

## AMENDMENTS TO THE BVI BUSINESS COMPANIES ACT 2004



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There are various significant amendments to the BVI Business Companies Act 2004 (the BCA) which will become effective on 1 January 2023.

As per recent developments across the industry, these amendments are being introduced in order to ensure the BVI's continued compliance with international standards.

### Key changes under the new legislation:

#### 1. Director names publicly available

Under the new legislation, the names of a company's current directors will be made available publicly on application to the Registrar of Corporate Affairs (the Registrar) via the BVI Financial Services Commission's online filing platform, VIRRGIN. Only registered users of VIRRGIN will have access to this information when carrying out a search on the company.

All companies have been required to file their full and up-to-date Register of Directors with the Registrar on a private basis since 2016. The only change under the new legislation is that the names of directors will become publicly available and searches will need to be run against a company name, rather than the name of a director. Other information from the Register of Directors will remain private, such as dates of birth, addresses or former directors' names.

#### 2. Filing annual financial return

In addition to existing record keeping obligations, the new legislation will introduce additional obligations that, save in specified limited circumstances, require BVI companies to provide certain financial information, in the form of an annual return, to their Registered Agent.

The form of return has not yet been finalised, but it is expected to consist of a simple balance sheet and profit and loss statement, which will not need to be audited.

An annual return will need to be prepared for each financial year of the company and filed with the Registered Agent within nine months following the end of the financial year to which it relates. The Registered Agent will have an obligation to inform the Registrar if it has not received the annual return within 30 days of the due date.

The information to be filed with the Registered Agent will not be made public, nor will the Registered Agent be obliged to file the annual returns or the information therein with any BVI authority.

Listed companies and companies that file tax returns in the BVI and certain BVI regulated entities will not be required to file an annual return.

### 3. Striking-off and dissolution

Under current legislation, a BVI company that is struck off the Register of Companies (the Register) (usually by failing to pay annual fees) will not be immediately dissolved, rather it must remain struck off for a continuous period of 7 years before it is dissolved. During this period, the company will retain its legal status, (and can incur liabilities), but is incapacitated for 7 years, unless it is brought back to good standing.

The new legislation will streamline the rules regarding struck-off companies by abolishing the 7-year period and all newly struck-off companies from 1 January 2023 will be dissolved immediately upon publication of striking-off notice in the BVI Gazette by the Registrar.

Brief transitional arrangements will apply to companies which are currently in a struck-off status prior to 1 January 2023. An existing struck-off company will have 6 months to bring itself back to good standing. If it fails to do so, then it will be dissolved automatically as a matter of law and its Registered Agent will be deemed to have resigned on the date of dissolution.

### 4. Restoration of struck off and dissolved companies

With the changes to the strike-off regime set out above, a fast-track restoration process will be introduced to facilitate the restoration of companies that may have been struck off and dissolved under the new legislation.

Such companies may be restored by a simple application to the Registrar without the need to apply to Court, provided that such application is made within 5 years of the date of dissolution.

In such circumstances, the Registered Agent of the restored company must declare that all information they hold is up-to-date and in compliance with various BVI regulations. There is also a requirement to take steps to notify the Crown if any property of the company has vested in the Crown *bona vacantia*.

### 5. New qualification and residency requirements for liquidators in solvent liquidations

At present, a person is eligible to be appointed as a voluntary liquidator of a solvent BVI company if they are not disqualified from acting on the grounds of being a person who is a bankrupt, a minor, a disqualified director or a person who is or was a director or in a senior management position with responsibilities including financial management of the company or an affiliated company within the previous two years.

The new legislation will require that the liquidators of BVI companies must have the requisite professional qualifications and liquidation experience to be appointed as voluntary liquidators and must have physically lived in the BVI for at least 180 days, either continuously or in aggregate, prior to their appointment. For any companies where joint liquidators are appointed, at least one of the liquidators must meet the residency requirement.

These resident liquidators will be required to collect the corporate records kept and maintained by the company in liquidation and on completion of the liquidation to provide copies of all records collected by the liquidator to the Registered Agent of the company. The Registered Agent has to keep and maintain those records for a period of at least 5 years.

### 6. Register of persons with significant control

The new legislation outlines a brief framework by which the BVI might in the future introduce a public register of persons with significant control, although it is important to note no changes are expected to come into force on 1 January 2023. The BVI Government had previously made commitment to introduce such a register by 2023, subject to certain caveats and qualifications.

The legislation provides that the BVI Government may, by subsequent regulations, specify the requirements for the format of such registers and also provides that the regulations may contain exemptions or restrict access to certain person's data.

## Our recommendations

Clients should take steps to:

- ▶ ensure the register of directors is up to date
- ▶ retain receipts, invoices and relevant financial records to facilitate preparation of annual returns
- ▶ keep asset-holding companies in good standing to avoid these assets being vested to the Crown in the event that the company is struck off

In the meantime, if you have any questions regarding the above, please reach out to your usual contact in BDO Hong Kong.



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