

VIRGIN ISLANDS

BANKS AND TRUST COMPANIES (AMENDMENT) ACT, 2010

ARRANGEMENT OF SECTIONS

Section

1. Short title.
2. Section 2 amended.
3. Section 3 amended.
4. Section 4 amended.
5. Section 4A repealed and replaced.
6. Section 5 amended.
7. Section 6 amended.
8. Section 10 amended.
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10. Section 11 amended.
11. Section 12 amended.
12. Section 14 amended.
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17. Section 23A inserted.
18. Section 28 amended.
19. Section 28A amended.

No. 8 of 2010

**Banks and Trust Companies
(Amendment) Act, 2010**

Virgin Islands

I Assent

**(Sgd.) V. Inez Archibald
Acting Governor
18th November, 2010**

VIRGIN ISLANDS

No. 8 of 2010

An Act to amend the Banks and Trust Companies Act, 1990 and provide for other matters connected therewith.

[Gazetted 16th December, 2010]

ENACTED by the Legislature of the Virgin Islands as follows:

- Short title. 1. This Act may be cited as the Banks and Trust Companies (Amendment) Act, 2010.
- Section 2 amended. 2. Section 2 of the Banks and Trust Companies Act, 1990 (hereinafter referred to as “the principal Act”) is amended
- (a) in subsection (1)
- (i) by deleting in the definition of “approved form”, the words “section 50A” and replacing them with the words “section 41B”;
- (ii) by deleting the definition of “auditor” and replacing it with the following new definition:
- ““auditor” means a person who

- (a) is qualified to act as an auditor of a licensee in accordance with section 56 of the Regulatory Code, 2009; and
 - (b) is in good standing with respect to that qualification;”;
- (iii) by inserting immediately after the definition of “authorised agent”, the following definition:

““bank” means a person that is licensed to carry on banking business;”;
- (iv) by inserting immediately after the definition of “company management” and “company management business”, the following definition:

““controlling interest”, in relation to a licensee, means the ownership or interest in the licensee or in any holding company of the licensee by a person of

 - (a) more than fifty per cent of the voting rights of the licensee; or
 - (b) a significant interest in the licensee which, although not constituting more than fifty per cent of the voting rights of the licensee (in aggregate or otherwise), gives the person a considerable advantage in the voting rights of the licensee if the remaining votes in the licensee are not voted on;”;
- (v) by inserting immediately after the definition of “registered agent”, the following definition:

““registered office services” means the provision by a person in the Virgin Islands of the registered office of a Virgin Islands company or a limited partnership registered under the Partnership Act, 1996;”;
- (vi) in the definition of “significant interest” by deleting the words “five per cent” in paragraphs (a), (b) and (c) and respectively replacing them with the words “ten per cent”; and
- (vii) by deleting the definition of “Virgin Islands company” and replacing it with the following new definition:

““Virgin Islands company” means a company that is incorporated, continued or re-registered under the BVI Business Companies Act, 2004.”; and

(b) by deleting subsection (1A) and replacing it with the following new subsection:

“(1A) A person provides registered agent services if he

(a) acts as the registered agent of

(i) a Virgin Islands company;

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

(iii) a limited partnership registered under the Partnership Act, 1996; or

(b) provides registered office services.”.

Section 3
amended.

3. Section 3 of the principal Act is amended

(a) in subsection (2) by deleting the word “him” and replacing it with the word “it”;

(b) by inserting after subsection (2), the following new subsection:

“(2A) No company shall carry on any kind of company management business in or from within the Virgin Islands unless the company holds a valid licence authorising it to carry on that kind of company management business.”;

(c) in subsection (4) by inserting after the words “subsection (2)”, the words “or (3)”.

Section 4
amended.

4. Section 4 of the principal Act is amended

(a) in subsection (4) by deleting paragraph (b) and replacing it with the following new paragraph:

“(b) the applicant satisfies the fit and proper criteria prescribed;”;

(b) in subsection (7) by deleting the full stop and adding at the end of the sentence the words “, including at the head office and every branch of the licensee.”.

Section 4A
repealed and
replaced.

5. Section 4A of the principal Act is repealed and replaced with the following new section:

“Fees. 4A. Regulations made under section 62 of the Financial
No. 12 Services Commission Act, 2001 may provide for the fees
of 2001 chargeable and payable under this Act.”.

Section 5
amended.

6. Section 5 of the principal Act is amended by inserting after the word “suspended”, the words “, cancelled”.

Section 6
amended.

7. Section 6 is amended by deleting subsection (1) and replacing it with the following new subsection:

“(1) A person who is licensed under this Act is not required to be licensed under

(a) the Business, Professions and Trade Licences Act to carry on banking business or trust business; or

(b) the Company Management Act, 1990 (Cap. 200) to carry on company management business if he holds a Class I trust licence or Class III trust licence.”.

Section 10
amended.

8. Section 10 of the principal Act is amended

(a) in subsection (1A) by deleting the words “section 4 (4A)” in the opening paragraph and replacing them with the words “this section,”;

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

“(1B) Where the Commission considers it necessary to preserve the conduct of company management business pursuant to licences granted under the Company Management Act, 1990 (Cap. 200), it may, notwithstanding anything contained in this Act, restrict the issuing of a Class III trust licence under this Act.”;

(c) in subsection (2) by inserting after the words “the particular type of trust business”, the words “or company management business”;

(d) by inserting after subsection (4), the following new subsection:

“(4A) Where the Commission issues a restricted Class II trust licence, it may provide in a schedule to the licence a list of the trusts in respect of which the licensee may undertake trust business, and that schedule may be amended if approval is obtained in accordance with subsection (6).”;

(e) by deleting subsection (5) and replacing it with the following subsection:

“(5) The holder of a restricted Class II trust licence that wishes to make any change in the trusts in connection with which it may undertake trust business, may apply to the Commission in the approved form (attaching in the case of new trusts a sworn undertaking) and the Commission may grant or refuse the application.”; and

(f) by adding after subsection (5), the following new subsection:

“(6) Where the Commission issues a Class I or Class III trust licence under this Act, it may

(a) restrict the type of company management business the licensee may undertake, save that this power shall not be exercised in respect of a Class III trust licence that is issued as a restricted Class III trust licence under subsection (1A) (b);

(b) limit the carrying on of the company management business within the Virgin Islands only.”.

Section 10A
inserted.

9. The principal Act is amended by inserting after section 10, the following new section:

“Power to
reclassify a
trust licence.

10A. (1) The Commission may either on an application received from a licensee or, subject to subsection (2), on its own volition, reclassify

(a) a Class I trust licence as a Class II, Class III or restricted Class III trust licence; or

(b) a Class II trust licence as a restricted Class II trust licence.

(2) The Commission shall not on its own volition reclassify a trust licence under subsection (1) unless it

(a) gives the licensee concerned at least 28 days notice of its intention to reclassify the licence;

(b) gives the licensee the Commission’s reason for its intention to reclassify the licence; and

(c) invites the licensee to make such representation to the Commission with respect to the

Commission's intention, being not less than seven days and not more than twenty one days from the date of the notice, as the licensee considers fit.

(3) Where the Commission receives a representation from a licensee under subsection (2) (d), it shall consider the representation before taking a decision to reclassify the trust licence to which the representation relates.

(4) In considering whether or not to reclassify a trust licence under subsection (1), the Commission may consider whether

- (a) the licensee is carrying on the full range of activities granted by the licence;
- (b) the licensee has adequate and competent staff to efficiently carry out the range of activities granted by the licence;
- (c) having regard to the licensee's compliance culture, it is in the public interest that the licence be reclassified;
- (d) there is any other reason which, in the Commission's opinion, justifies a reclassification of the licence."

Section 11 amended.

10. Section 11 of the principal Act is amended in subsection (1) by deleting the words "a company incorporated under the International Business Companies Act" in paragraph (a) and replacing them with the words "a company incorporated, continued or re-registered under the BVI Business Companies Act, 2004".

Section 12 amended.

11. Section 12 of the principal Act is amended in subsection (4) by deleting the words "Class I or Class II trust licence" in the opening paragraph and replacing them with the words "Class I, Class II or Class III trust licence".

Section 14 amended.

12. Section 14 of the principal Act is amended

- (a) in subsection (1) by inserting after the words "significant interest", the words "or controlling interest";
- (b) in subsection (5) by deleting the words "Commission's fit and proper criteria" in paragraph (b) and replacing them with the words "fit and proper criteria prescribed"; and

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

“(8) Without prejudice to subsection (7), where a person acquires, sells, transfers, charges or otherwise disposes of a significant interest or controlling interest in a licensee contrary to any requirement of this section, the Commission may,

(a) in the case of an acquisition, require the licensee to rescind the acquisition, notwithstanding anything to the contrary that may be contained in the licensee’s constitutional documents or contractual arrangements;

(b) in the case of a sale, transfer, charge or other disposition, require the person to

(i) rescind or reverse the sale, transfer, charge or other disposition;

(ii) modify the sale, transfer, charge or other disposition in such manner as the Commission may direct; or

(iii) suspend or rescind any activity that is contingent on the sale, transfer, charge or other disposition until otherwise advised by the Commission.

(9) No liability consequent upon a decision taken by the Commission under subsection (8) shall arise in respect of the Commission or, subject to subsection (7), of a licensee or other person acting on the directive of the Commission.

(10) No action taken by the Commission under subsection (8) shall be construed as a bar to a licensee or other person seeking approval under this section for the acquisition, sale, transfer, charge or other disposition of a significant interest or controlling interest.”.

Section 16A
inserted.

13. The principal Act is amended by inserting after section 16, the following new sections:

“Prohibition
against shell
banks, etc.

16A. (1) The establishment of a shell bank in the Virgin Islands is prohibited and no licence shall be granted to a shell bank.

(2) A licensee shall not keep or maintain an anonymous account or an account in a fictitious name, whether or not on its own behalf or on behalf of a customer or otherwise.

Maintaining liquid assets. 16B. A licensee that holds a banking licence shall at all times maintain a minimum level of liquid assets, and in such amount, as prescribed.”

Section 17 amended. 14. Section 17 of the principal Act is amended by repealing subsection (2) and replacing it with the following new subsection:

“(2) A licensee shall retain all financial records for a period of at least five years after the termination of the business relationship to which they relate and, for the purpose of this subsection, “business relationship” shall be construed in accordance with the definition of that term in the Anti-money Laundering Regulations, 2008.”.

Section 17C amended. 15. Section 17C of the principal Act is amended

(a) in subsection (1) by adding at the end of paragraph (a) before the semi-colon, the words “attesting to the matters outlined in section 17B (3) and (4)”; and

(b) by inserting after subsection (3), the following new subsections:

“(3A) Where the licensee is a parent bank of a Virgin Islands branch, the licensee shall publish the audited financial statements and auditor’s report in respect of the parent bank.

(3B) The Commission may by written notice require a licensee that is a parent bank of a Virgin Islands branch to provide the Commission with audited or unaudited financial statements of the Licensee’s Virgin Islands branch within such time and in relation to such period as the Commission may provide in the notice.”

Section 18 amended. 16. Section 18 of the principal Act is amended

(a) in subsection (1) by inserting after the words “change its name or”, the words “incorporate or”; and

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

“(1A) A licensee shall not close down or cease operations in any of its existing places of business unless, at least twenty-eight days prior to such intended closure or cessation of operations, the licensee so notifies the Commission in writing stating its reason.

(1B) Subsection (1) does not apply in the event of a *force majeure* or court decision which makes compliance with subsection (1A) impossible or difficult, but the licensee shall nevertheless notify the Commission the reason for its inability to comply with the requirement of subsection (1A).

(1C) Subsections (1A) and (1B) are without prejudice to the Commission’s power to suspend, cancel or revoke the licence of a licensee under section 38 of the Financial Services Commission Act, 2001.”.

Section 23A
inserted.

17. The principal Act is amended by inserting after section 23, the following new section:

“Vesting
provisions.

23A. (1) For the purposes of this section, the term “operations” refers to any activity of a licensee which the licensee engages in as part of its normal business.

(2) A licensee shall not sell, transfer or otherwise dispose of any of its operations, unless it notifies, and obtains the approval of the Commission.

(3) Where a licensee sells, transfers or otherwise disposes any of its operations, it shall

(a) enter into a written agreement with the person to whom the operations are sold, transferred or otherwise disposed, setting out the terms and conditions (if any) of the sale, transfer or disposal; and

(b) ensure that the agreement specifies

(i) the type and nature of the operations and whether the sale, transfer or disposition relates to the whole or only a part of the operations;

(ii) the rights and liabilities that arise in relation to the sale, transfer or disposition of the operations;

(iii) in the case of a transfer, whether

(aa) the transfer is conditional upon a specified event or situation occurring or arising, or not occurring or arising; and

(bb) a breach of the condition re-vests the operations to the licensee and what

consequences, if any, arise from the breach;

- (iv) how any powers, provisions and liabilities in respect of the operations are to be exercisable or have effect;
- (v) how any subsisting rights and interests of third parties in relation to the operations are to be preserved or effected without adversely affecting those third parties; and
- (vi) any other matter that, having regard to the operation and its nature and scope, it is reasonable to provide for.

(4) An agreement under subsection (2) may provide

- (a) that any other agreement made or other thing done by or in relation to the licensee to be treated as made or done by or in relation to the person to whom the operations are sold, transferred or otherwise disposed; and
- (b) for continuity of contracts of employment from the licensee to the person to whom the operations are sold, transferred or otherwise disposed, subject to the provisions of the Labour Code.

(5) Where the sale, transfer or disposition of the operations

- (a) comply with the requirements outlined in subsections (2) and (3), the rights and liabilities consequent upon the sale, transfer or disposition shall vest in the person to whom the operations are sold, transferred or otherwise disposed;
- (b) fail to comply with the requirements outlined in subsections (2) and (3), any sale, transfer or disposition or purported sale, transfer or disposition of the operations shall be void.”.

Section 28
amended.

18. Section 28 of the principal Act is amended by deleting the words “Governor in Council” and replacing them with the word “Cabinet”.

Section 28A
amended.

19. Section 28A of the principal Act is amended

(a) by numbering the current section as subsection “(1)”; and

(b) by adding after subsection (1) as renumbered, the following new subsection:

“(2) Without limiting subsection (1), a Regulatory Code issued under that subsection may

(a) require a licensee that engages in banking business to

(i) formulate appropriate policies and processes for identifying and managing the licensee’s problem assets;

(ii) review, on a periodic basis, the licensee’s problem assets and provide for asset classification, provisioning and write-offs, taking into account off-balance sheet exposures;

(iii) provide appropriate policies and processes to ensure that provisions and write-offs of the licensee reflect realistic repayment and recovery expectations; and

(iv) increase the licensee’s levels of provisions and reserves, including its overall financial strength, where the Commission considers the licensee’s level of problem assets to be of concern; and

(b) provide appropriate policies and processes for the consolidated supervision of licensees that engage in banking business, including

(i) a review of the overall activities of the licensee’s group and the supervision of the licensee’s foreign activities;

(ii) a mechanism for the evaluation of the risk that a licensee’s non-banking activities or banking group may pose to the licensee or its banking group;

(iii) the prudential standards that should be applied on a consolidated basis in respect of the licensee’s banking group; and

- (iv) limitations on the range of activities a licensee's consolidated group may conduct and the location of its activities."

Passed by the House of Assembly this 4th day of November, 2010.

(Sgd.) ROY HARRIGAN,
Speaker

(Sgd.) JOANN HODGE,
Ag. Deputy Clerk of the House of Assembly