

Why incorporate a startup in the British Virgin Islands?

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As the founder of a startup company, one of the first questions you need to consider is “where should I incorporate my company?”

Investors are drawn to the British Virgin Islands (BVI) for its flexible and modern corporate regime, tax neutrality, respected legal system, political stability and effective regulatory framework. The BVI provides a neutral and safe platform to pool and access capital, which is recognised by leading international investors and banks. Uniquely, BVI company law is based on Delaware law that has been anglicised to recognise that the BVI is a common law jurisdiction. This means investors from both sides of the Atlantic are equally comfortable using BVI companies. To date, more than one million companies have been formed in the BVI and we see a trend in BVI startup companies incorporating in the BVI.

BVI companies

A BVI company can be incorporated quickly, with a flexible organisational structure and minimal financial reporting requirements. BVI companies are ideal for startup companies as they can be operated from anywhere in the world and there are no restrictions on where a BVI company can carry out its business.

A BVI company’s constitutional documents comprise its memorandum and articles of association (the M&A). The M&A set out the terms and conditions of the company’s operation

and govern its relationship with its directors, its shareholders and third parties. The M&A can create different classes of shares, which can have different voting, dividend and distribution rights. This means that founders and investors can hold different classes of shares and, therefore, different rights in the company.

Management

The business and affairs of a BVI company are managed by its directors, who have a duty to act honestly, in good faith and in a manner in which they believe to be in the best interest of the company. Where expressly permitted in a company’s M&A, BVI law allows for a director to act in the best interest of a particular shareholder or group of shareholders. This is an extremely useful provision in the context of joint ventures as each party to the joint venture may appoint a director to effectively represent its own interests above those of the general body of shareholders or the company as a whole.

Directors and shareholders

A director or shareholder can be an individual or a corporate entity. There is no requirement for a director or shareholder to reside in the BVI, or for the meetings to be held in the BVI. In addition, there is no requirement for a BVI company to hold a certain number of shareholder or director meetings. The directors or shareholders do not need to be in the same physical location to hold a meeting, which can be held by telephone or video conference.

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Although a BVI company must maintain a register of directors and a register of members, these registers are not available for public inspection, ensuring confidentiality for founders and investors.

Distributions

Under BVI law, the concepts of authorised capital, share capital and general capital maintenance have been replaced with a requirement to simply state the maximum number of shares a company is authorised to issue (or state that there is no limit). The basis of this change was to provide BVI companies with greater flexibility when they declare distributions, carry out reverse share splits, change the par value of shares or effect redemptions. This means the directors of a BVI company may authorise any form of distribution to its shareholders at such time and of such amount, as they think fit (provided they are satisfied, on reasonable grounds, that the company will be able to pay its debts as they fall due and that its assets will exceed its liabilities after the distribution is made).

Corporate governance

On-going corporate governance requirements of BVI companies are well suited to startups with only minimal filing requirements. This means founders can spend more time focusing on product development and launch and less on corporate filings, whilst also keeping on-going fees to a minimum.

A BVI company must keep records which are sufficient to show and explain the company's transactions and to enable the financial position of the company to be determined with reasonable accuracy. This means that the BVI company must maintain financial accounts. However, there are no specific accounting standards that need to be adhered to. The accounts do not need to be filed and they remain private.

Tax benefits

Perhaps the most widely known (and often misconstrued) benefit of incorporation in the BVI is the tax neutral treatment of BVI companies. There is no corporation tax payable by BVI companies, making the BVI an ideal location to incorporate a start-up company. However, the BVI is a world leader in international anti-money laundering regulations and has signed a number of tax information exchange agreements. This has earned it a place on the OECD's "white list" of countries which employ internationally recognised and approved tax and transparency standards.

Access to capital

BVI companies are listed on the World's leading international stock exchanges. They are recognised as efficient, tax neutral vehicles, for use accessing international capital in financial centres from London and New York to Singapore and Hong Kong. As venture capital investors will be looking for exit options when they invest in a startup, having a vehicle which is suitable for floatation will be an important consideration from a corporate structuring perspective. This also provides an effective route for the founders to continue a successful startup following an exit by the investors.

Data protection

There is currently no formal legislation regulating data protection in the BVI, however the BVI Government has pledged to enact suitable data protection legislation in the near future. For now, the collection, storage and transfer of personal data is governed by the general principle of confidentiality applied at common law. This means there are no BVI requirements for a company to register with a data protection authority, appoint a data protection officer or maintain formal security measures. Although all of these considerations will be important for a startup to gain trust with consumers, it means the founders would be free to structure their own internal policies as required and appropriate.



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