

Voluntary liquidation of a solvent British Virgin Islands company

Service area / [Corporate, Restructuring and Insolvency](#)

Legal jurisdictions / [British Virgin Islands](#)

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This briefing note focuses on the solvent liquidation of non-regulated BVI companies.

The voluntary liquidation of a solvent BVI company is regulated by the BVI Business Companies Act, as amended (**BCA**). The BCA applies to all companies that have been incorporated, re-registered (whether voluntarily or automatically) or continued as BVI companies under the BCA.

Solvent liquidation is a method by which directors/shareholders are able to bring the affairs of a BVI company to an orderly close and, at the completion of the process, the BVI company is permanently dissolved and can no longer be restored or sued in its own name.

Regulated entities

If the BVI company is, or has at any time been, a regulated person in the BVI (e.g. a mutual fund, bank, trust company or insurer), a liquidator may not be appointed unless the BVI Financial Services Commission has given:

- its prior written consent to such BVI company being put into voluntary liquidation; and
- its prior written approval of the appointment of the individual(s) proposed to be appointed as liquidator.

Eligibility for solvent liquidation

Under the BCA, a BVI company may only be put in solvent liquidation if it:

- has no liabilities; or
- is able to pay its debts as they fall due (*cash flow test*); and
- the value of its assets equals or exceeds its liabilities (*balance sheet test*).

If a BVI company does not satisfy the relevant solvency tests, or it is of doubtful solvency, it can be placed into insolvent liquidation in accordance with the procedure set out in the Insolvency Act, 2003 (**Insolvency Act**).

Whilst not a requirement, it is generally market practice for directors of a BVI company to discharge any liabilities, distribute any remaining assets to the shareholders of the BVI company and to agree the liquidator's fees/expenses prior to initiating a liquidation in order to streamline the liquidation process and to ensure that the liquidation documents contain no commercially sensitive information.

Initial commencement

Subject to the specific terms of the memorandum and articles of association of a BVI company, a solvent liquidation of a BVI company may be commenced either by a resolution of its directors or a resolution of its shareholders.

To commence a solvent liquidation, directors of a BVI company must approve, by way of resolution:

- a declaration of solvency (attaching a statement of the company's assets and liabilities in an approved form); and
- a liquidation plan (detailing, amongst other things, the estimated timeframe for liquidation and identifying and instructing the proposed liquidators).

Whilst directors of a BVI company will often approve the declaration of solvency and the liquidation plan and largely steer the process in its initial stages, the memorandum and articles of association of a BVI company may require that the liquidation plan and appointment of the liquidator also be approved by the shareholders (regardless of whether they have already been approved by the directors).

Appointment of liquidator

A person does not need any special qualifications to act as a liquidator in a solvent liquidation in the BVI unless the BVI company is a regulated entity, in which case the liquidator will likely need to be a licensed insolvency practitioner.

A liquidator must be a natural person and cannot be a corporate entity.

However, certain individuals are restricted from acting as liquidators including undischarged bankrupts and persons (and their close relatives) involved in the management of the company in the previous two years.

The proposed liquidator must accept the appointment in writing and, once received, the BVI company must resolve to formally approve the liquidator's appointment. This resolution must be passed within four weeks of making the solvency declaration and within six weeks of approving the liquidation plan, but in practice the liquidator's consent is often received ahead of time and the appointment of the liquidator is included in the resolutions approving the liquidation documents.

Formal commencement

The liquidation formally commences when the liquidator files the following documents with the BVI Registrar of Corporate Affairs (**Registrar**):

- notice of the liquidator's appointment;
- a copy of the solvency declaration (with or without the statement of assets and liabilities); and
- a copy of the liquidation plan.

The statement of assets and liabilities is not required to be publicly filed but can be if the parties wish to do so.

The liquidator must make the required filings within 14 days of his/her appointment and the filing date will be treated as the commencement date of the liquidation.

Within 30 days of filing the requisite documents with the Registrar, the liquidator must also give public notice of his/her appointment by advertising in the BVI Official Gazette and at least one issue of a newspaper in both the BVI and the BVI company's principal place of business.

Copies of the solvency declaration (with the statement of assets and liabilities) and the liquidation plan must also be kept by the BVI company's registered agent.

Supervision and control

Once the liquidation formally commences, the liquidator has custody and control over the assets of the BVI company and, subject to specific exceptions, the directors cease to have any powers or duties (though they remain in office). Directors can however exercise specific powers granted to them in a written notice from the liquidator.

The role of the liquidator in winding up the affairs of the BVI company is primarily to:

- protect and realise assets of the BVI company;
- discharge all debts, liabilities and claims against the BVI company; and
- distribute surplus assets to the shareholders of the BVI company.

It is important to note that the appointment of a liquidator to a BVI company does not infringe upon the rights of a secured creditor to enforce its security over the assets of a BVI company in solvent liquidation.

In performing his/her duties, the liquidator may exercise all of the powers of the BVI company that are not reserved to the shareholders by the BCA or the BVI company's constitutional documents. This can include:

- executing any contract on behalf of the BVI company;
- borrowing money on secured or unsecured terms;
- prosecuting or defending any legal proceedings; and
- engaging professional advisors.

If authorised by the directors or the terms of the liquidation plan, the liquidator may also carry on the business of the BVI company for up to two years following his/her appointment, if doing so is determined to be in the best interests of the creditors or shareholders of such BVI company.

Removal of a liquidator

The BVI court may, on the application of a director, shareholder or creditor of a BVI company in solvent liquidation, order the removal of a liquidator.

A liquidator may be removed if the court finds a defect in his/her appointment or if the liquidator has failed to comply with an order of the court.

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The court also has discretion to remove a liquidator if it is determined that the liquidator:

- has a conflict of interest;
- falls short of the standards expected of a competent liquidator; or
- should be removed for some other reason determined by the court.

The liquidator must be given at least 14 days' notice in writing of the application to remove them.

If the application is successful and the court orders the removal of the liquidator, the applicant must file a copy of the court order with the Registrar.

Concluding a solvent liquidation

As outlined above, in a solvent liquidation, the principal duties of a liquidator are to discharge any debts or liabilities of the BVI company and distribute any residual capital to the shareholders of the BVI company.

It is commonplace (though not required) for the liquidator to prepare a statement of account for the shareholders at the completion of the liquidation of the BVI company as part of the liquidation plan.

Filing of completion statement with the Registrar

Once the liquidator has concluded the affairs of the BVI company, a completion statement must be filed with the Registrar. The Registrar will then strike the BVI company off the Register of Companies and issue a certificate of dissolution.

Publication of Notice of Strike off and Dissolution

Upon receiving the certificate of dissolution, the final duty of the liquidator is to publish a notice in the Gazette that the BVI company has been struck off and dissolved.

The dissolution of the BVI company is effective from the date of the issue of the certificate and, from that date, the BVI company can no longer incur liabilities or sue or be sued in its own name.

The BVI courts have indicated that, once a BVI company has been liquidated and subsequently struck off and dissolved, applications to restore the company will only be successful in very limited circumstances. These include circumstances where assets were overlooked or have unexpectedly arisen after the completion of the liquidation process.

Where the court grants the restoration of a BVI company following its dissolution in this manner, the BVI company will be restored to a state of being in liquidation in order for any deficiencies in the liquidation to be addressed and for the liquidation to be finally concluded.

If you require any further information on solvent liquidation of a BVI company, please contact one of the Carey Olsen team.

For information on the insolvent liquidation process, please refer to Carey Olsen's briefing note on "[Appointment of a liquidator to an insolvent company incorporated in the BVI](#)".



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