

# BVI versus Cayman? Your choice for structuring

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When structuring a new investment, a common question posed by clients is whether the British Virgin Islands (BVI) or Cayman is a more suitable jurisdiction of incorporation for a corporate entity.

While there is no one-size-fits-all answer, and our advice will always be framed with reference to a client's particular circumstances - including commercial factors, we have set out some common considerations that may help you below.

## What unites us

I write regularly about the BVI Advantage and a key point to make is that a lot of the elements of what makes the BVI a leading global offshore financial centre apply equally in Cayman. Similarly, many of the legal and structural advantages of doing business offshore are common to both territories.

## The BVI Advantage

In summary the key aspects of the BVI Advantage are:

- Flexible, modern and evolving corporate laws
- Legal certainty
- Creditor friendly legislation
- Light but effective and stable regulation
- Tax neutrality
- Access to legitimate privacy
- Superior corporate services infrastructure
- Ease and speed of incorporation and competitive set-up and annual costs
- Jurisdictional neutrality and stability
- A dependence on offshore business that renders material adverse change in tax and law almost unthinkable

## Available in the BVI and Cayman (but not always onshore)

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Statutory merger	Yes
Migration (in and out)	Yes
Forex restrictions	No
Government expropriation	No
Financial assistance	Permitted
Stamp duty on share transfer	N/A (unless local real estate is involved)
Ability to hold shares in treasury	Yes
Board and members, and their meetings global	Yes, subject to ES
Chapter 11 or administration equivalent?	Not currently in force
Share buyback without court consent	Yes
Bearer shares	Not permitted
Foreign character names	Permitted
Treatment of creditors	Pari passu treatment of claims, subject to respecting the rights of secured creditors, preferential creditors and rights of set-off

### Key differences between BVI and Cayman corporate vehicles

Key differences	BVI	Cayman
Security registration	Public regime for the registration of security that confers statutory priority	No statutory regime for general security registration
Documents available from a	Incorporation documents and	Name, registered number, registered

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<b>company search</b>	memorandum and articles of association, as well as any security registrations	office address
<b>Concept of share capital</b>	Abolished	Exists; reduction of share capital requires a court application
<b>Laws</b>	Heavily codified	Leaner law; more common law analysis required
<b>Solvency test</b>	English style, two pronged test: <ul style="list-style-type: none"> <li>• Cash flow solvency</li> <li>• Balance sheet solvency</li> </ul>	Cash flow only: <ul style="list-style-type: none"> <li>• a company must be able to repay its debts as they fall due in the ordinary course of business.</li> <li>• An easier threshold to meet (and avoids trying to decipher the applicability of the Eurosail case)</li> </ul>
<b>Deeds</b>	Mandatory to maintain but optional to use a seal; deeds must be signed in wet ink	Optional to maintain and use a seal; deeds may be signed electronically
<b>Statutory validation of subordination and netting arrangements</b>	Bilateral only	Multilateral
<b>Voidable (antecedent) transactions</b>	Preference, undervalue transaction, extortionate credit, voidable floating charge	Unfair preferences, undervalue transactions
<b>Restructuring tools</b>	<ul style="list-style-type: none"> <li>• Schemes and plans of arrangement</li> <li>• Company creditors' arrangements</li> <li>• Light touch provisional liquidation</li> </ul>	<ul style="list-style-type: none"> <li>• Schemes of arrangement only</li> <li>• No CCAs</li> <li>• Light touch provisional liquidation</li> </ul>

If you would like to discuss any aspect of structuring a new investment vehicle please do get in touch with the contacts listed to the right of this page.

For more information please contact:

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