



# 2024 Amendments to the BVI Business Companies Act

Insights - 02/10/2024

Changes have been announced to the BVI Business Companies Act 2004 (as amended) that will further strengthen the BVI's reputation for transparency and international best practice.

The BVI Business Companies (Amendment) Act, 2024 (**Amendment Act**), published in the BVI Gazette on 26 September 2024, details a number of amendments to the BVI Business Companies Act that will enhance the jurisdiction's ability to combat the use of financial services for money-laundering.

In this article, we summarise some of the key changes including clarification on beneficial ownership, register of members, rectifying the register of directors, director duties and more.

Please note that the Amendment Act is not yet in force. Further updates will be provided by our BVI team when more information becomes available.

## BVI beneficial ownership

The Amendment Act clarifies the definition of beneficial owner and confirms the long-standing position that beneficial ownership should consider both ownership and control.

Beneficial ownership information is required to be collected, kept, and maintained in an adequate, accurate and up-to-date manner. The Amendment Act does not prescribe the information to be maintained. However, the name, address, and confirmation of which limb of the definition of "beneficial owner" needs to be included. While now an obligation, this amendment codifies the previous best corporate governance practice.

A new requirement introduced by the Amendment Act is that the beneficial ownership information must now be filed with the BVI Registrar of Companies (**Registrar**), rather than on the BOSS Portal, as is currently the case. Significantly, this filing with the Registrar is not publicly accessible. This beneficial ownership information needs to be filed within 30 days of the incorporation of a

company or within 30 days of the date the company continues into the BVI.

The Amendment Act makes provision for certain categories of companies to be exempt from the requirement to file information on beneficial owners, which includes companies whose shares are listed on a recognised exchange and funds, which:

(a) have their beneficial ownership information held by a person who holds either:

1. i. Category 6 investment business licence in accordance with the Securities and Investment Business Act, 2004 (as amended), or
- ii. its authorised representative or other person licensed by the Financial Services Commission that has a physical presence in the BVI, and

(b) ensure that the beneficial ownership information can be provided to the Registrar within 24 hours of a request for such information.

A large number of BVI funds use a non-BVI domiciled fund administrator. As a result, beneficial ownership information is generally gathered and held outside the BVI. Following the enactment of the Amendment Act, it is not expected that such a fund would now be expected to maintain its beneficial ownership information in the BVI, provided that it was able to comply with the obligation in (b) above to provide the beneficial ownership of the fund to the Registrar within 24 hours of a request for such information.

The company is required to file a notice with the Registrar confirming the name and address of the person holding the beneficial ownership information within 30 days after the date of incorporation or continuation of the company, as relevant. Entities should ensure that they adhere to the filing requirement in the period between incorporation and approval for registration as an exempted entity, during which time they will not satisfy the criteria for the exemption.

Registered agents are required to take reasonable measures to verify the beneficial information provided prior to filing. Where beneficial ownership information changes, the company must, file information in respect of the change within 30 days. The company should act reasonably to ensure it becomes aware of any changes to beneficial ownership information.

A company incorporated or continued into the BVI prior to the Amendment Act coming in to force must comply with the requirements to file the beneficial ownership information within six months of the effective date of the Amendment Act.

## Register of members

The Amendment Act clarifies the information required in the register of members. In addition to the prescribed information, the Amendment Act requires that information relating to nominee shareholders is maintained and filed with the Registrar. The Amendment Act does not provide a

minimum shareholding over which a nominee acts in respect of the filing requirement and therefore all nominee shareholders should be recorded as a matter of good corporate governance.

The initial register of members must be filed with the Registrar within 30 days after the date of incorporation or date of continuation into the BVI, as relevant. Further changes to a company's register of members must be filed within 30 days of the changes occurring. The register of members will not be publicly available unless the company elects to have the filing publicly accessible. The company can also elect to include information it considers relevant in relation to a company granting security over its shares.

The Amendment Act exempts certain companies from the requirement to file the register of members, including companies whose shares are listed on a recognised exchange and funds. Entities should ensure that they adhere to the filing requirement in the period between incorporation and approval for registration as an exempted entity, during which they will not benefit from the exemption.

Additionally, a company that was struck off and dissolved and subsequently restored to the Register is not required to file a copy of its register of members. While the Amendment Act does not deal with which register of members is deemed to be prima facie evidence, it is likely that the courts will interpret this provision in light of the previous drafting. In the event that a publicly filed register of members is deemed to be the prima facie evidence of ownership, counterparties would be well advised to ensure their protection in transactions. This includes warranty protection to ensure the most recent register of members is filed (until such time as a company elects to no longer file its register of members).

A company must comply with the requirements to file the register of members within six months of the effective date of the Amendment Act.

## Rectification of register of directors

Where a register of directors omits information or includes inaccurate information, or there is an unreasonable delay in entering the required information, the Amendment Act clarifies that a member, director, or any person aggrieved by the omission of the relevant information may apply to court for an order to rectify the register of directors. The courts are afforded a wide discretion as to what, if any, costs order it may hand down in such a situation and this is likely to turn on the materiality of the omission.

## First directors of a company

The first registered agent of a company must now appoint one or more persons as the first director of the company within 15 days of the date of incorporation of the company. This amendment significantly shortens the previous allowance. However, we do not see that this should prejudice those seeking to incorporate entities in the BVI and would instead place a premium of obtaining

relevant documentation at an early stage.

## Director services

Where a person licensed under the Banks and Trust Companies Act, 1990 (as amended) or the Company Management Act, 1990 (as amended) is to provide director services to companies or act as a director to a company, the company shall indicate that the person is appointed to offer the services. The company must file the information with the Registrar at the same time as the filing of the register of directors. As a matter of good corporate governance, changes should be made to the register and provided to the Registrar within a reasonable timeframe of the change (15 days is suggested).

## Continuation under foreign law

Where a BVI company intends to redomicile out of the BVI, the Amendment Act expands the existing compliance declaration that the directors are required to file with the Registrar. The declaration must include statements of compliance with regards to any request to provide document or information to a competent authority, that no receiver has been appointed over the company or its assets, and that the company is not aware of any pending legal proceedings against it or its shareholders, directors, officers or agents in relation to the affairs of the company.

## Impact and effectiveness

It is clear that some of the proposed changes will impose additional obligations, such as filings in the event of changes. However, these should not be materially burdensome and the enhanced transparency they provide will help the BVI cement its reputation and popularity as a leading finance centre.

As noted above, the changes being introduced by the Amendment Act are not yet in force. We understand that it may also be the case that certain changes being made under the Amendment Act will come into force before others.

We do expect some action on this in the near future and we will provide an update as soon as possible once any notice is given.

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## Key Contacts



Stuart Fee

Counsel

British Virgin Islands

E: [stuart.fee@ogier.com](mailto:stuart.fee@ogier.com)

T: [+1 284 852 7337](tel:+12848527337)



Michael Killourhy

Partner

British Virgin Islands

E: [michael.killourhy@ogier.com](mailto:michael.killourhy@ogier.com)

T: [+1 284 852 7309](tel:+12848527309)



Simon Schilder

Partner

British Virgin Islands

E: [simon.schilder@ogier.com](mailto:simon.schilder@ogier.com)

T: +44 1534 514298

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