

New year, new BVI Business Companies Act: What changes from 1 January 2023?

September 2022

Further to our update earlier this year we are now able to advise how the BVI Business Companies Act, 2004 (the Act) will change from 1 January 2023.

As anticipated, the main changes include the welcome abolition in full of bearer shares and impact struck-off and dissolved companies, record-keeping obligations and the qualifications required to act as a voluntary liquidator of a BVI company.

We now have the detail on those, and other, changes and have prepared a user-friendly comparison table summarising the current regime and the post-1 January 2023 position below, together with our thoughts on the brave new world of BVI corporate law. In this article, the following definitions are used:

FSC means the BVI Financial Services Commission

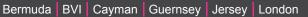
RA means registered agent

Registrar means the BVI Registrar of Corporate Affairs

The BVI Business Companies (Amendment) Act, 2022 and the BVI Business Companies (Amendment) Regulations, 2022 can be consulted in full here.

	Current rules	Position from 1 January 2023
Struck off companies	Companies that are struck off (typically for non-payment of fees) are automatically dissolved after a period of seven years of strike off	Newly struck-off companies will be dissolved immediately if they fail to cure the breach within a 90-day grace period; there won't be a period of strike off without dissolution Companies currently in the seven-year strike-off period may apply to be restored before the earlier of (i) the end of that seven-year period and (ii) 1 July 2023







Current rules

Position from 1 January 2023

Comment: we anticipated the seven-year period might be shortened to a year, reducing the period during which companies were effectively "in limbo", and could continue to be sued and accrue liabilities, but were operationally disenfranchised. The new regime removes this period of uncertainty while including a sensible grace period to avoid hair trigger default and placing unreasonable administrative burden on RAs

Dissolved companies

Dissolved companies may be restored for up to ten years postdissolution by order of the Court Dissolved companies may be restored within five years of dissolution (or, if struck off prior to 1 January 2023, by the earlier of (i) seven years from dissolution or (ii) 1 July 2023):

- 1. by application to the Registrar within five years of dissolution if, inter alia (i) the company was operational on dissolution; (ii) an RA will act; (iii) fees are repaid and (iv) the Registrar considers it just and reasonable or
- 2. by Court Order (i) if dissolved pursuant to a completed liquidation (voluntary or insolvent); (ii) if not carrying on business or in operation on the dissolution date; (iii) to commence or continue legal proceedings or to distribute assets vested in the Crown bona vacantia or (iv) where just and fair

Comment: the ability of the Registry to restore dissolved (rather than just struck off) companies tempers removal of the seven year strike off period, but this is balanced by a proviso that only operational companies can only be restored by the Registrar; companies that slide into dormancy prior to strike off and dissolution will have to apply to the Court

	Current rules	Position from 1 January 2023
Annual return	BVI companies are not required to file an annual return	BVI companies, other than listed companies, regulated entities and BVI tax payers, will be required to file an annual, non-audited return with their RA within nine months of the end of each financial year. This remains private to the RA. The RA must inform the FSC of any filings that are not received within 30 days of the due date which will impact the good standing of the company and attract fines of up to US\$5,000
regulatory standards; pace with global	phlight the BVI's commitment to keeping regulatory standards; it is hoped that the m superfluous accounts retention burde	e form of return will be designed with
Voluntary liquidators	Anyone may act as a voluntary liquidator of a BVI company	A voluntary liquidator must be licensed under the BVI Insolvency Act or resident in the BVI for 180 days prior to appointment; joint voluntary liquidators may still be appointed outside of the jurisdiction Incumbent voluntary liquidators are not required to resign and may conclude their liquidations
and it is right that adequately qualified	dator of a solvent company assumes mon persons should be conducting liquidation eserved, acknowledging this may avail op	ons. The ability to appoint a joint
Bearer shares	Bearer shares may be held only by a licensed custodian	New bearer shares will not be permitted and existing bearer shares will convert automatically to registered form on 1 January 2023
	that bearer shares must be abolished in f ancial services industry welcomes this ch	



Bermuda BVI Cayman Guernsey Jersey London

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	Current rules	Position from 1 January 2023
Register of directors	BVI companies must file their register of directors (privately) with their RA	The register of directors will remain private but the FSC will extract names of incumbent directors, which will be available to registered users of VIRRGIN on payment of a fee for searching against company names only; there is no additional filing for companies or their RAs to make, as the data on the register of directors remains private
	bate over whether the register should be ma standards of transparency and protecting the tempts	•
Beneficial ownership register	There is no public beneficial ownership register	The legislation anticipates this change in international standard by providing a framework for a future public beneficial ownership register
	es consistently maintained it would introduce	beneficial ownership registers at such
time as the same became the acce		

regime, to redomicile to a less salubrious jurisdiction where they might disenfranchise or defraud shareholders or frustrate the rights of creditors. Collas Crill documents customarily provide contractual protection against this, but the legislative change will avail stakeholders of additional remedies to breach of contract claims



	Current rules	Position from 1 January 2023
Charities	BVI companies may be used for	The ability to use BVI companies for
	charitable or non-commercial	charitable purposes, anywhere in the
	purposes	world, will be recognised by statute,
		subject to increased oversight – likely
		including the filing of audited
		accounts - for overseas charities. This
		will ensure that the use of BVI
		companies overseas for charitable
		purposes cannot be abused by
		persons seeking to avoid home
		regulation and oversight

Comment: BVI companies have long been legitimately used for charitable purposes, for example employee foundations, and this is where we most commonly see companies limited by guarantee. Unfortunately, however, the product has been abused and we welcome this development that protects against "satellite charities" operating without regulation



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