

THE REGULATORY ENVIRONMENT IN THE BVI

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Introduction

Ladies and Gentlemen

It is a real pleasure for me to be here today. We meet at a time when it is increasingly the accepted wisdom that, by the middle of this century, China will overtake the European Union and the United States as one of the world's new economic superpowers. I am delighted, therefore, to have the opportunity of speaking here in a country that will have such a pivotal part in shaping in the world of the 21st century.

BVI and China

I am proud, too, that the success of our attractive corporate structures means BVI is able to play its own part in supporting the development of the Chinese economy.

Since the creation of the BVI International Business Company (IBC) in 1984, over 700,000 companies from across the globe have been incorporated in BVI, making the IBC the world's most popular offshore incorporation vehicle.

Today, we value the fact that investment through BVI corporate entities contributed 6.73 billion dollars to the Chinese economy in 2004 alone.

Such investment is not just on paper. It means real businesses and real jobs for real people. Indeed, to prepare for this speech, I did a quick internet search of BVI firms operating in China since the beginning of this year.

This snapshot of the situation clearly shows that investment by BVI firms spans the whole spectrum of the Chinese productive economy....

- From gas production and power generation to freight forwarding, aviation and shipping;
- From property and hotel development to mineral extraction and aluminium production;
- And from the manufacture of computers, pharmaceuticals, measuring equipment and medical instruments to batteries, textiles, confectionery and cement.

Given our evident close economic links, I was delighted earlier this year and last year to welcome official delegations from Shanghai and Beijing. These officials travelled to BVI to learn more about our financial services industry and specifically our regulatory programmes. I was very glad to have the chance to talk to them about the high standards of our regulatory regime and I welcome the opportunity to take forward this dialogue with you today.

Private Sector Partnership and the BVI Company

Ladies and gentlemen, this year is a very special one for the BVI. 2005 sees the 21st birthday of our financial services industry, following the creation of the IBC Act. The Act created a generally recognised international brand for the BVI and made us the premier centre for incorporating offshore companies.

It drew great strength from having been developed through close collaboration between the regulator, private sector and government. I cannot emphasise enough how private sector partnership underpins everything we do. It is fundamental to BVI's approach, and the Financial Service Commission has continued to build on it strongly since we gained our independence from the BVI government three years ago.

The FSC Act that governs our operations gave the Commission a responsibility not only to supervise and protect the BVI's financial services regime but also to assist in fostering the healthy development of our industry.

We believe that the key to developing our industry and to maintaining the right environment for legitimate business lies in close cooperation with local practitioners. We thus participate actively with our industry in a range of consultative committees, focus groups and taskforces.

When it came to updating our traditional IBC for today's modern world, for example, we received valuable input from the private sector from the very early stages when the policy underpinning our new Business Companies Act was first formulated.

This input ensure that we have created a new corporate regime that enables BVI companies to continue to be accessible to whoever wants to meet their standards. They remain easy to register and to administer and to have a particularly cost-effective structure.

Also, all necessary steps have been taken to ensure that our Company Registry continues to meet the operational and legal requirements to provide an efficient and effective service.

The ease with which BVI companies can be terminated once the purpose for which they were established has been accomplished continues to make them a particularly suitable vehicle for numerous strategic business activities, particularly mergers, acquisitions and joint ventures.

Indeed, my snapshot of BVI firms operating in China revealed that, of the 90 I looked at, half had undertaken acquisitions or disposals since January of this year and some eight per cent had entered into joint ventures or mergers.

I should mention that another particular advantage of the BVI company is that it is firmly established by statute and founded on British law, with final appeal to the Privy Council in the UK. As a result, banks internationally have become extremely comfortable with it, to the extent that banks in the Hong Kong SAR ensure their systems are compatible with what BVI corporate structures allow.

Ladies and gentlemen, in this world of continuous change, we work hard at keeping our regulatory regime up to date. As we do so, our industry partnership helps us strike the right balance between ensuring that our laws, on the one hand, remain current and compliant with international standards and, on the other hand, do not become overly restrictive.

BVI's success is not built from rushing into change. Our financial sector regime has always benefited from a policy of cautious, pragmatic gradual change. Our credo is, "Do it right rather than do it fast". We realise this can sometimes be frustrating for our private sector partners, but we also know that they appreciate the positive results this approach brings.

For example, it is now nearly a year since the new BVI Business Companies Act was brought into force. Throughout this time, it has been possible to incorporate companies either as IBCs or as BVI Business Companies. We have been pleased to see a steady increase in the number of incorporations under the new Act, to the extent that overall incorporations are now significantly higher than last year. We take this as a vote of confidence in the new Act.

Balanced Regulation

Ladies and gentlemen, having a close relationship with the private sector is essential to running a well-regulated regime. It enables the Commission to ensure that our licensees, for example, maintain the same high standards of integrity and sound financial management that we demand of ourselves.

It is one of the reasons why the excellence of our regulatory regime has been recognised by the British government, the International Monetary Fund, the Organisation for Economic Cooperation and Development (OECD) and the FATF as being compliant with the relevant international standards.

Yes, BVI is proud of its regulatory reputation. But this does not mean we believe in regulation for its own sake. Far from it. We firmly believe that over-regulation produces unnecessary bureaucratic burdens, stifles innovation, hampers success and destroys business.

Yet at the same time, we would be doing ourselves and our clients a disservice if we did not recognise that inadequate regulation can lead to avoidable failures and undermine confidence, also destroying business.

So the Financial Services Commission takes a balanced, proportionate and risk-focused approach. Our emphasis has shifted from regulation to supervision, focusing now on internal controls, risk management systems and on-site compliance inspections.

As with any reputable finance centre, you can be confident that the BVI's laws and regulatory modes and practices safeguard the privacy of legitimate business arrangements. We are not a black hole for enquiries, but equally we do not facilitate fishing expeditions. We play by international rules and permit the exchange of information through a robust statutory gateway regime for cross border co-operation, providing a requisite "means test" is passed.

This balanced approach enables us to crack down on unethical behaviours, such white-collar crime, money laundering and terrorist financing, while at the same time protecting the confidentiality of legitimate transactions.

International Cooperation

Talking of unethical behaviour, I am aware of the increasing interest in China in the numerous initiatives being undertaken by the world's regulatory community to combat nefarious practices.

I have already mentioned the excellent reports BVI has received from numerous international organisations. This is due to our policy of active international engagement, which helps us both to uphold our good reputation and to play our necessary part in shaping high-class international standards.

We participate in many anti-money laundering and supervisory groupings, such as the Egmont Group of Financial Intelligence Units and the Caribbean Financial Action Task Force (CFATF). We were a member of the working groups that revised the main FATF's Forty Recommendations on combating money laundering.

And we were part of a small working group set up under the auspices of the Offshore Group of Banking Supervisors that developed a statement of international best practice for the regulation of trust and corporate service providers.

BVI has played a pivotal role, too, in bringing jurisdictions together to press for new international rules and standards to operate on the basis of a level playing field. This means developing measures in an inclusive process involving all states who are in material competition with each other, and implementing new rules on the same time frame and with the same consequences for non-co-operation. The level playing field is now at the centre of the OECD's harmful tax practices initiative.

BVI was also pleased to be the first and only Caribbean jurisdiction invited to join the International Association of Insolvency Regulators, whose members include the Hong Kong SAR, the United Kingdom and the United States.

Our focus on high-class regulation and international cooperation means that that BVI has never being on any international blacklist and intends never to be on one. We will do whatever is right and proper to avoid blacklisting without sacrificing the right to privacy of the users of BVI corporate entities.

Conclusion

Ladies and gentlemen, BVI has always operated on the principle that our development as a reputable financial services centre depends on the integrity and responsiveness of our local industry and on the effectiveness and appropriateness of our regulatory and registration mechanisms.

We intend to continue working closely with the local private sector and the international business community such as yourselves in a genuine partnership.

As a result, you can be confident that our legislative framework and policies will remain current, proportionate and at a high standard, and that our financial services offerings will continue to provide a legitimate solution to the needs of your clients and of the Chinese economy as a whole.

Thank you for your kind attention.