

BVI legislative update: Companies Act 2004

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There have been a number of amendments recently to the BVI Business Companies Act 2004 ("BCA") below we have highlight a number of those changes that will be of interest to practitioners who regularly deal with BVI companies.

Pre-Signed Execution Pages

The BCA has been amended to specifically permit pre-executed pages (whether under hand or under seal) to be attached to a deed or instrument governed by BVI law. Provided that the consent (express or implied) of the signatory is provided in respect of the attachment of its pre-executed signature page(s) to the deed or instrument, such instrument/deed will be considered to be validly executed.

Execution of BVI Law Governed Deeds by Foreign Companies

The BCA has recently been amended to clarify that a BVI law governed deed or instrument under seal is validly executed by a foreign company, if it is executed in a manner permitted under the laws of the place of incorporation of the foreign entity.

E-Service on BVI Companies

Recent amendments to the BCA and regulations specify that service of a document on a BVI company may be effected by e-mail attaching the document to be served. Where documents are to be served via e-mail the original of the document shall also be sent by post. It shall not matter that the document was a scanned version or other form as long as it is legible and in the form of the original document. Where documents are served by e-mail the document is considered served at a time at which it is shown to have been sent electronically if sent to the correct address.

While this is welcomed change, we believe it is important that any transactional document or agreement contain a well drafted notice clause or process clause that includes e-mail as a valid form of service and the clause should also set out an e-mail address (or several) that is likely to valid for an extended period of time, ideally a catch all address and rather than an individual.

Instructing Clients and Registered Agents

For lawyers who have a history of dealing with BVI companies, clarification in the BCA of the authority of directors and members to instruct a registered agent absent confirmation from the instructing client or client of record will bring a sigh of relief. Often as part of a commercial transaction, amendments to a BVI company's memorandum and articles of association will need to be filed or appointments and resignations of directors noted on the register of directors. On occasion, registered agent's in the BVI would not act on the authority of the directors or the members, as the case may be, without first confirming these instructions with their instructing client or client of record. This practice often led to delays and caused considerable headache while parties scrambled to identify the client of record, as invariably, for confidentiality reasons the registered agent would not indicate who it was. The BCA now states that, subject to the memorandum and articles of association of a BVI company registered agents are required to act on the instructions of the directors of BVI companies where: (i) the instructions are set out in resolutions of the directors; and (ii) copies of the resolutions are provided to the registered agent. Registered agents can no longer delay while they seek confirmation from their client of record before acting. Similarly,

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the position is confirmed that a registered agent must recognise and accept the appointment or removal of a director or directors by the members of a BVI company. Going forward any action contemplated on the part of BVI registered agents should be set out and covered in the authorising resolutions.