

BUSINESS COMPANIES REGIME IN THE BRITISH VIRGIN ISLANDS

Further to our recent update regarding the draft amendments to the BVI Business Companies regime, the BVI Business Companies (Amendment) Act, 2022 and the BVI Business Companies (Amendment) Regulations, 2022 (the “Amendments”) have been gazetted and will come into effect on 1st January 2023.

The main Amendments include:

1. Filing of Annual Financial Return (“Annual Return”)

- BVI companies must file an Annual Return with their Registered Agent (“RA”) within nine (9) months after the end of each financial year. This requirement does not apply to listed companies, BVI regulated entities and companies that file annual tax returns in the BVI.
- Accommodations have been made for BVI companies whose accounts are consolidated into group accounts, allowing such companies to file the consolidated accounts of the group with the RA.
- The form of the Annual Return remains under review; however, it will consist of a balance sheet and details of the profit & loss statement. The financial information filed with the RA does not need to be audited and will not be made publicly available or filed with any agency.

ATU offers accounting services and can assist with the preparation of the Annual Returns of BVI companies.

2. Voluntary Liquidations

- Voluntary liquidators must now be resident in the BVI. In cases where joint liquidators are appointed, only one of the liquidators need to meet the residency requirements.
- Voluntary liquidators will now be required to meet certain record keeping obligations which must be submitted to the RA of the company, including the Annual Return as mentioned above.

ATU offers BVI resident liquidator services.

3. Struck Off and Dissolved Companies

Currently, BVI companies struck off from the Register of Companies (the “Register”) can remain in that state for a period of seven (7) years before being dissolved. The company, which is struck off from the Register, most often due to the non-payment of its annual fees, can then make a payment of the outstanding accrued fees to bring the company back into good standing during that period. The Amendments significantly change the struck off regime.

- Beginning 1st January 2023, struck off companies will immediately be dissolved following the publication of the notice of striking off in the Gazette by the Registrar.
- A company can remain in a dissolved state for five (5) years. The process and procedure for restoring a dissolved company has however been eased. Rather than the application to the Court in accordance with the current regime, in the new regime companies can, during the five-year period, apply to the Registrar for restoration provided that:

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- a licensed person has agreed to act as registered agent of the company and has made a declaration that the company adheres to the record keeping obligations;
- the company has paid the restoration fees and any outstanding penalties;
- the company was carrying on business or in operation at the date of its striking off and dissolution; and
- the BVI Financial Secretary is notified if, following the striking off and dissolution of the company, any property or assets of the company have vested in the Crown.
- Commencing on 1st January 2023, there will be a transitional period of six (6) months for companies that are currently struck off before the new regime applies.

BVI companies currently struck off for non-payment of fees are urged to liaise with ATU to ensure good standing before the application of the new regime.

4. Register of Directors

- A company's Register of Directors must now include the names of persons who are appointed as alternate directors.
- The names of the current directors of BVI companies will be made available to registered VIRRGIN platform users. The additional information recorded on the Register of Directors such as the address and date of birth will not be made available.

For all queries or assistance regarding your BVI Business Company, please contact your usual correspondent at ATU General Trust (BVI) Limited or e-mail us at info@atubvi.com.

ATU General Trust (BVI) Limited

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