

British Virgin Islands corporate and finance update Q2 2024

Service area / [Banking and Finance, Corporate](#)

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Mutual evaluation report

In February 2024, the Financial Action Task Force published its mutual evaluation report on the BVI, its compliance with the FATF Recommendations and the effectiveness of anti-money laundering/counter-terrorist financing controls and systems.

In response, the BVI has:

- published a draft of the [BVI Business Companies \(Amendment\) Act, 2024](#) (the “**Bill**”) for public consultation;
- started a revision of its National AML/CFT Policy; and
- begun the implementation of its National Action Plan.

Proposed amendments to the BVI Business Companies Act

The Bill will amend the BVI Business Companies Act, 2004 (the “**Act**”) and will impact all companies that are incorporated or registered in the BVI.

Register of members

A company’s register of members will have to include the following additional information: (a) if a shareholder is acting in its capacity as nominee (if so, the register also needs to include the name and address of each nominee shareholder and when they cease to be a shareholder); and (b) if any person has nominated a nominee shareholder (if so, the

register also needs to include the name and address of each nominator and date they cease to be a nominator).

The Bill will also introduce a new requirement for companies to file a copy of their register of members with the BVI Registry of Corporate Affairs (the “**BVI Registry**”): (a) within 6 months of the Bill being brought into force; (b) within 14 days of any change being made; (c) when a foreign company continues into the BVI; and (d) within 14 days of a company’s incorporation.

The filed register of members will not be available for public inspection. Access will be limited to: (a) the company; (b) its registered agent; (c) anyone the company has authorised (in writing); (d) a competent authority, exercising its powers as a regulator of a financial services business, tax administrator, or for the purpose of dealing with a matter for which it has authority under an enactment (a “**Competent Authority**”); and (d) law enforcement agencies.

Register of directors

A company’s register of directors will have to include the following additional information: (a) if a director is acting in its capacity as nominee (if so, the register also needs to include the name and address of each nominee director and when they cease to be a director); and (b) if any person has nominated a nominee director (if so, the register also needs to

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include the name and address of each nominator and date they cease to be a nominator).

A company is already required to file a copy of its register of directors with the BVI Registry. When the Bill is enacted, it will change when this filing needs to be made, to: (a) within 30 days of any change being made to it; (b) as soon as a foreign company continues into the BVI; and (c) within 14 days of a company's first director(s) being appointed. The Bill also reduces the timeframe within which a company must appoint its first director(s) from 6 months to 14 days.

At the moment, a company's register of directors is not available for public inspection, but it is possible to conduct a search at the BVI Registry to obtain the names of a company's incumbent directors. When the Bill is passed, access to the register of directors will be expanded to include: (a) the company; (b) its registered agent; (c) anyone the company has authorised (in writing); (d) a Competent Authority; and (d) law enforcement agencies.

Register of beneficial ownership

At the moment, information about the beneficial owners of a company is entered on the beneficial ownership register maintained pursuant to the Beneficial Ownership Secure Search System Act (the "**BOSS Register**"). When the Bill is enacted, companies will also have to prepare and file new register of beneficial ownership (the "**ROBO**") with the BVI Registry: (a) within 6 months of the Bill being brought into force; (b) within 14 days of a Company's incorporation; (c) when a foreign company continues into the BVI; and (d) within 30 days of any change being made to it.

Once the ROBO is filed, the BVI Registry will adopt such measures as are considered necessary and adequate to verify the information contained in it, and to ensure it is kept up to date.

Access to the ROBO will be limited to: (a) the company; (b) its registered agent; (c) anyone the Company has authorised (in writing); (d) a Competent Authority; and (e) law enforcement agencies.

Discontinuations

When the Bill is passed, the BVI Registry will only issue a certificate of discontinuance if: (a) a company has satisfied the existing discontinuation requirements; (b) a company has included the new nominee director/shareholder information in its registers of directors/members and filed these, together with its ROBO, at the BVI Registry (the "**New Register Requirements**"); (c) the company has filed the address of its registered office in its country of incorporation with the BVI Registry; (d) there is no unsatisfied request from a Competent Authority, for the company to produce documents or provide any information; and (e) there is no pending criminal or civil litigation proceeding against the company, its shareholders, directors, officers or agents.

Continuations

When the Bill is enacted, the BVI Registry will only issue a certificate of continuance if the foreign company has: (a) satisfied the existing continuation requirements; (b) complied with the New Register Requirements; (c) and filed the address of its registered office in its country of incorporation with the BVI Registry.

Foreign companies

When the Bill is passed, the BVI Registry will only allow a foreign company to register in the BVI if it has: (a) satisfied the existing foreign company requirements; (b) complied with the New Register Requirements; and (c) filed the address of its registered office in its country of incorporation with the BVI Registry.

Dissolution

When the Act was last amended on 1 January 2023, there were significant changes to how a company could be struck-off and dissolved. Click [here](#) for more information about these changes.

When the new Bill is passed, the situations in which a company can be dissolved will be expanded to include where it fails to file any information that it is as required under BVI law and/or it fails to pay any penalty imposed on it.

Currently, the dissolution date is the date that a final notice is published in the BVI Gazette. This has caused some practical issues for the BVI Registry's portal (VIRRGIN) because the BVI Gazette is only published weekly, resulting in the actual dissolution date noted on VIRRGIN and the date published in the BVI Gazette not being aligned. In light of this, the Bill introduces a new dissolution process, whereby the BVI Registry will (unless the company shows cause to the contrary): (a) issue a notice to the company confirming it will be dissolved on a specific date (being 90 days after that notice); (b) publish a notice in the BVI Gazette of its intention to dissolve the company; (c) dissolve the company on that dissolution date; and (d) publish a notice of the dissolution in the BVI Gazette.

Restoration

When the Act was last amended, there were significant changes to the restoration process. Please click [here](#) for more information about these restoration processes. In short, there are currently two restoration processes: (1) the administrative restoration process; and (2) the Court restoration process.

When a company is being restored, its registered agent needs to submit a declaration, confirming that it has received all necessary company records and documents for the company (the "**Company Records**"). When the Bill is passed, the Company Records will need to include the New Register Requirements. The Bill will also allow a company to be restored if the registered agent provides an undertaking that it will receive the New Company Records within 14 days of the restoration date. If the undertaking is not satisfied, the company will be dissolved again.

Continued

At the moment, it is possible for a person who would have been in a contractual relationship with the company (but for the dissolution) to make an application for it to be restored. The Bill clarifies this does not include a registered agent, a former registered agent or any person who is/was an agent of or in an agency relationship with a Company. This will prevent companies relying on their agents to avoid penalties or allow agents to rectify their own shortcomings in relation to dissolved companies.

Economic substance

All companies and limited partnerships that are registered or incorporated in the BVI must carry out an annual review of their assets, activities, and tax residency and then prepare a formal declaration confirming the results of this annual review (an “**ES Declaration**”). A copy of the ES Declaration is filed with the BVI International Tax Authority. Most companies and partnerships have a 30 June or 29 December filing deadline for submitting their ES Declarations. For more information about this requirement and the impending filing deadlines, please see our [Economic Substance Guide](#).

Annual returns

A company must file its first annual return within 9 months of its fiscal year end. If the company maintains a standard calendar fiscal year, its first annual return must be filed by [30 September 2024](#) and should cover the period 1 January 2023 – 31 December 2023. This requirement does not apply to companies that are listed, regulated, or have filed tax returns with the BVI Inland Revenue. For more information about this requirement, and the impending filing deadline, please see our [Annual Returns Guide](#).

The recent and forthcoming changes to the Act are to be welcomed and together with the outcome of the recent OECD’s supplementary review of the BVI should help the BVI work towards being removed from the European Union’s “grey list”. The next update of the European Union’s grey list is expected to take place in October 2024.

If you have any questions on or would otherwise like to discuss the amendments and other points raised in this briefing note, please do not hesitate to contact your usual contact at Carey Olsen or bvi@careyolsen.com.



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