

FREQUENTLY ASKED QUESTIONS

**NEW RECORD-KEEPING REQUIREMENTS
FOR BVI BUSINESS COMPANIES AND PARTNERSHIPS**

In November 2012 the BVI enacted new record-keeping requirements for BVI Business Companies and Partnerships to comply with OECD recommendations. These new requirements are in addition to existing record-keeping obligations contained in the BVI Business Companies Act, 2004 (“BCA”).

This FAQ is based on questions we have received from clients about the new requirements.

SECTION ONE – BUSINESS COMPANIES**1. Who do the new requirements affect?**

All companies already registered under the BCA, as well as new companies.

2. What records will a BVI Business Company now have to maintain?

It is important to note that every BVI Business Company always has had, and continues to have, the obligation to maintain records that:

- are sufficient to show and explain the company’s transactions
- enable the financial position of the company to be determined with reasonable accuracy

The new record-keeping rules were introduced as amendments to the Mutual Legal Assistance (Tax Matters) Act, 2003 (“MLAT”). Under the new rules all BVI Business Companies must now:

- maintain records and “underlying documentation” for at least five years from the date of completion of the transaction to which the records and underlying documentation relate (unless before the expiration of the five-year period the company terminates the business relationship to which the records and underlying documentation relate)
- ensure that the records are sufficient to illustrate a company’s transactions and determine its financial position
- keep these records and underlying documentation at the office of its registered agent, or confirm in writing to the registered agent the location of the records if they are not kept with the registered agent

Under these new rules, “underlying documentation” is defined as including “accounts”. The requirement to keep “accounts” does not mean that BVI Business Companies have an obligation to produce and maintain financial statements. More accurately, keeping “accounts” under the terms of reference of the MLAT means keeping “accounting records” which:

- correctly explain all transactions
- enable the financial position of the entity or arrangement to be determined with reasonable accuracy at any time
- allow financial statements to be prepared
- are accompanied by underlying documentation such as invoices and contracts that show:
 - the value and detail of receipts and expenses
 - all sales and purchases and other transactions
 - the assets and liabilities of the relevant entity or arrangement

3. Do the new requirements mean a BVI Business Company has to produce financial statements?

No. Please see Question 2.

FREQUENTLY ASKED QUESTIONS

4. Where should these records be kept and who do I need to tell?

The records can be kept with the company's registered agent, or by the company at another location in or outside of the BVI. If the records are kept with the registered agent, no further action is required. If the records are not kept with the registered agent, companies that are clients of Trident Trust must inform the registered agent (Trident Trust BVI) or the Trident Trust office with which they usually work, in writing (which includes via email), of the location of the records.

If the records are kept purely in electronic form, the location of the server which holds the records, or if the records are maintained on a virtual server, the location of the primary access points for the records, will satisfy the record-keeping requirements.

General information, such as a policy on record-keeping, will not satisfy the record-keeping requirements.

5. What are the sanctions for non-compliance with the record-keeping rules?

A company that contravenes its statutory record-keeping obligation under the BCA commits an offence and is liable to a fine of US\$10,000.

The new rules at present do not impose penalties for non-compliance. However, a BVI Business Company is required to comply with requests for information from the BVI International Tax Authority, which is responsible for dealing with requests from overseas tax authorities pursuant to the Tax Information Exchange Agreements to which the BVI is a party.

SECTION TWO – PARTNERSHIPS**1. Who do the new requirements affect?**

All BVI Partnerships.

2. What records will a BVI Partnership now have to maintain?

Under the BVI Partnership Act, 1996, partners "are bound to render true accounts and full information of all things affecting the partnership to any partner, his agents and representatives". A limited partnership must keep such accounts and records as the partners consider necessary or desirable in order to reflect the financial position of the limited partnership.

Under the new rules, partnerships must now:

- maintain records and "underlying documentation" for at least five years from the date of completion of the transaction to which the records and underlying documentation relate, (unless before the expiration of the five-year period the partnership terminates the business relationship to which the records and underlying documentation relate)
- ensure the records are sufficient to illustrate a company's transactions and determine its financial position
- keep these records and underlying documentation at the office of its registered agent, or provide in writing to the registered agent the location of the records if they are not kept with the registered agent

BVI partnerships have been obliged for some time to maintain "accounts". However the new rules define this term as set out in Question 2 of Section One.

3. Where should these records be kept and who do I need to tell?

Please see Question 4 in Section One.

4. What are the sanctions for breaching the record-keeping rules?

A partnership that contravenes any provision of the BVI Partnership Act is liable to a fine of up to US\$5,000. The BVI Financial Services Commission may impose an administrative penalty on a partnership for breaches of the record-keeping requirements of the Partnership Act.