

- BVI Business Companies Act 2004
- Mutual Legal Assistance (Tax Matters) Act 2003

BVI Business Company Records – What, Where and Why

A BVI Business Company (BC) has a separate legal personality from its members and over the course of its life the activities which it undertakes are recorded in documents that were created or entered into on its behalf. The documents and records that a BC must maintain are prescribed by law and this paper will present a general overview of the documents and records that a non-regulated BC, limited by shares is legally required to keep.

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Record keeping is obviously essential to the proper functioning of any BC and makes good commercial sense.

What

Generally, a BC is required to keep copies of its constitutional documents, registers, resolutions and financial records.

Constitutional Documents

These are the memorandum and articles of association of the BC and are the documents that define the responsibilities of the directors, the kind of business to be undertaken, and the means by which the shareholders and directors control the BC.

Registers

The main registers maintained by a BC are its register of directors, register of members and register of charges.

(a) Register of Directors

Pursuant to Section 118(1) of the BVI Business Companies Act (**the Act**) a BC must keep a register of directors which contains (a) the names and addresses of the persons who are directors of the BC or who have been nominated as reserve directors of the BC; (b) the date on which each person whose name is entered in the register was appointed as a director,

or nominated as a reserve director, of the BC; (c) the date on which each person named as a director ceased to be a director of the BC.

(b) Register of Members

Section 42 of the Act sets out the information required to be maintained on its members which includes the name and address of the member, the number of shares (including the class of shares held by each member), the date on which each member's name is entered on the register and the date on which any person ceases to be a member.

(c) Register of Charges

Whilst the public filing of the particulars of a charge is optional (although advisable for priority purposes), the entry of the security interest in the BC's own private register of charges is mandatory under Section 162 of the BCA. This section of the Act provides that a BC shall keep a register of all relevant charges created by the BC showing: (a) the date of its creation or, if the charge is a charge existing on property acquired by the BC, the date on which the property was acquired; (b) a short description of the liability secured by the charge; (c) a short description of the property charged; (d) the name and address of the trustee for the security or, if there is no such trustee, the name and address of the chargee; (e) unless the charge is a security to bearer, the name and address of the holder of the charge; and (f) details of any prohibition or restriction, if any, contained in the instrument creating the charge on the power of the BC to create any future charge ranking in priority to or equally with the charge.

Resolutions of directors and shareholders

A BC must keep minutes of all meetings of its directors or any committee of directors; all written resolutions of its directors or any committee of directors; minutes of all meetings of its shareholders or any class of them; and all written resolutions of its shareholders or any class of them (together Resolutions).

Financial Records

Under the Act, a BC must keep records that: are sufficient to show and explain its transactions; and will enable its financial position to be determined with reasonable accuracy at any time. The Act does not require the BC to prepare or file financial statements or to appoint an auditor, although the BC's articles of association may require financial statements to be prepared and audited.

Mutual Legal Assistance (Tax Matters) Act 2003

Under the Mutual Legal Assistance (Tax Matters) Act 2003 (**MLAT**), a BC must keep (in addition to the records it is required to keep under the Act) records and underlying documents (including financial records) that satisfy the same requirements that apply under the Act (set out above). They must be retained for a period of at least five years from the date on which the transaction, or the business relationship, to which they relate terminates.

WHERE

Registers

A BC is free to keep the original copy of each register anywhere it likes, however, if it does not keep the original copy of its register of directors or register of shareholders at its registered agent's office, it must give its registered agent notice in writing of: any change in the register within 15 days of the change: the location at which the register is kept; and any change in the location at which the register is kept within 14 days of the change.

A copy of the register of charges is kept at the BC's registered office or at the office of its registered agent. If the BC does not keep the original copy of its register of charges at its registered agent's office, it must keep a copy there or at its registered office.

A BC's registers are confidentially maintained, meaning that they are not required to be filed with the Registrar of Corporate Affairs in the BVI (the Registry) and thereby available for public inspection. However a BC may elect to file a copy of its register of directors or register of shareholders with the Registry. If it does so, it must file an amended register each time any changes are made to it until it files a notice electing to cease filing changes to the register.

Resolutions

A BC is free to keep the original of its Resolutions anywhere its directors choose. However, if it does not keep the original of its Resolutions at its registered agent's office, the BC must give its registered agent notice in writing of: the location at which those Resolutions are kept; and any change in the location at which those Resolutions are kept within 14 days of the change.

MLAT

The BC must keep its records and underlying documents at its registered agent's office, or if its directors choose to keep any of them elsewhere, it must give its registered agent notice in writing of: each location where the original records and underlying documents are kept; and any change of that location within 14 days.

Registered agent's office - What must be kept there?

A BC must keep at its registered agent's office its memorandum and articles of association; an imprint of each of its corporate seals; a copy of each notice or other document filed by it with the registrar in the previous 10 years; each register or a copy of it; each Resolution or a copy of it; and its other records and underlying documents. Where a BC does not keep the original copy of any Resolutions, its register of directors, register of shareholders or any other record or underlying document at its registered agent's office, it must comply with the notification requirements mentioned above.

WHY

Registers

Being prescriptive, the Act imposes penalties for a BC that breaches the requirement to keep a register of members or a register of directors containing the information required by the Act and a BC would be guilty of an offence and, on conviction, would be liable to a US\$1,000 fine for each breach. Similarly, a BC would be liable to a US\$5000 fine should it commit the offence of failing to keep a register of charges containing the information required by the Act or to keep a copy of it at its registered office or its registered agent's office. Additionally where a BC fails to keep a copy of such registers at its registered agent's office or to give notification of any changes made to those registers and if found guilty of such a breach would on conviction, be liable to a US\$10,000 fine.

Should a BC breach the requirement to keep at its registered agent's office its memorandum and articles of association or a copy of each notice or other document filed by it with the registrar in the previous 10 years; or an imprint of each of its common seals, it is guilty of an offence and, on conviction, is liable to a US\$10,000 fine.

Resolutions

Where a BC breaches any of the requirements of the Act regarding its Resolutions, it is guilty of an offence and, on conviction, is liable to a US\$10,000 fine.

Financial Records

Breaching the requirements of the Act regarding its Financial Records, a BC would be guilty of an offence and, on conviction, would be liable to a US\$10,000 fine.

MLAT

If the BC breaches the requirements prescribed under MLAT, it would be guilty of an offence and, on conviction, would be liable to a fine of up to US\$100,000.

What we can conclude from this overview is that that record keeping is obviously essential to the proper functioning of any BC and makes good commercial sense. This of course is reinforced by the guidance provided in the Act as to where, what and why those documents need to be kept. Another important factor that reinforces the need to maintain proper records, is that pursuant to the Act (section 243) should a BC commit an offence under the Act, any director or officer who authorised, permitted or acquiesced in the offence, also commits the offence, and on summary conviction, is personally liable to the same penalty that would be applied to the BC.

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