

BVI Companies: Voluntary Liquidations v Strike Offs

Background

This industry update looks at two options which are available when a solvent, dormant British Virgin Islands ("BVI") company is no longer needed: a formal members' voluntary liquidation and a strike off and dissolution of the company on application to the BVI Registry of Corporate Affairs.

Members' Voluntary Liquidation

A BVI company must be in good standing with the BVI Registry of Corporate Affairs ("BVI Registry") in order to commence a members' voluntary liquidation. This includes having paid all outstanding licence fees and made all applicable returns within the time frame prescribed by law. Resolutions approving the liquidation and appointing a liquidator are signed by the directors and members of the company and various ancillary documents (including a liquidation plan) are also required. The liquidation commences on the date of registration of the appointment of the liquidator at the BVI Registry and in normal circumstances should complete within six to ten weeks.

There are limitations to who may act as a liquidator and the liquidator must be resident in the BVI, or where joint liquidators are appointed at least one of them must be BVI resident¹. The main role of the liquidator is to ensure that all liabilities of the

company have been satisfied and all assets of the company distributed before the company is liquidated. The liquidator also must collect in various records of the company and provide copies of them (at the end of the liquidation) to the company's registered agent, who keeps those records for at least five years. The liquidator owes fiduciary duties to the company and is more than simply a signatory on documents. The liquidator will typically require a standard indemnity from the member / parent company and would need the company to provide details of its assets and liabilities (if any).

A company dissolved following a liquidation can, technically, be restored by an application to the High Court in the BVI within five years of the date of dissolution of the company. The restored company would be restored back into liquidation, and this limited restoration would typically be sanctioned by the Court only for a compelling reason, with an obligation on the liquidator to complete the liquidation swiftly after restoration.

Strike Off and Dissolution

Under the BVI Business Companies Act (As Revised) (the "Act"), a company can apply to the BVI Registrar of Corporate Affairs (the "Registrar") to be struck off the Register of Companies in the BVI ("Register") on the grounds that the company has ceased to carry on business. If the Registrar is

¹ Please see our [legal guide](#) to Voluntary Liquidation of a Solvent BVI Company for further details of who may act as

liquidator, the records of the company to be collected and the voluntary liquidation process.

satisfied that the company has ceased to carry on business the company will, on 90 days' notice, be struck off the Register and at the same time be automatically dissolved.

If a company decides to apply to be struck off and dissolved, its' registered agent is required to update (as necessary) the company's statutory registers and its customer due diligence information, and the registered agent will typically ask the company to provide any additional information that is required in that regard.

A company can be restored to the Register by the Registrar within five years of the date that notice of its striking off and dissolution is published in the BVI Gazette. An application to restore can be made to the Registrar by the company, members or a creditor if the company has been struck off and dissolved in this way if the company meets certain conditions including:

- (a) the company was carrying on business or in operation at the date of its striking off and dissolution;
- (b) a licensed person has agreed to act as the company's registered agent in the BVI;
- (c) the registered agent has made a declaration that the company's anti-money laundering and terrorist financing records have been updated;
- (d) if following strike off and dissolution any property of the company has vested in the Crown (*bona vacantia*), the Financial Secretary has either consented to the company's restoration to the Register or is deemed to have consented by not responding to a request for consent within seven days;
- (e) the company has paid the restoration fee and any outstanding fees and penalties; and
- (f) the Registrar is satisfied that it would be fair and reasonable for the company to be restored to the Register.

If these conditions cannot be met there are certain other grounds on which a restoration application may be made to the Court. Where a company is

restored to the Register in this way by the Registrar or the Court, it is deemed never to have been struck off and dissolved.

Under BVI law, where a company has been struck off and dissolved, the company, its directors, its members, and any liquidator/receiver of the company, shall not:

- a) commence legal proceedings, or carry on any business or in any way deal with the assets of the company;
- b) defend any legal proceedings, or make any claim or claim any right for (or in the name of) the company; or
- c) act in any way with respect to the affairs of the company.

In addition, the striking off the Register and dissolution of a company does not terminate a director's duties to the company. Section 116 of the Act provides that a director who vacates the office of director will remain liable under any provision of the Act that imposes liability on a director in respect of any acts or omissions or decisions made while they were a director.

An application to strike off and dissolve a company may be suitable for a company that was incorporated but never used and has never traded, but is unlikely to be suitable if the company has traded, has liabilities or has entered into any contracts. In these circumstances, voluntary liquidation will typically be more appropriate. A strike off application may also not be suitable as a route to closing down a company for the following reasons:

- (a) the fact a company is struck off the Register and dissolved does not absolve it from any liability that arose or would have arisen before its' striking off and dissolution or that arises as a consequence of the company acting in breach of (a)-(c) above. Strike off and dissolution also does not prevent any creditor from making a claim against the company and pursuing the claim through to judgment or execution; or affect the liability of any of the

company's members, directors, officers or agents;

- (b) the company can be restored to the Register by a creditor if it has been struck off and dissolved in that manner, and in the event of restoration the company is deemed never to have been struck off and dissolved.

When is a Members' Voluntary Liquidation or Strike Off Application More Appropriate?

For a solvent BVI company which is no longer needed, a members' voluntary liquidation provides more finality than a strike off and dissolution and dormant BVI companies are often liquidated formally for this reason. There may be circumstances however when a company has never traded or been used when clients prefer to apply to strike the company off the Register instead of going through the formal voluntary liquidation process.

How the Maples Group Can Help

The Maples Group can assist with a formal members' voluntary solvent liquidation of a BVI company and our affiliate, Maples FS, can provide experienced liquidators and oversee the whole process. For more information on our liquidation services, please read our [flyer](#). We can also assist with an application to strike off and dissolve a dormant, solvent BVI company.

Further Assistance

Please contact us if you would like advice on members' voluntary liquidation or striking off and dissolving a BVI company. We would be pleased to assist.

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