

Amendments to the BVI Business Companies Act 2004

On 1 January 2023, various significant amendments to the BVI Business Companies Act 2004 will come into force.

The key revisions include the following:

- A streamlined process for the dissolution of BVI companies, and a more modern regime for restoration.
- Limited changes to the information on directors which will be publicly available to registered VIRRGIN users.
- Changes to the accounting and record keeping requirements for BVI companies.

The amendments are being introduced to ensure the BVI keeps pace with international best practices and with international standards established by standard-setting bodies such as the Global Forum on Transparency and Exchange of Information for Tax Purposes and the Financial Action Task Force. The jurisdiction remains committed to its place at the forefront of combatting financial crime in all its forms.

In this client update, we will use the term **Amended Act** to refer to the principal legislation as it will be in force in January.

Striking-off and dissolution

BVI companies may be struck off the Register in a number of different circumstances but are most often struck because they have failed to pay their annual fees.

Once struck, under the current law, they enter a state where that company (and its directors, members, and any liquidator or receiver) may not take any actions. In the current system, it will remain in that state for seven years, unless it is brought back to good standing. A struck company may generally be restored at any time by paying any accrued fees and penalties, together with rectifying any other defect in its compliance with law (such as appointing a new registered agent where the old one has resigned). If it does not get brought back into life prior to the end of the seven years, it will be dissolved by operation of law.

The Amended Act effectively abolishes this period, so that struck off companies will be dissolved immediately.

Brief transitional arrangements will apply to companies which are currently in a struck off or dissolved state. However, we would strongly urge all clients with struck or dissolved companies with underlying assets or business operations to take immediate action to bring the company back into good standing.

Restoration of dissolved companies

For companies that are in a dissolved state, the process of restoration will change significantly.

Under the current law, dissolved companies are only restorable by court order. The Amended Act introduces a simpler method for companies in this state to restore by application to the Registrar of Corporate Affairs (the **Registrar**) within five years of the date of dissolution¹, subject to meeting certain requirements. Chief among these is that a licenced

¹ Transitional arrangements will apply to companies which are currently in a struck off state so that, unless the seven years since their strike-off date expires earlier, they will be able to apply to the Registrar until 1 July 2023.

person has agreed to take on the role of RA for the restored company and has declared that 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 has vested in it.

A company may still also be restored by court order, in any of the following scenarios:

- The company was struck off the Register and dissolved following the completion of a liquidation.
- On the date of dissolution, the company was not carrying on business or in operation.
- The purpose of restoration is to (i) initiate, continue, or discontinue legal proceedings in the name of or against the company; or (ii) to apply for 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 under either limb, it is deemed never to have been struck off/dissolved.

Publicly available director names

The British Virgin Islands Financial Services Commission (**FSC**) will be making available the names of the directors of BVI companies to registered users of the online VIRRGIN system. There is expected to be an additional cost to the search. Searches will need to be run against a company name, rather than the name of a director.

Clients should note the full register of directors, which companies have been required to file with the FSC on a private basis since 2016, will not be public. The information available will not include dates of birth, or addresses. The names of former directors will not be available.

We understand that the FSC will extract this information from the registers they have on file, without the need for new or additional action from clients. Entities which have not kept their register up to date or which are otherwise not in compliance with their existing obligations should however take care to rectify the position as soon as possible.

Financial records and accounts

In addition to their existing record keeping obligations, BVI companies will be required to provide certain financial information, in the form of an annual return, to their registered agent. The form of return has yet to be finalised, but we expect it to consist of a simple balance sheet and profit and loss. This will not need to be audited.

The annual return will need to be filed within nine months of the end of an entity's financial year (which we expect will not necessarily have to be a calendar year). The registered agent will have an obligation to inform the FSC if it has not received the annual return within 30 days of the due time.

The information filed with the registered agent will not be made publicly available, and nor will the registered agent be obliged to file them with any regulator or BVI government authority.

There are exceptions that will apply to listed companies, companies which pay tax in the BVI and certain BVI regulated entities.

Liquidations

A residency requirement has been introduced for persons being appointed to act as liquidators of BVI companies on a solvent basis. 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.

In recognition of the fact that there may be foreign language, or time zone, benefits in having local liquidators in the place where companies have their main operations or businesses it will also be possible to appoint joint liquidators where only one meets the residency test. Liquidators will also now be required to take additional steps to obtain accounting records before commencing a liquidation.

Register of persons with significant control

The Amended Act provides for the 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. The BVI government had previously made a commitment to introduce such a register by 2023, subject to certain caveats including such registers becoming an international standard.

The Amended Act provides that the Government may by future regulations, specify the requirements for the format of such registers. It also provides that the regulations may contain exemptions or restrict access to certain person's data.

Next steps

By the end of 2022, all BVI companies should ready themselves to comply with the legislation.

Harneys will be providing further updates on the legislation, as market practice develops, and regulatory guidance becomes available, and we will be providing greater detail on some of these topics in due course.

Any clients who have particular concerns should feel free to contact the authors or their usual Harneys contacts.



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