

- Most recent updates
- Summary of key changes
- Related developments

Latest amendments to the BVI Business Companies Act take effect 15 January 2016

“

A number of the changes will dovetail with the recently announced new “premium service” function at the Companies Registry to facilitate “time sensitive, complex and special transactions”.

*The Government of the British Virgin Islands recently enacted the BVI Business Companies (Amendment) Act 2015 (the **Amending Act**). It is the thirteenth and most recent amendment to the successful BVI Business Companies Act 2004 (the **Principal Act**). Most of the proposed changes set out in the Amending Act came from a private sector committee that Harneys is fully involved with and it would be fair to say that the committee initially focussed upon fine tuning modifications rather than wholesale changes. The Amending Act (save for sections 27 and 28) comes into force on 15 January 2016; sections 27 and 28 will come into force on 1 April 2016.*

A number of the changes will dovetail with the recently announced new “premium service” function at the Companies Registry to facilitate “time sensitive, complex and special transactions” such as continuations to facilitate more difficult commercial transactions.

Generally speaking, most of the refinements should be warmly welcomed by the financial services community. The only provisions which may provoke controversy are those relating to the obligations with respect to registers of directors (which did not form part of the private sector’s recommendations, but were part of the BVI Government’s international commitments to assist foreign law enforcement authorities, and replicate similar changes in Cayman and other British Overseas Territories).

The table below summarises the main changes:

Key changes include:

Arbitration	The Principal Act will be amended to codify the common law rule in <i>Hickman v Kent or Romney Marsh Sheep-Breeders' Association</i> , permitting companies to include arbitration clauses in their articles of association.
Listed shares	Where a company's shares are listed on a recognised stock exchange, the mandatory obligation to maintain a share register becomes an optional power, and the rules relating to transfers of shares are relaxed with respect to the requirement for a written instrument of transfer.
Bonus shares	The Principal Act will be amended to provide that bonus shares will be deemed to be fully paid for upon issue.
Surrender of shares	Companies will be empowered to accept a surrender of shares by a shareholder for no consideration where the surrender is made in writing. This is not deemed to constitute a distribution.
Bearer shares	In accordance with past practice, fines for bearer share related offences were incrementally increased across the board. The Financial Services Commission will also now be able revoke the status of "recognised custodian" in appropriate cases, closing off a potential lacuna.
Court ordered meetings	The power of the court to order meetings of members was expanded to include where directors act in breach of their duties, closing the gap identified in the 2014 decision of the Commercial Court in <i>Chang v Winbles</i> .
Registered agents	New provisions are inserted into the Principal Act mandating that the registered agent of a company must act upon a valid resolution of the board of directors of a company (irrespective of the wishes of the registered agent's "client of record").
Changing registered agents	New provisions will resolve existing mechanical issues relating to law firms filing notices of change of registered agent (usually where the existing registered agent refuses to cooperate with the change).
Record keeping obligations	Existing financial record keeping obligations have been beefed up to comply with most recently published OECD requirements.
Execution of documents	The Amending Act will clarify the proper mode of execution of BVI law documents by foreign corporations, and will also abrogate the perceived effect of the English High Court decision in <i>Mercury Tax Group Limited v HMRC</i> relating to annexing pre-executed pages to subsequently agreed documents.
Register of directors	All companies will now be required to file their register of directors with the Companies Registry, but (unless the company otherwise elects) the register will not be available for public inspection. However, access may be

granted by either an order of the Court or application by a competent authority (ie law enforcement or financial regulator).

Existing companies will have a grace period of up until 31 March 2017 to comply.

Existing companies that file their register of directors prior to 30 September 2016 will not be charged a filing fee by the BVI Registry of Corporate Affairs for such initial filing.

From 30 September 2016 to 31 March 2017, the filing fee will be US\$25 and thereafter, US\$50.

Register of charges

A company will now be required to update its private register of charges (ie not the public register of registered charges) within 14 days of any change. Previously there was no time limit.

Continuation In

The existing practice of the Registrar in relation to relying upon a certificate signed by a director of a foreign company confirming that it complies with the BVI statutory requirements in relation to good standing will be codified, except that an approved form for such certificates will be required and the certificate will have to be notarised or otherwise duly legalised.

Continuation Out

Prior to continuing out, companies will be required to either release any charges registered against them in the public register of registered charges, or confirm that they have obtained the consent of the chargee for the continuation, or satisfy the Registrar that the security interest will not be compromised. If a company is subject to a contractual restriction on continuing out under a registered security document then they may not continue out at all. Companies will now also be required to file notice of continuance with the BVI Registry.

Liquidation

The Amending Act will clarify that (contrary to the Registrar's previous practice) a company may go into voluntary liquidation notwithstanding it has a security interest registered against it. It will be the duty of the liquidator to apply the company's assets to the registered charge in accordance with applicable law.

Striking-off

The Registrar will have power to strike off regulated companies who have their licences cancelled or revoked. In addition, where a company is struck off and subsequently restored, the Registrar will now issue a certificate of restoration.

For more information please contact:

Jacqueline Daley-Aspinall

+1 284 852 2569

jacqueline.daley@harneys.com

British Virgin Islands

Philip Graham

+1 284 852 2551

philip.graham@harneys.com

British Virgin Islands

Colin Riegels

+65 3152 1934

colin.riegels@harneys.com

Singapore

www.harneys.com

The foregoing is for general information only and not intended to be relied upon for legal advice in any specific or individual situation.

© Harneys, January 2016