COLLAS CRILL

Continuing a company out of the British Virgin Islands (BVI)

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Just like a person, a company can migrate from one country to another.

In the BVI, the process by which a company changes its nationality or place of registration is called a continuation. It is also commonly referred to as a migration or re-domiciliation.

This guide looks at the key things you need to know about the process for a company to continue its existence as a company incorporated in a foreign jurisdiction outside the **BVI**.

Words in **bold text** are defined at the end of this guide.

Eligibility

The BVI Business Companies Act (Revised 2020) (the **Act**) allows a company to continue as a body corporate incorporated in a foreign jurisdiction if:

- the company is in good standing with the BVI Registrar of Corporate Affairs (**Registrar**); and
- the laws of the foreign jurisdiction allow the company to continue into that jurisdiction and the company has complied with those laws.

Procedure

Foreign jurisdiction

The company must take any steps necessary for it to continue to the foreign jurisdiction under the laws of that foreign jurisdiction. These steps commonly include passing director and/or shareholder resolutions to approve it:

- continuing to that foreign jurisdiction;
- adopting a constitution that comply with the laws of that foreign jurisdiction;
- appointing a corporate services provider, appointing local directors (subject to tax advice) and approving a registered office address in that foreign jurisdiction;
- changing its name if necessary; and
- filing any required documents with the corporate registry of the **foreign jurisdiction** and observing any required formalities under the laws of the **foreign jurisdiction**.

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BVI

Subject to its memorandum and articles of association, for the purposes of the **Act**, the procedure for a company to continue to a foreign jurisdiction is as follows.

- The directors or members will by way of resolutions approve the proposal to continue the company to the foreign jurisdiction and taking all actions related to it.
- The company must advertise its intention to continue to a foreign jurisdiction in the BVI Gazette and the company's website (if any) (this must be done at least 14 days before filing the notice of its intention to continue out of the BVI with the **Registrar**).
- The Company must notify all of its members and creditors in writing of its intention to continue to a foreign jurisdiction.
  - The Company must file with the **Registrar**:
    - a notice of the company's intention to continue into a **foreign jurisdiction** inclusive of a declaration that it has placed the advertisement in the BVI Gazette and notified its members and creditors of its intention to continue out of the BVI.
    - a notice of continuance together with (i) a declaration confirming the laws of the **foreign jurisdiction** permit the continuation and that the company has complied with the foreign jurisdiction's laws, and (ii)

a certificate of continuation from the **foreign jurisdiction**.

- if there are any charges registered in respect of the company with the Registrar which have not been released or satisfied, the company shall, before continuing to the foreign jurisdiction provide an additional declaration to the Registrar or arrange for notice of satisfaction or release of such registered charges to be filed with the Registrar.

- If (following the filing of the notice of continuance with the Registrar)the **Registrar** is satisfied that the requirements of this Act in respect of the continuation of the company under the laws of the foreign jurisdiction have been complied with, the Registrar will: :
  - issue a certificate of discontinuance;
  - strike off the company name from the register of companies with effect from the date of the certificate of discontinuance; and
  - publish the striking off of the company in the BVI Gazette.

Effect of Continuance

The company ceases to be a company registered in the BVI with effect from the date of the certificate of discontinuance.

Once the company is continued under the laws of the **foreign jurisdiction**:

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- the company continues to be liable for all of all of its existing obligations that existed prior to the company's continuation into the foreign jurisdiction;
- no ruling or obligation due or to become due against the company or any member, director, officer or agent is released or impaired by the company's continuation into a foreign jurisdiction;
- no proceedings, whether civil or criminal either pending by or against the company or any member, director, officer or agent are discontinued by the company's continuation into a foreign jurisdiction; and
- service of process may continue to be effected on the registered agent of the company in the original jurisdiction, in respect of any claim or obligation of the company during its existence under the Act.

Terms used

- **Act** means the BVI Business Companies Act (Revised 2020).
- **BVI** means British Virgin Islands.
- **foreign jurisdiction** means a jurisdiction outside BVI.
- **Registrar** means the BVI registrar of corporate affairs.

About Collas Crill

We are a leading offshore law firm. We are easy to do business with and give practical advice to overcome tough challenges. Through our network of offices, we practise Bermuda, British Virgin Islands, Cayman Islands, Guernsey and Jersey law.

About this guide

This guide gives a general overview of this topic. It is not legal advice and you may not rely on it. If you would like legal advice on this topic, please get in touch with one of the authors or your usual Collas Crill contacts.

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