



**Press Release No. 5 of 2007**

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**PRESS RELEASE**

**SCHEDULES TO BVI BUSINESS COMPANIES ACT AMENDED  
AND OTHER REGULATORY UPDATES**

**Tortola, British Virgin Islands – 3 July 2007** - The BVI Financial Services Commission announced today that Executive Council has made an Order amending the Schedules to the BVI Business Companies Act (the “BVIBCA”). The Order is important as it paves the way for a number of new initiatives.

The Order:

- reduces 2007 annual fees payable by companies registered under the Companies Act to 2006 levels
- sets the fees that will be payable by private trust companies
- establishes new, simplified provisions for the transitioning of bearer share companies to non-bearer share companies

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- ensures that the register of charges of an IBC prior to its re-registration under the BVIBCA can be updated by the company and at the Companies Registry

### **Reduction of CapCo Annual Fees for 2007**

Legislation passed last year increased the fees payable by companies registered under the Companies Act (Cap. 185) (“CapCos”) to a minimum of \$350.00. This was intended to put CapCos on a par with companies registered under the new BVIBCA. An undertaking was given by the Commission to Government and the Legislative Council that there would be a Territory wide public campaign to educate members of the public about the implications of the new company regime in advance of the new changes taking effect.

The Government has decided that CapCos that had not re-registered under the BVIBCA when their annual fee was due (30 April 2007) should not be required to pay an increased fee in 2007. Executive Council has therefore reduced the 2007 annual fee for local companies to the same level as it was in 2006 and directed the Registrar of Companies to refund all overpaid fees.

The annual fee payable by a CapCo for this year will, as it has always done, depend upon the value of its assets. Where the value of a CapCo’s assets is less than \$10,000, the annual fee will be reduced from \$350 back to \$25.

There is no need for companies to apply for the repayment of any overpaid fee.

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The Companies Registry has commenced an exercise to identify all overpayments made and will notify all companies that are eligible for a refund. This process will take a few weeks and directors of CapCos are kindly requested to exercise forbearance whilst the Registry undertakes its work.

### **Private Trust Companies**

The Commission expects regulations enabling the establishment of private trust companies to come into force during the course of next month. The Order made by Executive Council anticipates this by setting the fees that will be payable by private trust companies. The incorporation fee and annual fee for a private trust company will be:

- where the company is authorised to issue 50,000 shares or less, \$750 instead of the normal fee of \$350
- where the company is authorised to issue more than 50,000 shares, \$1,450 instead of the normal fee of \$1,100.

### **Amended Transitional Provisions for Bearer Share Companies**

Provisions for transitioning bearer share companies to non-bearer share companies were originally enacted for IBCs in 2003. These provisions were carried forward to Schedule 2 of the BVIBCA.

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In essence, the existing transitional provisions require companies to fully immobilise their shares by 31 December 2010. In order to encourage companies to begin that process before then, the provisions provide for increases in the annual fees of bearer share companies commencing next year.

The increased annual fee would be payable by any company, the memorandum of which does not prohibit it from issuing bearer shares.

The Government and the Commission are aware that:

- the memoranda of association of most former IBCs do not prohibit the issue of bearer shares; and
- most IBCs have never issued bearer shares.

In order to avoid paying an increased annual fee next year, a former IBC will have to amend its memorandum of association before its 2008 annual fee becomes due. This will impact most former IBCs that have been automatically re-registered under the BVIBCA.

The Commission is concerned that the amendment of probably hundreds of thousands of memoranda of association would cause the financial services industry in the BVI a huge amount of additional work at a time when it is still getting used to new companies legislation and the new VIRRGIN system.

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Perhaps even more important, it would cause considerable inconvenience to the directors and owners of former IBCs who will have to pass resolutions amending their memoranda of association.

The BVIBCA and the IBC Act before it were designed to provide a legal mechanism for incorporating companies without unnecessary administrative burdens. The effort that would be required to comply with the existing transitional provisions is not consistent with this underlying philosophy.

In the circumstances, the Commission has listened to the representations that it has received from industry and worked hard to find a workable solution that will both achieve the immobilisation of all bearer shares before 2010 but which will impose the minimum administration on BVI companies.

The Order made by ExCo achieves this by:

- deeming that the memorandum of every former IBC will be amended with effect from the transition date to prohibit the issue of bearer shares, unless the company elects that the deeming provision should not apply; and
- abolishing the staged increases in annual fees between 2008 and the transition date.

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Given that this will make the transitioning of most bearer share companies to non-bearer share companies a straight forward process, the transition date has been brought forward one year from 31 December 2010 to 31 December 2009.

During the years 2008 and 2009, a former IBC that is a bearer share company will pay the same fee as a non-bearer share company. On 31 December 2009, the memorandum of a bearer share former IBC will be deemed to be amended to prohibit the issue of bearer shares and the company will become a non-bearer share company. It will, of course, be open to any bearer share former IBC to elect to disapply this deeming provision.

As a consequence, the vast majority of former IBCs need to do nothing.

The Commission is pleased to note that, once again, it has been able to satisfy the requirements of international standards whilst remaining a cost effective and attractive domicile for international companies.

## **NOTES TO EDITORS**

1. Prior to the enactment of The BVI Business Companies Act, 2004, BVI companies were administered under two statutes: CapCos or local companies under Cap. 285; and IBCs under The IBC Act 1984, Cap. 291.

2. With a view to eliminating accusations of ringfencing, the BVI enacted the BVIBCA in 2004 effectively bringing all its company registration regimes under the same modern state of the art statutory framework including transitional provisions to enable companies registered under the old regimes to satisfy the new requirements over a period of time.
3. The Financial Services Commission will be orchestrating a territory wide series of public workshops in July to educate local company owners and other key stakeholders of the new company regime and its implications.
4. The order will be made available on the Commission's website

#### **About the British Virgin Islands Financial Services Commission**

The BVI Financial Services Commission is an autonomous regulatory agency responsible for the regulation and supervision of financial services conducted in and from within the Territory.

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