

Let me introduce...

JOSÉ SANTOS AND KAREN GILBERT HIGHLIGHT IMPORTANT LEGISLATIVE CHANGES TO THE BVI'S ELIGIBLE-INTRODUCER AND ANTI-MONEY LAUNDERING REGIMES

THE BRITISH VIRGIN ISLANDS introduced in January 2016 various changes to the *BVI Business Companies Act, 2004* (the 2004 Act) and the anti-money laundering (AML) regime, including certain key changes to the existing third-party introducer (eligible introducer) regime. The changes have been made in recognition of the ongoing and evolving international standards of transparency promoted by the Financial Action Task Force (FATF) and the OECD.

AMENDMENTS TO THE BVI ELIGIBLE INTRODUCER REGIME

Eligible introducers are third-party intermediaries, such as company administrators or law firms (usually regulated in their own jurisdiction), that instruct BVI-based registered agents to incorporate new companies on behalf of their clients. The beneficial ownership information (including the full name, date of birth, residential address and nationality of the ultimate beneficial owner) of 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.

BVI-registered agents must test eligible introducers at least every three years to ensure they are complying with their written terms of business and current BVI AML standards. Such testing must be recorded and a copy made available whenever requested by the BVI Financial Services Commission.

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

With respect to any BVI companies that were incorporated directly, rather than via an eligible introducer, there is no change.

BVI BUSINESS COMPANIES (AMENDMENT) ACT, 2015

The *BVI Business Companies (Amendment) Act, 2015* clarifies and enhances various provisions of the 2004 Act. Some of the changes were required for the BVI to comply with international standards, such as those promoted by the FATF, including a requirement that companies file their register of directors with the BVI Registrar of Corporate Affairs (the Registrar).

REQUIREMENT TO FILE REGISTER OF DIRECTORS

Every new BVI company incorporated after 1 April 2016 will be required to file a copy of its register of directors with the Registrar within 21 days of the appointment of its first director. Changes to filed registers of directors will need to be filed within 30 days. Existing companies will have until 31 March 2017 to file with the Registrar their register of directors (i.e. details of the directors at the time of filing, rather than details of all historic directors).

It is important to note the register of directors will not be publicly available and will only be available to competent authorities or pursuant to a court order. Companies that would prefer not to file personal details of their directors may wish to consider appointing corporate directors in place of individual directors. In this case, action should be taken to effect such changes as soon as possible.

There have been minor changes to the information to be included in the register of directors. The former name (as well as the current name), date and place of birth, nationality and residential address (if different to the service address of individual directors) must now be included.

The penalties for non-compliance are potentially high. Failure to file a register of directors or a change to a register within the required timescale will incur a penalty of USD100, with accruing, uncapped penalties for failure of an existing company to file a register of directors by 31 March 2017. Thus, it will be essential for companies to liaise with their registered agents with respect to the first filing of the register of directors (in particular, responding promptly to any requests for information), and to ensure they notify their registered agents following any director changes, so that all relevant filings may be made on time.

THE EFFECT OF THE NEW LEGISLATION

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 on request.

The changes around 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 now 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. These changes aim to facilitate access to information on beneficial owners of BVI companies by competent authorities only.



BASED IN THE BVI, JOSÉ SANTOS IS HEAD OF CORPORATE AND THE LATIN AMERICA PRACTICE GROUP AND KAREN GILBERT, BASED IN LONDON, IS A CORPORATE PARTNER AT FORBES HARE