

**Brazil**

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## Securities trading in regulated markets

The Brazilian Securities Commission (CVM) has submitted to public hearing two draft regulations which will (i) replace CVM Rule 122, dated June 6 1990, and CVM Rule 387, dated April 28 2003, setting forth new rules and procedures governing securities trading in regulated markets, and (ii) amend CVM Rule 301, dated April 16 1999, which regulates the identification, registration form, communication, limits and liability before the CVM for money laundering crimes, and CVM Rule 14, dated October 17 1980, which regulates call and put options transactions that take place in the securities exchange and their requirements.

CVM's main concern in the first draft regulation is to establish a model focusing on compliance rules and procedures, strengthening the rules of conduct applicable to intermediaries in their relationship with clients for securities trades in regulated markets.

Moreover, some key developments proposed in the first draft include:

- The appointment of two statutory officers, separating the responsibility for compliance with the proposed rules from the responsibility for monitoring internal compliance procedures;
- The creation of new rules of conduct applicable to the institutions acting as intermediaries, establishing the duty of evaluating the suitability of the investment for their clients by verifying if the client's objective is compatible with its risk profile, financial knowledge, financial standing and investment track record;
- A duty for institutions acting as intermediaries to seek the best execution that is reasonably available for their clients, taking into consideration the price, cost, speed, probability of execution and settlement; and
- Specific regulation on the means accepted for the placement of orders, as well as the duty to register and promptly identify clients during the execution of orders.

In reference to the second draft, the proposed amendments will enhance the

quality of the identification and registration of clients. Comments and suggestions can be presented to the CVM until June 29 2009.

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## See the wood for the trees

While big-picture views often reigned in the banner years of 2006 and 2007, finance has been forced to go back to basics over the last 18 months. The detail of the trees is now every bit as important as the broader view of the wood.

The British Virgin Islands (BVI) sprung to life as a finance jurisdiction in the eighties, with Hong Kong leading the way. Hong Kong admired the simplicity of BVI companies, their ease of use and their adaptability. In the intervening period the use of BVI companies in Hong Kong and the PRC has become almost second nature. As England, and then certain parts of Europe, found favour with the BVI in the late nineties their use continued to spread. At the same time the hedge fund industry in North America liked what it saw and the BVI became a popular choice for funds. In time, derivatives work flowed from that.

As the world focuses on detail once more, perhaps in a way that is unprecedented, it is a good time to see the wood for the trees in the BVI. The woods are the headline features that have made the BVI one of the world's leading offshore jurisdictions. The trees are the detail that underpins the success.

The bigger picture (woods):

- The BVI is the world's leading offshore jurisdiction in terms of corporate domicile numbers.
- Global acceptability (China, Europe and America) makes it a popular choice across the board, particularly in finance transactions.
- Its popularity in the major emerging markets as well as traditional markets has made it a good bridge between the two.
- As a British Overseas Territory the BVI enjoys stability, coupled with great certainty by following English common law.

- A cutting edge corporate statute (2004), insolvency act (2003) and new Commercial Court place it in a very competitive position.
- Sensible regulation coupled with rigorous but appropriate anti-money laundering requirements mean that it understands and operates within international standards.

The all-important detail (trees):

- Flexibility and certainty on choice of law. The BVI was quick to recognise that the ability to use foreign law(s) to govern transactions involving BVI companies or assets was a pre-requisite to success. As such, legislation has catered for this since the eighties to ensure that foreign laws are given statutory recognition in a number of key areas without imposing the need to use BVI law.
- Statutory adoption of English common law and equity. The BVI generally follows English common law and equity, as a matter of BVI statute. Access to this jurisprudence has provided the perfect foundation for the BVI in the international arena.
- Wide choice of vehicle type. Several types of company can be used, including guarantee companies, unlimited companies, restricted purpose companies, segregated portfolio companies and private trust companies. This flexibility offers a number of alternatives and solutions for finance structures of all kinds.
- Straightforward, modern company law. Concepts like corporate benefit, ultra vires and financial assistance are appropriately placed in the context of the demands of the modern financial markets.
- Outdated capital maintenance rules replaced with modern requirements. Solvency tests have replaced the archaic capital maintenance rules that many jurisdictions are now moving away from.
- Easy redemptions and dividends. Again, reliance is now placed on the satisfaction of certain solvency tests rather than a need to satisfy additional hurdles such as distributable profits or reserves. This is a very helpful development for structured transactions.
- Certainty on governing law for security. BVI statute confirms that a BVI company can create security under the law of such jurisdiction as the company and the chargee may choose. This