



BVI Financial Services Commission

Registry of Corporate Affairs

User Guides on the BVI Business Companies Act

User Guide No. 1:

Incorporating a Company Limited by Shares

This is one of a series of User Guides published by the Registry of Corporate Affairs that are intended to provide general information about different aspects of the BVI Business Companies Act ["the Act"].

The Guide is not intended to provide, and is not a substitute for, legal advice and is not intended to address the circumstances of any individual case. The Act has been summarised to make the Guide easier to read and the Guide should be read together with the Act. You should always consider carefully whether you might benefit from legal, accounting or other professional advice concerning your particular circumstances or the circumstances of your company.

Introduction

This User Guide covers the incorporation of companies limited by shares, which are the most commonly formed type of company in the BVI.

If you will be acting as a director of a company that is to be incorporated, you should be aware of the legal responsibilities that the Act imposes on directors. See User Guide No. 4 [Directors and their Responsibilities]. You should also consider obtaining advice on:

- whether a company is the best way for you to run your business or affairs; and
- if so, how the company should be structured to meet your specific requirements.

Special restrictions and rules apply to a company that is authorised to issue bearer shares, whether or not the company actually issues bearer shares. Bearer share companies are no longer commonly used and they are not, therefore, covered in this or any other User Guide issued by the Registry of Corporate Affairs. Professional advice should always be sought with respect to bearer share companies.

Who can form a company?

The Act requires every BVI business company to have a registered agent and an application to the Registry to incorporate a BVI business company may only be made by the person who will be the first registered agent of the company. The Registrar is prohibited by the Act from accepting an application that is made by any other person. If you attempt to file an application yourself, it will be rejected. You must, therefore, instruct a registered agent to incorporate the company on your behalf.

Only a person who is licensed by the Financial Services Commission [“the Commission”] as a company management company [under the Company Management Act, 1990] or as a Class I or III trust company [under the Banks and Trust Companies Act, 1990] can lawfully act as the registered agent of a BVI business company. You can obtain a list of authorised registered agents from the Commission’s website or directly from the Commission.

Decisions to be made prior to incorporation

Once you have chosen and appointed the registered agent who will apply to incorporate the company for you and act as the company’s first registered agent, a number of steps must be taken before your company can be incorporated. These are:

- A name must be chosen for the company
- A decision must be taken on where the company’s registered office will be
- The company’s memorandum and articles of association must be drafted

It is also advisable to decide who the first directors and shareholders will be and obtain the necessary consents.

Step 1 – Choose an available name

The Act contains a number of requirements with respect to the names that may be used by companies. These are described more fully in User Guide No. 2 [Company Names].

Your registered agent can conduct an electronic on-line search to discover whether a name is in use or has been in use and should be able to advise you on whether your proposed name is likely to be accepted by the Registry. Alternatively, you can go to the Registry and undertake a search yourself.

It is not necessary for you to choose a specific name for your company. If you prefer, the name of the company can be its BVI Company Number, which the Registry will give to the company when it is registered, together with the required ending. A BVI company number name will be in the form “BVI Company Number 12345” with the appropriate ending, such as “Limited” or “Ltd.”.

A company may also have a foreign character name.

Step 2 – Decide where the company's registered office will be

Every company must have a registered office. The registered office is where documents may be legally served on the company. However, if the Registry ever needs to write to a company, it will always write to its registered agent, not its registered office.

The registered office must be a real physical address in the BVI - a post box is not sufficient. The registered office of a BVI company may be, and usually is, the office of the company's registered agent. This will ensure that any documents served on the company will be brought to the attention of the directors quickly, but this is not a requirement under the Act.

However, you should be aware that it is unlawful for any person other than a licensed trust company or a licensed company manager to make a charge to you or your company for providing the registered office for your company.

Step 3 – The Memorandum and Articles

Every company must have a memorandum and articles of association that complies with the Act. See User Guide No. 3 [Memorandum and Articles] for further information. The memorandum and articles are the equivalent of a company's constitution. The matters covered by the memorandum and articles include the company's internal governance procedures and the relationship between its members. The memorandum and articles of a proposed company must be filed with the application to incorporate and both the memorandum and articles must therefore be drafted before the application can be filed.

Step 4 – Decide on the directors and shareholders and obtain the necessary consents

Every company limited by shares must have at least one shareholder and at least one director, who may be the same person. The registered agent has a period of 6 months from the incorporation of the company to appoint the first director(s) and it is the first director(s) who will issue the first shares in the company.

Although it is not essential to decide who the shareholders and directors will be before a company is incorporated, a company cannot commence its operations until at least one director has been appointed and at least one share has been issued. If your company conducts business without a director and shareholder, you may be liable for its debts. Furthermore, if a company does not have a director, any person who manages the business and affairs of the company is deemed to be a director.

Once you have decided to incorporate a company and instructed a registered agent, in most cases, it makes good sense to decide who the directors and shareholders will be and to agree the number of shares that each shareholder will take.

As a person cannot be appointed to be a director without his consent, it is important to confirm at this stage that the person or persons who will be appointed as a director will provide his or their written consent.

It is particularly important to reach agreement at this stage with any professional service provider whom you may wish to hold shares as a nominee on your behalf or to act as a director of the company. However, you should note that only licensed trust companies or licensed company managers may provide nominee shareholder services or act as a director by way of business.

Incorporation of the company

Once the above decisions have been made, your registered agent will be in a position to apply to the Registrar to incorporate the company on your behalf. This is a simple and straightforward process. The registered agent will file a completed application form at the Registry together with:

- The memorandum and articles of association (and up to 3 copies), and
- His consent to act as registered agent.

If the Registry is satisfied that everything is in order, it will:

- Register the documents
- Allot a unique number to the company
- Issue a certificate of incorporation to the registered agent
- Return the copies of the memorandum and articles stamped with the Registry seal

Provided that the paperwork is correctly completed and there is no problem with the name chosen, an ordinary company limited by shares (without a foreign character name) should be incorporated within one working day of the application being received by the Registry.

The company is incorporated with effect from the date specified in the certificate of incorporation and has the name specified on the certificate.

Following incorporation

A company and its directors and shareholders have legal obligations under the Act. You will need to make sure that you know and understand these to the extent that they apply to you. Some of these obligations are covered in other User Guides. See in particular, the section on the use of company names in User Guide No. 2 [Company Names] and User Guide No. 4 [Directors and their Responsibilities].

Fees

The fees for incorporating a company limited by shares are as follows:

Where the company is authorised to issue less than 50,000 shares	\$350.00
Where the company is authorised to issue more than 50,000 shares	\$1,100.00

Where the company is authorised
to issue an unlimited number of
shares

\$1,100.00

A company will also have to pay an annual fee of the same amount, commencing in the year after its incorporation. The annual fee is payable:

- on 31 May each year if the company is incorporated between 1 January and 30 June; or
- on 30 November each year if the company is incorporated between 1 July and 31 December.

Note that the incorporation and annual fees for a company that is authorised to issue bearer shares, whether or not the company actually issues any bearer shares, are significantly higher than those stated above.