

# Incorporating Businesses in the BVI

THE BVI BUSINESS COMPANIES ACT (NO 16 OF 2004) IS A STATUTE OF THE BRITISH VIRGIN ISLANDS RELATING TO THE FORMATION OF ALL COMPANIES IN THE BRITISH VIRGIN ISLANDS, BOTH OFFSHORE COMPANIES AND LOCAL COMPANIES. IT REPLACED THE EXTREMELY POPULAR AND HIGHLY SUCCESSFUL INTERNATIONAL BUSINESS COMPANIES ACT.

The decision to replace the International Business Companies Act was driven by two things. Firstly, there was a general perception that the older legislation was becoming a bit dated, and needed modernising. Secondly, the OECD and other multinational organisations had expressed concerns about ring-fenced tax regimes in tax havens, such as that under the older legislation and were putting jurisdictions under pressure to repeal them. The British Virgin Islands Financial Services Commission dealt with both issues in a single legislative swoop.

The BVI Business Companies Act is actually based upon a New Zealand statute (as opposed to the International Business Companies Act, which was based on Delaware corporation law). Conscious of how widely the earlier legislation had been copied by other tax havens, the BVI Business Companies Act was drafted with a large number of forms and procedures which specifically tied it into the Territory's regulatory structure, thereby making it much harder to simply copy and enact.

Essentially, a modern IBC is a private corporation which is exempt from tax, suitable for virtually any international business activity, has a flexible organizational structure, is not burdened by excessive reporting and record-keeping requirements, and maintains strict confidentiality provisions.

## Tax exemption

A BVI Business Company is exempt from the BVI income tax, the same exemption applies to all dividends, interest, rents, royalties, compensations and other amounts paid by a company, and all capital gains realised with respect to any shares, debt obligations or other securities of the company. No estate, inheritance, succession or gift tax is payable with respect to any shares, debt obligations or other securities of a BVI BC.

All transactions and instruments relating to transfers of any type of property of assets, shares, debt obligations or securities to or by a BVI BC are exempt from the stamp duty, with a sole exception for land-ownership transactions in the British Virgin Islands, in which case stamp duty remains payable.

## The advantages of choosing the BVI

These are some of the general advantages of the British Virgin Islands over many other offshore financial centres:-

US dollar is the official currency in the BVI - therefore, by definition, there can be no currency controls and no artificial manipulation of money supply by the local government.

BVI are a British Overseas Territory, which provides for an outstanding political stability. The country also maintains a low international profile and a clean reputation, thus avoiding the pitfalls experienced by some more publicised and less scrupulous offshore tax havens.

BVI has an independent judicial system based on English Common Law. Laws and regulations are routinely developed in consultation with the private sector. Offshore financial

services sector contributes a very significant part to the country's gross domestic product. Therefore, an inherent and pronounced interest exists both with the government and with the general public to maintain and develop the country's status as a competitive offshore financial centre.

BVI is an independent country with a fairly high standard of living. Therefore, it avoided entering any information-sharing agreements with foreign countries or organizations for exchange of financial aid. Client confidentiality is robustly enshrined in the BVI corporate and business legislation.

BVI is easily accessible by sea and air, has modern telecommunications and is on US Eastern Standard Time (1 hour behind EST in winters).

## Flexibility and confidentiality

A BVI Business Company requires a minimum of only one owner, one shareholder, and one director. All of them can be one and the same person. Apart from the director, the company need not appoint any operating officers. The management structure of the BVI Business Company may be designed in accordance with the widest variety of requirements.

The shareholders, directors and officers of a BVI Business Company may be individuals or corporations and of any nationality. The shareholder's or director's meetings need not be held in the British Virgin Islands and there is no requirement for an Annual General Meeting.

Meetings can be held by telephone or other electronic means; alternatively, directors as well as shareholders may vote by proxy.

Where a Business Company has only one member who is an individual and that member is also the sole director, such sole member / director may specifically appoint a reserve director to act in his place in the event of his death.

Furthermore, Confidentiality is one of the key features of the BVI Business Company as details of the company beneficial owners, directors and shareholders are NOT part of public record. Register of Members, Register of Directors and all Minutes and Resolutions by the Company are kept only at the offices of the Registered Agent in complete confidentiality. Certainly, though, these files are available for inspection to Company shareholders.

The only documents held on public record are the Memorandum and Articles of Association, but these normally do not contain any indication as to the actual shareholders, directors or the beneficial owners of the company.



Calum McKenzie - Director

Folio Corporate Services Limited  
Tel: +1 284 494 7065 | Fax: +1 284 494 8356  
calum@folioadmin.com | www.folioadmin.com



**"Our ability to provide the quality service and diversity that is demanded by our clients has been demonstrated by our year on year growth since we began operations in 2005."**  
- Calum McKenzie

Folio Corporate Services Limited ("FCSL") is a BVI based corporate services company. The Company provides a full suite of corporate services to BVI companies and offers services in a number of other jurisdictions. These services range from the most commonly used, such as incorporation / registered Office & Agent services, through to handling licencing applications for investment business and trust companies, providing director/corporate governance services, opening bank & brokerage accounts throughout the world and other ancillary services such as ship registration.

FCSL is a subsidiary of Folio Administrators Limited, celebrating its 10th business anniversary this year, and is part of the Folio group of companies which also provide Fund Administration and Insurance services across a wide number of jurisdictions.

Calum McKenzie, FCSL Managing Director, said that given the Company's origins as a subsidiary of a Fund Administration company, its core competence has been dealing with the registration and approval/licencing of mutual funds and related companies.

He said: "We have established a reputation as a premier service provider in this area and have grown our business around mutual funds and companies related to them. We do not operate the common BVI business model being a provider of high volumes of companies for extremely low margins.

Our focus is to provide what would be termed 'value added services' and provide our clients with something that adds real substance to their operations."

Indeed, as Mr McKenzie noted, the firm has an excellent record of client and company retention, much higher than the industry norm and has a much lower percentage of companies/clients who do not renew on an annual basis.

"We provide services to a wide range of companies from basic business holding and trading companies through to mutual funds and listed companies. We provide director services to a diverse range of companies also, drawing upon the extensive pool of experience, knowledge and professionalism of our team of highly qualified personnel," he said. "Our ability to provide the quality service and diversity that is demanded by our clients has been demonstrated by year on year growth since we began operations in 2005."

Mr McKenzie went on to explain that the BVI is the leading jurisdiction for the incorporation of companies. The number of companies registered is now fast approaching 1 million.

"The main single reason for this is the product... the BVI company is quick and simple to obtain/register, easy to use and to understand, thanks to pragmatic, clear and simple legislation, recognized worldwide and historically proven. Service providers in the BVI are very competent and good at what we do. The jurisdiction has built its own reputation for the past 25 years and has proven it will do what is necessary to enable business to thrive within the BVI." he said.



Amy Roost

Jordans (Caribbean) Limited  
+1 284 494 6643  
amy\_roost@jordans-bvi.com  
www.jordans-international.com

Established in 1863, Jordans are a leading supplier of corporate and trust services both in the UK and a selection of offshore locations. In addition, Jordans provide business information, offer conveyancing services and are the largest independent legal publisher in the United Kingdom.

The headquarters of Jordans International Limited, part of the Jordans group of companies, is in the UK. Jordans also has a local presence in a number of leading offshore centres, which provide administration, taxation and accounting services primarily on behalf of professional advisors and entrepreneurs involved in cross border transactions.

"Our long heritage, independent ownership and the diversity of expertise we offer across our group are all features that set us apart," said Amy Roost, director. "For our clients, these qualities mean we are dependable, flexible, accurate and intellectually original in the solutions we provide."

The British Virgin Islands is one of the most popular jurisdictions in the world, with an excellent record and over 500,000 companies registered. Commenting on this popularity, Ms Roost stated that "success breeds success".

"The BVI company is well-established and is a known quantity to the banks and other financial institutions," she added. "Its corporate legislation is state of the art, and it is a white-listed jurisdiction."

A BVI Business Company requires no public disclosure of its shareholders or directors, although this information is held by the registered agent of the company within the jurisdiction. Ms Roost believes that the benefits of such confidentiality can be overstated, but it can reduce professional fees

required to implement a simple arrangement to retain a reasonable level of confidentiality.

A BVI IBC only takes two business days to incorporate. Commenting on the speed of this process, Ms Roost explained that BVI companies are incorporated electronically using the VIRRGIN system.

"Once we have full due diligence on our clients we are able to incorporate efficiently using the system," explained Ms Roost. "The company number and electronic M&A are received within 24 hours and the certificate of incorporation is generally received on the following business day."

Ms Roost noted that the most recent pieces of legislation are the Financing and Money Services Act (regulating Foreign Exchange and money services providers operating in the BVI) and the Securities and Investment Business Act which overhauled the mutual funds legislation, and introduced the regulation of BVI companies conducting investment activities around the world.

Concluding with her predictions for the rest of the year, Ms Roost stated that volumes of BVI companies are likely to increase.