

AMENDMENTS TO BVI BUSINESS COMPANIES ACT (BCA)

IMPORTANT NOTICE REGARDING AMENDMENTS TO THE BVI BUSINESS COMPANIES ACT (BCA)

We would like to bring to your attention significant amendments to the British Virgin Islands (BVI) Business Companies Act (BCA) that came into effect on 2 January 2025. These amendments will impact all entities operating within the jurisdiction and introduce important regulatory changes that you must be aware of.

The changes encompass a variety of provisions aimed at enhancing corporate governance, transparency, and compliance in the BVI business environment. Alongside these regulatory updates, there will also be new fees.

Register of Directors (ROD) Requirements

The recent amendments to the BCA emphasise the importance of maintaining an up-to-date Register of Directors (ROD) for all companies. One of the fundamental changes is that a company cannot obtain a Certificate of Good Standing unless its ROD has been duly filed with the Registry of Corporate Affairs ("BVI Registry").

For existing companies, i.e. companies that were incorporated prior to the entry into force of the amendments of 2 January 2025, the deadline for filing their ROD with the Registry of Corporate Affairs is 30 June 2025.

Companies that are incorporated or continued in the BVI after 2 January 2025 will have only 30 days from the date of incorporation or continuation to comply with the ROD filing requirements. The first directors are to be appointed **within 15 days from the date of incorporation** and the Company has **15 days from the appointment date to file their ROD with the BVI Registry**. Similarly, companies which are continued into the BVI will have **15 days from the date of continuation** to comply with the ROD filing requirements. A company that was struck off and dissolved but subsequently restored to the register shall file a copy of its ROD as a condition of restoration **within 14 days of the restoration date** (if the ROD was not filed prior to being struck off). Additionally, it is important to remember that any changes to the ROD - including updates to the composition of the board of directors - must also be filed at the BVI Registry **within 30 days of such changes**.

Register of Members (ROM) Requirements

The amendments to the BCA have also introduced additional requirements in respect of a company's Register of Members (ROM). Previously, a company only had to maintain an ROM. Now, all companies must file their ROMs with the BVI Registry. It should, however, be noted that there are some exemptions to this requirement, e.g. if the company's shares are listed on a recognised stock exchange or if a company is one of several types of funds specified in the BCA. While it is mandatory to file the ROM, a company may elect to keep the register private, which means its contents will not be available to the general public or evidenced on a company search report. Companies that were incorporated before the amendments must ensure that their ROM is filed by **30 June 2025**.

Companies that are incorporated or continued into the BVI after 2 January 2025 will only have 30 days from the date of incorporation or continuation to file their ROM. Additionally any changes to the information in the filed ROM must be updated at the BVI Registry **within 30 days of the change**.

When preparing the ROM, it is also essential to include the details of any nominators. If the person holding shares in the company is acting as a nominee shareholder, in addition to the ROM, the company must file the particulars of the person who has nominated the shareholder (i.e. the nominator).

A company cannot obtain a Certificate of Good Standing unless its ROM has been filed.

Beneficial Owners (BO) Requirements

Under the amended regulations, the BVI Registry will maintain a Register of Beneficial Owners (ROBO). From 2 January 2025, all companies in the BVI are required to file Beneficial Ownership information with the BVI Registry **within 30 days** of their incorporation. Similarly, any changes to the Beneficial Ownership information must be filed with the Registry within 30 days of the change. This requirement applies unless the entity is listed on a recognised exchange or is classified as an investment fund, which have specific exemptions from these obligations.

The ROBO must include detailed information about each beneficial owner or controlling owner who holds a 10% or greater interest in the entity. This provision is crucial for understanding the ownership structure and ensuring that entities are not being used for illicit purposes. Trustees will continue to be regarded as BOs, which means that if a trust holds an interest in the company or partnership, the trustee's information must be filed with the BVI Registry for inclusion in the ROBO.

It is essential to understand that a company cannot obtain a Certificate of Good Standing until the BO information has been duly filed at the BVI Registry.

Access and Searchability of ROBO Information

At the time of the changes, there is still no public access to the ROBO. However, provision has been made that anticipates that those with a "legitimate interest" will be allowed access to the ROBO. The ROBO information about each BO holding a 25% or greater interest will be searchable to persons who are able to prove to the Registrar that they have a legitimate interest in accessing this information. The concept of "legitimate interest" as well as the procedure for accessing the ROBO are yet to be further defined and brought into effect.

However, certain exceptions apply, meaning that the ROBO will not be accessible in the following scenarios:

1. If it is not in the public interest to disclose the information.
2. If there are data protection concerns that could jeopardise individuals' privacy.
3. If there is a need to protect a person from risk, which could encompass various threats.
4. If there is a need to protect a child who lacks legal capacity, ensuring their safety and privacy.

The ROBO information will be accessible for inspection by competent authorities and law enforcement agencies. This is similar to existing laws and practice.

Exemptions to Filing BO Information

The BCA provides specific exemptions regarding the filing of BO information for certain types of entities. Notably, companies whose shares are listed on a recognised exchange are exempt from the BO filing requirements.

In addition to publicly listed companies, exemptions also apply to various types of funds. These include private investment funds, professional funds, public funds, and approved and incubator funds that are recognised under the relevant investment business legislation in the BVI. However, the exemption granted to these funds is contingent upon specific conditions being met. Primarily, the fund must have its beneficial ownership (BO) information held by a BVI-based fund administrator, authorised representative, or another licensed entity with a physical presence in the BVI. This licensed entity must be capable of providing the Registrar with the BO information within 24 hours upon request.

Corporate trustees that are licensed under the BVI Banks and Trust Companies Act (Revised Edition 2020, as amended) are also exempt from the full BO filing requirements. In this case, these trustees are required to file only the name of the trust and the nature of their control or interest over the trust.

Continuation Out of the BVI

When a company wishes to continue its operations outside the BVI, several regulatory requirements must be met to ensure compliance and a smooth transition. Below are the key requirements and a step-by-step guide to help you navigate this process.

Key Requirements for Continuation Out

1. **Filing of ROD, ROM, and BO information:** Before a company can continue out of the BVI, it must ensure that its Register of Directors (ROD), Register of Members (ROM), and BO information are all filed and up to date.
2. **Release of Public Register of Charge or Chargee Consent:** If the company has registered any charges against its assets, it must either release these charges from the public register or obtain consent from the chargees (the parties holding the charges).
3. **Confirmation of No Pending Litigation and Not in Receivership:** The company must provide confirmation that there is no pending litigation against it and that it is not currently in receivership.
4. **Confirmation of No Unsatisfied Information Requests:** Finally, the company must confirm that there are no outstanding requests for information from competent authorities.

Continuation into the BVI

When a company wishes to continue its operations in the British Virgin Islands, it must adhere to specific regulatory requirements designed to ensure compliance with local laws and maintain corporate governance standards. The process of continuation into the BVI involves several key steps, including the filing of essential documents that provide transparency about the company's structure and operations.

Key Requirements for Continuation In

1. **Filing of Registers:** Before a company can successfully continue its operations in the BVI, it is required to file its Register of Directors (ROD), Register of Members (ROM), and BO information.
2. **Filing of Registered Office Address:** In addition to the registers, the company must also provide the address of its registered office in the jurisdiction of incorporation.

Restoration Process for Companies in the BVI

Restoring a company that has been struck off the register in the British Virgin Islands is a structured process that requires compliance with specific regulatory requirements. Below are the key requirements and a detailed step-by-step guide to help you navigate the restoration process effectively.

Key Requirements for Restoration

1. **Confirmation of KYC Documentation:** The first step in the restoration process is for the registered agent to confirm that it possesses all necessary Know Your Customer (KYC) documentation.
2. **Filing of ROD and ROM:** Once KYC documentation is confirmed, the company must file its Register of Directors (ROD) and Register of Members (ROM) within 14 days of initiating the restoration process.
3. **Filing of BO information:** In addition to the ROD and ROM, the company must file BO information within 14 days.

Duty to Cooperate for Companies in the BVI

In accordance with recent amendments to the regulatory framework governing companies in the British Virgin Islands, all companies now have a formal duty to cooperate with the BVI authorities and provide any information that is requested.

Key Aspects of the Duty to Cooperate

1. **Obligation to Provide Information:** Under the new regulations, companies must be prepared to any information requested by the BVI Registry or other competent authorities. This requirement underscores the importance of maintaining accurate and up-to-date records, as the ability to respond promptly and effectively to information requests is essential for compliance. Companies should ensure that they have efficient systems in place to gather and organise necessary data, making it readily accessible when needed.
2. **Power of the BVI Registry to Request Bespoke Reports:** The BVI Registry now has the authority to request bespoke reports tailored to specific inquiries or issues that may arise during their oversight of companies. This means that companies may be required to provide detailed explanations or analyses relevant to their operations, ownership structure, or financial activities.

Fees and Penalties in the BVI

Recent regulatory changes in the British Virgin Islands have introduced a new framework of fees and penalties aimed at enhancing compliance and ensuring that companies adhere to the provisions set forth by the BCA.

HOW WE CAN ASSIST

Trident will assist clients by facilitating the verification and confirmation of their data through our convenient Client Portal, followed by a secure upload to the designated government portal. A **one-time fee of \$200** will be added to the annual invoice for 2025 for all active entities for this service. This fee will be reflected on your invoice as "BVI Statutory Registers filing fee".

Entities that are incorporated after 2 January 2025 will not incur this \$200 fee since the filing of the required information is part of the incorporation process and covered by the incorporation invoice.

Note that any subsequent changes to the directors, members, partners or beneficial owners will be charged at the rates per Trident standard fees schedule.

Please contact your usual Trident contact if you would like more information or contact us at bvi@tridenttrust.com.