

IN BRIEF

TRANSITION TO NON-BEARER SHARE REGIME CONTINUES

The BVI continues the transition to its new company regime with the BVI Business Companies (Amendment of Schedules) Order 2007. Among other things, the Order simplifies the transition of bearer share companies to non-bearer share companies. See More on our web site about the new Business Companies Order.

BVI GOING BACK ON THE ROAD

The BVI's International Finance Center will be going "on the road" again this fall. Road Shows have been scheduled for London, Dorchester Hotel (October 2-4), Hong Kong, J.W. Marriott Hotel (October 8), and Singapore, Raffles Plaza Hotel (October 10).

VIRRGIN ENTERS SECOND PHASE

The BVI Financial Services Commission has launched the second phase of VIRRGIN, its new online information system. In this second phase, true automation of most post-incorporation transactions will be introduced. In addition, legal advocates, accountants, auditors, and other industry practitioners now have access to VIRRGIN.



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Private Trust Companies Legislative Update

The Financial Services (Exemptions) Regulations, 2007 which came into effect on August 1, 2007 brought about the much anticipated statutory recognition of private trust companies ("PTCs"). These regulations have codified provisions exempting private trust companies from the licensing requirements under the Banks and Trust Companies Act, 1990 (the "BTCA") and has brought about certainty as to the regulatory regime governing private trust companies. Prior to the regulations coming into force this regime was guided by broadly drafted regulatory directions.

This exemption only applies to private trust companies where its trust business consists solely of unremunerated trust business or related trust business ("Exempt PTCs"). Unlike its predecessor directions, the regulations give legislative clarity to the terms "unremunerated trust business" and "related trust business". The regulations further set out the scope of activities to which an Exempt PTC is limited, if it is to remain exempt from the licensing provisions of the BTCA. That is an Exempt PTC cannot carry on any business that is not trust business, solicit trust business from members of the public, or carry on any trust business other than unremunerated trust business or related trust business.

Exempt PTCs are also required to (i) be a qualifying BVI company limited within the meaning of the BVI Business Companies Act whose memorandum states that it is a PTC, (ii) ensure that at all times its registered agent is a person holding a Class I trust license, (iii) remove from its memorandum the statement that it is a PTC if at any time it is not entitled to the specified exemptions and (iv) include in its name the designation "(PTC)" immediately before its

statutory name ending.

The regulations also provide for the self-regulation of Exempt PTCs. That is, an Exempt PTC is required to ensure that at all times it is operating within the statutory requirements. An Exempt PTC will automatically cease to benefit from its exempt status if at any time it does not meet with the requirement for such exemption and are exposed to possible enforcement action by the FSC.

Lastly, and perhaps most interestingly, is that the regulations also places an obligation of the registered agent to ensure that Exempt PTCs are operating within the ambit of the limitations set by regulations. That is, registered agents of Exempt PTCs are required to (i) take reasonable steps on a periodic basis to satisfy itself that an Exempt PTC continues to comply with the regulations, (ii) take reasonable steps to ensure that up to date copies of the trust deed (or other document creating or evidencing the trust) and any deed or document varying the trust are kept at its office, (iii) keep copies of the documents and other information on which it has relied to satisfy itself that the Exempt PTC complies with the regulations and (iv) immediately notify the FSC in writing if at any time it is of the opinion that an Exempt PTC is not operating in compliance with the regulations.

Clients are encouraged to review the scope of their companies activities to ensure that PTCs are being operated within the ambit of the new regulations.