

The BVI Business Companies Act 2004 (“Act”) has been recently reformed aiming, amongst others, to strengthen its resilience to financial crime and incorporate relevant international standards and practices. In this framework, material changes will apply as of January 1<sup>st</sup>, 2023 on the following subjects:

#### **Strike-off**

Under the current form of the Act, once struck off, a BVI company is rendered inactive for a period of up to seven (7) years, during which it may be restored by complying with its pending statutory obligations / requirements. Upon lapse of such period, the company is *ipso jure* dissolved.

Under the amended Act, the aforesaid seven (7) year period is abolished, companies being dissolved shortly after their strike off and following ninety (90) days from the relevant announcement in the BVI Government Gazette.

Transitional provisions will apply until June 30, 2023 for companies already in a struck off state, however immediate action is required to prevent assets related implications.

#### **Post dissolution restoration**

Under the current form of the Act, dissolved BVI companies can only be restored by court order.

Under the amended Act, dissolved companies will be able to apply for restoration to the Registrar of Corporate Affairs (“RCA”) within a period of five (5) years as of the date of their dissolution, provided a licensed agent confirms the availability of all required information and compliance with applicable regulations, especially AML.

The application of the aforesaid simplified procedure is conditional and is not applicable on the following circumstances, which will continue to require the issuance of a relevant court order:

- On the date of dissolution, the company was not carrying on business or operations;
- The company was struck off the registrar and dissolved following the completion of liquidation;
- The purpose of restoration is to initiate, continue or discontinue legal proceedings in the name of or against the company;
- To apply for property that has vested in the Crown *bona vacantia* to be returned to the company; and
- In any other circumstance where the court decides taking into consideration any particular circumstance.

#### **Public information on directors**

Under the amended Act, BVI authorities (Financial Services Commission) will be making available the names of the registered directors of a BVI company upon request and probably a relevant fee. No additional information filed on behalf of the companies to this respect will be publicly available.

#### **Annual returns**

Under the amended Act and on top of current record keeping obligations, BVI companies who are not listed and/or regulated by the financial service legislation and/or which are subject to taxation,

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will be further required to submit to their registered agent annual returns within nine (9) months from the lapse of the respective financial year. The exact form of these annual returns has not been determined but are expected to be simplified and not require audit.

Said information will not form public record and will remain with the agent, who will however be obliged to report non-compliance to the Financial Services Commission.

### **Liquidators**

Under the amended Act, persons henceforth appointed as liquidators on a solvent basis will need to meet a residency criterion, requiring their physical presence in the BVI for at least 180 days, either continuously or in aggregate, prior to their appointment. Joint appointments will be possible in which case only one liquidator will be required to meet the aforesaid criterion. Furthermore, liquidators will be required to obtain all records kept and maintained by the company under applicable legislation before initiating liquidation. These provisions will not affect voluntary liquidations initiated under the current provisions.

### **Redomiciliation**

Under the amended Act, in the event where a BVI company intends to continue its operations out of the jurisdiction, it needs to (a) inform its members and creditors in writing and (b) publish an advertisement of such intention at least fourteen (14) days prior to the filing of a respective notice with the RCA. Such advertisement needs to be published in the BVI Government Gazette and the company's website (if available) and it needs to also specify the jurisdiction of continuation.

### **Register of persons with significant control**

Under the amended Act no specific provisions are enacted establishing a public register of persons with significant control over BVI companies and no changes are expected to apply as of January 1<sup>st</sup> to that respect.

### **Abolition of Bearer Shares**

Under the amended Act, it will no longer be possible for BVI companies to issue bearer shares whereas any such shares already issued will be automatically converted into registered shares on July 1<sup>st</sup>, 2023.

### **Way forward**

By the end of the year, all BVI companies need to take appropriate action in order to comply with the revised legislation and/or safeguards their assets. We in SP will continue to update our clients on relevant developments and provide all necessary support in order to smoothly transition into this new framework. Clients who use BVI entities, especially entities which have been struck off the registry yet continue to possess assets of any kind, are strongly advised to reach out to their SP contact in order to coordinate and determine the optimum way forward.