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HKCGI Guidance Note – British Virgin Islands (BVI) Annual Return and Other Recent Compliance Obligations (Amended)

Introduction

The governance professional will know that the British Virgin Islands (BVI) has long been a favoured offshore jurisdiction for businesses and investors worldwide. Known for its business-friendly environment and tax neutrality, the BVI attracts companies seeking to establish international scope and an offshore identity. However, to maintain transparency to meet new international regulatory compliance standards, the BVI has introduced a new requirement for entities established in its jurisdiction, namely the BVI Annual Return¹. This guidance note will explain the nature of the BVI Annual Return and assess the impact on businesses using the jurisdiction. This will be relevant to enhance the knowledge of governance professionals of this new compliance requirement where the

obligation to submit BVI Annual Returns came into effect on 1 January 2024.

There is also a summary sheet in Appendix A for the governance professional on the new requirements to file the BVI Annual Return discussed under this guidance note.

A. BVI Annual Return?

The BVI Annual Return is a financial disclosure document that companies registered in the BVI must submit annually to their respective BVI Registered Agent. The BVI Registered Agent will be obliged to inform the BVI Registry of Corporate Affairs if the BVI Annual Return is not received within 30 days of the deadline. It is important to note that the BVI Annual

1 The BVI Annual Return form can be found here: <https://www.vistra.com/insights/preparing-and-filing-annual-return-bvi-what-companies-need-know>

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Return is distinct from the Hong Kong Annual Return, which focuses on different aspects of corporate information applicable to Hong Kong entities. The BVI Annual Return primarily serves as a tool to enhance transparency regarding a company's financial position and operations. The governance professional should not equate the requirement to disclose financial disclosures as an audit requirement. There can be an audit to support disclosure, but that is not required under current BVI laws.

Key Components of the BVI Annual Return:

To guide the governance professional, we set out the key components of the BVI Annual Return as follows:

- **Financial Statements:** One of the core elements of the BVI Annual Return is the obligation to maintain and file financial statements. These statements should provide a snapshot of the company's financial transactions and status, including assets, liabilities, and shareholders' equity details, where applicable. There is, in fact, a standardised format in the form of a simple form balance sheet, and profit and loss statement. Work may be required to reconcile with this format which may involve internal/external financial advice.
- **No Audit Requirements:** No audit requirement is associated with the financial statements reflected in the BVI Annual Return. This provides businesses with a certain level of flexibility. However, it is always open to a company to have audit information to support the financial disclosures. In any event, a company must file proper information, which will normally require the involvement of internal/external financial advice.
- **Exemptions:** Certain entities are exempt from the BVI Annual Return obligations. These exemptions include entities subject to pre-existing financial reporting obligations in the BVI, listed companies, or entities whose status obviates the need for compliance,

e.g. companies in liquidation and where the annual return is not due. In case of doubt, the governance professional should consult an appropriate professional for advice.

Key Dates and Deadlines:

There are extensive fines for failure to comply with BVI Return filings. The governance professional will, therefore, need to ensure compliance. In summary, BVI entities must comply with key dates and deadlines for BVI Annual Return filings. The default dates (using a company with a financial year of 1 January to 31 December as a working example) are:

- **31 December of the preceding year** marks the year's fiscal year-end.
- **1 January:** This marks the beginning of a new annual return cycle.
- **30 September:** This is the submission deadline. The annual return must be filed within nine months of the end of a fiscal year.
- **30 October - Registered Agent Notification:** Registered agents must notify the BVI Registrar of Corporate Affairs in writing of non-compliance. This is required to be done no later than 30 days after the BVI Annual Return due date.

Flexibility

The governance professional should also know that while BVI entities' default financial year period is from 1 January to 31 December, companies can set their financial year end to align with business operations and local practice. This flexibility is particularly valuable for multinational companies and groups needing to work around diverse fiscal year periods and other requisite filings, including economic substance filings.

Another important aspect is the currency in which the financial statements and BVI Annual Returns are compiled and submitted. Unlike jurisdictions that

specify a particular currency, BVI allows for presenting financial information in any major currency. This flexibility caters to the global nature of businesses operating within the BVI.

Late filings

In terms of the penalty for late or non-filing of the BVI Annual Return, companies should be aware that it's calculated monthly. The first month incurs a penalty of US\$300, followed by US\$200 for each subsequent month, up to a maximum penalty cap of US\$5,000. This penalty is intended to incentivise timely compliance with the BVI Annual Return requirement.

Additionally, there is no specific requirement to sign the annual returns physically. However, good corporate governance practice suggests that board resolutions should be passed as a formal sign-off to confirm the accuracy and completeness of the BVI Annual Return.

B. Striking off, liquidation and restoration of BVI companies

Another important compliance change that the governance professional should be aware of is the relevant ease of striking off and liquidation of companies due to non-payment of annual license fees due to recent changes to the BVI company laws effective as of 1 January 2023. The previous strike-off process, which took seven years, is now fast-tracked. The strike-off date typically occurs no less than 90 days after the BVI Registrar sends a notice of striking-off for failure to pay annual license fees.

A notice of intention to strike-off will be published in the BVI Gazette – the notice will serve as the date of striking-off. Aside from being struck off, dissolution rules have changed in BVI such that a company will also be immediately dissolved on the notice's publication date.

If a company is struck off, restoration will be possible within five years of the notice, albeit an expensive exercise. It is essential to settle any outstanding obligations, including annual license fees and penalties, before restoration. Striking off can lead to complications, including jeopardising the ownership status of valuable assets and substantial penalties and restoration costs if not addressed promptly.

Conclusion

In conclusion, there have been significant changes in compliance requirements and risk exposure to penalties and asset ownership from the requirements to file financial disclosure information and the new regime for striking off, respectively. In particular, the BVI Annual Return is a key compliance requirement for companies operating in the BVI. It reflects the jurisdiction's commitment to transparency and accountability in line with international regulatory standards. The governance professional should stay informed about key aspects of the BVI Annual Return, as canvassed in this article, to ensure they meet their obligations and maintain good standing in this offshore financial centre.

Appendix A

BVI Annual Returns

- **Currency Restrictions:** There are no currency restrictions for annual returns in the BVI. Entities can provide their financial statements and annual returns in any major currency.
- **Dormant Companies:** If you have a dormant BVI company with no accounting transactions during the year, you are still obligated to file an annual return. Even if your financial statements show zeros, you must comply with the annual return requirement.

- **Filing Process:** The filing process for annual returns in the BVI has been modernised and streamlined. Many service providers offer electronic filing platforms. This digitalisation provides a 24-hour client-access platform for filing convenience and efficiency.
- **Relationship with Economic Substance (ES) Filing:** It is important to note that annual return filings are an altogether separate obligation from ES requirements, with different obligations and timeframes.
- **Using BVI Companies for Property and Asset Holding:** BVI companies are commonly used for property and asset holding, especially in jurisdictions like Hong Kong. All BVI companies, including property and asset holding companies, will be subject to annual return requirements. While auditing is not required, financial statements must be prepared.
- **Penalties for Late Filing:** Late filing or failure to file annual returns can result in penalties. These penalties are calculated month-by-month, starting with US\$300 for the first month and US\$200 for each subsequent month. Late filing penalties are capped at US\$5,000.
- **Strike Off:** If a company is struck off, it is not obligated to file an annual return for the year it was struck off. However, it is crucial to note that other obligations, such as ES requirements, may continue to apply.
- **Signing Annual Returns:** While there is no requirement to sign annual returns physically, it is considered good corporate practice to consider and approve financial statements and the annual return via board resolutions.
- **Strike-Off Date:** Strike-off is designated by a gazette date, typically no less than 90 days after the BVI Registrar sends a notice of striking-off for failure to pay annual license fees. A company that has been struck off the BVI register on or after 1 January 2023 will be dissolved on the date of publishing the notice of striking off in the BVI gazette.
- **Restoring Struck-Off and Dissolved Companies:** If you wish to restore a company that has been struck-off and dissolved, you must settle any outstanding fees and penalties and satisfy any outstanding regulatory filing obligations, including unpaid fees, penalties and filings, before restoration will be approved.

The above are some key questions and considerations related to BVI annual returns. The BVI's regulatory environment has changed, and companies must stay informed and compliant with these requirements.