

BVI Business Companies Act and Beneficial Ownership Regime Changes in Force 2 January 2025

On 2 January 2025, amendments to the British Virgin Islands ("BVI") Business Companies Act (As Revised) (the "BC Act") and the BVI Business Companies Regulations (As Revised) (the "Regulations") came into force, along with new BVI Business Companies and Limited Partnership (Beneficial Ownership) Regulations ("Beneficial Ownership Regulations") (together the "Amendments").

The Amendments bring the BVI beneficial ownership regime for BVI companies ("Beneficial Ownership Regime") within the BC Act for ease of reference and also make various updates to the BC Act in line with international standards and best practice, including filing the register of members and basic information on nominee shareholders with the BVI Registrar of Corporate Affairs ("Registrar"), changing the timing of the appointment of a company's first directors, and other updates described below.

The Amendments came into force on 2 January 2025 and a six-month transitional period applies for existing BVI companies.

Beneficial Ownership Regime Changes

The Amendments bring the Beneficial Ownership Regime within the BC Act and the supervision of the Registrar, in line with international standards and requirements that

beneficial ownership information is held by a public authority. BVI companies are required to collect, keep and maintain adequate, accurate and up-to-date information on the company's beneficial owners and, unless an exemption applies, file the beneficial ownership information with the Registrar. Filings must be made within 30 days of the date of incorporation or continuation of the company into BVI and updated within 30 days of the company becoming aware of a change to the information. The BVI Financial Services Commission (the "Commission") issued detailed Guidance on Filing of Beneficial Ownership Information under the Beneficial Ownership Regulations on 20 December 2024 to assist with implementation of the beneficial ownership changes. Equivalent changes to the beneficial ownership information requirements for BVI limited partnerships have also been made, which are outside the scope of this update.

Exemptions to Filing Beneficial Ownership Information

Exemptions to the obligation to file beneficial ownership information with the Registrar apply to:

- (a) Companies whose shares are listed on a recognised exchange; and¹
- (b) Companies that are a private, professional, public, private investment, incubator or approved fund regulated by the Commission, or companies whose shares are held by a trustee licensed under the BVI Banks and Trust Companies Act (As Revised) ("BTCA"), if the following conditions are satisfied:
 - (i) the company's beneficial ownership information is held by a BVI regulated fund administrator or the company's authorised representative or other person licensed by the Commission that has a physical presence in the BVI or the company's trustee licensed under the BTCA; and
 - (ii) the beneficial ownership information can be provided to the Registrar within 24 hours of request by the person referred to above. The information does not have to be held in BVI at all times.

The Beneficial Ownership Regulations confirm that if the company's beneficial ownership information is held by a trustee licensed under the BTCA, only the name of the trustee needs to be filed with the Registrar.

Beneficial Ownership Information Data

The data points required in relation to a beneficial owner under the amended Beneficial Ownership Regime are largely similar to the data filed by registered agents under the previous BVI

Beneficial Ownership Secure Search System Act (As Revised) ("BOSS Act") and under BVI Anti-Money Laundering Regulations (As Revised), other than to add new fields for occupation, gender and category of beneficial owner. From 2 January 2025, all beneficial ownership information filings will be made via the BVI online VIRRGIN platform, and beneficial ownership information filings under the BOSS Act will end.

The Commission has confirmed that a fee of US\$125 will apply for beneficial ownership filings made by newly incorporated BVI companies and companies continuing into BVI after 2 January 2025, with no filing fee applying to existing companies making filings before 2 July 2025.

New Register of Members Filing and Nominee Shareholder Information Filing

Register of Members Filing

Unless exempt, BVI companies must now file a copy of their register of members for registration by the Registrar. The initial copy must be filed within 30 days of either the date of incorporation or the date of continuation of a company into BVI, with an updated copy filed within 30 days of any change. The register of members filed with the Registrar, and information on nominee shareholders described below, will not be publicly accessible and will only be available to the company, its registered agent, a BVI competent authority and law enforcement agencies.

Exemptions apply to companies whose shares are listed on a recognised exchange or which are private, professional, public, private

¹"Recognised exchange" means a recognised exchange as defined in the Regulatory Code (As Revised), i.e. an exchange that is a member of the World Federation of Exchanges or recognised by the BVI Financial Services Commission under the

Regulatory Code (Recognised Exchanges) Notice (As Revised). This includes for example the London Stock Exchange, NYSE, NASDAQ and Hong Kong Exchanges and Clearing. Please contact us for the list of current "recognised exchanges".

investment, incubator or approved funds regulated by the Commission. If an existing BVI company had opted to file its register of members, it does not have to file another copy unless the previous copy register filed did not contain all the information required under the Amendments.

Nominee Shareholder Information Filing

Under the Amendments, where a company has any shareholder(s) that act as a nominee, the company must file the name and address of the nominator with the Registrar, in addition to keeping its register of members. A member acts as a nominee shareholder if they hold shares in the company and exercise the voting rights according to the instructions of a nominator without any discretion, or they receive dividends on behalf of a nominator. Details of changes to the nominee arrangements must also be filed with the Registrar.

Changes to Filings for Directors

Directors Appointed by BVI Licensed Director Services Providers

Where a BVI director services provider licensed by the Commission² acts as a director to a BVI company, the company now must file certain basic information with the Registrar, when the copy of the company's register of directors is filed for registration on incorporation or continuation of a company into the BVI and when changes are made to the register of directors.

Shortened Period for Appointment of First Directors

The Amendments shorten the period for the first director(s) of a company to be appointed by its registered agent, from the previous period of six months from the date of incorporation to 15 days after incorporation.

New Power of Rectification of Register of Directors

This new power allows a member, director or any person aggrieved by an omission, inaccuracy or delay in entering information in a register of directors to apply to the BVI court for an order that the register be rectified.

Access to Register of Directors

A list of the current directors of a BVI company will continue to be available from the Registrar on request and the Registrar can also now provide a copy of the full register of directors to the company or its registered agent, a BVI competent authority and a law enforcement agency.

Transitional Arrangements

From 2 January 2025, a six-month transitional period applies for existing BVI companies for the obligations to file beneficial ownership information, the register of members and information on director services provided.

This is extendable by the Registrar by up to a further six months. Existing companies that do not comply with these obligations within the transitional period will be liable to penalties of US\$600 for the first three months of breach, US\$800 for the second three months of breach, and then to be struck off by the Registrar after

² Licensed under the Banks and Trust Companies Act (As Revised) or the Company Management Act (As Revised)

the end of the second three-month period, i.e. six months after the end of the transitional period.

Other Updates to the BC Act

The Amendments also include:

- (a) **Continuations:** expanding the notice that a company intends to continue outside the BVI, to add declarations that (i) the company does not have any pending request from a competent authority to produce documents or provide information which has not been satisfied; (ii) a receiver has not been appointed over the company or in relation to any assets of the company; and (iii) the company is not aware of any legal proceedings, whether civil or criminal, pending against the company, or any member, director, officer or agent of the company as it directly relates to the affairs of the company.
- (b) **Striking off:** making minor changes to the grounds for striking a company off the BVI register of companies, to include where a company fails to provide information required under the BC Act, the company fails to pay any fixed penalty or administrative penalty or for a restored company, where a registered agent has not complied with an undertaking to update the company's registers and anti-money laundering records. The transitional provisions for the 1 January 2023 amendments to the BC Act have been amended so that the US\$5,000 penalty payable on restoration of an existing struck off company (at 1 January 2023) is no longer payable if the application for restoration is made by a creditor.
- (c) **Restoration of a company by the Registrar:** on an application to restore the name of a company to the Register by the Registrar under s217 of the BC Act, the company will now also have to file a copy of its register of members and register of directors on or within 14 days of the date of restoration of the company, unless the company had filed these registers at the date the company was struck off and dissolved.
- (d) **Restoration of a company by Court order:** an application to the BVI Court to restore a dissolved company to the register under s218 of the BC Act may now also be made by a person with a potential legal claim against the company's former directors or former members, or in respect of any assets of the company or issued shares, as well as the existing right for a person with a potential legal claim against the company to make this application. The requirement for the company to file its register of members and register of directors also apply on applications to restore companies under s218 of the BC Act.
- (e) **Broad new duty to cooperate with the Registrar:** a person conducting an inspection of a company, BVI competent authorities, and BVI law enforcement agencies. This includes an ability for the Registrar to provide a BVI competent authority or BVI law enforcement agency with access to the systems, facilities, and platforms, including the beneficial ownership information platform.
- (f) **Returns:** The Commission now has a broad ability to require a BVI company or foreign company registered under the BC Act to prepare and submit further returns on any matter concerning the business or affairs of the company, by order published in the BVI Gazette and on the Commission's website.
- (g) **Certificates of good standing:** for a certificate of good standing to be issued, the company will now need to have filed its register of members and beneficial ownership information with the Registrar.

The Registrar must also not have received a notification of failure by a company to file its annual return.

- (h) Penalties: The Regulations introduce tiered administrative penalties of up to \$75,000 for breaches of various provisions of the BC Act.

Conclusion

The Amendments are intended to maintain international standards and best practice throughout BVI company law. As the changes came into force on 2 January 2025, companies should review the impact of them now and take action as needed.

Further Assistance

If you would like further information on the Amendments, please reach out to your usual Maples Group contact or any of the persons listed below.

British Virgin Islands

Chris Newton

+1 284 852 3043

chris.newton@maples.com

Ruairi Bourke

+1 284 852 3038

ruairi.bourke@maples.com

Dubai

Philip Ireland

+971 4 360 4073

philip.ireland@maples.com

Hong Kong

Matt Roberts

+852 6013 7108

matt.roberts@maples.com

Ann Ng

+852 9868 7475

ann.ng@maples.com

Sharon Yap

+852 9023 0037

sharon.yap@maples.com

London

Matthew Gilbert

+44 20 7466 1608

matthew.gilbert@maples.com

Heidi de Vries

+44 20 7466 1651

heidi.devries@maples.com

Joanna Russell

+44 20 7466 1678

joanna.russell@maples.com

Fiona Chandler

+44 20 7466 1709

fiona.chandler@maples.com

Singapore

Michael Gagie

+65 9723 9872

michael.gagie@maples.com

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