



OBTAINING INFORMATION ON BVI COMPANIES

The books and records of a BVI company are confidential. It is therefore important to know what information is available, and your information rights, when dealing with a BVI company. This guide explores the information available to directors, shareholders, liquidators and third parties in relation to BVI companies.

Document retention obligations

In compliance with the BVI Business Companies Act 2004 (the Act), the following documents are kept by a BVI company at the office of its registered agent:

- memorandum and articles of association (**M&A**);
- register of directors (or a copy);
- register of shareholders (or a copy);
- register of charges (if any);
- the company's records and underlying documentation¹;
- copies of all notices or other documents filed by the company with the BVI Registrar of Corporate Affairs (the **Registrar**) in the previous 10 years; and
- minutes of all meetings and all written resolutions of its shareholders and directors².

BVI companies are required to appoint a licensed registered agent. Registered agents are regulated by the

BVI Financial Services Commission (the **Commission**) and provide company administration services, including company incorporation and registered office services. The registered agent is not an officer of the company and acts in accordance with the directors' instructions. Their duties include making statutory filings and paying annual fees on behalf of the company. Typically, a BVI company's registered office will be the office of its registered agent and, in any event, documents can be served on a BVI company at the office of its registered agent.

Information available to Directors and Shareholders

Directors and shareholders will ordinarily approach the company and/or its registered agent in the first instance when they are seeking access to information and documents.

Directors are entitled to inspect and take copies of all of the company books and records. They require access to these documents in order to fulfil their duties as directors.

Shareholders have no management role and, as such, have more limited rights under the Act. Shareholders are only entitled to inspect and take copies of the company's:

- M&A;
- register of shareholders and register of directors (together, the **Registers**); and
- minutes of shareholder meetings and resolutions made by the shareholders (together, the **Shareholder Resolutions**).

¹ BVI companies are obliged to keep such records for at least 5 years from the date of the relevant transaction or the termination of the business relationship to which the records relate.

² If the principal minutes and resolutions are held elsewhere, the Act obliges the company to tell the registered agent where they are kept.

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However, shareholders only have guaranteed access to the M&A. Where they are satisfied that giving access would be contrary to the company's interests, the directors are empowered by the Act to refuse a shareholder's request to inspect the company's Registers and Shareholder Resolutions, or to restrict inspection (e.g. the directors can refuse to allow copies to be taken). If the shareholder is dissatisfied with the directors' decision, they can apply to the BVI court seeking an order permitting inspection without limitation.

The directors' powers to refuse or restrict inspection can be removed by inserting appropriate wording in the M&A.

Information available to third parties

Company Search - General

Third parties can obtain specified documents and information about BVI companies by instructing a search of the Registrar's records. Those records are held digitally by the Commission on its secure site, VIRRGIN, which is accessible by account holders based in the BVI. The following documents and information can be obtained by instructing a company search via VIRRGIN:

Documents

- certificate of incorporation
- certificate of change of name (if any)
- the current and prior versions of the company's M&A
- notice of appointment of liquidator or receiver (if any)
- articles of merger (if any)
- articles of arrangement (if any)

Information

- registered office address
- name and address of the company's registered agent
- whether the company is in 'good standing' (i.e. whether it is active, struck off or in liquidation)

Company Search - Company Registers

Unlike some other common law jurisdictions, a BVI company's Registers are not publicly available.

A BVI company can **elect** to make its Registers publicly available, but this is rare (unless a share charge has been granted – see below). As a result, in most cases the Registers are not available via a VIRRGIN search and it is necessary to seek an order from the court.

Following amendment of the Act, as of 1 January 2023 third parties can obtain a list of directors which names the company's incumbent directors. While the list is produced from information contained in the Registers, the register of directors itself remains private and the identity of former directors is not included (nor is the identity of incumbent or former members). It is also worth noting that the VIRRGIN search is carried out with reference to the BVI company's name and, as such, will not confirm other directorships held.

Company Search - Securities

If a BVI company has security over any of its assets, the company or the secured party can file particulars of the security with the Registrar, which would then be available to the public via VIRRGIN. This ensures that the secured party's interest is protected against competing secured creditors, establishes priority and puts third parties on notice of the secured party's interest.

Similarly, where a shareholder creates security over shares in a company, the secured party usually requires the company to file with the Registrar a copy of its register of members, annotated to record particulars of the security created. Again, this information will be available via VIRRGIN, for similar reasons.

Court Search

Third parties can also instruct a search of the records held by the BVI Court Registry. This is an administrative process and does not require court proceedings.

Upon payment of the required fee, a court search can be carried out against the name of a company (or an individual) and, if that company (or individual) is involved in litigation in the BVI, copies of the following may be taken from the court file(s):



- claim forms;
- notices of appeal; and
- judgments and orders.

A court search is an inexpensive way to confirm whether a BVI company is engaged in litigation or the subject of a winding up application. It is therefore a useful tool when carrying out due diligence investigations prior to entering into a finance transaction, making an investment or instituting legal proceedings. If the relevant court file is sealed³ or additional documents are sought, the third party can apply to the court seeking an order permitting access to the file/documents.

Liquidation

Liquidators

Following their appointment, liquidators have custody of and control over the assets of a BVI company and effectively 'step into the shoes' of the directors in relation to the management of the company. Liquidators are therefore entitled to the same information and documents as directors.

The Insolvency Act 2003 (the **Insolvency Act**) empowers the company's liquidators (or provisional liquidators) to compel delivery up of the company's books and records from, for example, the company's directors, shareholders, employees and accountants. If delivery is not made, the person holding the documents commits an offence. The liquidators can also apply to the BVI court seeking an order directing the person to deliver the documents.

Creditors and Shareholders

The creditors and shareholders of a BVI company also have information rights in the event of insolvency and can apply to the BVI court under the Insolvency Act seeking an order which permits them to inspect specified books, records and documents of the company. However, access is not automatic. The court may refuse the application (i.e. on the basis that the application was made for purposes outside the company's winding up).

Conclusion

Whether you are a creditor or director of a BVI company, or a shareholder or indirect investor in a structure which includes a BVI company, it is important to know your information rights and to carefully consider whether you need additional information in order to protect your interests.

While the Act and the Insolvency Act contain certain safeguards, careful drafting at the outset, for example setting out enhanced shareholder information rights in the M&A or a separate joint venture agreement, or providing for regular financial reporting to creditors, can prove invaluable. Our BVI team on island and across the globe can advise you on your information rights and the available remedies if a dispute arises.

Contact Us

This guide provides a high-level overview of the information which is available in relation to BVI companies. Should you need further guidance please get in touch with our BVI team or your usual HFW contact.

³ A sealed court file is confidential to the court and the parties involved.

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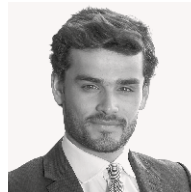
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