

Registering security interests created by BVI Business Companies in the British Virgin Islands

This concise guide discusses the BVI Business Companies Act as it relates to the registration of security interests granted by a BVI Business Company.

Where a Company creates a security interest over its own assets, there are two different registrations which need to be considered under the BVI Business Companies Act (No 16 of 2004)(the **Act**) :

- There is a public registration in the register of registered charges maintained by the Registrar of Corporate Affairs under section 163 of the Act; and
- There is a private registration in the register of charges maintained by the Company (or its registered agent) at its registered office or the office of its registered agent under section 162 of the Act.

Under BVI law, only the private registration is mandatory. If a Company fails to enter particulars of a security interest in the register of charges which it must keep at its registered office or the office of its registered agent, then it can potentially be subject to a fine of US\$5,000.

However, notwithstanding that it is not mandatory, it is the public registration which has the principal effect of determining the priority of security interests under BVI law. An application to enter particulars of a security interest in the public register may be made by the Company or by the person to whom the security interest is granted (or, in each case, their agents). An application is made by submitting a Form R401 to the Registry of Corporate Affairs together with the applicable filing fee (currently US\$100 per document). This is usually done electronically.

Registering a security interest in the public register will give it priority over:

- All security which is registered against the Company in the public register subsequently; and
- All security which is created by the Company after the “*commencement date*” (as is more particularly described in the Act) which is not registered.

However, please note that:

- Priority of security interests can be varied with the consent of the holders of the relevant charges; and
- The priority of a registered floating charge is postponed to a subsequently registered fixed charge (but not an unregistered fixed charge) unless the floating charge contains a restriction (a “negative pledge”) on the power of the Company to create any future charge ranking in priority to or equally with the floating charge

There is no express time limit within which a security interest must be registered in the public register. Generally speaking, security interests should be registered promptly after they are created since priority is determined by the date and time of registration. However, if you are considering registering an older security interest which was created before the Company was registered under the Act, you should take advice, as in some cases the security may have better priority if left unregistered.

Registration of security under BVI law only affects priority of security interests. A failure to register security under the Act will not otherwise affect the validity of a security interest. Nor is registration necessary under the Act to “perfect” a security interest.

This note relates only to registration under the Act. Where the security interest is created over specific types of asset (the principle examples being BVI registered ships and aircraft, and land within the BVI) there are also separate asset based security registration regimes which must also be complied with.

It is not possible for a foreign company to register security under the Act unless it re-registers as a company under the Act.



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