

## PROVISIONS RELATING TO AUTOMATICALLY RE-REGISTERED IBCs

The BVI Business Companies Act, as amended in 2005 and 2006 (“BVI BC Act”), regulates all matters relating to IBCs, which had formerly been ruled by the International Business Companies Act (the IBC “Act”). Below you will find guidelines applicable to IBCs that have been automatically re-registered in general and/or \*grandfathered bearer share companies, as the case may be. (see definition below).

### A) General Information

- On 1<sup>st</sup> January 2007, all IBCs that had not voluntarily re-registered were automatically re-registered under the BVI BC Act.
- IBCs automatically re-registered are subject to Schedule 2, Part IV (Transitional Provisions) of the BVI BC Act (For further details visit our website at [www.mossfon.com](http://www.mossfon.com)). The following is a summary of the main rules.
  - ✓ Automatically re-registered companies are allowed to keep the same IBC number. The only change is the addition of BC in front of the number.
  - ✓ The annual fees continue to be calculated on the basis of the amount of the authorized capital.
  - ✓ The M&AA of an IBC that has been automatically re-registered must include such statements as are required under Schedule 2, Part IV of the Transitional Provisions of the BVI BC Act in respect of the authorized capital, capital and surplus, redemption and dividends.
  - ✓ The M&AA of an automatically re-registered IBC does not need to be amended in regards of the Registered Office/Agent.
  - ✓ The annual license of automatically re-registered IBCs will increase as from 2008 (unless references to bearer shares are deleted. See next point below).
  - ✓ An automatically re-registered IBC may choose to amend its M&AA in its entirety by deleting all references to bearer shares so that only registered shares may be issued. As informed in February 2007, it is advisable to proceed with this

change as soon as possible (we suggest by 30<sup>th</sup> June 2007) in order to avoid the increased annual license fee payable as from 2008.

- ✓ An automatically IBC re-registered is a grandfathered bearer share company if same meets the requirements set forth below under the heading Grandfathered Bearer Share Company (See Schedule I, Part III, Section (9) (b) of the BVI BC Act).
- ✓ All IBCs are now referred to as BVI Business Companies and are subject to the BVI Business Companies Act.

## **B) Disapply Rule**

- If an automatically re-registered IBC does not wish to continue under the provisions of Part IV Transitional Provisions of the BVI BC Act and prefers that the company be fully ruled by the BVI BC Act, such IBC must issue a directors resolution resolving that the IBC disapplies Part IV, Transitional Provisions of the BVI Business Companies Act by filing a new M&AA that complies with the provisions of the BVI BC Act.

## **C) Client Option**

- Summarizing the options:
  - ✓ An IBC that has been automatically re-registered may disapply Part IV. In this case, a new M&AA will be provided.
  - ✓ An IBC that has been automatically re-registered may delete all references to bearer shares to avoid the increased annual license fee as from 2008. A new set of M&AA is optional.
  - ✓ An IBC that has been automatically re-registered may continue as a grandfathered bearer share company.

### **❖ Grandfathered Bearer Share Company \***

This is an IBC that was on the BVI Register as at 31<sup>st</sup> December, 2004 whose M&AA has not since 31<sup>st</sup> December 2004 forbidden it to issue bearer shares, and which was re-registered automatically in January 2007.

In addition to the rules set out above, the following will apply to grandfathered bearer share companies:

- All “existing bearer shares” issued before 1<sup>st</sup> January, 2005 (i.e. the “effective date” as defined in the BVI BC Act in respect of the automatic re-registration of IBCs) has until the transition date (31<sup>st</sup> December, 2010) to be converted into registered shares or to be deposited with a custodian who has agreed to hold them.
- Grandfathered bearer share companies will be obliged to appoint a custodian before 2010 if they issue bearer shares after the effective date (1<sup>st</sup> January 2005). We provide custodian services through a Mossfon Trust Company. For further information, please go to [www.mossfon.com](http://www.mossfon.com).
- Bearer shares that are not in custody by 2010 shall be rendered null and void. Additionally, the company will be in contravention of the BVI Act.

#### ❖ Annual License Fee

- In 2007, there will be no increase, such fee remaining as follows:
  - ❖ US\$350.00 if the BVI IBC share capital does not exceed US\$50,000.00
  - ❖ US\$1,100.00 if the BVI IBC share capital exceeds US\$50,000.00
- From 2008 to 2010, the annual license fee will remain unchanged if the IBC amends its M&AA by deleting all references to bearer shares.
- From 2008 to 2010, the annual license fee will increase (if the IBC is still authorized to issue bearer shares) as follows:

Year	Fee
<b>Capital under US\$50,000</b>	
2008	US\$600.00
2009	US\$850.00
2010	US\$1,100.00
<b>Above US\$50,000</b>	
2008	US\$1,250.00
2009	US\$1,400.00
2010	US\$1,550.00

❖ **Main differences between a BVI BC and an IBC.**

	<b>IBCs</b>	<b>BVI BCs</b>
Acceptance of Foreign Character Names	Nil	Yes (with approval of the Registrar of Corporate Affairs)
Objects Statement in the M&AA	Mandatory	Not required. SPVs may have object clauses.
Share Capital: (1) Authorised share capital	Mandatory	Voided. IBCs re-registered automatically that have not disapplied Part IV of the Transitional Provisions may continue with their old authorized capital.
Directors: (1) Consent to act from Directors (2) Reserve Director allowed	No Nil	Mandatory Yes, in the event the Sole Member and Director is the same person, a reserve director may be appointed.
Documents kept at the Registered Office  (1) Register of Directors and Officers  (2) Register of Members  (3) Appointment of First director(s)  (4) Consent to Act from Directors	<p>Copy or Original</p> <p>Within 30 days of the incorporation date.</p> <p>Nil</p>	<p>Copy or original, but if it is a copy, the Registered Agent needs to state in writing the physical address of the place where the original registers are kept.</p> <p>Within 6 months of incorporation date</p> <p>Mandatory</p>
Accounting Records: (1) Required	No	Only proof of BVI BCs financial position when required.