

Snapshot: explaining ostensible authority in BVI law

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In the first of our new series of corporate snapshots focusing on BVI law, our BVI Corporate and Banking and Finance partner Christian Burns-Di Lauro explains the concept of ostensible authority in the jurisdiction.

Sections 29, 31 and 32 of the BVI Business Companies Act, 2004 (the **BCA**) state no act of a BVI company is invalid by reason only of the fact that the BVI company did not have the capacity, right or power to perform the act. In addition, a BVI company may not assert against a person dealing with it that the BCA or its constitutional documents have not been complied with, or a person held out by it as a director has not been duly appointed or does not have the authority to exercise a power which a director of the BVI company carrying on business of the kind carried on by the BVI company customarily has authority to exercise, unless the person has, or ought to have, by virtue of his relationship to the BVI company, knowledge of such matters.

It should be noted that a person is not deemed to have notice or knowledge of any document relating to a BVI company, including its constitutional documents by reason only of the fact that a document is available from the Registrar of Corporate Affairs in the BVI or for inspection at the registered office of the BVI company. In addition, the agency rule/principles of ostensible authority as applied in the English case of *Freeman & Lockyer v. Buckhurst Park Properties* and the "internal management rule" as applied in the English case of *Royal British Bank v. Turquand* have all but been codified into statute in the BVI pursuant to the BCA. Furthermore, the concept of ultra vires has almost entirely been abolished in the BVI.

Section 28(1) of the BCA has been drafted so that every BVI company has full capacity to carry on or undertake any business or activity, do any act or enter into any transaction and for these purposes has full rights, powers and privileges. Additionally, Section 29(1) of the BCA provides that no act of a BVI company and no transfer of an asset by or to a BVI company is invalid by reason only of the fact it did not have the capacity, right or power to perform the act or transfer or receive the asset. A BVI company has the power and capacity to do almost anything on the

assumption that such activity undertaken is not illegal, a regulated activity or specifically prohibited by law or the its constitutional documents and the BCA specifically permits a BVI company to undertake actions irrespective of corporate benefit.

If a person dealing with a BVI company has, or ought to have by virtue of its relationship with the BVI company, knowledge of a constitutional limitation, it is possible for the BVI company to "assert" that against such person. Such an assertion could, potentially, go to the validity of the relevant act, but no further statutory guidance is given and the outcome would be fact sensitive. In addition, it is possible for the BVI company to "assert" actual knowledge against a person dealing with it and such an assertion could, potentially, go to the validity of the relevant act. Again, no further statutory guidance is given and the outcome would be fact sensitive.

For more information on this topic please contact our BVI corporate team.

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