

ADVISORY | INDUSTRY INFORMATION

Access to Company Information and Documents under the BVI Business Companies Act

Introduction

In this article, we discuss the information and documents available to the public, to directors and to shareholders in relation to a company (a "BVI Company") incorporated under the BVI Business Companies Act, 2004 (the "BVI Companies Act").

Publicly available information and documents

The BVI Registrar of Corporate Affairs (the "BVI Registrar") maintains information for BVI Companies and certain of the information filed with the BVI Registrar is available for public inspection on the Virtual Integrated Registry Regulatory General Information Network ("VIRRGIN"). In addition, certain documents filed with the BVI Registrar are or may be available, depending on whether the BVI Company has elected to file such documents.

Information available

- Company name, number and type (i.e. that it is a business company limited by shares or by guarantee etc);
- Date of incorporation;
- Status (i.e. whether it is active or dissolved);
- Name, address and other contact details of its registered agent;
- First and current registered office;
- Share/Capital Information (maximum number of authorised shares, whether ability to issue bearer shares);
- Previous name history (if any);
- Transaction history;
- Certificate history; and
- Names of the current directors¹.

Documents available

- Certificate of incorporation (including any certificate of change of name); and
- Memorandum of association and articles of association (the "M&A"), including any restated and amended M&A.

There are also documents which a BVI Company is obliged to maintain and may, but is not required to, elect to file with the BVI Registrar:

- Register of directors (noting that in any event the names of current directors are publicly available, as above);
- Register of members; and
- Register of charges.

If a BVI Company does elect to file one or more of these registers, it will be obliged to continue to file updates to such documents until it gives formal notice to the Registrar of Corporate Affairs that it is no longer elects to file. In practice a company will usually file details of charges in the register of charges as lenders typically require it, since the effect of filing is to create priority over any subsequent registered or unregistered security.

Access rights of directors and shareholders to information and documents

a) Directors

On giving reasonable notice to a BVI Company, a director may inspect, or make copies or take extracts of, its documents and records. The director may do so without charge at any reasonable time specified by the director.

The documents and records consist of:

¹ The name of a current director of a BVI Company is only available by way of a search against a particular company. It is not possible to search against names of individuals to see if that person is a director of any company

(1) Financial and other records

The BVI Companies Act requires a company to keep records that:

- are sufficient to show and explain its transactions; and
- will enable its financial position to be determined with reasonable accuracy at any time.

BVI Companies are obliged to file a financial ('annual') return which may be inspected by a director

(2) Registers

While a BVI Company is not obliged to make the registers public, it must maintain a register of directors, a register of members and a register of charges, as above, and a director has a right to inspect these registers.

(3) Minutes of meetings and written resolutions of directors and shareholders

A BVI Company must keep the following documents:

- minutes of all meetings of its directors or any committee of directors;
- all written resolutions of its directors or any committee of directors;
- minutes of all meetings of its shareholders or any class of them; and
- all written resolutions of its shareholders or any class of them.

b) Shareholders

Subject to the exception set out below, a member of a BVI Company is entitled, on giving reasonable notice to a BVI Company, to inspect, or make copies or take extracts of:

- its M&A;
- its register of shareholders;
- its register of directors; and
- minutes of meetings, or written resolutions, of shareholders or any class of which the shareholder is a member.

Subject to the BVI Company's M&A, if the directors are satisfied that it would not be in the company's interests to allow a shareholder to inspect (in whole or part) any register, minutes or resolutions mentioned above, they may refuse to allow the shareholder to inspect, make copies or take extracts of, the relevant document or limit the shareholder's ability to do so.

Where a company fails, or the directors refuse, to allow a shareholder to inspect a document (in whole or part), the shareholder may apply to the High Court for an order

allowing the shareholder to inspect the document or to inspect it without any limitation.

Shareholder's entitlement to disclosure of company documents in litigation

All documents obtained by the company in the course of its administration, including advice by the solicitors to the company about its affairs, do not attract privilege and are subject to disclosure to a shareholder (Re Hydrosan Ltd [1991] BCLC 418). The rationale for that rule is that a company's legal advice is indirectly paid for by its shareholders, and therefore it would be wrong for the Company to be able to assert privilege over it.

However, where hostile litigation between a company and its shareholder is ongoing or in reasonable contemplation, legal advice given to the company in defence of or in connection with that actual or contemplated litigation is privileged as against the shareholder.

Outside of litigation, a shareholder will usually be entitled to inspect legal advice only if authorised to do so by the directors or by ordinary resolution.

Additional considerations for directors

Reliance on records and reports

A director of a company, when exercising his or her powers or performing his or her duties as a director, is entitled to rely upon the register of members and upon books, records, financial statements and other information prepared or supplied, and on professional or expert advice given, by:

- a. an employee of the company whom the director believes on reasonable grounds to be reliable and competent in relation to the matters concerned;
- b. a professional adviser or expert in relation to matters which the director believes on reasonable grounds to be within the person's professional or expert competence; and
- c. any other director, or committee of directors upon which the director did not serve, in relation to matters within the director's or committee's designated authority.

This applies only if the director acts in good faith, makes proper inquiry where the need for the inquiry is indicated by the circumstances; and has no knowledge that his or her reliance on the register of members or the books, records, financial statements and other information or expert advice is not warranted.

Obligation on directors in relation to maintenance of records

The BVI Companies Act imposes various duties and responsibilities on directors with regard to the operation of a company. These obligations include keeping of minutes

of meetings, keeping of books of accounts and making certain information available to certain persons.

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