



# Update to the BVI Trustee Act

## Nerine Trust Company Limited

27 April 2015

In September 2014 the BVI updated their legislation in relation to keeping records for BVI companies and BVI partnerships. In order to complete the circle, on 30 March 2015 the BVI updated the Trustee Act in relation to the keeping of records for BVI trusts.

The key effect of the change is to require each trustee of a BVI trust to maintain 'records and underlying documentation' for a trust for at least five years.

The records and underlying documentation must be in a form that is:

- sufficient to show and explain the trusts' transactions; and
- will, at any time, enable the financial position of the trust to be determined with reasonable accuracy.

It must show:

- all sums of money received and expended by the trust and the matters in respect of which the receipt and expenditure takes place;
- all sales and purchases of goods by the trust; and
- the assets and liabilities of the trust.

The sanctions for failing to comply are very severe - a fine not exceeding \$100,000 or imprisonment for a term not exceeding five years.

The wording of the legislation is unclear as it does not state whether this is dependent on the governing law of the trust or the residence or incorporation of the trustee. Given the sanctions for non-compliance we would recommend that non-BVI trustees of BVI trusts and BVI trustees of non-BVI trusts comply with this legislation.

### How does it affect clients?

There has always been a duty for trustees to account to beneficiaries for the assets of the trust and therefore keep a record of the trust's assets, liabilities and transactions. This merely confirms that position and adds further legislative weight to it.

There are two areas where this could have a larger impact under Virgin Islands Special Trusts Act ('VISTA') trusts and where a Private Trust Company ('PTC') is a trustee of a BVI trust.

We recommend that a PTC has at least one director, who is a professional working in the fiduciary services industry, who will be able to provide administrative and financial accounting services to the PTC and be responsible for its corporate governance. This will ensure that the PTC is administered in accordance with applicable laws and regulations, and that financial records are accurately maintained.

A number of clients wish to administer PTCs themselves without the assistance of a qualified professional. Whilst it is perfectly legitimate, it is crucial that such clients take note of this new legislation and maintain the relevant financial records and underlying documentation as required. Given the penalties for failing to meet these new requirements, directors of PTCs must ensure that they are compliant without delay.

Under VISTA the trustee is prohibited from interfering with the management of the underlying company, but nonetheless these amendments apply to VISTA trusts in addition to standard BVI trusts.

As a minimum under VISTA, we would recommend that the directors of underlying BVI companies provide copies of their financial statements or balance sheet to the trustees on a regular basis. Where Nerine are the trustee, we will be insisting on receiving this information at least on an annual basis.

Whilst it is a requirement to maintain financial records and underlying documentation for trusts and companies in the BVI, it is not mandatory to prepare financial statements (unless the company is regulated), however this is best practice and we would recommend that clients ensure that financial statements are prepared.