

UPDATE

Upcoming amendments to the BVI business companies regime

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The BVI Financial Services Commission (**FSC**) has introduced changes to the BVI business companies regime in order to align it with international standards and obligations. This update summarises the key provisions of the BVI Business Companies (Amendment) Act, 2022 and the BVI Business Companies (Amendment) Regulations, 2022, which come into effect on 1 January 2023.

The key changes to the BVI Business Companies Act (Revised 2020) and the BVI Business Companies Regulations (Revised 2020), which will take effect on **1 January 2023**, are briefly set out below.

Directors names available to the public

The BVI Registrar of Corporate Affairs (the **Registrar**) will make available, upon request (and upon the payment of a fee), a list of directors contained in a company's register of directors filed with the Registrar. In practice, this means that the names of company directors will be available to registered users of the online VIRRGIN system when carrying out a search against a company's name.

Other points to note include:

- A company's full register of directors (which is currently required to be filed with the Registrar and is held privately) will not be available to the public.
- The information made available will not include dates of birth, addresses or the names of former directors.

Clients with BVI companies should make sure that they keep their register of directors up to date to ensure that they comply with current filing requirements.

Register of members to include voting rights

A 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 or articles of association.

Bearer shares

The concept of a bearer share will be removed from BVI business companies legislation. Companies will no longer be permitted to issue bearer shares, convert registered shares to bearer shares or exchange registered shares for bearer shares. Existing bearer shares will automatically convert to registered shares on **1 July 2023**.

Struck off companies and dissolution

BVI companies that are struck off the Register of Companies maintained by the Registrar (the **Register**) (eg for failing to pay annual fees or failing to retain a registered agent) are currently allowed to remain in the 'struck off' state for up-to seven years. Whilst struck off, the company, its directors or members (or any receiver or liquidator of the company) may not take any actions or act in any way in connection with the

company's assets. If not restored within seven years, such companies are automatically dissolved and any property of the Company vests *bona vacantia* in the Crown.

From 1 January 2023, the above regime will no longer apply and all newly struck off companies will be dissolved on the date the Registrar publishes a notice of striking off in the BVI Gazette (ie no seven year period, though companies will be given 90 days' notice to regularize its status / obligations before it becomes liable to be struck off by the Registrar).

Transitional arrangements will apply to companies which are currently struck off, such that if they wish to apply to be restored to the Register, they must do so before the earlier of either:

- 1 July 2023; or
- seven years from their scheduled strike off date.

Given the short period for transitional arrangements, if a BVI company is either struck off or is likely to become struck off over the next few months and has any underlying assets or business, we recommend getting in touch with your usual Mourant contact or contacts to discuss the steps to be taken as soon as possible.

Restoration of dissolved companies

Dissolved companies will, subject to certain requirements, be able to apply to the Registrar for restoration within five years of the date of dissolution without the need for a court order. In order to apply for restoration, a company will need a licensed registered agent who has agreed to act in that role and the registered agent will need to declare that they hold up to date information on the company, its directors and owners compliant with BVI anti-money laundering laws and regulations.

In addition, a company may still be restored by court order where:

- The company was struck off the Register and dissolved following the completion or termination of its voluntary liquidation or liquidation under the Insolvency Act, 2003.
- On the date of dissolution, the company was not carrying on business or in operation.
- The purpose of restoration is to:
 - initiate, continue, or discontinue legal proceedings in the name of or against the company; or
 - make an application for the company's property that has vested in the Crown *bona vacantia* to be returned to the company.
- In any other circumstance where the court considers that, having regard to any particular circumstances, it is just and fair to restore the company to the Register.

When a company is restored, it is deemed never to have been struck off and dissolved.

New annual financial returns

All BVI companies are currently required to maintain financial records and underlying documentation that show and explain their transactions. These records must be sufficient to enable the company's financial position to be determined with reasonable accuracy at any time. Financial records must be kept for a minimum of five years. However, unless a company is regulated by the FSC (eg a bank, fund, fund manager etc), there is no requirement to prepare those records in a particular form, have them audited or file them with any regulator or other third party.

From 1 January 2023, companies will be required to produce annual financial returns (**annual returns**) which must be:

- filed with the registered agent within nine months of the end of the company's calendar year (or, if the company's financial year is not a calendar year, the company's financial year); and
- retained by the registered agent for at least five years.

However, the above requirements will not apply to:

- listed companies;
- companies regulated under financial services legislation which already provide financial statements to the FSC under that legislation; and

- companies that file tax returns with the BVI Inland Revenue Department with accompanying financial statements.

A company that is part of a group of companies that prepares and maintains consolidated accounts will, for the purposes of its annual return, be able to file with its registered agent the consolidated accounts of the group provided those consolidated accounts show the accounts of the company. For holding companies, although the prescribed form of annual return is not yet finalised, we anticipate that a simple unaudited profit and loss account and balance sheet will likely be sufficient.

If the registered agent does not receive the annual return within 30 days of the due date, it will need to inform the FSC. However, the registered agent will not be required to file a company's annual return with the Registrar and it will not be available to the public. The requirement for a company to comply with its annual return obligations will become one of conditions to maintaining 'good standing'. Failure to file an annual return could also lead to a penalty fine of up to US\$5,000.

Continuation outside of the BVI

A company that wishes to continue outside of the BVI will, from 1 January 2023, needs to give advance notice to its creditors (secured or otherwise) and members of any proposed continuation out of the BVI.

In particular, a BVI company intending to continue to another jurisdiction must at least 14 days before filing to continue out:

- advertise a notice of its intention in the BVI Gazette and on the company's website (if any) and specify the foreign jurisdiction to which it intends to continue; and
- notify its creditors and members in writing of its intention.

The above requirements should be factored into a company's timetable where it is intending to continue to another jurisdiction.

Solvent liquidations – BVI residency requirement for liquidators

The definition of 'voluntary liquidator' in relation to solvent liquidations has been narrowed to mean a person who is either:

- 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);

In order to be resident in the BVI, an individual must have physically lived in the BVI for at least 180 days, continuously or in aggregate, prior to their appointment. However, where joint liquidators are appointed, only one of them needs to be resident in the BVI. Therefore, local liquidators, which may provide language or time zone benefits, may continue to act jointly with a BVI resident liquidator. Voluntary liquidators appointed prior to 1 January 2023 are allowed to continue to act until the conclusion of the liquidation without complying with the new BVI residency requirement.

Register of 'persons with significant control'

The BVI Government previously made a commitment to introduce a publicly accessible beneficial ownership register in relation to BVI companies by 2023, subject to various qualifications, if such registers were an international standard.

Provisions have now been included so that the BVI Government may in future regulations set out the requirements for registers of 'persons with significant control' (not dissimilar to the UK regime). However, the changes introduced do not impose the register and no public register of 'persons with significant control' is being introduced with effect from 1 January 2023.

Charitable companies

The changes to the legislation will confirm the ability of BVI companies to be used for wholly charitable or non-commercial purposes globally. However, charitable companies operating outside the BVI will be subject to increased financial oversight (which may include the preparing and filing audited accounts with the Registrar) in recognition of the increased risks associated with the use of charitable companies globally to assist or facilitate money laundering, terrorist financing and proliferation financing.

Resignation of registered agent

The period of notice which a registered agent needs to give before resigning from that role has been reduced from 90 days to 60 days. A registered agent will also no longer be required to resign (or give notice of resignation) if a company is dissolved or where the registered agent is acting for a foreign company which is removed from the Register of Foreign Companies.

Next steps

The long-anticipated amendments are generally designed to ensure that the BVI's business companies legislation continues to meet international standards and best practice as a leading offshore financial centre. Please contact a member of our team or any one of our contacts below for further information if you have any questions relating to this update or if any assistance is required to ensure compliance with the new legislation.

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