

**Principal Tricor subsidiaries in Hong Kong**

Tricor Abacus Limited  
Tricor Secretaries Limited  
Tricor Standard Limited  
Tricor Strath Corporate Services Limited  
Tricor Tengis Limited  
Tricor Executive Resources Limited  
Tricor Investor Services Limited

## British Virgin Islands ("BVI") Companies - Technical Update

This issue of TechNews highlights some of the influential features in the development of legislation governing companies in the British Virgin Islands ("BVI").

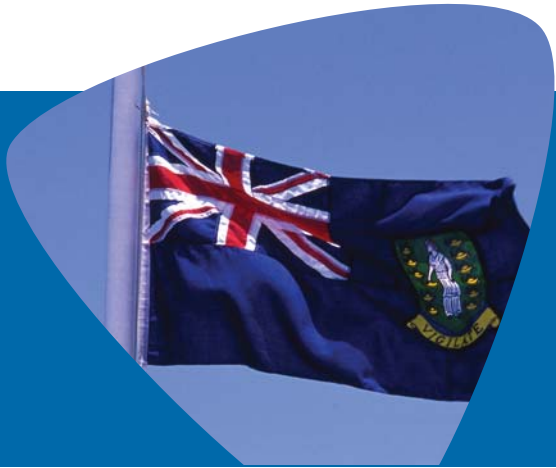
On 1 January 2007, the BVI Business Companies Act, 2004 ("BCA") replaced the former BVI International Business Companies Act ("Former Act"). All companies incorporated, continued or registered under the Former Act ("Former Act Cos") that did not apply for voluntary re-registration before 30 November 2006 were deemed to be automatically re-registered as a business company under the BCA on 1 January 2007 ("Auto Cos"). To ensure seamless transition of Auto Cos into the business company regime, specific provisions from the Former Act have been grandfathered into the BCA, applicable solely to Auto Cos. All Former Act Cos are now governed by the BCA.

In July 2007, further amendments were made to the BCA by the BVI government. An order from its Executive Council ("Order") aims to simplify provisions for the transitioning of bearer share companies to non-bearer share companies. Following from this Order, the memorandum and articles of association ("M&A") of Auto Cos with the authority to issue bearer shares ("Bearer Auto Cos") will be deemed to be amended to prohibit the issue of bearer shares, with effect from midnight on 31 December 2009 (the newly amended transition date), unless the company disapplies the deeming provision ("Deeming Provision"). The Order also abolishes the staged increases of licence fees payable by Bearer Auto Cos and brings forward by one year, the date on which bearer shares are required to be fully immobilized from 31 December 2010 to 31 December 2009.

The BCA introduced new provisions governing the registration of charges. Every company must now keep its own register of all relevant charges (as defined in the BCA) created by the company (whereas under the Former Act, the keeping of such a register was optional). A copy of the company's register of charges must be kept at the registered office of the company or at the office of its registered agent. The registration of charges with the Registrar of Corporate Affairs in the BVI ("Registrar"), however, remains optional. Subsequent amendments clarify the validity of the register of charges kept by a company under the Former Act, prior to re-registration.

On 1 August 2007, the BVI government introduced yet another piece of legislation whereby the Financial Services (Exemptions) Regulations, 2007 ("Regulations") came into force. The Regulations clarifies that a private trust company ("PTC") carrying out only unremunerated trust business or related trust business as defined in the Regulations does not need to obtain a trust licence.

More details follow.



#### Disclaimer

This publication is intended to provide only general information for clients and contacts of Tricor Services Limited and its associated companies. It does not purport to be comprehensive, and should not be relied upon nor taken as a substitute for proper professional advice concerning specific situations, which advice should be sought in a timely manner. Changes in law or circumstances may occur after the issue date, which may make information contained in this publication no longer accurate. Please pay attention to its date of issue.

All and any liability which might arise from this publication is hereby expressly excluded to the fullest extent permitted by law.

### Former Act Cos Governed by BCA

The BCA was first introduced in 2004 in the BVI and came into force on 1 January 2005. The BCA did not immediately replace the Former Act but ran parallel with the Former Act for two years. After the two-year transition period, all Former Act Cos were re-registered under the BCA as business companies. The Former Act was repealed on 1 January 2007. Former Act Cos are now all governed by the BCA.

A Former Act Co which was re-registered as a business company under the BCA continues its existence as a legal entity and its re-registration under the BCA does not prejudice or affect its identity, does not affect its assets, rights or obligations, and does not affect the commencement or continuation of proceedings by or against the company.

### Automatic Re-registration of Former Act Cos

On 1 January 2007, Former Act Cos that did not voluntarily apply to the Registrar on or before 30 November 2006 for re-registration were automatically re-registered under the BCA.

All Auto Cos were re-registered as companies limited by their shares. The company number of an Auto Co shall be the same as the number under which the Auto Co was registered under the Former Act, unless the Registrar is of the opinion that there are good reasons to the contrary. No certificate of automatic re-registration will be issued unless the company applies for it and pays an appropriate fee.

For smooth transition, specific provisions from the Former Act have been grandfathered into Part IV of Schedule 2 to the BCA ("Part IV") and apply solely to the Auto Cos. These provisions include:

- Provisions relating to the concept of "authorized capital", "capital" and "surplus".
- Provisions relating to consideration for shares, forfeiture of shares, dividend of shares, increase or reduction of share capital, and acquisition of own shares.
- Use of authorized capital to determine the annual licence fees.

### New Bearer Share Transition Regime for Auto Cos

The Order introduced in July 2007, among other things, has brought about significant changes in the bearer share transitional rules for Auto Cos. These are summarized as follows:

- Staged increases in licence fees payable by Bearer Auto Cos have been abolished.
- By the introduction of the Deeming Provision, the existing M&A of a Bearer Auto Co will be deemed to be amended to prohibit the issue of bearer shares with effect from midnight on 31 December 2009.
- A Bearer Auto Co wishing to retain the power to issue bearer shares must elect to disapply the Deeming Provision on or before 31 December 2009.
- Any shares issued as or converted to bearer shares prior to 1 January 2005 by a Bearer Auto Co will have to be deposited with a custodian or converted to, or exchanged for, registered shares on or before 31 December 2009.
- The increase of licence fee payable by a Bearer Auto Co, which has disapplied the Deeming Provision, will take effect from year 2010. For a company whose authorized capital is not more than US\$50,000, the annual licence fee will be increased from US\$350 to US\$1,100; whereas for a company whose authorized capital is more than US\$50,000, the annual licence fee will be increased from US\$1,100 to US\$1,350.

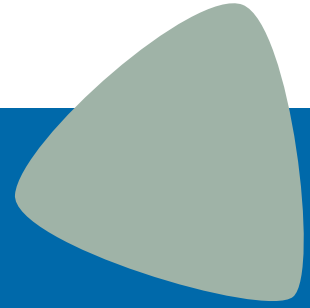
### Registration of Charges

**Registration and Registers.** The BCA introduced a new regime for the registration of charges.

Under the BCA, every company must now keep its own register of all relevant charges, and keep a copy of such at its registered office or the office of its registered agent. A "relevant charge" is defined as a charge created on or after 1 January 2005 or, where the company is a Former Act Co, as a charge created on or after the date on which it is re-registered as a BVI business company under the BCA.

With this new regime application for registration of charges with the Registrar remains optional. Where a company creates a relevant charge, an application may be made either by the company or the chargee. As registration is not mandatory, failure to make an application for registration will not therefore affect the charge's validity or enforceability. Once all formalities relating to the registration have been complied with, the Registrar will enter the charge on the Register of Registered Charges kept by him for that company, issue a certificate of registration of the charge and send a copy to the company and to the chargee. The certificate will state the date and time of registration, and is conclusive proof that the registration requirements have been complied with.

**Priority of Charges.** A relevant charge registered with the Registrar under the BCA will have priority over a relevant charge that is subsequently registered and a relevant charge that is not registered.



Relevant charges which are not registered will rank among themselves in the order in which they would have ranked as if the new provisions had not come into force.

Charges created by Former Act Cos before 1 January 2005 or prior to their re-registration under the BCA ("Commencement Date") will continue to rank in the order in which they would have ranked as if the new provisions had not come into force and, where they would have taken priority over a charge created on or after the Commencement Date, they will continue to take such priority after the Commencement Date. The effect of this provision is that chargees who have taken security from a Former Act Co prior to 1 January 2005 or prior to the re-registration of that Former Act Co under the BCA will be able to rely on the priority of their charge.

The order of priorities as between chargees can be modified by express consent of a chargee, or by agreement between chargees.

#### **Validity of the Register of Charges of a Former Act Co.**

Amendments under the BCA further clarified the validity of the register of charges kept by a company under the Former Act, prior to re-registration.

Where a Former Act Co, prior to re-registration, maintained a register of charges under the Former Act, the repeal of that Act does not:

- a) affect the validity of the register with respect to any charge registered on the register immediately before the Commencement Date; and
- b) does not prevent the company amending the register to record amendments to such charges or their discharge.

**Former Act Continues to be In Effect for Registrations Prior to Commencement Date.** Where a Former Act Co that, prior to re-registration, had, immediately prior to the Commencement Date, an election to submit its register of charges to the Registrar for registration under the Former Act, notwithstanding the repeal of that Act, sections 111A and 111B of that Act continue to be in effect with respect to any charges registered immediately prior to the Commencement Date.

#### **Reform in Private Trust Company Regulations**

On 1 August 2007, the Regulations governing the licensing of PTCs came into force. Under the Regulations, a PTC must satisfy the following conditions in order to be exempt from the requirement to obtain a trust licence under the Banks and Trust Companies Act, 1990 ("BTCA"):

- It must be a "qualifying BVI company", which condition is satisfied if the company was first incorporated under the BCA or was a Former Act Co which has been voluntarily re-registered or automatically re-registered under the BCA, and which has disappplied Part IV.
- It must be a company limited by shares or limited by guarantee.
- Its registered agent must hold a Class I trust licence at all times.
- Its memorandum must state that it is a private trust company.
- Its name must contain the designation "(PTC)" placed immediately before "Limited", "Ltd.", "Corporation", "Corp." or "Inc.", etc., as the case may be.
- It must not solicit trust business from members of the public.
- It must not carry on any business other than "trust business" which must comprise either "unremunerated trust business" or "related trust business".

Trust business has the same meaning as in the BTCA, namely the business of:

- a) acting as a professional trustee, protector or administrator of a trust or settlement; or
- b) managing or administering any trust or settlement.

Unremunerated trust business means trust business for which no remuneration, including money or any other form of property, is payable to, or received by:

- the PTC; or
- any person who has interest, whether legal or beneficial, in the PTC; or
- any person who is a director / former director, or an employee / former employee of the PTC (except that remuneration can be paid in respect of services provided by a professional director under certain circumstances).

Related trust business means trust business provided in respect of:

- a trust where each beneficiary has a family connection with the settlor or is a charity; or
- a group of trusts, in which each beneficiary of a trust has a family connection with the settlor of that trust or is a charity and the settlors of the trusts are connected.

Should you need further information or clarification regarding this issue of TechNews, please do not hesitate to approach your usual Tricor contact.



tricolor  
Seminar 2007

## Corporate Social Responsibility and Corporate Governance Updates

**Date:** 7 November 2007, Wednesday

**Time:** 9:00 a.m. ~ 12:30 p.m.

**Venue:** Level 3, Ballroom, JW Marriott Hotel,  
Pacific Place, 88 Queensway, Hong Kong

As our valued client and business partner, you are cordially invited to the Tricolor Seminar 2007.

The Seminar will be held on 7 November 2007 at JW Marriott Hotel. The focus will be corporate social responsibility and corporate governance updates.

Don't miss this important event. Please mark this on your diary.

Latest information about the Seminar will be posted at [www.tricolor.com.hk/seminar2007](http://www.tricolor.com.hk/seminar2007).

## BANGKOK

Tricor Outsourcing (Thailand) Limited  
Tricor Executive Recruitment Limited  
Tel: (66) 2 343 1200  
Fax: (66) 2 286 4130

## BARBADOS

Tricor Caribbean Limited  
Caribbean Corporate Services Ltd.  
Tel: (246) 430 8400  
Fax: (246) 429 6446

## BEIJING

TRICOR Consultancy (Beijing) Limited  
Tel: (86) 10 6533 0628  
Fax: (86) 10 6533 0618

## BRITISH VIRGIN ISLANDS (BVI)

Tricor Services (BVI) Limited  
Tel: (284) 494 6004  
Fax: (284) 494 6404

## HONG KONG

Tricor Services Limited  
Tel: (852) 2980 1888  
Fax: (852) 2861 0285

## JOHOR BAHRU

Tricor Services (Malaysia) Sdn Bhd  
Chua, Woo & Company Sdn Bhd  
Tel: (60) 7332 2088  
Fax: (60) 7332 8096

## KUALA LUMPUR

Tricor Services (Malaysia) Sdn Bhd  
Tel: (60) 3 4043 9411  
Fax: (60) 3 4043 1233

## MACAU

Tricor Services (Macau) Limited  
Tel: (853) 28788 022  
Fax: (853) 28788 021

## PENANG

Tricor Services (Malaysia) Sdn Bhd  
Total Corporate Compliance Sdn Bhd  
Tel: (60) 4 229 6318  
Fax: (60) 4 226 8318

## SHANGHAI

TRICOR Consultancy (Beijing) Limited -  
Shanghai Branch  
Tel: (86) 21 6391 6893  
Fax: (86) 21 6391 6896

## SHENZHEN

TRICOR Consultancy (Beijing) Limited -  
Shenzhen Branch  
Tel: (86) 755 8246 0282  
Fax: (86) 755 8246 0332

## SINGAPORE

Tricor Singapore Pte Limited  
Tel: (65) 6236 3333  
Fax: (65) 6236 4399



Member of BEA Group

Tricor, a member of The Bank of East Asia Group, is a global professional services provider of integrated Business, Corporate and Investor Services. As a business enabler, Tricor provides expert outsourcing services to enable clients to concentrate resources on what they do best - building business.

Tricor professionals are experts in corporate structuring and advisory functions. We offer value-added expertise in Accounting; China & Offshore Consulting; Company Formation, Company Secretarial & Corporate Governance; Executive Search & Selection; Initial Public Offerings & Share Registration; Fund, Payroll, Treasury & Trust Administration.

Tricor has built its reputation and professional expertise through the acquisition of various practices from major international accounting firms and leading professional firms in Hong Kong, Mainland China, Malaysia, Singapore, Thailand and the Caribbean: Barbados and the British Virgin Islands as well as through its organic growth and development.

Our mission is to be The Business Enabler of choice.

### TRICOR SERVICES LIMITED

#### GROUP CHIEF EXECUTIVE & GROUP MANAGING DIRECTOR

**Johnny Ng**  
Tel: (852) 2980 1100  
johnny.ng@hk.tricorglobal.com

#### GROUP MANAGING DIRECTOR

**Julian Chow**  
Tel: (852) 2980 1238  
julian.chow@hk.tricorglobal.com

#### EXECUTIVE DIRECTORS, PRACTICE LEADERS BUSINESS SERVICES

**Shirley Tsang**  
Tel: (852) 2980 1298  
shirley.tsang@hk.tricorglobal.com

**H C Ying**  
Tel: (852) 2980 1988  
h.c.ying@hk.tricorglobal.com

#### EXECUTIVE DIRECTORS, PRACTICE LEADERS CORPORATE SERVICES

**Natalia Seng**  
Tel: (852) 2980 1688  
natalia.seng@hk.tricorglobal.com

**Betty Yeung**  
Tel: (852) 2980 1882  
betty.yeung@hk.tricorglobal.com

#### EXECUTIVE DIRECTOR, PRACTICE LEADER INVESTOR SERVICES

**Allan Tong**  
Tel: (852) 2980 1818  
allan.tong@hk.tricorglobal.com

#### EXECUTIVE DIRECTORS, PRACTICE LEADERS CHINA SERVICES

**Natalia Seng**  
Tel: (852) 2980 1688  
natalia.seng@hk.tricorglobal.com

**Shirley Tsang**  
Tel: (852) 2980 1298  
shirley.tsang@hk.tricorglobal.com

#### PRACTICE LEADER - EXECUTIVE RESOURCES

**Fiona Yung**  
Tel: (852) 2980 1166  
fiona.yung@hk.tricorglobal.com

Please visit our website at [www.tricorglobal.com](http://www.tricorglobal.com)  
Email: [info@tricorglobal.com](mailto:info@tricorglobal.com)