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I would like to thank the BVI International Finance Centre and the organizers for inviting me to say a few words about the BVI corporate legislation.

Overview

The BVI Government and the Financial Services Commission considers it important to keep BVI's corporate legislation and international developments under continued review. Section 228A of the BVI Business Companies Act provides for the establishment of the Company Law Review Advisory Committee which is chaired by the Managing Director of the Commission with representation from Government and the private sector. The functions of the Company Law Review Advisory Committee are:

- (a) to keep this Act, and such other enactments relevant to company law as may be specified by the Commission, under review;
- (b) to make such recommendations as it considers appropriate to the Commission for changes to this Act and to any other enactments specified by the Commission under paragraph (a); and
- (c) to make such recommendations as it considers appropriate to the Commission for the development and reform of company law in the Virgin Islands.

The Commission receives feedback from the private sector on the BVI Business Companies Act, some no doubt emanating from international clients and professional intermediaries. Many of you would be aware that the BVI Business Companies Act has been in place since December 2004. The Act is widely welcomed as at the forefront of companies legislation. The Government of the BVI intends that it should stay that way, and therefore, the Act will be amended occasionally as necessary.

Recent amendments

The recent amendments to the BVI Business Companies Act are:

- BVI Business Companies (Amendment) Act, 2006;
- BVI Business Companies (Amendment of Schedules) Order, 2006; and
- BVI Business Companies (Amendment of Schedules) Order, 2007.

This presentation gives very brief summary of the effects of some of these amendments. However, many of the amendments covered just BVI local companies transitioning to

BVI Business Companies. Therefore, these provisions are not covered in this presentation.

BVI Business Companies (Amendment) Act, 2006

This amendment Act had almost entirely local effect covering, in particular, foreign companies intending to carry on business in the BVI. There is only one minor amendment relevant to international companies. The Act clarifies that where a BVI Business Company enters into voluntary liquidation, the liquidator is not required to file a copy of the statement of the company's assets and liabilities with the Registrar of Corporate Affairs. This must, however, be kept at the office of the registered agent of the company.

BVI Business Companies (Amendment of Schedules) Order, 2006

This Order provides for three important issues:

- amends Schedule 1 of the BVI Business Companies Act (fees and penalties);
- replaces Schedule 2 (transitional provisions) in its entirety; and
- postpones repeal of Companies Act to 1 January 2008.

Although the Order replaced the transitional provisions in their entirety, only two issues are of continuing relevance to international companies:

- new transitional provisions were introduced concerning voluntary liquidation and strike off; and
- the order enabled former International Business Companies to register charges created before re-registration as a BVI Business Company Act company.

International Business Companies in solvent liquidation on 31 December continue to be liquidated under International Business Companies Act, even though that Act has been repealed. Secondly, special provisions were introduced relating to dissolution of former Act companies, including former International Business Companies, to ensure that, even though an International Business Company may have been struck off under the IBC Act, it is restored to the Business Companies Act.

The provisions relating to registration of charges are:

- new provision enabling charge created by an International Business Company prior to re-registration to be registered under Business Companies Act;
- applies whether International Business Company re-registered voluntarily or automatically;
- charge treated as if charge created after re-registration; and

- takes priority from date of registration.

BVI Business Companies (Amendment of Schedules) Order, 2007

This Order came into effect on 1 July 2007. There are two matters covered by the Order which are of particular relevance to international companies:

- Order establishes new, simplified provisions for the transitioning of bearer share companies to non-bearer share companies; and
- Act made further provisions for charges registered prior to re-registration.

The previous transitional provisions for bearer share companies were:

- transitional provisions required companies to fully immobilize their bearer shares by 31 December 2010;
- increases in annual fees of bearer share companies were due to come into force next year; and
- in order to transition, bearer share company under previous provisions, company would have to amend its memorandum to prohibit issue of bearer shares.

There were a number of disadvantages with the previous provisions relating to bearer share companies:

- the memorandum of most International Business Companies contained power to issue bearer shares, even though none were issued; and
- to avoid paying an increased annual fee next year, a former International Business Company would have to amend its memorandum of association before its 2008 annual fee became due, which would have impacted most former International Business Companies.

The 2007 Order:

- abolished increases in fees for bearer share companies during the transition period;
- changed end date for transition period from 31 December 2010 to 31 December 2009;
- most important, the Order deemed that the memorandum of every former International Business Company will be amended with effect from the transition date to prohibit the issue of bearer shares, unless the company elects that the deeming provision should not apply;
- the effect of the Order is to make the transitioning of most bearer share companies to non-bearer share companies a straight forward process;
- during 2008 and 2009, a former International Business Company that is a bearer share company will pay the same fee as a non-bearer share company; and

- on 31 December 2009, the memorandum of a bearer share former International Business Company will be deemed to be amended to prohibit the issue of bearer shares and the company will become a non-bearer share company, unless former International Business company elects to disapply this deeming provision.

Finally, the Order clarifies the status of the register of charges of a former International Business Company that was maintained under the International Business Companies Act. In particular:

- the repeal of the International Business Companies Act does not;
 - affect the validity of the register with respect to any charges registered on the Register immediately before the commencement date; and
 - does not prevent the company amending the register to record amendments to such charges or their discharge;
- where an International Business Company [prior to its re-registration under the Business Companies Act] had elected to submit its register of charges to the Registrar of Corporate Affairs for registration under the International Business Companies Act, the provisions of the International Business Companies Act concerning registration of charges continue in effect with respect to any charges registered immediately prior to the commencement date.

Conclusion

In conclusion, the Commission's most recent statistical bulletin indicates that the Business Companies Act maintains its popularity with 2007 expecting to be a record year for incorporation.

Ladies and gentlemen, thank you for your attention.

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