

No. of 2017

VIRGIN ISLANDS
MICRO BUSINESS COMPANIES ACT, 2017

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SCHEDULE

No. 12 of 2001

“BVI business company” means a company incorporated or registered under the BVIBCA;

“charter” means the constitutive document of a micro business company registered by the Registrar;

“Commission” means the Financial Services Commission established under the Financial Services Commission Act, 2001;

“country” includes territory, province, state, canton or other geographical description of a defined geographic area or region that has a recognised ISO code;

“Court” means the High Court;

“distribution” has the meaning specified in section 27;

“document” means a document in any form, and includes –

- (a) any writing or printing on any material,
- (b) any record of information or data, however compiled, and whether stored in paper, electronic, magnetic or any non-paper based form and any storage medium or device, including discs and tapes,
- (c) books and drawings, and
- (d) a photograph, film, tape, negative, facsimile or other medium in which one or more visual images is or are embodied so as to be capable (with or without the aid of equipment) of being reproduced,

and without limiting the generality of the foregoing, includes any court application, order and other legal process and any notice;

“file”, in relation to a document, means to file the document with the Registrar;

“financial services legislation” means an enactment that is listed in Part 1 of Schedule 2 of the Financial Services Commission Act, 2001;

No. 5 of 2003

“Insolvency Act liquidator” means a liquidator appointed under the Insolvency Act, 2003;

“insolvency event” has the meaning specified in section 27;

“Internet site”, in relation to the Commission, means the principal public access Internet site for the time being maintained by, or on behalf of, the Commission;

“micro business company” means a micro business company formed under section 5, but excludes a micro business company that has been dissolved;

“Minister” means the Minister responsible for the administration of this Act;

“Official Receiver” means the Official Receiver appointed under section 488 of the Insolvency Act;

“participant” means –

- (a) in the case of a natural person, the natural individual shareholder stated as being the participant in the charter; or
- (b) in the case of a corporate person, the shareholder who is a micro business company and is stated as being the participant in the charter;

“participant share” has the meaning specified in section 20;

“prescribed” means prescribed by or under this Act or by or under any regulations made pursuant to section 122;

“principal” means the natural individual shareholder stated as being the principal in the charter;;

“principal share” has the meaning specified in section 20;

“Register” means the Register of Microfinance Business Companies maintained by the Registrar in accordance with section 103;

“registered agent” means the person who is approved by the Commission under section 34 (4) to act as registered agent of a micro business company;

“registered office” has the meaning specified in section 33 (2);

“Registrar” means the Registrar of Corporate Affairs appointed under section 229 of the BVIBCA, and “Deputy Registrar” and “Assistant Registrar” shall be construed accordingly;

“shareholder” means the principal and participant stated in the charter; and

“voluntary liquidator” means a liquidator appointed under section 68, but does not include an Insolvency Act liquidator.

(2) Where in this Act reference is made to –

- (a) the issuing of a notice, the notice may be issued in writing, and “writing” shall be construed to include writing in electronic form;
- (b) a principal being mentally incapacitated, this shall be construed to refer to the principal being certified by a medical practitioner in the Virgin Islands or any other jurisdiction, to be of unsound mind; and
- (c) the name of a micro business company, this shall be construed in accordance with section 10.

PART II

INCORPORATION, CAPACITY AND POWERS

Division 1 – Incorporation

Micro business company to be limited by shares.

3. A micro business company incorporated under this Act is a company limited by shares.

Application to incorporate a micro business company.

4. (1) Subject to subsection (2), a person may apply to the Registrar for the incorporation of a micro business company by filing –

- (a) the application in the approved form containing the required information for the charter;
- (b) a written confirmation by the proposed registered agent of its consent to act as registered agent of the company; and
- (c) such other information as may be prescribed.

(2) An application for the incorporation of a micro business company may be filed only by the proposed registered agent and the Registrar shall not accept an application for the incorporation of a micro business company filed by any other person.

(3) For the purposes of this section, the “proposed registered agent” means the person named in the charter as the first registered agent of the micro business company to be incorporated.

Incorporation of a micro business company.

5. (1) The Registrar shall, if he or she is satisfied that the requirements of this Act in respect of incorporation have been complied with, upon receipt of the information filed under section 4 (1) –

- (a) allot a unique number to the micro business company; and
- (b) register the micro business company and its charter on the Register.

(2) The registration of a micro business company and its charter under subsection (1) is conclusive evidence that –

- (a) all the requirements of this Act in relation to incorporation have been complied with; and
- (b) the micro business company is incorporated on the date of registration of the company and its charter.

(3) Upon registration of the micro business company and its charter under subsection (1) –

- (a) the principal share of the company is automatically issued and registered in the name of the principal;

- (b) if applicable, the participant share is automatically issued and registered in the name of the participant; and
- (c) the principal is obligated to direct and manage the business affairs of the company.

Division 2 - Charter

Charter.

- 6.** (1) The charter shall be in the approved form and shall state the following –
- (a) the registered name of the micro business company and that the company is a company limited by shares;
 - (b) the name of the registered agent of the micro business company and the address of the registered office of the company;
 - (c) the specific business purpose of the micro business company and the country in which the primary place of business operation of the company is located;
 - (d) the name and nationality of the principal and that the principal is the registered holder of the principal share;
 - (e) if applicable, the name and nationality of the participant and that the participant is the registered holder of the participant share and a description of the rights, privileges, restrictions and conditions attached or related to the participant share;
 - (f) that the principal share and the participant share are not transferrable and may not be encumbered under any form of security interest;
 - (g) that the business and affairs of the micro business company shall be managed by, or under the direction or supervision of, the principal who has express corporate authority (without the need for any further action or authorisation) under the charter and this Act to exercise powers and to act for and on behalf of the company and to legally and validly bind the company; and
 - (h) that the charter and the micro business company shall at all times be fully subject to, and compliant with, the provisions of this Act and any regulations made thereunder.

(2) In addition to the matters outlined in subsection (1), the charter of a micro business company may contain a provision indicating that any dispute involving the company may be settled through arbitration conducted in accordance with the Arbitration Act, 2013 and any rules, guidelines, procedures or other matter made thereunder.

No. 13 of 2013

Effect of charter.

- 7.** (1) The charter is binding on the micro business company, the principal and the participant (if any).

Amendment of
charter.

(2) The micro business company, the principal and the participant (if any) have the rights, powers, duties and obligations set out in this Act and any regulations made thereunder.

8. (1) Subject to subsections (2) to (7), no amendment may be made to the charter other than with respect to the updating of the information required under section 6 or the making of corrections that do not change the substance or meaning of a provision of the charter.

(2) Where a micro business company considers that any specific amendment to its charter not covered under subsection (1) is desirable or necessary to enhance or protect the company's business activity or to comply with a requirement of any other enactment, it may submit an application in writing to the Commission.

(3) An application under subsection (2) shall outline the amendment that is considered desirable or necessary and provide reasons in support of the application.

(4) Where the Commission, after review of an application under subsection (2), is satisfied that the application is justified, it may, having due regard to subsection (5), authorise the micro business company to amend its charter in such form and to such extent as the Commission considers fit.

(5) An authorisation by the Commission under subsection (4) for a micro business company to amend its charter shall not relate to or affect the matters specified in section 6 (1) (a), (f), (g) or (h).

(6) The Registrar shall, upon the filing by the micro business company of the Commission's authorisation under subsection (4) and the company's amendment to its charter, register the amendment.

(7) The Commission's authorisation under subsection (4) shall be in such form as the Commission considers fit.

Language of charter
and availability.

9. (1) The charter of a micro business company shall be in the English language.

(2) Without prejudice to subsection (1) but subject to subsection (3), a charter may be translated into any other language and posted on the micro business company's principal place of business and made available on any internet site and to such persons as it considers appropriate.

(3) A charter translated for the purposes of subsection (2) shall, before being dealt with in any manner prescribed in that subsection, be certified by a person who is legally qualified and authorised under the laws of the Virgin Islands, or of any other country where the company has its principal place of business, to certify documents.

(4) Every certified translated charter shall show either on the face of the first page of the charter or in a separate certificate available with the charter, indicating the full name of the person certifying the charter, his or her address, his or her authority to certify documents and the period of validity of his or her authority.

Division 3 – Micro Business Company Name

Required part of a micro business company name.

- 10.** The registered name of a micro business company shall comprise –
- (a) the expression “Micro Business Company” or “Micro Business Corporation” followed by its unique number allotted under section 5 (1) (a); and
 - (b) the ISO 3166 country code, being the country where the micro business company’s primary business operation is located.

Restriction in change of name.

- 11.** (1) Save as provided in subsection (2), a micro business company is not permitted to change its name.
- (2) The Registrar may change the name of a micro business company only if –
- (a) in the opinion of the Registrar –
 - (i) the use of the name contravenes another enactment; or
 - (ii) the name duplicates the name of another micro business company that is registered under this Act; or
 - (b) the Registrar receives an order of a court directing that the name of the company be changed.

Use of micro business company name.

- 12.** (1) A micro business company shall ensure that its registered name is –
- (a) clearly stated in every document issued or signed by, or on behalf of, the company that evidences or creates a legal obligation of the company; and
 - (b) conspicuously displayed in a prominent area of the location of its primary business operation.
- (2) A micro business company may, in addition to the use of its registered name, carry on business under a trading name of “doing business as [name]”, provided that doing so does not –
- (a) contravene the laws of the Virgin Islands or the laws of any jurisdiction in which the company carries on its business operation; or
 - (b) confuse or mislead regarding the type, nature or character of the business of the company.
- (3) Where a micro business company is dissolved or struck off the Register, the name of the company may not be re-used except where the company is restored to that Register pursuant to this Act.

Rights and interest in name.

13. The registration of a micro business company under this Act does not give the company any interest in, or rights over, its name that it would not have had apart from this Act.

Division 4 - Capacity and Powers

Separate legal personality.

14. A micro business company is a legal entity in its own right separate from its shareholders and continues in existence until it is dissolved.

Capacity and powers.

15. (1) Subject to this Act, any other enactment and a micro business company's charter, a micro business company has, irrespective of corporate benefit –

- (a) full capacity to carry on or undertake any activity, do any act or enter into any transaction in connection with its specified business purpose; and
- (b) for the purposes of paragraph (a), full rights, powers and privileges in connection with the company's specified business purpose.

(2) Without limiting subsection (1), the powers of a micro business company include the power to –

- (a) incur debt obligations; and
- (b) protect the assets of the company for the benefit of the company, its creditors, its principal and its participant (if applicable), and, at the discretion of the principal, for any person having a direct or indirect interest in the company.

Business restrictions.

16. (1) A micro business company is not permitted to –

- (a) carry on any business that is regulated under a financial services legislation;
- (b) have an annual turnover of more than \$2,000,000 or its equivalent in any other currency;
- (c) have gross asset value of more than \$2,000,000 or its equivalent in any other currency; or
- (d) have more than 10 employees.

(2) Where the principal becomes aware that the micro business company is not compliant with the restrictions provided in subsection (1) (b), (c) or (d), he or she shall, within 60 days of becoming so aware, cause the company to be transformed into a BVI business company in accordance with the provisions of this Act.

(3) Subject to subsection (4), the Commission may, where it considers it necessary and consistent with the nature and intent of the operation of a micro business company, impose additional restrictions under subsection (1) prohibiting a micro business company from engaging in a particular type of business activity.

(4) Any additional restriction imposed by the Commission under subsection (3) shall be in the form of an Order published in the *Gazette* and on the Internet site, and the Order shall not take effect earlier than 60 days from the date of publication of the Order.

Personal liability.

17. (1) Subject to subsection (2), the principal, agent or voluntary liquidator of a micro business company is not liable for any debt, obligation or default of the company, unless otherwise specifically provided in this Act or in any other enactment.

(2) Subsection (1) does not apply in circumstances where the principal, agent or voluntary liquidator may be personally liable for his or her own conduct not connected to the performance of his or her function as a principal, agent or voluntary liquidator of the micro business company.

Dealings between micro business company and other persons.

18. (1) A micro business company or a guarantor of an obligation of a micro business company may not assert against a person dealing with the company or with a person who has acquired assets, rights or interests in or from the company that –

- (a) this Act or the charter has not been complied with,
- (b) the person named as the principal in the charter –
 - (i) is not the person obligated to manage, direct or supervise the business and affairs of the company, or
 - (ii) does not have express corporate authority (without the need for any further action or authorisation) under this Act or the charter to exercise powers and to act for and on behalf of the company and to legally and validly bind the company,
- (c) a person held out by the company as its employee or agent –
 - (i) has not been duly appointed, or
 - (ii) does not have authority to exercise a power which the employee or agent of a company carrying on business of the kind carried on by the company has authority to exercise,
- (d) a person held out by the company as the employee or agent of the company with authority to exercise a power which the employee or agent of a company carrying on business of the kind carried on by the company does not have authority to exercise, does not have authority to exercise that power, or
- (e) a document issued on behalf of a company by its principal, employee or agent of the company with actual or usual authority to issue the document is not valid or not genuine,

unless the person has, or ought to have, by virtue of his or her relationship to the company, knowledge of the matters referred to in any of paragraphs (a) to (e).

(2) Subsection (1) applies even though a person of the kind specified in paragraphs (b) to (e) of that subsection acts fraudulently or forges a document that appears to have been signed on behalf of the micro business company, unless the person dealing with the company who has acquired assets, rights or interests in or from the company has actual knowledge of the fraud or forgery.

Constructive notice.

19. A person is deemed to have notice or knowledge of any document relating to a micro business company, including the charter, or of the provisions or contents of any such document, that has been registered by the Registrar under this Act and is publicly available from the Registry of Corporate Affairs.

PART III

SHARES AND SHAREHOLDERS

Division 1 - General

Shares.

20. (1) Each share in a micro business company is personal property.

(2) A micro business company is authorised to issue a maximum of 2 shares (in registered form only) as follows –

- (a) a principal share, which may only be issued to the principal; and
- (b) a participant share, which may only be issued to the participant .

Principal share.

21. (1) The principal share confers on the principal –

- (a) the obligation to manage, direct and supervise the business and affairs of the micro business company with the right of express corporate authority (without the need for any further action or authorisation) under the charter and this Act and the right to exercise powers and to act for and on behalf of the company and to legally and validly bind the company;
- (b) the right to any dividend paid on the principal share in accordance with this Act; and
- (c) the right to any distribution of the surplus assets of the micro business company.

(2) The principal share is deemed to be fully paid up upon its issue, and no consideration is payable in respect thereof.

Participant share.

22. (1) The participant share may confer on, or state in relation to, the participant any of the following elective rights which must be stated in the charter –

- (a) no right to any dividend paid in accordance with this Act;

- (b) no right to any distribution of the surplus assets of the micro business company;
- (c) the right to any dividend paid on the participant share in accordance with this Act;
- (d) the right to a specified share on the distribution of the surplus assets of the micro business company; and
- (e) such other rights, restrictions, privileges and conditions as may be identified.

(2) The participant share is deemed fully paid up upon its issue, and no consideration is payable in respect thereof.

No share certificates issued.

23. (1) A micro business company may not issue share certificates.

(2) The name of the principal and, if applicable, the participant, stated in the charter confirms that legal title in the principal share vests in the principal and the participant share vests in the participant.

Evidence of legal title.

24. A micro business company may treat the persons named as the principal and, if applicable, the participant, in its charter as the only persons entitled to any rights, powers and benefits attaching to the principal share or the participant share, as the case may be.

Division 2 –Disposition of Shares

Non-transferability of shares, etc.

25. (1) No share or any right attached to a share may be –

- (a) transferred or disposed of in any manner; or
- (b) encumbered by any form of security interest.

(2) Any purported transfer or disposition of a share (including any right attached to such share) or any purported security interest over a share (including any right attached to such share) shall be void and of no effect.

Death or mental incapacity of shareholder.

26. (1) If the principal dies or is declared mentally incapacitated –

- (a) the personal representative of the deceased or mentally incapacitated principal shall notify the registered agent of the micro business company of such death or mental incapacity;
- (b) the personal representative of the deceased or mentally incapacitated principal may, to the extent necessary to the probate or incapacitation process, exercise the rights and powers attached to the principal share even though the personal representative is not the principal;

- (c) the surplus assets of the micro business company shall be distributed according to the probate or mental incapacitation laws of the jurisdiction of residence of the principal;
- (d) the personal representative of the deceased or mentally incapacitated principal shall promptly confirm to the registered agent of the micro business company that the distribution of the surplus assets has been completed; and
- (e) the registered agent of the micro business company shall notify the Registrar that the surplus assets of the company have been distributed.

(2) Where the Registrar receives notification under subsection (1) (e), he or she shall dissolve the micro business company and strike the name of the company off the Register.

(3) When the Registrar dissolves a micro business company and strikes its name off the Register under subsection (3), the shares of the company shall be deemed to be redeemed and cancelled as part of the dissolution of the company.

(4) For the purposes of subsection (1) (c), the reference to “the jurisdiction of residence” of a principal shall be construed as the jurisdiction or place where the principal normally resides for the greater part of each year.

Division 3 - Distributions

Meaning of
"insolvency event"
and "distribution".

27. For the purposes of this Division –

- (a) an “insolvency event” means –
 - (i) a situation where the value of a micro business company’s liabilities exceeds its assets; and
 - (ii) the company is not able to pay its debts as they fall due; and
- (b) “distribution”, in relation to a distribution by a micro business company to its principal or participant, means –
 - (i) the direct or indirect transfer of an asset to, or for the benefit of, the principal or participant, or
 - (ii) the incurring of a debt to, or for the benefit of, the principal or participant,

in relation to the principal share held by the principal or, if applicable, the participant share held by the participant, and whether by means of the purchase of an asset, a transfer of indebtedness or otherwise, and includes a dividend.

Distribution.

28. Subject to this Part, the principal may, in relation to his or her micro business company, cause the company to make a distribution to the principal and, if applicable, to the participant, at such time and in such amount, as the principal considers fit if the distribution will not cause an insolvency event.

Recovery of distribution made when causing an insolvency event.

29. (1) Subject to subsection (2), any distribution made that causes an insolvency event –

- (a) may be recovered by the micro business company from the principal or participant, or both, as the case may be; and
- (b) shall render the principal personally liable for the repayment of the amount of any such distribution.

(2) If, in an action brought under this section against the principal or participant, as the case may be, the Court determines that the micro business company, by making a distribution of a lesser amount, would not have caused an insolvency event, the Court may –

- (a) permit the principal or participant, as the case may be, to retain an amount equal to the value of any distribution that could properly have been made; and
- (b) reduce the personal liability of the principal connected with the distribution to the amount of the distribution less the amount permitted to be retained under paragraph (a).

Division 4 - Shareholders

Number of shareholders.

30. (1) A micro business company may have a maximum of 2 shareholders, comprising one principal and one participant.

(2) A micro business company shall at all times have a principal, save for the period between the death or mental incapacitation of the principal and the subsequent dissolution of the company and the striking off of its name from the Register.

(3) A micro business company may, but is not required to, have a participant.

Liability of shareholders.

31. (1) Subject to subsection (2), a shareholder of a micro business company has no liability, as a shareholder, for the liabilities of the company.

(2) The liability of a shareholder to the micro business company is limited to liability to repay a distribution under section 29(1).

No resolutions.

32. The exercise by a shareholder of a power granted under this Act or the charter is expressly authorised as a matter of law and shall not require any form of resolution to be passed either in writing or otherwise.

PART IV

ADMINISTRATION

Division 1 - Registered Office and Registered Agent

Registered office.

33. (1) A micro business company shall at all times have a registered office in the Virgin Islands.

(2) The registered office of a micro business company shall be the physical address of its registered agent in the Virgin Islands.

Registered agent.

34. (1) Subject to subsection (7), a micro business company shall at all times have a registered agent in the Virgin Islands.

(2) Subject to subsection (3), a person who wishes to be approved as a registered agent of micro business companies shall submit an application in the approved form to the Commission.

(3) No person shall be qualified to be approved as a registered agent of micro business companies unless the person is licensed as a registered agent under the Banks and Trust Companies Act, 1990 or the Company Management Act, 1990.

No. 9 of 1990
No. 8 of 1990

(4) Where the Commission is satisfied that an applicant under subsection (2) –

(a) is licensed as provided in subsection (3),

(b) has met the requirements of the application under subsection (2) by complying with all the requirements of the approved form,

(c) has, at the time of application under subsection (2), been inspected and assessed by the Commission for prudential and anti-money laundering and countering the financing of terrorism and other supervisory compliance measures and received a performance rating of not less than compliant or largely compliant pursuant to the Commission's risk assessment of its licensees, and

(d) it is not against the public interest to approve the applicant,

the Commission may approve the applicant authorising it to act as a registered agent of micro business companies.

(5) No person shall be, or agree to be, the registered agent of a micro business company unless that person is approved by the Commission under this section.

(6) Unless the last registered agent of the micro business company has resigned in accordance with section 40 or ceased to be the company's registered agent in accordance with section 41 (5), the registered agent of the company is the person specified as the company's registered agent in the charter registered under section 5 (1) (b).

(7) A micro business company does not require a registered agent if it is in liquidation within the meaning of section 160 of the Insolvency Act, 2003.

(8) The Commission may withdraw its approval of a registered agent to act as a registered agent of micro business companies if, in its opinion, the registered agent, after having been granted approval under subsection (4), no longer meets any of the requirements outlined in that subsection.

(9) The Commission shall not withdraw the approval of a registered agent under subsection (8) unless it has first given the registered agent at least 14 days notice informing the registered agent of the Commission's intention to withdraw its approval and inviting the registered agent to, if it so wishes, submit a written representation as to why its approval should not be withdrawn.

(10) The reference in subsection (4) (c) to "licensees" refers to persons who are licensed by the Commission in accordance with a financial services legislation.

Registered office and registered agent fees.

35. (1) The Commission may, by an Order published in the *Gazette* and on the Internet site, prescribe the fees payable for the provision of registered office and registered agent services to a micro business company.

(2) No registered agent shall charge a micro business company a fee for registered office or registered agent services that is higher than the fee prescribed in the Order made pursuant to subsection (1).

(3) The Order published under subsection (1) may require each registered agent to provide the Commission with a list of the fees it intends to charge for each service rendered pursuant to this Act or any regulations made thereunder.

(4) Where the Order requires the provision of a list of fees chargeable by a registered agent, the Commission shall publish the list of fees on the Internet site in respect of the registered agent.

Appointment of registered agent.

36. (1) If at any time a micro business company does not have a registered agent, it shall forthwith, by written direction of its principal, appoint a registered agent by issuing a notice of appointment.

(2) A notice of appointment of a registered agent pursuant to subsection (1) shall be endorsed by the registered agent signifying its agreement to act as a registered agent of the micro business company, and the notice of appointment shall be filed by the registered agent.

(3) The appointment of the registered agent takes effect upon the updating of the charter to that effect by the Registrar pursuant to section 8 (1).

Directions to registered agent.

37. A registered agent shall act –

(a) on the written direction of the principal;

(b) to the extent the principal is deceased or declared mentally incapacitated, on the written direction of the personal representative of the deceased or mentally incapacitated principal; and

Change of
registered agent.

- (c) to the extent permitted in the charter, on the written direction of the participant.

38. (1) Subject to subsection (2), a micro business company may not change its registered agent except where the registered agent resigns or ceases to be eligible to act as registered agent.

(2) Where a micro business company forms the opinion that it is not receiving appropriate and competent representation from its registered agent or it is aggrieved by a specific conduct of the registered agent which makes it necessary for the company to change the registered agent, the company may submit an application in writing to the Commission requesting approval to change the registered agent.

(3) An application under subsection (1) shall state the specific reason or reasons for the application to change a registered agent and shall include such supporting evidence as may assist the Commission in determining the application, and the Commission shall take such decision as it considers appropriate and advise the micro business company concerned accordingly.

(4) Where –

- (a) a micro business company receives notice of resignation of its registered agent under section 40,
- (b) the registered agent of a micro business company ceases to be eligible to act as registered agent in accordance with section 41, or
- (c) a micro business company is permitted by the Commission under subsection (3) to change its registered agent,

the company may, by written direction of its principal, appoint a new registered agent by filing a notice in the approved form.

(5) A notice of appointment of a new registered agent shall be endorsed by the new registered agent signifying its agreement to act as registered agent of the micro business company.

(6) A notice of appointment of a new registered agent may be filed by –

- (a) the existing or new registered agent of the micro business company;
or
- (b) a legal practitioner in the Virgin Islands acting on behalf of the micro business company, subject to compliance with subsection (5).

(7) A change of registered agent takes effect upon the updating of the charter to that effect by the Registrar pursuant to section 8 (1).

(8) As soon as reasonably practicable after the updating of the charter to effect the change of registered agent and registered office, the Registrar shall notify the change to the former and new registered agents of the micro business company.

Change of registered office where registered agent changes address.

39. (1) This section applies in relation to a micro business company where the company's registered agent changes the location of its office.

(2) A registered agent may change the registered office of its micro business company to the changed location of the registered agent's office by filing a notice in the approved form—

(a) stating that —

(i) the registered agent has moved the location of its office; and

(ii) the micro business company intends its registered office to continue to be the office of the registered agent in compliance with section 33 (2); and

(b) specifying the new address of the registered agent's office.

(3) A change of registered office under this section takes effect upon the updating of the charter to that effect by the Registrar.

(4) A person who acts as the registered agent for more than one micro business company may file a single notice which combines all the micro business companies it acts for as registered agent.

Resignation of registered agent.

40. (1) A person may resign as the registered agent of a micro business company only in accordance with this section.

(2) A person wishing to resign as the registered agent of a micro business company shall —

(a) give the company not less than 90 days written notice of its intention to resign as registered agent of the company on the date specified in the notice;

(b) indicate in writing on the written notice that the list of all approved registered agents in the Virgin Islands with their names and addresses may be found on the Commission's Internet site; and

(c) file a copy of the written notice.

(3) The registered agent shall send a copy of the notice under subsection (2) to the principal.

(4) Upon receipt of a written notice under subsection (2), the micro business company shall appoint a new registered agent in accordance with the provisions of this Division.

(5) The resignation of a registered agent is effective on —

(a) the expiration of the date specified in the notice of resignation under subsection (2) (a), or

- (b) the date of appointment of a new registered agent by the micro business company,

whichever is earlier.

Registered agent
ceasing to be
eligible to act.

41. (1) A person ceases to be eligible to act as a registered agent if the Commission withdraws its approval authorising the person to act as a registered agent to a micro business company.

(2) Where a person ceases to be eligible to act as a registered agent, that person shall, with respect to each micro business company of which it was immediately before ceasing to be eligible to act as a registered agent, send to the persons specified in subsection (3) a written notice –

- (a) advising the micro business company that the person is no longer eligible to act as its registered agent;
- (b) advising the micro business company that it must appoint a new registered agent within 90 days of the date of the notice;
- (c) specifying that, on the expiration of the period specified in paragraph (b), the person will cease to be the registered agent of the micro business company; and
- (d) advising the micro business company that the list of all approved registered agents in the Virgin Islands with their names and addresses may be found on the Internet site.

(3) A notice under subsection (2) shall be sent to the micro business company and its principal.

(4) A micro business company which is sent a notice pursuant to subsection (3) shall, within 90 days of the date of the notice, appoint a new registered agent in accordance with section 38.

(5) A person who has ceased to be eligible to act as a registered agent ceases to be the registered agent of each micro business company to which it has sent a notice under subsection (2), on –

- (a) the date the Commission specifies in writing that the registered agent shall cease to hold a licence authorising it to act as a registered agent of micro business companies,
- (b) the date the micro business company appoints a new registered agent in accordance with subsection (4), or
- (c) the expiration of the date specified in the notice specified in subsection (4),

whichever is earlier.

- (6) A person does not commit an offence under section 117 by reason only that –
- (a) he or she has ceased to be eligible to act as a registered agent; or
 - (b) after ceasing to be eligible to act, he or she has continued to be the registered agent of a micro business company within the context of subsection (5) (a), (b) or (c).

Register of
Approved
Registered
Agents.

42. (1) The Commission shall maintain a Register of Approved Micro Business Companies Registered Agents in which the following details shall be recorded in respect of each approved micro business company registered agent –

- (a) the name of the approved registered agent;
- (b) the address of the approved registered agent;
- (c) the names of the individuals authorised to sign documents on behalf of the approved registered agent;
- (d) the date when the registered agent obtained the approval of the Commission authorising it to provide registered agent services to micro business companies;
- (e) in a case where a person ceases to be an approved registered agent –
 - (i) the date on which the person ceased to be so approved; and
 - (ii) the reason for ceasing to be an approved registered agent.

(2) An approved registered agent shall forthwith send written notification to the Commission in the approved form of any change in the details kept by the Commission in respect of the registered agent in the Register of Approved Micro Business Companies Registered Agents and the Commission shall record the change in the Register.

Division 2 – Micro Business Company Records and Operational Address

Documents to be
kept at office of
registered agent.

43. (1) A micro business company shall keep at the office of its registered agent copies of all notices and other documents filed by the company in the previous 5 years.

(2) A registered agent shall keep and maintain all notices and other documents filed by the micro business company for the period specified in subsection (1).

Records and
underlying
documentation.

44. (1) A micro business company shall –

- (a) keep at its registered office in the Virgin Islands or operational address (being the address of its primary place of business) the records and underlying documentation of the company;

- (b) retain the records and underlying documentation for a period of at least 5 years from the date –
 - (i) of completion of the transaction to which the records and underlying documentation relate; or
 - (ii) the company terminates the business relationship to which the records and underlying documentation relate; and
- (c) provide its registered agent without delay any records and underlying documentation in respect of the company that the registered agent requests pursuant to subsection (3).

(2) The records and underlying documentation of the micro business company shall be in such form as –

- (a) are sufficient to show and explain the company’s transactions; and
- (b) will, at any time, enable the financial position of the company to be determined with reasonable accuracy.

(3) Where the records and underlying documentation of the micro business company are kept at its operational office located outside the Virgin Islands, the company shall provide the registered agent with the physical address of the operational office located outside the Virgin Islands.

(4) Where the physical address of the operational office of the micro business company referred to in subsection (3) changes, the company shall immediately provide the registered agent with the new physical address of the operational office of the company.

(5) Whenever required to do so by the Commission or any other competent authority in the Virgin Islands acting pursuant to the exercise of a power under an enactment, the registered agent shall request from the micro business company records and underlying documentation in respect of the company.

(6) For the purposes of this section –

- (a) “business relationship” means a continuing arrangement between a micro business company and one or more persons with whom the company engages in business, whether on a one-off, regular or habitual basis; and
- (b) “records and underlying documentation” includes accounts and records (such as invoices, contracts and similar documents) in relation to –
 - (i) all sums of money received and expended by the micro business company and the matters in respect of which the receipt and expenditure takes place;
 - (ii) all sales and purchases of goods by the micro business company; and
 - (iii) the assets and liabilities of the micro business company.

Form of records.

45. The records and underlying documentation required to be kept by a micro business company under section 44 shall be kept –

- (a) in written form; or
- (b) either wholly or partly as electronic records complying with the requirements of the Electronic Transactions Act, 2001.

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Inspection of records.

46. The records of a micro business company shall be fully accessible to the principal and, to the extent such a right is expressly stated in the charter, the participant.

Service of process, etc. on micro business company.

47. (1) The service of legal process may be effected on a micro business company by addressing the document to the company at its registered address in the Virgin Islands or to the address of its primary place of operation outside the Virgin Islands.

(2) The service of a document on a micro business company may be proved by any of the following methods –

- (a) by properly addressing, preparing and posting an envelope containing the document to the address for service;
 - (b) by personal service;
 - (c) by direct delivery to the secretary or clerk of the company's registered agent; and
 - (d) by email attaching the document.
- (3) Where a document is served –
- (a) by post, the document shall, unless the contrary is proved, be deemed to have been served at the time when the document would have been received in the ordinary course of post;
 - (b) by personal service, the document is considered served at the time when the document is received by the person on whom it is served, whether or not receipt of the document has been signed for;
 - (c) by direct delivery, the document is considered served on the secretary or clerk at the time when the secretary or clerk received it, whether or not receipt of the document has been signed for; and
 - (d) by email, the document is considered served at the time at which it is shown to have been sent electronically if sent to the correct address, and it shall not matter whether the document was served in a scanned or other form so long as it is legible and in the form of the original document.

Division 3 - General Provisions

Contracts generally.

48. (1) The principal has express authority by virtue of this section to act for and on behalf of the micro business company and to negotiate, conclude, agree and enter into contracts (including any instrument or deed) in the name and on behalf of the company, which he or she may vary or discharge as he or she considers appropriate .

(2) A contract (including any instrument or deed) entered into in accordance with this section is valid and binding on the micro business company and its successors and all other parties to the contract, instrument or deed.

(3) For the purposes of this section and sections 49 and 50, “instrument” includes a contract, an agreement, a will, an order, a warrant, a scheme, letters patent, a promissory note or bill of exchange, rules or other document denoting a person’s or persons’ intention to make a formal arrangement of any matter.

No contracts before incorporation.

49. A micro business company may not enter into a contract (including any instrument or deed) pursuant to section 48 before it has been registered on the Register.

Power of attorney.

50. (1) A micro business company may, by instrument in writing, appoint any suitably qualified person through a power of attorney either generally or in relation to a specific matter.

(2) An act of a person, who is appointed through a power of attorney under subsection (1), exercised or performed in accordance with the terms of the power of attorney, binds the micro business company.

(3) An instrument appointing a person under a power of attorney under subsection (1) may either be –

- (a) executed as a deed by the principal; or
- (b) signed by the principal.

Authentication or attestation.

51. A document requiring authentication or attestation by a micro business company may be signed by the principal to signify its authentication or attestation.

PART V

MANAGEMENT OF THE MICRO BUSINESS COMPANY

Division 1 - Management by the Principal

Management by principal.

52. (1) The business and affairs of a micro business company shall be managed by, or under the direction or supervision of, the principal in his or her capacity as the sole director of the company.

(2) The principal has express corporate authority (without the need for any further action or authorisation) under this Act and the charter to exercise powers and to act for and on behalf of the micro business company and to legally and validly bind the company.

(3) The principal has all the powers necessary for managing, and for directing and supervising, the business and affairs of the micro business company.

(4) The exercise by the principal of a power granted under this Act or the charter is expressly authorised as a matter of law and shall not require any form of resolution to be passed either in writing or otherwise.

(5) The management, duties, responsibilities and obligations of the principal commence from the time of registration of the charter by the Registrar.

(6) The management responsibilities and obligations of the principal cease upon his death, mental incapacity or the dissolution and striking off of the name of the micro business company from the Register.

Persons
disqualified from
being a principal.

53. (1) The following persons are disqualified from being a principal –

(a) an individual who is under 18 years of age;

(b) a person who is a disqualified person within the meaning of section 260 (4) of the Insolvency Act, 2003;

(c) a person who is a restricted person within the meaning of section 409 of the Insolvency Act, 2003;

(d) an undischarged bankrupt; and

(e) a person who, in the opinion of the Commission, is not fit and proper in accordance with the provisions of Schedule 1A of the Regulatory Code, 2009.

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(2) A person who acts as the principal whilst disqualified under subsection (1) is nevertheless deemed to be the principal for the purposes of any provision of this Act that imposes a duty or obligation on the principal, and the acts of such person are valid in relation to a third party who was not aware of the principal's disqualification.

Division 2 - Management Duties, Responsibilities and Obligations of the Principal

Management
duties of
principal.

54. Subject to this section, the principal, in exercising his or her powers or performing his or her management duties, responsibilities and obligations, shall act honestly and in good faith and in what he or she believes to be in the best interest of the micro business company.

Powers to be
exercised for
proper purpose.

55. The principal shall exercise his or her powers for a proper purpose and shall not act, or agree to the micro business company acting, in a manner that contravenes this Act or the charter.

Standard of care.

56. The principal, when exercising his or her powers or performing his or her functions, shall exercise the care, diligence, and skill that a reasonable principal would exercise in the same circumstances taking into account, but without limitation –

- (a) the nature of the micro business company;
- (b) the nature of the decision to be taken; and
- (c) the position of the principal and the nature of the responsibilities undertaken by him or her.

Reliance on records and reports.

57. (1) Subject to subsection (2), the principal, when exercising his or her powers or performing his or her management duties, responsibilities and obligations, is entitled to rely upon the books, records, financial statements and other information prepared or supplied, and on professional or expert advice given, by –

- (a) an employee of the micro business company whom the principal believes, on reasonable grounds, to be reliable and competent in relation to the matters concerned; and
- (b) a professional adviser or expert in relation to matters which the principal believes, on reasonable grounds, to be within the person's professional or expert competence.

(2) Subsection (1) applies only if the principal –

- (a) acts in good faith;
- (b) makes proper inquiry where the need for the inquiry is warranted by the circumstances; and
- (c) has no knowledge that his or her reliance on the books, records, financial statements and other information or expert advice is not warranted.

Powers and duties applicable.

58. The powers and duties imposed on a principal under this Act replace and negate any other powers or duties that would otherwise be imposed on a person under common law.

Agents.

59. (1) The principal may appoint any natural person to be an agent of the micro business company on condition that the natural person will not, on appointment, be disqualified if he or she were to be appointed as a principal.

(2) An agent of the micro business company has such powers and authority of the principal as are set forth in the written instrument signed by the principal appointing the agent, except that no agent has any power or authority with respect to the following –

- (a) to file the annual return on behalf of the company;
- (b) to direct a change of the company's registered office or registered agent;
- (c) to appoint or remove another agent;

- (d) to make a declaration of solvency or to approve a liquidation plan in respect of the company; and
- (e) to make a distribution by the company.

(3) Where the principal appoints any person to be an agent of the micro business company, that agent may not appoint any substitute or delegate.

(4) The principal may remove an agent appointed under subsection (1) and may revoke or vary a power conferred on the principal under subsection (2), by way of a written instrument signed by the principal.

Indemnification.

60. (1) Subject to subsection (2), a micro business company may indemnify, against all expenses, including legal fees, and against all judgements, fines and amounts paid in settlement and reasonably incurred in connection with legal, administrative or investigative proceedings, any person who –

- (a) is or was a party or is threatened to be made a party to any pending or completed proceedings, whether civil, criminal, administrative or investigative, by reason of the fact that the person is the principal; or
- (b) is or was, at the request of the company, serving as a director of, or in any other capacity is or was acting for, another body corporate or a partnership, joint venture, trust or other enterprise.

(2) Subsection (1) applies only if the person referred to in that subsection acted honestly and in good faith and in what the person believed to be in the best interests of the micro business company and, in the case of criminal proceedings, the person had no reasonable cause to believe that his or her conduct was unlawful.

(3) The termination of any proceedings by any judgement, order, settlement, conviction or the entering of a *nolle prosequi* does not, by itself, create a presumption that the person –

- (a) did not act honestly and in good faith and with a view to the best interests of the micro business company; or
- (b) had reasonable cause to believe that his or her conduct was unlawful.

(4) Expenses, including legal fees, incurred by the principal in defending any legal, administrative or investigative proceedings may be paid by the micro business company in advance of the final disposition of such proceedings upon receipt of an undertaking by or on behalf of the principal to repay the amount if it is ultimately determined that the principal is not entitled to be indemnified by the company in accordance with subsection (1).

(5) The indemnification and advancement of expenses provided by, or granted pursuant to, this section is not exclusive of any other rights to which the person seeking indemnification or advancement of expenses may be entitled under any agreement or otherwise, both as to acting in the person's official capacity and as to acting in another capacity while serving as principal.

(6) If a person referred to in subsection (1) has been successful in defending any proceedings, the person is entitled to be indemnified against all expenses, including legal fees, and against all judgements, fines and amounts paid in settlement and reasonably incurred by the person in connection with the proceedings.

(7) A micro business company shall not indemnify a person in breach of subsection (2), and any indemnity given in breach of that subsection is void and of no effect.

Insurance.

61. A micro business company may purchase and maintain insurance in relation to any person who is the principal, or who at the request of the company is or was serving as a director of, or in any other capacity is or was acting for, another body corporate or a partnership, joint venture, trust or other enterprise, against any liability asserted against the person and incurred by the person in that capacity, whether or not the company has or would have had the power to indemnify the person against such liability pursuant to section 60.

Division 3 – Annual Return

Annual return.

62. (1) Subject to subsection (2), the principal shall file an annual return with the registered agent of the micro business company not later than the 31st day of January of each year following the year of incorporation of the company.

(2) If a micro business company is incorporated after the end of June of any particular year, the principal shall file the first annual return with the registered agent in respect of the company no later than the second January following the year of incorporation, and the annual return shall relate to all of the company's activities from the date of its incorporation.

(3) The required certifications in the annual return shall include confirmation that –

- (a) the micro business company is conducting business activities within its specified business purpose;
- (b) the name and nationality of the principal and, if applicable, participant, are as stated in the charter (or, if the principal's or participant's name or nationality has been legally changed, the current full legal name and nationality of the principal or participant);
- (c) the micro business company's business operations are within the requirements applicable to the company, in that –
 - (i) its annual turnover is not more than \$2,000,000 or its equivalent in any other currency;
 - (ii) its gross asset value is not more than \$2,000,000 or its equivalent in any other currency; and
 - (iii) it has no more than 10 employees;
- (d) the principal is not disqualified from being the principal (or, if disqualified, the reason for disqualification);

- (e) the country where the micro business company's primary business operation is located is as stated in its charter (or, if different, the country where its primary business operation is currently located);
- (f) the records and underlying documents of the micro business company are located at the address of its primary business operation; and
- (g) the contact details for the principal (as provided to the registered agent of the micro business company) remain true and correct or, if different, the current contact details for the principal.

(4) To the extent that the principal cannot confirm in the annual return that the micro business company's business operations are within the requirements applicable to the micro business company under subsection (3) (c), the principal shall cause the micro business company to transform into a BVI business company in accordance with the provisions of this Act by no later than the 30th day of April of the year of filing of the annual return.

(5) To the extent that the principal is disqualified from being a principal of the micro business company, the principal shall cause the company to be dissolved in accordance with the provisions of this Act no later than 60 days of the date the principal knew or ought to have known that he or she had become disqualified.

(6) The Commission may, notwithstanding the periods specified in subsections (4) and (5) but upon receipt of an application in the approved form from the principal, extend any of the periods specified in those subsections for up to 60 days and on such terms and conditions as the Commission considers fit.

PART VI

TRANSFORMATION INTO AND REGISTRATION AS A BVI BUSINESS COMPANY

Election to transform into a BVI business company.

63. (1) A micro business company may elect to, and shall if section 62 (4) applies, transform into and register as a BVI business company by filing –

- (a) a memorandum that, subject to subsections (2), (3) and (4), complies with section 9 of the BVIBCA and articles that comply with the BVIBCA (hereafter referred to as “the new memorandum” or “the new memorandum and articles” as the context requires);
- (b) a notice in the approved form to transform into a BVI business company; and
- (c) such other documents as may be prescribed.

(2) The new memorandum and articles shall be signed by the registered agent of the micro business company.

(3) In addition to the matters required under section 9 of the BVIBCA, the new memorandum shall state –

- (a) the unique number allotted to the micro business company under section 5 (1);
- (b) the date that the micro business company was first incorporated; and
- (c) that, immediately prior to its transformation and registration under the BVIBCA, the micro business company was governed by the provisions of this Act and any regulations made thereunder.

(4) The new memorandum shall state the name of the registered agent and the address of the registered office as at the date of filing of the notice under subsection (1) (b).

(5) A notice to transform into a BVI business company shall be authorised, and the new memorandum and articles shall be approved, by way of a written direction by the principal.

(6) The transformation of a micro business company under this section takes effect from the date that the notice filed pursuant to subsection (1) (b) is registered by the Registrar, and from that date –

- (a) the company shall be treated as transformed into and registered as a BVI business company under the BVIBCA with the same issued shareholding as it had as a micro business company and the registered agent shall serve as the first appointed director of the company;
- (b) the provisions of this Act and any regulations made thereunder shall cease to apply; and
- (c) the transformed BVI business company shall be subject to the provisions of the BVIBCA.

(7) Upon the registration of a notice under subsection (6), the Registrar shall issue a certificate in the approved form and allocate a BVI business company number to the transformed BVI business company.

(8) As soon as the transformation becomes effective in accordance with subsection (6)

–

- (a) the assets, including choses in action and the business of the former micro business company immediately vest in the transformed BVI business company; and
- (b) the transformed BVI business company is liable for all claims, debts, liabilities and obligations of the former micro business company.

(9) Where a micro business company is transformed as provided in this section –

- (a) no conviction, judgement, ruling, order, claim, debt, liability or obligation due or to become due, and no cause existing, against the transformed micro

business company or against the principal, participant or agent of the company, is released or impaired by the transformation; and

- (b) no proceedings, whether civil or criminal, pending at the time of transformation by or against the transformed micro business company or against the principal, participant, or agent of the company, are abated or discontinued by any merger or consolidation, and –
 - (i) the proceedings may be enforced, prosecuted, settled or compromised by or against the transformed BVI business company or against any member, director, officer or agent of the company, as the case may be; or
 - (ii) the transformed BVI business company may be substituted in the proceedings for the micro business company prior to its transformation.

(10) The Registrar shall, upon the registration of the transformed BVI business company, strike the name of the micro business company, off the Register.

No continuation.

64. (1) A micro business company may not continue as an entity incorporated under the laws of a jurisdiction outside the Virgin Islands.

(2) Where a micro business company wishes to continue as an entity incorporated under the laws of a jurisdiction outside the Virgin Islands, it shall first transform into a BVI business company.

(3) An entity incorporated under the laws of a jurisdiction outside the Virgin Islands may not continue into the Virgin Islands as a micro business company.

PART VII

LIQUIDATION, STRIKING-OFF AND DISSOLUTION

Division 1 - Liquidation

Interpretation for this Part.

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65. In this Part, unless the context otherwise requires –

“creditor” has the meaning specified in section 9 of the Insolvency Act, 2003;

“liability” has the meaning specified in section 10 of the Insolvency Act, 2003 and the reference in that section to “for the purposes of this Act” shall be construed as if it were a reference to this Act; and

“licensed insolvency practitioner” means a person holding a licence to act as an insolvency practitioner issued under section 476 of the Insolvency Act, 2003.

Filing of notices by voluntary liquidator.

66. Where any notice or other document is required under this Part to be filed by a voluntary liquidator, the document may only be filed by –

- (a) the voluntary liquidator;
- (b) a person qualified under this Act to act as the registered agent of a micro business company; or
- (c) a legal practitioner in the Virgin Islands, acting on behalf of the voluntary liquidator.

Condition for liquidation of micro business company.

67. A micro business company may only be liquidated under this Division if –

- (a) it has no liabilities; or
- (b) it is able to pay its debts as they fall due and the value of its assets equals or exceeds its liabilities; and
- (c) the proposed voluntary liquidator is a suitably qualified individual in accordance with section 68 (2).

Declaration of solvency and appointment of voluntary liquidator.

68. (1) Where it is proposed to liquidate a micro business company under this Division, the principal shall execute a liquidation plan that includes –

- (a) a declaration of solvency in the approved form stating that, in his or her opinion –
 - (i) the micro business company is and will continue to be able to discharge, pay or provide for its debts as they fall due; and
 - (ii) the value of the micro business company’s assets equals or exceeds its liabilities;
- (b) a statement specifying –
 - (i) the reason or reasons for the liquidation of the micro business company;
 - (ii) his or her estimate of the time required to liquidate the micro business company;
 - (iii) whether the voluntary liquidator is authorised to carry on the business of the micro business company if he or she determines that to do so would be necessary or in the best interests of the creditors of the company;
 - (iv) the name and address of the proposed voluntary liquidator and the remuneration proposed to be paid to the voluntary liquidator;
 - (v) the assets and liabilities of the micro business company as at the latest practical date before the proposed date of execution of the liquidation plan; and

(vi) that the voluntary liquidator is required to send to the principal a statement of account prepared or caused to be prepared by the voluntary liquidator in respect of his or her actions or transactions; and

(c) a written consent to be appointed as voluntary liquidator signed by the voluntary liquidator.

(2) The micro business company shall identify and appoint a suitably qualified individual resident in the Virgin Islands to act as the company's voluntary liquidator, if the individual is not –

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(a) a person disqualified for any reason under the Financial Services Commission Act, 2001, Regulatory Code, 2009 or under any financial services legislation or a person subject to an equivalent disqualification under the laws of a country outside the Virgin Islands;

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(b) a restricted person within the meaning of section 409 of the Insolvency Act, 2003 or an individual subject to an equivalent restriction under the laws of a country outside the Virgin Islands;

(c) a person against whom an order has been made by the Court under Part IX of the Insolvency Act, 2003 (in relation to malpractice);

(d) a minor;

(e) an undischarged bankrupt;

(f) an individual who is, or at any time in the previous 2 years has been, a director of the company or an affiliated company;

(g) an individual who acts, or at any time in the previous 2 years has acted, in a senior management position in relation to the company or an affiliated company and whose functions or responsibilities have included functions or responsibilities in relation to the financial management of the company or an affiliated company; or

(h) an individual who is a close family member of an individual specified in paragraph (f) or (g).

(3) For the purpose of subsection (2), an individual is considered to be resident in the Virgin Islands if he or she is known to physically live in the Virgin Islands for a period of at least 180 days in each year of his or her residence in the Virgin Islands.

Duration of
liquidation.

69. The liquidation of a micro business company under this Division commences at the time at which the notice of the voluntary liquidator's appointment is filed and continues until it is terminated in accordance with section 78 or 79.

Circumstances in which voluntary liquidator may not be appointed.

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- 70.** (1) A voluntary liquidator may not be appointed if –
- (a) an administrator or liquidator of the micro business company has been appointed under the Insolvency Act, 2003; or
 - (b) an application has been made to the Court to appoint an administrator or a liquidator of the micro business company under the Insolvency Act, 2003 and the application has not been dismissed.
- (2) A liquidation plan is void and of no effect unless the voluntary liquidator files notice of his or her appointment on or before the fourteenth day following the date of execution of the liquidation plan.

Notice of liquidation.

- 71.** (1) Where a voluntary liquidator is appointed, he or she shall, within 14 days of the appointment, file a notice of his or her appointment in the approved form and a copy of the liquidation plan of the micro business company.
- (2) The principal shall keep a copy of the executed liquidation plan at the office of the registered agent of the micro business company.
- (3) Where a voluntary liquidator fails to comply with the period for filing the notice referred to in subsection (1), his or her appointment shall lapse and shall be of no effect upon the expiry of that period.

Effect of appointment of voluntary liquidator.

- 72.** (1) Subject to subsections (2) and (3), with effect from the commencement of the voluntary liquidation of a micro business company –
- (a) the voluntary liquidator has custody and control of the assets of the company; and
 - (b) the principal remains in office but ceases to have any powers, functions or duties other than those required or permitted under this Part.
- (2) Notwithstanding subsection (1) (b), the principal, after the commencement of the voluntary liquidation, may –
- (a) authorise the voluntary liquidator to carry on the business of the micro business company if the voluntary liquidator determines that to do so would be necessary or in the best interests of the creditors of the company or where the liquidation plan does not give the voluntary liquidator such authorisation; and
 - (b) exercise such powers as the voluntary liquidator, by written notice, may authorise the principal to exercise.

Resignation of voluntary liquidator.

- 73.** (1) A voluntary liquidator may only resign in accordance with this section.
- (2) Subject to subsection (3), the voluntary liquidator shall give to the principal not less than 14 days' notice of his or her intention to resign, and he or she shall file a copy of the notice.

(3) The principal may agree in writing to accept less than 14 days' notice of the voluntary liquidator's resignation.

(4) The notice of intention to resign shall be accompanied by a summary of the liquidation accounts and a report of the voluntary liquidator's conduct of the liquidation.

(5) On the expiration of the period specified in the notice given under subsection (2) or such shorter period that may be accepted by the principal under subsection (3), the voluntary liquidator's resignation becomes effective.

Removal of
voluntary
liquidator.

74. (1) A voluntary liquidator may only be removed in accordance with this section.

(2) The Court may, on application by a person specified in subsection (3), remove a voluntary liquidator of a micro business company from office if –

(a) the voluntary liquidator –

(i) was not eligible to be appointed, or is not eligible to act, as the voluntary liquidator of the micro business company; or

(ii) fails to comply with any direction or order of the Court made in relation to the liquidation of the micro business company; or

(b) the Court has reasonable grounds for believing that –

(i) the voluntary liquidator's conduct of the liquidation is below the standard that may be expected of a reasonably competent voluntary liquidator;

(ii) the voluntary liquidator has an interest that conflicts with his or her role as voluntary liquidator; or

(iii) there is some other reason which warrants the removal of the voluntary liquidator.

(3) An application to the Court to remove a voluntary liquidator may be made by –

(a) the principal or, if there is a participant, the participant, or creditor of the micro business company; or

(b) the Official Receiver.

(4) The Court may require an applicant specified in subsection (3) (a) to give security for the costs to be incurred by the voluntary liquidator on the application.

(5) On the hearing of an application under this section, the Court may make such interim or other order it considers appropriate, including the appointment of a voluntary liquidator to replace the voluntary liquidator removed by the order.

(6) Where the Court removes a voluntary liquidator, the person who applied for the removal of the voluntary liquidator under subsection (2) shall file a copy of the Court's order.

Filling vacancy
in office of
voluntary
liquidator.

75. If a vacancy occurs in the office of voluntary liquidator, whether on account of the death, resignation or removal of the voluntary liquidator, the principal shall appoint another voluntary liquidator to fill the vacancy and all the provisions in this Part in relation to a voluntary liquidator shall apply accordingly.

Duties of
voluntary
liquidator.

76. The principal duties of a voluntary liquidator are to –

- (a) take possession, protect and realise the assets of the micro business company;
- (b) identify all creditors of, and claimants against, the micro business company;
- (c) pay or provide for the payment of, or to discharge, all claims, debts, liabilities and obligations of the micro business company;
- (d) distribute the surplus assets of the micro business company to the shareholders in accordance with the charter;
- (e) prepare or cause to be prepared a statement of account in respect of the actions and transactions of the voluntary liquidator; and
- (f) send a copy of the statement of account to the principal.

Powers of
voluntary
liquidator.

77. (1) In order to perform the duties imposed on him or her under section 76, a voluntary liquidator has all powers of the micro business company that are not reserved to the principal under this Act or in the charter including, but not limited to, the power to –

- (a) take custody of the assets of the company and to register any property of the company in the name of the voluntary liquidator or that of his or her nominee;
- (b) sell any assets of the company at public auction or by private sale without any notice;
- (c) collect the debts and assets due or belonging to the company;
- (d) borrow money from any person for any purpose that will facilitate the winding-up and dissolution of the company;
- (e) negotiate, compromise and settle any claim, debt, liability or obligation of the company;
- (f) prosecute and defend, in the name of the company or in the name of the voluntary liquidator or otherwise, any action or other legal proceeding;
- (g) retain legal practitioners, accountants and other advisers and appoint agents;
- (h) subject to subsection (2), carry on the business of the company, if the voluntary liquidator has received authorisation to do so in the liquidation plan or from the principal, as the voluntary liquidator may determine to be necessary or to be in the best interest of the creditors of the company;

- (i) execute any contract, agreement or other instrument in the name of the company or in the name of the voluntary liquidator; and
- (j) make any distribution in money or in other property or partly in each, and if in other property, to allot the property, or an undivided interest therein, in equal or unequal proportions.

(2) A voluntary liquidator shall not, without the permission of the Court, carry on the business of a micro business company in voluntary liquidation for a period of more than 2 years.

Termination of voluntary liquidation.

78. (1) The Court may, upon application and at any time after the appointment of a voluntary liquidator under section 68, make an order terminating the voluntary liquidation if it is satisfied that it would be just and equitable to do so.

(2) An application for an order under subsection (1) may be made by –

- (a) the voluntary liquidator of the micro business company; or
- (b) the principal, participant (if any) or creditor of the micro business company.

(3) Before making an order under subsection (1), the Court may require the voluntary liquidator to file a report with respect to any matters relevant to the application.

(4) An application for an order under subsection (1) shall be served, if made by a person other than the voluntary liquidator, on the voluntary liquidator and the voluntary liquidator is entitled to appear and be heard on the hearing of the application.

(5) An order under subsection (1) may be made subject to such terms and conditions as the Court considers appropriate and, on making the order or at any time thereafter, the Court may give such supplemental directions or make such other order as it considers fit in connection with the termination of the liquidation.

(6) Where the Court makes an order under subsection (1) –

- (a) the micro business company ceases to be in voluntary liquidation;
- (b) the voluntary liquidator ceases to hold office with effect from the date of the order or such later date as may be specified in the order; and
- (c) the person who applied for the order shall, within 7 days of the date of the order –
 - (i) serve a sealed copy of the order on the voluntary liquidator (if that person is not the voluntary liquidator); and
 - (ii) file a sealed copy of the order.

Completion of liquidation.

79. (1) A voluntary liquidator shall, upon completion of a voluntary liquidation, file a statement that the liquidation has been completed and upon receiving the statement, the

Registrar shall make an annotation on the Register certifying that the micro business company has been dissolved and struck off the Register as at the date of the annotation.

(2) Immediately following the Registrar's action under subsection (1), the person who, immediately prior to the dissolution and striking off of the micro business company, was the voluntary liquidator of the company, shall cause to be published in the *Gazette*, a notice that the company has been dissolved and struck off the Register.

Division 2 — Liquidation where Micro Business Company Insolvent

Micro business company in voluntary liquidation unable to pay its debts.

80. (1) For the purposes of this Division, a micro business company is insolvent if –

- (a) the value of its liabilities exceeds, or will exceed, its assets; or
- (b) it is, or will be, unable to pay its debts as they fall due.

(2) If at any time the voluntary liquidator of a micro business company in voluntary liquidation is of the opinion that the company is insolvent, he or she shall forthwith send a written notice in the approved form to the Official Receiver.

Liquidator to call meeting of creditors.

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81. (1) Where a voluntary liquidator sends a notice to the Official Receiver under section 80 (2), he or she shall call a meeting of creditors of the micro business company and sections 179 and 180 of the Insolvency Act, 2003 shall apply accordingly, and –

- (a) the 21 day period in section 179 of that Act shall be computed to commence from the date the voluntary liquidator forms the opinion that the company is insolvent; and
- (b) a reference in those sections to “member” and “director” shall be construed as a reference to the principal.

(2) A meeting called in accordance with subsection (1) shall be treated as if it were the first meeting of the creditors of the micro business company pursuant to sections 179 and 180 of the Insolvency Act, 2003.

(3) Without affecting any acts carried out by the voluntary liquidator appointed under Division 1 prior to sending a notice to the Official Receiver under section 80 (2), section 182 of the Insolvency Act, 2003 applies to the voluntary liquidator as if he or she were a liquidator appointed under that Act.

(4) Subject to the exercise of powers under section 180 of the Insolvency Act, 2003 where the voluntary liquidator who files a notice under subsection (1) is not a licensed insolvency practitioner with respect to the micro business company, the Official Receiver may apply to the Court *ex parte* for the Court to appoint him or a licensed insolvency practitioner as the liquidator of the company and the Court may make the appointment subject to such conditions as it considers appropriate.

82. (1) From the time that a voluntary liquidator appointed under Division 1 first becomes aware that the micro business company is not, or will not be, able to pay its debts, he or she shall, without prejudice to section 81, conduct the liquidation as if he or she had been appointed liquidator under the Insolvency Act, 2003.

(2) Where the voluntary liquidator of the micro business company files a notice with the Official Receiver under section 80 (2) –

- (a) the Insolvency Act applies to the liquidation of the micro business company, subject to such modifications as are appropriate; and
- (b) the liquidation of the micro business company shall be deemed to have commenced on the date of the appointment of the voluntary liquidator under Division 1.

Division 3 — Striking Off and Dissolution

83. (1) The Registrar may strike the name of a micro business company off the Register if –

- (a) the company –
 - (i) does not have a registered agent in accordance with the requirements of this Act; or
 - (ii) fails to file any return, notice or document required to be filed under this Act;
- (b) the Registrar is satisfied that –
 - (i) the company has ceased to carry on business; or
 - (ii) the company is carrying on business outside of the powers and purpose stated in its charter or under this Act;
- (c) the company fails to provide its annual return to its registered agent; or
- (d) the company fails to pay its annual fee or any late payment penalty by the due date.

(2) If the Registrar is of the opinion that the micro business company is trading or has property or that there is some other reason why the company should not be struck off the Register, he or she may, instead of striking the company off the Register, refer the company to the Commission for investigation.

(3) Subject to subsection (6) (b), the Registrar shall, before striking a micro business company off the Register on any of the grounds specified in subsection (1) (a) or (1) (b), send to the company a notice stating that, unless the company shows cause to the contrary, it will be struck off the Register on a date specified in the notice.

(4) The date for the striking off of a micro business company from the Register specified in a notice sent by the Registrar under subsection (3) shall be 30 days after the date of the notice (the “strike off date”).

(5) The Registrar may, on the strike off date, strike the name of the micro business company off the Register, unless the Registrar is satisfied that the company has shown cause against striking off.

(6) The striking off of the name of a micro business company from the Register—

(a) is effective from the strike off date; and

(b) shall not be affected by any failure on the part of the Registrar to serve a notice on the registered agent of the company.

Appeal.

84. (1) Any person who is aggrieved by the striking off of the name of a micro business company from the Register under section 83 may, within 90 days of the date of striking off, appeal to the Court.

(2) A notice of appeal to the Court under subsection (1) shall be served on the Registrar who shall be entitled to appear and be heard at the hearing of the appeal.

(3) The Registrar may, pending the determination of an appeal under subsection (1), suspend the operation of a striking off upon such terms as he or she considers appropriate.

(4) For the purposes of this section, a person is considered to be aggrieved by the striking off of the name of a micro business company from the Register if he or she –

(a) is a principal, participant (if applicable) or creditor of the company;

(b) is a competent authority who is dealing with a mutual legal assistance matter with respect to the company and the competent authority forms the opinion that it is not in the public interest that the company should be struck off until the mutual legal assistance matter is concluded; or

(c) can establish, to the satisfaction of the Court, that he or she has an interest in having the company restored to the Register.

(5) For the purpose of subsection (4) (b), “competent authority” means a competent authority so designated, recognised or appointed under an enactment.

Effect of striking off.

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85. (1) Subject to subsections (2) and (3), where a micro business company has been struck off the Register, the company, its principal, its participant (if applicable) and any voluntary liquidator or liquidator under the Insolvency Act, 2003, as the case may be, or receiver thereof, may not –

(a) commence legal proceedings, carry on any business or in any way deal with the assets of the company;

(b) defend any legal proceedings, make any claim or claim any right for, or in the name of, the company; or

(c) act in any way with respect to the affairs of the company.

(2) Where a micro business company has been struck off the Register, the company, its principal, its participant (if applicable), and any voluntary liquidator or liquidator under the Insolvency Act, as the case may be, or receiver thereof, may –

- (a) make application for restoration of the company to the Register;
- (b) continue to defend proceedings that were commenced against the company prior to the date of the striking-off; and
- (c) continue to carry on legal proceedings that were instituted on behalf of the company prior to the date of striking-off.

(3) Nothing contained in this Act shall be construed to prevent a competent authority from instituting against a micro business company, legal proceedings or pursuing against the company any matter in relation to a mutual legal assistance request, simply on account that the company has been struck off the Register.

(4) The fact that a micro business company is struck off the Register does not prevent –

- (a) the company from incurring liabilities, or
- (b) any creditor from making a claim against the company and pursuing the claim through to judgement or execution,

and does not affect the liability of its principal, its participant (if applicable), or any of its officers or agents.

Dissolution of micro business company struck off the Register.

86. Where a micro business company that has been struck off the Register under section 83 remains struck off continuously for a period of one year, it is dissolved with effect from the last day of that period.

Restoration of name of micro business company to the Register.

87. (1) Subject to subsection (2), where a micro business company has been struck off the Register but not dissolved, the Registrar may, upon receipt of an application in the approved form and upon payment of the restoration fee and all outstanding fees and penalties, restore the company to the Register.

(2) Where a micro business company has been struck off, the Registrar shall not restore the company to the Register, unless the Registrar is satisfied that –

- (a) the information in relation to the company as required under this Act has not changed or, where such information has changed, the information has been updated to the satisfaction of the Registrar;
- (b) a person approved by the Commission has agreed to act as registered agent of the company;
- (c) it would be fair and reasonable for the name of the company to be restored to the Register; and
- (d) it is not against the public interest to restore the company to the Register.

(3) An application to restore a micro business company to the Register under subsection (1) may be made by the company, its principal, its participant (if applicable) or any voluntary liquidator or liquidator under the Insolvency Act, 2003, as the case may be, of the company.

(4) An application under this section to restore a micro business company that has been struck off the Register and dissolved in accordance with section 86 shall be made within a period of 5 years after the effective date of dissolution of the company.

(5) Where the Registrar refuses to restore a micro business company under this section, any of the persons mentioned in subsection (3) may, within 90 days of the Registrar's refusal, appeal to the Court and, if the Court is satisfied that it would be just and fair and not against the public interest for the company to be restored to the Register, it may direct the Registrar to, subject to subsection (2) (a) and (b), restore the company upon such terms and conditions as it may consider appropriate.

(6) Any notice of appeal to the Court under subsection (5) shall be served on the Registrar who shall be entitled to appear and be heard at the hearing of the appeal.

Issuing certificate of restoration and effect thereof.

88. (1) Where the Registrar restores a micro business company to the Register under section 87, he or she shall issue the company with a certificate of restoration.

(2) Where a micro business company is restored to the Register and issued a certificate of restoration, the company shall –

(a) be deemed never to have been struck off the Register; and

(b) forthwith appoint a registered agent (if not already done), having regard to section 87 (2) (b).

Application to restore dissolved micro business company to the Register.

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89. (1) An application may be made to the Court for an order to restore to the Register a micro business company that has been dissolved on account of liquidation, whether under this Act or under this Act and the Insolvency Act, 2003 by –

(a) a creditor, former principal, former participant (if applicable) or former voluntary liquidator or liquidator under the Insolvency Act, 2003, as the case may be, of the company; or

(b) any person who can establish an interest in having the company restored to the Register.

(2) An application under subsection (1) may not be made more than 5 years after the date that the micro business company was dissolved.

(3) Notice of an application under this section shall be served on the Registrar and the Financial Secretary, each of whom is entitled to appear and be heard on the hearing of the application.

Court's powers
on hearing.

- 90.** (1) Subject to subsection (2), on an application under section 89, the Court may –
- (a) make an order to restore the micro business company to the Register, subject to compliance with section 87 (2) (a) and (b) and upon such other conditions as the Court considers appropriate to impose; and
 - (b) give such directions or make such other orders as it considers necessary or desirable for the purpose of placing the micro business company and any other persons as nearly as possible in the same positions as if the company had not been dissolved or struck off the Register.

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(2) Where the micro business company was dissolved following the completion or termination of its voluntary liquidation under this Act or its liquidation under this Act and the Insolvency Act, 2003, the Court shall not make an order restoring the company to the Register unless –

- (a) the applicant under section 89 nominates a person to be liquidator of the company, if it is restored to the Register;
- (b) the person nominated a liquidator consents to act, and is eligible to act, as liquidator of the company on its restoration; and
- (c) satisfactory provision has been made or will be made for the expenses and remuneration of the liquidator, if appointed.

(3) For the purposes of subsection (2) (b), a person is eligible to act as the liquidator of a micro business company –

- (a) in the case of a micro business company that was dissolved following the completion or termination of its voluntary liquidation, if he or she would be eligible to be appointed voluntary liquidator of the company under this Act; and
- (b) in the case of a micro business company that was dissolved following the completion or termination of its liquidation under this Act and the Insolvency Act, if he or she is a licensed insolvency practitioner who would be eligible to act in relation to the company in accordance with section 482 of the Insolvency Act, 2003.

(4) Where the Court makes an order restoring a micro business company to which subsection (2) applies, the Court shall appoint as liquidator of the company –

- (a) the person nominated by the applicant; or
- (b) some other person who is eligible to act as liquidator of the company.

Effect of
restoration.

91. (1) Where the Court makes an order restoring a micro business company to the Register, a sealed copy of the order shall be filed–

- (a) in the case of a micro business company to which section 90 (2) applies, by the person appointed to be liquidator of the company pursuant to section 90 (4); and
- (b) in any other case, by the person making application for the order.

(2) On receiving a filed copy of a sealed order under subsection (1) and being satisfied that section 87 (2) (a) and (b) has been complied with, the Registrar shall restore the micro business company to the Register with effect from the date that the copy of the sealed order was filed and issue a certificate of restoration to the Register.

(3) Where the micro business company was dissolved following the completion or termination of its voluntary liquidation under this Act or its liquidation under this Act and the Insolvency Act, 2003 –

- (a) the company is restored as a company in liquidation under this Act or the Insolvency Act, 2003; and
- (b) the person appointed by the Court as liquidator is constituted liquidator of the company with effect from the time that the company is restored to the Register.

(4) Subject to subsection (5), a micro business company is restored to the Register with the name and unique number that it had immediately before it was dissolved.

(5) A micro business company that is restored to the Register in accordance with this section is deemed to have continued in existence as if it had never been dissolved and struck off the Register.

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Property of dissolved micro business company.

92. (1) Subject to subsection (2) and section 93 (5), any property of a micro business company that has not been disposed of at the date of the company’s dissolution vests in the Crown.

(2) When a micro business company is restored to the Register, any property, other than money, that was vested in the Crown pursuant to subsection (1) on the dissolution of the company and that has not been disposed of must be returned to the company upon its restoration to the Register.

Disclaimer.

93. (1) In this section, “onerous property” means –

- (a) an unprofitable contract; or
- (b) property of the micro business company that is unsaleable, or not readily saleable, or that may give rise to a liability to pay money or perform an onerous act.

(2) Subject to subsection (3), the Minister may, by Notice in writing published in the *Gazette*, disclaim the Crown’s title to onerous property which vests in the Crown under section 92.

(3) A statement in a Notice disclaiming property under this section that the vesting of the property in the Crown first came to the notice of the Minister on a specified date shall, in the absence of proof to the contrary, be evidence of the fact stated.

(4) Unless the Court, on the application of the Minister, orders otherwise, the Minister is not entitled to disclaim property unless the property is disclaimed –

- (a) within 12 months of the date upon which the vesting of the property under section 92 came to the notice of the Minister, or
- (b) if any person interested in the property gives notice in writing to the Minister requiring him to decide whether he or she will or will not disclaim the property, within 3 months of the date upon which he or she received the notice,

whichever occurs first.

(5) Property disclaimed by the Minister under this section is deemed not to have vested in the Crown under section 92.

(6) A disclaimer under this section –

- (a) operates so as to determine, with effect from immediately prior to the dissolution of the micro business company, the rights, interests and liabilities of the company in or in respect of the property disclaimed; and
- (b) does not, except so far as is necessary to release the micro business company from liability, affect the rights or liabilities of any other person.

(7) A person suffering loss or damage as a result of a disclaimer under this section –

- (a) shall be treated as a creditor of the micro business company for the amount of the loss or damage, taking into account the effect of any order made by the Court under subsection (8); and
- (b) may apply to the Court for an order that the disclaimed property be delivered to or vested in that person.

(8) The Court may, on an application made under subsection (7) (b), make an order under that subsection if it is satisfied that it is just for the disclaimed property to be delivered to or vested in the applicant.

PART VIII

INVESTIGATION OF MICRO BUSINESS COMPANIES

Definition of
“inspector”.

94. In sections 95 to 101, “inspector” means an inspector appointed by an order made under section 95 (2).

Investigation
order.

95. (1) The Registrar may apply to the Court *ex parte* or upon such notice as the Court may require, for an order directing that an investigation be carried out in respect of a micro business company.

(2) If, upon an application under subsection (1), it appears to the Court that –

- (a) the business of the micro business company is or has been carried on with intent to defraud any person,
- (b) the micro business company was formed for a fraudulent or unlawful purpose or is to be dissolved for a fraudulent or unlawful purpose, or
- (c) any person concerned with the incorporation, business or affairs of the micro business company has in connection therewith acted fraudulently or dishonestly,

the Court may make any order it thinks fit with respect to an investigation of the company and by an inspector, who may be the Registrar.

(3) The Registrar shall not be required to give security for costs.

Court's powers.

96. (1) An order made under section 95 (2) shall include an order –

- (a) appointing an inspector to investigate the micro business company; and
- (b) fixing the inspector's remuneration.

(2) The Court may, at any time, make any order it considers appropriate with respect to the investigation, including but not limited to making any one or more of the following orders, that is to –

- (a) replace the inspector;
- (b) determine the notice to be given to any interested person, or dispense with notice to any person;
- (c) authorise the inspector to enter any premises in which the Court is satisfied there might be relevant information, and to examine anything, and to make copies of any documents or records, found on the premises;
- (d) require any person to produce documents or records to the inspector;
- (e) authorise the inspector to conduct a hearing, administer oaths or affirmations and examine any person upon oath or affirmation, and prescribe rules for the conduct of the hearing;
- (f) require any person to attend a hearing conducted by the inspector and to give evidence upon oath or affirmation;

- (g) give directions to the inspector or any interested person on any matter arising in the investigation;
- (h) require the inspector to make an interim or final report to the Court;
- (i) determine whether a report of the inspector should be published and, if so, order the Registrar to publish the report in whole or in part, or to send copies to any person the Court designates;
- (j) require an inspector to discontinue an investigation; or
- (k) require the micro business company to pay the costs of the investigation in part or in full.

(3) The inspector shall file a copy of every report he or she makes under this section.

(4) A report received by the Registrar under subsection (3) shall not be disclosed to any person other than in accordance with an order of the Court made under subsection (2) (i).

Inspector's powers.

97. An inspector –

- (a) has the powers set out in the order appointing him or her; and
- (b) shall, upon request, produce to an interested person a copy of the order.

Hearing in camera.

98. (1) An application under this Part and any subsequent proceedings, including applications for directions in respect of any matter arising in the investigation, shall be heard *in camera* unless the Court orders otherwise.

(2) A person whose conduct is being investigated or who is being examined at a hearing conducted by an inspector under this Part may appear or be heard at the hearing and has a right to be represented by a legal practitioner appointed by him or her for the purpose.

(3) No person shall publish anything relating to any proceedings under this Part except with the authorisation of the Court.

Incriminating evidence.

99. No person is excused from attending and giving evidence and producing documents and records to an inspector appointed by the Court under this Part by reason only that the evidence tends to incriminate that person or subject him or her to any proceeding or penalty, but the evidence may not be used or received against him or her in any proceeding thereafter instituted against him or her, other than a prosecution for perjury in giving the evidence.

Privilege.

100. (1) An oral or written statement or report made by an inspector or any other person in an investigation under this Part has absolute privilege.

(2) Nothing in this Part affects the legal privilege that exists in respect of a legal practitioner and his or her client.

PART IX
ADMINISTRATION AND GENERAL

Company Law
Review Advisory
Committee.

101. The Company Law Review Advisory Committee established under section 228A of the BVIBCA shall, in addition to performing its functions under that section, perform the same functions in relation to this Act as if those functions were specified with respect to this Act in relation to micro business companies.

Registrar of
Corporate
Affairs.

102. (1) The Registrar of Corporate Affairs appointed under section 229 of the BVIBCA shall act as, and perform the functions of, Registrar under this Act.

(2) Subject to the control of the Registrar, the Deputy Registrar and Assistant Registrar referred to in section 229 of the BVIBCA may exercise the powers and perform the functions of the Registrar under this Act and their exercise of such powers and performance of such functions shall be conclusive evidence of their authority to do so.

(3) Subject to the control of the Commission, the Registrar is responsible for the administration of this Act.

Register of Micro
Business Companies.

103. (1) The Registrar shall maintain on the Internet site a publicly accessible register of all micro business companies incorporated under this Act.

(2) The Register and the information contained in any filing shall be kept in such manner as the Registrar considers fit including, either wholly or partly, by means of a device or facility –

- (a) that records or stores information magnetically, electronically or by other means; and
- (b) that permits the information recorded or stored to be inspected and reproduced in legible and usable form.

(3) The Registrar shall establish systems and facilities enabling the filing of documents and the provision of information to the Registrar in electronic form and the issuance of certificates and other documents in electronic form.

(4) The Registrar shall –

- (a) provide that specified qualifying documents, specified types or descriptions of qualifying documents, qualified documents filed by specified persons or by specified types or descriptions of persons or all qualifying documents may only be filed by electronic means; and
- (c) specify requirements concerning –
 - (i) the keeping by the Registrar of the Register and of documents filed and information provided, in electronic or any other form;
 - (ii) the filing of documents and provision of information in electronic form; and

(iii) the issuance by the Registrar of certificates and other documents in electronic form.

(5) The Registrar shall –

- (a) retain every qualifying document filed; and
- (b) not retain any document filed that is not a qualifying document.

(6) For the purposes of this section, a document is a qualifying document if –

- (a) this Act or another enactment requires or expressly permits the document or information to be filed; and
- (b) the document or information complies with the requirements of, and is filed in accordance with, this Act or the other enactment that requires or permits the document or information to be filed.

(7) The Registrar may maintain such other registers as he or she considers appropriate in relation to micro business companies under this Act and the registers shall be in such form as the Registrar may determine.

Filing of documents.

104. (1) Except as otherwise provided in this Act or the regulations, a document or information required or permitted to be filed by a micro business company under this Act, may only be filed –

- (a) by the registered agent of the company; or
- (b) if an Insolvency Act liquidator is appointed in respect of the company, by that liquidator.

(2) The Commission may, by notice published in the *Gazette* and the Internet site, provide for the filing, registration and issuing of documents, or certain specified types of documents, or information, on a non-business day.

Inspection of registers and documents filed.

105. (1) Except as otherwise provided in this Act or any other enactment, a person may –

- (a) inspect the Register maintained by the Registrar under section 103 (1);
- (b) print off a copy of the charter of a micro business company from the Register;
- (c) inspect any document retained by the Registrar in accordance with section 103 (5); and
- (d) order a certified or uncertified copy or extract certificate of restoration or dissolution of a micro business company, or a copy or an extract of any document or any part of a document of which he or she has custody, to be certified by the Registrar, and a certificate of restoration or dissolution of a

micro business company or a certified copy or extract is *prima facie* evidence of the matters contained therein.

(2) A document or a copy or an extract of any document or any part of a document certified by the Registrar under subsection (1) is admissible in evidence in any proceedings as if it were the original document.

(3) Subsection (2) applies whether the copy or extract is obtained from a document or information filed in electronic form.

Form of
certificate.

106. Any certificate or other document required to be issued by the Registrar under this Act shall be in the approved form.

Certificate of
good standing.

107. (1) The Registrar shall, upon request by any person and subject to subsection (3), issue a certificate of good standing in the approved form certifying that a micro business company is of good standing if the Registrar is satisfied that –

- (a) the company is on the Register;
- (b) the company has paid all fees, annual fees and penalties due and payable under this Act or any regulations made thereunder;
- (c) the company has not been convicted of an offence within or outside the Virgin Islands involving –
 - (i) theft, fraud or any dishonest conduct,
 - (ii) money laundering, terrorist financing, proliferation financing or other financial crime, or
 - (iii) breach or violation of any sanctions or embargoes imposed pursuant to any law extended to or applicable in the Virgin Islands,

in the last 7 years prior to the request for a certificate of good understanding.

(2) The certificate of good standing issued under subsection (1) shall contain a statement containing the matters specified in paragraphs (a), (b) and (c) of that subsection, including as to whether at the date of the certificate –

- (a) the micro business company is in voluntary liquidation;
- (b) the micro business company is in liquidation or receivership under the Insolvency Act and, where appropriate, stating that it is in administrative receivership; or
- (c) any proceedings to strike the micro business company off the Register have been instituted.

(3) If the request for a certificate of good standing under subsection (1) is made by –

- (a) a micro business company, the principal or participant (if applicable), the Registrar shall not issue the certificate unless the principal confirms in the approved form the matters specified in paragraph (c) of that subsection; and
- (b) any other person other than the micro business company, the principal or participant (if applicable), the certificate of good standing need not include the matters specified in paragraph (c) of that subsection.

Issue of miscellaneous certificates.

108. The Registrar may, upon request by any person, issue a certificate confirming –

- (a) information recorded on the Register in relation to a micro business company; and
- (b) the status of the micro business company.

Fees and penalties to be paid to Registrar. Schedule No. 12 of 2001

109. (1) The fees and penalties specified in the Schedule shall be payable to the Registrar who shall pay them into the Government Trust Account established under section 19 of the Financial Services Commission Act, 2001.

(2) Subject to subsection (3) and save where this Act or any regulation made thereunder provides otherwise, the registered agent is the only person authorised to pay a fee to the Registrar under this section, and the Registrar shall not accept a fee paid by any other person.

(3) The Commission may, on an application by a legal practitioner on behalf of a micro business company, permit the legal practitioner to pay a fee to the Registrar under this section if the Commission is satisfied that there are reasonable circumstances that warrant the grant of such permission.

(4) The grant of permission by the Commission under subsection (3) shall relate to a single transaction in respect to the payment of fees on behalf of a micro business company and, in granting its permission, the Commission may impose such conditions as it considers necessary.

Due date of annual fees.

110. (1) The annual fee payable by a micro business company is due by the 31st day of January of each year, commencing in the year following its incorporation.

(2) The annual fee payable by a micro business company is the annual fee specified in Part I of the Schedule.

(3) Where an Insolvency Act liquidator is appointed in respect of a micro business company, the company is not liable for any fees under the Schedule after the date of the liquidator's appointment.

Recovery of penalties, etc.

111. Any fee or penalty payable under this Act or any regulations made thereunder that remains unpaid for 30 days immediately following the date on which demand for payment is made by the Registrar is recoverable at the instance of the Commission before a Magistrate in civil proceedings notwithstanding the amount sought to be recovered.

Micro business company struck off liable for fees, etc.

112. A micro business company continues to be liable for all fees and penalties payable under this Act or any regulations made thereunder notwithstanding that the name of the company has been struck off the Register.

Power of Registrar to refuse to act.

113. The Registrar may refuse to take any action required of him or her under this Act or any regulations made thereunder for which a fee is prescribed or a penalty is payable until such fee or penalty, as the case may be, has been paid.

Approval of forms by Commission.

114. (1) Where this Act requires a document to be in “the approved form”, the Commission shall, by publication on its Internet Site in the prescribed manner, approve a form to be used for the document.

(2) The Commission may, with respect to any other document required or permitted to be filed, issued or produced under this Act, approve a form to be used for the document.

(3) Where, pursuant to subsection (1) or (2), the Commission has published an approved form with respect to a document to be filed, issued or produced under this Act, the document shall –

- (a) be in the form of, and contain the information specified in, the approved form; and
- (b) have attached to it such documents as may be specified by or in the approved form.

Exemptions from tax.
Cap. 206

115. (1) The following are exempted from all provisions of the Income Tax Ordinance –

- (a) a micro business company;
- (b) all dividends, interest, rents, royalties, compensations and other amounts paid by a micro business company; and
- (c) capital gains realised with respect to any shares, debt obligations or other securities of a micro business company.

(2) No estate, inheritance, succession or gift tax is payable with respect to any shares, debt obligations or other securities of a micro business company.

(3) Subject to subsection (4), the following are exempt from the payment of stamp duty under the Stamp Act –

Cap. 212

- (a) all instruments relating to transfers of property to or by a micro business company;
- (b) all instruments relating to transactions in respect of the shares, debt obligations or other securities of a micro business company; and
- (c) all instruments relating to other transactions relating to the business of a micro business company.

- (4) Subsection (3) does not apply to an instrument relating to –
- (a) the transfer to or by a micro business company of an interest in land situate in the Virgin Islands; or
 - (b) transactions in respect of the shares, debt obligations or other securities of a land owning micro business company.

(5) For the purposes of subsection (4), a micro business company is a land owning micro business company if it, or any of its subsidiaries, has an interest in any land in the Virgin Islands.

Cap. 67

(5) The following are exempt from the provisions of the Registration and Records Act with respect to deeds and other instruments relating to –

- (a) transfers of property to or by a micro business company;
- (b) transactions in respect of the shares, debt obligations or other securities of a micro business company; and
- (c) other transactions relating to the business of a micro business company.

Foreign tax obligations.

116. Nothing under this Act excuses or exempts a micro business company from taxes or duties that are payable by the company in any other jurisdiction where it conducts or carries on its business operations.

Offences and penalties.

117. (1) Where a person contravenes a provision, or fails to comply with a requirement, of this Act or, in complying with a requirement of this Act or adhering to any request made by the Commission, engages in any act that misleads, the person commits an offence.

(2) A person who commits an offence under subsection (1) is liable on conviction to a fine not exceeding \$50,000.

No. 5 of 2003

(3) Where an action under this Act relates to the application of and compliance with a provision of the Insolvency Act, 2003 in relation to a liquidator appointed or performing functions under or pursuant to that Act for which an offence and a penalty are prescribed under that Act, the offence and penalty prescribed under that Act shall apply instead of subsections (1) and (2).

(4) Where an offence under this Act is committed by a micro business company, the principal, participant (if applicable) or other senior officer of the micro business company who authorized, permitted or acquiesced in the commission of the offence also commits an offence and is liable on conviction to the penalty specified in subsection (2).

PART X

MISCELLANEOUS PROVISIONS

Jurisdiction.

118. For purposes of determining matters relating to title and jurisdiction but not for purposes of taxation, the situs of the ownership of shares, debt obligations or other securities of a micro business company is in the Virgin Islands.

Declaration by Court.

119. (1) A micro business company may, without the necessity of joining any other party, apply to the Court, by summons supported by an affidavit, for a declaration on any question of interpretation of any provision of this Act or the charter of the company, and the Court may make such declaration as it considers fit.

(2) A person acting on a declaration made by the Court as a result of an application under subsection (1) shall be deemed, in so far as regards the discharge of any fiduciary or professional duty, to have properly discharged his or her duties in the subject matter of the application.

Judge in Chambers.

120. A judge of the Court may exercise in Chambers any jurisdiction that is vested in the Court by this Act and in exercise of that jurisdiction, the judge may award costs as may be just.

Amendment of Schedule.

121. (1) The Cabinet may, on the advice of the Commission, by an Order published in the *Gazette*, amend in such manner as it considers fit –

- (a) any matter prescribed or specified in section 110;
- (b) the penalty prescribed under section 117 (2); and
- (c) the Schedule.

(2) An Order made under subsection (1) shall be subject to a negative resolution of the House of Assembly.

Regulations.

122. (1) The Cabinet may, acting on the advice of the Commission, make such regulations as it considers fit to deal with any matter under or in relation to this Act and such regulations may –

- (a) make different provision in relation to different persons, circumstances and cases; and
- (b) provide, subject to subsection (2), for offences and penalties for any contravention of or failure to comply with specified requirements of the regulations.

(2) A penalty provided for an offence under any regulations made under subsection (1) shall not exceed a fine of \$30,000.

Act binding on the Crown.

123. This Act binds the Crown.

SCHEDULE

[Section 109]

FEES AND PENALTIES

PART I – FEES

COLUMN 1 SECTION	COLUMN 2 NATURE OF FEE	COLUMN 3 FEE (\$)
4 (1)	Application for incorporation of micro business company	100
5 (1)	For registration of –	
	(a) micro business company	50
	(b) charter	50
8 (2), (4), (5)	(a) Application for amendment to charter	25
	(b) Authorisation by Commission for micro business company to amend its charter	25
	(c) Registration of amendment to charter	25
12 (3)	For re-use of name of struck off or dissolved micro business company upon restoration to the Register	50
34 (2), (4)	(a) Application to be approved as registered agent for micro business companies	100
	(b) Approval by the Commission authorising a person to act as registered agent of micro business companies	150
36 (2)	Filing notice of appointment of registered agent	75
38 (2)	Filing a notice appointing a new registered agent	75
39 (2)	Filing notice of change of registered address of –	
	(a) Less than 5 micro business companies	150
	(b) More than 5 micro business companies	300
40 (2) (c)	Filing a copy of written notice of resignation as registered agent	50
42 (2)	Notification to the Commission for change in detail of registered agent which the Commission records on the Register	25
62 (6)	Application to the Commission for extension of time under section 62 (4) or (5)	150
63 (1), (6), (7)	(a) Making a filing under section 63 (1) to transform into and register as a BVI business company	75
	(b) Registration of notice of transformation into a BVI business company	75
	(c) Issuing a certificate to a transformed BVI business company	100
71 (1)	Filing notice of appointment of voluntary liquidator	50

73 (2)	Filing copy of notice of intent to resign as voluntary liquidator	50
74 (6)	Filing copy of Court order removing a voluntary liquidator	50
78 (6) (c) (ii)	Filing sealed copy of Court order terminating a voluntary liquidation	50
79 (1)	Filing statement of completion of liquidation	50
87 (1), (4), (5)	Restoration of a struck off micro business company to the Register by the Registrar – (a) if the application for restoration is made – (i) within 6 months after the date the company's name was struck off the Register (ii) within 12 months after the date the company's name was struck off the Register (iii) within 1 year after the date the company's name was struck off and dissolved under section 86 (iv) within 2 years after the date the company's name was struck off the Register (v) within 5 years after the date the company's name was struck off the Register (b) if the restoration is pursuant to an order of the Court	250 500 800 1,500 2,500 50
88 (1)	Issuing a restored micro business company with a certificate of restoration	50
91 (1), (2)	(a) Filing sealed copy of Court order restoring dissolved micro business company on account of liquidation to the Register (b) Restoration of name of dissolved micro business company in the Register if restoration is – (i) within 1 year after the date of dissolution (ii) within 2 years after the date of dissolution (iii) within 5 years after the date of dissolution (iv) beyond 5 years after the date of dissolution (c) Issuing certificate of restoration	50 800 1,500 2,500 3,500 50
105 (1)	(a) For inspecting the Register and any other register or document maintained by the Registrar (b) For printing off a copy of a charter of a micro business company or any part thereof	15 40 for first 20 pages and 1.50 for each

		additional page
	(c) For issue by the Registrar of –	
	(i) a certified copy of a charter	25
	(ii) a certified copy of a certificate of restoration	25
	(iii) a certified copy of a certificate of dissolution	25
	(iv) an extract certificate of restoration or dissolution	25
	(v) a copy or extract of any other document or part thereof that is in the Registrar’s custody	25
	(vi) an uncertified copy or extract of any document mentioned in sub-paragraphs (i) to (v)	20
107 (1)	For issue by the Registrar of a certificate of good standing	50
108	For issue by the Registrar of a certificate confirming information recorded on the Register or the status of a micro business company	25
110 (2)	Annual fee payable by a micro business company	100

PART II – PENALTIES

Penalty payable by micro business company for late payment of annual fee.

If a micro business company fails to pay the annual fee payable under Part I on or before the date on which the annual fee is due, it shall, in addition to the annual fee, be liable to pay a penalty calculated as follows:

- (a) if the fee is paid before the expiration of 2 months after the date when the fee was due, the penalty payable shall be equal to 10% of the annual fee due; and
- (b) if the fee is paid after the expiration of 2 months after the date when the fee was due, the penalty payable shall be equal to 50% of the annual fee due.

OBJECTS AND REASONS

This Bill is designed to introduce a new type of company regime in the Virgin Islands that essentially caters to small micro businesses. The regime will allow small businesses that find the BVI business company regime either too complex or unsuitable for the type of business they are engaged in to establish as small enterprises with some of the advantages of a BVI business company. Thus the regime will afford these small businesses the legal protection that a corporate entity has under the BVI business company regime. Accordingly, a person that is incorporated as a micro business company shall function as a company limited by shares.

It is expected that a person wishing to incorporate as a micro business company under the Bill will, amongst other things, have a clear business purpose, have a principal and no more than one participant, and its annual turnover and gross asset value do not each exceed two million dollars. Should its annual turnover or gross asset value exceed the threshold of two million dollars, the micro business company will be required to transform into a BVI business company pursuant to the BVI Business Companies Act, 2004 and the Bill provides the procedure for such transformation. In addition, the micro business company cannot have more than ten employees. These restrictions are designed to ensure that the two company regimes, namely the BVI business company and the micro business company, co-exist with each having its specific purpose and attendant obligations and liabilities.

The Bill employs simple and less complex legal avenues to enable small businesses to form themselves into legal companies at considerably reduced costs. It outlines the mechanisms for incorporation of a micro business company and provides the capacity and powers of the company. It further outlines the shares and shareholder regime of the company, including the administration of the company. In that respect, the Bill requires the retention of registered agents who must be approved by the Commission from those that have been issued licences to act as registered agents under the Banks and Trust Companies Act, 1990 or the Company Management Act, 1990. However, the registered office and registered agent services fees will be determined and capped by the Commission through an Order published in the *Gazette* and on the Commission's website. While other fees, such as filing and application fees, are not included in that delegated authority to the Commission, each approved registered agent will be required through the Order to submit to the Commission its list of fees charged under the Bill which the Commission will publish on its website. This will afford prospective clients a clear opportunity to shop for their own registered agents having regard to the fees charged by each agent.

Furthermore, details regarding the principal and participant of a micro business company will be disclosed and made publicly available on the Commission's website. This requirement, coupled with the disclosure requirement in respect of the fees chargeable by a registered agent, will provide a good level of transparency in relation to the regime. In addition, the Bill outlines the management duties of the principal of a micro business company and the powers exercisable by such principal.

It is hoped that the Members of this Honourable House will see the value of developing and adding to the Territory's financial services product a new regime that is innovative to adequately cater for all types of business – in this case relative to small businesses – within the Virgin Islands and globally.

D. Orlando Smith, OBE
Premier and Minister of Finance