

## **BVI Companies and their Joint Venture Advantage**

British Virgin Islands (“BVI”) companies are well known for their flexibility and ease of use in international transactions. With an ever changing global economy, partnerships and joint venture arrangements between parties in different countries, continents and time zones have become the norm. In these situations, it is always important that the joint venture company used to carry out the joint venture project is able to be tailored to suit the needs and protect the interests of all the parties involved.

The BVI Business Companies Act, 2004 (the “Act”) is the sole corporate statute in the BVI and regulates all BVI companies. The Act has some unique features which makes a BVI company well suited for a joint venture arrangement.

### **Constitutional documents**

The Act allows great flexibility in the way a BVI company can modify its constitutional documents subject to some limitations in the Act. The main benefit of this flexibility is that the constitutional documents can be drafted so as to mirror certain provisions of the joint venture agreement. This ensures that any specific provisions of the joint agreement which is usually also addressed in the constitutional documents will not contradict the constitutional documents of the company when the joint venture agreement is agreed. An additional benefit of being able to modify the constitutional documents is that they may also be modified at a later stage to adopt to a change in business strategy, for example, they may be later modified to satisfy a listing scenario.

### **Directors duties**

One crucial aspect of any joint venture company is the role of the directors since each investor in a joint venture situation is likely to have at least one director on the board of the joint venture company. Supplemental to the duties of a director set out in BVI insolvency legislation and common law duties, the Act codifies the principal duties of a director. Typically, directors of a BVI company would be required to act in the best interests of the company, however, in a joint venture situation, the Act provides that a BVI company has the ability to include a provision in its constitutional documents which provides that a director of a BVI joint venture company can act in the best interests of one or more shareholders of the company regardless of whether such actions are in the best interest of the joint venture company itself. This provides certainty and addresses the situation where a director is required to act in a certain manner as dictated by a particular shareholder which is usually the case in practice.

### **Dividends and distributions**

Another element of attraction of a BVI joint venture company is the ease in which profits can be released from the company. In order to make a distribution to shareholders, the BVI company only needs to satisfy a solvency test. The solvency test is satisfied if: (i) the company’s assets exceed its liabilities; and (ii) the company is able to pay its debts as

they fall due. There are no distributable profits tests or similar requirements which is the case in some jurisdictions and hence another BVI advantage.

### **Shareholder protection**

Not all joint ventures will have a happy ending and although sometimes parties will try to resolve disputes amicably, that is not always the case. The Act therefore also addresses situations where a shareholder might need to seek protection and remedies where the joint venture arrangement has become untenable. These protections come in various forms including, compliance orders, unfair prejudice and derivative actions. *Compliance Orders* - Under the Act, a shareholder can apply to the BVI courts for an order to enforce compliance with the provisions of the constitutional documents of the company or to restrain conduct in contravention of it. *Unfair prejudice* - If a shareholder considers that the affairs of the joint venture company have been, are likely to be conducted in a manner that is, or likely to be oppressive, unfairly discriminatory or unfairly prejudicial to them, they can apply to the court for the application of the remedies which can include an order to wind up the joint venture company or force a majority shareholder to purchase a minority shareholder's shares at a fair and reasonable price. *Derivative actions* - A BVI court may also grant a particular shareholder permission to bring proceedings in the name and on behalf of the joint company or to intervene in proceedings to which the company is party. Permission to bring proceedings under this heading may only be granted by the court if it is satisfied that: (i) the joint venture company does not intend to bring, continue or defend (or even discontinue) the proceedings; or (ii) it is in the interests of the joint venture company that the conduct of the proceedings should not be left to the directors or to the determination of the shareholders as a whole.

### **Conclusion**

The BVI has a number of advantages over other jurisdictions as it relates to joint venture arrangements. Its flexibility in relation to a company's constitutional documents, position on directors duties and the protection offered by statute when things go wrong means that all parties can come to the table with a high level of comfort.

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**This Article is general in scope and is not intended to be comprehensive. It is not a substitute for legal advice.**

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