



The BVI Business Companies (Amendment) Act, 2015 & 2016 (the 'BC Amendment Acts')

Nerine Trust Company Limited **7 January 2016**

The amendments that the BC Amendment Acts introduces have been prompted by both industry and international pressure, with the objective of ensuring that the BVI remains a market leader for company incorporations whilst maintaining the integrity of the jurisdiction by attracting legitimate business.

This note will not cover all the changes made, and a link to the BC Amendment Act can be found [here](#):

The BC Amendment Acts

The BC Amendment Acts will come into force on 15 January 2016, apart from section 118 that deals with the filing of registers of directors, which will come into force on 1 April 2016.

Records maintained by the company

The amendments to section 97 and 98 are very significant, and the fines that could be levied for breaching these reflect this.

Under section 97, the fine for not maintaining director and member minutes and resolutions and not providing the registered agent with a written record of the physical address or place where the records are kept has been increased significantly from \$10,000 to \$50,000.

Section 98 details the records and documentation that must be kept for a period of at least 5 years from the date –

- of completion of the transaction to which the records and underlying documentation relate; or
- the company terminated the business relationship to which the records and underlying documentation related.

Crucially, the company must provide the registered agent without delay any records and underlying documentation in respect of the company that the registered agent requests. The registered agent

shall request this when required by the Commission or any other competent authority in the BVI.

The records and underlying documents must be sufficient to show and explain the company's transactions and will, at any time, enable the financial position of the company to be determined with reasonable accuracy.

The registered agent must keep a record of the physical address where the records are maintained and the name of the person who maintains them, and therefore the company is obligated to provide this information to the registered agent. If the place or the person changes, the registered agent must be informed by the company within 14 days of the change. The company can be fined \$50,000 for a breach of this section.

Register of Directors – section 118

From 1 April 2016 all new companies must file a register of directors with the BVI Registrar of Companies ("the Registrar") within 21 days of the first appointment. Existing companies must file their register of directors by 31 March 2017. Any changes to the register of directors filed with the Registrar must be updated within 30 days of the change. The penalty for failing to file the register of directors, or any subsequent changes, within the prescribed periods are as follows:

- for the first month or part thereof after 31 March 2017 - \$300
- for the next three months or part thereof - \$500
- for the next three months or part thereof - \$750
- after seven months - \$1,000 for each month or part thereof.

The fee payable to the Registrar to file the register of directors of an existing company (incorporated before 1 April 2016) for the first time is \$25. The fee payable to file the register of directors for new

companies (incorporated after 1 April 2016), and to make changes to a register of directors already filed with the Registrar, is \$50. These fees are in addition to any charge that the registered agent may levy.

However, please note that the Registrar has waived the \$25 filing fee for existing companies if the register of directors is filed between 1 April 2016 and 30 September 2016. The \$25 filing fee will be applicable for existing companies who file their register of directors with the Registrar between 1 October 2016 and 31 March 2017.

The information that needs to be listed on the register for an individual is:

- Full name
- Former names (if any used in previous 10 years, including maiden names)
- Date of appointment
- Date of cessation
- Usual residential address (if different to service address)
- Date and place of birth
- Nationality (if more than one list all)

For a corporate:

- Corporate name
- Corporate or registration number, if any
- Registered office or principal office address
- Address (if not a BVI company)
- Place and date of incorporation or registration
- Date of appointment
- Date of cessation

This register is maintained by the Registrar and is not public. The Registrar will only make it available if the company elects to do so, pursuant to an order of the court or on a written request by a competent authority.

Registered agent acting on a resolution of directors

This is an area of the law that has been clarified. Often a registered agent will act only on the instructions of his 'client of record' generally the introducer of the business. This amendment clarifies that subject to the memorandum and articles of a company a registered agent shall act on the instructions of the directors of the company provided they are contained in a resolution passed by the directors and a copy of the resolution is made available to the registered agent.

The registered agent shall also recognise and accept the appointment or removal of a director or directors by members of the company.

Change of registered agent

A new section 92(4B)(4C) confirms that if a legal practitioner files a notice of change of registered office or agent, the company remains responsible for any liabilities to the outgoing registered agent.

Arbitration

The BVI is looking to establish itself as an arbitration centre. A new section 10A permits the articles of a company to provide for disputes to be settled through arbitration in the BVI. If you or your clients would like this included in the articles of your BVI company, please contact your usual adviser.

Listed companies

In order to be more practical where a company is listed on a recognised exchange, the company keep such information relating to its members as permitted in its articles as approved by a resolution of the members (section 41(1A)).

A new section 54A has also been included to make it easier to transfer shares listed on a recognised exchange. Providing the transfer complies with certain requirements it can be effected without a written instrument of transfer.

Register of Charges

It is already a requirement for the registered agent to maintain a register of charges for a BVI company. The BC Amendment Acts now state that where there is an amendment to an existing charge the company shall, within 14 days of the amendment, inform the registered agent of it so that it can be correctly recorded.

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