

Company restoration – British Virgin Islands

Briefing Summary: In this guide, we explain how a company that was incorporated or registered in the British Virgin Islands (**company**) can be restored to the BVI register of companies (**register**). In short, there are two restoration processes: (1) arrange for the company to be administratively restored (**administrative restoration**); or (2) apply for the company to be restored by a court order (**court restoration**). There are many reasons why you may need to restore a company, which include needing to regain control of its assets, to commence legal proceedings in the name of the company, or to deal with previously unknown (or forgotten) creditors.

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For more information about how a company can be dissolved in the first place, please see our [dissolution guide](#), which details the two dissolution processes: (1) a company can be liquidated and dissolved; or (2) a company can be administratively struck-off and dissolved (**administratively dissolved**).

Administration restoration

Court restoration

Who can make a restoration application?

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A company that has been administratively dissolved after 1 January 2023 can make an application to be administratively restored.

The application must be made to the BVI Registrar of Corporate Affairs (**registrar**) by the company itself or a creditor, member, or liquidator of the company.

A company that: (1) was administratively dissolved before 1 January 2023; or (2) has been liquidated can make an application to be restored by a court order.

The application can be made to the BVI High Court (in the civil or commercial division) by: (1) the attorney general or other competent authority in the BVI; (2) a creditor, a former director, a former member or a former liquidator of the company; (3) a person who but for the company's dissolution would have been in a contractual relationship with the company; (4) a person with a potential legal claim against the company; (5) a manager or trustee of a pension fund established for the benefit of employees of the company; or (6) any person who can show an interest in having the company restored.

When does the restoration application need to be made?

The restoration application must be made within five years of the company's dissolution date.

Generally, the restoration application must be made within five years of the company's dissolution date. However, if the company was dissolved before 1 January 2023, the application can be made any time before 1 January 2028 or within 10 years of the company's dissolution date (whichever date is earlier).

What are the restoration pre-requisites?

A company needs to satisfy all of the following requirements:

- the company must demonstrate that it was carrying on business (or was operational) when it was administratively dissolved;
- a licensed person must agree to provide registered agent services to the company;
- the company must provide updated records (including all compliance documents) to its registered agent, so it can file a declaration confirming the same;
- if the company has assets that vest in the crown *bona vacantia*, the financial secretary of the Ministry of Finance ("**financial secretary**") must signify the crown's consent to the restoration (such consent is deemed given if no response is received within seven days);
- the company must agree to pay all fees due to the registrar; and
- the registrar must be satisfied that the restoration is fair and reasonable.

A company needs to satisfy one of the following requirements:

- the company was dissolved following the completion or termination of a solvent or insolvent liquidation;
- the company was not carrying on business or in operation on its dissolution date;
- the purpose of restoration is to initiate, continue or discontinue legal proceedings in the name of or against the company;
- the purpose of restoration is to make an application for the company's property (vested in the crown *bona vacantia*) to be returned to the company; or
- in any other case, in which a company cannot obtain an administrative restoration, the court considers it just and fair to restore the company.

In addition, notice of the restoration application must be served on: (a) the registrar; (b) the financial secretary; and (c) the Financial Services Commission, if the company was ever regulated.

How much will the restoration application cost?

The registrar will charge \$700 to administratively restore a company, if the application is made within 12 months of the company's dissolution date. This fee will increase to \$1,600, if the application is made later.

The company will also have to pay all outstanding fees and penalties due to the registrar.

The registrar will charge \$2,400 to restore a company by court order, if the application is made within 12 months of the company's dissolution date. This fee will increase to \$4,600, if the application is made later.

The registrar will formally defend the restoration application and will ordinarily attend the court hearing. This means the applicant will also have to pay registrar's limited costs for attending court, together with all outstanding fees and penalties due to the registrar.

What is the effect of a successful restoration?

Once a company has been administratively restored to the register, it is deemed to have continued in existence as if it had never been administratively dissolved.

Any of the company's property that vested in the crown *bona vacantia* will be returned and the company is entitled to be paid out of the BVI's consolidated fund in respect of: (a) any money received by the crown upon its dissolution; and (b) the value of any property that has been disposed of by the crown (the value being the lesser of an amount equal to the value of the property at the date it vested in the crown or, the amount realised by the crown on the disposition of the property).

On hearing the application, the court may either: (a) restore the company to the register, subject to such conditions as the court deems appropriate; or (b) give such directions or make such orders as it considers necessary or desirable for the purpose of placing the company and any other person as close as possible to the position they would have been in had the company not been dissolved.

Once a company has been restored to the register, it is deemed to have continued in existence as if it had never been dissolved, unless it was dissolved via a voluntary liquidation (see below). In terms of timing, a company will be restored when the court order is filed with the registrar.

When a company was dissolved following the completion or termination of a liquidation the court will not fully restore the company to good standing. Instead, the company will be restored "*in liquidation*". This means, the court will only restore a company if: (1) the applicant nominates a person to be the company's liquidator; (2) the liquidator has consented to act and is eligible to act as liquidator of the company; and (3) satisfactory provision has been made or will be made for the expenses and remuneration of the liquidator, if appointed.

The liquidation of a company is meant to be 'final', so the court will take into account different considerations when restoring a liquidated company and may impose additional requirements.

Once a company is restored, any of its property that vested in the crown *bona vacantia* will be returned and the company is

Carey Olsen (BVI) L.P. is registered as a limited partnership in the British Virgin Islands with registered number 1950.

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