

Note with regard to changes in the procedures for the voluntary liquidation of companies in the British Virgin Islands following the implementation of the BCA Amendment Act on October 15th, 2012.

Please find below a complete “procedure” for the carrying out of voluntary liquidations in the BVI as amended following the implementation of the BCA Amendment Act.

The principal changes are as follows:

1. The Declaration of Solvency must now include a statement that the company is Balance Sheet solvent (assets exceed liabilities) as well as cash flow solvent.
2. The liquidator can no longer be someone who is (or has been within the previous two years) a director or senior officer of the company. This includes anyone who is an individual director of a company that provides a corporate director to a company.
3. The advertising of the appointment of the liquidator must now take place not only in the BVI but in the jurisdiction that is deemed to be the principal place of business of the company. If there is no principal place of business then the liquidator must advertise wherever he thinks that any potential creditors of the company are most likely to see the advertisement. As a practical matter this will often be the jurisdiction where the company is administered (eg Jersey, Guernsey, Switzerland).
4. Commencement date of liquidation, this is no longer the date upon which the liquidator is appointed but is now the date upon which the notice of appointment of a voluntary liquidator is filed with the companies registry in the BVI.

**PROCEDURE FOR VOLUNTARY LIQUIDATION UNDER
THE BVI BUSINESS COMPANIES ACT, 2004 (“BCA”)**

1. The directors must make a declaration of solvency (the “**D**claration”) in accordance with Section 198(1) of the BCA (see “**A**”). The Declaration:
 - (i) must be made no more than four (4) weeks earlier than the date of the resolutions referred to at 2 below approving the appointment of the liquidator; and
 - (ii) must attach a recent and up to date statement of the assets and liabilities of the company.
2. A Plan of Dissolution (the “**P**lan”) containing the particulars required by Section 198(1)(b) of the BCA must be prepared (see “**B**”) and approved. Note that the Plan must be approved by the directors by way of a resolution of directors (see “**C**”) no more than six (6) weeks prior to the date of the resolution to appoint the voluntary liquidator.
3. If no shares have been issued in the company or if the directors expressly have the power under the company’s memorandum and articles of association to do so, they may appoint an eligible person as the voluntary liquidator of the Company. In addition, a meeting of the shareholders must be convened to consider the Plan and a copy of the Plan must be attached to the notice of meeting or written resolutions must be prepared and circulated to all shareholders of company and a copy of the Plan must be attached to such written resolutions. The shareholders must then by resolution approve the Plan (see “**E**”).

Note that a liquidator must be an individual and he or she must expressly consent to his/her appointment (“**D**”). The liquidator may not be an individual who either is or was a director or senior office of the company.

4. If the directors do not appoint the voluntary liquidator, the shareholders, by way of a resolution, shall then appoint an eligible individual as the voluntary liquidator of the company and shall approve the Plan. It should be noted that where different classes or series of shares are issued in the company, shareholders will only be entitled to pass class resolutions approving the Plan if the memorandum or articles of the company expressly permit this. Draft written resolutions are attached (see “**E**”) and if the issued shares are held by bearer, a certificate of authentication (see “**F**”) should be attached to the written resolutions.
5. The liquidation of the company commences upon the appointment of the liquidator and continues until the liquidation is terminated and during the period of the liquidation, the company shall be referred to as in liquidation.
6. Within fourteen (14) days after the appointment of the liquidator, a Notice of Appointment of Liquidator (Form R501) attaching the following documents must be filed with the British Virgin Islands Registry of Corporate Affairs:
 - (i) notice of appointment of liquidator (see “**G**”);
 - (ii) the Declaration (note that the statement of the assets and liabilities of the company does not need to be attached for the purposes of the public filing); and

(iii) the Plan,

together with a filing fee of US\$75.

7. Within thirty (30) days of the commencement of the liquidation, the liquidator must advertise notice of his appointment in a newspaper in the BVI and also in the company's principal place of business. If this cannot be determined then the liquidator must place the advertisement wherever he feels that any potential creditors of the company are most likely to see it.
8. Upon completion of the liquidation, the Liquidator must prepare a statement, confirming that the liquidation has been completed (see "H") to be filed with a Notice of Completion of Liquidation (Form R502) with the Registrar of Corporate Affairs.
9. The British Virgin Islands Registrar of Corporate Affairs will then strike the company off the Register of Companies and issue a Certificate of Dissolution for a fee US\$25.00.
10. Once the liquidator receives the Certificate of Dissolution, a notice that the company has been struck off and dissolved must be published in the BVI Gazette (see "I").
11. It should be noted that the registered agent of the Company is required to file Form R501 and R502 and that the registered agent usually makes arrangements for the advertisement of the notice of appointment of the liquidator in the British Virgin Islands referred to under item 7 above and the publishing of the notice of dissolution in the British Virgin Islands Gazette referred to under item 10 above.

“A”

THE BVI BUSINESS COMPANIES ACT, 2004

[Name of Company]
(the “Company”)

DECLARATION OF SOLVENCY

I/We, the undersigned, being [all of the directors]/[the sole] of the Company, having carefully considered all necessary accounts, books and records of the Company so as to allow us to make the declaration contained herein and to determine the financial position of the Company, hereby certify and declare that the Company is and will continue to be able to discharge, pay or provide for its debts as they fall due and the value of the Company’s assets equals or exceeds its liabilities.

Dated the day of 200[]

(Director)

“B”

TERRITORY OF THE BRITISH VIRGIN ISLANDS

LIQUIDATION PLAN

OF

[Name of Company]
(the “**Company**”)

1. It is intended that the Company be liquidated [as the Company is no longer carrying on business]/[for the following reasons [state reasons for liquidation]].
2. It is estimated that the time required to liquidate the Company is approximately [six months].
3. It is proposed that [Name of Liquidator] of [Address of Liquidator], should be appointed as the Liquidator of the Company [and [he]/[she] would be authorised to carry on the business of the Company if [he]/[she] determines that to do so would be necessary or in the best interests of the creditors or shareholders of the Company].

It is proposed that the Liquidator should receive remuneration in the amount of [US\$] [].

4. The Liquidator [shall]/[shall not] be required to send to the shareholders a statement of account prepared or caused to be prepared by the Liquidator in respect of his actions or transactions.

Dated this [] day of [], 200[]

[name of director]

[name of director]

“C”

[Name of Company]
(the “Company”)

[UNANIMOUS] WRITTEN RESOLUTIONS OF THE [DIRECTORS]/[SOLE DIRECTOR]

WHEREAS the [directors have]/[sole director has] carefully considered all the necessary accounts, books and records of the Company and [have]/[has] determined that the Company is and will continue to be able to discharge, pay or provide for its debts as they fall due; and

WHEREAS it is proposed that the Company be liquidated and a liquidation plan in the form of the draft attached (the “Plan”) has been prepared in accordance with section 198(1)(b) of the BVI Business Companies Act.

IT IS HEREBY RESOLVED that:

1. the Plan be and is approved in all respects;
2. [the shareholders be invited to adopt a resolution to approve the Plan and to appoint [Name of Liquidator] as the liquidator of the Company and that the Company circulate notice of a meeting of shareholders or written resolutions of shareholders (as deemed appropriate) attaching a copy of the Plan;]

OR

[[Name of Liquidator] be and is appointed as Liquidator of the Company;] and

3. the registered agent, the liquidator, any director, officer or other agent of the Company be and each are hereby authorised to prepare, execute and file any and all necessary documents, pay any fees and take any and all necessary action so as to effect the liquidation of the Company.

Dated this day of , 200[]

Name:
[Sole] Director

Name:
Director

“D”

[Name of Liquidator]
[Address of Liquidator]

[] 200

[Name of Company]
[Address of Company]

Dear Sirs

Re: Consent to Act as Liquidator of [Name of Company] (the “Company”)

I note that it is proposed that the Company be liquidated.

I hereby consent to act as the liquidator of the Company.

I agree that my remuneration shall be [US\$][].

Yours sincerely

[Name of Liquidator]

“E”

[Name of Company]
(the “Company”)

[UNANIMOUS] WRITTEN RESOLUTION OF THE [SHAREHOLDERS]/[SOLE
SHAREHOLDER]

WHEREAS it is proposed that the Company be liquidated and a liquidation plan in the form of the draft attached (the “**Plan**”) has been prepared in accordance with section 198(1)(b) of the BVI Business Companies Act.; and

WHEREAS the [directors]/[sole director] approved the Plan on [] and the Plan has been forwarded for consideration and if thought fit, approval.

IT IS HEREBY RESOLVED that:

1. the Plan be and is approved in all respects;
2. [Name of Liquidator] be and is appointed as Liquidator of the Company; and
3. the registered agent, the liquidator, any director, officer or other agent of the Company be and each are hereby authorised to prepare, execute and file any and all necessary documents, pay any fees and take any and all necessary action so as to effect the liquidation of the Company.

Dated the day of , 200[]

[name of shareholder]
Shareholder

[name of shareholder]
Shareholder

“F”

[Name of Company]
(the “Company”)

CERTIFICATE OF AUTHENTICATION

I, _____, duly appointed Director/Officer of the Company/Notary Public★ hereby certify that:

1. There has been produced to me Bearer Share Certificate(s), numbered _____ with respect to _____ bearer share(s) issued by the Company on _____.
2. The signature of the holder(s) of the Bearer Share Certificate(s) were duly set and subscribed in my presence to the resolutions of the shareholder(s) annexed hereto and the signature(s) appearing on the resolutions is that/are those★ of the person(s) producing to me the said Bearer Share Certificate(s).

Dated this _____ day of _____, 200_____

Director/Officer of the Company/Notary Public★

★ Delete where necessary

“G”

THE BVI BUSINESS COMPANIES ACT, 2004
NOTICE OF LIQUIDATOR’S APPOINTMENT
(COMPANY NAME)
(the “Company”)

NOTICE is hereby given pursuant to Section 204(1)(a)(i) of the BVI Business Companies Act 2004 that the Company is in voluntary liquidation. The voluntary liquidation commenced on , 2013. The liquidator was appointed on (), 2013 and is (name and address.)

Name:
Liquidator

“H”

[]
(In Liquidation)
(the “Company”)

To: The Registrar of Corporate Affairs
 Registry of Corporate Affairs
 Road Town, Tortola
 British Virgin Islands

The undersigned, as Liquidator of the Company, in accordance with Section 208(1) of the BVI Business Companies Act, 2004, hereby confirm that the liquidation of the Company has been completed.

I hereby request that the name of the Company be struck off the Register of Companies and that a Certificate of Dissolution be issued for the Company.

Dated this day of ,

Liquidator

“T”

[Name of Company]

Notice is hereby given in accordance with Section 208(3) of the BVI Business Companies Act, 2004, that [Name of Company] has been dissolved and struck-off the Register of Companies with effect from the _____ day of _____, 200__

(Sdg:) _____

Liquidator