

Alert

Striking Off and Dissolution of BVI Companies: Amended Act Brings New Efficiencies

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The BVI Business Companies (Amendment) Act 2022 (the “BCA Amendment Act”) sees the introduction of a number of changes to the BVI Companies Act (the “BCA”) which will take effect on 1 January 2023 (the “Amended BCA”).

Conyers’ recent [article](#) identifies four key amendments to BVI Company Law of which companies need to be aware.

From a litigation perspective, the standout amendment under the Amended BCA brings an end to companies being struck off the Register of Companies (the “Register”) but not dissolved for a period of seven years. Under the Amended BCA, a company that is struck off the Register will also be automatically dissolved on the date the Registrar publishes a notice of the striking off, following which an application for the restoration of the company to the Register must be made within five years.

Strike Off Procedure under the Current BCA

Under the current BCA, it is possible for a company to be struck off the Register without being dissolved. Reasons for a company being struck off include where the company does not have a registered agent, fails to file required returns or fails to pay its annual fees.

There is presently a seven year period during which a company is struck off the Register before it is dissolved. During that period, the company may not (among other things) commence or defend legal proceedings, carry on any business, or in any way deal with the assets of the company. Provided the seven year period has not lapsed, the Registrar may restore the company to the Register upon receipt of an application, the filing of a copy of the register of directors, payment of the restoration fee and payment all outstanding fees and penalties.

If the seven year period lapses, the company is dissolved and the only route to restoring that company is to bring an application before the Court.

Strike Off and Dissolution under the Amended BCA

The Amended BCA will mean the end of the seven year suspension period and the company will be dissolved automatically on the date that the Registrar publishes a notice of the striking off in the Gazette.

Whilst a company no longer has the safety net of the seven year suspension period before it is dissolved, the restoration provisions in the Amended BCA have been amended to allow for the Registrar (rather than just the Court) to restore dissolved companies to the Register upon the satisfaction of certain conditions and provided that the application is made within five years.

An application to the Court to restore the company to the Register is still available but (as long as the conditions are met) an application to the Registrar is likely to save an applicant significant time and costs when seeking to have the company restored. The deadline for bringing an application before the Court for the restoration of a company is five years from the date of dissolution.

Companies can also take comfort from the increased notice period given by the Registrar before a company is struck off the Register. Where the notice from the Registrar indicating an intention to strike off the company previously provided for a 30 day notice period, that notice period has now been extended to 90 days. It is expected that this three month notice period will see fewer companies subject to strike off in the first instance.

Should you have any questions about how these developments may affect you, please contact Ben Mellett, Matthew Brown or your usual Conyers contact.

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