

Court restorations of BVI companies in a nutshell

Companies registered in the BVI that have been dissolved will need to be restored before various steps can be taken concerning the company or assets it held. Accordingly, there are many reasons why a person may wish to restore a BVI company. Recent changes to BVI company law have significantly changed the rules relating to company dissolution and restoration. Under the new provisions, a BVI company is now automatically dissolved once it is struck off. This guide provides an overview of the steps involved in a court restoration for companies struck off and dissolved after 1 January 2023.

1. Determining whether restoration will provide or assist in delivering the desired outcome

The restoration of a BVI company is only ever required where the person seeking the restoration needs the company to be placed back on the register of companies so that they can pursue their objective. Common reasons for seeking a restoration order are that the dissolved company has assets that need to be disposed of or a creditor seeks to claim against the company. Therefore, the first question to be asked in the process will always be whether restoration is necessary to achieve the desired objective.

2. Onboarding the client

For us to act as legal practitioners on any restoration application, we must first ensure that all customer due diligence is collected and approved by our compliance team.

3. Identifying a registered agent

All BVI companies are required to have a registered agent and registered office in the BVI. We will need to resolve the issue of who will serve as the company's registered agent before an application is filed.

4. Applying

An application for a court restoration comprises many documents that must be drafted and filed to support the claim. The applicant's evidence must address:

- the applicant's qualification to make the application (standing)
- compliance with the limitation period (restoration applications must be brought within 5 years of dissolution)
- compliance with service requirements
- an explanation for restoration
- the position of the persons on whom the application is to be served

5. Court approval and timeframe

If the application is in order, the court may approve the order at the hearing or before the hearing on paper if the parties agree and the court has been given sufficient time to consider the papers filed supporting the application. Once the court grants the order approving a company's restoration, the company has 60 days from the date of the grant of the order to complete the restoration.

6. Sealing and filing

The order, once granted, perfected, and filed at court, must be sealed by a Registrar of the Court and filed with the Registrar of Corporate Affairs, through the designated portal (**VIRRGIN**). Either the prospective registered agent or the law firm handling the application must file the order through VIRRGIN. Simultaneous payments of back fees and penalties must be submitted at this stage. Proof of payment of the Registrar's Counsel's fees is also required.

7. Restoration certificate

Once the Registry of Corporate Affairs processes the restoration application, the company receives an e-certificate of restoration, dated from the date of submission on VIRRGIN and payment of all outstanding fees and penalties.

8. Appointment of registered agent

Once the company is restored, the registered agent must be provided with immediate notice of the restoration to enable it to file its appointment documentation. There is a 48-hour window for this filing where the company had no registered agent and a 5-day grace period where the company had a registered agent but is changing the agent upon its restoration.



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