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Auld Lang Syne and other important end of year administration for BVI business companies

DECEMBER 2023

As we near the end of the year and the introduction of new legislation it's a timely reminder to ensure that, firstly, your company has paid its latest annual BVI Corporate Registry fees (if due) and secondly, you consider your company's first annual return.

Annual BVI corporate registry fees

The due date for annual fees for any companies incorporated in the second half of any year was 30 November 2023. This is important to note as, under the new regime which came into force on 1 January 2023 through the BVI Business Companies (Amendment) Act, 2023 (**Amendment Act**), if a company fails to pay its annual fee, the BVI Registry will give notice to the company confirming that a company is liable to be dissolved within 90 days if not rectified. If the company does not comply, it will be struck off and dissolved, and its assets will be vested in the Crown.

Prior to the Amendment Act, it took seven years to dissolve a company that had been struck off. It is critical that companies do not rely on the old ruling – you now need to act within 90 days!

There are also other reasons that may cause a company to be struck off from the register, including a company not having a registered agent, or where it has failed to make a filing with the Registrar (often its register of directors).

The restoration of a dissolved company can be an expensive process requiring an application to the BVI Court.

Penalties

Where a company fails to pay its annual fee, it will be liable for a penalty on top of its outstanding annual fee in line with the below.

		PENALTY	
Date of Incorporation	**Annual Fee Due Date**	**10% payable between**	**50% payable between**

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First Half Company	1 January – 30 June	31 May	1 June – 31 July	1 August – 31 October
Second Half Company	1 July – 31 December	30 November	1 December – 31 January	1 February – 30 April

Annual Returns

From 1 January 2024, the first round of annual returns will fall "due" under the Amendment Act and the BVI Business Companies (Financial Return) Order, 2023 (the **Order**).

Annual returns are not publicly filed or publicly accessible.

The first annual return for a company must be filed with its registered agent within 9 months after it becomes due; the "due date" being the day after the end of a company's financial or fiscal year ending on or after 31 December 2023. A company's financial year does not need to correspond with a calendar year and for ease of reference, we've set out the most common financial year-ends below and their corresponding filing deadlines:

Financial Year End	**First Deadline**	**Annual Deadline for Years Following**
31 December 2023	30 September 2024	30 September
31 March 2024	31 December 2024	31 December
30 June 2024	31 March 2025	31 March

Form

The form of the annual return to be used is included in the schedule to the Order and takes the form of a basic balance sheet and profit and loss statement. The Financial Services Commission (**FSC**) has confirmed that the form should not be amended or adjusted, save for non-material amendments (which will be interpreted narrowly). Any major currency may be used and there is no need of the form to be audited.

Exemptions

The requirement for a company to file an annual return does not apply to the following:

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- listed companies;
- companies regulated under financial services legislation which already provide financial statements to the FSC;
- companies that file annual tax returns to the Inland Revenue Department accompanied by financial statements; and
- a company that is in liquidation (except as set out below).

Companies in liquidation

It's important to note that putting a company into liquidation does not automatically exempt that company from filing its annual return. If a company goes into liquidation when it’s annual return is due (being at any time during the 9 months following it's "due date") it is still bound to file its annual return. On the other hand, if a company's financial year is a calendar year and the company goes into liquidation in June in the calendar year before, they will not be required to file an annual return.

Failure to file an Annual Return

A company's registered agent is required to notify the Registrar of Corporate Affairs if a company has not submitted its Annual Return to its registered agent within 90 days of the filing deadline.

Failure to comply with this obligation will affect a company's 'good standing' and the company will be liable for a fine of US$300 for the first month (or part thereof) and then an additional US$200 per month up to a maximum of US$5,000. If a company reaches this threshold and still does not file its Annual Return, the Registrar may strike it off the register.

Registered agents are not devoid of responsibility either, and where a registered agent fails to notify the Registrar of a company's non-compliance, it is liable to a fine of US$3,000.

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