



BVI Business Companies Act changes are now in force with effect from 1 January 2023

January 2023

The Business Companies (Amendment) Act, 2022 (**Companies Amendment Act**) of the British Virgin Islands (**BVI**) which amends the BVI Business Companies Act, 2004 (**Companies Act**), came into force on 1 January 2023. The BVI Business Companies (Amendment) Regulations, 2022 (**Companies Amendment Regulations**) which amends the BVI Business Companies Regulations, 2020, also came into effect at the same time as the Companies Amendment Act.

The amendments introduced by the Companies Amendment Act and the Companies Amendment Regulations represent the commitment of the BVI to ensure that its financial services industry is aligned with international best practices and compliant with the standards imposed by the Financial Action Task Force. The changes also embody the policy decisions of the Company Law Review Advisory Committee following public consultation in 2021.

A list of key changes introduced are as follows:

1. BVI residency requirement for liquidators in solvent liquidations

Prior to 1st January 2023, there was no residency requirement for an individual appointed as liquidator to conduct a solvent voluntary liquidation of a BVI company under Part XII of the Companies Act. The Companies Amendment Act has introduced a residency requirement for liquidators. To qualify, an individual must have physically lived in the BVI for at least 180 days, either continuously or in aggregate, prior to their appointment.

However, where joint liquidators are appointed, at least one of the joint liquidators is required to satisfy the BVI residency requirement but the BVI residency requirement shall not apply to the

other joint liquidator if he or she is resident outside the BVI.

2. Names of Current Directors of a BVI Company are now publicly available

Although the Register of Directors of a BVI company (with names, addresses, nationality, date of birth and other information required to be filed with the Registrar under Sections 118A and 118B relating to current and past Directors) continues to be a matter of private record, it is now possible to obtain a list of the names of the **current directors** of a BVI company through the Virtual Integrated Registry and Regulatory General Information Network (VIRRGIN), which is the online information platform maintained by the BVI Financial Services Commission for filing and accessing information regarding BVI entities. The personal particulars of the current directors (e.g. addresses, nationality, date of birth and other information) will remain confidential and the names of any past directors will not be disclosed.

In addition, the name of a current director of a BVI company is only available by way of a search against a particular company. It is not possible to search against names of individuals to see if that person is a director of any company.

3. New financial reporting rules

Although every BVI company must maintain financial records to adequately show and explain its transactions, there was no requirement for an unregulated company to maintain records in any prescribed form, or to have such records audited or filed with any regulatory or supervisory authority.

As from 1 January 2023, BVI companies are now required to file an annual financial return (which will include specific financial information) with their BVI registered agent within nine (9) months of the end of the financial year to which it relates. The actual form of annual financial return will likely consist of a relatively simple form balance sheet and profit and loss account.

The annual financial return will not be publicly available or accessible (though the registered agent will have an obligation to inform the Registrar of Corporate Affairs within thirty (30) days after the annual financial return was due, if it has not received the annual financial return, and **there will be no requirement that the financial information included in an annual return be audited.** The requirement to file an annual financial return will not apply to

- i. companies whose shares are listed on a recognized exchange.
- ii. a company that is regulated under BVI financial services legislation and already provides financial statements to the BVI Financial Services Commission accordance with the requirements of that financial services legislation, and
- iii. a company that already files its annual tax return with the BVI Tax Authority.

A company that fails to file an annual financial return may be fined and ultimately struck-off.

4. Bearer shares

Bearer shares will be phased out in the BVI, and from 1 January 2023 it is no longer permissible to issue bearer shares, or to convert or exchange registered shares into bearer shares. From 1 July 2023, any existing bearer shares will automatically be converted into registered shares to be held by the relevant company on trust for the owner of the shares.

5. Register of members

Unless such information is already included in a BVI company's memorandum and articles of association, a company's register of members will need to include the nature of any voting rights. This may, as an example, include whether such voting rights are conditional or unconditional.

6. Continuation outside the BVI

The Companies Amendment Act has introduced a requirement for a BVI company intending to continue or redomicile out of the BVI to undertake the following at least fourteen (14) days before filing to continue out:

- advertise notice of its intention to redomicile from the BVI in the BVI's Official Gazette and on its own website (if any) and specify the jurisdiction to which it intends to continue; and
- notify all of its members and creditors in writing of its intention.

7. Striking off, dissolution and restoration

The previous striking-off regime in the BVI under which companies that were struck off had a seven-year grace period before being dissolved, has been overhauled. As of 1 January 2023, every BVI company that is struck off from that date will be dissolved on the date that the BVI Registrar of Corporate Affairs publishes a notice of striking-off in the BVI Gazette (i.e. almost

immediately). A company will be given 90 days' grace notice to remedy the default actions (e.g. payment of fees) and regularise its status before it becomes liable to be struck off.

Subject to meeting certain prescribed conditions, a BVI company may be restored within five (5) years of being struck off and dissolved by making an application to the BVI Registrar of Corporate Affairs or the Court. Importantly, an application to the BVI Registrar of Corporate Affairs will only be permitted if the company was carrying on business or in operation at the date of its striking-off and dissolution.

8. Public register of beneficial ownership

The BVI has previously committed to introducing a public register of beneficial ownership subject to such registers becoming an international standard. In line with this commitment, a framework will be enacted pursuant to which the BVI may introduce a public register of beneficial ownership by way of future regulations.

This publication is not intended to be a substitute for specific legal advice or a legal opinion. For specific advice on BVI Business Companies Act changes, please contact your usual Loeb Smith attorney or any of the following:

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