

# Corporate Migration to the British Virgin Islands

The sheer volume of active BVI Business Companies (over 400,000<sup>1</sup>) is testament to the fact that no other offshore jurisdiction offers a comparable corporate vehicle. The combined number of active Cayman and Bermudan companies, for example, is approximately 100,000<sup>2</sup>.

Companies that have been incorporated in other offshore jurisdictions may 'continue' or 'migrate' to the BVI. This article highlights some popular reasons for doing so, corrects some common misconceptions, and summarises our statutory process.

## Why Migrate to the BVI

Companies often migrate to the BVI from other offshore jurisdictions in order to take advantage of significantly lower annual maintenance fees, the flexibility of the BVI's legislation (which facilitates a wide range of corporate transactions) and the BVI's superior global reputation in the business world. It is not uncommon for multiple companies that have been incorporated in a variety of other jurisdictions, but which comprise a single group, to migrate to the BVI together, in order to simplify the group's audit process or to streamline a proposed reorganisation. Additional reasons to migrate to the BVI include the BVI's inclusion in the OECD White List and the quality of the BVI's service providers, legal, fiduciary, accounting and other financial services.

## Business Continuity

It is a commonly held misconception that the process of continuing to another jurisdiction may be disruptive to the company's business operations or otherwise. In fact, continuation to the BVI does not affect the continuity of the company as a legal entity and similarly, any assets, rights, obligations or liabilities of the company are not affected in any way under BVI law.

## Simple Process

The BVI's statutory procedure is very straightforward. A corporate migration to the BVI can be effected in a short time frame.

Pursuant to Part X of the BVI Business Companies Act, 2004 (the "**Act**"), the company's proposed BVI registered agent must submit an application, which must include the following documents, to the BVI Registry of Corporate Affairs (the "**Registry**"):

- a) a certified copy of the company's certificate of incorporation (or equivalent);
- b) the form of memorandum and articles of association to be adopted;
- c) evidence that the application to continue and the proposed form of memorandum and articles of association have been approved by a majority of the directors (or other persons who exercise the power of the company) or in such other manner as may be established by the company for exercising the powers of the company; and
- d) evidence that the company is not prohibited from migrating to the BVI (see below).

If the Registry is satisfied that the requirements for continuation have been complied with, the company shall be registered, allocated a BVI company number and issued with certificate of continuation. Such certificate of continuation shall be conclusive evidence that the company is continued as a BVI Business company under the Act on the date specified in the certificate of continuation.

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 BVI Business Companies under the Act.

## Restrictions on Migrating to the BVI

There are some limited circumstances where a company that has been incorporated in another jurisdiction cannot continue as a BVI Business Company as follows:

- a) the laws of the jurisdiction in which the company is registered do not explicitly permit it to do so;
- b) the company is in liquidation, or subject to equivalent insolvency proceedings, in another jurisdiction;
- c) a receiver or manager has been appointed in relation to any of the company's assets;

<sup>1</sup> BVI Financial Services Commission's Statistical Bulletin for Q2 2009: as at 31 June 2009 there were 405,873 active BVI Business Companies.

<sup>2</sup> According to the Cayman Islands Government website and the Bermuda Royal Gazette website as at 4 November 2009.

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- d) the company has entered into an arrangement with creditors that has not been concluded; or
- e) an application made to a Court in another jurisdiction for the liquidation of the company, or for the company to be subject to equivalent insolvency proceedings, has not been determined.

## Conclusion

If your offshore corporate vehicle is overly expensive to maintain, or unsuitable for your business needs, corporate migration to the BVI may be the solution. Many offshore jurisdictions permit corporate migration out of the jurisdiction of incorporation, and a corporate migration to the BVI can be effected in a short timeframe.

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# Continuations of Companies into and out of the British Virgin Islands

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