

2022 Amendments on BVI Business Companies Act

January 2023

Dear Clients, Associates, and Friends

The enactments by the British Virgin Islands (**BVI**) of the BVI Business Companies (Amendment) Act 2022 (**BCA Amendment Act**) and the associated BVI Business Companies (Amendment) Regulations, 2022 (**BCA Regulations Amendment**) introduce certain key amendments to the BVI Business Companies Act (**BCA**) and BVI Business Companies Regulations (**BCA Regulations**) respectively, which are effective as from 1st January 2023.

The key amendments concern the following:

A. Striking Off and Dissolution of Companies

Struck-off companies are now automatically dissolved following the publication of the striking off notice by the Registrar (subject to a 90 days' notice period to the company to regularise its status). If dissolved following striking off, the company may apply to the Registrar or the High Court within five years (instead of the ten years' period provided for prior to the amendments taking place) for restoration to the Register (subject to certain conditions being met). Transitional rules apply to companies that were struck off on the date the BCA Amendment Act came into force.

B. Filing of an Annual Financial Return

Companies are required to file an annual financial return with their registered agent within nine months from the end of the year to which the return relates. Registered agents will be obliged to notify the Registrar of any failure by a company to file its annual financial return. The actual form of the return is yet to be developed, but it will likely consist of a relatively simple form balance sheet and profit and loss account. It is noted that:

- the return is not made public (though the registered agent has an obligation to inform the FSC if it has not received the return); and
- there is no requirement that the financial information included in an annual return be audited.

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C. Directors

A list of the names of the current directors of a company may be made available upon request to the Registrar and payment of a fee.

D. Continuation in a jurisdiction other than BVI

Companies intending to continue their existence in a jurisdiction other than the BVI are required to provide an advance notice of such intention to its members and creditors. In addition, a company needs to file a notice of its intention to continue in a jurisdiction other than the BVI with the Registrar and publish such notice in the Gazette and on the company's website (if any) for a period of at least 14 days before the continuation.

E. Voluntary Liquidation

To qualify as a liquidator of a company, an individual should be a BVI resident meaning that he or she must have lived in the BVI for at least 180 days, either continuously or in aggregate, prior to their appointment. This is to facilitate the collection and retention of a liquidated company's records within the BVI. Where joint voluntary liquidators are appointed, at least one of them must be a BVI resident.

F. Deemed Resignation of a Registered Agent

The period of notice registered agents need to give to their clients indicating their intent to resign is reduced from 90 days to 60 days' written notice. Resignation is now automatic on expiry of the period, rather than requiring a further filing of a notice.

G. Elimination of Bearer Shares

The residual bearer share regime has now been eliminated.

Our team of lawyers and consultants is at your disposal for any clarifications you may require.