

# 30TH ANNIVERSARY OF THE BVI INTERNATIONAL BUSINESS COMPANIES ACT 1984

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15 August 2014 marked the 30th anniversary of the date that the International Business Companies Act 1984 (IBC) came into force in the British Virgin Islands (BVI). In terms of individual statutes worldwide, one would be hard-pressed to find an example of a similar law that has had such profound and positive implications for the jurisdiction in which it was promulgated.

The 1984 introduction of the IBC and its successor, the BVI Business Companies Act 2004, have paved the way for the BVI to become a global leading international financial centre, particularly in the arena of company incorporations.

## History

The creation of the IBC was ignited by the USA and UK unilaterally terminating their respective tax relief treaties with the BVI in 1981. The loss of revenue, particularly as a result of the termination of the US treaty, had an almost immediate direct negative impact on the territory. The indirect positive repercussions to the BVI were to be broader and have greater significance than most would have imagined at the time.

The germination of the development of the territory as an international financial centre (**IFC**) had, however, occurred some years earlier. In 1976 Paul Butler, a partner at the Wall Street law firm Shearman & Sterling had explored and subsequently pioneered the structuring of transactions employing BVI vehicles.

In the early 1980's the newly appointed BVI Attorney General, Lewis Hunte, together with Paul Butler and a team of bright energetic BVI lawyers, realised that to build on the growing attractiveness of the BVI as an IFC, the BVI needed to offer an innovative, flexible and business-friendly corporate vehicle as well as enhance corporate law legislation. Consequently, these individuals were the pioneers of drafting, reviewing and bringing into existence the new legislation in August 1984.

## Legislation

The IBC reflected recognition by its draftsmen of the impending developments in global corporate law. These developments included enabling these companies to acquire their own shares and provide financial assistance to others in acquiring their shares; abolishing the requirement for all corporate actions to be solely for the corporate benefit of the company (thereby recognising and enabling the development and use of the corporate group structure); removing the requirement for corporate capacity, *ultra vires* (thereby enabling these companies a great degree of flexibility in their operations and an ability to quickly adapt their operations to commercial developments); creating new mechanisms to achieve mergers, acquisitions and restructuring of these companies; and importantly creating an effective and efficient incorporation procedure allowing the quick establishment and commencement of operations of these vehicles. These provisions are common-place in the global modern corporate law arena but were revolutionary at the time of introduction in the BVI.

This quantum leap in BVI corporate jurisprudence was not a one-off event. The IBC was amended from time-to-time, albeit infrequently. One of the material amendments was to introduce a regime of security interest registration. This allowed charges, mortgages and assignments of interests in assets of BVI companies to be formally registered. This security

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registration regime has been one of the contributors to BVI companies being widely used in banking and financing transactions by providing an effective security recording and publicity regime that provides substantial comfort and protection to lenders.

Post-millennium, a process of replacing the IBC was commenced. The rationale for replacement legislation was twofold. Firstly, it was deemed necessary to update and modernise the IBC, which had been based on Delaware corporate law, whilst retaining its essential business efficacy characteristics. Secondly, to respond to, and deal with, pressure from the OECD and other organisations that objected to IBC companies being incorporated within the BVI but not being subjected to local corporate tax, provided they conducted business outside of the BVI ('ring-fencing'). Local BVI companies, termed 'CAP' companies, were subject to local BVI corporate tax as they conducted business and generated income within the BVI. The new legislation, the BVI Business Companies Act 2004 (**BCA**), which was based on New Zealand corporate legislation, therefore consolidated both forms of BVI corporate vehicles.

### Global Appeal

The global appeal of the BVI corporate offering cannot be understated. Shareholders in BVI companies are located in countries as diverse as China to Chile and New Zealand to Norway.

The positive uses to which BVI corporate vehicles are applied are numerous and varied. These vehicles have and continue to be used for projects such as listing a BVI company operating as a new town developer on the Hong Kong stock exchange or establishing BVI investment holding companies and funds for Middle Eastern investors or for South Korean asset managers.

As noted above, the BVI corporate security registration system has, in particular, proven attractive and has led to BVI companies being directly involved in the financing of alternative energy sources and clean water projects in the People's Republic of China for an Asian development bank operating out of the Philippines.

### Conclusion

In the final analysis, the fact that the BVI corporate product appeals to such culturally diverse people for such a myriad of purposes remains an enduring testament to the foresight and energy of those early pioneer draftsmen of this legislation and also of those men and women who have subsequently and tirelessly promoted the BVI as an IFC.

The future challenge is to further develop and diversify the BVI corporate offering, as well as other products and structures, so that the BVI continues to offer an environment that is conducive to, and facilitates, international business.

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