



# BVI updates following “Meet the Regulator”

## **Nerine Trust Company Limited** **19 November 2015**

The latest “Meet the Regulator” gathering at the BVI Financial Services Commission was an important one given the number of draft amendments to legislation that were due to be introduced in the BVI, and the impact they will have both on direct clients and introduced business.

The key topics of this meeting were:

- Premium services
- Extended hours
- Updates on VIRRGIN
- Proposed changes to the BVI Business Companies Act and the AML regime
- Treatment of Struck Off Companies.

### **Premium Services**

This is a new initiative that will be launched in 2016 in which the Registrar of Companies guarantees to turn around documents within four hours of their submission. The premium fee is \$500 per transaction in addition to normal charges, but the premium fee is waived if the four hour time limit is not achieved. If there is a defect in the document then the clock is stopped, and restarted after the defect is rectified.

The services offered are:

- Continuation into the BVI
- Continuation out of the BVI
- Amendments of the Memorandum & Articles of Association
- Changes in shares
- Registration of charges
- Mergers

We suspect that this new service will be of more interest and relevance for higher value corporate transactions where time is of the essence. If applications are submitted prior to 6:00pm they should be returned by 10:00pm on the same day providing there are no defects that need to be rectified.

### **Extended Hours**

The extended hours of the Companies Registry in 2016 will be as follows:

|                             |   |
|-----------------------------|---|
| Extended Services - Finance | 8:30am – 5:30am   |
| Client Services             | 8:30am – 6:00pm   |
| Premium Services            | 7:30am – 6:00pm (last request)<br>10:00pm (last response) |

### **Updates on VIRRGIN**

There are some enhancements coming to VIRGGIN which will allow directors approval for regulated entities to be processed through VIRGGIN. Previously such approvals had to be submitted physically.

However, the more significant change to VIRGGIN is for licensed entities. Each licensed entity must complete an application and pay an annual fee of \$750 per annum plus \$100 per employee with access to VIRRGIN.

They are also allowing Hong Kong user access. They are permitting one Hong Kong VIRGGIN user for each five BVI VIRGGIN users at a cost of \$1,500 per Hong Kong user. There access is restricted to name reservations and company searches.

## Proposed changes to the BVI Business Companies Act and the AML Regime

There have been a number of amendments made to the BVI Business Companies Act. Some have been in response to industry pressure to assist with corporate transactions and to clarify the role of the registered agents, and others have been led by the regulator for compliance purposes.

The key points are:

- Register of directors – a requirement to file a confidential register of directors with the companies' registry, which will only be accessible by the regulatory authorities or the court. Existing companies must file their register of directors by 31 December 2016, which will attract a \$25 filing fee plus whatever charge the registered agent imposes. New companies must file their register of directors within 14 days of the first directors being appointed, and changes of directors for existing companies must be filed within 21 days of the effective date. Both of these filings will attract a \$50 filing fee plus whatever charge the registered agent imposes;
- Listed companies – there is now express statutory recognition of share transfers through stock exchange clearing systems;
- Articles of Association can be amended to allow disputes to be settled by arbitration in the BVI;
- Directors resolutions – there is now an express requirement for registered agents to follow their instructions;
- Confirmation that where a law firm transfers the registered office and agent of a company, the liabilities of the previous registered agent are still owed by the company;
- Records and underlying documentation must be kept for five years from the termination of the business relationship. The FSC and other authorities can request copies of the records and underlying documentation in respect of terminated business, and failure to comply can result in a penalty.

In regards to introduced business, some major changes to the regime were recently announced with the aim being to ensure that the use of introduced business was not abused, and that only eligible introducers who complied with the AML Code of Practice were granted that status.

Significant fines have been introduced to ensure that this is adhered to. New Eligible Introducer agreements will need to be entered into by all introducers, in which they will confirm that all of the requirements listed in section 31A of the Anti-Money Laundering and Terrorist Financing (Amendment) Code of Practice, 2015 are being adhered to.

The updated Eligible Introducer agreements need to be in place by 31 December 2016 and the licensee must also test the introducer every three years at a minimum, and provide details of the outcome of the testing to the BVI FSC on a prescribed form that will be available soon.

## Struck off companies

The regulator is coming under increasing pressure to deal with struck off companies and clarify who is responsible for them. They are looking at solutions that will remove this responsibility after a short period. However, it appears likely that the registered agent will have a continuing obligation to a struck off company to maintain due diligence and forward documents to the shareholder(s) even if they are not being paid.

Should this continuing obligation come into force, a deposit lodged with the registered agent at the outset of the relationship may be considered appropriate to cover ongoing costs in the event that the company is struck off, and only returned upon liquidation or transfer to another agent or jurisdiction.

## Conclusion

There are still a number of issues that need to be clarified when the amendments to the legislation are enacted, but it is clear that there is a push to ensure that introduced business is only that of the highest standards, and that the provision of information on a virtually immediate basis is very much the objective.

We will see what effect these changes have on the BVI as an international finance centre, but it will hopefully demonstrate to the world stage that the BVI is a competitive but highly compliant jurisdiction that attracts legitimate business.