

## CLIENT MEMO

**BVI BUSINESS COMPANIES ACT UPDATE**

In July 2012 the British Virgin Islands passed into law the BVI Business Companies (Amendment) Act, 2012, which makes a number of updates to the jurisdiction's existing and well-respected 2004 legislation for Business Companies.

The amendments focus on streamlining the existing BVI Business Companies regime and addressing points where it had become clear that improvements or clarifications were needed.

The updated legislation will come into effect on 15 October, 2012, with the accompanying regulations that support it also expected to be effective from the same date. The key changes introduced by the Amendment Act are:

**Voluntary Liquidations** To enter into voluntary liquidation, a company must now be both cash-flow and balance sheet solvent (rather than just cash-flow solvent as was previously the case). The voluntary liquidation process now begins at the time the notification of the appointment of the liquidator is filed with the BVI registry and not when the liquidator is actually appointed. Current directors and recent former directors of a company cannot act as liquidators in its voluntary liquidation.

**Alternate Directors** The rights of alternate directors are increased. They are now able to sign written resolutions, attend and vote at meetings in place of the appointing director.

**Foreign Character Names** Although the BVI already permits the use of characters from alphabets other than the Latin alphabet in the naming of BVI Business Companies, there has been no detailed guidance on how this works in practice. A detailed framework on the use of foreign character names has now been provided.

**Re-Use of Company Names** Subject to certain rules on timing and circumstances, the names of inactive or dissolved companies can now be re-used.

**Registration of Charges** In a formalization of existing practice, only the registered agent of the company or a legal practitioner may file a charge in the register of charges.

**Share Charge Enforcement** The enforcement of rights relating to charges over shares issued by BVI companies and governed by BVI law is now permitted immediately following default: there is no longer any moratorium period.

**Dissolution and Strike Off** A company that has been struck off the BVI register through default or inactivity will be dissolved after 7 years as opposed to the former period of 10 years.

**Directors' Resolutions** The passing of meeting and written directors' resolutions is, as is currently the case, subject to the memorandum and articles of the Company. If the passing of directors' resolutions is not covered in these then the default position is that resolutions at a meeting require a majority of the votes cast and written resolutions require the support of all the directors entitled to vote on them.

**Convertible Shares** Shares can be converted from one class to another, provided the conversion mechanism is set out in the company's memorandum and articles. This was not previously expressly permitted.

Trident Trust is one of the oldest, largest and most active trust companies in the BVI, with a 100-strong team in Tortola. In addition to the incorporation and representation of BVI companies, we provide managed company services, trust and fiduciary services, as well as fund licensing, representation and registrar and transfer agent services. We are a licensed captive insurance company and an authorized custodian for bearer shares.

To discuss the new amendments to the BVI's Business Companies legislation, or your needs in the BVI, please contact your local Trident Trust representative or our BVI team.

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