

HARNEYS

**STRUCTURING USING BVI
COMPANIES
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Background - BVI general

- **British Virgin Islands (“BVI”) – Overseas Territory of the UK**
- **Legal system - English common law and BVI statute Privy Council in London final appeal court**
- **Approximately 800,000 companies incorporated**
- **White listed – has signed more than the 12 TIEAs required following the 2009 G20 summit**
- **Stable political and economic environment. Global Financial Centres Index March 2010**

Uses of BVI vehicles

- **Joint ventures – TNK-BP Limited**
- **Securitisations and Asset Finance**
- **IPO's – LSE (including AIM), Oslo (Seabird Exploration Limited and Frigstad Discoverer Invest Ltd.), NYSE (Tommy Hilfiger), NASDAQ, Singapore etc.**
- **Bond Issues**
- **Project Finance - BTC Pipeline Transaction (Baku Tblisi Ceyhan pipeline - financing a crude oil pipeline stretching from Azerbaijan through Georgia to Turkey**
- **Derivatives**
- **Holding and subsidiary companies**
- **Trusts for individual wealth planning**

Features of BVI companies

- **Main corporate legislation is the BVI Business Companies Act, 2004 (“BCA”)**
- **1 January 2007 – Companies previously incorporated under the International Business Companies Act, Cap. 291 (“IBCA”) automatically re-registered under the Act (“IBC’s”)**
- **Flexibility - Corporate governance and financing**
- **Types of corporate vehicles available – Seven in all**

Tax Basics

- **No taxes from BVI itself**
- **No useful income or corporate tax reduction treaties so often used in conjunction with double tax treaty jurisdiction**
 - Ukraine - Cyprus
 - India - Cyprus/Mauritius
 - China- Hong Kong
- **Transaction taxes such as stamp duty**

- **Shareholder agreements**
 - agreement versus M&A
 - agreement is not an amendment
- **Directors duties**
- **Corporate reconstruction**

Investment Funds

Quality

- **Regulation**
- **Private, Professional and Public**
- **SIBA**

Personal Holding Companies

- **General suitability**
- **VISTA Trusts**
 - Succession not tax planning
 - Need BVI company
 - Call option
- **PTCs**
- **Other Trust products**
 - Gaining acceptance in Europe

Financing vehicles

- **Familiarity**
- **Creditor friendly insolvency rules**
- **Developed derivatives framework**
- **Security in general**

Corporate Governance

- **Directors - duties and role**
- **Shareholder - rights**
- **Registered Agent – role**

Directors - overview

- **Business and affairs of the company usually managed by the board of directors**
 - Can be changed by the memorandum or articles
 - Some companies require the board to obtain approval of “supervisory” or “advisory” board (non-directors)
- **Certain matters require shareholder approval**
 - Most frequent one is s.175
 - Articles can also proscribe additional matters

Directors – who do we mean?

- **De Facto and shadow directors**
- **Disqualified persons**
- **Reserve directors**

Directors – proceedings and authority

- **Sole director permitted**
- **Board resolutions usually require**
 - Majority of votes at a meeting
 - Unanimous written resolutions
- **Usually individual directors will have express or ostensible authority to represent a company**
- **Larger transactions almost always require a supporting board resolution**

Directors – duties and liabilities

- **Acting honestly, in good faith in best interests of the company and a duty of skill & care**
- **Disclosure of interests**
- **Delegation**

Directors – appointment and removal

- **First director appointed by registered agent and subsequently by members or directors**
- **Written notice of resignation and removal by resolution of members**
- **Wide variety of options**

Members - overview

- Technically includes shareholders, guarantor members and members of unlimited companies which are not shareholders
- Rights and Liabilities defined by memorandum and articles (the statutory contract)
- Default rights: one vote, equal share of dividend, equal share on distribution of surplus assets
- Act by way of resolutions which may be passed at meeting or in writing – default of 50% plus of votes

Members – rights and liabilities

- **Limited company no liability for debts or obligations of company**
- **Rights can be negated, modified or varied by memorandum and articles**
- **Pre-emption rights – default position set out in Companies Act but must opt in**

Members – classes of shares

- **Different classes of shares common with different rights and restrictions but these must be in the memorandum**

Members – minority rights

- **Derivative actions in exceptional circumstances**
 - Action need leave of court
 - May require costs to be met by company
 - May appoint single member to represent all
- **“Just and equitable” appointment of liquidator**

Registered Agent

- **Statutory Requirement**
- **Records keeper and usually a provider of registered office**
- **Pays annual fees, files all statutory notices on behalf of a BVI company, liaises with the Registry, can draft resolutions if required.**
- **In the context of a transaction the agent may:**
 - Provide a RA Certificate for a BVI legal opinion
 - Amend registers of members and directors in accordance with board/shareholders' resolutions
 - Place notations on share registers
 - Register charges
 - Certify copies of documents
- **Almost always acts on instructions from a “client of record”**

Shareholder Register

- A Very Eastern European Obsession?
- Required, relevant to issue and transfer of shares, *prima facie* evidence of legal title, right to inspect, notice of meetings
- Original or copy to be kept at office of Registered Agent
- Directors may rely on register only in good faith and if no knowledge that reliance not warranted
- Public filing possible

Harneys Corporate Services

- **Corporate Services Arm of Harneys**
- **With JV partner in HK probably 20% of market in BVI company administration**
- **Offices in BVI, Montevideo, Hong Kong, Cayman and BVI (Law firm also has offices in Cyprus and London)**

Harneys Corporate Services

- Incorporate and administer BVI and Cayman companies, partnerships, funds and trusts
- Immediate access to the best legal advice on structuring of a transaction or regulatory issues
- Provision of directors, nominee shareholders, trustees, authorised representatives

www.harneys.com

Contact us

Quality



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