

Alert

Recent Amendments to BVI Company Law: Four Key Changes

Author: Anton Goldstein, Partner

There have recently been a number of amendments to BVI company law.¹ While many of these amendments are technical and will not have a material impact on clients, there are four key changes of which clients should be aware. All changes come into effect on 1 January 2023.

1. New Annual Financial Return

A BVI company is currently required to keep records and documents that enable the financial position of the company to be determined with reasonable accuracy. With effect from 1 January 2023, there will be a further requirement for a BVI company to prepare and file with its registered agent an “annual return” containing certain prescribed financial information.

- While the form of the annual return has not yet been finalized, it will include a basic balance sheet and income (profit and loss) statement for the company’s financial/fiscal year. These will not need to be audited.
- The annual return is only filed privately with the registered agent of the BVI company and will not be accessible to the public in any way.
- The annual return must be filed within 9 months after the end of the company’s financial/fiscal year to which the annual return relates. If the company’s financial/fiscal year is the calendar year, the first annual return will be due by 30 September 2024 for the year ending 31 December 2023 (and will be due each 30 September thereafter). If the company’s financial/fiscal year ends on 30 June, the company’s first annual return will be due on 31 March 2024 for the year ending 30 June 2023 (and will be due each 31 March thereafter).
- The requirement for an annual return will not apply to public companies or BVI regulated entities that already provide accounts to the BVI Financial Services Commission (including investment funds that submit annual accounts).
- The registered agent is required to notify the BVI Registry of Corporate Affairs of any company that has failed to provide the annual return within 30 days of its due date. Such a company will not be able to make filings at the Registry or obtain a certificate of good standing until this is rectified.

We will provide a further update on these requirements once the form of the annual return has been finalized. Conyers Corporate Services will be offering a range of services to assist you comply with the new obligation to prepare and file an annual return, which will be communicated in due course.

¹ BVI Business Companies (Amendment) Act, 2022 (amending the BVI Business Companies Act, 2004 (as amended)) and the BVI Business Companies (Amendment) Regulations, 2022 (amending the BVI Business Companies Regulations, 2012 (as amended)).

2. Names of Directors to be Publicly Accessible

At present, the register of directors of each BVI company is filed with the BVI Registry of Corporate Affairs but is not accessible by the public in any way. With effect from 1 January 2023, the names of the current directors of BVI companies will be publicly accessible.

- Only the names of the current directors of the BVI company will become available. Dates of birth, nationality, addresses and other personal information will not be publicly accessible.
- The names of former directors will not be available.
- A search to find out the names of directors may only be carried out by certain authorised users of the BVI Registry's system (generally, only BVI service providers) and is not a search that can be carried out online by the general public.
- Although this remains to be determined, we expect there will be some form of fee to access the names of directors (as with all company searches in the BVI).
- The names of directors will only become available upon a search of a particular BVI company. It will not be possible to search the name of a person to establish the BVI companies of which he or she is a director.

While we do not expect this change to affect the majority of our clients, there may be some directors who have legitimate concerns about their names becoming publicly accessible. For such clients, there is ample time to change the board of directors to ensure their names do not become accessible on 1 January 2023.

3. Striking-off and the Increased Importance of Paying Annual Fees on Time

At present, if a company does not pay its annual government fees it is "struck-off" five months later. Under the current process this can be easily be rectified (within 7 years of the date of strike-off) by paying the outstanding government fees, certain penalties and a restoration fee. Upon payment of the outstanding amounts the BVI company is automatically restored and deemed to be in the same position as if it had never been struck-off. If the company is not restored within 7 years, it is automatically dissolved and a court application (within 7 years from the date of dissolution) is required to restore the company.

On 1 January 2023, companies that are struck-off will automatically be dissolved (rather than existing in a limbo "struck-off" state for 7 years). To be clear, this means that non-payment of government fees now directly leads to automatic dissolution. This is a significant change to the BVI model which clients need to be aware of. While there will now be a new procedure to restore such companies without going to court, the process is more complicated than under the previous regime and must be done within 5 years (instead of 7). In particular, it will be necessary to write to the BVI Financial Secretary to obtain consent to the restoration (which is deemed to be given if no response is received in 7 days). It will also be necessary for the company's registered agent to provide a declaration that all of the company's records and KYC information are up-to-date and to submit a formal application to the BVI Registry for restoration. To avoid the increased complexity and expense of this procedure, we strongly recommend government fees are paid on a timely basis.

As before, there is also a separate court process for restoring a company from dissolution should that become necessary.

For those BVI companies that are struck off on or before 31 December 2022 there will be a transitional period until 30 June 2023 during which the company can be restored under a simplified procedure. To the extent clients wish to restore any companies that are currently struck-off, we recommend they be restored as soon as possible.

On a different note, some clients have historically used the strike-off regime as a substitute for the formal liquidation of a BVI company. The new amendments make this option more attractive. This is because the company is dissolved as soon as it is struck-off (instead of the current period of 7 years until dissolution). However, as before (a) any creditor, director or shareholder may apply to court to restore the company to deal with any unresolved matter concerning the company; and (b) there remain some risks for directors in allowing strike-off without a formal liquidation process (which involves advertisement and the identification and repayment of any creditors). Under the new regime these risks are effectively extinguished within 5 years of strike-off (instead of 14 years under the previous regime) as the company cannot be restored after 5 years of dissolution.

4. New requirements for voluntary liquidators

A voluntary liquidator of a BVI company (or, in the case of a joint liquidation, at least one of the liquidators) must now be resident in the BVI and must have certain experience and qualifications. Liquidators also have new obligations to collect copies of financial records, including the annual return of the company (discussed above). As is currently the case, Conyers Corporate Services can provide or source a liquidator that meets these new requirements and otherwise assist with the liquidation of a BVI company.

5. Miscellaneous changes

There are a number of other changes that will also come into effect on 1 January 2023:

- **Redomiciliations to other jurisdictions:** A BVI company wishing to discontinue (redomicile) to another jurisdiction must advertise and notify its shareholders and creditors of its intent to change jurisdictions at least 14 days prior to the intended date of redomiciliation.
- **Charitable and non-commercial companies:** New rules will apply to BVI companies that have charitable purposes or non-commercial purposes (whether wholly or partially), including the ability of the Registrar to require such companies to prepare audited accounts. These rules do not apply to a BVI company that engages in charitable or non-commercial activity for the purposes of its corporate social responsibility programme.
- **Bearer shares:** Although the BVI has ceased to have bearer shares in any meaningful sense for over a decade (having prohibited new bearer shares in 2007 and “immobilised” existing bearer shares in 2012), all bearer shares will be abolished on 1 January 2023.
- **Register of persons with significant control:** The amended Act contains a legal framework to introduce (but does not introduce) a new public register of persons with significant control (also referred to as the public register of beneficial owners). It is important to note it is uncertain whether the BVI will introduce such a public register. In 2020, following the adoption of certain legislation by the UK Parliament, the BVI Government made a commitment to introduce a publicly-accessible register of beneficial owners subject to such registers becoming a global international standard (amongst other conditions). However, as the global agenda on public registers of beneficial owners appears to have stalled to some extent, it is unclear if and when such a register would become an international standard and be introduced in the BVI.

We are here to help

We recognise that the proposed changes will in some cases require further consideration and advice. Conyers is ready to assist clients in understanding their obligations under the legislation and in implementing any such changes that may be required. Please feel free to contact your usual Conyers contact or one of our lawyers listed below.

Contacts:

Robert Briant
Partner, Head of BVI Corporate
robert.briant@conyers.com
+1 284 852 1100

Anton Goldstein
Partner
anton.goldstein@conyers.com
+1 284 852 1119

Rachael Pape
Counsel
rachael.pape@conyers.com
+1 284 852 1114

Christopher W.H. Bickley
Partner, Head of Hong Kong Office
christopher.bickley@conyers.com
+1 852 2842 9556

Eric Flaye
Counsel, Head of London Office
eric.flaye@conyers.com
+44 (0)207 562 0341

Preetha Pillai
Director, Head of Singapore Office
preetha.pillai@conyers.com
+65 6603 0707

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