

BVI BUSINESS COMPANIES (AMENDMENT) ACT 2022

THE ANNUAL FINANCIAL RETURN HOLDING CLIENTS TO ACCOUNT – ARE YOURS?



SUMMARY

- *Many clients in Asia utilise a BVI (or other tax neutral) company as an asset holding vehicle, often as part of their estate and succession plan and structure, but also for business purposes. Once a simple vehicle, the complexities of administering these entities continues to grow.*

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» On 1st January 2023,

the BVI Business Companies Act (“the Act”) was amended by the BVI Business Companies (Amendment) Act, 2022 and the BVI Business Companies (Amendment) Regulations, 2022.

There were a number of key aspects of the Amendment, covering topics such as a much more rapid strike off regime, a different (2 types) restoration process, the abolition of bearer shares and a mechanism (but not yet implemented) for a public register of “Persons with Significant Control” and other matters.

If the year-end is 31st December 2023, then the first deadline is 30th September 2024. So, as we approach the end of 2023, most clients are likely to have a year-end of December 31, 2023, so all will now need to consider how to collate the necessary information to complete the Annual Financial Return.

The recommended format for the Annual Financial Return (“the Return”) can be found in the Schedule to the BVI Business Companies (Financial Return) Order 2023, which can be found in the BVI Financial Services Commission website.

not be able to make filings at the Registry of Corporate Affairs or obtain a Certificate of Good Standing until the Return is filed.

In addition to the requirements of the owners and directors, their Registered Agents have a duty to enforce the requirements. To this end, the Registered Agent must notify the Registrar within 30 days after the deadline, the names of all companies that have failed to meet the filing deadlines. They must provide the BVI authorities with a copy of the Return on request, and they must maintain a copy of the

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A major change arising from the Amendment is to the treatment of financial statements of BVI companies, and owners and their advisors ignore this at their peril.

The Annual Financial Return

Maintaining accounting records for BVI companies has been a requirement for many years. However, until now there has been no filing requirement, so in the vast majority of cases, nothing resembling a financial statement has been maintained by owners and directors of BVI companies.

As a result of the amendments to the Act, there is now a filing obligation. BVI Companies must now file an Annual Return within 9 months of the financial year-end. So, what does this mean?

Once the Return has been completed, it does not need to be filed with the Government, but the requirement is to file the Return with the Registered Agent in the BVI. Access to the information can then be obtained should a Competent Authority trigger a request from another jurisdiction under one of the treaties in place.

Failure to comply with the new requirements (i.e., if a company fails to file the Return within 9 months of the year end) will result in a penalty of \$US300 in the first month, and for each subsequent month a penalty of \$US200 will accrue up to a maximum of \$US5,000. At this stage the company may be struck off by the Registrar (which may ultimately allow the Government to seize the assets of the company). Furthermore, the company will

Return for at least 5 years from the date it ceases to act as the Registered Agent. Failure to do this can lead to significant fines.

Summary

As the end of 2023 comes into sight, owners and directors of BVI companies need to review their accounting and how they will translate this into an accurate Return as required by the new laws. Failure to do so can have significant consequences as has been shown.

For wealth managers, fiduciaries and trusted advisors this is an important topic to keep on top of and in order to avoid a panic rush in 12 months’ time, putting into place the accounting mechanisms to translate financial information into recognisable financial returns should be implemented now. ■