



BVI BUSINESS COMPANIES ACT WORKSHOP

RATIONALE FOR THE BVI BUSINESS COMPANIES ACT, 2004

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1. HISTORICAL BACKGROUND

(a) International Business Companies Act (Cap. 291)

- enacted in 1984
- area of concentration (incorporation of international business companies)

(b) Companies Act (Cap. 285)

- enacted in 1885
- area of concentration (incorporation of companies doing business in or from within the BVI)

(c) Amendments to Caps. 291 and 285

- Cap. 291 - amendments
- Cap.285 - amendments
- need for certainty and simplicity

2. INTERNATIONAL INITIATIVES

(a) FATF Non-cooperating Countries and Territories (NCCT) Initiative

(b) OECD initiative on tax competition and tax havens

- the issue of transparency and effective exchange of information
 - the issue of ring fencing (what does it mean?)
 - the listing of tax havens (which included the BVI)
 - the BVI's commitment to the OECD principle of transparency and effective exchange of information
- (c) EUSD on the taxation of interest on income
- automatic exchange of information versus withholding tax
 - automatic exchange of information versus exchange of information on request
 - extent of application (EU member states and their OTs/dependent territories)
- (d) The disparities between Cap. 291 and Cap. 285 within the OECD context
- Cap. Companies subject to the payment of tax
 - Cap. 291 Companies exempt from the payment of tax
 - ring fencing one company regime against another
 - absence of transparency
 - absence of effective exchange of information on tax matters
- (e) International cooperation
- recognises the proliferation of cross border crime
 - extends the arms of cooperation to non-criminal matters
 - recognises the need for cooperation between both regulatory and law enforcement agencies, including tax administrations

- encourages greater implementation of international treaties, covering organized crime, drug trafficking, tax information exchange, money laundering, regulator-to-regulator cooperation and international cooperation generally

3. REGIONAL AND INTERNATIONAL ASSESSMENTS

- (a) International Monetary Fund (IMF)
- (b) Caribbean Financial Action Taskforce (CFATF)
- (c) Implementation of international AML/CFT benchmarks of compliance

4. BVI'S RESPONSE AND INITIATIVES

- (a) recognition of the need to review and modernize the Companies regime
- (b) importance of ensuring compliance with international initiatives designed to insulate and improve the stability of the domestic and global economies
- (c) recognition of the regional and international assessment benchmarks and how these could impact on the BVI
- (d) reviewing existing legislation and developing new legislation to better develop and safeguard the domestic market, while at the same time meeting international obligations
- (e) amalgamating the international Business Companies Act and the Companies Act into a new enactment – BVI Business Companies Act, 2004 -
 - to create a single companies regime that is holistic in its approach and user friendly by employing simple drafting language

- to ditch the archaic Companies Act by incorporating modern and emerging concepts of company law that promote business growth
- to fully comply with established international standards of regulation and do away with offending provisions (such as ring fencing)
- to encourage the growth of the domestic market players by extending specified benefits to them
- to rationalize the fees regime
- to generally rationalize and properly streamline the Companies regimes to ensure the continued growth of the BVI economy and its reputation as an international financial services centre

5. OBJECTIVES OF THE WORKSHOP

- (a) to sensitise the users of the Companies regime of the available tools provided in the BVIBC Act
- (b) to outline the advantages afforded by the BVIBC Act, compared to the Companies regimes that the Act replaces
- (c) to deal with company incorporation and administration generally
- (d) to outline the duties and obligations company directors owe to their companies
- (e) to outline the liabilities that attach with respect to a company (company liability and director liability)
- (f) to outline the issue of voluntary and automatic re-registration under the BVIBC Act
- (g) to outline the rationale for the need to appoint registered agents, including a description of and requirements under the registered agent regime

- (h) to explain the current and expected future fee regime that applies to local companies
- (i) to encourage dialogue and understanding of the new Companies regime

6. CONTINUING DIALOGUE

It is the ultimate aim of the Workshop to educate the general public about the new Companies regime so it serves as a gateway for continuing dialogue between the business community and the Financial Services Commission.