Amendments to the BVI Business Companies Act and Regulations effective 1 January 2023

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Dear client:

The British Virgin Islands enacted important amendments to the BVI Business Companies Act (the "BVI BC Act") and the Business Companies Regulations (the "BVI BC Regulations") as part of its ongoing commitment to comply with international standards aiming to combat harmful tax practices and money laundering in the financial services industry. These amendments will come into force on the 1st day of January, 2023.

The key amendments to the BVI BC Act and BVI BV Regulations are briefly explained below:

BVI residency for liquidators in solvent liquidations. BVI companies will be required to apppoint a person to act as voluntary liquidator that has physically lived in the BVI for at least 180 days, either continuosly or in aggregate, prior to their appointment. In case joint liquidators be appointed, only one of them need to comply with the residency test. Every liquidator will also be required to obtain accounting records from the companies before the liquidation commences. Liquidators appointed before the entry into force of the amendments, will be allowed to continue with their duties without complying with the BVI tax residency requirement. Our office will be in a position to assist you with this requirement.

Restoration of dissolved companies. According to the current legislation, dissolved companies can only be restored by a court order. The amended BVI BC Act will allow for dissolved companies to be restored by way of an application to the BVI Registrar of Corporate Affairs within 5 years of the date of dissolution provided that:

i) The company was carrying on business or in operation at the date of its striking off and dissolution;
ii) A licensed person has agreed to act as registered agent;
iii) The registered agent declares the company's records have been updated;
iv) Notification to the Crown if any property has vested in it;
v) Payment of all outstanding fees and penalties;
vi) The BVI Registrar is satisfied it is fair and reasonable to reinstate the company.

BVI companies may still be reinstated by court order under the following circumstances:

i. The company was struck off and dissolved following the completion of its voluntary liquidation or liquidation under the Insolvency Act, 2003;
ii. On the date of dissolution, the company was not conducting any business or operation;
iii. The purpose of the restoration is to i) initiate, continue or discontinue legal proceedings in the name of or against the company, ii) make an application for the company's property that has vested in the Crown bona vacantia to be returned to the company; and
iv. The court considers it is just and fair to restore the company to the Register.

Struck off companies. The current BVI BC Act indicates that while a company is struck off, its director or members (or any liquidator or receiver of the company), may not take any actions in connection to the company's assets. If the company is not restored within 7 years of the struck off date, the company is automatically dissolved and any property of the company vests bona vacantia in the Crown.

Effective from 1 January, 2023, the 7-year period of striking off status will be abolished, therefore, all newly struck off companies will be dissolved on the date the Registrar publishes a notice of striking off in the BVI Gazette. It is understood that the striking off process would be almost immediately.

The amended BVI BC Act refers to transitional provisions applicable to companies in struck off status before 1 January 2023. These companies would need to apply to the BVI Registrar for restoration before either i) 1 July 2023 and ii) 7 years from their scheduled strike off date.

Register of Directors. Since 2016, all BVI companies are required to file their register of directors as private record into the Virtual Integrated Registry Regulatory General Information Network (VIRRGIN) system managed by the BVI Registrar of Corporate Affairs. The amended BVI BC Act will allow for the name of the directors to be available for registered users of the VIRRGIN system for a cost. It is understood that searches will need to be run against a company's name rather than the name of a director.

The information available will not include dates of birth, addresses or names of former directors. The BVI Registrar will arrange to extract the information already filed in VIRRGIN to make the names of the directors publicly available, therefore, at this moment, unless any changes are to be made to the filed register of directors, there is no action required from the companies.

Continuation out of the BVI. A company that wishes to continue as a company incorporated under the laws outside the BVI, shall at least 14 days before making the filing to continue to the foreign jurisdiction, advertise its intention in the BVI Gazette of its continuation and notify its members and creditors of its continuation.

Annual Returns. Under the current BVI BC Act, all companies need to maintain records and underlying documentation to evidence their financial standing. The amended BVI BC Act will require all companies to produce annual financial returns and send the same to its registered agent in the BVI. The prescribed form of the annual return has not been finalized, but it is expected to consist of a simple unaudited balance sheet and profit and loss.

All companies, except listed companies, companies which pay taxes in the BVI and certain companies regulated under BVI financial services legislation, are obligated to file the annual return with its registered agent within 9 months after the end of the calendar year or if a company's financial year is not a calendar year, the company's financial year. The registered agent will have an obligation to infom the BVI Financial Services Commission ("FSC") if it has not received the annual return within 30 days of the due date.

The annual returns will not be publicly available and the registered agent is not obligated to file them with any BVI government authority. Failure to file the annual return results in a penalty of US$300.00 for the first month after the due date and US$200.00 for each month thereafter up to maximum penalty of US$5,000.00.

Register of Persons with Significant Control. In line with BVI's commitment to introduce a public register of beneficial owners by 2023, subject to certain reservations and provided said registers become an international standard, the amended BVI BC Act introduces in a general manner the framework by which the BVI might introduce a Register of Persons with Significant Control. This amendment do not impose an obligation to companies to prepare said register and no public Register of Persons with Significant Control will be in effect from 1 January 1st, 2023.

Resignation of registered agent. The period of notice given by the registered agent of a company of its intent to resign as registered agent will be reduced from 90 days to 60 days. The resignation is to be effective at the end of the notice period, therefore, the filing of the final notice confirming the resignation is no longer required.

Charitable companies. BVI Companies will be able to be used for charitable or non-commercial purposes only upon a successful application to the BVI Registrar and more strict supervision provided they operate outside the BVI.

Bearer shares. The amended BVI BC Act will abolish the bearer shares regime, therefore, companies will no longer be permitted to issue bearer shares, convert shares to bearer shares, exchanged registered shares for bearer shares or have bearer shares in custody.

For any queries you might have, or additional information you might need, please do not hesitate to contact a member of our ARIFA BVI Corporate team.