

Continuation by a BVI company to a foreign jurisdiction

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The BVI Business Companies Act (Revised 2020) (as amended, the **Act**) allows a BVI company to continue its existence as a body corporate incorporated under the laws of a jurisdiction outside the BVI (a **foreign jurisdiction**) in the manner provided for by the laws of the foreign jurisdiction. This process is sometimes referred to as a corporate migration, re-domiciliation or transfer of place of incorporation.

This guide examines the continuation of a BVI company to a foreign jurisdiction under the Act (**Continuation**). For information about the continuation of a foreign company into the BVI, refer to our guide entitled '[Continuation by a foreign company into the BVI](#)'.

Eligibility

The Act allows a company to continue its existence as a body corporate incorporated under the laws of a foreign jurisdiction if:

- its memorandum and articles of association do not prohibit it from doing so;
- it has complied with any requirements in its memorandum and articles of association relating to its Continuation;
- it is in good standing; and
- the laws of the foreign jurisdiction allow it to continue there and it has complied with those laws.

Continuity

Under the Act, a Continuation does not affect a company's:

- continuity as a legal entity (it simply changes its jurisdiction of incorporation to the foreign jurisdiction); or
- assets, rights, obligations or liabilities.

Simple procedure

The company must take any steps necessary for its Continuation under the laws of the foreign jurisdiction. It will not cease to be incorporated under the Act until it has complied with such laws.

For the purposes of the Act, the procedure for a Continuation is as follows:

- the directors or shareholders of the company (as applicable) must pass a resolution authorising the intended Continuation;
- the company must:
 - advertise a notice of the intended Continuation in the BVI Gazette and on the company's website (if any) specifying the foreign jurisdiction to which it intends to continue (the **Advertisements**);
 - notify the members and creditors of the company in writing of the intended Continuation (the **Notifications**);

- at least 14 days after the Advertisements and Notifications have been made, file a notice of the intention of the Continuation with the BVI Registrar of Corporate Affairs (the **Registrar**) which includes a declaration that:
 - the company has made the Advertisements and Notifications not less than 14 days prior to filing the notice with the Registrar;¹
 - the company does not have any pending request from a competent authority to produce documents or provide information which has not been satisfied;
 - a receiver has not been appointed over the company or in relation to any assets of the company; and
 - the company is not aware of any legal proceedings, whether civil or criminal, pending against the company, or any member, director, officer or agent of the company as it directly pertains to the affairs of the company,
 and pay the relevant fee;
- if:
 - particulars for a security interest over any property of the company have been registered with the Registrar; and
 - the security document does not prohibit the company from continuing to a foreign jurisdiction, the company must file with the Registrar a declaration (a **security declaration**) stating that a notice of satisfaction or release for the security interest:
 - has been filed and registered; or
 - has not been filed and registered and the security taker has been given written notice of the company's intended Continuation and:
 - has consented, or has not objected, to it; or
 - has not consented or has objected to it and the security interest will not be diminished or compromised in any way by it and the company will continue to be liable for the debts secured by the security interest;
- the company's registered agent must file with the Registrar:
 - a notice of the company's Continuation and pay the relevant fee;
 - a declaration from the company confirming that:
 - the laws of the foreign jurisdiction permit the company's Continuation; and
 - the company has complied with those laws; and
 - a certificate of continuance or, in the circumstances noted below, a provisional certificate of continuance from the foreign jurisdiction evidencing the company's Continuation under the laws of the foreign jurisdiction; and
- if the Registrar is satisfied that the company has complied with the requirements of the Act relating to its Continuation, the Registrar will:
 - issue a certificate of discontinuance;
 - strike off the name of the company from the Register of Companies maintained by the Registrar under the Act with effect from the date specified in the certificate of discontinuance; and
 - publish a notice of the company's striking off in the BVI Gazette.

Where, under the laws of the foreign jurisdiction, the company's Continuation is dependent on the Registrar issuing a certificate of discontinuance, the Registrar may issue a certificate of discontinuance on the basis of a provisional certificate of continuance from the foreign jurisdiction. The company's registered agent must file the certificate of continuance from the foreign jurisdiction with the Registrar after it has been issued.

The date of the certificate of discontinuance will usually be the date on which the notice of the company's Continuation is filed by the registered agent with the Registrar.

¹ A company that has filed the notice of intention of the Continuation may, at any time before the Registrar has issued a certificate of discontinuance and struck the company from the Register of Companies maintained by the Registrar under the Act, rescind the notice by filing a notice of rescission and payment of the relevant fee.

Effects of continuation

The effects under the Act of a company continuing to a foreign jurisdiction are that:

- it remains liable for all claims against it and all of its debts, liabilities and obligations that existed prior to its continuation;
- no conviction, judgment, ruling, order, claim, debt, liability or obligation due or to become due, and no cause existing, against it or against any of its shareholders, directors, officers or agents, is released or impaired by its continuation;
- no proceedings, whether civil or criminal, pending by or against it, or against any of its shareholders, directors, officers or agents are abated or discontinued by its continuation, and the proceedings may be enforced, prosecuted, settled or compromised by or against it or against the relevant shareholder, director, officer or agent; and
- documents commencing legal proceedings against it relating to any claim, debt, liability or obligation arising during its existence as a company incorporated under the Act may continue to be served on its registered agent in the BVI.

In addition, a security declaration does not operate as a bar to any legal action a security taker is entitled to take against the company.

Contacts

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