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HKCGI Guidance Note on Recent BVI Company Regulations and Developments

The governance professional will, in many cases, have dealt with corporate structures that involved the use of British Virgin Islands (BVI) companies. The Institute has called for enacting a re-domiciliation regime in Hong Kong - given compliance with economic substance, global minimum tax, and increasing anti-money laundering and counter-financing of regulations requirements for disclosure of beneficial ownership for offshore companies - might result in them seeking to continue as Hong Kong companies to reduce the compliance burden. Nevertheless, BVI companies that are used under a holding structure are expected to continue to be used because of the minimal stamp duty for share transfers, as well as being an established and readily understood jurisdiction with English legal tradition.

The governance professional should already be familiar with economic substance filing requirements,

which have been in place for a number of years. Thus, this guidance note will focus on some of the latest regulatory developments under BVI company regulations. This should provide handy information to the governance professional dealing with BVI companies as part of practical governance.

BVI Annual Financial Return

As of 1 January 2023, BVI companies must submit a financial annual return (FAR) to their Registered Agents. This has to be done within nine months after each company's financial year end (FYE). There is no requirement for an audit, and the information must be as set out in a standard form. Please see the schedule for the BVI Business Companies (Financial Return) Order 2023 (Order)¹ for the form. There are exemptions to the filing requirements under s. 3(2) of the Order, namely:

1 https://www.bvifsc.vg/sites/default/files/bvi_business_companies_financial_return_order_2023.pdf

Authors:

- **Mr Edmond MK Chiu FCG HKFCG(PE)**, Council Member, HKCGI; and Head of Company Secretarial Services, Greater China, Vistra,

- **Joe Cheung**, Managing Director, Harney's Fiduciary HK

Contributing Editor: Mohan Datwani FCG HKFCG(PE), Institute Deputy Chief Executive - For comments and suggestions: mohan.datwani@hkcgi.org.hk.

- A listed company, meaning a company that is listed on a stock exchange.
- A company that is regulated under financial services legislation and provides financial statements to the Financial Services Commission (Commission) in accordance with the requirements of financial services legislation.
- A company that files its annual tax return to the Inland Revenue Department accompanied by the company's financial statements.
- A company in liquidation, except that this exemption does not apply if the company's annual return becomes due prior to the commencement of the liquidation.

Dormant companies are not exempt. The FAR is, for now, confidential and not open to the public, but it is accessible by BVI authorities through requests made on a company's Registered Agent.

For example, if a company's FYE, determined by the directors under a board resolution, is 31 December 2023, the filing should have been made by 30 September 2024. For late filings, the penalty is US\$300 for the first month and US\$200 per month after that, with a maximum fine of US\$5,000. The BVI Registrar of Corporate Affairs (Registrar) could strike off the company after that.

Whilst the Commission updated its guidance on 26 September 2024 that it and the BVI Registrar will not initially take enforcement actions for failure to file against the BVI company, it remains a breach of the legislation for a company not to file a FAR, and it is unclear as to how long this moratorium will last. Further, if a FAR has not been filed, TCSPs will have no legal power to provide a Certificate of Good Standing for a trust or a company until this requirement has been fulfilled.

Therefore, please comply with the filing requirements with the help of your trust and company service provider (TCSP), Registered Agent (normally associated with a TCSP) or professional adviser, as appropriate.

Upcoming Developments

The BVI Business Companies Act of 2004 will soon undergo several important changes following the expected passage of an amendment. For the governance professional's information, the major changes will include:

- **Register of members.** Companies will be required to submit their register of members to the Registrar. The information will remain private and not be searchable by the general public but will be accessible by competent BVI authorities. There will be a six-month transitional period, beginning on the day the amendment is implemented. Companies newly incorporated after the amendment becomes effective must comply as soon as they are incorporated.
- **Register of professional directors and nominee shareholders.** Companies with "nominee" shareholders and licensed professional directors are subject to new registration requirements. Companies must submit the identities of these directors and nominees and the information of any people they are directed to act under.
- **Rectification of register of directors.** There will be the introduction of statutory provisions for those aggrieved to seek court rectification based on an omission, inaccuracy, or delay in updating information in a company's register of directors.

- **Register of beneficial ownership.** The framework for establishing a public beneficial ownership record in the BVI was enacted on 1 January 2023. The BVI is now expected to require filing a beneficial ownership register accessible only to those demonstrating a legitimate interest in the information sought. This is a major development, and related provisions and exemptions are evolving to align BVI with European requirements to address beneficial ownership disclosure as a global AML/CFT concern.
- **Outward re-domiciliation.** Companies that want to re-domicile (that is, continue) their business outside of the BVI must verify with the Registrar that they have no active legal actions, unanswered regulatory demands, or receivers appointed over their assets. The modifications will add to the further safeguards for members and creditors that were put in place in 2023.
- **Restoration.** The rules governing the restoration of dissolved companies will undergo minor revisions, allowing companies to adhere to the recorded-keeping requirements within 14 days of the restoration date, whether under a court-ordered or administrative restoration.
- **Additional regulatory powers.** Companies will expressly be required to cooperate with BVI law enforcement agencies and other appropriate authorities following the amendment's effectiveness. Additionally, the Registrar now has the authority to demand that a business submit a 'return' on its operations.

As set out under this guidance note, additional compliance requirements and far-reaching amendments to the BVI Companies Act are expected to be effective soon. These will align with global business, tax and AML/CFT concerns. The governance professional should be aware of these developments and consult their TCSPs, Registered Agents and professional advisers on the impact of these requirements, as appropriate.