

ANDREAS M.SOFOCLEOUS & CO. LLC

ADVOCATES - LEGAL CONSULTANTS

Practical Guide to British Virgin Islands Company Formation





PRACTICAL GUIDE TO BRITISH VIRGIN ISLANDS COMPANY FORMATION

Country General Information

The British Virgin Islands (BVI) are a chain of 60 islands, located in the Caribbean Sea 90 miles east of Puerto Rico. **The BVI is the world's largest company formation centre.** It was one of the first off-shore centres to target the market for international business companies (IBC).

A BVI IBC is typically used by clients wishing to operate internationally from a secure, tax-exempt and confidential location.

Extent Jurisdiction Used by Others

There are over 1,000,000 Companies registered in the BVI making it the number one ranked offshore jurisdiction by volume of incorporated companies.

Key Jurisdictional Features

- BVI are British overseas territory and are politically and economically stable;
- Their jurisdiction is English law based and they implement effective but nonintrusive regulations;
- There are no direct or indirect taxes for BVI companies making them cost effective, fast and competitive with a strong international reputation;
- A well-developed professional services industry and no exchange controls or investment restrictions give rise to confidential and privacy.

Company Incorporation General Information

Incorporation Period

The incorporation shall be made by a registered agent in the British Virgin Islands (BVI), through our office.

In most cases, a British Virgin Islands (BVI) company may be incorporated within 1 business day. Within 3-5 days we have a scan copy of the incorporation documents and within 10 days we have the original apostilled documents here at our office.

We do also have ready shelf companies at our office which are available instantly upon request.

Incorporation Costs

Variable legal fees for the incorporation of a standard BVI company are available upon request.

Duration of Existence

The existence of a BVI company is continuous until the company is dissolved or struck off if the Government license fee is not paid within six months from its due date.

Licensing

There are no restrictions on the business or activities of a company, however, a license is required if the company is embarking in areas such as banking, trust, insurance, third party company management, mutual funds or any other such regulated business activity.

Available Company Classes

It is possible to adopt a specific type of corporate model best suited to the optimal business requirements of the client.

Available alternatives include but are not limited to: (i) a company limited by shares (ii) a company limited by guarantee (iii) an unlimited company (iv) a restricted purposes company (v) a segregated portfolio company.

The most common vehicle for international transactions is a company limited by shares.

Restricted Purposes Company

This is a special type of company available in BVI, utilised in structured or ring-fenced transactions.

A restricted purposes company will typically have restricted objects, which may be entrenched, that are designed to limit or restrict the type of business activity which the company may undertake.



Under BVI law the general rule is: an act of a restricted purposes company is invalid if the company did not have the capacity, right or power to perform said act.

Segregated Portfolio Companies (SPC)

These are a companies which segregate the assets and liabilities of different classes (or sometimes series) of shares from each other and from the general assets of the SPC.

Segregated portfolio assets comprise of assets representing share capital, retained earnings, capital reserves, share premiums and all other assets attributable to or held within the segregated portfolio.

Maintenance

Annual Cost

- An annual government license fee of \$350 (USD) must be paid for a company authorised to issue a maximum of 50,000 shares;
- For a company authorised to issue more than 50,000 shares, the payable annual government license fee is \$1100 (USD);
- For Companies limited by guarantee not authorised to issue shares and unlimited company not authorised to issue shares, the payable annual government fee is \$350 (USD);
- 10% penalty is imposed on payments made up to two months late;
- 50% penalty imposed on payment made between the third and sixth month after the due date.

Annual Reporting/Filing Requirements

There are no annual reporting obligations and no annual filings, approvals, declarations or returns that need to be made apart from foreign companies, unlimited companies not authorised to issue shares, and regulated entities.

Annual Shareholders Meetings

There are no statutory requirements to hold annual shareholder meetings. If such meetings are called, the members may congregate at any location of their choosing inside or outside the BVI, either in person or in proxy or via telephone.

Annual Director Meetings

There are no statutory requirements to hold annual director meetings. If such meetings are called, the members may congregate at any location of their choosing inside or outside the BVI, either in person or in proxy or via telephone.

Requirements of Locality

A BVI company is required to situate a registered office and a registered agent, a role similar to that of company secretary.

Taxation

- There is no concept of residency currently applicable to BVI corporate taxation. BVI companies are exempted from income tax and all dividends, royalties, compensations and other amounts paid by the company and all capital gains legalised in respect to any shares, debts, obligations or other securities of the company;
- No estate, inheritance, succession or gift tax is payable with respect to any shares, debt obligations or other securities;
- All transactions and instruments relating to transfers of any type are exempt from tax duty except for land ownership transactions in the BVI in which case the stamp duty remains payable.

Financial Records and Accounts

Financial Record Keeping

With the exception of certain regulated entities, there is no requirement to file or otherwise publish any accounts or financial records of a company.

Every BVI Company has an obligation to maintain financial records that are sufficient to show and **explain the company's transactions and enable the financial position of the company to be determined with reasonable accuracy.**

Audit Requirements

With the exception of certain regulated entities, there are no audit requirements in the BVI.



Audit Requirements

With the exception of certain regulated entities, there are no audit requirements in the BVI.

Constitutional Documents

Documents

A company's Memorandum and Articles of Association, along with the BVI Business Companies Act 2004 (as amended), provide corporate governance for the company.

Amendments

A company's Memorandum and Articles may be amended by shareholder resolution. Furthermore, a company's Memorandum and Articles may be amended by a resolution of the directors. This may be administratively beneficial if the company has a widely spread shareholder base.

Shares and Shareholders

Limitation of Shareholder Liability

Shareholder liability may be restricted to any desirable amount, even a purely nominal amount, upon incorporation. Limitations by shares and by guarantee are permissible.

Minimum Number of Shareholders

- A company must have at least one shareholder;
- Shareholder(s) may be a corporation or a natural person;
- It is also possible for shares to be held through a nominee.

Resident Requirements for Shareholders

There are no BVI residency requirements for shareholders. Accordingly, a BVI company may be fully owned by foreign nationals.

Capital Requirements

- There are no minimum capitalisation requirements, provided at least one share is issued. Consequently, a company may be formed with a purely nominal equity investment;
- Multiple classes of shares with differing rights and restrictions are permitted;

- A company may issue fractional shares and a company can also issue shares with or without a par value;
- Bearer shares are also allowed but should be deposited with an approved or authorized custodian.

Restrictions on Issue and Allotments of New Shares

There are no statutory restrictions on the allotment of new shares, provided that no share be issued for less than its par value, no share which carries a liability may be issued to any person without their written agreement, and there are sufficient unissued shares available to accommodate the proposed new share allotment.

It is possible for a company to be structured so there is no limit on the maximum number of shares which it may issue.

Any desired restrictions on the allotment of shares can be incorporated into the Memorandum and Articles; including, but not limited to, a requirement that the allotment be first approved by the existing shareholders which provides anti-dilution protection.

Restrictions on Transfers of Shares

There are no statutory restrictions on transfers of shares, provided the transfer instrument is in the requisite form. Any voluntarily desired restrictions on the transfers of shares can be incorporated into the Memorandum and Articles, including without limitation, a requirement that the transfer be first approved by the existing shareholders to prevent undesired outsiders from joining said company.

Government Approval Required for Allotments/ Transfers of Shares

No government approvals are required for allotments and/or transfers of shares in a BVI company.

Preferred Shares

Different classes of shares may be created bestowing distinct rights and restrictions or indeed no rights at all on such shares, in regards to voting and other matters.

This may be used in relation to economic entitlements and priority rankings pertaining to payments of dividends, distributions and returns of capital.



Share Rights and Restrictions

- Voting and non-voting shares as well as restricted/limited voting shares and veto shares are permitted;
- Dividend bearing and non-dividend bearing shares are also permitted, as well as preferential dividend bearing shares;
- Redeemable and non-redeemable shares and also capital return preferred shares are permissible. The latter entitles certain shareholders to rank above others in terms of return of capital in the event of company dissolution;
- Special bespoke rights and restrictions are permitted, if required by the relevant stakeholder, in favour of selected shareholders.

Bearer Shares

A BVI company may issue bearer shares if this is provided for by its Memorandum and Articles, however these shares must be deposited with a licensed custodian together with a written statement of the identity and address of the actual owner.

Directors

Minimum Number of Directors

A company must have at least one director. Director(s) may be a corporation or a natural person.

There are no BVI residency requirements for directors therefore a BVI company may be controlled solely by foreign nationals.

Appointment/Removal of Directors

The power to appoint and remove directors will be regulated by the provisions of a company's Memorandum and Articles. Typically, the responsibility would ultimately be in the hands of the shareholders or in some case certain selected shareholders;

Directors may be elected for terms of any length or on a staggered basis.

Confidentiality

- Anonymity is possible in a BVI company;
- When a client wishes not to appear connected to a company or his identity not to be in public, he/she may appoint a nominee;
- There is no requirement to publicise files or otherwise publish details of the company's directors, officers, shareholders or anyone else whom may be affiliated with the said company;
- The identification of the company's director(s) and/or shareholder(s) may remain private, confidential and well-kept at the registered office of the agent;
- The company's Memorandum and Articles are publicly filed and therefore, no sensitive or confidential information should be documented therein.

Distributions

Flexibility of Dividend Payments

A company may dividend out any of its assets, including; profits, share premium and capital.

One condition for dividend payments is that company on reasonable grounds can pass a solvency test immediately after the dividend payment.

A company satisfies the requirements of a solvency test if the value of the company's assets exceeds its liabilities and if the company is able to pay its debts in due course.

Note that dividend payments are free of any taxation.

Dividend payments made when the company did not immediately satisfied the solvency test, are subject to **"claw-back" by the company. However the company cannot recover such a distribution if:**

- (a) a member has received it in good faith without **having knowledge of the company's default;**
- (b) has altered his position based on the validity of the distribution;
- (c) A repayment is unfair to be requested.



Flexibility of Share Buy-Backs and Redemptions

The BVI Business Companies Act 2004 (as amended) provides flexibility to the Companies to purchase, redeem or otherwise acquire its own shares in accordance with two distinct regimes:

- (a) under its own memorandum or articles of association or
- (b) according to the provisions of the Act.

A company may buy back or redeem its own shares as long as said company can pass a solvency test, immediately after the distribution.

Return of Capital to the Shareholders in the Event of Liquidation

- The traditional "debt before equity" rule applies.
- The company's creditors must be reimbursed, prior to the shareholders, in the event of liquidation.

Mergers and Consolidations of BVI Companies

Statutory Mergers and Consolidations

The BVI has a fast track statutory merger and consolidation regime which enables mergers and consolidations to be completed without the necessity, expense and delay of court approved sanctioned processes.

Merger and consolidation can be between multiple BVI companies or with foreign companies.

Cross-border Mergers and Consolidations

The fast track statutory regime may be adopted for both international (BVI and non-BVI) and domestic (solely BVI) company mergers and consolidations.

Features of BVI Statutory Mergers and Consolidations

- BVI statutory mergers and consolidations may be completed relatively quickly as no court or governmental approvals or sanctions are required;
- They have a very flexible regime modelled after US statutory mergers and consolidation;

- Unlike in other offshore jurisdictions, no personal certifications from the director pertaining to fairness are required;
- A Certificate of Merger, issued by Corporate Registry, is conclusive evidence of the merger.

Takeovers

Takeover Code

As there is no takeover code in BVI, the company has the flexibility to regulate takeover rules in the Memorandum and Articles of Association.

Any related rules on the relevant stock exchange of which said company is listed, must be complied with.

Squeeze Out Rights

A company has the statutory ability to "squeeze out" minority holders, if 90% of the target company's shares are acquired, unless said ability has been invalidated in the Memorandum and Articles.

Minority shareholders who are squeezed out are generally entitled to payment of the fair value of their shares.

Ability to Impose Takeover Defences

Certain actions such as a merger, consolidation or liquidation require shareholder approval.

No statutory restrictions on incorporating anti-takeover defences may be found in the company's Memorandum and Articles.

Statutory Re-domiciliation

Transfers of companies both inwards and outwards of the BVI, are permitted.

Regulatory/Legislative Regime Common or Civil Law Jurisdiction

Modern statutes may be supplemented by principles of equity and common law (English common law being persuasive, albeit not binding).



Corporate and Contract Law

- English case law is widely used and, though not legally binding, is highly influential;
- The court may also take into account, United States authorities especially if the statute at hand was patterned after a corresponding US statute;
- The court of general jurisdiction is the Eastern Caribbean Supreme Court;
- The decisions of the Court of Appeal of the Eastern Caribbean Supreme Court may be appealed in the Judicial Committee of the Privy Council in England.

Enforcement of Arbitration Provisions

Arbitration provisions are generally enforceable in the BVI. The 1958 New York Convention on Recognition and Enforcement of Foreign Arbitral Awards has been made applicable in the BVI.

Under Section 28 of the Arbitration Act, an award on an arbitration agreement may, by leave of the High Court or a judge thereof, be enforced in the same manner as a judgment or order of the High Court to the same effect. Where leave is so given, judgment may be entered in terms of the award.

Disclaimer

© 2014 Andreas M. Sofocleous & Co. LLC

These materials have been prepared for general information purposes only and should not be relied upon as a substitute to professional legal advice. Professional legal advice should be sought if you have any specific questions about any legal matter. The author(s) and publisher disclaim all liability in respect to actions taken or not taken based on any or all the contents of these materials, to the fullest extent permitted by law.



Andreas M. Sofocleous & Co. LLC

Advocates & Legal Consultants

Andreas Sofocleous & Co was founded by Mr. Andreas Sofocleous in 1995. Over the years the firm grew considerably and expanded with new offices in Russia and Ukraine . In 2012 the partnership was succeeded by the law firm Andreas M. Sofocleous & Co LLC .

The firm is one of the most successful corporate and commercial law firms in Cyprus. Headquartered in Limassol and with offices in Eastern Europe and the UK, the firm provides legal services for individuals and companies at a national and international level across a wide range of industries, dealing with mergers and acquisitions, cross border transactions, joint ventures, intellectual property licensing, as well as company formation and management and other business arrangements.

Our main areas of practice are: Corporate and Commercial law; International and Domestic Arbitration; Commercial and Civil Litigation; Banking and Finance Law; Admiralty and Marine Law; Aviation Law; Property Law; Immigration Law.

The Firm's specialization

We specialize in global corporate structuring, helping businesses and individuals who wish to protect their assets to invest and expand their operations in new international markets.

We work with a range of clients worldwide, including multinational corporations, public companies, small to medium enterprises and individuals. Each and every client, regardless of size and status, has specific needs, particular goals and individual plans for the future. Our aim is to assist them all to achieve their objectives and fulfil their plans successfully. To that end we focus on their needs and concerns by developing the appropriate business strategy to suit each client, and then work together to implement it.

Limassol Office

Proteas House, 155 Makariou III Avenue
Limassol 3026, Cyprus
P.O. Box: 58159 Limassol 3731

Phone: +357 25 849000
Fax: +357 25 849100
E-mail: info@sofocleous.com.cy
Website: www.sofocleous.com.cy

Moscow Office

303e, 113/1 Leninsky Prospekt
Moscow 117198, Russia

Tel: +7 495 789 90 26
Fax: +7 495 789 90 52
Email: moscow@sofocleous.com.cy

Kiev Office

36-D Saksagavskgov Str.
Office2, Kiev 01033
Ukraine

Tel: +380-444902003/4/5
Fax: +380-444902006
Email: kiev@sofocleous.com.cy