

Access to Equity Capital Markets – A BVI Perspective

By Michael Gagie

The versatility and flexibility of BVI corporate vehicles is demonstrated by the jurisdiction's position as the leading offshore corporate domicile with some 41 percent of the world's offshore companies. Market confidence in the BVI is demonstrated by its ready acceptance by the regulators of some of the world's leading international equity capital markets in the US, Germany, UK and now, at the end of 2009, Hong Kong. The purpose of this note is to give an overview of the very clear advantages of using a BVI corporate vehicle for international listings.

Zero tax regime – BVI companies are not subject to income or corporation tax in the BVI. Holders of BVI shares are not subject to tax in the BVI on any distributions or dividends paid to them and there are no transfer taxes on shares.

Start up and maintenance costs – BVI companies are relatively inexpensive to incorporate and only require payment of an annual fee to the Registry of Corporate Affairs in the BVI to remain in good standing. The requirement to appoint a Registered Agent domiciled in the BVI ensures that the Company has an administrator who knows the jurisdiction and is capable of dealing with any filing requirements and other domicile specific issues.

Shareholder Rights and Protections – the BVI's corporate legislation, the BVI Business Companies Act ("BC Act"), provides several statutory protections for shareholders and is flexible enough to allow the constitution of a company to provide specifically for key business decisions to require shareholder approval.

Funding – a key advantage of using a BVI vehicle is that it can be used as a "money box" company. BVI companies are often used to hold group funds. These funds can then be used to either finance other group companies through injections of share capital or can be used to fund acquisitions by group members.

Share, capital and distributions – the BC Act has abolished the concept of share capital. The majority of newly incorporated BVI companies limited by shares have shares with no par value. The abolition of share capital allows a BVI company seeking to make a distribution to its shareholders to ignore any retention of capital in determining the amount of funds available for distribution. For a company with a large issued share capital figure, this is potentially a huge advantage.

Under the BC Act, "distributions" to shareholders can be made (subject to certain exceptions) after the directors of the company have satisfied themselves on

reasonable grounds that the company will immediately after the distribution, satisfy the twolimbed statutory solvency test.

Corporate governance – whilst the BC Act provides for the directors to run the Company as they see fit, the “inclusive” approach of the BC Act (which throughout provides a company with the opportunity to bespoke its constitution to provide for something more substantive than the minimum required statutory provisions) means that a BVI company looking to list, can “cherry pick” the most attractive and most useful provisions of the law of the market in which the company is seeking admission to add into its constitution. In the case of a number of AIM listed BVI companies, this has enabled those companies to adopt in whole or in part, the UK’s “combined code”. In the case of NASDAQ listed companies, it has enabled BVI companies to comply with all required SEC standards. This flexibility ensures that BVI companies are able to adapt themselves to the requirements of the particular market and investor base which they are targeting. In addition to the implications on board level activity, in relation to shareholders, the BVI approach allows companies the option of including provisions that require their shareholders to provide them with information relating to the beneficial and legal ownership of shares thereby adhering to calls from G20 countries for transparency in the light of the increasing threats posed by terrorism and money laundering. The BVI itself is on the OECD’s white list.

Takeover requirements – the BVI does not have its own securities legislation and BVI companies are nimble enough to be able to import into their constitution, such takeover measures as are appropriate to the law or the investor base in the market in which they are looking to list.

Currently, nearly fifty percent of all BVI incorporated companies are owned by investors in Asia. With the BVI’s promotion to the Hong Kong Stock Exchange’s list of acceptable jurisdictions for listing there is good reason to believe that we may start to see BVI companies competing against their Cayman counterparts as the preferred offshore vehicles for Hong Kong listings.

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