

Continuation of a company into the British Virgin Islands

Service area / [Corporate](#)

Location / [British Virgin Islands](#)

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A company incorporated in a foreign jurisdiction (a “Foreign Company”) can continue into the British Virgin Islands (the “BVI”), provided the laws of the jurisdiction where the Foreign Company is registered (the “Foreign Law”) permit it to do so.

Process

In order to continue a Foreign Company into the BVI, the following documents must be prepared and submitted to the BVI Registrar of Corporate Affairs (the “Registrar”):

- a certified copy of the Foreign Company’s certificate of incorporation (or such other document as evidences its incorporation, registration or formation under Foreign Law);
- the memorandum and articles of association that the Foreign Company proposes to adopt when it continues into the BVI (the “Continuation M&A”);
- evidence that: (a) the application to continue into the BVI; and (b) the Continuation M&A have been approved by a majority of the Foreign Company’s directors (or foreign law equivalent). This is usually evidenced by submitting a copy of the Foreign Company’s resolutions (or a certified extract thereof), which approve the continuation and the Continuation M&A, to the Registrar; and

- a director’s certificate from a director of the Foreign Company, attesting that none of the Restrictions on Continuation (defined below) apply to the Foreign Company and confirming that the Foreign Company meets the requirements for continuing into the BVI. The director’s certificate must be notarised or legalised in accordance with Foreign Law. It must also be accompanied by an extract of the legislation that evidences the continuation of the Foreign Company is permitted under Foreign Law.

Continuation memorandum and articles of association

When the Foreign Company is continued into the BVI, it must have approved memorandum and articles of association that comply with the BVI Business Companies Act (the “Act”). The Continuation M&A can either be based on standard form BVI memorandum and articles of association, or bespoke memorandum and articles of association can be prepared, so they are similar to the constitutional documents that the Foreign Company had before it was continued into the BVI.

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The Continuation M&A must confirm the following:

- the Foreign Company's name at the date the application is made to continue into the BVI;
- the name that the Foreign Company proposes to adopt when it is continued into the BVI;
- the jurisdiction under which the Foreign Company was incorporated, registered or formed;
- the date the Foreign Company was incorporated, registered or formed; and
- whether or not the Foreign Company will be authorised to:
 - a. issue bearer shares; or
 - b. exchange/convert registered shares for bearer shares, when it is continued into the BVI.

The Continuation M&A must be signed by, or on behalf of, the persons who are authorised to, and who have approved, the Foreign Company's continuation into the BVI.

Restrictions on continuation

A Foreign Company may not continue into the BVI if any of the following (the "Restrictions on Continuation") apply:

- the Foreign Company is in liquidation, or subject to equivalent insolvency proceedings in another jurisdiction; or
- a receiver or manager has been appointed in relation to any of the Foreign Company's assets; or
- the Foreign Company has entered into an arrangement with its creditors that has not been concluded; or
- an application made to a court in another jurisdiction for the liquidation of the Foreign Company or for the Foreign Company to be subject to equivalent insolvency proceedings has not been determined.

The Registrar may also refuse to continue a Foreign Company into the BVI, if it would be contrary to the public interest to do so.

Certificate of continuation

Once the Registrar is satisfied that the provisions of the Act have been complied with, the Registrar will give the Foreign Company a unique company number and issue a certificate of continuation (the "Certificate of Continuation").

The effective date of the continuation will be the date specified on the Certificate of Continuation. Once issued, the Certificate of Continuation is conclusive evidence that all requirements of the Act have been complied with and that the Foreign Company has been continued as a company incorporated in the BVI under the Act.

Effect of continuation

Once the Foreign Company is continued into the BVI:

- the Act will apply to the Foreign Company as if it had been originally incorporated under the Act;
- the Foreign Company will be capable of exercising all the powers of a company incorporated under the Act;
- the Foreign Company will no longer to be treated as a company incorporated under Foreign Law;
- the Continuation M&A will become the constitutional documents of the Foreign Company; and
- all shares in the Foreign Company that were outstanding before the Certificate of Continuation was issued, will be deemed to have been issued in conformity with the Act and therefore remain unaffected by the continuation.

The continuation of the Foreign Company under the Act does not:

- affect the continuity of the Foreign Company as a legal entity or any of its assets, rights, obligations or liabilities; or
- release or impair any conviction, judgment, ruling, order, claim, debt, liability or obligation due (or to become due) or any cause existing, against the Foreign Company or against any of its members, directors, officers or agents; or
- discontinue or impair any proceedings, whether civil or criminal, pending at the time the Certificate of Continuation is issued, by or against the Foreign Company, or against any of its members, directors, officers or agents.

For the avoidance of doubt, any such proceedings may be enforced, prosecuted, settled or compromised by or against the Foreign Company or against any of its members, directors, officers or agents, as the case may be.

Benefits of continuing into the BVI

Continuing a Foreign Company into the BVI can be a relatively quick process. This, coupled with the fact that under BVI law the continuation does not affect a Foreign Company's continuity as a legal entity or any of its assets, rights, obligations or liabilities, makes it a useful restructuring tool for Foreign Companies who want to take advantage of the BVI's tax neutrality and flexible, robust and internationally recognised company laws.

Some of the other reasons for continuing a Foreign Company into the BVI include:

- the ease of transferring shares in a BVI company which can be transferred on a same-day basis. To transfer shares in a BVI company, a shareholder just needs to provide the company with a duly executed written instrument of transfer, confirming the name and address of the new shareholder;

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- the BVI is an Organisation for Economic Co-operation and Development (OECD) white listed jurisdiction, which provides a tax neutral platform for cross border structuring, investments, financing and other transactions; and
- the ease of listing a BVI company on a number of recognised stock exchanges including the London Stock Exchange (and the Alternative Investment Market (AIM) of the London Stock Exchange), the New York Stock Exchange, NASDAQ, the International Securities Exchange, the Toronto Stock Exchange and the Hong Kong Stock Exchange.

If you require any further information regarding the continuation of a Foreign Company into the BVI, please contact one of the Carey Olsen BVI team.



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