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Company restorations in the BVI and the Business Companies (Amendment) Act 2022's transitional provisions – FAQs

MAY 2023

The rules surrounding BVI company restorations were changed significantly by the introduction of the BVI Business Companies (Amendment) Act 2022, which came into force on 1 January 2023 (the **Amendment Act**).

The Amendment Act changed the landscape of restoring companies to the Register of Companies (the **Register**) in the BVI and, to ensure a smooth change, it contains a number of transitional provisions which will remain in place until **1 July 2023**.

With this deadline fast approaching, we have addressed some frequently asked questions on the subject.

1. When will a company be struck off?

Under the previous rules (the BVI Business Companies Act 2004), if a company was struck off the Register for a continuous period of seven years then it would automatically be dissolved. However, following the introduction of the Amendment Act, the seven year strike off period has been abolished.

Under the Amendment Act, the position is now as follows:

a) a company may be given notice that, unless the company shows cause to the contrary, it will be struck off the Register. The Registrar may give up to 90 days' notice of the intention to strike it off, to allow the company time to remedy any issues (such as failing to pay its annual fees); and

b) if the notice is not complied with in this timeframe then the Registrar of Companies shall publish a notice in the BVI Gazette for the company's strike off. The company would be dissolved on the date that the notice of the striking off is published.

These recent changes are subject to the transitional provisions discussed below.

2. Is the position different for companies which were struck off before 1 January 2023?

Yes, the Amendment Act contains transitional provisions which apply to existing struck-off companies (i.e. those companies which were already struck off, but not dissolved, as at 1 January 2023). These companies will

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be automatically dissolved on 1 July 2023.

Pursuant to the transitional provisions, an application to administratively restore an existing struck off company may be made to the Registrar under the previous, simplified procedure before the earlier of:

(a) 30 June 2023; or

(b) within the seven year strike-off period.

3. Are there any transitional provisions applying to companies which were dissolved before 1 January 2023?

As you may expect, the Amendment Act also contains transitional provisions which apply to existing dissolved companies (i.e. those companies which were already dissolved as at 1 January 2023).

Pursuant to the transitional provisions, existing dissolved companies have until the earlier deadline of

(a) five years from 1 January 2023, or

(b) its existing deadline under the previous restoration regime to be restored.

4. What are the relevant timeframes for seeking to restore companies which are dissolved on or after 1 January 2023?

If a company was struck off and dissolved after the Amendment Act came into force on 1 January 2023 then an application for its restoration may be made (either the Registrar or to the High Court, depending on the circumstances), within five years of its dissolution. This is a significant reduction to the 10 year period within which dissolved companies could be restored under the previous restoration regime.

5. Are there any other key deadlines to be aware of under the transitional provisions?

It is unsurprising that the BVI's new restoration regime also sets out a process to further phase out bearer shares. As of 1 January 2023, it has not been possible to issue new bearer shares, and any existing bearer shares will be automatically converted to registered shares on 1 July 2023.

This update is not intended to constitute legal advice and should not be relied upon as such. If you would like to discuss the restoration of a BVI company then please contact a member of our Dispute Resolution team.

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