

Guide to the benefits of redomiciling a company to the BVI

From time to time economic or legislative changes within a jurisdiction may cause the directors of a company to re-assess whether the company's domicile should not be changed. The recent financial crisis in Cyprus is an example of the sort of change that might trigger companies to consider moving to a different domicile. There are also less dramatic reasons: the laws of another jurisdiction might be better suited for the objectives of the company; might give it more flexibility or better tax treatment than the laws of its current domicile or it may be a combination of these factors.

The "redomiciliation" or "continuation" of a company to the British Virgin Islands ("BVI"), is permitted by the BVI Business Companies Act (the "Act"). The Act specifically allows companies incorporated outside of the BVI to continue into the BVI, and it also allows companies incorporated in the BVI to continue to a jurisdiction outside of the BVI. From our experience, the former is usually the case and therefore the focus of this article is redomiciliation to the BVI.

Benefits of redomiciling to the BVI

The benefits associated with redomiciling a company to the BVI vary but some reasons typically include:

No taxation, currency restrictions or residency requirements

The BVI has no income tax, corporation tax, capital gains tax, inheritance tax, gift tax, wealth tax or any other form of taxes applicable to a company conducting business outside of the BVI. There is also no currency exchange controls applicable to a BVI company nor any residency requirement for its directors.

Reduced maintenance costs

Government fees and ongoing annual maintenance fees for a BVI company are generally lower than for companies incorporated in other jurisdictions including most other offshore jurisdictions.

Flexible constitutional documents

The Act provides tremendous flexibility as it relates to the constitutional documents of a BVI company. The main benefit of this flexibility is that the constitutional documents can be drafted so as to mirror a specific transaction such as a joint venture arrangement or listing scenario or any special purpose structure involving multiple classes of shares with varying rights etc. Most companies will also have a wide objects clause which will give the company the power to conduct any type of activity subject to any applicable licensing requirements and once it is not illegal.

Joint venture arrangements

Typically, a director is required to act in the best interests of a company, however, in a joint venture situation, the Act specifically provides that a BVI company has the ability to include a provision in its constitutional documents that a director of the BVI company can in a joint venture scenario act in the best interests of one or more shareholders of the company regardless of whether such actions are in the best interest of the BVI joint venture company itself. This provision has been viewed as a great practical benefit to joint venture transactions generally.

Dividends and distributions

Another advantage of BVI companies is the ease with which profits can be distributed. In order to make a distribution to shareholders, a BVI company only needs to satisfy a solvency test. The solvency test is satisfied if: (i) the company's assets exceed its liabilities; and (ii) the company is able to pay its debts as they fall due. There are no distributable profits tests or similar requirements which is the case in most other jurisdictions.

IPO capability and international recognition

BVI companies are used as listing vehicles on the world's most renowned stock exchanges including the New York Stock Exchange, Nasdaq, the London Stock Exchange (Main Board and AIM), the Toronto Stock Exchange, the Singapore Stock Exchange and the Hong Kong Stock Exchange. The listing of BVI companies on these exchanges is a clear indication that BVI companies and their underlying structure can undergo the most rigorous of tests applied in the world's leading financial markets.

Service providers

The BVI has a very wide spectrum of high quality service providers including legal, fiduciary, accounting and other financial services providers who are able to assist clients and provide high level input and guidance from the first instruction to the closing of a deal.

The redomiciliation process

Having determined that a foreign company can continue into the BVI then the next step would be to comply with the fairly straightforward continuation process under the Act. The process involves submitting an application supported by the company's corporate documentation, constitutional documents and the like.

Secondly, the application has to be submitted to the Registrar of Corporate Affairs (the "**Registrar**") and if the Registrar is satisfied that the requirements for continuation have been complied with, the company will be registered, allocated a BVI company number and issued with a certificate of continuation. Such certificate of continuation is conclusive evidence that the company is continued as a BVI Business Company under the Act on the date specified in the certificate of continuation.

In addition, the proposed Registered Agent of the company in the BVI must be satisfied with the due diligence it has conducted with respect to the foreign company.

Once the company is recognised as a company continued under the Act, that company is treated as a company incorporated under the Act and is therefore capable of exercising all relevant powers applicable to companies under the Act.

Effect of redomiciliation

It is important to note that the continuation of a foreign company under the Act, does not affect the continuity of the company as a legal entity or the assets, rights, obligations or liabilities of the company. In addition: (a) no conviction, judgment, 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, is released or impaired by its continuation as a company under the Act; and (b) 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, 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.

Also, all shares in the company that were outstanding prior to the issue by the Registrar of a certificate of continuation shall be deemed to have been issued in conformity with the Act.

O'Neal Webster is leading law firm in the British Virgin Islands and is able to assist with all aspect of BVI continuations. For further information, please contact Christopher Simpson at csimpson@onealwebster.com.

This Guide is general in scope and is not intended to be comprehensive. It is not a substitute for legal advice.

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