



New year, new BVI restoration regime

Service area / [Dispute Resolution and Litigation](#)

Legal jurisdiction / [British Virgin Islands](#)

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As we enter the new year, we also welcome the implementation of the British Virgin Islands (“BVI”) Business Companies Act (the “Act”) amendments which came into force on 1 January 2023.

The amendments update several parts of the Act and continues to conform with best practice and international standards. As well as providing a new procedure for the restoration of dissolved companies, the amendments also include:

- making a list of a company’s current directors publicly available;
- BVI residency requirements for voluntary liquidators;
- new requirements in relation to continuation outside of the BVI;
- introduction of an annual financial return to be lodged with BVI registered agents;
- a framework for the introduction of a Register of Persons of Significant Control; and
- the abolition of bearer shares in BVI.

In this article we focus on the new procedure for the restoration of dissolved BVI companies and how it will impact our clients in the People’s Republic of China (“PRC”) and elsewhere in Asia.

Struck-off companies

Under the Act as it previously stood, there was a seven year grace window between a company being struck off the register of companies (the “Register”) and that company being dissolved.

Once stuck-off, a company continues to exist in a “suspended state” and neither the company, its directors and members or any receiver or liquidator can take any actions or act in any way in connection with the company’s assets.

This grace window has now been abolished under the amendments and instead, once a company is struck off the Register it will also be dissolved on the date that the BVI Registrar publishes a notice of the striking off in the Gazette.

Transitional arrangements will apply for companies that are struck off but not yet dissolved as at 1 January 2023 if they wish to be restored to the Register. However, PRC and Asian clients with a company that has assets or remains in operation should consider whether to take action to restore the company as soon as possible. Further, given the severity of the consequences now arising from falling behind on fees and filings, additional care should be taken to make sure that relevant entities remain in good standing at all times.

Dissolved companies

Under the new restoration procedure introduced by the amendments, dissolved companies may as of 1 January 2023 apply for restoration to the BVI Registrar under s.217 of the Act within 5 years of the date of dissolution without applying to the Court provided that:

1. the company was carrying on business or in operation at the date of its striking off and dissolution;
2. a Registered Agent (“RA”) has agreed to act;
3. the RA has declared that company’s records are up to date;
4. the company’s directors and owners comply with BVI AML laws and regulations.

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This option is welcomed and will be attractive for our PRC and Asian clients as it is faster, streamlined and cost efficient. However, it does only apply to straightforward restorations. The old regime continues in parallel to this under s.218 of the Act, and an application to the Court in the usual (and previous) procedure must be made if:

1. the company was struck off the Register and dissolved following the completion or termination of its voluntary liquidation under the BCA or liquidation under the Insolvency Act;
2. on the date of dissolution, the company was not carrying on business or in operation;
3. the purpose of restoration is to initiate, continue or discontinue legal proceedings in the name of or against the company or to apply for the company's property that has vested in the Crown *bona vacantia* to be returned; or
4. in any other circumstances not falling under the above.

An application to the Court may be made by a creditor, former director, former member or former liquidator of the company, a person who (but for the company's dissolution) would have been in a contractual relationship with the company, a person with a potential legal claim against the company or any other person who can establish an interest in having the company restored to the Register.

Once restored to the Register, the company is deemed to have never been struck off or dissolved.

Time limits

Applications for the restoration of a BVI company must now be made no more than 5 years after the date of the dissolution of the company. This is a significant change as the previous period was 10 years to bring a claim. This means that clients in PRC and Asia will need to be more vigilant as to the standing of BVI companies and act more swiftly if restoration is required.

There are however, transitional provisions: existing dissolved companies will have 5 years from 1 January 2023 within which to apply to the Court, unless the existing period comes to an end before that, in which case the earlier date applies.

Abolition of bearer shares

Although the issuance of new bearer shares has been prohibited under the Act since 2010 and existing bearer shares were generally immobilised, bearer shares continued to exist under the Act. However, from 1 July 2023 every existing bearer share of a bearer share company shall be deemed to be converted to a registered share and treated as if it had been issued on or after the 1 July 2023 as a registered share. If the owner of the bearer share is unknown, the bearer share is deemed to be transferred to the company which shall hold the share in trust for the owner thereof.

This is of particular importance for our clients in the context of the restoration of a bearer share company, which previously would be complicated by the fact that the bearer shares were immobilised.

Conclusion

These are very welcomed changes which should strengthen the reputation of the BVI for those dealing with BVI incorporated companies.

We strongly recommend that all of our PRC and Asian clients check the standing of their BVI entities to ensure that the companies are not struck-off or dissolved, and if they are, to act swiftly in restoring them. Given that generally companies are struck-off and dissolved as a result of failure to pay annual fees or penalties or failing to appoint or replace a registered agent, companies should keep up to date with their filings and payment of relevant fees to the Registrar and ensure to engage a registered agent in order to avoid becoming unintentionally struck off and dissolved. The team at Carey Olsen are on hand to assist with any such restorations or queries in relation thereto.



FIND US

Carey Olsen Hong Kong LLP
Suites 3610-13
Jardine House
1 Connaught Place
Central
Hong Kong SAR

T +852 3628 9000

E hongkong@careyolsen.com



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Visit our dispute resolution and litigation team at [careyolsen.com](https://www.careyolsen.com)



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