



British Virgin Islands
Financial Services Commission

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Industry Circular No. 5 of 2022 - Legislative Updates

Wednesday, 5 October, 2022

The BVI Business Companies Act & The BVI Business Companies Regulations Receive Significant Updates

The BVI Business Companies (Amendment) Act, 2022 (https://www.bvifsc.vg/sites/default/files/act_no_6_of_2022-bvi_business_companies_amendment_act_2022_1.pdf) ("the Amendment Act") and the BVI Business Companies (Amendment) Regulations, 2022 (https://www.bvifsc.vg/sites/default/files/si_no_73_of_2022-bvi_business_companies_amendment_regulations_2022.pdf) ("the Regulations") were gazetted on 12th August 2022 and are scheduled to come into force on **1st January 2023**.

The Amendment Act and Regulations will strengthen the BVI's legal and regulatory regime and allow for continued compliance with new and emerging international standards. The amendments include provisions addressing the abolition of bearer



shares; changes in the dissolution and the striking-off of companies regime; new financial reporting rules for BVI BCs; restrictions in relation to charitable or non-commercial business; refining the continuation of BVI BCs outside the Territory; access to the list of directors; inclusion of alternate directors in the register of directors; requirements for the appointment of voluntary liquidators; and how legacy companies are to be treated.

BVI Business Companies (Amendment) Act, 2022

Abolition of Bearer Shares

The issuance of new bearer shares was immobilised since 2010, thereby requiring existing and new bearer shares to be vested in an approved or recognised custodian. With the new amendments, the bearer shares regime is now completely done away with. By the 1st of July 2023, all existing bearer shares which have not been redeemed or converted into registered shares will be deemed converted to registered shares. Accordingly, companies holding bearer shares by then will be deemed to be companies holding registered shares for and on behalf of the persons entitled to such shares.

Striking-Off and Dissolution of Companies

Currently, the BVI BCA provides that where a company has been struck off the register of companies, after a period of seven years, it is deemed dissolved. With the amendments, a company that is struck off the register will instead be deemed dissolved on the date that the Registrar publishes a striking off notice in the Gazette. Prior to effecting such striking off (to be followed by dissolution), the Registrar will provide a defaulting company up to a period of 90 days within which to bring itself into good standing.

The period within which a company that has been struck off and dissolved can apply to the Registrar or the High Court to be restored has also been amended from seven years to five years. The amendments prescribe different criteria for applications for restoration through the Registrar and the High Court.

Forced Resignation on Account of AML/CFT Laws



The amendments also aim to streamline the relationship between a registered agent and a company for which it acts as such agent in the context of the Territory's AML/CFT laws. The registered agent is now required to resign as an agent of a company if the agent has terminated its business relationship with the company pursuant to the laws relating to money laundering, terrorist financing or proliferation financing.

New Financial Reporting Rules for BVI BCs

The Amendment Act introduces the requirement to file an annual return which is due nine months after the end of the year to which the annual return relates. The annual return is to be filed with the company's registered agent. The requirement for filing an annual return applies to all BCs, with the exception of: listed companies; companies regulated under a financial services legislation requiring the reporting of financial statements; and companies that file their annual tax returns and financial statements with the BVI Government's Inland Revenue Department. Failure by a company to file its annual return constitutes an offence and may result in prosecution or a fine. The amendments require the FSC, by an Order published on its website, to prescribe the form for filing an annual return. The relevant Order is expected to be finalised during the course of 2022. However, the first filing of annual returns will not be due until 2024, with a due date not going beyond September 2024.

Restrictions in Relation to the conduct of Commercial and Charitable or Non-Commercial Business

The amendments include an expansion of the regime for the incorporation of BCs that wish to engage in both commercial and charitable or non-commercial activities. Companies that wish to engage in such combined activities must first submit an application to the Registrar for approval. The purpose and structure of the company's charitable or non-commercial purposes must be clearly defined and set out in the company's memorandum. Additional obligations are provided in the amendments, including the need to segregate a company's charitable or non-commercial assets from its commercial assets where the company carries out both commercial and charitable or non-commercial activities.

Refining of BVI BC Continuation Regime



Amendments to the BVI BC continuation regime include provisions for companies wishing to continue outside the Virgin Islands to provide advance notice of such intention to its members and creditors. Additionally, a notice of intention to continue outside the Virgin Islands should be published in the Gazette and on the company's website and must include an indication of the jurisdiction to which the company wishes to continue. A notice of intention to continue outside the Virgin Islands may be rescinded by filing a notice of rescission with the Registrar before action is taken on the initial notice of intent to continue.

Access to List of Directors

The amendments now provide for accessibility to a company's list of directors. The list will relate to current directors on the company's register of directors. An application must be submitted to the Registrar in order to access a company's list of directors.

Register of Directors to include Alternate Directors

The amendments now make it clear that a person who is appointed as an alternate director must have his or her name included in the company's register of directors. This will not apply where the person appointed as an alternate director is already a director of the company. However, in such a circumstance the company is required to record in its books the name of the director as an alternate director.

Legacy Companies

The amendments create a new Part VIIA in Schedule 2 of the Act. This Part essentially deals with legacy companies – that is, existing struck-off companies and existing dissolved companies as of the date of the coming into force of the amendments (1st January 2023 or the effective date).

Struck off Legacy Companies

As of the effective date, existing struck-off companies which had seven years within which to apply to the Registrar to be restored to the register will now have a maximum of 6 months (to June 30th, 2023) to apply to the Register to be restored.



However, if the period within which an existing struck-off company may be restored to the register falls anywhere between 1st January and 30th June 2023, it is that period that will apply. For example (applying the 7-year rule), if Company A's maximum period of restoration falls on 15th March 2023, then Company A can only be restored to the register by the Registrar if the application for restoration is received on or before 15th March 2023 – not 30th June 2023. If, on the other hand, Company A's maximum period of restoration falls on any date after 30th June 2023 (e.g. 15th September 2023), then Company A can only apply to be restored to the register by the Registrar (after the effective date) up to 30th June 2023 – not beyond. If an existing struck-off company fails to apply within the specified period to be restored to the register, it is deemed to be dissolved on the day following the end of the specified period.

Dissolved Legacy Companies

In a similar fashion, a company that was dissolved prior to the effective date has only five years within which it can apply to the High Court to be restored to the register. However, if the period within which such an existing dissolved company falls anywhere within the 5-year period from the effective date (that is, 1st January 2023 and 31st December 2027), it is that period that applies. For example, if an existing dissolved Company B's maximum period for restoration falls on 10th June 2025, then Company B has only up to that date within which it can apply to be restored to the register – not 31st December 2027. If, on the other hand, Company B's maximum period of restoration falls on any date after 31st December 2027 (e.g. 10th June 2029), then Company B can only apply to the High Court to be restored to the register (after the effective date) up to 31st December 2027 – not beyond.

BVI Business Companies (Amendment) Regulations, 2022

The amendments to the BVIBCA have necessitated amendments to the BVI Business Companies Regulations, which include the streamlining of references from seven years (with regards to dissolutions and restorations of BVIBCs) to five years. The amendment Regulations further identify the necessary qualifications that a person ought to have to be appointed as a voluntary liquidator. These qualifications are cumulative and must all be satisfied.



The Registrar will, in due course, publish a list of FAQs on the Amendment Act and regulations, which will include information on streamlining the new provisions into

Anti-Money Laundering Regulations and Code of Practice Available On Our Website

The BVI Financial Services Commission has published the Revised Editions of the Anti-Money Laundering and Terrorist Financing (Amendment) Code of Practice, 2022 (https://www.bvifsc.vg/sites/default/files/anti-money_laundering_and_terrorist_financing_amendment_code_of_practice_2022.pdf) and the Anti-Money Laundering (Amendment) Regulations, 2022 (https://www.bvifsc.vg/sites/default/files/anti-money_laundering_regulations.pdf) here on our website.

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