

# Capital Markets - A BVI Perspective

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## Introduction

Companies incorporated in the British Virgin Islands (**BVI**) have long been popular and accessible vehicles for capital market transactions, offering a range of flexible and creative options compared to their onshore counterparts.

BVI companies are accepted by institutional and private investors, rating agencies, underwriters and regulators around the world and, as a result, BVI companies are frequently listed on some of the world's largest stock exchanges, including the LSE, NYSE, NASDAQ and SEHK.

This guide explores the benefits of using BVI listing vehicles, recent capital market trends, Mourant's experience and recent transactions, as well as how Mourant can help.

## Advantages of using a BVI listing vehicle

The BVI Business Companies Act (Revised 2020) (as amended, the **Act**) is the main corporate legislation in the BVI, and it applies to all BVI companies (whether listed or not).

The Act offers an extremely flexible and modern platform to facilitate global capital market transactions, such as initial public offerings (**IPOs**), takeovers and take-private transactions, as well as note and bond issuances. A few of the key benefits of using a BVI listing vehicle are as follows:

- BVI companies are flexible in their structure and governance, meaning the constitutional documents can be easily amended to reflect any required shareholder protection provisions, including the disclosure of directors' interests, annual general meetings, compliance with listing rules and the retirement of directors by rotation;
- there is no takeover code or legislation applicable to BVI listed companies, nor are there any statutory restrictions in BVI law relating to the use of defensive mechanisms for potential mergers or takeovers (subject to the board's fiduciary duties);
- there are no share capital requirements for a BVI company, meaning that shares can be issued for no par value, allowing the subscription price for shares to be set by the directors with no minimum threshold, with no requirement to segregate subscription monies;
- the Act provides several options for the acquisition of a BVI company, including by way of court-approved scheme or plan of arrangement, squeeze out, merger or consolidation which (in combination with the lack of takeover code of legislation) offers great flexibility when it comes to restructuring, reverse takeovers and take-private transactions;
- most decisions of a BVI company are made at board level and by majority decision, avoiding the issue of (and delay in) seeking shareholder approval; and
- there is no need to calculate distributable reserves in order for a BVI company to make a dividend or distribution, which can instead be achieved via a simple solvency determination by the directors.

Other advantages of using a BVI listing vehicle include the political stability (and tax neutrality) of the BVI, the BVI's developed common law legal system, straight forward and low cost administrative processes, light

touch regulation and (from a practical perspective) the ability to execute most documents by electronic signature pursuant to the BVI Electronic Transactions Act, 2021.

### **Recent BVI capital markets trends**

The turbulence of the global markets during 2022 has resulted in the volume of global IPOs falling since 2021. Notably, Asia-Pacific accounted for 67% of global IPO proceeds in 2022. BVI and Cayman Islands vehicles have been central to deal flows in Asia since the late 1980s and are frequently used as listing vehicles in IPOs with an Asian nexus. Our BVI capital markets team were busy throughout 2022 advising on a range of equity capital markets matters including US listings, corporate governance, regulatory advice, implementation of share plans and shelf listings.

Additionally, SPACs have enjoyed a resurgence in recent years, a significant number of which use offshore vehicles. In 2021, there were over 600 SPAC IPOs in the U.S., more than a third of which involved listing vehicles incorporated in either the BVI or the Cayman Islands. The SPAC IPO market has now started to cool. However, given that SPACs are required to spend their capital within a certain period or return it to shareholders via redemptions, our view is that this will have a meaningful impact on cross-border M&A markets in 2023 as these vehicles identify merger targets and de-SPAC. For more information on SPACs, see our guide on [The SPACs renaissance and the offshore advantage](#).

### **How Mourant can help**

As a leading offshore law firm advising on the laws of the BVI, Mourant regularly works on large and complex capital markets transactions. When it comes to listing BVI companies, this includes pre-IPO structuring and planning, advising on the offering documents, preparing the constitutional and BVI launch documents, and providing BVI legal opinions to (among others) the SEC and the relevant underwriters. Following a listing, Mourant regularly advises on governance, compliance and further capital market transactions.

We regularly work with high-profile clients and leading onshore lawyers and have strong connections globally and within the BVI market (including with BVI registered agents and BVI accountants). As such, we offer an international level of legal services with local market insight, coupled with a hands-on and commercial approach.

### **Contacts**

A full list of contacts specialising in BVI capital markets work can be found [here](#).

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