

LISTING OF BRITISH VIRGIN ISLANDS COMPANIES ON THE STOCK EXCHANGE OF HONG KONG

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On 15 December 2009, The Stock Exchange of Hong Kong Limited (“Hong Kong Exchange”) announced that the British Virgin Islands has been accepted as an acceptable jurisdiction for an issuer’s place of incorporation under Chapter 19 of the Listing Rules, paving the way (subject to applicants satisfying the criteria set out below) for the listing of companies incorporated in the British Virgin Islands on the Hong Kong Exchange. In light of this, British Virgin Islands companies wishing to list on the Hong Kong Exchange may follow the streamlined process for listings set out in the guidance letter issued by the Hong Kong Exchange, and need not complete a detailed, line by line comparison with the Hong Kong Exchange’s joint policy statement regarding the listing of overseas companies issued in March 2007.

In addition to provision of requisite confirmations of the sponsor and legal counsel as to the adequacy of the shareholder protection offered in the British Virgin Islands and the ability of the applicant, under its memorandum and articles, to comply with relevant securities legislation in Hong Kong, an applicant must satisfy the following criteria:

- amend its memorandum and articles to address certain issues of shareholder protection where the protection afforded to shareholders is considered less stringent than in Hong Kong; and
- demonstrate a reasonable nexus between its place of incorporation and its place of business operations.

The key advantage for British Virgin Islands companies in being able to list directly on the Hong Kong Exchange means there should be no need for an applicant to undertake either (i) a restructuring of its business and operations through the establishment of a new Bermuda or Cayman Islands holding company or (ii) a redomicile of its place of incorporation by way of merger or continuation, prior to listing. This would be of particular benefit for companies incorporated in the British Virgin Islands:

- with a listing on another exchange who wish to have a secondary listing in Hong Kong and avoid the time, cost and expense of such a restructuring or redomicile; or
- used as a private equity investment vehicle with complicated convertible preferred share type structures, where a restructuring of the sort described above may not be readily achievable, or only achievable with difficulty, due to the need to obtain multiple preferred shareholder and other approvals.

In light of the popularity of British Virgin Islands companies as special purpose vehicles for investments in Asia, and particularly the People’s Republic of China, the Hong Kong Exchange’s decision provides investors in such companies with a further route to exit investments through a listing on a highly regarded, Asian focused, stock exchange. In addition, for those entities incorporated in the British Virgin Islands with operations in Asia but a primary listing on another stock exchange (i.e. AIM, NASDAQ), a secondary listing on a more market appropriate exchange is now easily within reach.

In the year to date, Conyers Dill & Pearman has been engaged as Cayman Islands or Bermuda counsel on over 40 successful listings on the Hong Kong Exchange, representing approximately 80% of all such listings, and has already been approached in relating to acting on the listing of British Virgin Islands companies on the Hong Kong Exchange. Subject to companies being able to satisfy the criteria outlined above, we anticipate this being a popular route to listing in the future.

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This article is not intended to be a substitute for legal advice or a legal opinion. It deals in broad terms only and is intended to merely provide a brief overview and give general information.

Notes to Editors

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Conyers Dill & Pearman was named Offshore Law Firm of the Year 2009 by *The Lawyer*.

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