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NEW RECORD-KEEPING RULES FOR BVI COMPANIES

The new record-keeping rules for companies (and limited partnerships) that were enacted by the BVI at the end of 2012 to meet OECD requirements, have been updated to include a more precise definition of the financial records that must be kept. This update is effective from September 2014.

Key Requirements

- Records must be maintained for a minimum of five years from the commencement or termination of a transaction.
- Records and underlying documentation can be kept in the BVI or in another jurisdiction.
- Where documentation is kept outside the BVI, the company (or partnership) must confirm in writing to its BVI registered agent the physical address where the records are kept and of any changes in their location.

Satisfying the Records Requirement

Companies must still meet their existing statutory obligation to keep records that are sufficient to show and explain a company's transactions. The records must enable the financial position of the company to be determined with reasonable accuracy, with the 2014 Amendment to the legislation stating that these records must include: sums of money received and expended; sales and purchases of goods; and assets and liabilities.

Although the requirement to keep "accounts" does not mean that BVI Business Companies have an obligation to produce and maintain financial statements, it does mean they are required to keep "accounting records".

What records does a BVI Business Company have to maintain?

It is important to note that every BVI Business Company always has had, and continues to have, the obligation to maintain records that:

- are sufficient to show and explain the company's transactions
- enable the financial position of the company to be determined with reasonable accuracy

The new record-keeping rules were introduced as amendments to the Mutual Legal Assistance (Tax Matters) Act, 2003

("MLAT"). Under the new rules all BVI Business Companies must now:

- maintain records and "underlying documentation" for at least five years from the date of completion of the transaction to which the records and underlying documentation relate, or for five years from the date the company terminates the business relationship to which the records and underlying documentation relate
- ensure that the records are sufficient to illustrate a company's transactions and determine its financial position
- keep these records and underlying documentation at the office of its registered agent, or confirm in writing to the registered agent the location of the records if they are not kept with the registered agent

• the Amendment Act in 2014 further defined that these financial records must include: sums of money received and expended; sales and purchases of goods; and assets and liabilities. This definition is effectively a clarification of the previous position set out below.

Under the rules, “underlying documentation” is defined as including “accounts”. The requirement to keep “accounts” does not mean that BVI Business Companies have an obligation to produce and maintain financial statements. More accurately, keeping “accounts” under the terms of reference of the MLAT means keeping “accounting records” which:

- correctly explain all transactions
- enable the financial position of the entity or arrangement to be determined with reasonable accuracy at any time
- allow financial statements to be prepared
- are accompanied by underlying documentation such as invoices and contracts that show:
 - the value and detail of receipts and expenses
 - all sales and purchases and other transactions
 - the assets and liabilities of the relevant entity or arrangement.

The records can be kept with the company’s registered agent, or by the company at another location in or outside of the BVI. If the records are kept with the registered agent, no further action is required. If the records are not kept with the registered agent, companies that are clients of Trident Trust must inform the registered agent (Trident Trust BVI) or the Trident Trust office with which they usually work, in writing (which includes via email), of the location of the records.

If the records are kept purely in electronic form, the location of the server which holds the records, or if the records are maintained on a virtual server, the location of the primary access points for the records, will satisfy the recordkeeping requirements.

General information, such as a policy on record-keeping, will not satisfy the record-keeping requirements.

What are the sanctions for non-compliance with the record-keeping rules?

A company that contravenes its statutory record-keeping obligation under the BCA commits an offence and is liable to a fine of US\$10,000.

The new rules at present do not impose penalties for non-compliance. However, a BVI Business Company is required to comply with requests for information from the BVI International Tax Authority, which is responsible for dealing with requests from overseas tax authorities pursuant to the Tax Information Exchange Agreements to which the BVI is a party.

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