

Asset tracing in the British Virgin Islands

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PARTNER | US

CATEGORY:

ARTICLE

Helping you obtain information

“Knowledge and human power are synonymous, since ignorance of the cause frustrates the effect.” Francis Bacon, Aphorism III

Securing information and evidence is important whether contemplating litigation, tracing assets or undertaking due diligence into a potential business partner or joint venture. It can mean the difference between success or failure in making a recovery, and can avoid significant wasted costs and effort.

This guide lists some of the main sources of information that are publicly available in the British Virgin Islands (BVI). It has been compiled to assist you identify and track companies, individuals and assets. It lists the information obtainable by undertaking a company search of the BVI Registrar of Corporate Affairs, as well as information separately available to a director or shareholder. It also explains some of the other sources of public information obtainable in the BVI such as the Court register which identifies current or historic litigation, list of disqualified directors, land registry search, FSC search and search of the BVI ship registry.

In addition to undertaking searches, we have a number of other proven tools that we can use to help unlock information. We are often able to assist in obtaining information about a company, individual, trust or assets by undertaking a forensic investigation or by searching and cross referencing private databases or other primary and secondary sources.

We can also request information by letter or make one of a number of applications to Court for disclosure of documents or information. The BVI Courts are very experienced in handling cross border fraud and asset recovery claims, and can be sympathetic in offering assistance.

Company search

Confidentiality of corporate documents and information is one of the key attractions of incorporating a company in the BVI. A company search at the BVI Registrar of Corporate Affairs is therefore likely to reveal only limited information.

A company is only required to file its Memorandum of Association and Articles of Association, together with any amendment to these documents.

A company is not required to file its register of directors, register of members, register of charges or an annual return¹ with the BVI Registrar of Corporate Affairs.

A company can elect to file one or more of these registers, but if it does it will be obliged to continue to file such documents until it gives formal notice to the Registrar of Corporate Affairs.

In practice a company may file details of charges as lenders typically require it, since the effect of filing is to create priority over any subsequent registered or unregistered security.

Importantly, a BVI company is not required to file statutory accounts (with the exception of certain regulated companies). All that is required is to maintain records “sufficient to show and explain the company’s transactions” and which “will, at any time, enable the financial position of the company to be determined with reasonable accuracy”². There is no requirement for any accounts or financial records to be subject to independent audit.

Obligations of the Registrar of Corporate Affairs

The BVI Business Companies Act 2004 (BCA) requires the Registrar of Corporate Affairs to maintain the following information:

- Register of Companies incorporated under the BCA;
- Register of Foreign Companies (registered under Part XI);
- Register of Charges (registered under Part VIII)³.

Unless otherwise provided, a person may:

- inspect the Registers maintained by the Registrar;
- inspect any document retained by the Registrar;
- require a certified or uncertified copy or extract certificate of incorporation, merger, consolidation, arrangement, continuation, discontinuance, dissolution or good standing of a company, or a copy or an extract of any document or part of a document of which he has custody⁴.

Certificate of Good Standing

Upon completing form R800, it is possible to obtain a Certificate of Good Standing from the Registrar of Corporate Affairs certifying that a company is of good standing. The Certificate largely resembles the initial Certificate of Incorporation and is used to formally confirm the company's continued legal existence. It also confirms that all administrative requirements pertaining to the company's continued registration have been complied with.

Such a certificate will be issued if:

- The company is on the Register of Companies; and
- There are no overdue annual or other fees and penalties due and payable ⁵

The certificate will state whether:

- The company has filed articles of merger or consolidation which are pending;
- The company has filed articles of arrangement that have not yet become effective;
- The company is in voluntary liquidation; or
- Proceedings have been instituted to strike the name of the company off the Registrar of Corporate Affairs.

Maintaining records

Whilst there are limited requirements to file documents with the Registrar of Corporate Affairs, a company is required to maintain certain records and documents at the office of its registered agent, as listed below. However, there is no public right to inspect these documents at the registered agent's office:

- Memorandum and Articles of Association;
- Register of Members;
- Register of Directors; and
- Copies of all notices and documents filed with the Registrar of Corporate Affairs in the previous ten years⁶.

A company must also keep other documents including:

- Minutes of members' and directors' meetings and copies of resolutions ⁷; and
- Financial records sufficient to show and explain the company's transactions as detailed above.

Financial and other company records may be kept in written form, or wholly or partly in electronic form, in accordance with the requirements of the BVI Electronic Transactions Act 20018. In practice although the registered agent of a company is responsible for maintaining records, the registered agent is often reliant on the directors to keep the records up to date and accurate.

Rights of access by directors

A director of a company is entitled, on giving reasonable notice, to inspect the documents and records of the company:

- in written form;
- without charge; and
- at a reasonable time specified by the director;

and to make copies of or take extracts from the documents and records⁹.

Rights of access by shareholders

A shareholder of a company is entitled, on giving, written notice to the company, to inspect:

- the memorandum and articles;
- the register of members;
- the register of directors; and

- minutes of meetings and resolutions of members and of those classes of members of which he is a member;

and to make copies of or take extracts from the documents and records¹⁰. Subject to the memorandum and articles, the directors may, if they are satisfied that it would be contrary to the company's interests, refuse to permit the member to inspect any document or any part of a document (save the memorandum and articles)¹¹. In such circumstances, a member may apply to Court for an order that he should be permitted to inspect the document without limitation¹².

Other sources of public information

There are a number of other sources of publicly available information in the BVI that may be helpful to an enquirer, as follows:

List of entities regulated by the BVI Financial Services Commission

Information regarding entities regulated by the BVI Financial Services Commission are available via the Financial Services Commission website (www.bvifsc.vg), although this is not always up to date.

The list includes inter alia banks and fiduciary services companies, insurers and insurance brokers, accountants, lawyers, insolvency practitioners, mutual funds and registered agents.

Court Documents and Judgments

It is possible to undertake a search of the cause list of the Supreme Court to determine whether a company is party to pending litigation before the BVI Commercial Court or Eastern Caribbean Court of Appeal.

In the event of litigation, Rule 3.14(1) Civil Procedure Rules (CPR) of the Eastern Caribbean Supreme Court provides that any person can obtain access and take copies of the following Court documents appearing on the Court file, on payment of the prescribed fee:

- A Claim Form;
- A Notice of Appeal;
- A Judgment or Order given or made in Court;
- Any other document, upon obtaining leave of the Court.

There is no official reporting of High Court decisions although a number of important post 2000 decisions can be found on the ECSC website (www.eccourts.org).

Advisory warnings and public statements issued by the BVI Financial Services Commission

Advisory warnings and public statements are issued by the Financial Services Commission to warn consumers of companies not registered in the BVI or entities not licensed to carry on financial services business within the BVI, as well as other issues of public importance. These are available via the FSC website (www.bvifsc.vg).

Land Registry search

The BVI Land Registry can provide certain details including confirmation of the owner of BVI land or real estate upon application. This requires the applicant to identify the location or owner of the land.

BVI Ship Registry

It is possible to obtain certain information regarding vessels registered under a British Virgin Islands flag from the BVI Ship Registry.

BVI Gazette

It is possible to search the Virgin Islands Official Gazette (the official newspaper of the BVI government) which lists Government, Statutory, Liquidation and other Notices, including deportation orders. This is available online at www.bvigazette.org.

Disqualified directors

The Registrar of Corporate Affairs is required to maintain a list of disqualified directors in the Register of Disqualification Orders and Undertakings¹³. The Register is open to inspection upon payment of a prescribed fee¹⁴.

[1] Unlimited companies that are not authorised to issue shares and foreign companies registered under Part XI of the BCA are required to file annual returns s118A and 192 of BVI Business Companies Act 2004

[2] s98 BVI Business Companies Act 2004.

[3] s230(1) BVI Business Companies Act 2004

[4] s233(1) BVI Business Companies Act 2004. Any such document is prima facie evidence of the matters contained therein. s233(2) provides that any such certified document is admissible in evidence in any proceedings as if it were the original document.

[5] s235(1) BVI Business Companies Act 2004.

[6] s96 BVI Business Companies Act 2004.

[7] s97 BVI Business Companies Act 2004.

[8] s99 BVI Business Companies Act 2004.

[9] s100(1) BVI Business Companies Act 2004.

[10] s100(2) BVI Business Companies Act 2004.

[11] s100(3) BVI Business Companies Act 2004.

[12] s100(5) BVI Business Companies Act 2004.

[13] s270 of Part X of the Insolvency Act 2003

[14] At the time of writing, no director has been disqualified under the Directors Disqualification provisions contained in Part X of the Insolvency Act 2003

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