

Amendments to the BVI Business Companies Act

Service area / [Corporate](#)

Legal jurisdiction / [British Virgin Islands](#)

Date / [December 2022](#)

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

BVI registry fees

On 1 January 2023, the BVI Registry will increase its incorporation and annual renewal fees (“**Fees**”). The Fees for Companies authorised to issue up to 50,000 shares, will increase to \$550. The Fees for Companies authorised to issue more than 50,000 shares, will increase to \$1,350.

Company searches

At the moment, information about a Company’s directors is not available for public inspection (unless a Company elects otherwise). From 1 January 2023, it will be possible to conduct a company search, to disclose the names of incumbent directors. However, the search will not disclose any personal information about the incumbent directors (date of birth, nationality or residential address etc.) or the names of any former directors.

Voluntary liquidators

From 1 January 2023, any voluntary liquidator appointed by a Company must have certain experience/qualifications and satisfy a 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

Companies can be struck-off for several reasons. The most common reason is failure to pay annual BVI Registry fees. When a Company is struck-off, it currently takes seven years before it is dissolved. During this period, the Company continues to exist, but is incapacitated.

The Amendments bring an end to the seven year strike-off period. From 1 January 2023, if a Company fails to pay its annual fee, the BVI Registry will give the Company 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.

There is a different process for Companies that are struck-off (but not dissolved) before 1 January 2023. They will be subject to a transitional period and dissolved by 1 July 2023.

OFFSHORE LAW SPECIALISTS

Restoration process

Currently, a Company that is struck-off (but not dissolved) can be administratively restored at any time during its seven year strike-off period, by simply paying all outstanding fees due to the BVI Registry. Once a Company has been dissolved, it can only be restored by a Court Order and the application must be made within ten years of the Company's dissolution date. We set out below the new restoration processes that will apply from 1 January 2023:

New Administrative Restoration Process

A Company that is struck-off and dissolved can be administratively restored after 1 January 2023, if:

1. the Company can demonstrate it was carrying on business (or was operational) when it was dissolved;
2. the registered agent agrees to act, and files a declaration confirming the Company's records (including all compliance documents and information) have been updated;
3. the Company pays all fees due to the BVI Registry;
4. the BVI Registrar is satisfied the restoration is fair and reasonable; and
5. 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.

New Court Restoration Process

A dissolved Company can be restored by a Court Order after 1 January 2023, if:

1. the Company was dissolved by virtue of a liquidation;
2. the restoration is being made to initiate, continue or discontinue legal proceedings in the name of or against the Company;
3. the Company was not carrying on business when it was dissolved;
4. the restoration is being made so the Company can make an application for its property (vested in the Crown *bona vacantia*) to be returned to the Company; or
5. the Company cannot be administratively restored and the Court considers it just and fair to restore the Company.

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.

Companies that are struck-off (but not dissolved) before 1 January 2023 can still be administratively restored under the old regime, provided all outstanding fees are paid: (1) within their seven year strike-off period; or (2) by 30 June 2023 (whichever date is earlier).

Companies that are dissolved before 1 January 2023 can still be restored under the old Court Order regime, provided the application is made: (1) within seven years of the Company's dissolution date; or (2) by 30 June 2023 (whichever date is earlier).

Record keeping requirements

Companies must maintain records (including accounts) that are sufficient to show and explain their transactions and which enable the Company's financial position to be determined with reasonable accuracy ("**Records**"). The Records must be maintained for at least five years. Provided the Company is not regulated, the Records do not have to be audited, filed with any authority or in any particular format.

From 1 January 2023, Companies must prepare an additional annual return, containing prescribed financial information. The form of the annual return has not yet been finalised, but we expect it to include a basic balance sheet and income (profit and loss) statement. This new annual return requirement does not apply to Companies that are listed, regulated, or file tax returns with the BVI Inland Revenue.

The annual return must be filed with the registered agent, within 9 months of the Company's financial year end. Annual returns will not be made available for public inspection. Most companies elect to have a calendar fiscal year (1 January – 31 December), which means their first annual return will not be due until 30 September 2024.

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 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, confirming the Disclosure Requirements are invalid and that 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 objective pursued. This landmark decision may have implications on the commitments made by the British Overseas Territories

Continued

(including the BVI) and Crown Dependencies, to establish publicly available beneficial ownership registers by 2023.

Bearer shares

The Amendments abolish bearer shares. Any existing bearer shares will be automatically converted into registered shares on 1 July 2023.

Continuations

From 1 January 2023, Companies that want to continue into a foreign jurisdiction must first 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.



FIND US

Carey Olsen (BVI) L.P.
Rodus Building
PO Box 3093
Road Town
Tortola VG1110
British Virgin Islands
T +1 284 394 4030
E bvi@careyolsen.com



FOLLOW US

Visit our corporate team at
careyolsen.com



PLEASE NOTE

This briefing is only intended to provide a very general overview of the matters to which it relates. It is not intended as legal advice and should not be relied on as such. © Carey Olsen 2022.