



PORTCULLIS NOTICES

MCI (P) 030/07/2022

13 September 2022

AMENDMENTS TO THE BVI BUSINESS COMPANIES ACT

KEY POINTS

Bearer share regime abolished

New strike off and restoration regime

Names of current Directors available to the public

Voluntary Liquidators to be physically present/residing in BVI

Annual Financial Returns filing requirements

The British Virgin Islands (BVI) recently enacted the BVI Business Companies (Amendment) Act, 2022 and the BVI Business Companies (amendment) Regulations, 2022, which will come into force on 1 January, 2023. The new amendments are intended to strengthen the BVI business companies' regime and ensure continued compliance with international standards and emerging global standards in financial services. The links to the amendments are set out below:

- [BVI Business Companies \(Amendment\) Act 2022](#)
- [BVI Business Companies \(Amendment\) Regulations, 2022](#)

BVI BUSINESS COMPANIES (AMENDMENT) ACT, 2022

The following are the key changes to the BVI Business Companies Act and the BVI Business Companies Regulations:

- Bearer Shares

The concept of a bearer share will be removed from BVI business companies legislation. Companies will no longer be permitted to issue bearer shares, convert registered shares to bearer shares or exchange registered shares for bearer shares. Existing bearer shares will automatically be converted to registered shares on 1 July 2023.

- Directors Names Publicly Available

The BVI Registrar of Corporate Affairs will make available, upon request (and likely upon payment of a fee), a list of directors contained in a company's register of directors filed with the Registrar. Only registered users of the online VIRRGIN system will have access to this information when carrying out a search of the company.

The following are important further points to note:

- The complete company's register of directors (which is currently required to be filed with the Registrar and is held privately) will not be available to the public.
- The information made available will not include dates of birth or addresses or the names of former directors.

Portcullis may, on a discretionary basis, provide directors. Please speak with your Portcullis relationship manager if such assistance is required.



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- Register of members to include voting rights

A company's register of members will need to include the nature of any voting rights, unless such information is already included in the company's memorandum or articles of association.

- Struck off companies and dissolution

Presently, a BVI company that is struck off the Register of Companies (e.g. for failing to pay annual fees or failing to retain a registered agent) remains in the 'struck off' state for up-to seven years. During this period, the company, its directors or members (or any receiver or liquidator of the company) may not take any actions or act in any way in connection with the company's assets. If the company is not restored within seven years, it is automatically dissolved and any property of the Company vests bona vacantia in the Crown.

From 1 January 2023, the above regime will be substantially modified and all newly struck off companies will be dissolved on the date the Registrar publishes a notice of striking off in the BVI Gazette, i.e. almost immediately.

Transitional arrangements will apply to companies which are currently struck off, such that if they wish to apply to be restored to the Register, they must do so before the earlier of either:

- 1 July 2023; or
- seven years from their scheduled strike off date.

- Restoration of dissolved companies

The amended legislation provides for a simpler method for dissolved companies to be restored to the Register. Dissolved companies will, subject to certain requirements, be able to apply to the Registrar for restoration within five years of the date of dissolution without the need for a court order. In order to apply for restoration, a company will need a licensed registered agent who has agreed to act in that role and the registered agent will need to declare that they hold up to date information on the company, its directors and owners compliant with BVI anti-money laundering laws and regulations. The company is also required to notify the Crown if any property has been vested in the Crown bona vacantia.



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A company may still be restored by court order in certain circumstances.

When a company is restored, it is deemed never to have been struck off and dissolved.

- New annual financial returns

All BVI companies are currently required to maintain financial records and underlying documentation that show and explain their transactions. These records must be sufficient to enable the company's financial position to be determined with reasonable accuracy at any time. Financial records must be kept for a minimum of five years. However, unless a company is regulated by the FSC (eg a bank, fund, fund manager etc), there is no requirement to prepare those records in a particular form, have them audited or file them with any regulator or other third party.

From 1 January 2023, each company will be required to file an annual financial return with its registered agent within nine months of the end of the calendar year (or, if the company's financial year is not a calendar year, the company's financial year). This return must be retained by the registered agent for at least five years.

However, the above requirements will not apply to the following companies:

- listed companies;
- companies regulated under financial services legislation which already provide financial statements to the FSC under that legislation; and
- companies that file tax returns with the BVI Inland Revenue Department with accompanying financial statements.

A company that is part of a group of companies that prepares and maintains consolidated accounts will, for the purposes of its annual return, be able to file with its registered agent the consolidated accounts of the group provided those consolidated accounts show the accounts of the company.

For holding companies, although the prescribed form of annual return is not yet finalised, we anticipate that a simple unaudited profit and loss account and balance sheet will likely be sufficient.



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If the registered agent does not receive the annual return within 30 days of the due date, it will need to inform the FSC. There is no requirement to file a company's annual return with the Registrar and the return will not be available to the public.

The requirement for a company to comply with its annual return obligations will become one of conditions to maintaining 'good standing'. Failure to file an annual return could also lead to a penalty fine of up to US\$5,000.

Portcullis can assist with the preparation of such accounts for submission together with the annual returns. Please speak with your Portcullis relationship manager if such assistance is required.

- Continuation outside of the BVI

From 1 January 2023 a company that wishes to continue outside the BVI will need to give advance notice to its members and creditors (secured or otherwise) of its intention to continue out of the BVI.

In addition, a BVI company intending to continue to another jurisdiction must at least 14 days before filing to continue out:

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

The above requirements are intended to provide protection and comfort to creditors and members while still allowing a company the freedom to continue out to another jurisdiction.

- Solvent liquidations – BVI residency requirement for liquidators

With respect to solvent liquidations, the definition of 'voluntary liquidator' has been narrowed to mean a person who is either:

- resident in the BVI individual for at least 180 days, either continuously or in aggregate, prior to the appointment; or
- licensed as an insolvency practitioner under the Insolvency Act;



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However, where joint liquidators are appointed, only one of them needs to meet the residence test. Voluntary liquidators appointed prior to 1 January 2023 are allowed to continue to act until the conclusion of the liquidation without complying with the new BVI residency requirement.

- Register of 'persons with significant control'

The BVI Government previously made a commitment to introduce a publicly accessible beneficial ownership register in relation to BVI companies by 2023, subject to a number of caveats and qualifications, and provided such registers were an international standard.

Provisions have now been included in the Act so that the BVI Government may in future regulations set out the requirements for registers of 'persons with significant control'. However, the changes introduced in these amendments do not currently impose the register and no public register of 'persons with significant control' will be introduced with effect from 1 January 2023.

- Charitable companies

The changes to the legislation now allow BVI companies to be used for wholly charitable or non-commercial purposes globally, rather than confined to the BVI as previously. However, charitable companies operating outside the BVI will be subject to increased financial oversight (which may include the preparation and filing of audited accounts with the Registrar) in recognition of the increased risks associated with the use of charitable companies globally to assist or facilitate money laundering, terrorist financing and proliferation financing.

- Resignation of registered agent

The period of notice of resignation required to be given by a registered agent has been reduced from 90 days to 60 days. A registered agent will also no longer be required to resign (or give notice of resignation) if a company is dissolved or where the registered agent is acting for a foreign company which is removed from the Register of Foreign Companies.

Please contact your Portcullis Relationship Manager or one of our representatives for assistance or further information should you have any questions or difficulty in meeting these regulatory requirements.



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