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I would like to thank the BVI International Finance Centre and the organizers for inviting me to say a few words about the Private Trust Companies Regulations.

Overview

Private trust companies have been an important part of offshore structures for many years. The Financial Services Commission recognizes that it is appropriate for some companies that act as trustee or provide other trust related services, particularly for a group of related family trusts, to be exempted from the licensing requirement under the Banks and Trust Companies Act, 1990. It is important to remember that the BVI has permitted use of private trust companies since the Banks and Trust Companies (Application Procedures) Directions, 1991. However, after 15 years, the 1991 exemptions no longer served the requirements of the market place and required updating. The BVI branch of STEP submitted a proposal for updating the 1991 exemptions some years ago and a draft amendment to the Banks and Trust Companies Act was later circulated for consultation. However, the Commission was concerned that the proposals did not satisfactorily address our regulatory concerns. Therefore, last year, the Commission commenced a review with the intention of establishing a new regime for private trust companies.

Legal framework

The legal framework for the private trust companies regime comprises of three pieces of legislation:

- Financial Services (Exemption) Regulations, 2007;
- BVI Business Companies (Company Names) Regulations, 2007; and
- BVI Business Companies (Amendment of Schedules) Order, 2007.

The Exemption Regulations contained detailed provisions for PTCs, including the requirements imposed upon them.

The Company Names Regulations requires that the name of a BVI Business Company that is a PTC must end with “PTC” immediately before the normal permitted endings.

The BVI Business Companies (Amendment of Schedules) Order sets out the fee for a PTC of US\$750 (where the maximum number of shares is less than 50,000 and US\$1,500 where the maximum number of shares is more than 50,000.

What is a PTC?

The definition of a PTC was drafted to be clear, simple and unambiguous so as to ensure legal status is always certain. There are three straightforward criteria:

1. The company must be a qualifying BVI Business Company, i.e., a fully compliant BVI Business Company;
2. The company must be a limited company; and
3. The memorandum of the company must state that it is a private trust company.

The status of a PTC, does not depend on approval of, or registration by, the Commission. As PTCs are not regulated, it is considered inappropriate that the Commission should be involved in any vetting of, or due diligence on, PTCs. The Commission has taken the deliberate decision that other factors, such as contraventions of regulations, should not affect the certainty of legal status of the PTC. If the PTC contravenes the regulations, the Commission may take enforcement action against it and may force it to cease to be a PTC.

What trust business can be a PTC

A PTC may carry on trust business that is either unremunerated trust business or related trust business. In these circumstances, a PTC is exempt from the requirement to obtain a trust licence under the Banks and Trust Companies Act. PTC may not carry on both unremunerated trust business and related trust business at the same time. There is no problem if, for example some or all of its related trust business is also unremunerated trust business, or vice versa. If a PTC breaches these conditions, it loses the benefit of the licensing exemption, but does not cease to be a PTC. However, the PTC must amend its memorandum so that it ceases to be a PTC and the Commission may take certain enforcement action against the PTC under the Financial Services Commission Act.

Definition of trust, unremunerated and related business

Trust business has the same meaning as in the Banks and Trust Companies Act, 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 is:

- “trust business where no remuneration is payable or paid to, or received by, the PTC, or any person associated with the PTC, or any person

associated with the PTC, inconsideration for, or with respect to, the services that constitute the trust business”

Related trust business is intended to cover trust business carried on for one or more related family trusts. Related trust business is defined as trust business provided in respect of:

- a single qualifying trust; or
- a group of related qualifying trusts

A trust is a qualifying trust where each beneficiary of the trust is:

- a connected person in relation to the settlor of the trust; or
- a charity

A trust is related to another trust where the settlor of the trust is a connected person with respect to the settlor of the second trust. A group of trusts are related trusts where each trust in the group is related to all of the other trusts in the group.

Obligations on PTC

A PTC has the following obligations:

- must appoint a licensed class I trust company with registered agent status as its registered agent;
- must not carry on any business that is not trust business;
- must not solicit trust business from the general public; and
- must only carry on unremunerated or related trust business.

Records held by registered agent

The following records, or up to date copies, must be held by the registered agent:

- the trust deed or other document creating or evidencing each trust for which the PTC is providing trust business; and
- any deed or document varying the terms of such a trust.

Role and duties of registered agent

The Commission does not approve the exemption of a PTC or carry out any ongoing monitoring of PTCs. The Commission considers it more appropriate that a registered agent, which must be a licensed trust company, undertakes the monitoring of PTCs. It is therefore necessary to impose certain duties and obligations on registered agents of PTCs. This is a vital role and if registered agents do not undertake obligations properly, the Commission may take enforcement action against registered agents, as well as PTC, including revoking the licence of the trust company.

A licensed trust company must not act as a registered agent of a PTC unless it has taken all reasonable steps to satisfy itself that the PTC:

- where already established, is complying with its obligation as a PTC; or
- PTC will comply with its obligations once it commences business.

The registered agent of a PTC must:

- on a risk-based basis, periodically take all reasonable steps to satisfy itself that the PTC continues to comply with its obligations;
- take all reasonable steps to ensure that all required records relating to a PTC are kept at its office; and
- notify the Commission if it forms the opinion that the PTC is no longer complying with its obligations.

Conclusion

The initial reports from the BVI private sector, indicates that the private trust company exemption regime is proving to be very popular. This is a direct result of the hard work that has gone into marketing this product.

Ladies and gentlemen, thank you for your attention.

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