

Key provisions of the British Virgin Islands Business Companies (Amendment) Act and British Virgin Islands Business Companies (Amendment) Regulations, 2022

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The British Virgin Islands (the “BVI”) has recently enacted the BVI Business Companies (Amendment) Act, 2022 (the “**BC Amendments**”) and the BVI Business Companies (Amendment) Regulations, 2022 (the “**BC Regulations**”). Together they will introduce several key reforms to BVI law which will come into force on the 1st of January 2023 (the “**Enforcement Date**”).

We outline the key provisions of the BC Amendments and the BC Regulations in this note.

Directors

Publicly available names of directors

In 2016, the BVI Business Companies Act, 2004 introduced a requirement for all BVI companies to file the names of directors with the Registrar of Corporate Affairs (the “**Registrar**”). To date, the contents of the private register of directors have not been available for inspection by the public.

The BC Amendments will introduce a search mechanism for registered VIRRGIN users to access the name of a company’s directors, upon request, and for a search fee. It is important to note that the search must be conducted against a specific company’s name rather than an individual’s name. In addition the personal details of individual directors will be limited in that the search will not produce the director’s address, occupation, or any other sensitive personal information.

The names of those directors who have resigned will not be included on the company’s public list of directors. The BC

Amendments will only require active directors to be listed. The register of directors must include persons who have been appointed as alternative directors.

Liquidation

Residency requirement for liquidators

The BC Amendments have introduced a residency requirement for a liquidator to be eligible to act as a liquidator for a BVI company.

To qualify, a liquidator will be required to have been resident in the BVI for a period of at least 180 days, either continuously or in aggregate. Joint liquidators will satisfy the residency requirement if at least one liquidator has been living in the BVI for the stipulated time.

Bearer shares

Bearer shares are now done away with completely

Bearer shares have long been immobilised under BVI law, in that they have been required to be held by a licensed custodian and there is currently no mechanism for the issuance of new bearer shares.

Under the BC Amendments the concept of bearer shares will cease to exist. Any bearer share that exists at the Enforcement Date will need to be redeemed by the company, or be converted into a registered share.

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Struck-off companies

The effect of struck-off Companies and Dissolution

The BC Amendments have simplified the existing rules and streamlined the restoration process for struck companies. Currently a BVI company may be struck-off the register of companies (the “**Register**”) by the Registrar for a number of reasons. Usually, a strike-off occurs for either failing to appoint a registered agent in the BVI, or for the non-payment of the annual license fee to the Registrar.

Under the current law, when a company is struck-off the Register it is not immediately dissolved. Instead, the company retains its legal status but cannot carry on business in any way. If the company is not restored to the Register within seven years of strike-off, the company is automatically dissolved.

The BC Amendments end the concept of being “struck-off” under BVI law. Instead, when a company has not complied with its ongoing requirements it will be automatically dissolved by the Registrar. Transitional provisions will apply to companies that were struck-off the Register prior to the Enforcement Date.

Restoration

Under the current law, when a company is dissolved after a period of seven years following strike-off, the company is required to make a court application to be restored to the Register. There is no guarantee the court application will be successful and the process usually involves considerable cost.

The BC Amendments provide for a simplified and cost-effective route for the restoration of a dissolved company.

The company may make application within five years of the date of dissolution, to the Registrar, to be restored to the Register. The BC Amendments require the company to have appointed a registered agent. The registered agent must declare to the Registrar that it holds all the requisite information for the company, its directors and owners, and that the information is up to date.

When a company is restored to the Register under the new process it is deemed never to have been dissolved.

Financial statements

Preparation of annual financial statements

Under the BC Amendments, BVI companies will be obligated to file an annual financial return with their registered agent. The details and form of the annual financial return have not been finalised, but it is expected that it will take the form of a simple balance sheet and profit and loss statement. There is no audit requirement.

The directors will have a period of nine months from the end of the company's financial year to make the filing with the registered agent. The financial return will be filed only with the registered agent and will not be made public. The registered agent will be under an obligation to report a company to the FSC that has not filed an annual financial return.

There are certain exceptions on filing annual financial statements that apply to listed and regulated companies.

We will provide further information and updates over the remainder of the year. Please contact your usual Carey Olsen or CO Services (BVI) Ltd. contact should you have any questions or concerns.



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