

- BVI Business Companies Act 2004
- Dissolutions
- Regulatory supervision

## *Restoration and Bearer Shares*

*Restoring a company to good standing is one avenue by which a creditor may pursue an asset thought to have vanished. BVI companies are often times incorporated to fulfil a specific investment purpose, and in many such instances, once the purpose has been fulfilled the focus shifts to other areas, which sometimes result in companies being struck-off the register and in some cases even being dissolved.*

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*Bearer shares are subject to very onerous regulations, including being deposited with a custodian approved by the BVI Financial Services Commission.*

In normal circumstances, once a company is struck from the register of companies neither it nor its directors or members may commence legal proceedings, defend proceedings which commenced after it was struck off, carry on any business or in any way deal with its assets, or act in any way with respect to the affairs of the company. The exception to this general rule is where an application is made to restore a company to good standing. The legislation provides the category of persons who will have standing to make such an application, most notably, from an asset tracing perspective, a creditor of the company.

Where a company has been struck off but not yet dissolved, the restoration process is an administrative one which simply involves payment of outstanding licence and registered agent fees. Where on the other hand, the company is dissolved, a claim must be brought before the Court and an order granted by the Court before the company will be restored to good standing. In addition, once the order is granted, the company's restoration will be subject to payment of all outstanding fees from the date of its striking off to the present. The registered agents of such companies will also require updated due diligence material which will need to meet certain compliance standards, before they agree to continue acting as registered agent.

Since one of the key rationales for seeking the restoration of a company is that the company has forgotten assets that need to be dealt with or that the company has a debt that it needs to service, creditors have long

pursued restoration claims in the hopes of recovering outstanding debts owed by such dissolved company. To bring a restoration claim, the claimant will need to demonstrate that it falls within one of the categories of persons that the BVI Business Companies Act 2004 (as amended)(**the Act**) prescribes; that the application is brought within the relevant period being ten years from the date of dissolution; and that service of the claim has been effected in accordance with the Act.

While restorations have been a largely rudimentary exercise, the recent resurgence of bearer share companies has sought to throw a spanner in the works. The background to this resurgence is that these companies are so old that they pre-date the refurbishments that have for all intents and purposes obliterated bearer share companies and the bearer share regime in the BVI. Following the repeal of the IBC Act and the enactment of the Act, bearer shares are now subject to very onerous regulations, the most significant of which was the requirement that companies intending to maintain their bearer share status deposit their existing bearer shares with a custodian approved by the BVI Financial Services Commission. Where a company failed to do this by a certain time (such time having now long passed), the bearer shares in issue were deemed disabled, the effect of which is that members would not be able to enjoy the benefits which they would have normally derived from their shares.

To the extent that a company sought to be restored is one of those companies that was not able to deposit their bearer shares with an approved custodian or request that their shares be redeemed and reissued as registered shares or converted to registered shares, on restoration, the process to getting the company in a position to be able to deal with its assets will be much more involved than with a standard restoration. Such a company will be required to undertake the process to ridding itself of its bearer shares, and coming in line with the Act and its Articles of Association. The Act would deem the company's Articles of Association to be amended such that the company will, on restoration, only be authorised to issue and otherwise deal with registered shares. It is only after the company undergoes these processes that its assets will be able to be returned and or distributed responsibly and under proper regulatory supervision to their rightful owners.

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