

# British Virgin Islands: Market Update and Key Trends

## Introduction

With almost 500,000 active British Virgin Islands (“BVI”) business companies in existence, and over 10,000 new incorporations per quarter, the BVI is universally recognised as one of the world’s leading offshore jurisdictions.

The purpose of this client briefing is to provide a market update and high level overview of recent trends in the BVI.

Campbells advises on all aspects of BVI and Cayman Islands law and has further expanded its capabilities to advise on BVI matters by the addition of several new lawyers in recent months.

## Corporate and Finance Transactions: Overview

By virtue of the sheer volume of active BVI business companies, there continues to be a regular flow of corporate and finance transactions involving such companies. The demand for BVI business companies as asset holding vehicles in group and family structures remains strong, particularly in the Asian market, and we continue to see BVI business companies utilised in a wide variety of cross-border corporate and finance transactions, including IPOs, mergers and acquisitions, series financing, joint ventures and asset financing.

In addition to the tax neutral status of BVI business companies and the absence of any residency requirements for directors, the unparalleled flexibility of the BVI Business Companies Act, 2004 (as amended) (the “BCA”) continues to attract new and existing clients to the jurisdiction.

The following features of BVI business companies, as provided for by the BCA, are often viewed by our clients as particularly appealing and advantageous:

- A BVI business company is not subject to the concepts of “share capital” or “share premium” that exist in most other offshore jurisdictions. A BVI business company’s constitutional documents are simply required to state the number of shares that the company may issue or that it may issue an unlimited number of shares.
- A BVI business company need not have distributable reserves or profits in order to make a distribution to its shareholders. Directors may authorise a distribution at such time and of such an amount as they think fit if they are satisfied on reasonable grounds that the company is solvent.
- A BVI business company can issue par value or no par value shares.
- The constitutional documents of a BVI business company can provide that a director of a joint venture

company may act in the best interests of one or more shareholders even though it may not be in the best interests of the company.

- The constitutional documents of a BVI business company can be amended by the directors without shareholder approval if this is permitted by the company's constitutional documents (subject to certain limitations).
- The BCA provides a straightforward statutory framework for mergers or consolidations between BVI business companies and also with foreign companies.
- The BCA contains provisions which allow a BVI business company to enter into a court approved Scheme of Arrangement or Plan of Arrangement.
- A BVI business company can continue to another jurisdiction by following a straightforward statutory procedure.

One cautionary note however is that members of the public can obtain a copy of a BVI business company's constitutional documents from the BVI Registry for a nominal fee, unlike the position in the Cayman Islands. Caution must therefore be exercised in ensuring that sensitive information is excluded when preparing or updating a BVI business company's constitutional documents.

### Investment Funds: Overview

We have witnessed a subdued appetite for new private and professional funds in the BVI, with only 102 funds being licensed by the BVI Financial Services Commission ("BVI FSC") in 2014. The Cayman Islands continue to dominate the offshore hedge funds market, with over 11,000 open ended funds registered with the Cayman Islands Monetary Authority ("CIMA") as against 2,000 private and professional funds in the BVI. Although the BVI's private fund product continues to attract smaller start-up managers due to perceived cost savings, start-up managers often opt for a "Section 4(4)" Cayman Islands unregulated open ended fund where there are 15 or fewer investors. The BVI does not currently have an exempted or unregulated open ended fund product.

Although statistics for closed ended funds are less readily available, as such funds are not regulated in either the BVI or the Cayman Islands, the latest statistics published by the BVI FSC show that 74 International Limited Partnerships were established in the BVI in the second half of 2014, up from 55 in the first half of 2014. We have noted a preference for closed ended limited partnership funds to be established in the Cayman Islands however following the coming into force of The Exempted Limited Partnership Law, 2014, which provides Cayman Islands exempted limited partnerships with additional flexibility and certainty.

Changes were made to the BVI's "Approved Manager" regime for investment managers and advisers in January 2014 to allow a BVI Approved Manager to act as an investment manager or adviser to a Cayman Islands investment fund. Although the take up has been much weaker than expected, with just 29 Approved Managers being licensed by the BVI FSC in 2014, we have noticed an increase in the number of enquiries that we have received in the first quarter of this year.

### Campbells BVI Team

Campbells is able to provide advice on the full range of BVI corporate transactions and litigation matters. You can

contact one of the below Attorneys or your usual Campbells contact.



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