

No. 5 of 2018

VIRGIN ISLANDS

BANKS AND TRUST COMPANIES (AMENDMENT) ACT, 2018

ARRANGEMENT OF SECTIONS

Section

- 1... Short title and commencement.
- 2... Section 2 amended.
- 3... Section 6 amended.
- 4... Section 9 amended.
- 5... Section 9A inserted.
- 6... Section 10 amended.
- 7... Section 10A amended.
- 8... Section 12 amended.
- 9... Section 14 amended.
- 10... Section 28A amended.

No. 5 of 2018

**Banks and Trust Companies (Amendment)
Act, 2018**

**Virgin
Islands**

**I Assent
(Sgd.) Augustus J. U. Jaspert,
Governor.
27th July, 2018**

VIRGIN ISLANDS

No. 5 of 2018

An Act to amend the Banks and Trust Companies Act (No. 9 of 1990).

[Gazetted 3rd August, 2018]

ENACTED by the Legislature of the Virgin Islands as follows:

Short title and commencement

1. (1) This Act may be cited as the Banks and Trust Companies (Amendment) Act, 2018.

(2) This Act shall come into force on such date as the Minister may, by Notice published in the *Gazette*, appoint.

Section 2 amended

2. Section 2 of the Banks and Trust Companies Act, 1990 (hereinafter referred to as the “principal Act”) is amended –

(a) in subsection (1) –

(i) by inserting after the definition of “prescribed”, the following new definition –

“ “registered agent” means a person who provides registered agent services;” and

(ii) by deleting “subsection (1A)” in the definition of “registered agent services” and substituting “section 9A”; and

(b) by deleting subsection (1A).

Section 6 amended

3. Section 6 of the principal Act is amended in subsection (1) by deleting “Class I trust licence or Class III trust licence” in paragraph (b) and substituting “Class I or Class IV trust licence or a Class III or Class V licence”.

Section 9 amended

4. Section 9 of the principal Act is amended by deleting subsection (2) and substituting the following subsection –

“(2) The functions of an authorised agent are to –

- (a) act as an intermediary between the licensee and the Commission, except that in the absence or inability of one authorised agent to act, the other authorised agent may carry out the functions of both authorised agents; and
- (b) accept, on behalf of the licensee, service of legal and other process, including any other documents.”.

Section 9A inserted

5. The principal Act is amended by inserting after section 9, the following new section –

“Registered agent and registered agent services

9A. (1) A person provides registered agent services if he or she –

- (a) is licensed under this Act, but excludes a person licensed to provide banking business;
- (b) acts as the registered agent of –
 - (i) a company incorporated under the BVI Business Companies Act;
 - (ii) a corporation incorporated under or pursuant to an enactment;

- (iii) a foreign company registered under the BVI Business Companies Act; or
 - (iv) a limited partnership registered under the Partnership Act; and
- (c) provides registered office services or carries on other company management services under the Company Management Act.

(2) The Commission may, by an Order published on the Internet site, restrict a registered agent or any class of registered agents from acting as a registered agent of any of the entities listed in subsection (1) (b) unless the person or class of persons meets such conditions as the Commission may specify in the Regulatory Code.

(3) The Commission may specify in the Regulatory Code additional registered agent services or specify the details of any registered agent services as it may consider necessary.”.

Section 10 amended

6. Section 10 of the principal Act is amended –

- (a) in subsection (1) –
 - (i) by deleting “a Class III trust licence” in paragraph (f) and substituting “a Class III licence”;
 - (ii) by deleting the full-stop at the end of paragraph (f) and substituting a semi-colon; and
 - (iii) by adding after paragraph (f), the following new paragraphs –
 - “(g) a Class IV trust licence, for the purposes of carrying on trust business and company management business by family offices and other closely held groups; and
 - (h) a Class V licence, for the purposes of carrying on company management business only by family and other closely held groups.”;
- (b) in subsection (1A), by deleting “a restricted Class II licence” and “a Class III trust licence” in paragraph (b) and substituting “a restricted Class II trust licence” and “a Class III licence” respectively;

- (c) in subsection (1B), by deleting “a Class III trust licence” and substituting “a Class III licence”;
- (d) by deleting subsections (2), (3) and (4);
- (e) in subsection (6) by deleting “Class III trust licence” in the opening paragraph and “restricted Class III trust licence” in paragraph (a) and substituting “Class III licence” and “restricted Class III licence” respectively; and
- (f) by adding after subsection (6), the following new subsections –

“(7) Where the Commission issues –

(a) a Class IV trust licence, the licensee shall –

- (i) be restricted to administering no more than 500 Virgin Islands companies and 50 trusts;
- (ii) have a physical presence in the Virgin Islands; and
- (iii) not engage in introduced or third party business;

(b) a Class V licence, the licensee shall –

- (i) be restricted to administering no more than 300 Virgin Islands companies;
- (ii) have a physical presence in the Virgin Islands;
- (iii) not engage in any trust business; and
- (iv) not engage in introduced or third party business.

(8) For the purposes of subsection (1) (g) and (h), the Regulatory Code may make provision defining the nature and scope of family operated business and other closely held group business.

(9) Where prior to the coming into force of this Act (hereinafter referred to as “the 2018 Amendment Act”), a company engaged or approved to engage in a company management or trust business was listed in a schedule of the licence of a Class I or II trust

licence or a Class III licensee as a subsidiary of the licensee, that company shall, no later than 30th June, 2019, submit a written application to the Commission to be separately licensed.

(10) Where a company referred to in subsection (9) fails to comply with the requirement of that subsection by the stipulated deadline

- (a) the company shall, after the stipulated deadline, be deemed to have ceased to be listed in the schedule of the licence of the Class I or II trust licensee or Class III licensee;
- (b) the Class I or II trust licensee or Class III licensee on whose licence the company was listed shall no later than 31st July, 2019 surrender its licence to the Commission; and
- (c) the Commission shall re-issue the Class I or II trust licensee's or Class III licensee's licence without a list of any subsidiary included on the licence.

(11) Upon the coming into force of the 2018 Amendment Act –

- (a) a Class I or II trust licensee or Class III licensee cannot merge into a company that is listed as a subsidiary on the licensee's licence unless the company has applied for and obtained a separate licence under this Act; and
- (b) a company that is listed as a subsidiary on the Class I or II trust licensee's or Class III licensee's licence may, before the end of the deadline stipulated in subsection (9), merge into the licensee.

(12) A company that is listed in the schedule of a Class I or II trust licence or Class III licence that engages in company management or trust business after the deadline stipulated in subsection (9) without obtaining a separate licence commits an offence and is liable on conviction to a fine not exceeding \$50,000.”

Section 10A amended

7. Section 10A of the principal Act is amended in subsection (1) by deleting “Class III or restricted Class III trust licence” in paragraph (a) and substituting “Class III or restricted Class III licence”.

Section 12 amended

8. Section 12 of the principal Act is amended by deleting the opening paragraph of subsection (4) and substituting the following –

“(4) A company holding a Class I, Class II or Class IV trust licence, or a Class III or Class V licence, shall at all times –”.

Section 14 amended

9. Section 14 of the principal Act is amended –

- (a) in subsection (1), by inserting after “transfer,” the words “merge,”;
- (b) in subsection (3) –
 - (i) by inserting after “transfer,” in paragraph (a), the words “merger,”; and
 - (ii) by inserting after “significant interest” in paragraph (b) (i) and (ii), the words “or controlling interest”;
- (c) in subsection (5), by inserting after “significant interest” in paragraph (b), the words “or controlling interest”;
- (d) by inserting after subsection (5), the following new subsection –

“(5A) In the case of a merger where the licensee is not the surviving company and the surviving company is not or will not be licensed under this Act, the reference in subsection (5) (a) to “the licensee” shall be restricted to the licensee that is licensed under this Act.”;
- (e) in subsection (8) –
 - (i) by inserting after “transfers,” in the opening paragraph, the words “merges,”;
 - (ii) by inserting after “transfer,” wherever the words appear in paragraph (b), the words “merger,”; and
- (f) in subsection (10), by inserting after “transfer,” the words “merger,”.

Section 28A amended

10. Section 28A of the principal Act is amended in subsection (2) –
- (a) by deleting the “and” at the end of paragraph (a) (iv); and
 - (b) by deleting the full-stop at the end of paragraph (b) (iv) and substituting “; and”; and
 - (c) by adding after paragraph (b), the following new paragraph –
 - “(c) require a licensee, who is not the holder of a banking licence, to –
 - (i) fully disclose the terms upon which the licensee holds the assets of its clients, including trust assets;
 - (ii) segregate its assets from the assets of its clients and ensure that the latter’s assets are held in separate and distinct accounts;
 - (iii) adopt appropriate measures to ensure that any payment of client monies is, at the minimum, effected through a dual signature mechanism;
 - (iv) reconcile the accounts of its clients in a prompt and responsible manner; and
 - (v) establish policies, procedures and controls to prevent the misuse of client monies for the settlement of the licensee’s fees and other disbursements.”.

Passed by the House of Assembly this 10th day of July, 2018.

(Sgd.) Ingrid Moses-Scatliffe,
Speaker.

(Sgd.) Phyllis Evans,
Clerk of the House of Assembly.