

BRITISH VIRGIN ISLANDS - BVI

The British Virgin Islands consists of some 50 rocky and hilly islands in the Caribbean, about 1100 miles southeast of Miami and 40 miles east of Puerto Rico, with a total land area of 60 square miles. The biggest island is Tortola, where the capital Road Town is located.

The British Virgin Islands are a British Crown territory, therefore politically stable, democratic and substantially more prosperous than the other Caribbean nations. The legal and judicial system is based on English common law, with domestic legislation passed by the BVI Legislative Council. The United Kingdom is responsible for the islands' defense, foreign affairs, internal security, and the administration of justice. The resident population of the British Virgin Islands is approximately 22,000. The U.S dollar is the official currency.

The BVI has a taxation system, rather characteristic of an offshore tax haven nowadays. There is no corporate or personal income tax, and capital gains are not taxable. The Government covers its budget with the payroll tax (10% for small enterprises and 14% for all the rest) as well as from import and stamp duties, license fees and company registration fees. More than 700,000 companies have been registered in the BVI over the years, enabling the Territory to become one of the most important offshore jurisdictions

THE BVI BUSINESS COMPANY

1 GENERAL ASPECTS

1.1 Company Law:

The BVI Business Companies (BC) Act, 2004, as amended

1.2 Types of companies:

Several types of companies are now allowed under the new Act. These are:

- Companies limited by shares
- Companies limited by guarantee not authorized to issue shares
- Companies limited by guarantee authorized to issue shares
- Unlimited companies authorized to issue shares
- Unlimited companies not authorized to issue shares
- Restricted purposes companies
- Segregated portfolio companies
- Private Trust companies
- Bearer Share companies

1.3 Advantages of a Business Company of BVI (BC):

- Prompt and efficient incorporation due to a well-managed and organized BC Registry Office, with clear and simple procedures.
- Foreign language names are permitted.
- Only one subscriber and thereafter one shareholder (who could be a corporate body).
The Register of Directors of BVI companies' has to be filed at the BVI Companies Registry on a confidential basis so that it may be available to the BVI's regulatory authorities or to the BVI courts. The files of the Register of Directors shall be considered private information and shall only be available upon a court order or a written request issued by a competent authority.
- No restrictions concerning nationality and domicile of the directors, officers, and shareholders.
- Minimum of one director. Directors can be corporate and need not be BVI residents.
- Directors and Officers need not be Shareholders.
- Flexible structure of the shares: nominative and/or bearer shares (bearer shares must be immobilized with an authorized custodian in the BVI).
- No limitations on capital, which need not be paid at the time of incorporation.
- Optional registration of the names of Officers, Shareholders and Attorneys in Fact at the BC Registry.
- Meeting of the Board of Directors or Shareholders may be held in any country.
- Directors and Shareholders can attend meetings personally, by proxy, telephone or any other electronic means.
- Resolutions of the Board of Directors and Shareholders ratified by a majority are valid, without the necessity of a meeting.
- Exemption from all forms of local taxation including Stamp Duty.
- Competitive registration fees and annual license fees.
- No restrictions on establishing branch offices abroad.
- It is recommended that prior professional advice be obtained in relation to what is intended to be accomplished by using a BVI BC.

1.4 Incorporation and Administration:

- Excellent availability of company names for incorporation.
- Familiarity of incorporation documents (Memorandum & Articles of Association, Certificate of Incorporation) because the British Virgin Islands belong to the British Commonwealth.

- The words "Limited", "Corporation", "Incorporated", or "Sociedad Anónima", or the abbreviations "Ltd.", "Inc." or "S.A." may be used as a company's name ending.
- Incorporation documents may be drafted in Spanish or any language and submitted together with an English translation.
- Speedy incorporation procedure and simple ongoing administration.
- Incorporation procedure takes 1 day and the original papers will be in your hands between 5 to 6 days.
- The BVI Registry is equipped with modern sophisticated computer equipment improving speed and efficiency in the processing of documents in a timely manner.
- Shelf companies available.
- Registration of mortgages on vessels and aircraft available.

Any person (natural or juridical) may singly or jointly with others (in the BVI or elsewhere) incorporate a BC by subscribing to a Memorandum and Articles of Association. The usual procedure is for a nominee to act as incorporator. Our company, Quijano & Associates (BVI), offers the service to act as sole incorporator. When the company is registered, control of the company is passed over to the interested party by appointing as first directors (individual or corporate) those indicated by the client. The directors, in turn, arrange the issuance of shares and take the other decisions to commence business.

In accordance with regulatory and legal provisions, our firm maintains internal policies related to the processes of "Due Diligence" and "Know your Client", as routine to avoid the occurrence of illicit activities, protecting our clients and our business.

2. INCORPORATION PROCEDURE

2.1 Company Name:

Any name is acceptable, provided that it does not contain any "sensitive" or prescribed words, is not offensive or objectionable, and is not identical to, or too similar to, that of an already existing company. The words "Limited", "Corporation", "Incorporated", "Société Anonyme" or "Sociedad Anónima", or an abbreviation thereof, must be included in the company name to denote limited liability.

Other companies must indicate in their names their specific type. For example, restricted purposes companies need to add "SPV" to their names, while segregated portfolio companies need to include such phrase or the abbreviations "SPC" before the required name ending. Names can be reserved for 10 days unless an extra fee is paid which would cover a 90-day period.

2.2 Uses of a BVI BC:

A company may be incorporated under the Business Companies Act for any object or purpose not prohibited under said Act or under any other law for the time being in force in BVI, such as:

- Holder of bank accounts, fixed deposits, investment plans and any other financial or commercial titles.
- Owner of shares of other companies or legal entities.
- Owner of apartments, houses, buildings and any other movable or immovable property or goods.
- Manager and promoter of international business transactions.
- International leasing of vehicles, machinery and others.
- To give or receive money for loans, commissions or others.
- Marketing and promotion of products and services.
- Other commercial and financial activities.

2.3 The Registered Office:

A Company must have at all times a registered office and agent in BVI. Copies of documents such as the Memorandum and Articles of Association, appointment/resignation of directors and officers, share register, are required to be kept at the registered office of the company. The following documents may be kept at the registered office of a company or at any other such place that the directors may determine. These are: copies of resolutions, and accounting records.

2.5 Shares:

A BVI BC requires a minimum of one shareholder. Even though bearer shares will continue to be permitted in the British Virgin Islands, the regulatory regime requires the immobilization of bearer shares. You can have an unlimited number of shares but with an increase in the annual franchise tax when the amount of more than 50,000 shares is authorized.

2.6 Register of Members:

The register of members is strictly confidential. Every BC is required to keep a Register of Members, and a copy must be kept at the Registered Office of the Company in the BVI. To comply with the law, the Registered Agent must be informed of any changes in the Shares Register within 15 days of any change in the register.

2.7 Directors:

A BVI BC may have one or more individual or corporate directors of any nationality., Board meetings may take place anywhere in the world, and those who attend may do so in person or by proxy or by any electronic means (e-mail, telephone, fax, videoconference or other electronic means).

2.8 Register of Directors:

Every company formed in the BVI is required to establish and maintain a Register of Directors. A copy of the Register must be kept at its Registered Office and will remain confidential in our files and the Registry's records. Please refer to point 1.3 here above. The initial register of directors shall, be filed for registration at the Registry within 21 days of the appointment of the first directors and any changes thereafter, must be filed within 30 days of any changes occurring.

2.9 Accounts:

In order to comply with OECD requirements, late in 2012, BVI enacted new recordkeeping rules for companies and limited partnerships:

- As from the initial or final date of a transaction, records must be kept for at least five (5) years.
- All records and underlying documentation of the company (or partnership) can be kept within BVI or in any other jurisdiction.
- The BVI Registered Agent must receive confirmation in writing of the physical address where records are being kept, and promptly be informed of any change of said address, whenever the company (or partnership) maintains its documentation outside BVI.

In the event these records are not kept with the registered agent, in addition to the address, where the same are kept, the name of a person who maintains and controls these must be provided. The penalty for non-compliance of this requirement amounts to US\$50,000.

Complying with Record Requirements

It continues to be the legal obligation of the Companies to comply in maintaining records that satisfactorily show the financial position and explain the transactions of the company in order for it to be determined with a reasonable accuracy.

“Records and underlying documentation”, as a term, is expressly stated as including the accounts of the company (or partnership) pursuant to the new law.

2.10 Annual Fee:

- Annual Fee paid to the government for companies allowing up to 50,000 shares is US\$450.00.
- Annual Fee paid to the government for companies allowing more than 50,000 shares is US\$1,200.00.
- Note: Should you require the incorporation of a company which allows the issuance of bearer shares, please contact us for further details and fees.

A BC must pay an Annual Fee to the Registry of Corporate Affairs. The amount of this fee depends on the authorized shares of the company. If the annual fee is not paid on the on the corresponding last penalty date, the company is stricken-off from the Register. However, it may be subsequently restored by payment of the fee that is due plus a fine or penalty.

a) For companies incorporated during the first six months of a year:

- Payment of the Fee is due by May 31st.

- After June 1st, payment of the fee is subject to the following surcharges for nonpayment on due date:

- 10% until 31st July
- 50% until 31st October

b) For companies incorporated during the second six months of a year:

- Payment License Fee is due on November 30th.

- After November 30th, payment of the fee is subject to the following surcharges for non-payment on due date:

- 10% until 31st January
- 50% until 30th April

Please note that on the next year following the year of incorporation, the client shall be sent a reminder of when and how to pay the Annual Fee and Registered Agent and Registeerd Office fee.

Our fees for providing registered agent and office are payable annually and may be negotiable with institutional clients which maintain a considerable volume of companies under our management.

2.11 Common Seal:

A BC is required to have a common seal (which may be kept outside or within the BVI) and an imprint thereof must be kept at the BBC's Registered Office in BVI.

An instrument (contract, deed, agreement, will, order, warrant, letter, or other document showing an intention to make a formal arrangement of any matter) is not invalid by reason only of the fact that the company seal is not affixed to the instrument or deed

2.12 Continuation:

A BVI company may transfer its domicile to a foreign jurisdiction permitting such transfer. A company organized under any foreign jurisdiction may continue its existence as a BVI company upon approval of the necessary Resolution by its proper corporate body.

If a company with a registered charge in the BVI shall be continued outside the jurisdiction, the same must take into consideration the following requirements:

1. The Register must be notified about the release of the registered charge.
2. In the event the charge has not been released, the charge must be notified in writing about the intention of the continuation and the same must give his consent or non-refusal of the same.
3. If the charge does not provide his consent or non-refusal, his interest shall not be diminished or compromised.

2.13 Identity of Beneficial Owners

The BVI Anti Money Laundering Regulations and the Code of Practice were amended in respect of information requirements concerning Eligible Introducers and Beneficial Ownership.

Registered Agents are bound to maintain files with the proper information about the beneficial owners' names, their dates of birth, residential addresses and nationalities.

a. Statutory time periods to be considered

These filing requirements are in force and effects as of January 1, 2016.

b. Confidentiality

The Registered Agent (Quijano & Associates (BVI) Limited) will only keep the above-mentioned information in its file of the respective company, and it shall be kept as strictly confidential. All supporting documentation and copies related to the Beneficial Owner may remain with the Eligible Introducer.

c. Procedure to follow

Any company to be incorporated as of today must disclose to us, in our capacity as its registered agents, the beneficial owners' information referred to above.

On the other hand, we shall appreciate it very much that you kindly provide us such beneficial owners' information for each and all of the companies already established with our organization.

Should you require more information or any clarification in connection with the above, please do not hesitate to contact us, and we shall oblige without delay.

2.14 Economic Substance Requirements (ES)

Under the Economic Substance Act (“ESA”), legal entities formed or registered in the BVI are required to have economic substance in the BVI.

Which entities will be affected?

The ESA applies to certain BVI companies, BVI limited partnerships with legal personality, and foreign companies and foreign limited partnerships with legal personality registered in the BVI carrying on “relevant activities”. The ESA does not apply to limited partnerships that do not have legal personality.

Entities that are tax resident in a jurisdiction outside of the BVI (other than in a jurisdiction included on the EU non-cooperative jurisdictions list) do not need to comply with the economic substance requirements but will need to provide satisfactory evidence of their tax residency.

What activities are covered?

Legal entities carrying on any “relevant activities” will be required to satisfy an economic substance test. Relevant activities include the following types of business/business activity:

- Banking
- Fund management
- Insurance
- Intellectual property
- Shipping
- Finance and leasing
- Headquarters
- Holding
- Distribution and service center

What to do?

Where a legal entity is subject to the economic substance regime, it will need to demonstrate that it adheres to the BVI Law.

Full details on the requirements for compliance will follow once further clarification has been provided by the final Economic Substance Code. In the interim, the first step is to consider whether a legal entity is carrying on a “relevant activity”.

If it is, the next step is to consider whether it has sufficient substance or is tax resident in another jurisdiction. If not, appropriate action, which will depend on the particular facts and circumstances, needs to be taken.

2.15 Our Professional Fees:

A table of fees is available at this or any at the QUIJANO & ASSOCIATES offices upon request.