

Mergers between BVI companies and foreign companies

Last reviewed: April 2022

The BVI Business Companies Act 2004 (as amended) (the **Act**) allows BVI companies to merge with one another and BVI companies to merge with foreign companies quickly and simply.

This guide examines the merger process between BVI companies and foreign companies. For information about the merger process between BVI companies, refer to our guide [Mergers between BVI companies](#).

What is a merger?

A merger is the process by which two or more companies (each, a **constituent company**) merge into one of the constituent companies (the **surviving company**) and the legal existence of each constituent company other than the surviving company ceases. The surviving company may be either a BVI or a foreign constituent company.

The Act also allows two or more companies to consolidate. The feature which distinguishes a consolidation from a merger is that a consolidation results in the creation of a new or consolidated company and the legal existence of each constituent company ceasing. The consolidation process is broadly similar to the merger process.

Advantages

The advantages of a merger under the Act include that:

- the merger procedure is simple and relatively inexpensive;
- a merger can be completed quickly;
- a merger does not need to be approved by a court; and
- an opinion on the fairness of a merger is not required.

Eligibility

A BVI company may only merge with a foreign company if the merger is permitted by the laws of the jurisdiction in which the foreign company is incorporated.

Applicable laws

A BVI company must comply with the merger provisions of the Act and a foreign company must comply with the merger provisions of the Act (to the extent applicable to it) and the laws of its jurisdiction of incorporation.

Timing

If each BVI constituent company is in good standing with the BVI Registrar of Corporate Affairs (the **Registrar**), in most cases, from a BVI perspective, a merger where the surviving company is a BVI company can usually be completed within ten working days.

Once the merger documents have been filed with the Registrar, it usually takes up to ten working days for the Registrar to approve the merger documents and issue a certificate of merger. The certificate of merger will be dated the date on which the merger documents are filed with the Registrar if there are no defects in them.

Merger documents

From a BVI perspective, the two documents needed to carry out a merger are a plan of merger and articles of merger.

Plan of merger

The plan of merger must state:

- the name of each constituent company;
- the name of the surviving company;
- for each constituent company, the designation and number of outstanding shares of each class and each class entitled to vote on the merger and each class (if any) entitled to vote as a class;
- the terms and conditions of the merger (for example, the details of how shares in each constituent company are to be cancelled, reclassified or converted into shares, debt obligations or other securities, in the surviving company, or money or other assets and any change to the name or directors of the surviving company); and
- any amendment to the memorandum or articles of association of the surviving company where it is a BVI company.

Articles of merger

The articles of merger must:

- contain the plan of merger;
- state the date on which the memorandum and articles of association of each BVI constituent company were registered by the Registrar;
- state the manner in which the merger was authorised by each constituent company; and
- if the merger is not to become effective on the date on which the articles of merger are registered by the Registrar, state the date (which, where the surviving company is a BVI company, must not be more than 30 days after that date on which the Registrar registers the articles of merger) on which the merger is to become effective.

Simple procedure

From a BVI perspective, the procedure for carrying out a merger is as follows:

- the directors of each constituent company must approve the plan of merger;
- the shareholders of:
 - each constituent company must approve the plan of merger;
 - each class of shares of a constituent company entitled to vote on the merger as a class (whether under its memorandum or articles of association or because the plan of merger contains a provision that requires the consent of that class) must approve the plan of merger; and
 - the surviving company (where it is a BVI company) must approve any amendment to be made to its memorandum or articles of association;
- each constituent company must sign the articles of merger;

- the registered agent of the surviving company (if it is a BVI company) or the surviving company (if it is a foreign company) must file with the Registrar each document listed under 'Filings' below; and
- if the Registrar is satisfied that the requirements of the Act (including regarding any change in name of the surviving company where it is a BVI company) relating to the merger have been satisfied, the Registrar will:
 - register the articles of merger and any amendment to the memorandum or articles of association of the surviving company where it is a BVI company;
 - issue a certificate of merger; and
 - strike off each BVI constituent company other than the surviving company where it is a BVI company.

If a constituent company has shares in issue of a class that does not carry voting rights, the constituent company must send to each holder of that class a copy of the notice of meeting and plan of merger (if shareholder approval is to be given at a meeting) or the resolutions in writing and plan of merger (if shareholder approval is to be given in writing).

Merger between a parent and subsidiary

The Act also allows a parent company to merge with one or more of its subsidiary companies.

For this purpose, a **parent company** is a company that owns at least 90 per cent of the outstanding shares of each class of any other company and a **subsidiary company** is a company of which at least 90 per cent of the outstanding shares of each class are owned by another company.

From a BVI perspective, the merger documents and procedure for the merger of a parent company with one or more of its subsidiary companies are largely as described above. The differences are that:

- the plan of merger must include, for each constituent company, the designation and number of outstanding shares of each class and the number of shares of each class in each subsidiary company owned by the parent company;
- a copy or outline of the plan of merger must be sent to each shareholder of each subsidiary company unless the shareholder waives this right;
- only the directors of the parent company need to approve the plan of merger;
- if the parent company does not own all of the shares in each subsidiary company, the articles of merger must include the date on which a copy or outline of the plan of merger was made available to, or waived by, each shareholder of each subsidiary company; and
- only the parent company needs to sign the articles of merger.

Date of merger

BVI company is surviving company

If a BVI company is the surviving company, the merger will become effective on:

- the date on which the Registrar registers the articles of merger; or
- a later date (being not more than 30 days after that date on which the Registrar registers the articles of merger) specified in the articles of merger.

Foreign company is surviving company

If a foreign company is the surviving company, the merger will become effective on the date provided by the laws of its jurisdiction of incorporation.

Effect of merger

BVI company is surviving company

If a BVI company is the surviving company, once the merger is effective:

- the surviving company will have all of the rights, privileges, immunities, powers, objects and purposes of each constituent company;
- the memorandum and articles of association of the surviving company will automatically be amended to reflect any amendments set out in the articles of merger;
- all assets and the business of each constituent company will immediately vest in the surviving company; and
- the surviving company will be liable for all claims, debts, liabilities and obligations of each constituent company.

The merger will not:

- release or impair any conviction, judgment, ruling, order, claim, debt, liability or obligation due or to become due or any cause existing against any constituent company or any of its shareholders, directors, officers or agents; and
- abate or discontinue any proceedings, whether civil or criminal, pending at the time of the merger by or against any constituent company or any of its shareholders, directors, officers or agents. Any proceedings of this kind may be enforced, prosecuted, settled or compromised by or against the surviving company or the relevant shareholder, director, officer or agent and the surviving company may be substituted in the proceedings for the relevant constituent company.

Foreign company is surviving company

If a foreign company is the surviving company, the effect of the merger under the Act is the same as where the surviving company is a BVI company, except to the extent that the laws of its jurisdiction of incorporation provide otherwise.

Filings

BVI company is surviving company

If a BVI company is the surviving company, its registered agent must file with the Registrar:

- the signed articles of merger; and
- any resolution amending the surviving company's memorandum or articles of association.

Foreign company is surviving company

If a foreign company is the surviving company, it must file with the Registrar:

- the signed articles of merger;
- an agreement that legal process may be served on it in the BVI in respect of proceedings for the enforcement of any claim, debt, liability or obligation of a BVI constituent company or the rights of a dissenting shareholder of a BVI constituent company against the surviving company;
- an irrevocable appointment of its registered agent as its agent to accept service of legal process for proceedings referred to above;
- an agreement that it will promptly pay to any dissenting shareholder of a BVI constituent company the amount (if any) to which the dissenting shareholder is entitled under the Act; and
- a certificate of merger issued by the appropriate authority of the foreign jurisdiction where it is incorporated or (if no certificate of merger is issued by that authority) any evidence of the merger as the Registrar considers acceptable.

Contacts

A full list of contacts specialising in company law can be found [here](#).