

Amendments to the British Virgin Islands (BVI) Business Companies Act

The BVI Business Companies (Amendment) Act 2022 (“BCA Amendment Act”) and the associated BVI Business Companies (Amendment) Regulations, 2022 (“BCA Regulations Amendment”) have been introduced on January 1st, 2023. Under the BCA Amendment Act and the BCA Regulations Amendment, the BVI Business Companies Act was amended, with the sole purpose to meet international standards on transparency and enhancing its reputation by combatting financial crimes.

1. Striking-off and Dissolution

BVI companies may be struck off the Companies Register for several reasons but the most common are:

- i) failure to pay annual fees and
- ii) failure to appoint or retain a Registered Agent

a) Restoration of Struck-off Companies:

The BCA Amendment Act abolishes the seven (7) year strike off period meaning companies will be dissolved almost immediately (with 90 days’ notice provided by the Companies Registry), this change came into force on 1st January 2023.

b) Restoration of Dissolved Companies

The BCA Amendment Act is simplifying the procedure for restoration of dissolved companies by application to the Registry within five (5) years from the date of dissolution, without the need for obtaining a court order.

However, certain conditions will apply to this fast-track method such as:

- obtaining the agreement of a Registered Agent to act and who can confirm that the company's records have been updated in compliance with anti-money laundering obligations;
- companies must be operational and carrying on business prior to their dissolution.

A court order would still be needed for a restoration of dissolved companies in cases where:

- i) on the date of dissolution the company was not carrying on business or operations;
- ii) the company was struck off the register and dissolved following the completion of a liquidation;

- iii) the purpose of restoration is to initiate, continue or discontinue legal proceedings in the name of or against the company;
- iv) to apply for property that has vested in the Crown bona vacantia to be returned to the company; and
- v) in any other circumstance where the court decides taking into consideration any particular circumstances.

Once the company is restored, is deemed that have never been struck off or dissolved.

c) Restoration of Companies that were Struck off and Dissolved Companies as of 1 January 2023:

STRUCK-OFF	DISSOLVED
As of 1 January 2023 (the Effective Date), the companies that were struck-off and not restored, have until 30 June 2023 to apply to the Registrar to be restored <u>unless:</u>	As of the Effective Date, the companies that were dissolved, have until 1 January 2028 to apply for restoration <u>unless:</u>
A) the previously applicable 7-year period ends prior to such date, in which case that earlier date shall be the deadline for applying for restoration	A) the previously applicable 10-year period ends prior to such date, in which case that earlier date shall be the deadline
B) the previously applicable 7-year period ends after 30 June 2023, in which case 30 June 2023 shall be the deadline. If a struck-off company is not restored on or by such dates (whichever is applicable), that company will be dissolved on the day thereafter	B) the previously applicable 10-year period ends after 1 January 2028, in which case 1 st of January 2028 shall be the deadline.

2. Voluntary Liquidations of Solvent Companies

Additionally, the BCA Amendment Act along with the BCA Regulations Amendment introduce the residency requirement for persons appointed to act as liquidators of solvent BVI companies. To qualify, an individual must have physically resided in the BVI for at least 180 days, either continuously or in aggregate, prior to the appointment. The BCA Amendment Act and the BCA Regulations Amendment provide the option for joint liquidators to be appointed, where only the one liquidator must meet the residency test.

Individuals appointed as liquidators will also be required to have at least two years' liquidation experience, professional competence to liquidate the company and an appropriate professional qualification or hold an insolvency practitioner's licence issued by the BVI Financial Services Commission (FSC).

3. Financial Records and Accounts

In addition to the existing record keeping obligations (Economic Substance requirements), BVI companies will be required to provide certain financial information, in the form of an annual financial return, within 9 months after the end of the Company's Financial year to which it relates to their Registered Agent as of 1st January 2023.

The Registered Agent is not required to file the Annual Financial Record but will have an obligation to inform the Financial Services Commission (FSC) if it has not received the annual return within 30 days of the due date. Non-compliance with this requirement may result to penalties of up to \$5,000 and will have an impact on the company's "good standing" status. The information filed with the Registered Agent will not be made publicly available, nor will the Registered Agent be obliged to file it with any regulator or BVI government authority.

4. Abolition of Bearer Shares

The BCA Amendment Act will fully abolish and remove the concept of bearer shares from BVI law. Existing bearer shares will convert automatically by operation of law to registered shares on the 1st of July 2023 if they are not redeemed or converted to registered shares prior to this date.

5. Charitable and Non-commercial Companies

While it has always been considered possible to form a BVI company to pursue wholly charitable or non-commercial objects, previously such entities had to confine operations to the BVI. The BCA Amendment Act recognises and confirms the ability of BVI companies to be used for wholly charitable or non-commercial purposes globally.

However, those operating outside of the BVI will be subject to increased financial oversight.

6. Redomiciliation out of the BVI

In an effort to allow for appropriate notice to be given to the persons who may object to the redomiciliation of a BVI company outside the BVI, a new requirement has been introduced whereby at least 14 days prior to the filing of a notice of intention to redomicile out of the BVI with the Registrar, an advertisement of this intention will have to be published in the official gazette (BVI) and the website of the company (if available) specifying the intended jurisdiction for redomiciliation. The company must also notify all its members and creditors of its intention in writing.

7. Publicly available Register of Directors

The BVI Financial Services Commission (FSC) will make the names of the directors of BVI companies available to registered users of the so called online “VIRRGIN” system. Searches will need to be made against a company’s name, rather than the name of a director. Kindly note that this service is available for an additional fee. The full register of directors, which companies have been required to file with the FSC on a private basis since 2016, will not be made public.

Information available will not include dates of birth, addresses or the names of former directors. Companies that are non-compliant with their filing obligations in terms of changes to directors should rectify the position as soon as possible.

8. Register of members to include voting rights

Any BVI’s company register of members will need to include the nature of any voting rights, unless such information is already included in the company’s Memorandum and Articles of Association.

9. Register of Persons with Significant Control- future development

The BCA Amendment Act will introduce in the future a public register of persons with significant control, although no changes in this respect have been effected, as of January 1st, 2023.

HOW OUR FIRM CAN ASSIST?

For more information and how this development may impact your business, feel free to contact in our below indicated email addresses.

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