

No. 7 of 2013

VIRGIN ISLANDS

VIRGIN ISLANDS SPECIAL TRUSTS (AMENDMENT) ACT, 2013

ARRANGEMENT OF SECTIONS

Section

- 1... Short title and commencement.
- 2... Section 2 amended.
- 3... Section 4 amended.
- 4... Section 6 amended.
- 5... Section 7 amended.
- 6... Section 8 amended.
- 7... Section 12 amended.
- 8... Section 14 amended.
- 9... Section 15 amended.

I Assent

**(Sgd.) Boyd McCleary, CMG, CVO,
Governor.**

8th May, 2013

VIRGIN ISLANDS

No. 7 of 2013

An Act to amend the Virgin Islands Special Trusts Act (Act No. 10 of 2003).

[Gazetted 14th May, 2013]

ENACTED by the Legislature of the Virgin Islands as follows:

Short title and
commencement.

1. (1) This Act may be cited as the Virgin Islands Special Trusts (Amendment) Act, 2013.

(2) The provisions of this Act come into force on such date as may be appointed by the Governor by proclamation published in the *Gazette*.

Section 2
amended.
No. 10 of 2003

2. The Virgin Islands Special Trusts Act, 2003 (hereinafter referred to as “the principal Act”) is amended in section 2 (1)

(a) in the definition of “designated shares”, by adding at the end of the sentence before the semi-colon, the words “and is in effect”;

(b) by deleting the definition of “designated trustee” and substituting the following definition:

“designated trustee” means

No. 9
of 1990

(a) a holder of a trust licence under the Banks and Trust Companies Act, 1990; or

S.I. 2007
No. 50

(b) a private trust company as defined in paragraph 1 of Part I of the Schedule to the Financial Services (Exemptions) Regulations, 2007;”;

(c) in the definition of “interested person”,

(i) by adding at the end of paragraph (f) before the semi-colon, the words “, unless the trust instrument provides otherwise” and deleting the word “or” after the semi-colon;

(ii) by deleting the full-stop at the end of the paragraph and substituting “; or”; and

(iii) by adding immediately after paragraph (g), the following new paragraph:

“(h) any other person so designated under the terms of the trust instrument;”;

(d) in the definition of “Virgin Islands shares”;

No. 16
of 2004

(i) by deleting the words “incorporated under the Companies Act or the International Business Companies Ordinance which is not” in the opening paragraph and substituting the words “that is on the Register of Companies maintained under the BVI Business Companies Act, 2004 which is not”;

No. 1
of 2008

(ii) by deleting the words “Insurance Act, 1994” in paragraph (b) and substituting the words “Insurance Act, 2008”;

No. 2
of 2010

(iii) by deleting the words “, under the Mutual Funds Act, 1996” in paragraph (c) and substituting the words “or a professional fund, under the Securities and Investment Business Act, 2010”; and

No. 2
of 2010

(iv) by deleting the words “manager or administrator of mutual funds under the Mutual Funds Act, 1996; or” in paragraph (d) and substituting the words “fund manager or administrator under the Securities and Investment Business Act, 2010;”;

(v) by deleting the full-stop at the end of paragraph (e) and substituting the words “; or”; and

(vi) by adding immediately after paragraph (e), the following new paragraph:

No. 9
of 2009

“(f) a company which has a licence under the Financing and Money Services Act, 2009.”.

Section 4
amended.

3. Section 4 of the principal Act is amended

(a) in subsection (3) by adding at the end of the sentence before the full-stop, the words “, unless that other trust is a Virgin Islands trust and one of the trustees of that other trust is a designated trustee”;

(b) in subsection (4)

(i) by deleting paragraph (b) and substituting the following paragraph:

“(b) at least one trustee of the trust is a designated trustee at the time at which the direction under subsection (1) takes effect;”;

(ii) by deleting paragraph (c) and substituting the following paragraph:

“(c) the terms of the trust require that, for so long as the direction under subsection (1) has effect, at least one trustee is a designated trustee;”;

(iii) by adding at the end of the sentence in paragraph (d) before the full-stop, the words “, unless that other trust is a Virgin Islands trust and at least one trustee of that other trust is a designated trustee”;

(c) by deleting subsection (5) and substituting the following subsection:

“(5) A direction under subsection (1) may

(a) identify the shares to which the direction relates either specifically or by any general description;

(b) specify a date or event upon the occurrence of, or circumstances in, which the direction will take or will cease to have effect.”;

(d) by inserting after subsection (5), the following new subsections:

“(5A) The event referred to in subsection (5) (b) may include the service on the trustee of the trust, or on any of the trustees if more than one, of a written direction (“a trigger direction”) made by such person or committee as is specified by the terms of the trust to the effect that the direction under subsection (1) is immediately to take effect or is immediately to cease to

have effect, as the case may be.

(5B) The person or committee referred to in subsection (5A) may not be or include the trustee of the trust, or any trustee of the trust if more than one.

(5C) The terms of the trust shall determine whether or not the decision to make or refrain from making the trigger direction is fiduciary and, in a case where the terms of the trust do not expressly state otherwise, there shall be a presumption that the decision is fiduciary.”; and

(e) by adding after subsection (7), the following new subsection:

“(8) In this section, “Virgin Islands trust” means a trust the essential validity of which is governed by the laws of the Territory.”.

Section 6
amended.

4. Section 6 of the principal Act is amended by adding after subsection (3), the following new subsection:

“(4) This section shall not apply so as to limit or restrict the exercise by a trustee of its rights, powers or entitlements under

No.16
of 2004

(a) sections 16 and 100 of the BVI Business Companies Act, 2004;
or

(b) any provision of the articles of association of a company which enables members to inspect, make copies or take extracts from accounts and records of the company or any connected company.”.

Section 7
amended.

5. Section 7 of the principal Act is amended

(a) in subsection (2)

(i) by deleting the word “or” at the end of paragraph (f);

(ii) by deleting the full-stop at the end of paragraph (g) and substituting “; or”; and

(iii) by adding immediately after paragraph (g), the following new paragraph:

“(h) provide for the remuneration of the person or committee referred to in paragraph (e) to be paid from the trust fund.”;

- (b) in subsection (8) (b) by deleting the words “unlawful, impracticable, or plainly inconsistent with the wishes of the settlor,” and substituting the words “unlawful or impracticable”;
- (c) in subsection (9) by deleting the words in the opening paragraph and substituting the words “Subject to any express provision to the contrary in the terms of the trust, a trustee shall have no duty”; and
- (d) in subsection (10) by inserting after the word “appointment”, the words “or removal”.

Section 8 amended.

6. Section 8 of the principal Act is amended

- (a) in subsection (8) by adding at the end of paragraph (c) before the full-stop, the words “or who, in the case of a purpose trust, is the enforcer”;
- (b) by inserting immediately after subsection (8), the following new subsection:

“(8A) Where there is an appointed enquirer, the trustee shall use all reasonable endeavours to ensure that at all times he is given the documents and information concerning the trust which are referred to in subsection (8) (c) (i) to (v).”;

- (c) by adding immediately after subsection (10), the following new subsections:

“(11) The terms of the trust may provide for the remuneration of the appointed enquirer to be paid from the trust fund.

(12) The terms “enforcer” and “purpose trust” in subsection (8) shall be construed in accordance with the use of those terms in section 84A of the Trustee Act.”.

Cap. 303

Section 12 amended.

7. Section 12 of the principal Act is amended in subsection (2) by inserting after the words “20 years”, the words “, or such shorter period as may be specified in the trust instrument,”.

Section 14 amended.

8. Section 14 of the principal Act is amended

- (a) in subsection (2) by inserting after the word “alive”, the words “or in existence”; and
- (b) in subsection (3) by inserting after the word “dead”, the words “or no longer in existence”.

Section 15

9. Section 15 of the principal Act is amended by adding immediately after subsection

amended. (2), the following new subsections:

“(3) A trust of designated shares may, by the terms of the trust instrument, exclude or modify any of the provisions of subsections (1) and (2) in relation to those shares.

(4) An exclusion or a modification made under subsection (3) shall have effect only if it expressly indicates that it is made pursuant to this section.”.

Passed by the House of Assembly this 25th day of April, 2013.

(Sgd.) Ingrid Moses-Scatliffe,
Speaker.

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