



BVI COMPANY LAW

INCORPORATION

- Only a licensed BVI registered agent can apply for the incorporation of a BVI Company
- Incorporation is achieved by the registration of the company's memorandum and articles together with the registered agent's consent to act for the company
- Filing is done electronically via the Registrar's website
- The registrar gives the company a unique number and issues a certificate of incorporation
- Incorporation is deemed to have taken place on the date shown on the certificate

DUE DILIGENCE

- BVI registered agents are required to ensure that KYC (know your client) obligations are met
- This involves gathering due diligence on the shareholders as well as those who hold an ultimate beneficial ownership in the company
- Certified verification of each person is required
- Incorporation is only completed when the due diligence requirements have been met

MEMORANDUM

This must state:

- The name of the company
- Whether the company is limited by shares, unlimited or limited by guarantee
- The address of the registered office
- The name of the registered agent
- If a company is limited by shares the memorandum must state:
 - The maximum number of shares the company is authorised to issue
 - The classes of share the company is authorised to use
 - Whether the company is authorised to issue bearer shares

SEGREGATED PORTFOLIO COMPANIES


- A segregated portfolio company is a company limited by shares that separates the assets and liabilities of each individual portfolio from those of its other portfolios and from those of the company itself
- On the BVI only a company that is an insurance company or a fund can be incorporated as a segregated portfolio company
- A segregated portfolio company in the BVI is similar to a protected cell company in Guernsey

COMPANY NAMES

- It is possible to reserve a company name for a period of time
- A limited company's name must include the word "Limited", "Corporation", "Incorporated", "Societe Anonyme", "Sociedad Anonima", or the abbreviation "Ltd", "Corp", "Inc", or "S.A."
- A company's name can merely be the expression "BVI company number" followed by the company's number in figures and one of the above suffixes
- Names cannot be indecent or objectionable or suggest royal patronage



REGISTERED OFFICE

- Every company must have a registered office in the BVI
 - The address must be a physical address and not a PO box
 - The company can change its registered office
 - The Registrar must be notified of any change
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REGISTERED AGENT

- The company must maintain a registered agent in the BVI
- Any company which fails to do this is guilty of an offence and can be struck off the register
- A company's registered office can also be the office of its registered agent

DIRECTORS

- The number of directors of a company may be fixed by its articles
- A company must have at least one director
- If a company does not have a director for any period of time the person who manages the company is deemed to be a director
- Directors do not have to be residents of the BVI
- Directors must act honestly, in good faith and in the best interests of the company
- Directors must act in accordance with the Companies Act and the company's articles

REGISTER OF DIRECTORS

BVI business companies are required to file and keep updated copies of the register of directors with the registrar

The register of directors can be in any form that the directors approve

The register is not available to public scrutiny

The register should record the name and particulars of each director together with the date of appointment and date of resignation

For a new company the register of directors must be filed within 21 days of the appointment of the first directors

Where there is a change the company must file an updated copy with the registrar within 30 days

DIRECTORS' MEETINGS

- Subject to the company's articles, the directors of the company can meet at such times and place as the directors decide
- The meetings can be held in the BVI or elsewhere
- Telephone meetings are allowed
- Resolutions passed require a quorum
- The quorum is fixed by the Articles
- If the Articles do not specify a quorum, the board meeting is valid if one half of the directors are present at the start of the meeting
- Unless the Articles provide otherwise, resolutions at a board meeting are passed by a simple majority of the votes cast
- Written resolutions are allowed
- A written resolution needs to be signed by all directors unless the Articles provide otherwise

SHARE CAPITAL

- The concept of authorised share capital has now been abolished
- No minimum share capital is prescribed for a company
- A company can issue shares with par value or no par value
- A share is deemed to be issued when the name of the member is entered in the company's register of members

SHARES

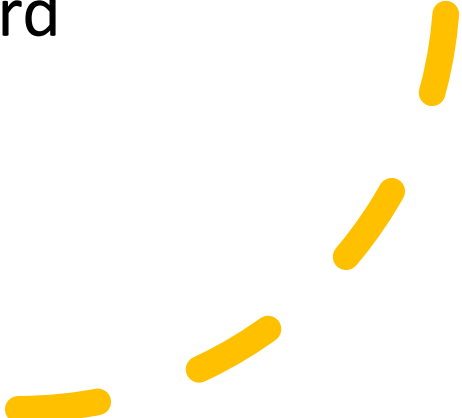
- Shares can be issued fully paid, partly paid or unpaid
- The consideration for shares can be money, services rendered, property, a promissory note or other binding obligation
- Consideration for shares can not be less than the par value
- A company can purchase its own shares but must be solvent immediately after this (directors responsibility)
- The Act allows the company to issue Treasury shares

REGISTER OF MEMBERS

- Every company must keep a register of members in the BVI
- The register can be in any form the directors decide
- If the register is kept in electronic form it must be capable of being replicated in non legible form
- The register must contain the following information:
 - Names and addresses of members
 - The number of each class of shares held by each member
 - Date of becoming a shareholder and date of ceasing to be a shareholder
 - Details of bearer shares (if any)



REGISTER OF BENEFICIAL OWNERS

- A company must now keep a register detailing the name, address, date of birth and nationality of its beneficial owners
 - The register must be maintained by the company's registered agent
 - The register must be uploaded to a central database
 - The database is not a public record
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BENEFICIAL OWNER

- A beneficial owner is a person who:
 - Owns or controls 25% or more (directly or indirectly) of the shares or voting rights in the company or
 - Exercises control over the management of the company
- Exemptions from the above include:
 - Companies listed on a recognised stock exchange
 - Certain funds
 - BVI licensees such as a bank, insurance company or trust company

GENERAL MEETINGS

- Meetings can be held either in or out the BVI
- Be careful of management and control issues
- Subject to the company's Articles 7 days' notice is required to convene a meeting
- 90% of members can waive this notice
- No AGM is required by the company law
- 30% of members can insist that directors hold a general meeting
- Unless the Articles say otherwise, a resolution is passed by a simple majority of the votes cast by members entitled to vote
- Written resolutions are allowed (unless specifically prohibited by the Articles)
- No notice needs to be given for a written resolution

DISTRIBUTIONS

- Directors can authorise a distribution subject to the company's Articles
- They decide the amount to propose by way of dividend
- The directors resolution proposing the dividend must include a statement that the company will satisfy the solvency test
- The solvency test is:
 - The value of a company's assets exceeds its liabilities and
 - The company is able to pay its debts as they fall due

STATUTORY RECORDS

- The following records must be kept at the office of the registered agent:
 - Memorandum and articles
 - Register of members
 - Register of directors
 - Copies of all notices and filings in the last 10 years
- A company must notify the registered agent of changes to the register of directors or register of members within 15 days

OTHER RECORDS

- Certain other records have to be kept at the office of the registered agent or where the directors decide (outside or inside the BVI) as follows:
 - Minutes of general meetings
 - Resolutions of members
 - Minutes of directors meetings
 - Resolutions of directors
- If these records are not kept by the registered agent (RA) the RA must be informed of their whereabouts and told within 14 days of any changes to this location

FINANCIAL RECORDS

- A company is required to keep financial records which are sufficient to explain the company's transactions and will enable the financial position of the company to be determined



INSPECTION OF RECORDS

- A director can inspect the company records without charge
- A member can inspect the following on giving written notice to the company:
 - Memorandum and articles
 - Register of members
 - Register of directors
 - Minutes of meetings of members of the same class
- The directors can refuse access by a member if it is deemed contrary to the company's interests
- The member can then petition the Court for access to the records

Audit

- The company law does not require a company to have an audit
- The Articles can require an audit





COMPANY SEAL

A company must have a common seal

An imprint of the seal needs to be kept at the office of the registered agent

