

## Registering security in the British Virgin Islands

Service area / [Banking and Finance](#)

Location / [British Virgin Islands](#)

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All companies incorporated in or continued into the British Virgin Islands ("BVI") are governed by the BVI Business Companies Act (the "Act"). BVI companies regularly provide security over their assets as part of financing transactions. Although there are no filing or registration requirements in the BVI which affect the validity of a charge, the Act provides a robust security registration system that enables a secured party to register a charge and secure its priority.

When a BVI company creates a security interest over its assets there are two different registrations which need to be considered:

- the private register of charges, maintained by the BVI company (or its registered agent) at its registered office under section 162 of the Act; and
- the public register of charges, maintained by the Registrar of Corporate Affairs (the "Registrar") under section 163 of the Act.

### Private register of charges

Section 162 of the Act requires all BVI companies to maintain a register of all relevant charges created by the company, showing:

- if the charge is a charge created by the company, the date of its creation or, if the charge is a charge existing on property acquired by the company, the date on which the relevant property was acquired;
- a short description of the liability secured by the charge;

- a short description of the property charged;
- the name and address of the trustee for the security or, if there is no such trustee, the name and address of the chargee;
- unless the charge is a security to bearer, the name and address of the holder of the charge; and
- details of any prohibition or restriction, if any, contained in the instrument creating the charge, on the power of the company to create any future charge ranking in priority to or equally with the charge.

A copy of the register of charges must be kept at the company's registered office or at the office of the registered agent of the company. As it is a private register details of the charges will not be disclosed on a company search (details of the charges will only be disclosed in a certificate of incumbency/registered agent's certificate).

If a company's private register of charges is kept at the office of its registered agent and a change occurs in the relevant charges or in the details of the charges required to be recorded, the company must provide the registered agent with details of the change within 14 days of the change occurring.

There is no deadline for updating the private register of charges, however failure to comply with the obligation set out in section 162 of the Act is an offence and is liable on summary conviction to a fine of US\$5,000.

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## Public register of charges

Section 163 of the Act provides for the creation of a public register of charges by filing an application to register a relevant charge with the Registrar. It is not mandatory for a company to file such an application and failure to do so will not affect the validity of the security created by the charge. A secured party should, however, insist upon this registration as it is the public register of charges (rather than the private register of charges created pursuant to section 162 of the Act) which determines priority of security under BVI law: charges which are registered in accordance with section 163 of the Act take priority over those which are not registered. Charges which are so registered also have priority over charges which are subsequently registered (subject to any intercreditor arrangements which have been entered into) other than registered floating charges which will rank behind a subsequently registered fixed charge (unless the floating charge contains a prohibition or restriction on the power of the company to create any future charge ranking in priority to or equally with the charge). Please note that a different priorities regime applies in respect of BVI companies incorporated under the International Business Companies Act ("IBC Companies").

Please contact us for further information should your transaction involve security granted by, or over the assets of, an IBC Company.

An application to register a charge with the Registrar is made by filing an application specifying the particulars of the charge, in the approved form and may be made by:

- the company or a legal practitioner in the BVI authorised to act on its behalf; or
- the chargee or a legal practitioner in the BVI authorised to act on its behalf or the registered agent of the company.

Once the Registrar is satisfied that all registration requirements have been complied with it will register the charge on the BVI company's public register, and will issue a certificate of registration of the charge, confirming the date and time of the registration. This certificate provides conclusive proof that the registration requirements of the Act have been complied with.

The public register of charges will be available for public inspection and will be disclosed in any company search carried out in respect of the company. As is the case for the private register of charges maintained under section 162 of the Act, there is no deadline for updating the public register under section 163 of the Act. However, as priority of the security is determined based on the date and time of the public filing with the Registrar, this filing should be completed immediately to minimise the risk of a subsequent competing charge taking priority.

## Variations and release of a registered charge

Where there is a variation in the terms of a charge registered on the public register of charges, an application for variation of the charge should be filed with the Registrar.

Where a charge is to be released, a notice of satisfaction or release should be filed with the Registrar. Please see our guide on [de-registering security in the BVI](#) for further information.

## Share register notations

The Act allows for security to be created over shares in a BVI company, provided that the security document:

- is in writing;
- is signed by, or with the authority of, the security giver; and
- clearly indicates the intention to create security over the shares and the amount secured (or how the amount is to be calculated).

Although not strictly a form of security registration, where security has been granted over shares of a BVI company, a properly advised secured party will require the BVI company to make an annotation on its register of members confirming:

- that the shares are charged;
- the name of the chargee; and
- the date on which the statement and name were entered in the register of members.

The making of such an annotation on the register of members is not mandatory and does not have any specific statutory effect, however the making of such an annotation will give actual notice of the security interest to any person who views the register of members and there is a strong argument that such an annotation would provide constructive notice of the security interest to any person dealing with the shares.

It is common for a secured party to demand that the annotated register of members be filed with the Registrar, the effect of which is to make the register of members available for public inspection and therefore increase the range of persons with actual notice of the security interest.

Once a BVI company has filed its register of members with the Registrar it is bound by the contents of this public register of members. The Registrar must be notified of any changes to the company's register of members (e.g. any future share issues, transfers, redemptions etc.) and each time a change is made the company must file an updated register of members with the Registrar. This obligation continues until the company files a notice confirming that it will no longer maintain a public register of members (which usually requires the secured party's consent). Once this notice has been filed, the company will not have to notify or provide the Registrar with an updated register of members – it is only required to maintain and update its private register of members.

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It should be noted that any register of members that has been filed with the Registrar will remain a public, albeit historical, document and it cannot be removed from the company's records.



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