

## Further refinement to the BVI Business Co's Act



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The BVI Business Companies Act, 2004 was a significant milestone for the British Virgin Islands. The British Virgin Islands rose to prominence as an offshore jurisdiction under the landmark International Business Companies Act, 1984, and the 2004 legislation's clear and flexible provisions have enabled the jurisdiction to build upon that success.

The BVI Financial Services Commission has recently consulted with the financial services industry, and this has culminated in the passing of the BVI Business Companies (Amendment) Act, 2012 (the Amendment Act) and the BVI Business Companies Regulations, 2012 (the Regulations). The Amendment Act and the Regulations provide for even greater flexibility and clarify certain matters under the existing legislation.

It is expected that the Amendment Act and the Regulations will become effective shortly. Some of the key amendments include the following.

**Conversion of share classes.** Shares of a particular class may be convertible into shares of a different class, if permitted by the memorandum and articles of association. This is welcomed, as previously there was no clear statutory ability to convert shares between classes.

**Share charge enforcement.** Under a BVI-law share charge the chargee may, if the share charge so provides, exercise their statutory enforcement rights immediately upon a default occurring.

**Consent to short notice of general meeting.** Short notice may be waived by any such majority as may be specified in the memorandum or articles (previously the maximum majority was 90 percent).

**Service of notice on members.** The Amendment Act confirms that notices can be served on a member via electronic means if the member has consented to this.

**Listed companies and funds.** New Listed Companies and Funds Regulations (yet to be drafted) may in future disapply or

modify the statutory corporate record keeping requirements in relation to listed companies, public funds, private funds and professional funds. The Amendment Act also allows for Regulations to be passed concerning the application of the Act to listed companies and funds more generally.

**Directors' resolutions.** The Amendment Act confirms that a written resolution of the directors may be passed by a majority of the directors.

**Alternate directors.** The Amendment Act contains new provisions regarding the appointment, removal and powers of alternate directors, and confirms that alternate directors are able to sign written resolutions.

**Segregated portfolio companies.** The Amendment Act clarifies a number of matters regarding segregated portfolio companies, including the steps which must be taken if the directors fail to record that a document has been entered into on behalf of a specific portfolio. A company may also terminate a segregated portfolio which no longer has any assets or liabilities attributed to that portfolio.

**Public charge filings.** The Amendment Act confirms that a person will be deemed to have notice of the provisions and contents of a document which is the subject of a charge filing at the BVI registry. Such charge filings must also include contact details for a person located in the BVI who is authorised to receive notices on behalf of the chargee. A release filing may now either confirm (a) that all liabilities have been paid or satisfied in full, or (b) that a charge has ceased to affect the property, or any party of the property, of the company.

**Dissolution of company.** A company which has been struck off the Register by the Registrar will now be dissolved after 7 years (rather than after 10 years). The Amendment Act also clarifies a number of matters regarding a company being restored to the Register by the court, including the powers of the court.

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