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## A guide to dealing with BVI companies

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This article covers the most commonly-asked questions regarding the use of BVI companies in transactions.

### 1. What information is publicly available?

A BVI company's M&As and public register of charges are available from the BVI Registry. Details of a BVI company's directors and shareholders are publicly available only if the company has elected to publicly file those registers. Most companies do not elect to do this,<sup>1</sup> but share registers are sometimes publicly filed when there is security over the shares in the company. The details of the company's directors, shareholders and private register of charges (see below for more details) are provided by the BVI company's registered agent in the form of a registered agent's certificate (also known as a certificate of incumbency). The BVI company's "client of record" will need to authorise the registered agent to issue this certificate.

### 2. What is a registered agent and a client of record?

A registered agent provides a registered office and corporate services for a BVI company, reflecting the fact that most BVI companies' directors are not physically based in the BVI. A "client of record" is the person who the registered agent takes instructions from for that BVI company. Under the BVI BCA, the registered agent must act on the instructions of the directors contained in director resolutions of the BVI company.

### 3. Do we need shareholder resolutions?

Most of the time these would not be needed: a board of directors has the powers to run a BVI company's affairs without the need for authorisation from the shareholders. Exceptions are if there is an unusual provision in the relevant company's M&As requiring shareholder approval or if section 175 (*disposal of assets*) of the BVI BCA applies. Essentially section 175 requires the consent of shareholders if the BVI company is disposing of more than 50 per cent of its net assets. It does not apply to the granting of security over assets and tends to be disapplied in most BVI companies' M&As.

#### **4. Are there any corporate benefit requirements or restrictions on what a BVI company can do? (third party security, financial assistance etc)**

Most BVI companies (other than restricted purpose companies)<sup>2</sup> are permitted to carry out any lawful act or activity and there are no restrictions relating to corporate benefit. There is a multitude of statutory provisions to be overcome by any person asserting that a transaction is invalid due to lack of capacity or power on behalf of a BVI company. BVI companies are expressly empowered to provide financial assistance for the acquisition of their own shares, although they will need to be solvent when they make a distribution.

#### **5. Can we use a foreign law security document – for asset security and share security?**

Yes and yes. If you are going to use a “foreign” law to take security over the shares in a BVI company, it would be best to use a law such as that of California, Canada, England or New York, with which the BVI courts are familiar.

#### **6. What perfection steps are needed?**

There are no specific steps required under BVI law, but you will need to perfect the relevant security document in accordance with the governing law of that security document and the laws of the location of the assets being secured.

The BVI does have a public security registration scheme for when a BVI company creates security over its assets. This scheme is not mandatory and failure to publicly register a security interest will not void that security interest. However it does determine priority under BVI law (from the date of registration rather than the date of creation of the relevant security interest) and therefore most security takers will require the public registration. The registration is an electronic filing which can be made on behalf of the BVI company or the security taker, and no original security documents are needed to be submitted with the filing.

This scheme does not apply to security over the shares in a BVI company charged by a parent who is not a BVI company. For share security, the share register is usually annotated with details of the security interest. This has the additional benefit of triggering protection in most companies’ M&As restricting the transfer of shares which are subject to a security annotation.

There is also a private register of charges that each BVI company has to keep, this is mandatory but has no impact on the validity or priority of any security interests created over the assets of the relevant BVI company.

#### **7. Are there any formalities for signing documents?**

No. BVI companies do have seals, but they are not required to be applied to documents. A deed needs to be expressed to be executed as such and signed by a director or authorised signatory of a BVI company and can be “pre-signed”. A foreign entity needs to sign a BVI law governed deed in a manner that is valid under its own laws.

## 8. Is there taxation or stamp duty?

BVI companies are tax neutral: no corporation, capital gains or sales tax will be imposed in the BVI on transactions involving BVI companies. Stamp duty is only imposed on the transfer of shares of a BVI company if that company owns land (directly or indirectly) in the BVI.

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<sup>1</sup> Pursuant to recent amendments to the BVI Business Companies Act 2004 (the **BVI BCA**), the register of directors of each BVI company must, by 31 March 2017, be included in a central register, although that information will still not be publicly available.

<sup>2</sup> Restricted purpose companies are identifiable by their names which must include "(SPV) Limited".