

Exponential Increase of Company Continuations to the British Virgin Islands

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The BVI Registry of Corporate affairs (the “**Registry**”) has seen a 60% increase on incorporations between Q4 2020 and Q4 2021. There were more new companies formed in Q4 of 2021 than there has been in any quarter since 2018. Based on the latest figures there are over 368,000 active companies on the register. The recent upward trend in incorporation figures for the British Virgin Islands (the “**BVI**”) has shown that the BVI remains a highly popular offshore financial centre.

It appears that the increase in incorporations is also due to the exponential increase in company continuations to the BVI. The latest statistics released by the BVI Financial Services Commission (“**FSC**”) show that 2,825 of the 9,805 new companies registered in Q4 2021 were company continuations into the BVI, whilst in Q4 2020 only 125 companies were continued to the BVI. The statistics published by the FSC do not specify the jurisdictions from which the companies migrated. In our practice, we have seen companies continuing, inter alios, from Barbados, Canada, the Cayman Islands, the Channel Islands and Panama.

The following guide is in respect of the continuation of companies limited by shares into the BVI, should you be interested in continuing a fund into the BVI please refer to [our previous guide](#).

The BVI has long been favoured as an offshore financial centre. As a mature offshore jurisdiction it has a well developed and highly regarded corporate and regulatory regime together with a stable government, modern flexible legal system, tax neutrality and recognised good governance standards. Companies registered under the BVI Business Companies Act 2004 (the “**BCA**”), provide one of the most the most efficient and cost effective corporate structures available. BVI companies and associated structures are recognised by global investors and credit institutions, whilst also providing flexibility and clarity for shareholders and creditors alike. The BVI has a mature and well established professional services industry able to provide specialist legal, fiduciary/company secretarial, accounting and insolvency businesses. There are, bar international sanction compliance and some minor exceptions for local activities, no geographic restrictions on where a BVI company may operate, and they are popular as holding companies, start-up companies, investment fund vehicles, special purpose vehicles, joint-ventures, and special purpose acquisition vehicles. In more recent times, flexibility of a BVI company has

proven to be particularly popular for fintech and digital asset innovations which have seen a large increase in registrations and continuations.

Under the BCA a company may continue to the BVI if the laws of its current jurisdiction permit. As with all companies in the BVI, the continuing company will need to have an authorised registered agent and registered office in the BVI. The registered agent will need to prepare and submit the following documents to the BVI Registrar of Corporate Affairs (the “Registrar”):

- a copy of the existing certificate of incorporation for the existing company (or equivalent document);
- the form of BVI compliant continuation memorandum and articles of association that will be used by the company (the “M&A”) in the BVI;
- evidence that the application to continue into the BVI and the form of M&A have been approved by the directors (or such other foreign law equivalent thereof); and
- evidence that the company meets the requirements of continuing into the BVI and confirming that it is not prohibited by any of the restrictions under the BCA.

The evidence that the company meets the requirements under the BCA is usually dealt with by a short form of director certificate, which will be notarised. The certificate will confirm that the company has complied with all foreign law requirements for a continuation and that none of the following BCA disqualifications apply:

- the laws of the existing jurisdiction do not expressly permit the continuation of the company;
- the company is in liquidation, or such other equivalent procedure;
- a receiver or manager has been appointed in relation to the company’s assets;
- the company has entered into any arrangement with its creditors which has not yet been concluded; or
- an application has been made to a court in another jurisdiction for the liquidation of the Company or the Company is subject to equivalent insolvency proceedings which have yet to be determined.

Once the Registry is satisfied that the company has complied with the requirements for a continuation the company will be given a BVI company number and a certificate of continuation. The certificate is conclusive evidence that the company has continued to the BVI under the BCA and will state the date of continuation, which will be the date on which the successful application was filed.

Once the company has continued into the BVI, the BCA will apply to the company as if it had been originally incorporated under the BCA and it will be able to exercise all powers of a company incorporated under the BCA. The M&A will be treated as the constitutional documents of the company and any shares issued at the date of the certificate of continuation will be deemed to have been issued in accordance with the BCA. Any assets, rights, obligations or liabilities of the company existing prior to the continuation are not affected in any way under BVI law.

Should you have any queries on the continuation of a company into the BVI please do not hesitate to contact us on the details below.

About Hatstone

Hatstone is a multi-jurisdictional group providing legal, investment fund administration, fiduciary and corporate services with offices in the British Virgin Islands, Jersey, Ireland, London, Panama and South Africa. Our team is committed to providing responsive service and innovative solutions to our clients.

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