

# Micro Business Companies Act, 2017

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The BVI has, for many years, been a key jurisdiction in the international business community with over 350,000 active business companies domiciled here, many of which form part of the corporate structures of the world's largest multinationals. With the bringing into force of the Micro Business Companies Act, 2017 (the **MCBA**) on June 4<sup>th</sup> this year, however, the BVI has turned its attention to one of the largest economic groups on the planet by number – micro enterprises.

A significant percentage of all employment within the OECD group comes from small enterprises, many of which have fewer than 9 employees and, as such, are frequently termed 'micro' businesses. While there is no common definition of what a micro business is, they are typically small, family-and-friends run business without a high degree of corporate sophistication. Furthermore, whereas larger companies tend to be based in rich, developed countries, micro business are frequently found in, and play a significant role in the economies of, countries in the developing world. The MCBA has been introduced to provide the benefits of a corporate 'wrapper' to these enterprises, and act as an introductory step to becoming fully-fledged companies.

## What are the requirements?

Whereas a standard BVI company incorporated under the Business Companies Act, 2004 (the **BCA**) has no restrictions *per se* on the types or sizes of business it can be used for, micro business companies have to fall within a set of restriction set out in section 17 of the MCBA. These restrictions are that the micro business company (**MBC**) may not:

- carry on any business that is regulated under any financial services regulation under any circumstances;
- have an annual turnover of more than \$2,000,000 (or its equivalent in any other currency) and more than 10 employees; or
- have gross assets valued at more than \$2,000,000 (or its equivalent in any other currency)

and more than 10 employees.

In the event that these limits are exceeded, or the MBC wishes to engage in regulated business, the MBCA requires the MBC to convert to a full BVI business company under the BCA, a mechanism for which is set out in the MBCA.

For existing companies operating within the BVI for which the MBCA regime would be more appropriate, there is a mechanism to convert to an MBC, though this programme is time-limited and is only available for the next nine months.

### **Who is it for and how is it held?**

MBCs are designed for sole-trader type enterprises, where a single person is responsible for the operation and management of the business, but with the possibility of having a few investors who are, from a legal perspective, effectively sleeping partners.

MBCs are limited to issuing 6 shares: 1 'principal share' and 5 'participant shares'. The principal share must be issued to the principal of the MBC, and the participant shares may be held by one or more participants (though each participant is limited to holding a single participant share).

### ***Principals***

The principal of an MBC is the person with sole responsibility for the management of the enterprise. They hold the principal share, which confers on them:

- the obligation to manage, direct and supervise the business and affairs of the MBC;
- the right to dividends; and
- the right to distributions of surplus assets on a winding-up of the MBC.

The obligation to manage comes with full corporate authority to exercise powers and act on behalf of the MBC without any further need for authorisations; this is in contradistinction to the requirements of the BCA on full business companies, which typically require director resolutions to authorise acts of a company, even in the case of sole director companies.

### ***Participants***

Those who wish to invest money in an MBC may subscribe for a participant share in the business. Participant shares are more flexible than principal shares and may have such rights as are set out in the charter of the MBC.

There are no express provisions in the MBCA for participant shares to be issued in different classes or series, and as such it appears that each participant share will, by default, be issued bearing equal rights. Section 23 of the MBCA states that rights must be set out in the charter of

the MBC and may include (or restrict):

- dividend rights;
- rights to any distributions of the surplus assets of the MBC on a liquidation; and
- such other rights, restrictions, privileges and conditions as may be identified.

Notwithstanding the implication in the MBCA that participant shares will, by default, carry equal rights, section 31 of the MBCA provides that distributions may be made "in accordance with any profit sharing agreement between the principal and the participant" and, therefore, while other rights may be equal it seems that it will be possible to differentiate between individual participants as regards economic interests and entitlements. Participant shares do not carry voting rights.

Both participant shares and the principal share are deemed fully paid-up on issue, and are not required to be issued for consideration. While principal shares are transferable, they may not be encumbered, held on trust, or jointly held. Participant shares are subject to similar limitations on encumbrances but also are not transferable under any circumstances.

### **Incorporation and ongoing requirements**

An MBC is required, like a company incorporated under the BCA, to have a registered agent in the BVI. In order to incorporate an MBC, the proposed registered agent must file with the registry of corporate affairs in the BVI the information that is to be contained in the MBC's constitutional document – its charter. The charter of a company is publicly available and contains (*inter alia*):

- the name of the MBC;
- the specific business purpose of the MBC;
- the name and nationality of the principal; and
- the name and nationality of each participant.

Each year, on 31 January, the MBC must file an annual return that confirms that these details are still correct and that the MBC is still within the thresholds set out in section 17 of the MBCA relating to type of business, turnover, assets, and number of employees, as described above. If the MBC is unable to make this confirmation, because the type of business it is proposed to be engaged in has changed or a threshold is exceeded, it must convert to a company registered under the BCA. In the event that the MBC fails to make this filing, it will be struck off the register of companies and will be dissolved after one year, unless it is restored to the register by making this filing and paying the appropriate penalty.

One of the factors that often militates against small business electing to incorporate as limited

liability entities is the costs involved (for example, basic incorporation and annual registration costs for a BCA company can range between \$700 - \$1,400); the MBCA seeks to mitigate this concern by providing low annual registration fees (as at 4 June 2018, the incorporation and annual registration fees are \$100 each) and by setting caps on the fees that are chargeable by registered agents for their services in relation to MBCs. Information on all fees payable will be publicly available, which can give a prospective MBC great clarity on the potential costs involved in registering.

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