

No. 13 of 2006

**VIRGIN ISLANDS
COMPANY MANAGEMENT (AMENDMENT) ACT, 2006**

ARRANGEMENT OF SECTIONS

Section

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- 10.** Section 9 amended.
- 11.** Section 10 repealed and replaced.
- 12.** Section 11 amended.
- 13.** Section 12 repealed.
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- 15.** Section 13 repealed and replaced.
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- 20.** Section 18 repealed.
- 21.** Section 19 amended.
- 22.** Sections 21 and 22 repealed.
- 23.** Section 23 amended.
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- 25.** Section 26 amended.
- 26.** Section 26A inserted.
- 27.** Schedule repealed.

No. 13 of 2006

**Company Management
(Amendment) Act, 2006**

**Virgin
Islands**

I Assent

**DAVID PEAREY
Governor**

16th October, 2006

VIRGIN ISLANDS

No. 13 of 2006

An Act to amend the Company Management Act, 1990 [No. 8 of 1990].

[Gazetted 2nd November, 2006]

ENACTED by the Legislature of the Virgin Islands as follows:

Short title and
commencement.

1. (1) This Act may be cited as the Company Management (Amendment) Act, 2006.

(2) The provisions of this Act come into operation on 15th January, 2007.

Interpretation.
No. 8 of 1990.

2. In this Act, “the principal Act” means the Company Management Act, 1990.

Section 2
amended.

3. Section 2 of the principal Act is amended

(a) in subsection (1)

- (i) in paragraph (b) of the definition of “auditor”, by deleting the words “the Commission, by order approves” and substituting the words “may be prescribed”,
- (ii) by repealing the definitions of “business of company management” and “Certificate of Compliance”,
- (iii) by repealing the definition of “company management” and substituting the following definition:

““company management” means

- (a) the formation of Virgin Islands companies, including the continuation of companies as Virgin Islands companies;
 - (b) the provision of registered agent services;
 - (c) the provision of registered office services;
 - (d) the provision of directors or officers for companies, whether such companies are Virgin Islands companies or companies incorporated or registered in a jurisdiction outside the Virgin Islands; and
 - (e) the provision of nominee shareholders in companies, whether such companies are Virgin Islands companies or companies incorporated or registered in a jurisdiction outside the Virgin Islands;”;
- (iv) by inserting in the appropriate alphabetical order, the following definitions:

““approved form” means a form approved by the Commission in accordance with section 50A of the Financial Services Commission Act, 2001;

No. 12 of 2001

“company management business” means the provision of company management services for profit or reward;

“prescribed” means prescribed in a Regulatory Code;

“registered agent services” has the meaning specified in subsection (1A);

“registered office services” has the meaning specified in subsection (1B);

“Regulatory Code” means a Regulatory Code issued under the Financial Services Commission Act, 2001;

“senior officer” means a person appointed to perform such supervisory or managerial functions with respect to a licensee as may be prescribed;

“significant interest”, in respect of a licensee, means a holding or interest in the licensee or in any holding company of the licensee held or owned by a person, either alone or with any other person and whether legally or equitably, that entitles or enables the person, directly or indirectly,

- (a) to control five per cent or more of the voting rights of the licensee,
- (b) to a share of five per cent or more in any distribution made by the licensee, or
- (c) to a share of five per cent or more in any distribution of the surplus assets of the licensee;

“Virgin Islands company” means a company that is

- (a) a company incorporated or continued under the International Business Companies Act;
- (b) a company incorporated under the Companies Act; or
- (c) a company incorporated, continued or re-registered under the BVI Business Companies Act, 2004.”; and

Cap. 291

Cap. 285

No. 16 of 2004

(b) by inserting after subsection (1), the following subsections:

“ (1A) A person provides registered agent services if he acts as the registered agent of

- (a) a Virgin Islands company;

(b) a foreign company registered under the BVI Business Companies Act, 2004; or

(b) a limited partnership registered under the Partnership Act, 1996.

No. 5 of 1996

(1B) A person provides registered office services if he provides the registered office for

(a) a Virgin Islands company; or

(b) a limited partnership registered under the Partnership Act, 1996.”.

4. Section 3 of the principal Act is repealed and the following section substituted:

Section 3 repealed and replaced.

“Prohibition on unauthorised company management business.
No. 9 of 1990

3. (1) No person shall carry on any kind of company management business in or from within the Virgin Islands unless the person holds a valid licence issued under this Act or under the Banks and Trust Companies Act, 1990 authorizing him to carry on that kind of business.

(2) For the purposes of subsection (1), a Virgin Islands company that carries on company management business outside the Virgin Islands is deemed to be carrying on company management business from within the Virgin Islands.

(3) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding two years or to both.”.

5. Section 4 of the principal Act is amended

Section 4 amended.

(a) in subsection (1), by deleting the words “application therefor to the Commission in the prescribed form” and substituting the words “written application to the Commission in the approved form”;

(b) by repealing subsection (2);

(c) by repealing subsection (3) and substituting the following subsections:

“ (3) The Commission may issue a licence to an applicant if it is satisfied that

- (a) the applicant satisfies the requirements of this Act and the Regulatory Codes in respect of the application and will, upon issuance of the licence, be in compliance with this Act and the Regulatory Codes;
- (b) the applicant satisfies the Commission’s fit and proper criteria;
- (c) the organisation, management and financial resources of the applicant are adequate for the carrying on of the business in respect of which a licence is sought; and
- (d) issuing the licence is not against the public interest.”; and

(d) in subsection (6), by deleting the words “in the *Gazette*” and substituting the words “in such manner as shall be specified in regulations made under section 26.”.

Section 4A inserted.

6. The principal Act is amended by inserting after section 4 the following section:

“Fees. No. 28 of 2005 **4A.** The fees prescribed by or under the Statutory Rates, Fees and Charges Act, 2005 in respect of and pertaining to this Act shall be payable to the Commission.”.

Section 5 repealed.

7. Section 5 of the principal Act is repealed.

Section 6 repealed and replaced.

8. Section 6 of the principal Act is repealed and the following section substituted:

“Validity of licence. No. 12 of 2001 **6.** A licence is valid until it is suspended or revoked by the Commission in accordance with the Financial Services Commission Act, 2001.”.

Section 7 amended.

9. Section 7(1) of the principal Act is amended by deleting the words “person who licensed” and substituting the words “person who is licensed”, and by deleting the words “the business of company management” and substituting the words “company management business”

- 10.** Section 9 of the principal Act is amended Section 9 amended.
- (a) by designating the existing provision as subsection (1);
 - (b) in the existing provision, by deleting the words “as soon as possible thereafter” and substituting the words “within fourteen days”; and
 - (c) by inserting after the existing provision the following subsection:

“ (2) A licensee who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding \$5,000.”.
- 11.** Section 10 of the principal Act is repealed and the following section substituted: Section 10 repealed and replaced.
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|-------------------|--|
| “Capital resource | <p>10. (1) A company holding a licence shall at all times maintain capital resources of not less than the prescribed requirements. minimum or such greater capital resources as the Commission may require the licensee to maintain.</p> <p style="margin-left: 40px;">(2) For the purposes of this section, the definition of “capital resources” and acceptable forms of capital may be specified in a Regulatory Code.”.</p> |
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- 12.** Section 11 of the principal Act is amended by deleting the words “the business of company management” and substituting the words “company management business”. Section 11 amended.
- 13.** Section 12 of the principal Act is repealed. Section 12 repealed.
- 14.** The heading to Part III is amended by deleting the words “Shares and Changes in Directors” and substituting the words “Significant Interests”. Heading to Part III amended.
- 15.** Section 13 of the principal Act is repealed and the following sections substituted: Section 13 repealed and replaced.
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| “Disposing of or acquiring significant interest in licensee. | <p>13. (1) A person owning or holding a significant interest in a licensee shall not sell, transfer, charge or otherwise dispose of his interest in the licensee, or any part of his interest, unless the prior written approval of the Commission has been obtained.</p> |
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(2) A person shall not, whether directly or indirectly, acquire a significant interest in a licensee unless the prior written approval of the Commission has been obtained.

(3) A licensee shall not, unless the prior written approval of the Commission has been obtained

- (a) cause, permit or acquiesce in a sale, transfer, charge or other disposition referred to in subsection (1);
- (b) issue or allot any shares or cause, permit or acquiesce in any other reorganisation of its share capital that results in
 - (i) a person acquiring a significant interest in the licensee, or
 - (ii) a person who already owns or holds a significant interest in the licensee, increasing or decreasing the size of his interest.

(4) An application to the Commission for approval under subsection (1), (2) or (3) shall be made by the licensee.

(5) The Commission shall not grant approval under subsection (1), (2) or (3) unless it is satisfied that following the acquisition or disposal

- (a) the licensee will continue to meet the criteria for licensing specified in section 4(4); and
- (b) any person who will acquire a significant interest in the license satisfies the Commission's fit and proper criteria.

(6) An approval under subsections (1), (2) or (3) may be granted by the Commission on such conditions as it considers appropriate.

(7) A person who contravenes subsection (1) or (2) and a licensee that contravenes subsection (3) commits

an offence and is liable on summary conviction to a fine not exceeding \$5,000.

Power to grant exemption.

13A. The Commission may exempt a licensee, or any description or category of licensee from the provisions of section 13, or any of them, on such conditions as it considers appropriate.”.

16. Section 14 of the principal Act is repealed.

Section 14 repealed.

17. Section 15 of the principal Act is amended

Section 15 amended.

- (a) in subsection (1)(a) and (b), by deleting the words “the business of company management” and substituting the words “company management business”;
- (b) in subsection (2),
 - (i) by deleting the words “the business of company management under a name which is” and substituting the words “company management business under a name which”,
 - (ii) in paragraph (a), by inserting the word “is” at the beginning of the paragraph and by inserting the words “, in the opinion of the Commission,” before the words “so nearly resembles”,
 - (iii) in paragraphs (b) and (c), by inserting the words “in the opinion of the Commission, is” at the beginning of each paragraph, and
 - (iii) by deleting the words “and in default of compliance may revoke his licence”; and
- (c) by inserting after subsection (2) the following subsection:
 - “ (3) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding \$50,000 or a term of imprisonment not exceeding two years or to both.”.

Section 16
repealed and
replaced.

18. Section 16 of the principal Act is repealed and the following sections substituted:

“Certain approvals
required.

16. (1) A licensee shall not change its name or operate inside or outside the Virgin Islands any subsidiary, branch, agency or representative office without the prior written approval of the Commission.

(2) A licensee who contravenes this section commits an offence and is liable on summary conviction to fine not exceeding \$25,000 or to imprisonment for a term not exceeding one year or to both.”.

Number of
directors.

16A. (1) A licensee shall at no time have less than two directors.

(2) A licensee shall, before the appointment of a director or other senior officer, apply to the Commission for its written approval of the appointment.

(3) Notwithstanding subsection (2), the Commission may exempt a licensee from the requirements specified in that subsection but such an exemption

(a) *ipso facto* lapses if the director or senior officer becomes bankrupt, makes an arrangement or composition with his creditors or is convicted of an offence involving dishonesty; and

(b) may be revoked by the Commission.”.

(4) A licensee who contravenes subsection (1) or (2) commits an offence and is liable on summary conviction to fine not exceeding \$25,000 or to imprisonment for a term not exceeding one year or to both.”.

Section 17
repealed and
sections 17 to
17K substituted.

19. Section 17 of the principal Act is repealed and the following sections substituted:

“Licensee to keep
financial records.

17. (1) A licensee shall keep financial records that

(a) are sufficient to show and explain its transactions;

- (b) will, at any time, enable its financial position to be determined with reasonable accuracy;
- (c) will enable it to prepare the financial statements and make the returns required under this Act and any Regulatory Code; and
- (d) will enable its financial statements to be audited in accordance with this Act and the Regulatory Code.

(2) A licensee shall retain all financial records for a period of at least five years after the completion of the transaction to which they relate.

(3) A licensee shall

- (a) keep its financial records in the Virgin Islands; and
- (b) if its financial records, or any of them, are kept at a place other than its principal office in the Virgin Islands, notify the Commission in writing of the place where those financial records are kept.

(4) A licensee shall comply with such rules as may be prescribed concerning

- (a) the segregation of its assets from the assets of companies that it manages;
- (b) the segregation of the assets of companies that it manages;
- (c) the maintenance of bank and other accounts with respect to moneys held on behalf of companies that he manages;
- (d) accounting rules and procedures to be applied with respect to company assets.

(5) A licensee that contravenes this section commits an offence and is liable on summary conviction to fine not exceeding \$25,000 or to imprisonment for a term not exceeding one year or to both.

Meaning of
“financial
statements”.

17A. (1) In this Act, “financial statements” in relation to a licensee and to a financial year, means

- (a) a statement of the financial position of the licensee as at the last date of the financial year;
- (b) a statement of the financial performance of the licensee in relation to the financial year;
- (c) a statement of cash flows for the licensee in relation to the financial year;
- (d) such statement relating to the prospects for the licensee’s business as may be prescribed or as may be required by the accounting standards in accordance with which the accounts are prepared; and
- (e) such other statements as may be prescribed;

together with any notes or other documents giving information relating to the matters specified in paragraphs (a), (b), (c), (d) or (e).

Preparation of
financial
statements.

17B. (1) A licensee shall prepare financial statements for each financial year that comply with generally accepted accounting standards or such other accounting standards as may be prescribed.

(2) If, in complying with the accounting standards in accordance with which they are prepared, the financial statements do not give a true and fair view of the matters to which they relate, the notes to the financial statements shall contain such information and explanations as will give a true and fair view of those matters.

(3) The financial statements prepared under subsection (1) shall be

- (a) approved by the directors of the licensee; and
- (b) following approval under paragraph (a), signed by at least one director on behalf of all the directors.

(4) The director signing the financial statements shall state the date when the financial statements were approved by the directors and the date when he signs the financial statements.

Submission of financial statements to Commission and publication.

17C. (1) The financial statements signed by a director in accordance with section 17B shall be submitted to the Commission within six months of the end of the financial year to which they relate accompanied by

- (a) a directors' certificate;
- (b) an auditor's report;
- (c) any report on the affairs of the licensee made to the members of the licensee in respect of the relevant financial year;
- (d) a certificate of compliance issued by the auditor that the information set out in the application for a licence, as modified by any subsequent notification of change in accordance with section 9, remains correct and gives an accurate summary of the business of the licensee; and
- (e) such other documents as may be prescribed;

(2) Unless accompanied by the certificates, reports and documents specified in subsection (1), the financial statements referred to in subsection (1) are deemed not to have been submitted to the Commission.

(3) A licensee who contravenes this section commits an offence and is liable on summary conviction to fine not exceeding \$10,000.

Submission of quarterly financial statements.

17D. (1) A licensee shall, in respect of each quarter, submit to the Commission, within such time period as shall be prescribed

- (a) financial statements, that may be unaudited;
- (b) a return in the approved form;
- (c) such other information and documentation as may be prescribed.

(2) In this section, “financial statements” has the meaning specified in section 17A with the substitution of “quarter” for “financial year”.

(3) A licensee who contravenes this section commits an offence and is liable on summary conviction to fine not exceeding \$10,000.

Extension of time.

17E. (1) The Commission may, on the application of a licensee, extend the time for compliance with section 17C or section 17D for a period of, or where it grants more than one extension for an aggregate period not exceeding, three months.

(2) An extension under subsection (1) may be granted subject to such conditions as the Commission considers appropriate.

Amendment of financial statements.

17F. (1) If the Commission considers that any document submitted by a licensee under section 17C or 17D is inaccurate or incomplete or is not prepared in accordance with this Act or a Regulatory Code, it may by written notice require the licensee to amend the document or to submit a replacement document.

(2) If a licensee fails to comply with a notice under subsection (1), the Commission may reject the document.

Licensee to appoint auditor.

17G. (1) A licensee shall appoint an auditor, which in the case of a licensee that is a Virgin Islands company, shall be an auditor approved by the Commission, for the purposes of auditing its financial statements.

(2) The Commission shall not approve the appointment of an auditor under subsection (2) unless it is satisfied that he has sufficient experience and is competent to audit the financial statements of the licensee.

(3) A licensee shall make such arrangements as are necessary to enable its auditor to audit its financial statements in accordance with this Act.

(4) The approval of the Commission is not required where the auditor appointed in respect of a financial year acted as the auditor of the licensee in the previous financial year.

(5) A licensee shall, within 14 days of the appointment of its auditor, submit a notice of appointment in the approved form to the Commission.

(6) A licensee shall not change its auditor without the prior written approval of the Commission.

(7) A licensee who contravenes this section commits an offence and is liable on summary conviction to fine not exceeding \$10,000.

Audit report.

17H. (1) Upon completion of his audit of the financial statements of a licensee, the auditor shall provide an audit report to the licensee complying with the Regulatory Codes.

(2) The Commission may at any time, by notice in writing, direct a licensee to supply the Commission with a report, prepared by its auditor or other person nominated by the Commission, on such matters as the Commission may determine which may include an opinion on the adequacy of the accounting and control systems of the licensee.

(3) A report prepared under subsection (2) shall be at the cost of the licensee.

Obligations of auditors.

17I. (1) Notwithstanding anything to the contrary in any other enactment, the auditor of a licensee shall

- (a) provide the Commission with a copy of the audit report provided to a licensee under section 17H;
- (b) report immediately to the Commission any information relating to the affairs of a licensee that he has obtained in the course of acting as its auditor that, in his opinion, suggests
 - (i) that the licensee is insolvent or is likely to become insolvent or is likely to be unable to meet its obligations,
 - (ii) that a criminal offence has been or is being committed by the licensee or in connection with its business,
 - (iii) that the licensee is in breach of any provision of this Act or any Regulatory Code with respect to capital resources or any other matter that may be prescribed,
 - (iv) that serious breaches of this Act or any Regulatory Code or such enactments, regulations or Codes relating to money laundering or the financing of terrorism as may have been prescribed have occurred in respect of the licensee or its company management business;
 - (v) that the licensee has significant weaknesses in internal controls which render it vulnerable to significant risks or exposures that have the potential to jeopardise the licensee's financial viability.

(2) Where the appointment of an auditor is terminated, the former auditor shall

- (a) forthwith inform the Commission of the termination of his appointment and disclose to the Commission the circumstances that gave rise to such termination; and
- (b) if, but for the termination of his appointment, he would have
 - (i) sent an audit report to the Commission under subsection (1)(a), or
 - (ii) reported information to the Commission under subsection (1)(b),

he shall send a copy of the report to the Commission, or report the information concerned to the Commission, as if his appointment had not been terminated.

(3) The Commission may require an auditor of a licensee to discuss any audit he has conducted or commenced with, or provide additional information regarding the audit to, the Commission.

(4) Where, in good faith, an auditor or former auditor provides a report or any information to the Commission under subsections (1), (2) or (3), he is deemed not to be in contravention of any enactment, rule of law or professional code of conduct to which he is subject and no civil, criminal or disciplinary proceedings shall lie against him in respect thereof.

(5) The failure, in good faith, of an auditor or former auditor to provide a report or any information to the Commission under subsections (1), (2) or (3) does not confer upon any other person a right of action against the auditor which, but for that failure, he would not have had.

Powers of Commission with regard to appointment of auditor.

17J. (1) Where the Commission is satisfied that the auditor of a licensee has failed to fulfil his obligations under this Act or any Regulatory Code, or is otherwise not a fit and proper person to act as the auditor of a licensee, it may, by written notice to the licensee, revoke the approval of the appointment of the auditor and the licensee shall appoint a new auditor in accordance with section 17G.

(2) A notice revoking the appointment of an auditor under subsection (1) shall be given to the auditor.

(3) If a licensee fails to appoint an auditor in accordance with section 17G, the Commission may appoint an auditor of the licensee.

(4) An auditor appointed under subsection (3) is deemed for the purposes of this Act to have been appointed by the licensee.

Group accounts.

17K. (1) Where a licensee is a member of a group of companies, the Commission may require the licensee to submit group accounts.

(2) The Commission may require that the group accounts are audited by the auditor of the licensee or by another auditor approved by the Commission.

(3) The Regulatory Codes may prescribe the form and content of group accounts to be submitted under this section.”.

Section 18 repealed.

20. Section 18 of the principal Act is repealed.

Section 19 amended.

21. Section 19 of the principal Act is amended

- (a) by designating the existing provision as subsection (1);
- (b) in the existing provision, by deleting the words “and shall cease to carry on its business until the insurance has been reinstated or replaced”; and
- (c) by inserting after the existing provision the following subsection:

“(2) A licensee who fails to effect a policy of insurance as required by the Commission under subsection (1), commits

an offence and is liable on summary conviction to fine not exceeding \$10,000.”.

- 22.** Sections 21 and 22 of the principal Act are repealed. Sections 21 and 22 repealed.
- 23.** Section 23 of the principal Act is amended by repealing subsections (1) and (2). Section 23 amended.
- 24.** Section 24 of the principal Act is repealed. Section 24 repealed.
- 25.** Section 26 of the principal Act is amended by deleting the words “into effect, and specifically-” and by deleting paragraphs (a) and (b) and by substituting the words “into effect.” Section 26 amended.
- 26.** The principal Act is amended by inserting after section 26A the following section: Section 26A inserted.
- “Regulatory Code. No. 12 of 2006 **28A.** Without limiting section 41 of the Financial Services Commission Act, 2001, the Commission shall issue a Regulatory Code under that section of the Act with respect to company management business.”.
- 27.** The Schedule to the principal Act is repealed. Schedule repealed.

Passed by the Legislative Council this 22nd day of September, 2006.

(Sgd.) V. INEZ ARCHIBALD,
Speaker.

(Sgd.)ALVA MC CALL,
Acting Clerk of the Legislative Council.

