

Restoration of a British Virgin Islands company

Service area / [Corporate](#)

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Companies incorporated in the British Virgin Islands (the “BVI”) are hugely popular offshore vehicles. However, when their purpose comes to an end, they will either be liquidated and dissolved or left to be struck off the register of companies in the BVI (the “Register”). Sometimes though, there is a need to restore a BVI company that has been struck from the Register and/or dissolved, for example, when an asset of value has been discovered or a creditor comes to light.

Restoration Processes

The Registrar of Corporate Affairs (the “Registrar”) in the BVI has responsibility for the incorporation, striking off and restoration of companies to the Register. For the purpose of this guide, we will be looking at the two restoration processes available in the BVI:

- restoring a company that has been struck off the Register but not yet dissolved; and
- restoring a company that has been dissolved.

A company which has been struck off the Register but not yet dissolved can be restored to the Register by submitting an application, in the approved form, with the relevant payments to the Registrar.. Restoring a company that has been dissolved requires an application to be made to the Court.

Administrative Strike Off

The Registrar may strike a company off the Register if the company:

- fails to pay its annual licence fee (or any late payment penalties);
- does not have a registered agent in the BVI;
- fails to file any return, notice or document required to be filed under the BVI Business Companies Act, 2004 (the “Act”).
- has ceased to carry on business (and the Registrar is satisfied this is the case);
- is carrying on business without a licence, permit or the requisite authority required under BVI law; or
- is regulated under the BVI financial services legislation and has had its licence cancelled or revoked by the BVI Financial Services Commission.

A company that is struck off the Register will not be immediately dissolved. The company must remain struck off for a continuous period of seven years before it is dissolved. During this time the company retains its legal status but is incapacitated, which gives rise to a number of significant implications. For further information on striking a company off the Register, please refer to Carey Olsen’s guide on “Administrative strike off”.

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Dissolution of a solvent BVI company

A solvent company incorporated in the BVI will be dissolved: (a) immediately following the voluntary liquidation process prescribed by the Act; or (b) seven years from the date the company is struck off the Register.

Restoring a company struck off the register but not yet dissolved

Where a Company has been struck off the Register but is not yet dissolved, the company, a creditor, a member or a liquidator of the company can make an application to the Registrar to restore the company to the Register within seven years from the date of strike off from the Register. This application must be made before the Company is dissolved. Before the company can be restored, the company or other applicant must pay all outstanding fees and penalties due to the Registry and a restoration fee. Once restored, the Registrar will issue a certificate of restoration and the company will be deemed to have never been struck off the Register.

Where a company has been struck off the Register for not having a registered agent, the Registrar will not restore the company unless she is satisfied: (a) that a licenced registered agent has agreed to act; and (b) it is fair and reasonable for the name of the company to be restored to the Register. If the company is restored, it is required to immediately appoint a registered agent following its restoration.

If the Registrar refuses to restore a company, the company, a creditor, a member or a liquidator may, within 90 days, appeal to the Court to direct the Registrar to restore the company upon such terms and conditions as the Court considers appropriate. The Court will only grant such an order if it is satisfied that it would be just for the company to be restored to the Register.

Restoring a dissolved company (not previously in voluntary liquidation)

Where a company has been dissolved, an application to restore the company to the Register may be made to the Court by a creditor, a former director, a former member or a former liquidator of the company or any person who can show an interest in having the company restored. An application to restore a dissolved company must be made within ten years of the date on which the company was dissolved.

Notice of any application for restoration of a dissolved company must be served on: (a) the Registrar; (b) the Financial Secretary of the Ministry of Finance; and (c) if at any time prior to its dissolution the company was a regulated person, the Financial Services Commission, each of whom is entitled to appear and be heard on the hearing of the application to restore the dissolved company. The Registrar will ordinarily attend the Court hearing and the applicant will be required to pay the Registrar's limited costs for attending Court.

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 or struck off the Register. Before the company can be restored, the company must pay all outstanding fees and penalties due to the Registry and a restoration fee.

The Court will apply certain tests to determine if a company should be restored. For example, in *Yeung Kwok Mung v The Attorney General and the Financial Services Commission*, the Court held that a company should be restored only when necessary for the purpose of: (a) dealing with matters which should have been dealt with in the winding up but were inadvertently overlooked; or (b) which have unexpectedly arisen subsequently. In *Dedyson Enterprises Limited v Registrar of Corporate Affairs* the Court held that the powers to restore a dissolved company to the Register are intended to be exercised only when the Court considers that the restoration of the company will serve some beneficial purposes consistent with the requirements of justice.

Where the Court makes an order restoring the company to the Register, a sealed copy of the order is filed with Registrar. The Registrar will then restore the company from the date and time the order is filed at the Registry. A company that has been restored to the Register is deemed to have continued in existence as if it had not been dissolved or struck off the Register.

Restoring a company dissolved following voluntary liquidation

When a company was in solvent voluntary liquidation prior to its dissolution, the Court will only restore the company to the Register if:

- the applicant nominates a person to be the company's liquidator, if the company is restored to the Register;
- the person nominated to act as liquidator has consented to act and is eligible to act as liquidator of the company; and
- satisfactory provision has been made or will be made for the expenses and remuneration of the liquidator, if appointed.

If the Court restores the company to the Register it will be restored "in liquidation" and a voluntary liquidator will be appointed to the company. In light of this, the Court can appoint the liquidator nominated by the applicant or such other person who is eligible to act as liquidator. If it is the intention of the party making the application to restore the company to a pre-liquidation status, a second application to the Court will be necessary to terminate the liquidation.

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Property of a dissolved company

Where a company is restored to the Register, any property situated in the BVI, other than money, that vested in the Crown and that has not been disposed of, must be returned to the company upon its restoration to the Register. 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 the dissolution of the company; 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).

If you require any further information in respect of administrative strike off, solvent voluntary liquidation, dissolution and/or restoration of a BVI company, please contact one of the Carey Olsen BVI team.



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