

No. 14 of 2022

VIRGIN ISLANDS
BANKS AND TRUST COMPANIES (AMENDMENT) ACT, 2022

ARRANGEMENT OF SECTIONS

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I ASSENT
(Sgd.) John Rankin CMG,
Governor.
23rd December, 2022

VIRGIN ISLANDS

No. 14 of 2022

AN ACT TO AMEND THE BANKS AND TRUST COMPANIES ACT, REVISED EDITION 2020, AND FOR OTHER MATTERS CONNECTED THEREWITH.

[Gazetted 29th December, 2022]

ENACTED by the Legislature of the Virgin Islands as follows:

Short title and commencement

1. (1) This Act may be cited as the Banks and Trust Companies (Amendment) Act, 2022.

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

Section 2 amended

2. Section 2 of the Banks and Trust Companies Act, Revised Edition 2020 (hereinafter referred to as the “principal Act”) is amended

(a) in subsection (1)

(i) by inserting in their appropriate alphabetical order, the following new definitions

“bridge bank” means a bank that is licensed under section 4 (4) to temporarily take over and maintain all or certain assets, operations and liabilities of a failed bank as part of the resolution process with respect to the failed bank;

“principal office” means a place or an office of a person, who is licensed under this Act, from which the business of the person is mainly carried out;

“resolution” has the meaning provided in subsections (9) and (10);

“systemically important bank” means a bank whose failure as such will or is likely to trigger a financial crisis, whether within or outside the Virgin Islands or both;”;

- (ii) by deleting the definition of “controlling interest” and substituting the following definition

““controlling interest”, in relation to a licensee

(a) means the ownership or interest in the licensee or in any holding company of the licensee by a person who has

(i) more than 50% of the voting rights of the licensee; or

(ii) a significant interest in the licensee which, although not constituting 50% of the voting rights of the licensee (in aggregate or otherwise), gives the person a considerable advantage in the voting rights of the licensee; and

(b) includes a person referred to in subsection (7);” and

- (b) by adding after subsection (6), the following new subsections

“(7) A person shall be treated as holding a controlling interest in a licensee if

(a) the person has an influence over the activities of any undertaking of the licensee without having a significant interest in the undertaking; or

(b) a director or senior officer of the licensee is accustomed to acting on the instructions of the person.

(8) A bank shall be treated as a failed bank if the Commission forms the view, upon assessment, that the bank is unable to pay its liabilities as they fall due or has stopped making payments to its depositors.

(9) A resolution, in relation to a bank (which shall be construed as including the bank’s holding company and subsidiary), refers to the process for dealing with the bank with a view to ensuring the bank’s orderly winding down by preparing and implementing a disposition plan, and includes liquidation and depositor reimbursement, transfer and sale of assets and liabilities, establishment of a bridge bank and the write-down of debt or conversion of debt to equity.

(10) A resolution may also include the application of processes and procedures under the Insolvency Act, Revised Edition 2020, to parts of a bank that is in resolution, in conjunction with the exercise of resolution powers.”.

Section 4 amended

3. Section 4 of the principal Act is amended in subsection (4) by inserting after paragraph (a), the following new paragraph

“(aa) the applicant has made a written undertaking to provide the Commission with a copy of its policy of deposit insurance issued in accordance with the provisions of the Virgin Islands Deposit Insurance Act, No. 7 of 2016, within 6 months of the issue of the licence;”.

Section 5 amended

4. Section 5 of the principal Act is amended

- (a) by redesignating the section as subsection (1);
- (b) in subsection (1) as redesignated, by deleting the words “A licence” and substituting the words “Subject to subsection (2) and section 11A, a licence”; and
- (c) by adding after subsection (1) as redesignated, the following new subsection

“(2) A licence issued under section 4 in respect of a bridge bank shall terminate in accordance with the provisions of section 19(6) of the Virgin Islands Deposit Insurance Act, No. 7 of 2016.”.

Section 7 amended

5. Section 7 of the principal Act is amended

- (a) by redesignating the existing section as subsection (1); and
- (b) by adding after subsection (1) as redesignated, the following new subsection

“(2) A person who upon the coming into operation of the Virgin Islands Deposit Insurance Act, No. 7 of 2016 is carrying on banking business has a period of 6 months from the date of operation of the Act to obtain a policy of deposit insurance issued in accordance with the Virgin Islands Deposit Insurance Act and provide a copy of the policy to the Commission.”.

Section 10 amended

6. Section 10 of the principal Act is amended

- (a) in subsection (1) by inserting after paragraph (c), the following new paragraph
“(ca) a bridge bank licence, for purposes of temporarily taking over and maintaining all or certain assets, operations and liabilities of a failed bank as part of a resolution process;”;
- (b) in subsection (1A), by deleting paragraph (b) and substituting the following:

- “(b) a Class III licence may be issued as a restricted Class III licence, in which case the holder of the licence shall undertake no company management business, other than the provision of directors and officers, and nominee shareholders, for Virgin Islands companies and non-Virgin Islands companies.”;
- (c) in subsection (7)
 - (i) in paragraph (a)(i) by inserting directly after the words “Virgin Islands companies”, the words “or non-Virgin Islands companies”; and
 - (ii) by deleting paragraph (b)(i) and substituting the following:
 - “(i) be restricted to administering no more than 500 Virgin Islands companies and non-Virgin Islands companies;”; and
- (d) by inserting after subsection (7), the following new subsection
 - “(7A) For the purposes of subsections (1A) (b) and (7) (a) (i) and (b) (i), the reference to “non-Virgin Islands companies” refers to companies incorporated, registered or otherwise formed, approved or established in other countries, that are not subject to any form of sanctions or prohibitions, whether or not with respect to laws relating to money laundering, terrorist financing or proliferation financing.”.

New sections 11A, 11B and 11C inserted

7. The principal Act is amended by inserting after section 11, the following new sections

“Resolution powers

11A. (1) Subject to any power exercisable by the Virgin Islands Deposit Insurance Corporation under the Virgin Islands Deposit Insurance Act, No. 7 of 2016, in relation to a bank, the Commission may, where it considers it to be necessary in the public interest and to safeguard the interest of depositors and maintain financial stability, place a bank into resolution.

(2) Where the Commission places a bank into resolution pursuant to subsection (1), it may exercise any of the resolution powers outlined in section 4A of the Financial Services Commission Act, Revised Edition 2020, and any other applicable financial services legislation.

Bridge bank

11B. (1) A licence issued to a bridge bank under this Act shall terminate if

- (a) the status of the bridge bank is terminated in accordance with section 19(6) of the Virgin Islands Deposit Insurance Act, No. 7 of 2016; or

(b) the Commission forms the opinion that it is in the public interest that the licence is terminated.

(2) Subject to subsection (3), where a licence issued to a bridge bank is terminated pursuant to subsection (1), the bridge bank shall be placed into receivership and liquidated in accordance with the provisions of the Insolvency Act, Revised Edition 2020, BVI Business Companies Act, Revised Edition 2020, or any other applicable enactment as may be considered fit.

(3) The Commission may, prior to the expiration of the period referred to pursuant to subsection (1)(a), initiate the receivership of a bridge bank.

(4) Where the licence of a bridge bank is terminated in accordance with subsection (1), the bridge bank shall forthwith surrender its licence to the Commission to be cancelled.

(5) Subject to subsection (6), a bridge bank shall, except where exempted, be subject to the provisions of this Act the Regulatory Code, Revised Edition 2020, and the Virgin Islands Deposit Insurance Corporation Act.

(6) The Commission may, where it considers it appropriate and in the public interest to ensure the successful performance of a bridge bank, exempt the bridge bank from complying with any requirement of this Act, the Financial Services Commission Act, Revised Edition 2020 and the Regulatory Code, Revised Edition 2020.

Systemically important bank

11C. (1) The Commission may, at any time after issuing a banking licence, designate a licensee as a systemically important bank.

(2) Where a licensee is designated under subsection (1) as a systemically important bank, the licensee shall, in addition to the requirements of this Act, the Financial Services Commission Act, Revised Edition 2020, and any other relevant enactment applicable to the licensee, comply with such other requirements as may be prescribed.”.

Section 17H amended

8. Section 17H of the principal Act is amended by inserting after subsection (2), the following new subsection:

“(2A) Where a licensee receives an audit report under subsection (1) which is qualified, or contains any emphasis of a matter made, by the auditor, the licensee shall forthwith notify the Commission of that fact.”.

Section 26 amended

9. Section 26 of the principal Act is amended in the opening paragraph by deleting the words “Financial Services Commission Act, 2001” and substituting the words “Financial Services Appeal Board Act, Revised Edition 2020”.

Passed by the House of Assembly this 24th day of November, 2022.

Corine N. George-Massicote,
Speaker.

Phyllis Evans,
Clerk of the House of Assembly.