

Significant Outcomes of Key Legal Amendments in the BVI's Financial Industry



The beginning of 2016 saw a flurry of amendments introduced to several key Acts in the BVI. Business BVI discussed the implications of these changes with legal experts, Karen Gilbert, a Senior Associate, and José Santos, Head of Corporate, at Forbes Hare.

Business BVI: What brought about the recent amendments to the BVI Business Companies Act and the Eligible Introducer Regime?

José Santos: The amendments were introduced in response to the 40 Financial Action Task Force (FATF) recommendations (as revised in 2012),

in particular Recommendations 24 and 25 (FATF Recommendations) relating to transparency and beneficial ownership of legal persons and legal arrangements. The thinking behind these two recommendations is that competent authorities should be able to obtain or have access in a timely fashion to adequate, accurate and current information on the beneficial ownership and control of companies and other legal persons (beneficial ownership information).

The filing with a company Registry of certain basic information, including a list of directors is a minimum requirement of Recommendation 24 and therefore the amendment to the BVI Business Companies Act requiring the filing of registers of directors was mandatory.

The amendment to the Eligible Introducer Regime (i.e. the incorporation of companies via third party introducers who will have the ultimate end relationship with the client, rather than in many cases the BVI based registered agent) was made to enable the BVI to share information on who owns BVI companies with competent authorities and law enforcement authorities more easily and in a more timely manner. It should be noted that such beneficial ownership information would always be held in the BVI by the registered agent with respect to any BVI companies that were incorporated directly rather than via an Eligible Intermediary.

Although these amendments were specifically designed to address the FATF Recommendations, the BVI (as a British Overseas Territory) has also been under pressure from the UK government to introduce registers of beneficial owners of BVI entities. At June 2013's G8 summit, the United Kingdom government announced plans for the United Kingdom and its overseas territories (and crown dependencies) to establish mandatory registers of beneficial ownership. In response to this proposal, the BVI government undertook a public consultation on beneficial ownership of companies registered in the BVI. The consultation concluded that the system the BVI currently has in place, achieves the same outcomes, using an equally effective mechanism which meets the FATF standards and those set out in the G20 High-Level Principles on Beneficial Ownership and Transparency. Companies and similar legal entities, can only be formed through a company service provider who is in turn required to obtain and maintain the requisite beneficial ownership information which is made available to appropriate authorities when required. The UK government has recently accepted this argument, which was a very positive outcome for the BVI.

The BVI government and all interested parties have fought hard over recent years to strike the right balance between safeguarding the BVI's financial services industry and ensuring that the BVI remains a competitive and attractive jurisdiction, at the forefront of international standards.

BB: What will this mean for a BVI company's register of directors?

Karen Gilbert: From 1 April 2016 all newly incorporated BVI companies will be required to file their register of directors with the BVI Registry of Corporate Affairs and to file any changes made to such register within 21 days of such change. The register of directors will not be publicly available and will only be available by court order or on the written request of a foreign competent authority or a competent authority in the BVI, such as a regulator of financial services business, tax administrator or law enforcement agency. All existing companies will have until 31 March 2017 to file the register of directors with the BVI Registry of Corporate Affairs.

BB: What are the critical changes to note in the Eligible Introducer Regime?

KG: Beneficial ownership information (including details of the full name, date of birth, residential address and nationality) of the ultimate beneficial owner with respect to new BVI companies incorporated via Eligible Introducers must now be provided to the BVI company's BVI-based registered agent. Existing companies incorporated via Eligible Introducers have until the end of 2016 to comply with the changes.

Prior to the changes, it was permissible for beneficial ownership information to be held only by the Introducer outside the BVI (and not the BVI registered agent) although such information had to be provided upon the registered agent requesting the same from the Introducer.

It should be noted that beneficial ownership information was, (prior to the changes) required to be held in the BVI by the registered agent with respect to any BVI companies that were incorporated directly rather than via an Eligible Introducer.

BB: Should the BVI offshore industry be wary of any negative repercussions from these amendments?

KG: There should not be any negative repercussions from these new amendments. Very little has changed in reality – BVI companies have always been required to have registers of directors and the beneficial owners of BVI companies have for a long time been required to be identified. Licensed registered agents in the BVI have been and continue to be under an obligation to ensure that such beneficial ownership information is kept up to date and is available to competent authorities upon request.

The changes relating to beneficial ownership information only relate to the incorporation of companies through an intermediary and the location of the beneficial ownership information with respect to such incorporations, i.e. it must be located in the BVI.

No confidential information on BVI companies or their owners will be publicly available despite the huge amount of international pressure on the BVI government to legislate for this. Rather than simply bowing down to this pressure, which would have been detrimental to the jurisdiction, the BVI has fought long and hard to demonstrate that the jurisdiction already has a very effective system for identifying the beneficial owners of BVI companies that is arguably far more effective than that of many other international finance centers, including the UK.

What these changes achieve is the tightening up of a couple of areas that were not quite as effective as they could have been, the aim being to facilitate the access to information on beneficial owners of BVI companies by competent authorities only.

BB: Are there any future amendments on the horizon in the financial sphere to note?

JS: The BVI Premier has indicated that the next stage in the development of the BVI's successful Corporate Service Provider model will be the design – in full consultation with the financial services industry – of a technology based solution that will ensure the timely access and sharing of beneficial ownership information held by Trust and Company Service Providers (TCSPs).

BB: What are Forbes Hare's plans for 2016?

JS: We will continue promoting the BVI as the premier corporate offshore jurisdiction internationally, from our offices in London and Singapore as well as our BVI office. We will be expanding our litigation team in the BVI and we also anticipate some growth in our New Zealand trust offering, together with our Latin American-focused private client team.