

GUIDE TO COMPANIES IN THE BRITISH VIRGIN ISLANDS

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PREFACE

This Guide is a summary of the law and procedures relating to the establishment and operation of a business company in the British Virgin Islands.

We recognise that this Guide will not completely answer detailed questions which clients and their advisers may have; it is not intended to be comprehensive. If any such questions arise in relation to the contents, they may be addressed to any member of the team, using the [contact information](#) provided at the end of this Guide.

Appleby

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1. **BVI BUSINESS COMPANIES**

BVI corporate law previously distinguished between local companies (permitted to operate in BVI's domestic market) and foreign-controlled companies (restricted to international business). When the amended BVI Business Companies Act (as further amended, **Act**) came into force on 1 January 2005, any former distinctions between local companies and foreign-controlled companies were removed with the introduction of the business company (**Company**) which continues to enjoy the tax-exempt status enjoyed by the former BVI International Business Corporation.

The Act makes it possible to establish several different types of Companies in the BVI. The most common type is a Company limited by shares (i.e. it has limited liability and is authorised to issue shares). However, one may also establish an unlimited Company (with unlimited liability) or a Company limited by guarantee (in either case with or without authority to issue shares). In each case, a Company will be incorporated with constitutional documents comprised of a memorandum of association (**memorandum**) and articles of association (**articles**).

While Companies are regularly used as investment fund structures, insurance companies, investment business companies and the like, they are most commonly used as group holding companies. A Company may be incorporated as a restricted purposes company (with limited objects set out in its memorandum) or as a segregated portfolio company.

A foreign company, i.e. a company incorporated outside the BVI, may seek to establish in the BVI its principal place of business or, more usually, a branch office. However, a foreign company that wishes to "carry on business" in the BVI may only do so with the permission of the Registrar of Corporate Affairs (**Registrar**). Further information on foreign companies carrying on business in the BVI is set out in Appleby's "Guide to Doing Business in the British Virgin Islands", available from our website (www.applebyglobal.com).

2. **INCORPORATION**

Only a licensed BVI registered agent can apply for the incorporation of a Company. Incorporation is accomplished by the registration of the proposed Company's memorandum and articles, together with the registered agent's consent to act for the Company. Filing is done electronically via the Registrar's VIRRGIN website. Incorporation can take as little as a day. Once the Registrar is satisfied that the Act's requirements for incorporation have been met, the Registrar will allot the Company a unique number and issue a Certificate of Incorporation. Incorporation is deemed to have taken place on the date shown on the certificate.

3. **"KNOW YOUR CLIENT" REQUIREMENTS**

All BVI registered agents are required to undertake the necessary reviews to ensure that stringent "Know Your Client" (**KYC**) obligations are met. This will involve gathering information on the persons who will be the registered members of the Company, as well as those who will hold an ultimate beneficial interest in the issued shares. In some circumstances, KYC procedures will be applied to those who control the Company, even though they may not be members or beneficial owners. Certified identification of each verification subject is typically required. The precise KYC obligations vary depending on the nature of the Company in question (e.g. funds, regulated entities, Companies the shares of which will be listed on certain stock exchanges). A complete discussion of the BVI's robust anti-money laundering and anti-terrorist financing regime is beyond the scope of this Guide, but the important point is that registered agents in the BVI take their KYC obligations seriously and the incorporation process can only occur once the KYC requirements have been fully met.

A Company may issue bearer shares in certain limited circumstances. To ensure that compliance with the KYC requirements is maintained, a strict custodian regime has been established for the holding of bearer shares. However, in practice, the use of bearer shares is rare.

4. CONSTITUTIONAL DOCUMENTS

A Company's memorandum must state:

- (a) the name of the Company;
- (b) whether the Company is limited by shares, unlimited or limited by guarantee (and in the latter two cases, whether or not it is authorised to issue shares);
- (c) the address of the first registered office of the Company; and
- (d) the name of the first registered agent of the Company.
- (e) In addition, where a Company is limited by shares or is otherwise authorised to issue shares, the memorandum must state:
 - (i) the maximum number of shares that the Company is authorised to issue (or that the Company is authorised to issue an unlimited number of shares);
 - (ii) the classes of shares that the Company is authorised to issue and, if the Company is authorised to issue two or more classes of shares, the rights, privileges, restrictions and conditions attaching to each class of shares; and
 - (iii) whether or not the Company is authorised to issue bearer shares (or to convert or exchange registered shares into bearer shares).

In the case of a Company limited by guarantee, the memorandum must also state the amount which each guarantee member of the Company is liable to contribute in the event of liquidation while he is a member.

The articles of a Company govern its internal organisation, management and administration. The rights and duties of the members as against the Company, and as between the members themselves, are set out in the articles, which constitute a contract between these parties. The Act imposes no strict requirements as to the content of a Company's articles. Accordingly, articles can be tailor-made to suit a Company's needs and may differ significantly from Company to Company. In addition, there is considerable scope for overlap between the procedures set out in the Act and those that may be contained in a Company's articles, e.g. a Company is at liberty to adopt in its articles a procedure that is more onerous or restrictive than that contained in the Act.

An amendment to the constitutional documents of a Company may be effected by resolution of the Company's members and, with certain exceptions, by its directors (if the memorandum so allows). However, the documents themselves may provide that certain provisions may not be amended, or that a supermajority of votes is required for amendment, or that certain conditions must be met before an amendment can be effected.

5. OBJECTS AND POWERS

Subject to its memorandum and articles of association, a Company has the full capacity of a natural person. Pursuant to the Act, a Company has, irrespective of corporate benefit, the full capacity to carry on or undertake any business or activity, do any act or enter into any transaction, and the full rights, powers and privileges related thereto, including the power to:

- (a) issue and cancel shares and hold treasury shares;
- (b) grant options over unissued shares in the Company and treasury shares;
- (c) issue securities that are convertible into shares; and
- (d) give financial assistance to any person in connection with the acquisition of its own shares, unless in each instance the Company is not authorised to issue shares.

Subject to the rights or interests of any existing or subsequent creditor of the Company in any of the Company's assets, a Company will also have the power to:

- (e) issue debt obligations of every kind and grant options, warrants and rights to acquire debt obligations;
- (f) guarantee a liability or obligation of any person and secure any of its obligations by mortgage, pledge or other charge; and
- (g) protect the Company's assets for the benefit of the Company, its creditors and its members and, at the discretion of its directors, for any person having a direct or indirect interest in the Company.

6. **RESTRICTED PURPOSE COMPANIES**

A Company may restrict its purposes in its memorandum and register as a restricted purposes company (**RPC**). RPCs are typically used in securitisation and structured finance transactions and for the sole purpose of holding certain assets. Notably, an RPC must be registered as such at the time of incorporation; a Company will not be permitted to register as an RPC post-incorporation. The Certificate of Incorporation of an RPC will state on its face that the Company is registered with restricted purposes.

7. **SEGREGATED PORTFOLIO COMPANIES**

A segregated portfolio company is a company limited by shares that separates the assets and liabilities of each individual portfolio from those of its other portfolios and from those of the company itself. In the BVI, only a Company that is an insurance company or a mutual fund can be incorporated as a segregated portfolio company.

8. **NAMES**

The Registrar may, at the request of any person, reserve a name for a set period of time for future adoption by a Company. The word "Limited", "Corporation", "Incorporated", "Société Anonyme" or "Sociedad Anonima" or the abbreviation "Ltd", "Corp", "Inc" or "S.A." must be a part of the name of every Company, and an unlimited Company's name must end with "Unlimited" or "Unltd". If the Company is an RPC, the name of the Company must end with the words "(SPV) Limited" or "(SPV) Ltd". If the Company is a segregated portfolio company, the name of the Company must include the designation "Segregated Portfolio Company" or "SPC".

A Company's name can merely comprise the expression "BVI Company Number" followed by the Company's number in figures, along with one of the above mentioned endings. The Company may also have an additional name in foreign characters.

Names that are (in the opinion of the Registrar) indecent or objectionable will not be approved and names may not suggest royal patronage. The use of names that suggest that the entity is regulated (e.g. "Trust Company" or "Bank") is restricted.

Given the vast number of companies incorporated in the BVI, the need to re-use company names or similar names is increasingly evident. The Registrar now has the capacity to permit, in certain cases and subject to important restrictions in relation to insolvent companies, the reuse of names where the original company has been dissolved.

Every Company must ensure that its full name and, if it has one, its foreign character name, is (or are, as applicable) clearly stated in every written communication sent by or on behalf of the Company; and on every document issued or signed by or on behalf of the Company that evidences or creates a legal obligation of the Company.

9. CONTINUANCE

A company incorporated outside the BVI (**foreign company**) may apply to the Registrar to be continued into the BVI as if it were incorporated under the Act, provided such continuation is permitted under the laws of its home jurisdiction. However, a foreign company may not continue into the BVI if, for example, it is subject to insolvency proceedings; a receiver or manager has been appointed in relation to any of its assets; it has entered into an arrangement with creditors that has not been concluded; or an application has been made to the relevant jurisdiction's Court to liquidate the company. Continuance is accomplished through a straightforward procedure involving the filing of constitutional and support documents and the payment of a fee. Upon completion of the process, the Registrar will issue a Certificate of Continuance.

Where a foreign company is continued under the Act, the company continues as a body corporate under the name designated in its memorandum, capable of exercising all of the powers of a Company under the Act. The memorandum and articles filed pursuant to the Act become the memorandum and articles of the Company. All property of the company continues to vest in the Company and the continuation of the company into the BVI does not affect the continuity of the company as a legal entity nor does it affect the assets, rights, obligations or liabilities of the company, including any existing cause of action, claim or liability to prosecution. All shares in the Company that were outstanding prior to the issue by the Registrar of a Certificate of Continuation are deemed to have been issued in conformity with the Act.

10. DISCONTINUANCE

Subject to its memorandum and articles, any Company in respect of which the Registrar would issue a Certificate of Good Standing may, by a resolution of the directors or members, continue out of the BVI as a company incorporated under the laws of a foreign jurisdiction, provided such continuation is permitted under the laws of the foreign jurisdiction and the Company has complied with those laws. A Certificate of Good Standing will be issued on request and on payment of the prescribed fee if the Registrar is satisfied that the Company is registered on the Register of Companies and has paid all fees, annual fees and penalties due and payable.

A continuation out of the BVI will not release or impair any conviction, judgment, ruling, order, claim, debt, liability, obligation or cause existing against a Company or any member, director, officer or agent thereof or result in the discontinuation or abatement of any civil or criminal proceedings which are pending at the time of the continuation or discontinuation.

11. REQUIREMENTS FOR REPRESENTATIVES IN THE BVI

Every Company is required to have a registered office in the BVI which must be a "physical address", i.e. it may not be a post office box. The Company may change its registered office at any time, but the Registrar must be notified of such change. The Act also requires that a Company always maintain a registered agent

in the BVI and any Company that fails to do so is guilty of an offence and is liable to be struck off the Register of Companies. A Company's registered office may also be the office of its registered agent.

12. DIRECTORS

The Act provides that, subject to a Company's memorandum or articles, "the directors of a company have all the powers necessary for managing, and for directing and supervising, the business and affairs of the company". The Act does not require that any of the directors be actual residents of the BVI.

The number of directors of a Company may be fixed by its articles. Apart from the time between a Company's incorporation and the appointment of its first directors by the registered agent, a Company must have at least one director. If a Company does not have a director for any period of time, the person who manages (or supervises the management of) the Company is deemed to be a director for the purposes of the Act.

Directors of a Company operate under certain statutory and common law duties. The main statutory duty of directors is to act honestly, in good faith and in what the director believes to be in the best interests of the Company. Other statutory duties of directors include exercising their powers for a proper purpose, which includes not acting or agreeing to act in a manner that contravenes the Act or the Company's memorandum or articles, and a duty to exercise their powers and perform their duties with a level of care, diligence and skill that a reasonable director would exercise in the circumstances, taking into account (amongst other things) the nature of the Company, the nature of the decision and the position of the director and the responsibilities undertaken by the director. For further information on the duties and liabilities of directors of Companies in the BVI, please see Appleby's "Guide to Directors' Duties under the BVI Business Companies Act 2004", available from our website (www.applebyglobal.com).

13. REGISTER OF DIRECTORS

From 1 April 2016, BVI business companies are required to file (and keep updated) copies of the register of directors with the Registrar. The register of directors may be in such form as the directors approve. The register of directors is *prima facie* evidence of any matters required to be in it. The filed register of directors is not publicly available.

The register of directors will set out the name and particulars of each director, as well as the date each person commenced (and, where applicable, ceased) being a director.

For a new Company, the initial register of directors must be filed within 21 days of the appointment of the first directors. Companies in existence prior to 1 April 2016 have until 31 March 2017 to file their registers. A further six month extension may be allowed by the Registrar in certain situations.

When there is a change of particulars, the Company is required to file an updated copy with the Registrar within 30 days.

14. DIRECTORS' MEETINGS AND WRITTEN RESOLUTIONS

The Act provides that, subject to the Company's memorandum or articles, the directors of the Company may meet at such times and in such manner and places (either within or outside the BVI) as the directors deem necessary or desirable. A director can attend the meeting by way of telephone or other electronic means, provided that all directors participating in the meeting are able to hear each other.

In order for resolutions to be implemented at a board meeting, there must be a quorum. The Act provides that the quorum for a board meeting is that fixed by the memorandum or articles; however, if a quorum is

not fixed by the memorandum or articles, a board meeting is considered to be properly constituted if at the commencement of the meeting one half of the total number of directors are present. Unless the articles provide otherwise, resolutions at a board meeting will pass upon the affirmative vote of a simple majority of the votes cast.

As an alternative to physically meeting in person, any action that may be taken by the directors at a board meeting (or a meeting of a committee of directors), may be taken by a resolution of directors (or committee of directors) consented to in writing (including electronically). A written resolution of the directors must be signed by all of the directors unless the articles provide otherwise.

15. **SHARE CAPITAL**

The Act abolished the concept of authorised share capital to accord with company legislation in Commonwealth jurisdictions such as Australia and Canada (however, the concept continues to apply for some former BVI International Business Corporations that were automatically re-registered pursuant to the Act on 1 January 2007, rather than voluntarily re-registering).

Under the Act, no minimum share capital is prescribed for a Company and a Company may issue shares with par value, with no par value or a combination thereof and may also issue fractional shares. A share is deemed to be issued when the name of the member is entered in the Company's register of members.

Save as otherwise stated in its memorandum or articles, a Company may increase or reduce its authorised capital, though the Company must inform the Registrar in writing of any such change to its authorised capital and file an amendment to its memorandum.

16. **SHARES**

Shares may be issued fully paid, partly paid or unpaid. The consideration for shares may be money, services rendered, personal property, real property, a promissory note or other binding obligation to contribute money or property to the Company or any combination thereof.

Subject to its memorandum or articles, a Company may issue its shares for such amount as may be determined from time to time by its directors, save that where the shares have a par value, the consideration payable for such shares may not be less than the par value.

A Company may, alternatively, purchase, redeem or otherwise acquire its own shares in accordance with a process specified in its memorandum or articles. The provisions of the Act dealing with redemption or purchase of shares by a Company are negated to the extent that they are inconsistent with the provisions of the Company's memorandum or articles dealing with purchase, redemption or acquisition.

A Company may purchase, redeem or otherwise acquire its own shares, provided that, immediately after doing so, the Company is solvent (i.e. the value of the Company's assets exceeds its liabilities, and the Company is able to pay its debts as they fall due), and the directors believe on reasonable grounds that the Company will be solvent after the purchase, redemption or other acquisition.

The Act allows a Company to hold treasury shares, subject to any provisions to the contrary in the Company's memorandum and articles.

17. **REGISTER OF MEMBERS**

Every Company must keep a register of its members in the BVI which must detail, as appropriate for the Company (depending on whether it is unlimited, limited by shares or limited by guarantee):

- (a) the names and addresses of the members holding registered shares in the Company;
- (b) the number of each class of shares held by each member;
- (c) the names and addresses of the persons (if any) who are guarantee members or unlimited members of the Company;
- (d) if the Company has issued bearer shares:
 - (i) the total number of each class and series of bearer shares held by the member; and
 - (ii) with respect to each bearer share certificate: the identifying number of the certificate; the number of each class or series of bearer shares specified in the certificate; the date of issue of the certificate, and the name and address of the custodian of the certificate;
- (e) the date on which each person was entered in the register of members; and
- (f) the date on which any person ceased to be a member.

The Act also provides that the register of members may be in such form as the directors approve (but if the register is kept in magnetic, electronic or other data storage form, the Company is required to be able to produce legible evidence of its contents).

Entry of a person's name in the register of members as a holder of a share in a Company is considered *prima facie* evidence that legal title in the share vests in that member. Accordingly, a Company can treat the holder of a registered share as the only person entitled to exercise any voting rights attaching to the share, receive notices, receive a distribution in respect of the share, and exercise other rights and powers attaching to the share.

18. MEMBERS' MEETINGS

A meeting of the Company's members may be held at such time and in such place (either within or outside the BVI) as the convenor of the meeting considers appropriate. A person convening a meeting of members is required, subject to the Company's memorandum or articles, to give not less than seven days' notice of the meeting to those persons who appear in the Company's register of members and are entitled to vote at the meeting. However, this notice requirement can be waived by members holding 90% of the total voting rights on all matters to be considered at the meeting (or a lesser majority specified in the Company's memorandum or articles).

The Act does not require a Company to hold an annual general meeting of its members, though the Company's memorandum or articles may provide for meetings of members in certain circumstances, in which case the memorandum or articles will set out the rules and procedures relating to these meetings.

The Act contains general provisions dealing with meetings of members and voting by members, all of which are subject to any contrary or varying provisions in the Company's memorandum or articles. Accordingly, the Act need only be consulted on this subject if there are no relevant provisions in the Company's memorandum or articles.

The Act provides that the directors of a Company are required to call a meeting of members if requested by members who are entitled to exercise at least 30% of the voting rights in relation to the matter in which a meeting is requested. This is subject to the Company's articles, which may specify that a lesser percentage of members may requisition a meeting.

Where member approval is required under the Act, and there is no specific reference to the percentage of the votes required for approval in the Company's memorandum or articles or in any other source (such as stock exchange listing rules, where relevant), a resolution is considered to be passed if approved by a simple majority of the votes cast by members entitled to vote. The votes of members are counted according to the votes attached to the shares held by the voting member.

Unless the memorandum or articles of the Company state otherwise, the exercise by the members of a power provided under the Act or the Company's memorandum or articles can be effected by resolution either passed at a meeting of members or consented to in writing (including electronically). In the case of written resolutions, no notice needs to be given.

19. DISTRIBUTIONS

In respect of a Company incorporated under the Act, "distribution" means: (i) the direct or indirect transfer of an asset, other than the Company's own shares, to or for the benefit of the member; or (ii) the incurring of a debt to or for the benefit of a member, in relation to shares held by a member, or to the entitlement to distributions of a member who is not a member, and whether by means of the purchase of an asset, the purchase, redemption or other acquisition of shares, a transfer of indebtedness or otherwise (and includes a dividend).

The directors of a Company may, subject to its memorandum or articles, pass a resolution authorising a "distribution" by the Company to members at such a time and for an amount that they think reasonable, which resolution must include a statement that the Company will, immediately after the distribution, satisfy the "solvency test". The Act provides that a Company satisfies the "solvency test" if (i) the value of the Company's assets exceeds its liabilities, and (ii) the Company is able to pay its debts as they fall due.

A Company may recover a distribution made to a member when the Company did not satisfy the solvency test immediately after the distribution, unless the member received the distribution in good faith and without knowledge of the Company's failure to satisfy the solvency test; the member has altered his position in reliance on the validity of the distribution and it would be unfair to require payment in full or at all.

20. RECORDS, FINANCIAL MATTERS AND SEAL

The Act requires a Company to keep a number of essential documents (being its memorandum and articles, the register of members (or a copy thereof), the register of directors (or a copy thereof) and copies of all notices and other documents filed by the Company in the previous ten years), at the office of the registered agent. A Company must, within 15 days, notify the registered agent, in writing, of any change in the register of directors or register of members and where a Company fails to provide such notification, the Company is liable to a fine.

The Act also requires that other records of the Company be maintained, either at the office of the Company's registered agent, or such other place(s) either within or outside the BVI as the directors may decide. These records are minutes of meetings and resolutions of members (and of classes thereof) and minutes of meetings and resolutions of directors (and committees thereof). Where any of these records are kept at a place other than the office of the Company's registered agent, the Company is required to provide the registered agent with a written record of the physical address of the place at which the records are kept and to notify the registered agent of any change in the physical address of the records within 14 days of the change of location. A Company is also required to keep financial records which are sufficient to show and explain the Company's transactions and will, at any time, enable the financial position of the Company to be determined with reasonable accuracy.

The Act provides directors and members with a right to inspect the Company's records. A Company's director is entitled, on giving reasonable notice and at a reasonable time specified by the director, to inspect the documents and records of the Company without charge and to make copies of or take extracts from the documents and records. A member of the Company is entitled, on giving written notice to the Company, to inspect the Company's memorandum and articles, the register of members, the register of directors, and minutes of meetings and resolutions of members and of those classes of members of which he is a member, and to make copies or take extracts from the documents and records.

Subject to the memorandum and articles, the directors can refuse to permit the member to inspect any document, or can limit the inspection, if satisfied that such inspections would be contrary to the Company's interests. However, where the directors refuse to permit a member inspection of any document, the member has a right to apply to Court for an order that such member be permitted to inspect the document or to inspect the document without limitation and the Court "may make such an order as it considers just".

While the Act does not provide for an annual audit or the appointment of auditors, a Company is at liberty to provide for the appointment of an auditor in its memorandum or articles.

A Company must have a common seal and an imprint of the seal needs to be kept at the office of the Company's registered agent.

21. CHARGES

A Company must maintain at its registered office or the office of its registered agent a register of charges which must include, *inter alia*, details of each charge entered into by the Company, including the liability secured, a description of the property charged, the name and address of the chargee (or trustee), the date of creation of the charge and details of any restriction on the power of the Company to create any future charge ranking in priority to or equally with the charge.

The Company or a chargee may choose to submit a charge for registration with the Registrar. The Registrar keeps, with respect to each Company, a Register of Registered Charges. In the event that questions of priority fall to be determined by reference to BVI law, any charge registered pursuant to the Act will take priority over any other charge that is registered subsequently in regard to the same assets, and over all other unregistered charges created over such assets after 1 January 2005 (or in the case of a former BVI International Business Corporation (**IBC**), the date on which the IBC re-registered or was deemed to have been automatically re-registered pursuant to the Act). Charges created before 1 January 2005 (or in the case of a former IBC, the date on which the IBC re-registered or was deemed to have been automatically re-registered pursuant to the Act) maintain their original priority.

22. TAXATION AND EXCHANGE CONTROL

The Companies incorporated under the Act (or, in the case of former BVI International Business Companies, re-registered or deemed to have re-registered under the Act) are exempt from all provisions of the BVI's Income Tax Act, CAP 206 (**Income Tax Act**). All dividends, interest, rents, royalties, compensations and other amounts paid by a Company to persons who are not resident in the BVI, and capital gains realised with respect to any shares, debt obligations or other securities of such a Company by persons who are not resident in the BVI, are exempt from the provisions of the Income Tax Act. No estate, inheritance, succession or gift tax, rate, duty, levy or other charge is payable by persons who are not resident in the BVI with respect to any shares, debt obligations or other securities of a Company. All instruments relating to transfers of property to or by a Company and transactions in respect of the shares, debt obligations or other securities of a Company are exempt from the payment of stamp duty. It should be noted, however, that transactions relating to land located in the BVI, or in respect of shares, debt

obligations or other securities of a company that owns land in the BVI are not exempted from the stamp duty regime.

Further, transfers of property to or by a Company, transactions in respect of the shares, debt obligations or other securities of a Company and other transactions relating to the business of a Company are exempt from the provisions of the BVI's Registration and Records Act, CAP 67.

The only "tax" imposed on a Company is an annual licence fee and such other filing fees as may be payable for certain corporate actions from time to time. Nevertheless, any Company that has operations and employees within the BVI itself will be liable to certain taxes in respect of those employees; please see the relevant sections of Appleby's "Guide to Doing Business in the British Virgin Islands", mentioned above, for further details.

There are no laws or regulations governing exchange control in the BVI. This means that a Company is free to deal in any currency (e.g. the currency in which the Company's shares will be issued with respect to a share with a par value) of their choosing. The local currency is the US dollar.

For more specific advice on companies in the BVI, we invite you to contact:

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For the convenience of clients in other time zones, a list of contacts available in each of our jurisdictions may be found [here](#).