



Brexit

British Virgin Islands Perspective

29 June 2016

BVI Law Considerations Regarding Finance Transactions Involving BVI companies

The United Kingdom (UK) voted in its historic referendum on 23 June to leave the European Union (EU). The process of leaving the EU now requires the UK to invoke Article 50 of the Lisbon Treaty and embark on a period of uncertainty, involving complex negotiations, which is expected to last at least two years. Against this backdrop, we have set out some preliminary thoughts which clients that have participated in financing transactions involving companies established in the British Virgin Islands (BVI) may wish to consider.

As a starting point, it is important to note that while the BVI is a British Overseas Territory of the UK, the BVI has its own separate legal system which is distinct from the legal systems of the UK and the EU. The BVI is not directly subject to EU law. The laws of the BVI are not affected by the referendum, nor do we anticipate that they will be directly impacted by the coming negotiations concerning the United Kingdom's departure from the EU.

Clients can therefore rest assured that the reasons why the BVI is seen as a jurisdiction of choice for international financing transactions remain valid. The BVI enjoys a strong reputation as an international financial centre with a robust legal framework that provides certainty to financiers and borrowers, cost effective and tax neutral solutions for their business needs, and a well regulated, transparent financial system that meets the highest standards of international transparency requirements. Our expectation is that the BVI's position with regard to the international requirements of the Foreign Account Tax Compliance Act (FATCA), Common Reporting Standards (CRS), Organisation for Economic Co-operation and Development (OECD) and Financial Action Task Force (FATF) will not be impacted by the referendum.

Notwithstanding the fact that BVI law is not directly affected by Brexit, as clients consider their existing and potential new financing arrangements involving BVI companies, certain considerations may warrant attention, including as follows:

- a. some contracts governed by BVI law may have references to EU Regulations or EU Directives. It may be prudent to review these in the light of the interpretation provisions of such contracts and in the context of possible future changes to such regulations or directives;
- b. the scope of material adverse effect, force majeure, illegality provisions and/or references to EU Sanctions in loan documentation entered into by a BVI company may need to be reassessed in the light of fast evolving and uncertain market conditions;
- c. debt or equity disclosure statements of BVI issuers containing references to Brexit and/or EU considerations may need to be revised in the light of ongoing developments;
- d. new business opportunities to reorganise corporate structures or set up new structures involving BVI companies may arise which clients may wish to consider in more detail against the backdrop of a changing EU regulatory landscape; and



e. certain amendments made to contracts entered into by BVI companies may require filings to be made in the BVI, for example where changes are made to the terms of security interests granted by BVI companies to lenders, or where modifications are made to the Memorandum and Articles of Association of a BVI company.

Walkers would be pleased to consider existing or potential new financing structures and documentation from a BVI legal perspective in the light of the fast changing Brexit landscape.

Key Contacts

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