



2016 Updates to BVI Business Companies Act



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In its continuing effort to keep the *BVI Business Companies Act* (the “Act”) at the forefront of offshore company law legislation, the BVI Government, in direct consultation with the private sector, has introduced several updates to the Act as follows:

- To allow weighted voting by directors whereby certain directors may have more than one vote, if specifically provided for in the memorandum or articles of association of the company. While the default is one director, one vote, the flexibility of allowing this default provision to be varied may be desirable in certain types of companies, notably joint venture companies.
- To allow shareholders to voluntarily surrender their fully paid shares to the company for no consideration. While this is a somewhat unusual event, on occasion it is desirable for a shareholder to voluntarily surrender shares, notably in wholly owned companies. This change makes this action clearly permissible.
- To allow companies to issue bonus shares as fully paid shares. While bonus shares are permitted by the Act, this amendment just clarifies that they are issued as fully paid shares.
- To clarify and simplify the language and procedure when issuing shares for non-money consideration. When issuing shares for non-money consideration, the directors will merely need to confirm that the value of the non-money consideration is not less than the issue price of the shares.
- To allow the Court to order a meeting of shareholders where a meeting is requisitioned by shareholders but the directors fail to call the meeting. While shareholders may requisition a meeting, they are reliant on the directors to attend to the mechanical process of doing so. This change allows the Court to carry out the mechanical steps of calling the meeting.
- To disapply the Rule in the *Mercury* case thereby allowing documents to be executed under deed by having signature pages executed in advance, held in escrow and appended to the final form of documents. In addition, foreign companies will not be required to execute British Virgin Islands law governed deeds under seal.



- To remove the need for a written instrument of transfer where shares of a British Virgin Islands company are listed on a recognised exchange. While the prior provision was honoured in the breach, this welcome amendment clears up an anomaly in the Act.

In addition to the foregoing, certain amendments have been made to deal with the continuation of a company out of the British Virgin Islands where there is a charge filed against the company. Specifically, either the charge holder must consent to the continuation or a notice of satisfaction or release must be filed. Otherwise, British Virgin Islands law provides that the chargee's interest shall not be diminished in any way as a result of the continuation.

While the foregoing amendments are designed to assist transactional business, in order to ensure continued compliance with international standards of transparency, the eligible introducer regime in the British Virgin Islands has been refined to require, amongst other things, registered agents who rely on eligible introducers to maintain certain basic information in the British Virgin Islands. Specifically, registered agents will be required to hold in the British Virgin Islands beneficial owners' names, dates of birth, residential addresses and nationalities. Further, the information required to be maintained on the register of directors of each BVI company has expanded, and the register will need to be filed with the Registrar of Corporate Affairs. It must be emphasised that none of this information will be publicly available, but, as always, will be available to law enforcement, regulators and taxing authorities pursuant to a proper investigation.

The British Virgin Islands is by far the leading offshore incorporation jurisdiction with over 450,000 active business companies. The Act, modelled on the company law of Delaware, was instrumental in this success. The latest changes will ensure the continued use of BVI business companies by introducing greater flexibility for transactional work and by continuing to meet international standards of transparency.



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