



3rd October 2018
Industry Circular No. 5 of 2018

BVI Business Companies Act (Amendment of Schedule) (No. 3) Order, 2018

Maximum penalty for filing RODs

BVI Business Companies that existed prior to 1st April 2016 (existing companies) were given until 31st March 2017 to file Registers of Directors (“RODs”) at the Registry of Corporate Affairs (“the Registry”). Companies that failed to file RODs by this deadline were subjected to escalating penalty fees, up to a maximum of \$8,000. The BVI Business Companies Act (Amendment of Schedule 1) (No. 3) Order, 2018 (“the Order”), which came into force on 1st September 2018, has reduced the maximum penalty for late filing of RODs to \$5,000.

Refunds for ROD filings

The Order further authorised the issue of a refund in cases where a penalty above \$5,000 was previously applied. The refund process has already begun and companies that paid penalties in excess of \$5,000 will be issued refunds via credit to the account of the company’s registered agent.

Striking of existing companies from the Register for non-filing of ROD’s

The Order provides for the Registrar to strike existing companies from the Register of Companies (“the Register”) in accordance with section 213(1)(a)(ii) of the Act if they fail to file ROD’s, on or before 31st December, 2018. The Registrar will enforce this provision and a notice will be issued to inform affected companies that they will be struck from the Register, if they fail to file RODs by the stated date. Companies that have not filed RODs by 31st December, 2018 will be struck from the register on 2nd January, 2019.

Striking of companies from the Register for non-filing of ROD's

Section 213 of the BVI Business Companies Act, 2004 (“the BVIBCA”) requires one or more persons to be appointed as the first director(s) of the company within six months of the date of incorporation of the company.

Section 118B(2) of the BVIBCA requires the initial register of directors to be filed within 21 days of the appointment of the first directors under section 113. A penalty is imposed if the filing is done outside of the 21 days.

Section 213(1)(a)(ii) gives the Registrar authority to strike the name of the company from the Register if the company fails to file any annual return, notice or document required to be filed under the Act. In exercise of this power, companies incorporated between the period of 1st April 2016 and 31st March, 2018 will also be struck from the Register if the RODs are not filed on or before 31st December, 2018.

Going forward companies incorporated after 31st March 2018 will be liable to being struck from the Register, where RODs have not been filed within 9 months of the incorporation of the company. The nine months includes the six month appointment period, the 21 day filing requirement and an additional grace period.

Restoration of struck off companies

Effective January 1st, 2019 companies incorporated after 1st April 2016, that have been struck from the Register for non-payment of fees or for any other reason, and have not filed RODs must file RODs and pay all outstanding fees and penalties along with the application for restoration in order to be restored to the Register.

Certificates of Good standing

Effective October 1st 2018, certificates of good standing will not be issued for companies that have not filed RODs. Under the BVI Business Companies (Amendment) Act, 2018, which came into force on October 1st, a company that has not filed its RODs is not in good standing and therefore will not be eligible to receive a certificate of good standing.

Segregated Portfolio Companies

BVI Business Companies that are not conducting any regulated financial services business are allowed to incorporate or register as segregated portfolio companies, pursuant to the BVI Business Companies (Amendment) Act, 2018 and the Segregated Portfolio Companies (BVI Business Company) Regulations, 2018. The named legislation came into force on 1st October 2018 and transactions to register existing companies as Segregated Portfolio Companies is now active via VIRRGIN. Transactions to incorporate new companies as Segregated Portfolio Companies will come on stream via VIRRGIN in the near future.