

提示简报

Recent Amendments to BVI Company Law: Four Key Changes

英属维尔京群岛公司法最新修订：四大变更

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There have recently been a number of amendments to BVI company law.¹ While many of these amendments are technical and will not have a material impact on clients, there are four key changes of which clients should be aware. All changes come into effect on 1 January 2023.

英属维尔京群岛公司法近日进行了一些修订。¹ 主要修订为技术性方面的，并不会为客户带来重大影响，但客户仍应留意当中的四大变更。相关修订将于 2023 年 1 月生效。

1. New Annual Financial Return

A BVI company is currently required to keep records and documents that enable the financial position of the company to be determined with reasonable accuracy. With effect from 1 January 2023, there will be a further requirement for a BVI company to prepare and file with its registered agent an “annual return” containing certain prescribed financial information.

- While the form of the annual return has not yet been finalized, it will include a basic balance sheet and income (profit and loss) statement for the company’s financial/fiscal year. These will not need to be audited.
- The annual return is only filed privately with the registered agent of the BVI company and will not be accessible to the public in any way.
- The annual return must be filed within 9 months after the end of the company’s financial/fiscal year to which the annual return relates. If the company’s financial/fiscal year is the calendar year, the first annual return will be due by 30 September 2024 for the year ending 31 December 2023 (and will be due each 30 September thereafter). If the company’s financial/fiscal year ends on 30 June, the company’s first annual return

1. 周年财务申报

按现时要求, 英属维尔京群岛公司需要保存具合理准确性的公司财务状况记录及文件。由 2023 年 1 月起, 英属维尔京群岛公司须要向注册代理人, 申报公司财务数据, 履行进行周年财务申报。

- 周年财务申报表仍未有订稿, 但内容会包括公司年度基本财务报表及收支表讯息。该报表不需要找审计师做审计。
- 周年财务申报只须向注册代理人递交, 公众并未有查看渠道。
- 周年财务申报须于公司财政年度完结后九个月之内提交。若公司之财政年度按年历计算, 就以 2023 年 12 月 31 日为年结为例, 第一份周年财务申报表则须于 2024 年 9 月 30 日或之前提交 (及后的周年财务申报到期日为每年的 9 月 30 日)。就以 2023 年 6 月 30 日为年结为例, 第一份周年财务申报表则须于 2024 年 3 月 31 日或之前提交 (及后的周年财务申报到期日为每年的 3 月 31 日)。

¹ BVI Business Companies (Amendment) Act, 2022 (amending the BVI Business Companies Act, 2004 (as amended)) and the BVI Business Companies (Amendment) Regulations, 2022 (amending the BVI Business Companies Regulations, 2012 (as amended)). 2022 英属维尔京群岛公司法 (修订) (修改 2004 英属维尔京群岛公司法 (经修订) 及 2022 英属维尔京群岛公司条例 (修改 2012 英属维尔京群岛公司条例 (经修订)))。

will be due on 31 March 2024 for the year ending 30 June 2023 (and will be due each 31 March thereafter).

- The requirement for an annual return will not apply to public companies or BVI regulated entities that already provide accounts to the BVI Financial Services Commission (including investment funds that submit annual accounts).
- The registered agent is required to notify the BVI Registry of Corporate Affairs of any company that has failed to provide the annual return within 30 days of its due date. Such a company will not be able to make filings at the Registry or obtain a certificate of good standing until this is rectified.

We will provide a further update on these requirements once the form of the annual return has been finalized. Conyers Corporate Services will be offering a range of services to assist you comply with the new obligation to prepare and file an annual return, which will be communicated in due course.

2. Names of Directors to be Publicly Accessible

At present, the register of directors of each BVI company is filed with the BVI Registry of Corporate Affairs but is not accessible by the public in any way. With effect from 1 January 2023, the names of the current directors of BVI companies will be publicly accessible.

- Only the names of the current directors of the BVI company will become available. Dates of birth, nationality, addresses and other personal information will not be publicly accessible.
- The names of former directors will not be available.
- A search to find out the names of directors may only be carried out by certain authorised users of the BVI Registry's system (generally, only BVI service providers) and is not a search that can be carried out online by the general public.
- Although this remains to be determined, we expect there will be some form of fee to access the names of directors (as with all company searches in the BVI).
- The names of directors will only become available upon a search of a particular BVI company. It will not be possible to search the name of a person to establish the BVI companies of which he or she is a director.

While we do not expect this change to affect the majority of our clients, there may be some directors who have legitimate concerns about their names becoming publicly accessible. For such clients, there is ample time to change the board of directors

- 周年财务申报要求不适用于上市公司或受英属维尔京群岛规管须递交周年报表予英属维尔京群岛金融委员会之公司（包括须递交周年报表之投资基金）。
- 若有公司未有如期提交周年财务申报，注册代理人须于到期日的 30 天内通报英属维尔京群岛公司注册处。该公司则不能于英属维尔京群岛公司注册处作任何公司资料变更存盘或申请良好存续证明直至完成周年财务申报止。

周年财务申报表格订稿后我们会提供进一步数据。康德明企业服务团队能协助你履行相关公司周年申报事宜。

2. 董事名单供公众查阅

现时每间英属维尔京群岛公司董事名册须于英属维尔京群岛公司注册处存档但公众并没有查阅权利。由 2023 年 1 月起，英属维尔京群岛公司之现任董事名单将供公众查阅。

- 现任董事名字将供公众查阅。董事之出生日期、国籍、地址及其他个人资料则不会供公众查阅。
- 前任董事名字将不会供公众查阅。
- 董事名字搜索功能只供指定英属维尔京群岛公司注册处授权用户（一般为英属维尔京群岛服务提供商），一般公众并不能使用该网上系统。
- 虽然仍未有落实但我们预计董事名字搜索会如现时英属维尔京群岛公司资料搜索般进行收费。
- 董事姓名仅可于搜索指定英属维尔京群岛公司后查阅，惟任何人士所担任董事的英属维尔京群岛公司则不得透过搜索该人士的姓名查证。

我们认为这变更对我们大部分客户没有什么影响但当中有若干董事对其名字可被搜索感关注。对相关表示关注的董事们，距离 2023 年 1 月 1 日前仍有充裕时间为此作出董事会会员改动以应对。

to ensure their names do not become accessible on 1 January 2023.

3. Striking-off and the Increased Importance of Paying Annual Fees on Time

At present, if a company does not pay its annual government fees it is “struck-off” five months later. Under the current process this can be easily be rectified (within 7 years of the date of strike-off) by paying the outstanding government fees, certain penalties and a restoration fee. Upon payment of the outstanding amounts the BVI company is automatically restored and deemed to be in the same position as if it had never been struck-off. If the company is not restored within 7 years, it is automatically dissolved and a court application (within 7 years from the date of dissolution) is required to restore the company.

On 1 January 2023, companies that are struck-off will automatically be dissolved (rather than existing in a limbo “struck-off” state for 7 years). To be clear, this means that non-payment of government fees now directly leads to automatic dissolution. This is a significant change to the BVI model which clients need to be aware of. While there will now be a new procedure to restore such companies without going to court, the process is more complicated than under the previous regime and must be done within 5 years (instead of 7). In particular, it will be necessary to write to the BVI Financial Secretary to obtain consent to the restoration (which is deemed to be given if no response is received in 7 days). It will also be necessary for the company’s registered agent to provide a declaration that all of the company’s records and KYC information are up-to-date and to submit a formal application to the BVI Registry for restoration. To avoid the increased complexity and expense of this procedure, we strongly recommend government fees are paid on a timely basis.

As before, there is also a separate court process for restoring a company from dissolution should that become necessary.

For those BVI companies that are struck off on or before 31 December 2022 there will be a transitional period until 30 June 2023 during which the company can be restored under a simplified procedure. To the extent clients wish to restore any companies that are currently struck-off, we recommend they be restored as soon as possible.

On a different note, some clients have historically used the strike-off regime as a substitute for the formal liquidation of a BVI company. The new amendments make this option more attractive. This is because the company is dissolved as soon as it is struck-off (instead of the current period of 7 years until dissolution). However, as before (a) any creditor, director or shareholder may apply to court to restore the company to deal with any unresolved matter concerning the company; and (b) there remain some risks for directors in allowing strike-off without a formal liquidation process (which involves advertisement and the identification and repayment of any creditors). Under the new regime these risks are effectively extinguished within 5 years of strike-off (instead of 14 years

3. 剔除注册及准时缴付年费的重要性

现时若公司未按时缴付政府年费, 该公司会于五个月后被剔除注册。按现时程序公司只须于被剔除注册七年内缴付所拖欠的政府年费便可简易地恢复注册状态。在补付政府年费后该公司自动恢复注册状态将犹如未曾被剔除注册般。若被剔除注册七年内未有恢复注册, 该公司将被自动撤销注册, 若在自动撤销注册七年内需要恢复注册则需要向法院申请。

自 2023 年 1 月 1 日起, 被剔除注册的公司会自动撤销注册并没有前述的“七年可恢复期限”。换言之若公司未按时缴付政府年费将等同自动撤销注册。客户必须注意此项较大的变更。在新恢复注册措施下被剔除注册的公司若想重拾注册状态可省却法庭处理步骤, 但于五年内(前措施期限为七年内)进行恢复注册手续相对以往繁复。特别是在新措施要求中包括需要去信英属维尔京群岛财政秘书及获其同意(去信七日后没有收到回复即等同同意)才能恢复注册。此外, 公司注册代理人也须对公司记录及客户尽职审查文件作出更新声明及向英属维尔京群岛公司注册处提交恢复注册正式申请书。为避免增加程序的繁复性及提交额外费用, 我们强烈建议务必按时缴付政府年费。

一如以往, 若公司想恢复注册已解散的公司仍须经历指定法庭程序。

就那些于 2022 年 12 月 31 日或之前已被剔除注册的英属维尔京群岛公司而言仍可于直到 2023 年 6 月 30 日间之过渡期内运用简易程序恢复注册。客户若希望恢复目前已被剔除注册的公司, 我们建议应尽早办理恢复注册手续。

另一方面, 过往有些客户运用被剔除注册方式来代替正式英属维尔京群岛公司清盘动作。在新变更的实行下, 此代替方式更为吸引, 因为公司会在被剔除注册的同时亦会被自动撤销注册(与过往在被剔除注册后仍有七年可恢复期限不一样)。但是, 一如以往(一)任何债权人、董事或股东可向法庭申请恢复注册以解决任何相关公司未处理事宜; 及(二)采用被剔除注册方式来代替正式公司清盘动作的同时董事仍须承受包括当中涉及刊登广告以及识别任何债权人及对其偿还款项的风险。在新制度下, 鉴于公司不得于五年后恢复注册, 故有关风险得以于剔除注册五年(而非前制度下

under the previous regime) as the company cannot be restored after 5 years of dissolution.

4. New requirements for voluntary liquidators

A voluntary liquidator of a BVI company (or, in the case of a joint liquidation, at least one of the liquidators) must now be resident in the BVI and must have certain experience and qualifications. Liquidators also have new obligations to collect copies of financial records, including the annual return of the company (discussed above). As is currently the case, Conyers Corporate Services can provide or source a liquidator that meets these new requirements and otherwise assist with the liquidation of a BVI company.

5. Miscellaneous changes

There are a number of other changes that will also come into effect on 1 January 2023:

- **Redomiciliations to other jurisdictions:** A BVI company wishing to discontinue (redomicile) to another jurisdiction must advertise and notify its shareholders and creditors of its intent to change jurisdictions at least 14 days prior to the intended date of redomiciliation.
- **Charitable and non-commercial companies:** New rules will apply to BVI companies that have charitable purposes or noncommercial purposes (whether wholly or partially), including the ability of the Registrar to require such companies to prepare audited accounts. These rules do not apply to a BVI company that engages in charitable or non-commercial activity for the purposes of its corporate social responsibility programme.
- **Bearer shares:** Although the BVI has ceased to have bearer shares in any meaningful sense for over a decade (having prohibited new bearer shares in 2007 and “immobilised” existing bearer shares in 2012), all bearer shares will be abolished on 1 January 2023.
- **Register of persons with significant control:** The amended Act contains a legal framework to introduce (but does not introduce) a new public register of persons with significant control (also referred to as the public register of beneficial owners). It is important to note it is uncertain whether the BVI will introduce such a public register. In 2020, following the adoption of certain legislation by the UK Parliament, the BVI Government made a commitment to introduce a publicly-accessible register of beneficial owners subject to such registers becoming a global international standard (amongst other conditions). However, as the global agenda on public registers of beneficial owners appears to have stalled to some extent, it is unclear if

的 14 年) 内实际消除。

4. 关于自愿清算人的新要求

一位英属维尔京群岛公司的自愿清算人（或，在联合清算的情况下，至少一名清算人）现须为英属维尔京群岛居民并必须具特定的经验和资历。清算人有新的责任去收集财务记录，包括公司的周年财务申报（如以上所讨论）。就现行的个案，Conyers Corporate Services 可提供或外借符合新要求的清算人去处理英属维尔京群岛公司清算个案。

5. 其他杂项变更

以下多个其他公司法的变更将于 2023 年 1 月 1 日生效：

- **迁册至其他司法管辖区：**如英属维尔京群岛公司有意迁册到其他司法管辖区，该公司必须在预期迁册当日的 14 天前公布并通知其股东以及债权人有关该公司迁册的意向。
- **慈善以及非商业性公司：**新的法例将同时应用于具慈善以及非商业目的的英属维尔京群岛公司，包括注册处有权要求这些公司提供审核账目。但新的法例，并不应用于出于企业社会责任而参与慈善或裨商业活动的英属维尔京群岛公司。
- **不记名股票：**即使英属维尔京群岛在过去十几年已经取消不记名股票（已经在 2007 年开始禁止发行新的不记名股票并于 2012 年“固定”现存的不记名股票），所有的不记名股票将于 2023 年 1 月 1 日被废除。
- **具一定公司控制权的人士：**经修定的公司法透过载列法律框架引入（而非正接引入）新的重要控制人公开登记册（亦指为实益拥有人公开登记册）。需要注意的是暂不确定英属维尔京群岛会否推行所提及的公众注册处。于 2020 年，继采用经英国议会的法案后，英属维尔京群岛政府承诺将推行一个公众可参阅的企业最终受益人注册处，前提是这类注册处已成为国际标准（除此之外亦有其他条件）。然而由于全球在实施企业最终受益人注册处的议程受到一定程度的暂缓，因此并不确定这类注册处现时会否或会在什么时候成为国际标准并在英属维尔京群岛推行。

and when such a register would become an international standard and be introduced in the BVI.

We are here to help

We recognise that the proposed changes will in some cases require further consideration and advice. Conyers is ready to assist clients in understanding their obligations under the legislation and in implementing any such changes that may be required. Please feel free to contact your usual Conyers contact or one of our lawyers listed below.

This article is not intended to be a substitute for legal advice or a legal opinion. It deals in broad terms only and is intended to merely provide a brief overview and give general information.

For further information please contact: media@conyers.com

我们随时可以提供协助

我们考虑到因应新修正案的变更，个别情况需要进一步的考虑和法律建议。我所已准备好协助客户理解在新修定案后，他们的责任以及实施任何必要的变更。烦请联络我所相熟的联络人或以下我所的律师。

本文不应被视为法律建议或法律意见，其内容并非详尽无遗，仅可作为概览及一般参考资料。感谢您的垂阅。

若需提供进一步资料，请发送电邮至：media@conyers.com

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