

**British Virgin Islands:
Amendments to the BVI Business Companies Act***September 2022*

Effective **1st January 2023**, a number of significant amendments to the British Virgin Islands (BVI) Business Companies Act will come into force, bringing it in line with international standards and obligations. The key changes/ amendments are briefly set out below.

1. Requirement for filing Annual Financial Returns

A new requirement is introduced whereby a BVI company is required to produce Annual Financial Returns (AFR). The AFR must be submitted to the registered agent (RA) within 9 months after the end of the company's financial year to which the AFR relates to. The AFR must be retained by the RA for a period of at least five years. This requirement does not apply to listed companies, companies which are regulated under the financial service legislation and companies which file tax returns with the BVI Inland Revenue Department.

The RA is not required to file the AFR with any BVI Competent Authority and this will not be available to the public. However, if the AFR is not received by the RA by the end of the 9-month period, then the RA is obligated within 30 days to report this non-compliance to the Financial Services Commission (FSC). 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 details and form of this AFR have not yet been determined, however it is anticipated to consist (as a minimum) of a simple balance sheet and profit and loss.

2. Strike-off and dissolution

Currently, BVI companies may be "struck-off" the register when there is failure to pay their annual registry fees and penalties, failure to appoint a registered agent, or where a registered agent resigns without being replaced. Once struck-off, a company continues to exist in a "suspended mode" and neither the company, its directors and members, nor any receiver/liquidator may take any actions or act in any way in connection with the company's assets. If not restored within a period of seven years, it is automatically dissolved.

From 1st January 2023, the above regime shall be abolished and all newly struck-off companies will be automatically dissolved within 90 days after the date when the Registrar publishes a notice of striking off in the BVI Gazette.

For companies which have been struck off (but not yet dissolved) prior to 1st January 2023, there will be a transitional period of six months (no later than 30th June 2023) for these companies to be restored in the register.

It is strongly recommended that all companies which are currently struck-off or dissolved with underlying assets or business operations take appropriate steps towards bringing these back into good standing.

3. Restoration of Dissolved Companies

Under the new regime, the restoration process of dissolved companies has been modified significantly by introducing a more simplified process for restoration.

Dissolved companies may now apply for restoration to the Registrar of Corporate Affairs within 5 years of the date of dissolution without the need for obtaining a court order under the following conditions:

- a licensed RA who agrees to act for the restoration; and
- its RA declares that it holds up to date information about the company; and
- its directors and owners comply with the BVI AML legislations and regulations.

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

- on the date of dissolution the company was not carrying on business or operations;
- the company was struck off the registrar and dissolved following the completion of a liquidation;
- the purpose of restoration is to initiate, continue or discontinue legal proceedings in the name of or against the company;
- to apply for property that has vested in the Crown *bona vacantia* to be returned to the company; and
- in any other circumstance where the court decides taking into consideration any particular circumstance.

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

4. Names of Directors available to the public

The names of the current directors contained in a company's register of directors filed with the Registrar will be available upon request to the Registrar by way of a search against the name of a particular company. No other information apart from the name of the current director will be available during the search and information such as date of birth, residential address as well as the name of former directors will not be disclosed.

We urge our clients to ensure that each company's register of directors is kept up to date in an effort to be in full compliance with this requirement.

5. BVI residency requirement for liquidators

In an effort towards facilitating the collection and retention of a liquidated company's records within the territory of the BVI, a residency requirement has been introduced for persons being appointed to act as liquidators on a solvent basis. Essentially, the definition of 'voluntary liquidator' in relation to solvent liquidations has been redefined so as to refer to a person who is either a resident in the BVI and appointed under section 199 of the BVI Business Companies Act (Revised 2020) or licensed as an insolvency practitioner under the Insolvency Act (Revised 2020).

To qualify, an individual must have physically lived in the BVI for at least 180 days, either continuously or in aggregate, prior to their appointment.

The Act gives the option for joint liquidators to be appointed, where only one has to meet the residency test. Voluntary liquidators appointed prior to 1st January 2023 will be allowed to continue to act until the conclusion of the liquidation without having to comply with the new residency requirement.

Liquidators will also now be required to take additional steps to obtain accounting records before commencing a liquidation.

6. Continuation out of the BVI (redomiciliation)

In an effort to allow for appropriate notice to be given to the persons who may object to the continuation 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 continue out of the BVI with the Registrar, an advertisement of this intention will have to be published in the official gazette and the website of the company (if exists) specifying the intended jurisdiction of continuation. The company must also notify all its members and creditors of its intention in writing.

7. Register of members to include voting rights

The company's 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.

8. Introduction of Register of Persons with significant control

The Act provides for the framework by which the BVI might introduce a public register of persons with significant control in the near future. For the time being, it is important to take note that these provisions are still being worked on and therefore no changes in this regard are expected to come into force on 1st January 2023. We shall keep you informed as to when this register will be officially introduced.

Conclusion

The amendments to the Act and Regulations are intended to keep the BVI in compliance with the international standards and best practices. As the current changes come into force on 1 January 2023, you are urged to review them and to assess the impact that these might have on your companies.

Should you have any questions or concerns in respect of the upcoming changes please contact your usual point of contact at Totalserve.

The above is intended to provide a brief guide only. It is essential that appropriate professional advice is obtained. Totalserve Management Ltd will be glad to assist you in this respect. Please do not hesitate to contact us.