

Mergers involving British Virgin Islands companies

Service area / [Corporate](#)

Location / [British Virgin Islands](#)

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Can a BVI company enter into a merger?

Yes. Mergers of British Virgin Islands (“BVI”) companies are governed by the BVI Business Companies Act, as amended (the “Act”) and the common law. Subject to its memorandum and articles of association, any BVI company limited by shares (other than a segregated portfolio company) can merge with another company or companies, provided each BVI company involved in the merger has paid its annual government filing fee and is in good standing with the Registrar of Corporate Affairs in the BVI (the “Registrar”).

Can a BVI company merge with a foreign company?

Yes. The Act authorises the merger of a BVI company with one or more foreign companies, provided this is permitted by the constitutional documents of each foreign company and the laws of the relevant foreign jurisdiction(s). The surviving company can be either a BVI company or a foreign company. Certain foreign jurisdictions, however, may not permit their companies to merge with BVI companies. In such circumstances it may be possible, for example, to re-domicile the foreign company in the BVI prior to the merger, thereby enabling the merger to proceed.

How are shares treated in each merging company?

The merger documents will set out how the shares in each company will be treated following the merger, whether by re-classifying, cancelling or converting the shares of each company into shares, debt obligations, or other securities in the surviving company (or money, or assets or a combination of the same). Where a parent company merges with one or more of its subsidiary companies some or all of the shares in each company to be merged may be converted into assets and shares. If the parent company is not the surviving company, then the shares in the parent company can only be converted into similar shares in the surviving company.

Who needs to approve the merger?

In general, the directors and members of each merging BVI company will need to approve the company’s entry into the merger. Members who are not entitled to vote are still entitled to receive copies of the merger documentation. The registered agent of each merging BVI company will also need to consent to the merger by way of letter. Parent and subsidiary company mergers can be approved by the directors of the parent.

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How long does a merger take?

The timeframe for a merger will depend largely upon the jurisdiction in which the surviving company is registered. If the surviving company is a BVI company, the merger will usually be effected within two or three business days of the completed merger documents being filed with the Registrar.

What documentation is required to effect a merger?

A plan of merger, articles of merger and resolutions are required from a BVI perspective. The BVI company's registered agent will file the articles of merger with the Registrar. Where the surviving company of the merger is a foreign company, additional documentation will need to be filed with the Registrar.

When does a merger become effective?

Where the surviving company is a BVI company, a merger is effective on the date that the merger documentation is registered by the Registrar (or on such date, not exceeding 30 days, as is stated in the merger documentation). Approximately two days after the merger documentation has been approved by the Registrar, a certificate of merger will be issued by the Registrar which is conclusive evidence of compliance with all the requirements of the Act in respect of the merger. Where the surviving company is a foreign company, the effective date of the merger is governed by the law of the foreign jurisdiction.

What are the effects of a merger?

As soon as a merger becomes effective:

- the surviving company (so far as is consistent with its memorandum and articles) has all rights, privileges, immunities, powers, objects and purposes of each of the merging companies;
- the business and assets of each merging company immediately vest in the surviving company;
- the surviving company is liable for all claims, debts, liabilities and obligations of each merging company;
- no conviction, judgment, ruling, order, claim, debt, liability or obligation due or to become due, and no cause existing, against a merging company or against any member, director, officer or agent thereof, is released or impaired by the merger; and
- no proceedings, whether civil or criminal, pending at the time of a merger by or against a merging company, or against any member, director, officer or agent thereof, are abated or discontinued by the merger; but
 - a. the proceedings may be enforced, prosecuted, settled or compromised by or against the surviving company or against the member, director, officer or agent thereof, as the case may be; or
 - b. the surviving company may be substituted in the proceedings for a merging company.

What happens to a BVI company that is not the surviving company in a merger?

The Registrar will strike off the Register of Companies any BVI company that is not the surviving company in a merger.



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