

BVI Micro Business Companies Act Comes into Force

The British Virgin Islands ("**BVI**") is a well-established jurisdiction of choice for international businesses, and has long provided innovative legal structures for cross border trading and investment activity. The BVI has been an early adopter of electronic filing systems for company incorporation and maintenance and has a modern risk-based compliance regime, which has helped to keep annual fees at a manageable level for international businesses.

The jurisdiction has now sought to enhance its reputation as a cost-effective provider of legal structures with the new Micro Business Companies Act 2017 (the "**Act**") which came into force on 4 June 2018. The Act is primarily aimed at small, non-financial sector businesses including sole traders, start-ups and small to medium enterprises, for which the BVI recognises that the initial costs of setting up a company, combined with the associated ongoing regulatory requirements, can often be either challenging or outright prohibitive. The Act's ease of use and the simplicity of its corporate governance regime makes it particularly suited for smaller, closely held family businesses rather than for international corporations.

The Act allows for the creation of a micro business company through which smaller scale business operations can be conducted, aimed both at local market operators in the BVI and micro businesses in other countries. Allowing smaller scale operators access to a corporate structure is intended to enable them to benefit from the usual ability to ring-fence the assets and liabilities of the business, and to offer confidence to the trading partners and potential investors in, and funders of, the micro business.

The operations of a micro business company are carried out by an individual who is referred to in the Act as the principal. A micro business company can only issue a maximum of six non-transferable shares, one of which will be issued

to the principal and is referred to as the principal share, and the remaining five shares can, but are not required to, be issued to shareholders. The holder of the principal share is under an obligation to manage, direct and supervise the business and affairs of the micro business company, and has the right of express corporate authority so that he or she may continue to steer the company's business and activities without the need for any further formal action or authorisation by the shareholders or any directors. The Act further includes an express statutory right for the principal to negotiate, conclude, agree and enter into contracts in the name and on behalf of the company.

A micro business company is required as part of its incorporation to prepare an English language charter in an approved form which will set out, amongst other things, its specific business purpose. The charter will be binding on the principal. As with companies incorporated under the BVI Business Companies Act, 2004, (as amended) (the "**Business Companies Act**") a micro business company is required to have a registered agent and registered office in the BVI, with only certain approved entities able to provide the service, but the service providers' fees are capped (as discussed in further detail below).

The Act provides that a micro business company can have no more than 10 employees and its turnover and gross asset value must not exceed US\$2 million per annum, making these companies ideally suited to smaller operators. A micro business company that exceeds these limits can re-register as a BVI Business Company under the Act and the Business Companies Act, thus allowing the growth of the business to be reflected in the type of legislation and associated regulation to which it is subject, which will remain appropriate to the nature and size of business, and provide appropriate comfort for its stakeholders over time.

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The fees involved in registering a company can often add to the reluctance to incorporate before the business of a would-be company has sufficiently grown in scale. In order to cut through this issue the BVI has included the ability for the regulator to prescribe the fees that may be payable for the registered agent and registered office services which the legislation requires. Service fees must be published on agents' websites. This fee transparency allows for the clear identification of the costs involved from the outset and promises to ensure the micro business company will have a macro future.

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July 2018

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