



MEET THE REGULATOR FORUM

Tuesday 3rd October, 2023

BVI Business Companies (Amendment) Act, 2022 TRANSITIONAL PROVISIONS

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OUTLINE

- **Brief overview of strike-off, dissolution, and restoration regimes prior to 1 January 2023**
- **Brief overview of the current regime highlighting the differences**
- **Transitional Provisions of the BC Act**



Overview of Regime prior to 1 January 2023

- (1) S. 213 discretion – does not have a registered agent, fails to file any return, notice or document required to be filed under the Act, ceases to carry business (“Triggering Events”)
- (2) 30–day notice issued to the Company and published in the Gazette
- (3) No reasonable cause received / Notice of Striking published in the Gazette
- (4) Consequences of being struck-off (cannot commence legal proceedings, carry on business or deal with business and assets or defend any legal proceedings)
- (5) Once struck, the company could have remained continuously struck-off up to 7 (BC Companies) or 10 years (former act companies), during which time an application could have been made to the Registrar for restoration.
- (6) deemed dissolved under section s. 216 after 7 years of being continuously struck (10 in the case of former act companies).
- (7) Undisposed property vests in the Crown *bona vacantia*.
- (8) Application to the court for restoration under section 218(3) or para 57(3)
- (9) Application must be made within 10 years.



THE NEW REGIME – 1 JANUARY 2023

A Brief Overview

- (1) S. 213 discretion – does not have a registered agent, fails to file any return, notice or document required to be filed under the Act, ceases to carry business (“Triggering Events”)
- (2) 90–day notice issued to the Company and published in the Gazette
- (3) No reasonable cause received / Notice of Striking published in the Gazette
- (4) Consequences of being struck-off (cannot commence legal proceedings, carry on business or deal with business and assets or defend any legal proceedings)
- (5) No 7-year window to apply to the Registrar for restoration.
- (6) S. 216 - deemed dissolved the day the Registrar publishes the notice.
- (7) Undisposed property vests in the Crown *bona vacantia*.
- (8) Application for restoration under section 217 or 218 of the BC Act
- (9) Application must be made within 5 years.



TRANSITIONAL PROVISIONS

Transitional Provisions – Division 5, Part VIIA, Schedule 2,



NAVIGATING THE TRANSITIONAL PROVISIONS



Para 60A:

INTERPRETATION



“effective date” means the
1st day of January, 2023



EXISTING STRUCK OFF COMPANIES



What is an existing struck-off company?

- Para 60A:

“existing struck off company”
means a company which, as at the effective date, was struck off from the Register and not restored;



TIME FOR APPLYING TO RESTORE EXISTING STRUCK OFF COMPANIES EXPIRED

Para. 60B(1) – **Subject to subparagraph (2)** and notwithstanding anything to the contrary contained in any Part of this Schedule, every existing struck off company has, as of the effective date, 6 months within which it may apply to the Registrar under section 217 to be restored to the Register.

60B(2) Where an existing period in respect of an existing struck-off company comes to an end on any date (“the earlier date”):

- (a) within (up to) 6 months of the effective date, the existing struck-off company has only up to the end of the earlier date to apply to be restored to the Register; *- if an existing period comes to an end on 1 May 2023 –that company had up to 1 May 2023 to apply to the Registrar under section 217 for restoration, because it is the date on which the existing period came to an end, notwithstanding that it is earlier than 30 June 2023 being 6 months of the effective date.*
 - (b) after 6 months from the effective date, the existing struck-off company has only up to the end of that 6-month period within which it may apply to be restored to the Register. *If the existing period is scheduled to come to an end on 1 November 2023, the existing struck-off company had up to 30 June 2023, being 6 months after the effective date, to apply to the Registrar for Restoration under section 217 of the BC Act*
- **Up to 30 JUNE 2023 to apply to the Registrar under section 217**



WHAT WERE THE CONSEQUENCES OF FAILING TO APPLY FOR RESTORATION BEFORE 30 JUNE 2023?

1) DEEMED DISSOLVED ON 1 JULY 2023

- **60D.** (1) Where an existing struck off company is not restored to the Register as indicated in paragraph 60B (2), it is **deemed to be dissolved** on the day following the end of the period specified in that paragraph.

2) DEEMED RESIGNATION OF REGISTERED AGENT

- **60E.** (1) Where an existing struck off company is deemed dissolved in accordance with paragraph 60C, the registered agent of the existing struck off company shall, unless he or she had resigned earlier, be deemed to have resigned ("**deemed resignation**") as registered agent of the existing struck off company on the date the company was dissolved.



HOW DO I RESTORE AN EXISTING STRUCK OFF COMPANY THAT IS DEEMED DISSOLVED UNDER PARA. 60D?

- **By applying to the court under
section 218**



WHY CAN'T I APPLY TO THE REGISTRAR UNDER SECTION 217 TO RESTORE AN EXISTING STRUCK OFF COMPANY THAT IS DEEMED DISSOLVED UNDER PARAGRAPH 60D?

- Section 217 does not make provisions for the restoration of existing struck off companies that are deemed dissolved under paragraph 60D.
- Para. 60G(1) of the Transitional Provision expressly refers to the restoration of existing struck off companies that are deemed dissolved under para. 60D.



WHAT ARE THE PENALTIES FOR RESTORING AN EXISTING STRUCK OFF COMPANY THAT IS DEEMED DISSOLVED?

- **60G.** (1) Where the Court, in the exercise of powers under section 218 of the Act, makes an order to restore to the Register an existing struck off company that is deemed dissolved under paragraph 60D, the company is liable to pay a penalty of \$5,000 in addition to complying with the requirements specified in section 218A (1) (a) of the Act.
- There are exceptions:
 - **60G.**(2) The penalty specified in subparagraph (1) shall not apply if the application for restoration was made by a person other than a creditor, former director, former member or former liquidator of the company.



Restoration of Existing Dissolved Companies



RELEVANT TERMS

- “*effective date*” means the 1st day of January, 2023;
- *Existing Dissolved Companies* - means a company which, as at the effective date, was dissolved but has up to 10 years from the date of dissolution within which it may apply to be restored to the Register.
- *Existing Period means* “the period of 10 years from the date of dissolution within which an existing dissolved company could apply to be restored to the Register under section 218 of the Act; ”



WHEN SHOULD I APPLY TO RESTORE AN EXISTING DISSOLVED COMPANY?

- **60C.** (1) Subject to subparagraph (2) and notwithstanding anything to the contrary contained in any Part of this Schedule, every existing dissolved company has, as of the effective date, 5 years within which it may apply to the Court under section 218 to be restored to the Register. (up to 1 January 2028)



WHEN TO APPLY BASED ON EACH SUBSECTION

- (2) Where an existing period in respect of an existing dissolved company comes to an end on any date (“the earlier date”)–
 - (a) within 5 years of the effective date, the existing dissolved company has only up to the end of the earlier date to apply to be restored to the Register and not beyond; and

Eg(a). if the 10-year period for applying for a restoration (existing period) comes to an end on 1 November 2027, because that date is earlier than 1 January 2028 that existing dissolved company has up to 1 November 2027 to apply under section 218 of the BC Act to apply for restoration.
 - (b) after 5 years from the effective date, the existing dissolved company has only up to the end of that 5-year period within which it may apply to be restored to the Register.

Eg (b). if the 10-year period for applying for a restoration (existing period) comes to an end on 1 November 2032, because the effective date is the earlier date, that Company has up to 1 January 2028 to apply under s. 218 of the BC Act for restoration.



RESTORATION UNDER SECTION 218

- **Who can apply?**
- (2) An application under subsection (1) may be made by –
 - (a) the Attorney General or any other competent authority in the Virgin Islands;
 - (b) a creditor, former director, former member or former liquidator of the company;
 - (c) a person who but for the company's dissolution would have been in a contractual relationship with the company;
 - (d) a person with a potential legal claim against the company;
 - (e) a manager or trustee of a pension fund established for the benefit of employees of the company; or
 - (f) any other person who can establish an interest in having the company restored to the Register.



RESTORATION UNDER SECTION 218 Cont'd

- **Accompanying documents: 218(4)**
 - (a) consent of the Crown signified by the Financial Secretary that the Crown has no objection to the company's restoration to the Register;
 - (b) response of the Financial Secretary objecting to the company's restoration to the Register; or
 - (c) a declaration of the applicant that the Financial Secretary has not responded to a request for consent to the company's restoration to the Register, within a period of 7 days after receipt of the request.



RESTORATION UNDER SECTION 218 Cont'd

- Required service: s. 218(6)
 - *(a)* the Registrar;
 - *(b)* the Financial Secretary; and
 - *(c)* the Commission if, at any time prior to its dissolution, the company was a regulated person.
[Entitled to appear and be heard]



RESTORATION UNDER SECTION 218 Cont'd

- The Court has a discretionary power to restore a dissolved company: s, 218A
- (a) make an order to restore the company to the Register subject to—
 - (i) the Court being satisfied that a licensed person has agreed to act as registered agent of the company;
 - (ii) the registered agent making a declaration in the approved form that the company's records have been updated as required under section 213 (3B);
 - (iii) the company paying the restoration fee and any outstanding penalties in relation to the company; and
 - (iv) such other conditions as the Court considers appropriate;



RESTORATION UNDER SECTION 218 Cont'd

- The Order must be filed with the Registrar within **30 days** of its making:
218B (1)



RESTORATION UNDER SECTION 218 Cont'd

- **Consequences of failing to file a restoration order within 30 days**
- (1A) If a sealed copy of the order made by the Court is not filed with the Registrar within the period specified in subsection (1), the order shall cease to be valid.



RESTORATION UNDER SECTION 218 Cont'd

- **60C(4) Where an existing dissolved company is restored to the Register, the company is deemed never to have been dissolved.**



Section 217 – Restoration by Registrar

Restoration of name of company to Register by Registrar

217. (1) Where a company has been struck off the Register and dissolved, the Registrar may, subject to receipt of an application in the approved form and upon being satisfied that the conditions specified in subsection (2) have been met, restore the company to the Register. (*Substituted by Act 6 of 2022*)

(2) The conditions referred to in subsection (1) are that—

- (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 registered agent of the company;
- (c) the registered agent has made a declaration in the approved form that the company's records have been updated as required under section 213(3B);
- (d) if, following the striking off and dissolution of the company, any property of the company has vested in the Crown *bona vacantia*, the Financial Secretary—
 - (i) has signified to the Registrar the Crown's consent to the company's restoration to the Register; or
 - (ii) has, within 7 days of receiving a request to give the Crown's consent to the company's restoration to the Register, failed to respond to the request giving the Crown's consent or refusing consent.
- (e) the company has paid the restoration fee and any outstanding penalties in relation to the company; and
- (f) the Registrar is satisfied that it would be fair and reasonable for the company to be restored to the Register.



SECTION 217 Cont'd

(3) An application to restore a company to the Register under subsection (1) may be made by the company, or a creditor, member or liquidator of the company and shall be made within 5 years of the date of the notice published in the *Gazette* under section 213(5). *(Amended by Acts 19 of 2015 and 6 of 2022)*

(4) The company, or a creditor, a member or a liquidator thereof, may, within 90 days, appeal to the Court from a refusal of the Registrar to restore the company to the Register and, if the Court is satisfied that it would be just for the company to be restored to the Register, the Court may direct the Registrar to do so upon such terms and conditions as it may consider appropriate. *(Amended by Act 26 of 2005)*

(5) Notice of an appeal to the Judge in Chambers under subsection (4) shall be served on the Registrar who shall be entitled to appear and be heard at the hearing of the appeal.

(5A) Where the Registrar restores a company to the Register under subsection (1) or pursuant to a direction of the Court under subsection (4), he or she shall issue a certificate of restoration to the Register. *(Inserted by Act 19 of 2015)*

(6) Where a company is restored to the Register under this section, the company is deemed never to have been struck off the Register and dissolved. *(Amended by Act 6 of 2022)*

(7) Where a company to which subsection (2) applies is restored to the Register, it shall forthwith appoint a registered agent under section 91A. *(Inserted by Act 5 of 2012)*

(8) For purposes of subsection (2) (d) (ii), a request sent to the Financial Secretary seeking his or her consent to a company's restoration to the Register shall be deemed to have been received –

(a) if sent by post, at the time when the envelope containing the request would have been received in the ordinary course of post;

(b) if by direct delivery, the document containing the request is received by the Financial Secretary or by a secretary or clerk at his or her office, whether or not the receipt of the document has been signed for; or

(c) if sent by email, the request is shown to have been electronically sent to the correct address.

(Inserted by Act 6 of 2022)



Section 218 – Restoration by the Court

- **218. (1)** A person specified in subsection (2) may make an application to the Court to restore a dissolved company to the Register if –
 - (a) the company was struck off the Register and dissolved following the completion or termination of its voluntary liquidation under this Act or liquidation under the Insolvency Act;
 - (b) on the date of dissolution, the company was not carrying on business or in operation;
 - (c) the purpose of restoration is to—
 - (i) initiate, continue or discontinue legal proceedings in the name of or against the company; or
 - (ii) make an application for the company's property that has vested in the Crown *bona vacantia* to be returned to the company, subject to subsection (4); or
-



Section 218 Cont'd

- (d) in any other case not falling under paragraph (a), (b) or (c) or in which application cannot be made to the Registrar under section 217, the Court considers that, having regard to any particular circumstances, it is just and fair to restore the company to the Register.
- (2) An application under subsection (1) may be made by –
 - (a) the Attorney General or any other competent authority in the Virgin Islands;
 - (b) a creditor, former director, former member or former liquidator of the company;
 - (c) a person who but for the company's dissolution would have been in a contractual relationship with the company;
 - (d) a person with a potential legal claim against the company;
 - (e) a manager or trustee of a pension fund established for the benefit of employees of the company; or
 - (f) any other person who can establish an interest in having the company restored to the Register.
- (3) For purposes of subsection (2)(a) and the avoidance of doubt, nothing contained in this section or section 217 shall be construed to prevent the Attorney General or any other competent authority from instituting against a company, legal proceedings or pursuing against the company any matter in relation to a mutual legal assistance request, simply on account that the company has been struck off the Register and dissolved.



Section 218 Cont'd

- (4) An application under subsection (1)(c)(iii) shall not be made unless the application is accompanied by the written—
 - (a) consent of the Crown signified by the Financial Secretary that the Crown has no objection to the company's restoration to the Register;
 - (b) response of the Financial Secretary objecting to the company's restoration to the Register; or
 - (c) a declaration of the applicant that the Financial Secretary has not responded to a request for consent to the company's restoration to the Register, within a period of 7 days after receipt of the request.
- (5) An application under subsection (1) may not be made more than 5 years after the date of dissolution of the company.
- (6) Where a person makes an application under subsection (1), he or she shall serve a notice of the application on—
 - (a) the Registrar;
 - (b) the Financial Secretary; and
 - (c) the Commission if, at any time prior to its dissolution, the company was a regulated person.



Section 218 Cont'd

- (7) A person upon whom a notice is served under subsection (6) is entitled to appear and be heard on the hearing of the application before the Court.
- (8) For purposes of subsection (4) (c), a request sent to the Financial Secretary seeking his or her consent to a company's restoration to the Register shall be deemed to have been received –
 - (a) if sent by post, at the time when the envelope containing the request would have been received in the ordinary course of post;
 - (b) if by direct delivery, the document containing the request is received by the Financial Secretary or by a secretary or clerk at his or her office, whether or not the receipt of the document has been signed for; or
 - (c) if sent by email, the request is



A hand in a suit sleeve holds a pen, poised to sign a document. The background is a collage of images: a blue-tinted cityscape on the left, a red-tinted hillside with buildings on the right, and a modern glass skyscraper at the bottom. Blue and red triangles are scattered across the composition.

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