



### **Arbitration – (Slide # 2)**

A new section 10A will be introduced which provides that the articles of association of a BVI Business Company may include an arbitration clause and for the arbitration to be conducted in the Virgin Islands pursuant to the Arbitration Act, 2013.

### **Optional register of members – (Slide # 3)**

A new section 43A will allow a company to elect to file a copy of its register of members. If a company elects to file its register of members, it shall file all changes in the register by filing a copy of the register until such time as the company may elect to cease filing registration of changes to its register of members.

### **Power to remove authorised and recognised custodians – (Slide # 5)**

A new section 73A gives the Commission the power to revoke the approval of an authorised custodian and to cease to recognise a recognised custodian.

## **Obligation of Registered agent to act on a resolution of directors – (Slide # 6)**

A new section 91B will require a registered agent to act on the instructions of the directors if the instructions are contained in a resolution. Additionally, the registered agent shall accept the appointment and removal of directors by the members of the company.

1. Question: What happens where the registered agent may not have the most current register of directors and/or members and will still need to request these from the client of record? Will there be any penalty applicable for non-compliance?

Answer: The Registered Agent should have the most current registers of members and directors. In any event, the Registered Agent should act on the instruction of a director or member of record until such time as revised or more current registers of members or directors are received.

The Act will not provide a penalty for non-compliance with this section.

## **Change of registered office or registered agent – (Slide # 7)**

Two new sections 92 (4B & 4C) have been inserted to rectify anomalies where legal practitioners file notices of change of Registered Office or Registered Agent. Specifically, legal practitioners making these filings

are permitted to pay outstanding fees on behalf of the company. The filing of notices for changes in Registered Office or Registered Agent by a legal practitioner does not absolve a company from any liability it has to its registered agent.

### **Records and underlying documentation – (Slide # 8)**

Section 98 of the BVI BCA will be repealed. New sections which assist the BVI in fully complying with OECD Global Forum recommendations will be substituted.

Under the new sections a company will be required to:

1. Retain records and underlying documentation for 5 years from
  - a. Completion of a transaction
  - b. the date of termination of the business relationship
1. Maintain records and underlying documents that:
  - a. are sufficient to show and explain the company's transactions
  - b. Enable the financial position of the company to be determined
2. Maintain a record of where company records and underlying documentation are located and who controls the records.
3. Provide notification when the location of records and underlying documentation changes.
4. Honour requests from the FSC and other competent authorities for company records and underlying documentation.

No specific format for the record of the address where records are maintained is being prescribed in the proposed amendments

The proposed penalty (\$50,000) is applicable to both the company and the registered agent according to their respective obligations under this section. Under section 22 of the Interpretation Act essentially the directors or any person acting in the capacity of a director may be prosecuted.

Whenever required to by the Commission or any other competent authority in the Virgin Islands, acting pursuant to the exercise of a power under an enactment, the Registered Agent has an obligation to request the records from the company. The Registered Agent should also be able to demonstrate that it has discharged its obligation under section 98 (6).

### **Register of directors – (Slide # 9)**

Section 118A will require the mandatory filing of the company's register of directors with the Registry of Corporate Affairs. The filed register of directors will not be publicly available unless the company opts to make the filing public.

New BVI business companies must file the register of directors within 14 days of the appointment of the first directors (filing fee \$50). Any subsequent changes to the register of directors must be filed within 21

days of any change occurring (filing fee \$50). The register of directors will not be available to any person unless by a Court Order or written instructions by a Virgin Islands competent authority.

Existing companies have until 31 December 2016 to comply (filing fee \$25) and may be granted an extension of up to 6 months, subject to a reasonable explanation for the request.

The proposed amendment will require that the register of directors contain:

1. The name and address of the directors or reserve directors;
2. The date on which each director was appointed or nominated as a reserve director;
3. The date on which each person ceased to be a director;
4. The date on which nomination of reserve director ceased to have effect; and
5. Such other information as may be prescribed.

The effective date for the first filing of a company's Register of Directors will be the date when the amendment takes effect. Companies will not need to file historical information.

1. Schedule 1, Part 1 s. 118A (1) of the proposed amendment act prescribes a charge of \$50 for the initial registration by the Registrar

of a copy of a register of directors. After the first filing of a register of directors pursuant to Schedule 1, Part 1 section 118A (3) any filing to reflect a change to the register of directors will attract a filing fee of \$50.

2. : The Commission will provide a prescribed form for the filing of a register of directors. The filings will be available using the VIRRGIN system and will allow for individual and bulk filings.

Only companies that are active at the effective date of the amendment will need to file register of directors.

### **Striking a company from the Register – (Slide # 10)**

A new section 213 (d) will be inserted. The Registrar will have the power to strike a company from the Register where the company held a licence under any financial services legislation and the Commission cancelled or revoked the company's licence.

Section 38(b) of the proposed amendments reduces the time frame, when the company, a creditor, member or liquidator of the company may make

an application to the Registrar to restore a company to the register from 10 years to 7 years.

The effect of the proposed amendment is that a company that was struck from the Register prior to 15 October 2006, may not be restored to the Register by an application to the Registrar, because the time frame for making such an application has now expired. Any application to restore such a company to the register must be made through by application to the Courts.