

## INTRODUCTION

The British Virgin Islands' corporate statute is ideally suited for a wide range of corporate and commercial applications including international listings. BVI companies have been used widely for listings on international stock exchanges in New York, London, Singapore and Oslo. They have been especially popular vehicles for listings on the world's most successful growth market, the LSE's Alternative Investment Market (AIM).

The reasons for their popularity in relation to the Equity Capital markets include their versatility, low start-up and maintenance costs and the BVI's zero tax regime. BVI companies enjoy flexible and business-friendly approaches to corporate governance, funding, and share capital requirements without sacrificing shareholder rights and remedies and compare favourably with companies registered in the Isle of Man, another financial centre used for international listings.

Below you will find an introduction to key features of the BVI's corporate statute through a comparison with the Isle of Man. For more information about using BVI companies to access the equity capital markets please contact Leonard Birmingham ([leonard.birmingham@harneys.com](mailto:leonard.birmingham@harneys.com)) at Harneys' London office.

## Comparison: Key features of company law legislation in the British Virgin Islands and the Isle of Man

KEY FEATURE	THE BRITISH VIRGIN ISLANDS (the "BVI")	THE ISLE OF MAN (the "IoM")
Enabling Legislation	The BVI Business Companies Act, 2004	The Companies Act, 2006
Types of Vehicles	<ol style="list-style-type: none"> <li>1. Company limited by Shares</li> <li>2. Company limited by guarantee that is not authorized to issue shares</li> <li>3. Company limited by guarantee that is authorized to issue shares</li> <li>4. Unlimited Company that is not authorized to issue shares</li> </ol>	<ol style="list-style-type: none"> <li>1. Company limited by Shares</li> <li>2. Company limited by Guarantee</li> <li>3. Company limited by shares and by Guarantee</li> <li>4. Unlimited Company with Shares</li> </ol>

KEY FEATURE	THE BRITISH VIRGIN ISLANDS (the “BVI”)	THE ISLE OF MAN (the “IoM”)
Types of Vehicles con’t	<ul style="list-style-type: none"> <li>5. Unlimited Company that is authorized to issue shares</li> <li>6. Segregated Portfolio Company</li> <li>7. Restricted Purpose Company</li> </ul>	<ul style="list-style-type: none"> <li>5. Unlimited Company without shares</li> <li>6. Protected Cell Company</li> </ul>
Capacity and Powers	<p>A company is a legal entity in its own right separate from its members.</p> <p>Company has full capacity to carry on or undertake any business, activity or transaction</p>	<p>A company is a legal entity in its own right separate from its members.</p> <p>Company has full capacity to carry on or undertake any business, activity or transaction</p>
Share Capital	Shares may be issued with or without a par value and if with a par value it may be issued in any currency	Shares may be issued with or without a par value and if with a par value it may be issued in any currency
Capital Maintenance requirements	Nil (but subject to a solvency test)	Nil (but subject to a solvency test)
Amendment to the Memorandum and Articles	Either by a resolution of directors (if permitted by the Memorandum of Association) or by a resolution of members	Either by a resolution of directors (if permitted by the Memorandum of Association) or by a resolution of members

KEY FEATURE	BVI	IoM
Types of Shares	<ol style="list-style-type: none"> <li>1. Convertible, common or ordinary;</li> <li>2. Redeemable at the option of the shareholder or the company or either of them;</li> <li>3. Shares which confer preferential rights to distributions;</li> <li>4. Shares which confer special, limited or conditional rights, including voting rights</li> <li>5. Shares which confer no voting Rights</li> <li>6. Shares which participate only in certain assets of the Company</li> </ol>	<ol style="list-style-type: none"> <li>1. Convertible, common or ordinary;</li> <li>2. Redeemable at the option of the shareholder or the company or either of them;</li> <li>3. Shares which confer preferential rights to distributions;</li> <li>4. Shares which confer special, limited or conditional rights, including voting rights</li> <li>5. Shares which confer no voting Rights</li> <li>6. Shares which participate only in certain assets of the Company</li> </ol>
Financial Assistance	No restrictions	No restrictions
Other features	Multi-currency, fractional shares available. Shares may be in registered form, and share certificates are not compulsory	Multi-currency, fractional shares available. Share certificates are compulsory, unless a contrary provision is made in the memorandum and articles
Treasury Shares	Yes	No
Transfer of Shares	Yes	Yes
Offering Documents	Compulsorily required for companies conducting investment funds business as Public Funds under the Mutual Funds Act, 1996	Any type of company may offer securities to the public. Offering Document must contain all material information relating to the offer, as fairly and

<b>Offering Documents con't</b>		accurately as possible. Director(s) liable for misstatements in the Offering Document.
<b>Distributions and Solvency Test</b>	Distribution of assets to members possible, subject to a solvency test (ability of company to pay its debts as they fall due and that the value of the company's assets exceed the liabilities)	Distribution of assets to members possible, subject to a solvency test (ability of company to pay its debts as they fall due and that the value of the company's assets exceed the liabilities)
<b>Min. number of Members</b>	One	One
<b>Annual General Meetings</b>	Not compulsory	Not compulsory
<b>Min. number of Directors</b>	One	One
<b>Corporate Directors</b>	Yes	Yes, within certain limits
<b>Local Directors</b>	No	No
<b>Location of Directors</b>	Anywhere	Anywhere
<b>Directors meetings</b>	Physical and participation by electronic means permitted	Physical and participation by electronic means permitted
<b>Members and Directors Written resolutions</b>	Yes	Yes

KEY FEATURE	BVI	IoM
<b>Company Administration</b>	Registered Agent required; Registered Office to be located in the BVI	Registered Agent required; Registered Office to be located in the IoM
<b>Company Records</b>	<ol style="list-style-type: none"> <li>1. Memorandum and Articles of Association of the Company</li> <li>2. Register of members</li> <li>3. Register of directors</li> <li>4. Copies of all notices and other documents filed by the company in the previous 10 years</li> <li>5. Minutes of meetings and resolutions of members and of classes of members and committees of members</li> <li>6. Minutes of meetings and resolutions of directors and committees of directors</li> <li>7. Register of Charges</li> <li>8. Company Seal</li> </ol>	<ol style="list-style-type: none"> <li>1. Memorandum and Articles of Association of the Company</li> <li>2. Register of members (business or residential address required)</li> <li>3. Register of directors (business or residential address required)</li> <li>4. Register of charges</li> <li>5. Copies of all notices and other documents filed by the Company in the previous 6 years</li> <li>6. Accounting records and originals of any financial statements prepared</li> <li>7. Minutes of meetings and resolutions of members and of classes of members</li> <li>8. Minutes of meetings and resolutions of directors and committees of directors</li> <li>9. Company Seal</li> </ol>
<b>Financial records</b>	Records that: <ol style="list-style-type: none"> <li>(a) are sufficient to show and explain the company's transactions; and</li> <li>(b) will, at any time, enable the financial position of the company to be determined with reasonable accuracy.</li> </ol>	(1) Reliable accounting records which- <ol style="list-style-type: none"> <li>(a) correctly explain the transactions of the company; and</li> <li>(b) enable the financial position of the company to be determined with reasonable accuracy at any time; and</li> <li>(c) allow financial statements to be prepared.</li> </ol>

KEY FEATURE	BVI	IoM
<b>Audit</b>	Not compulsory	Not compulsory unless securities are listed or admitted to trade on a securities market or exchange
<b>Taxation</b>	No income, capital gains, corporation or stamp taxes	0-10% tax rate depending on the type of company; no capital gains, inheritance tax or stamp duty
<b>Annual Returns</b>	No	Yes
<b>Business Combination/Public to Private</b>	Yes, statutory merger and consolidation available as well as Plan of Arrangement and Scheme of Arrangement.	Yes, statutory scheme of merger available as well as Plan of Arrangement.
<b>Time for incorporation</b>	1 day	5 days
<b>Double Taxation Avoidance Agreements access</b>	No	Only with UK
<b>Min. annual govt. fees</b>	US\$350	£190
<b>OECD status</b>	White-listed	White-listed

## Comparison: British Virgin Islands and Isle of Man corporate vehicles for international listings

KEY FEATURE	BVI	IoM
Reputation	The BVI is the largest offshore corporate domicile in the world	Another jurisdiction offering offshore corporate domicile facilities
Ease of doing business	Very creditor friendly and stable common law jurisdiction; company can be incorporated in one day; tried and tested corporate legislation	Common Law jurisdiction; can take up to 5 days to incorporate a company; the current corporate legislation is fairly new
Regulatory approval for listings	No prior regulatory approval required in the BVI	Prospectus exemptions available
Dematerialised Shares	Shares in BVI companies are capable of being held in dematerialised form (no BVI stamp duty applicable)	Shares in IoM companies are capable of being held in dematerialised form through CREST (stamp duty may be applicable)
Multi-currency shares	Yes	Yes
Public and Private companies	No distinction	No distinction
Ability to trade shares via CREST	No, but can trade Depository Interests	Yes

KEY FEATURE	BVI	IoM
<b>Takeover Code</b>	Does not exist. No Stock Exchange in the BVI. Aspects of City Code (UK) and Combined Code on Corporate Governance are routinely incorporated into the Memorandum and Articles of BVI companies.	City Code on Takeovers and Mergers applies if the Panel on Takeovers and Mergers considers the company to have its place of central management and control in the UK, Isle of Man or Channel Islands
<b>Direct Taxation</b>	No income, capital gains, corporation or stamp taxes	0-10% tax rate depending on the type of company; no capital gains, inheritance tax or stamp duty
<b>VAT implications</b>	Nil	Yes.  The IoM has a value added tax (VAT) regime which is essentially identical to, and interlinked with, that of the UK. The IoM is regarded as part of the European Single Market, and transactions involving the IoM are treated by EU Member States as if they involved the UK. Businesses trading in the UK/IoM, or in both jurisdictions, may apply to register for VAT in the IoM providing that they can show that day to day management and control is effected from the Island. Day to day management and control may be demonstrated by a number of factors, or a combination of them: by showing that record-keeping, bank accounts, premises,

## VAT Implications con't

directors, invoicing and administration take place in the IoM. Once VAT-registered any IoM business is subject to the normal VAT rules. For IoM businesses that are trading outside the UK and IoM, their trading would normally be outside the scope of VAT, and so they would not be required to register unless they wished to do so on a voluntary basis.

## FURTHER INFORMATION

For more information on this subject please contact:

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*The foregoing discussion and analysis is for general information purposes only and not intended to be relied upon for legal advice in any specific or individual situation.*

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## Harneys tops Hemscott FTSE AIM 100 table

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Harneys has topped the latest Hemscott tables as the legal advisor with the largest total client market capitalisation among FTSE AIM 100 clients. The firm also rose to the 6th place in the ranking of total AIM client market capitalisation, the highest position garnered by an offshore law firm

The latest quarterly rankings from data provider Hemscott show Harneys with total AIM client market capitalisation of £1.5 billion (\$2.3 billion). Among FTSE AIM 100 clients, this market capitalisation reached £1.3 billion (\$2 billion).

Global Head of Harneys' Corporate and Commercial practice Leonard Birmingham, who splits his time between London and the BVI, said: "Businesses seeking a listing on an international stock exchange have used BVI companies for decades and the AIM market is no exception. The simple reason is that these vehicles have been tried, tested and found to be reliable."

The AIM-listed companies advised by Harneys and represented in Hemscott's recent report were Asian Logic, Emerging Metals, Equest Investments Balkans, Playtech, Polo Resources, ReneSola, and San Leon Energy.

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