

## BVI: 中国企业 海外投资的平台

## BVI: Platform for Chinese overseas investment



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For close to 30 years, BVI Business Companies have been vehicles of choice for successful Chinese firms trading across the world. BVI business companies are among major businesses listed on the London, New York and Hong Kong stock exchanges. Well-respected companies worldwide use BVI business companies to manage their cross-border activities.

British Virgin Islands (BVI) business companies have been utilised in joint venture structures as part of mergers and acquisitions transactions, structures for project finance, and for the setting up of private equity funds.

The BVI demonstrates its flexibility and ability to cut through the complexity of different industries by arranging structures for projects and transactions in such areas as oil and natural gas, petrochemicals, metal industries, manufacturing and electronics.

The BVI's attributes – a legal system based on English common law, internationally-compliant regulations and tax neutrality – make it an especially attractive jurisdiction to channel outbound Chinese investment.

The BVI is well-known for being trustworthy and robust, all of which plays a part in the globalised demand for the use of BVI structures. The BVI offers tax and jurisdictional neutrality, administrative convenience and country risk mitigation, among other benefits.

If there are disputes, the BVI business companies offer legal and commercial certainty and protection of investors and creditors via English common law.

In Asia and in China, particularly, there is a wide availability of seasoned and highly skilled professionals who deal with both the legal and financial aspects of working with BVI structures.

近30年来,在英属维尔京群岛(BVI)注册的商业公司成为中国成功企业全球交易的首选。一部分BVI商业公司为伦敦、纽约和香港证券交易所上市大企业。全球知名企业纷纷利用BVI商业公司管理跨境活动。

不仅并购交易的合资架构使用BVI商业公司,设计项目融资结构以及建立私募基金时也可利用BVI商业公司。

对石油和天然气、石化、金属、制造业和电子等行业而言,利用BVI公司可以设计好项目和交易的结构,不仅具有灵活性,还能减少跨行业收购造成的麻烦。

BVI法律体系以英格兰普通法、国际法规及税收中立原则为基础。因此作为中国对外投资的通道,它的司法制度尤为诱人。

众所周知,BVI法律商业环境稳定可靠,值得信赖,这正是全球对BVI结构趋之若鹜的原因之一。选择BVI的优势众多,其中包括税收和司法中立、行政便利以及国家风险较低等。

当发生争议时,BVI商业公司的存在不仅提供了法律和商业确定性;同时,依据英格兰普通法,保护投资者和债权人。

在亚洲,尤其是中国,大量经验丰富、技术纯熟的专业人员精于处理BVI结构的法务和财务问题。

### 有限合伙议案

BVI此前出台了一份新的《有限合伙议案》。议案为有限合伙的组建和运营提供了现代的专门法律依据。

新议案的起草过程兼顾了对私募和风投资金的要求。该议案对有限合伙采用现代化的、与时俱进的、对企业友好的措施,它综合了《BVI商业公司法案》及全球范围内广泛采纳的有限合伙的概念和理念。

### LIMITED PARTNERSHIP BILL

The BVI has introduced a new Limited Partnership Bill. The bill provides bespoke modern legislation for the formation and operation of limited partnerships.

The new bill has been designed with the requirements of private equity and venture capital in mind. It will introduce a modern, updated and business-friendly approach to limited partnerships, taking into account concepts and ideas used globally for limited partnerships as well as from the BVI Business Companies Act.

According to the Limited Partnership Bill, persons looking to form a limited partnership may choose between having a limited partnership either with legal personality or without legal personality. Those limited partnerships with legal personality may hold assets, enter into contracts and litigate directly in their own name rather than through their general partner.

The list of "safe harbour" activities of limited partners, which expressly do not constitute taking part in the management of the limited partnership business, will be expanded to provide limited partners with greater certainty that such activities will not expose them to liability.

It will also be possible to register a description of charge against a limited partnership formed with legal personality, and thereby obtain priority. For those limited partnerships not formed with legal personality, a filing will be possible against the name of the limited partnership to assist in putting the public on notice of the charge.

Subject to the limited partnership agreement, it will be possible to merge or consolidate a limited partnership with another limited partnership, and to squeeze out certain partners under provisions

根据《有限合伙议案》，拟组建有限合伙的人可以在有法人资格和无法人资格的有限合伙中二选一。有法人资格的有限合伙可以直接以其本身名义而不通过普通合伙人持有资产、订立合同和提起诉讼。

议案将扩大有限合伙人的“安全港”活动范围（即明确不构成参与有限合伙业务管理的活动），使有限合伙人更确切地判断这些活动不会使其产生法律责任。

根据新议案，可针对以有法人资格形式组建的有限合伙登记押记权，从而获得优先受偿权。对于以无法人资格形式组建的有限合伙，可就其名称进行备案，以便达到公示押记权的目的。

根据与《BVI商业公司法案》第176条相似规定，在遵守有限合伙协议的前提下，一家有限合伙可以与另一家有限合伙进行吸收合并或新设合并，也可以将一些合伙人除名；但持不同意见的合伙人将得到与《BVI商业公司法案》第179条相似的保护。

根据新议案，依据现行有效的合伙法案组建的有限合伙可以重新登记为依据新的有限合伙法案组建的有限合伙。

### BVI的仲裁

英属维尔京群岛是《纽约公约》缔约国，该司法辖区现行有效的《仲裁法案》以联合国国际贸易法委员会(UNCITRAL)的《国际商事仲裁示范法》为基础。根据《仲裁法案》，仲裁双方可自由地按其意愿选择法律事务代理人而不受限制。

BVI于2016年11月正式开设了BVI国际仲裁中心，作为替代性纠纷解决机制(ADR)的指路明灯。新的仲裁中心总部设在托托拉岛，其使命是成为解决加勒比地区、美洲和周边地区所有ADR案件的区域性中心。

在BVI设立国际仲裁机构将使投资者及BVI结构的使用者放心。该

similar to section 176 of the BVI Business Companies Act, with protections provided to dissenting partners along the lines of section 179 of the BVI Business Companies Act.

Under the new bill, limited partnerships formed under the existing Partnership Act may be re-registered as limited partnerships formed under the new limited partnership act.

### ARBITRATION IN BVI

The BVI is a signatory to the New York Convention, and the jurisdiction's current Arbitration Act is based on the United Nations Commission on International Trade Law (UNCITRAL) Model Law on International Commercial Arbitration. The Arbitration Act gives the parties to arbitration the freedom to select a legal representative of their choice without restriction. The BVI officially opened the BVI International Arbitration Centre in November 2016 as a beacon for all alternative dispute resolution (ADR). The new arbitration centre is based in Tortola, and its mission is to become a regional hub for the settlement of all ADR cases in the Caribbean, the Americas and beyond.

Having an international arbitration institution in the BVI will reassure investors and users of BVI structures. It will validate the fact that such investments and structures are safeguarded by a modern ADR system, lowering the risk of operating such structures or making such investments.

The BVI International Arbitration Centre will administer arbitrations under its own rules, but it will also offer first class premises and support services to users of 'ad hoc' or other institutional arbitration. BVI arbitrations can be administered anywhere in the world, providing the facilities are conducive to arbitration proceedings. The

举措肯定了有关投资和结构受现代化的ADR制度保障，从而降低了运作结构或实施投资的风险。

BVI国际仲裁中心将根据其仲裁规则审理仲裁案件，但也向“临时”仲裁或其他机构仲裁的使用者提供一流的场所和支持服务。只要所提供的设施有利于仲裁程序的进行，BVI仲裁案件可以在世界任何地方审理。

政府以及BVI国际仲裁中心管理机构和首席执行官是为了使该机构成为BVI当地、加勒比和周边地区乃至全球商业活动、投资和项目产生的争端的首选地区仲裁中心。

### CRS 合规

BVI继续承诺会遵守法规、致力于国际合作。今年初，BVI颁布一项实施经济合作与发展组织(OECD)共同报告标准(CRS)的国内法律。

CRS是OECD就税收事宜为全球性信息自动交换(AEOI)制定的计划。目前已有包括BVI在内的逾90个司法辖区承诺实施OECD《多边税收征管互助公约》，另有60多个司法辖区签署了《多边主管当局间协议》，该协议允许参与国订立规定AEOI等事宜的协定。该等文件共同构成实施CRS的法律框架。

BVI的CRS立法项下的原则与美国的《海外账户税收合规法案》(FATCA)相似，虽然两者存在重要的不同。例如美国的FATCA着重于公民身份和税收居民身份，而CRS仅关注税收居民身份。

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aim of the government, the governing body of the BVI International Arbitration Centre and its CEO is to ensure that the institution becomes the regional centre of choice for the arbitration of disputes arising not only out of business activity, investments and projects worldwide, but also in the BVI, the Caribbean and beyond.

### CRS COMPLIANCE

The BVI continues to demonstrate its strong commitment to regulatory compliance and international cooperation. Earlier this year, the BVI enacted domestic legislation implementing the Organisation for Economic Co-operation and Development's (OECD) Common Reporting Standard (CRS).

CRS is the OECD initiative for the global automatic exchange of information (AEOI) for tax purposes. Currently over 90 jurisdictions, including the BVI, have committed to the implementation of the OECD Multilateral Convention on Mutual Administrative Assistance in Tax Matters and over 60 jurisdictions have signed a Multilateral Competent Authority Agreement which permits participating countries to enter into agreements that, *inter alia*, provide for AEOI. These form the legal framework for the implementation of CRS.

The principles under the BVI CRS legislation are very similar to the US Foreign Account Tax Compliance Act (FATCA), although there are some important distinctions. For example, while US FATCA focuses on citizenship and tax residency, CRS only focuses on tax residency.

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