Company is migrating which prohibits its continuation into the BVI. Evidence confirming permissibility under the applicable foreign law should be provided.
- ii. The Foreign Company must not be subject to any pending liquidation or insolvency proceedings and must not be in liquidation in any jurisdiction.
- iii. No receiver or manager must have been appointed over any of the Foreign Company's assets.

- iv. The Foreign Company must not have entered into any arrangement or composition with creditors which at the time of migration is unresolved.
- v. The Registrar of Corporate Affairs in the BVI ("**Registrar**") must be satisfied that the continuation would not be contrary to the public interest.
- vi. The Foreign Company must appoint a BVI-licensed registered agent, who will hold the company's registered office in the BVI and is responsible for submitting the continuation application and supporting documents to the Registrar on the company's behalf. A company cannot apply to continue into the BVI, and cannot thereafter be incorporated under the Act, without a licensed registered agent in place.

3. **What are the Key Provisions and Application Process?**

The application to the Registrar, which must be submitted by the Foreign Company's proposed BVI registered agent, must include the following documents:

- i. a certified copy of the Foreign Company's certificate of incorporation (or equivalent);
- ii. the form of the BVI law compliant Memorandum and Articles of Association to be adopted;
- iii. evidence that the application to continue and the proposed form of Memorandum and Articles of Association have been approved (i) by a majority of the directors (or other persons who exercise the power of the company), or (ii) in such other manner as may be established by the Foreign Company for exercising the powers of the Foreign Company; and
- iv. evidence that the company is not prohibited from migrating to the BVI.

If the Registrar is satisfied that the requirements of the Act in respect of continuation have been complied with, upon receipt of the documents listed above, the Registrar will then:

- i. register the documents;
- ii. allot a unique number to the company; and
- iii. issue a certificate of continuation in the approved form to the company.

A certificate of continuation issued by the Registrar is conclusive evidence that: (i) all the requirements of the Act as to continuation have been complied with; and (ii) the company is continued as a company incorporated under the Act under the name designated in its Memorandum of Association on the date specified in the certificate of continuation.

4. **The Role of the BVI Registered Agent**

Every company incorporated or continued under the Act must, at all times, maintain a registered agent licensed to provide such services in the BVI. In the context of an inbound continuation, the registered agent plays a central role: it is the registered agent, not the Foreign Company directly, which submits the application and supporting documents to the Registrar, and it is the registered agent which will subsequently hold the company's registered office and statutory records in the BVI. Selecting and formally engaging a licensed registered agent is therefore a practical precondition to continuation and should be attended to at the outset of the process, alongside the other pre-application requirements described above.

5. What is the Effect of Continuation?

When a Foreign Company is continued under the Act:

- i. the Act will apply to the company as if it had been incorporated originally under the Act after the date upon which the continuation is approved;
- ii. the company is capable of exercising all the powers of a company incorporated under the Act;
- iii. the company is no longer to be treated as a company incorporated under the laws of a jurisdiction outside of the BVI; and
- iv. the Memorandum and Articles of Association adopted and filed under section 181(1) of the Act become the Memorandum and Articles of the company.

The continuation of a Foreign Company under the Act does not affect:

- v. the continuity of the company as a legal entity; or
- vi. the assets, rights, obligations or liabilities of the company.

It is also important to note that:

- vii. no conviction, judgement, ruling, order, claim, debt, liability or obligation due or to become due, and no cause existing, against the company or against any member, director, officer or agent thereof, is released or impaired by its continuation as a company to the BVI under the Act; and
- viii. no proceedings, whether civil or criminal, pending at the time of the issue by the Registrar of a certificate of continuation by or against the company, or against any member, director, officer or agent thereof, are abated or discontinued by its continuation as a company under the Act, but the proceedings may be enforced, prosecuted, settled or compromised by or against the company or against the member, director, officer or agent thereof, as the case may be.
- ix. all shares in the company that were outstanding prior to the issue by the Registrar of a certificate of continuation are deemed to have been issued in conformity with the Act.

Further Assistance

This publication is not intended to be a substitute for specific legal advice or a legal opinion. If you require further advice relating to the matters discussed in this Briefing, please contact us. We would be delighted to assist.

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