

# Amendments to the BVI Business Companies Act

Service area / [Corporate](#)

Legal jurisdiction / [British Virgin Islands](#)

Date / [September 2023](#)

On 1 January 2023, the BVI Business Companies Act, 2004 was amended by the: (1) BVI Business Companies (Amendment) Act, 2022; and (2) the BVI Business Companies (Amendment) Regulations, 2022 (together the “**Amendments**”). The Amendments impact all companies incorporated or registered in the BVI (“**Companies**”). We set out below the key changes introduced by the Amendments:

## BVI registry fees

The BVI Registry has increased its incorporation and annual renewal fees. For Companies authorised to issue up to 50,000 shares, their incorporation and annual fees are now \$550. For Companies authorised to issue more than 50,000 shares, their incorporation and annual fees are now \$1,350.

## Director information

It is now possible to conduct a search and obtain the names of a Company’s incumbent directors. However, it is still not possible to obtain any additional personal information about the incumbent directors (date of birth, nationality, or residential address etc.) or the names of any former directors.

## Voluntary liquidators

Voluntary liquidators must now have relevant experience/ qualifications and satisfy a new BVI residency requirement (i.e. they must have physically lived in the BVI for at least 180 days before their appointment). Where joint liquidators are appointed, only one needs to satisfy the new residency requirement. Voluntary liquidators appointed before 1 January 2023 can continue to act on existing liquidations until they conclude, without having to satisfy the new experience/ residency requirements.

## Strike-off regime

Before 1 January 2023, it took seven years for a struck-off Company to be dissolved. Now, if a Company fails to pay its annual fee, the BVI Registry will give it 90 days’ notice, confirming: (a) the Company is liable to be dissolved; and (b) how this can be avoided. If the Company does not comply with the notice, it will be struck-off and dissolved.

## Restoration process

Historically, a Company could be struck-off (but not dissolved) for a period of seven years. During this time, a Company could be administratively restored at any time by paying all fees due to the BVI Registry. In addition, when a Company was dissolved, it could only be restored by a Court Order, and such restoration application had to be made within ten years of its dissolution date.

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There are now two new restoration processes:

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### Administrative Restoration Process

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For Companies struck-off and dissolved after 1 January 2023, they can be restored administratively, without the need for a Court Order, provided they can satisfy the following requirements:

1. a licensed person agrees to provide registered agent services to the Company;
2. the Company provides updated records (including all compliance documents) to its registered agent, so it can file a declaration confirming the same;
3. the Company pays all fees due to the BVI Registry;
4. the BVI Registrar is satisfied that the restoration is fair and reasonable;
5. the Company can demonstrate it was carrying on business (or was operational) when it was dissolved; and
6. the Financial Secretary has signified the Crown's consent to the restoration (such consent is deemed given if no response is received within 7 days), if the Company has assets that vest in the Crown *bona vacantia*.

The BVI Registry 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.

Only Companies that were in good standing at the BVI Registry on 1 January 2023 can be administratively restored under this process. Companies that were not in good standing at the BVI Registry on 1 January 2023 can now only be restored pursuant to a Court Order (see below).

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### Court Restoration Process

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For Companies dissolved after 1 January 2023, they can now be restored by a Court Order if they can satisfy any of the following requirements:

1. it was dissolved following the completion or termination of its (solvent or insolvent) liquidation;
  2. it was not carrying on business or in operation on its dissolution date;
  3. the purpose of restoration is to initiate, continue or discontinue legal proceedings in the name of or against the Company;
  4. the purpose of restoration is to make an application for the Company's property that has vested in the Crown *bona vacantia* to be returned to the Company; or
  5. in any other case, in which an administrative restoration application cannot be made, and the Court considers it just and fair to restore the Company.
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The following persons can make an application for a Company to be restored by a Court Order: (a) the Attorney General or other competent authority in the BVI; (b) a creditor, former director, former member or former liquidator of the Company; (c) a person who but for the Company's dissolution would have been in a contractual relationship with the Company; (d) a person with a potential legal claim against the Company; (e) a manager or trustee of a pension fund established for the benefit of employees of the Company; or (f) any other person who can establish an interest in having the Company restored.

The BVI Registry 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.

If a Company was dissolved before 1 January 2023, it can apply to be restored by Court Order (without obtaining the Crown's consent), provided the application is made before 1 January 2028 or within 10 years of its date of dissolution (whichever date is earlier).

### Record keeping requirements

Companies must now prepare an annual return, containing prescribed financial information, including a basic balance sheet and income (profit and loss) statement. Annual returns will not be made available for public inspection.

A Company must file its annual return with its registered agent, within 9 months of the Company's financial year end. Most Companies maintain a calendar fiscal year (1 January – 31 December), which means their first annual return will not be due until 30 September 2024. This new annual return requirement does not apply to Companies that are listed, regulated, or who file tax returns with the BVI Inland Revenue.

### Public register of significant control

The Amendments provide a mechanism for (but do not introduce or implement) a Register of Persons with Significant Control. The BVI has committed to introduce this register by 2023, to comply with the European Union's directive (EU2015/849), which requires Member States to ensure beneficial ownership information is publicly accessible (the "Disclosure Requirements").

However, the European Court of Justice (the "ECJ") handed down a landmark judgment on 22 November 2022, which confirmed the Disclosure Requirements are invalid, and public access to beneficial ownership information constitutes a serious interference with the EU's Charter of Fundamental Rights, in particular Article 7 (respect for private and family life) and Article 8 (protection of personal data). The ECJ also confirmed this interference with fundamental rights is neither limited to what is strictly necessary nor proportionate to the

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objective pursued. This landmark decision may have implications on the commitments made by the British Overseas Territories (including the BVI) and Crown Dependencies to establish publicly available beneficial ownership registers by 2023.

### Bearer shares

The Amendments abolished bearer shares. All bearer shares that existed before 1 July 2023 have now been automatically converted into registered shares.

### Continuations

Companies that want to continue into a foreign jurisdiction must now place a notice in the BVI Gazette, to give shareholders and potential creditors at least 14 days' notice of the continuation.

### Register of members

A register of members must include the nature of any voting rights, unless such information is already included in the Company's memorandum or articles of association.

### Charitable activities

Companies can carry on charitable or non-commercial activities, subject to approval from the BVI Registrar.

This guidance note is intended to provide a general overview of the Amendments. It is not intended as legal advice and should not be relied on as such. If you have any questions about the Amendments, please do not hesitate to contact your usual contact at Carey Olsen or [bvi@careyolsen.com](mailto:bvi@careyolsen.com).



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