

Continuation by a foreign company into the BVI

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The BVI Business Companies Act, 2004 (as amended) (the **Act**) allows a foreign company to continue its existence as a BVI company incorporated under the Act. This process is sometimes referred to as a corporate migration, redomiciliation or transfer of place of incorporation.

This guide examines the continuation by a foreign company into the BVI under the Act. For information about the continuation of a BVI company to a foreign jurisdiction, refer to our guide entitled '[Continuation by a BVI company to a foreign jurisdiction](#)'.

Why BVI?

The BVI is an increasingly popular jurisdiction for foreign companies that wish to relocate their place of incorporation. The features that make the BVI an attractive jurisdiction include:

- the ease and simplicity of the continuation procedure;
- the BVI has comparatively low set up and running costs;
- a BVI company is exempt from all forms of BVI tax and stamp duty;
- the BVI has a modern legal system based on English legal principles, and in particular, its corporate legislation is flexible and its insolvency legislation is creditor friendly;
- the BVI is recognised and respected as a well regulated jurisdiction by organisations around the world (including corporations, funds, banks and financial institutions);
- the BVI has a well respected commercial court; and
- a BVI company is not usually required to appoint a BVI resident director or an auditor.

Eligibility

The Act allows a foreign company to continue its existence as a company incorporated under the Act if:

- the laws of its current jurisdiction of incorporation allow it to do so;
- it is not in liquidation or subject to equivalent insolvency proceedings in any jurisdiction;
- no receiver or manager has been appointed in relation to any of its assets;
- it is not subject to any unconcluded arrangement with its creditors; and
- it is not subject to any liquidation proceedings (or any equivalent insolvency proceedings) before a court in any jurisdiction.

Continuity

The foreign company's continuation as a company incorporated under the Act does not affect its:

- continuity as a legal entity; or
- assets, rights, obligations or liabilities.

Simple procedure

The foreign company must take any steps necessary for it to continue into the BVI under the laws of its current jurisdiction of incorporation.

For the purposes of the Act, the procedure for a foreign company to continue into the BVI is as follows:

- it must appoint a licensed registered agent in the BVI;
- it must reserve a name with the BVI Registrar of Corporate Affairs (the **Registrar**);
- its BVI registered agent must file with the Registrar:
 - an application form;
 - a certified copy of its certificate of incorporation (or equivalent document evidencing its registration in its current jurisdiction of incorporation);
 - evidence satisfactory to the Registrar that its application to continue and its proposed memorandum and articles of association have been approved:
 - by a majority of its directors or other persons authorised to exercise its powers (eg resolutions of directors); or
 - in any other manner it has established for the exercise of its powers;
 - its proposed memorandum and articles of association which must:
 - comply with the Act (in particular, its proposed memorandum of association must state its current name, the name under which it proposes to be continued and the date on which, and the jurisdiction in which, it was originally incorporated); and
 - be signed by the persons who have approved them; and
 - evidence satisfactory to the Registrar that it is not disqualified from continuing into the BVI (this is normally satisfied by providing an affidavit of a director which addresses the matters set out under 'Director's affidavit' below; and
- if the Registrar is satisfied that the foreign company has complied with the requirements of the Act relating to its continuation to the BVI, the Registrar will:
 - register the documents filed by its BVI registered agent;
 - allocate it a unique number; and
 - issue it a certificate of continuance.

The foreign company will become a BVI company incorporated under the Act with effect from the date specified in its certificate of continuance.

Director's affidavit

The director's affidavit mentioned above must:

- confirm that the director has carried out a thorough search of the foreign company's books and records and all other relevant documents and publications;
- confirm that each requirement mentioned under 'Eligibility' above is satisfied;
- be signed by a director and notarised or otherwise legalised in accordance with the laws of the foreign company's current jurisdiction of incorporation; and
- be accompanied by an extract of the law relied upon for the purposes of establishing that the laws of its current jurisdiction of incorporation allow it to continue into the BVI.

Effects of continuation

The effects of a foreign company continuing into the BVI are that:

- it is treated as if it were originally incorporated under the Act;
- it is capable of exercising all of the powers of a company incorporated under the Act;
- it is no longer to be treated as incorporated under the laws of its former jurisdiction;
- the memorandum and articles of association filed with the Registrar become its memorandum and articles of association;

- no conviction, judgment, ruling, order, claim, debt, liability or obligation due or to become due, and no cause existing, against it or against any of its shareholders, directors, officers or agents, is released or impaired by its continuation;
- no proceedings, whether civil or criminal, pending by or against it, or against any of its shareholders, directors, officers or agents are abated or discontinued by its continuation, and the proceedings may be enforced, prosecuted, settled or compromised by or against it or against the relevant shareholder, director, officer or agent; and
- all shares in issue before its continuation are treated as having been issued in compliance with the Act.

Contacts

A full list of contacts specialising in BVI law can be found [here](#).