



## IBC BRIEFING

### BVI Business Companies Act 2004

The BVI Business Companies Act 2004 (the “Companies Act 2004”) was Gazatted on 29 December 2004 is now in force. The Company Act 2004 draws the two then existing pieces of company legislation; the IBC Ordinance 1984 and the Companies Act (Cap. 285) and transitional arrangements have been set in place for the smooth transfer to the new legislation.

- 2005** The previous two companies Acts and the new Act will sit side by side; new company incorporated in 2005 has the option to register either under the IBC Ordinance or the Companies Act 2004.
- 2006** Companies formed under the IBC Ordinance 1984 will continue to be guided by the provisions of that Ordinance, but all new companies must be incorporated under the Companies Act 2004.
- 2007** The IBC Ordinance 1984 and the Companies Act (Cap. 285) will be repealed and the only legislation relating to companies will be the Companies Act 2004, and all companies registered under the IBC Ordinance 1984 will be **automatically** be registered under this Act.

#### The Objective

The BVI has brought in the new legislation to meet the twin objectives of being attractive to international clients, whilst also providing a legal framework for companies that undertake business within the BVI and to ensure that BVI companies remain **tax-free**. One of the important aspects of the new legislation is that it is enabling in nature, providing a legal framework that is flexible enough to enable the incorporation of companies for as wide a variety of legitimate purpose as possible.

#### The Concept

*Flexibility* – It is now possible to incorporate a company limited by guarantee, hybrid companies and unlimited companies with or without a share capital. The Acts also introduces the new Restricted Purpose Company; Segregated Purpose Company will now be incorporated under this Act rather than the Insurance Act as hitherto, and Mutual Funds may now be incorporated as an SPC. Matters relating to SPCs may be found in Part VII of the Act.

#### Highlight of Key Changes

*Incorporators & First members* - The Act allows for any person to incorporate a company, but requires the applications to be filed by the company’s registered agent. Incorporators will become the first members of the company.

*Company Name* – A company may now be incorporated using its company number as its name, and would be styled as BVI Company Number 1234567 Limited, or such other appropriate suffix as provided in section 17 of the Companies Act 2004. This has particular application for those applying for shelf companies and allows a change of name at some future point in time.

*Did you know?*  
There is no premium charged for a Belizean company to issue bearer shares?

The Companies Act 2004 also gives recognition of the addition of foreign character name approved by the BVI Registrar.

*Registration of Charges* – Registration continues to remain optional, but the first charge registered at the Registry should take priority regardless of the sequence of their creation. Failure to register a charge does not make it unenforceable. A charge may be registered by the secured creditor and there is no time limit for registration. A registered floating charge or debenture taken and registered before a fixed charge will generally stand behind the fixed charge in priority, unless the floating charge contains a negative pledge.



## The IBC Amendment Act (2004)

We take this opportunity to remind you that the IBC Amendment Act (2004) has come into effect in the BVI effective 1 January 2005, which now interfaces with the Companies Act 2004. The main provisions are summarized as follows.

### Directors

*Appointment of directors* – Directors must be appointed within 30 days of the company's date of incorporation.

*Register of directors* – The register of directors must be maintained at the registered office. IBCs incorporated before 1 January 2005 will have until January 2006 to create a register of directors. Companies incorporated after 1 January 2005 will be required to comply within 30 days after incorporation.

### Existing Companies (IBCs incorporated prior to 1 January 2005)

Bearer shares will be required to be placed with an authorised custodian no later than 31 December 2010, or to exchange the existing bearer shares for registered shares.

IBCs which have the right to issue bearer shares pursuant to their Memorandum and Articles of Association (M&A) must amend their M&A no later than 31 December 2010 to prohibit the issuance of bearer shares in order to avoid the attraction of a higher licence fee. The amendment must be filed with the BVI Registrar, together with a declaration stating that no bearer shares have been issued.

IBCs that do not make the above mention filing will have to pay a slightly higher licence fee starting in year 2008; and starting in the year 2011, IBCs incorporated prior to 1 January 2005 which have the bearer shares in issue or which have the power to issue bearer shares will have to pay an annual licence fee of US\$1,100.

### New Companies (Companies incorporated after 31 December 2004)

It is still possible to incorporate companies with bearer shares in the BVI, but the bearer shares will need to be placed with an Authorised and Recognised Custodian and the annual licence fee of US\$1,100.

#### ***"Implication of the new Companies Act 2004 on BVI Companies Operation"***

*The new Companies Act 2004 was enacted on 1 January 2005, which applies significant impacts on the operations of BVI companies. Nevertheless, how different would the operations be under the new act? How do we maximise our benefits? Any strategy we could undertake in operating our BVI companies as our offshore vehicle?*

*We are in honour to invite Mr. Charles Crane and Ms. Barbara O'Neal, our affiliate office from the BVI, to bring us first hand information and share with us their insights on the enactment of the new Companies Act 2004.*

*Date: April 14, 2005*

*Time: 12:30pm to 2:00p.m.*

*Venue: Chamber Theatre, The Hong Kong General Chamber of Commerce, 22/F, United Centre, 95 Queensway, HK*

*Please contact our office to request for an invitation to participate in this remarkable opportunity. See you there!!*

A copy of the Companies Act 2004 is available upon request and **free of charge** if via email, printed copy is also available and there will be a charge of US\$75 to defray photocopying and postage costs.

If you have any questions in relation to the Companies Act 2004 or any of the above comments, please do not hesitate to contact our office.

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