

Entering New Regulations

On 1 January 2007 the British Virgin Islands Business Companies Act 2004 (the BVI BC Act) became the sole Business Companies Act in the jurisdiction. The BVI BC Act replaces the International Business Companies (IBC) Act, which was enacted in 1984.

Under the new BVI Business Companies Act, Companies are obliged to maintain more documentation than under the former International Business Companies Act. Much of this, such as keeping a copy of the Memorandum and Articles of Association, and copies of all filings made before the Registrar of Companies, is handled automatically by a Registered Agent.

Because there are now fines mandated by the Act for non-compliance, the following new rules should be noted by those who own and/or manage BVI Business Companies:

- The company's name must be stated on all official correspondence of the company.
- The company must maintain copies the following at the Registered Agent's office:
 - < Up to date Register of Members;
 - < Impression of the company's seal;
 - < Up to date Register of Directors;
 - < Register of Charges, Mortgages and other Encumbrances;
 - < Financial records sufficient to explain the company's financial transactions.
- Directors are required to disclose any interest in any transaction with the Company. Failing to disclose such an interest makes the transaction voidable by the company unless it has been ratified by the members or the members knew of the interest or the company has received fair value for the transaction. Any director who fails to make an appropriate disclosure of an interest is liable to a fine of US\$10,000 on summary conviction.

Other notable changes include:

- < Shares can be issued with or without a par value;
- < Shares do not need to be fully paid on issue. Shares may be issued nil or partly paid. Bonus shares can also be issued.
- However, directors must certify by written resolutions any non-cash consideration. The consideration must be certified to represent a reasonable cash value;
- < Shareholders must consent in writing to becoming shareholders if they incur a liability in doing so;
- < Likewise, directors must also consent in writing to their appointment to the board;
- < Unlike under the former IBC Act where title to shares was evidenced by the share certificate, evidence of title to shares now is entry in the register of members. In the case of shares which are acquired by transfer, the transferee must also sign the stock transfer form if the shares impose a liability on him to the company, such as cases where the shares are not fully paid;
- < The Memorandum and Articles of Association may provide that share certificates need not be issued. Share certificates can be signed by only one director if desired;
- < Bearer shares issued after 1st January 2005 must be deposited with a Authorized or Recognized Custodian. Bearer Shares issued prior to that date will face the same requirement no later than 1st January 2011;
- < License fees for former IBCs whose Memorandum and Articles of Association merely allow for the issuance of Bearer Shares (regardless of whether they have been issued) will begin rising in 2008;
- Where Bearer Shares are either no longer needed, or not in issue, the Company can avoid the increased fees by amending its Memorandum and Articles of Association to remove the ability to issue Bearer Shares;
- < Companies must satisfy a solvency test before making any distribution; Directors and members may become liable to compensate the company for a distribution made in breach of these provisions;
- < The Act contains detailed provisions relating to the standard of duty that a director owes to his company, including the obligation to exercise powers with the same degree of skill and care as a "reasonable director";
- < The Amendment Act introduces the concept of a Reserve Director, a person nominated by a person who is the sole member and sole director to act as director in the event of the person's death. The appointment of any Reserve Director will be recorded in the Register of Directors.