

BVI FINANCIAL SERVICES COMMISSION MEET THE REGULATOR (MTR) FORUM

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Eileene L. Parsons Auditorium, HLSCC

***Topic: Struck-off Companies under the BVIBCA in
Relation to AML/CFT Obligations***

Cherno S. Jallow, QC

Director - Policy Research & Statistics

BVI Financial Services Commission





The current regime on struck-off companies

- **Circumstances giving rise to striking off of a company from the register (section 213)**
- **When a struck-off company ceases to function as a legal entity**
- **Consequences of striking off**
- **Restoration (within 7 years)**
- **Conditions precedent to restoration**
- **Effect of restoration**





The current regime on dissolved companies in relation to restoration

- **Dissolution after end of restoration period**
- **Restoration by court order**
- **Conditions precedent to restoration**
- **Effect of restoration**



AML/CFT obligations in relation to companies generally

- **Application of AMLR & AMLTFCOP (the new amendments)**
- **CDD obligations**
 - Identification & verification of customer's identity
 - Identification and verification of beneficial owner
 - Understanding ownership & control structure (LP)
 - Understanding (& as appropriate) obtaining information on purpose and intended nature of business relationship
- **Obligation on termination of business relationship (updating CDD information)**
- **How termination occurs (& would fees be waived?)**





Company struck-off the register, but business relationship continues

- Effect of continuation – the law vs. industry practice
- Which one prevails?
- Applying the AML/CFT standards



Proposed ways forward in relation to struck-off companies

Option 1:

- Source and update CDD information
- File declaration within transition period
- File declaration with the Commission
- Maintain updated CDD information for 5 years
- Each RA to provide the Commission with number of struck-off companies with which it has business relationship
- New condition precedent for restoration: updating of CDD information to be filed with the Commission





Proposed ways forward in relation to struck-off companies (Cont'd)

Option 2:

- **Terminate business relationship with struck-off company, but ...**
- **After carrying out necessary CDD update...and then**
- **No further CDD obligation**



Proposed ways forward in relation to struck-off companies (Cont'd)

Option 3:

- Deem a struck-off company to be dissolved after 3/6/? Months – this effectively severs the business relationship
- CDD information updating to take place at striking off
- Regime on restoration with Registrar to end
- Ability to restore remains, but pursuant to a court order



Exceptions to CDD information updating on restoration of struck-off company

Requirement for CDD information updating not to apply where restoration is:

- Purely for purpose of commencing or continuing legal proceedings
- Purely for defending action brought against struck-off company ...
and
- Company is dissolved immediately upon completion of purpose of restoration

Exception does not apply where restoration is:

- As a going business concern
- For distribution of outstanding assets

