

Incorporation under the BVI Business Companies Act, 2004

1. Introduction

The following is a brief summary of the significant features of a BVI Business Company (“BVIBC”) together with an outline of the incorporation procedure under the BVI Business Companies Act, 2004 as amended (“BVIBC Act”). We have included in this summary details of both our standard incorporation fees and the current Government fees. Also attached are an application for incorporation and a client questionnaire which detail the information that we require from you to enable us to incorporate and organise a BVIBC on your behalf as well as comply with all applicable anti-money laundering laws.

2. Significant Features of BVIBCs

- Subject to any provisions in the Memorandum or Articles of Association (which together form the constitutional documents of the BVIBC) a BVIBC has statutory power to engage in any lawful activity irrespective of corporate benefit.
- A BVIBC is exempt from the provisions of the British Virgin Islands Income Tax Ordinance.
- A BVIBC is exempt from British Virgin Islands tax and stamp duty on documents in respect of transactions carried out by it or relating to its shares or debt obligations save in respect of the transfer of interests in land in the British Virgin Islands or transactions in respect of the shares, debt obligations or other securities of a company owning land in the British Virgin Islands.
- A BVIBC is required to have a Registered Agent. This is a licensed service provider located in the British Virgin Islands which carries out a quasi company secretarial function. Harneys Corporate Services Limited acts as registered agent to all BVIBC’s which we incorporate.
- No public record is maintained as to the identity of shareholders or directors unless the company elects to do so. A copy of the register of members and register of directors must be kept at the office of the registered agent of the company. It is open to any shareholder to request inspection of the registers and minutes of meetings and other resolutions of shareholders. Apart from where the Memorandum or Articles of Association gives a member the absolute right to inspect the corporate records, in all other cases if the company refuses access to a member, an application may be made to the court for an order to allow inspection. Nominee shareholders may be used.

- A BVIBC does not have to file annual returns or accounts, but an unlimited company not authorised to issue shares must file a return of directors and most regulated companies will have to file returns and/or accounts with the BVI Financial Services Commission.
- Public records of BVIBCs are generally limited to the Certificate of Incorporation, the Memorandum and Articles of Association (for details of which see Section 3 below), the name and address of the registered agent and the record of payments of the annual fees and may contain details of any security created by the company over its property.
- A BVIBC may have a single shareholder and it may also have a single director, either or both of which may be corporate and non-resident. No company secretary is required by law. Resolutions of shareholders or directors may be consented to in writing in the manner provided for in the Articles of Association.
- Companies incorporated under the laws of a jurisdiction outside the British Virgin Islands (if the laws of the jurisdiction under which it is incorporated permit) may be converted to BVIBCs.
- Companies incorporated under the British Virgin Islands International Business Companies Act that did not apply for re-registration as a BVIBC during 2005 and 2006 were automatically re-registered as BVIBCs with effect from 1 January 2007. Companies incorporated under the British Virgin Islands local Companies Act (Cap 285) that do not apply for re-registration as a BVIBC during 2005 to 2007 will be automatically re-registered as BVIBCs with effect from 1 January 2008.
- A BVIBC may change its domicile to another jurisdiction.
- A BVIBC may fully indemnify directors, officers and liquidators from corporate funds subject to such persons having acted honestly and in good faith and in what they believe to be in the best interest of the BVIBC.
- A BVIBC may merge or consolidate with other BVIBCs, and with foreign companies (if permitted by the laws of the jurisdiction in which such foreign companies are incorporated).
- A BVIBC may issue bearer shares but they must be delivered to or deposited with an authorised or recognised custodian. In addition, the Government fees for a BVIBC that is authorised to issue bearer shares or convert or exchange registered shares for bearer shares are higher. We will refer any request to incorporate a company with bearer shares to our associated law firm for special advice.
- A BVIBC may purchase its own shares.
- A BVIBC may be incorporated as a company limited by shares, a company limited by guarantee (either authorised or not authorised to issue shares) or an unlimited company (either authorised or not authorised to issue shares). In the vast majority of cases, a BVIBC will be incorporated as a company limited by shares.
- The BVIBC Act makes no distinction between private and public BVIBCs.

- Subject to the provisions in the Memorandum and Articles of Association, the members may by a majority, amongst other things, amend the Memorandum and Articles of Association, change the name and go into voluntary liquidation (if solvent). Subject to certain provisions to protect shareholders, the power to amend the Memorandum and Articles of Association may be given to the directors.
- The directors may protect the assets of a BVIBC for the benefit of the company, its creditors and its members and for any persons having direct or indirect interests in the company by transferring the assets of the BVIBC in trust to trustees, or to another company or legal entity.
- A BVIBC may be incorporated as a restricted purposes company.
- A BVIBC may apply to a Judge in chambers, without the necessity of joining any other party, for a declaration on any question of interpretation of the BVBC Act or of its Memorandum or Articles of Association.

3. Formation

A BVI Business Company is formed by filing a Memorandum of Association (“Memorandum”) and Articles of Association (“Articles”) with the Registrar of Corporate Affairs. The Articles, which are similar to By-Laws in the United States, must (save in the case of an unlimited company not authorised to issue shares) be filed simultaneously with the Memorandum, which is similar to a Certificate of Incorporation in the United States.

Memorandum of Association

The Memorandum must contain the following information:

- **Name**

The proposed name of the BVIBC can be in any language. However, it must end with one of the following:

- “Limited” or “Ltd”;
- “Corporation” or “Corp”;
- “Incorporated” or “Inc”;
- “Soci t  Anonyme” or “S.A.”; or
- “Sociedad An nima” or “S.A.”;

A company that is a restricted purposes company must end with the phrase “(SPV) Limited” or “(SPV) Ltd”, and a company that is a segregated portfolio company, which is not also a restricted purposes company, must include the designation “Segregated Portfolio Company” or “SPC” immediately before one of the above endings. Additionally, a limited company that is also a private trust company must include the designation “(PTC)” immediately before one of the above endings.

A company name may comprise the expression “BVI Company Number” followed by its company number in figures and an ending required by (i) above. In such cases the

company may have an additional foreign character name approved by the Registrar of Corporate Affairs.

The name of a BVIBC must not:

(a) contain any of the following words or expressions:

<i>Assurance</i>	<i>Municipal</i>
<i>Bank</i>	<i>Reinsurance</i>
<i>Building Society</i>	<i>Royal</i>
<i>Casualty</i>	<i>Savings</i>
<i>Chamber of Commerce</i>	<i>Savings and Loans</i>
<i>Chartered</i>	<i>Surety</i>
<i>Co-operative</i>	<i>Trust</i>
<i>Fiduciary</i>	<i>Trust Company</i>
<i>Guarantee</i>	<i>Trust Corporation</i>
<i>Indemnity</i>	<i>Trustee</i>
<i>Imperial</i>	<i>Trustee Company</i>
<i>Insurance</i>	<i>Underwriting</i>

unless special written permission is granted by one or more of the Registrar of Corporate Affairs, the Financial Services Commission or the Governor in Council;

- (b) suggest or imply the patronage of Her Majesty or any member of the Royal Family or any connection with Her Majesty's Government or any department thereof or any connection with a municipality or other local authority or with a society or body incorporated by Royal Charter;
- (c) be, in the opinion of the Registrar of Corporate Affairs, offensive or otherwise objectionable; or
- (d) be identical or so similar so as likely to confuse or mislead as the name of another company incorporated in the British Virgin Islands.

A name intended for future adoption may be reserved for 90 days.

- **Type of Company**

The Memorandum must state the type of company, which in most cases will be a company limited by shares.

- **Registered Office Address**

This must be an address in the British Virgin Islands. Harneys Corporate Services Limited will provide this.

- **Registered Agent's Name**

We will act as registered agent.

- **Authorised Number of Shares**

The maximum number of shares that the Company is authorised to issue must be set out in the Memorandum or a statement that the Company is authorised to issue an unlimited number of shares. No concept of authorised capital is employed by the BVIBC Act and so it is not necessary to attribute par value to shares. The concept can be built into the constitution of the Company if required but serves no legal purpose under BVI law.

- **Classes of Shares**

A statement must be included as to the classes of shares that may be issued and, if the company is authorised to issue two or more classes of shares, the rights and privileges, restrictions and conditions attaching to each class of shares.

Articles of Association

The Articles must prescribe regulations for the company and must be submitted for registration (filing) together with the Memorandum save in the case of an unlimited company not authorised to issue shares.

Directors

A minimum of one is required. Directors may be corporations or individuals. Harneys Corporate Services Limited may provide directors in suitable cases. Directors' meetings can be held anywhere in the world and can be conducted by telephone. Annual meetings are not required.

Timing

In order to file the Memorandum and Articles with the Registry of Corporate Affairs we need to have received from you:

- (a) a completed application for incorporation (see attached);
- (b) payment of our fees;
- (c) an original completed client questionnaire together with requisite documentation (see attached).

Once the Memorandum and Articles are filed at the Registry of Corporate Affairs, a Certificate of Incorporation is issued by the Registry of Corporate Affairs usually within 48 hours.

If you would like further information on BVI Business Companies or details of how Harneys Corporate Services Limited can help you with your incorporation enquiries, please contact Andrew Swapp at incorporations@harneys.com or your usual Harneys contact. Alternatively, you may visit our website at www.harneyscorporate.com.