

No. of 2022

VIRGIN ISLANDS

BVI BUSINESS COMPANIES (AMENDMENT) ACT, 2022

ARRANGEMENT OF SECTIONS

Section

- 1... Short title and commencement.
- 2... Section 2 amended.
- 3... Section 17 amended.
- 4... Section 17A redesignated as section 17B.
- 5... New section 17A inserted.
- 6... Section 17B amended.
- 7... Section 38 repealed and substituted.
- 8... Section 41 amended.
- 9... Section 55 repealed.
- 10... Section 66 amended.
- 11... Division 5 of Part III repealed.
- 12.. Section 85 amended.
- 13.. Section 89 repealed and substituted.
- 14.. Section 90 amended.
- 15.. Section 93 amended.
- 16.. Section 94 amended.
- 17.. New section 98A inserted.
- 18.. Section 118 amended.
- 19.. Section 118B amended.
- 20.. Section 150 repealed.
- 21.. Section 184 amended.
- 22.. Section 189A amended.
- 23.. Section 189B amended.
- 24.. Section 193A amended.
- 25.. Section 193B amended.
- 26.. Section 196A amended.
- 27.. Section 196B amended.
- 28.. Section 199 amended.
- 29.. Section 201 amended.
- 30.. Section 203 amended.
- 31.. Section 205C amended.
- 32.. Section 205D amended.
- 33.. Section 207A amended.
- 34.. Section 212 amended.

- 35.. Section 213 amended.
- 36.. Section 214 amended.
- 37.. Section 215 amended.
- 38.. Section 216 repealed and substituted.
- 39.. Section 217 amended.
- 40.. Section 218 repealed and substituted.
- 41.. Section 218A amended.
- 42.. Section 218B amended.
- 43.. Section 219 repealed.
- 44.. Section 230 amended.
- 45.. Section 235 amended.
- 46.. Schedule 1 amended.
- 47.. Schedule 2 amended.

CONSULTATION DRAFT

No. of 2022 BVI Business Companies (Amendment) Virgin Islands
Act, 2022

I Assent

Governor
, 2022

VIRGIN ISLANDS

No. of 2022

A Bill for

An Act to amend the BVI Business Companies Act, 2004 (No. 16 of 2004).

[Gazetted , 2022]

ENACTED by the Legislature of the Virgin Islands as follows:

Short title and commencement. **1.** (1) This Act may be cited as the BVI Business 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 BVI Business Companies Act, 2004 (hereinafter referred to as the “principal Act”) is amended –

(a) by designating the existing section as subsection (1);

(b) in subsection (1) as redesignated –

(i) by placing in its appropriate alphabetical order, the following new definition

–

““competent authority” means an authority designated or performing functions as such under an enactment, and includes the Attorney General, Governor, Financial Investigation Agency, Financial Services Commission, International Tax Authority and such other authority the Governor may, by an Order published in the *Gazette*, designate as a competent authority;” and

(ii) by deleting the definition of “voluntary liquidator” and substituting the following definition –

“voluntary liquidator” means a liquidator who is resident in the Virgin Islands and appointed under section 199 or an Insolvency Act liquidator, and any reference to “liquidator” shall be construed in that context.”; and

(c) by adding after subsection (1) as redesignated, the following new subsection –

“(2) For purposes of the definition of “voluntary liquidator” in subsection (1), a liquidator is considered to be resident in the Virgin Islands if he or she can establish to the satisfaction of the Commission that, prior to his or her appointment as voluntary liquidator, he or she has been living physically in the Virgin Islands for a period of not less than 180 days, whether continuously or in aggregate.”.

Section 17 amended.

3. Section 17 of the principal Act is amended in subsection (1) in the opening paragraph, by inserting after “subsections (3), (4), (5) and (6)”, the words “and section 17A”.

Section 17A redesignated as section 17B.

4. Section 17A of the principal Act is amended by redesignating the section as section 17B.

New section 17A inserted.

5. The principal Act is amended by inserting after section 17, the following new section –

“Restrictions in relation to charity or non-commercial business under section 17.

17A. (1) Where a company with a name ending referred to in section 17 (1), wishes to be incorporated to pursue charitable or non-commercial purposes, whether wholly or otherwise, it shall apply to the Registrar in the approved form to be incorporated with the name ending concerned.

(2) An application under subsection (1) shall –

- (a) indicate whether the purpose of incorporating the company is to undertake charitable or non-commercial activities, wholly or partially;
- (b) if the company is to carry out charitable or non-commercial activities partially, indicate how it intends to segregate the activities of the charity or the non-commercial business from the other business activities of the company;
- (c) provide a copy of the company's memorandum;
- (d) indicate the geographic region or regions in which such charitable or non-commercial activities are to be carried out; and
- (e) provide the names, addresses and contact details of the shareholders, directors and other principals of the company.

(3) Where the Registrar receives an application under subsection (1), he or she may approve the company to use a name ending referred to in section 17 (1), if the Registrar is satisfied that, in relation to the company's charitable or non-commercial activities

–

- (a) the company's memorandum provides that any income derived therefrom shall be applied solely in promoting the objects of its memorandum as they relate to the charity or non-commercial business;
- (b) the company's memorandum prohibits distributions of the income and other properties related to the charity or non-commercial business to the members of the company; and
- (c) it is not against the public interest to incorporate the company with the name ending referred to in section 17 (1), (2), (3) or (4).

(4) Where the Registrar grants approval under subsection (3), he or she may impose such conditions on the company as he or she considers necessary including, though not limited to, requiring the company to –

(a) notify the Registrar as soon as practicable if –

- (i) the company's memorandum is amended such that it no longer complies with its charitable or non-commercial purpose;
- (ii) the company applies its income in relation to its charity or non-commercial business other than promoting the objects identified in its memorandum contrary to subsection (3) (a);
- (iii) the company makes any distributions to its members contrary to subsection (3) (b); or
- (iv) the company breaches, or for any reason, is no longer in compliance with, any conditions specified by the Registrar under this subsection; and

(b) provide the Registrar with its annual audited statements in relation to the company's charitable or non-commercial business.

(5) If an event that requires notification by a company under subsection (4) occurs, the Registrar may by written notice, whether or not the company has provided the notification as required by that subsection –

- (a) require the company to change its name to a name acceptable to the Registrar that includes an ending specified in section 17 (1) on or before a date specified in the notice, which shall be not less than 14 days after the date of the notice; and
- (b) direct the company to amend its memorandum to remove the charitable or non-commercial objects.

(6) For purposes of subsection (4) (b), the audited statements in relation to a company's charitable or non-commercial business may form part of the company's overall audited statements (where the company is also carrying on non-charitable or commercial business) if the audited statements segregate those

aspects of the statements that relate to the charitable or non-commercial business.

(7) If, in relation to subsection (6), the Registrar forms the view that the audited statements do not segregate those aspects of the company's statements with respect to its charitable or non-commercial business in a manner or to an extent satisfactory to the Registrar, the Registrar may require the company to –

- (a) resubmit the audited statements to segregate the aspects of the company's statements in relation to its charitable or non-commercial business in the manner or to an extent directed by the Registrar; or
- (b) submit separate audited accounts regarding the company's charitable or non-commercial business.

(8) A company that contravenes a condition imposed, or fails to provide its annual audited statements, under subsection (4) commits an offence and is liable on summary conviction to a fine of \$50,000.”.

Section 17B
amended.

6. Section 17B, as redesignated, is amended –

(a) in subsection (1), by deleting the opening paragraph and substituting the following opening paragraph –

“Application may be made to the Registrar in the approved form to –”;

(b) in subsection (2) –

- (i) in the opening paragraph, by deleting the words “the Commission may authorise the registration of” and substituting the words “the Registrar may incorporate”; and
- (ii) in paragraph (b), by deleting the word “Commission” and substituting the word “Registrar”;

(c) by repealing subsection (3) and substituting the following subsection –

“(3) Where the Registrar incorporates a company under subsection (2), he or she may, whether at the time of incorporation or subsequently, impose such conditions on the company as he or she considers fit.”;

(d) in subsection (4) –

- (i) by deleting the opening paragraph and substituting the following opening paragraph –

“A company that has been incorporated under subsection (2) shall notify the Registrar as soon as practicable if –”;

- (ii) in paragraph (c), by deleting the word “Commission” and substituting the word “Registrar”;

(e) by repealing subsection (5) and substituting the following subsection –

“(5) If an event that requires notification by a company under subsection (4) occurs, the Registrar may by written notice, whether or not the company has provided notification as required by that subsection, direct the company to change its name to a name acceptable to the Registrar that includes an ending specified in section 17 (1) on or before a date specified in the notice, which shall be not less than 14 days after the date of the notice.”;

(f) by repealing subsection (6); and

(g) by repealing subsection (7) and substituting the following subsection –

“(7) A company that fails to comply with a condition imposed under subsection (3) or give a notification under subsection (4) commits an offence and is liable on conviction to a fine of \$50,000.”.

Section 38
repealed and
substituted.

7. Section 38 of the principal Act is amended by repealing section 38 and substituting the following section –

“Prohibition against
bearer shares.

38. (1) No company shall, with effect from the date of the coming into force of this Act –

- (a) issue a bearer share;
- (b) convert a registered share to a bearer share; or
- (c) exchange a registered share for a bearer share.

(2) Where, prior to the coming into force of this Act, a company or segregated portfolio company had –

(a) issued a bearer share,

(b) converted a registered share to a bearer share, or

(c) exchanged a registered share for a bearer share,

the issued, converted or exchanged bearer share shall be treated in accordance with Division 5 of **Part IV of Schedule 2**.

(3) A company or segregated portfolio company that contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding \$50,000.”.

Section 41 amended.

8. Section 41 of the principal Act is amended –

(a) in subsection (1) –

(i) in paragraph (b), by inserting after the words “each shareholder”, the words “, including the nature of associated voting rights,”; and

(ii) by deleting paragraphs (c) and (d); and

(b) in subsection (4), by deleting the words “, and to bearer shares that have been cancelled,”.

Section 55 repealed.

9. Section 55 of the principal Act is repealed.

Section 66 amended.

10. Section 66 of the principal Act is amended –

(a) in subsection (1), by deleting the words “, the holder of the bearer share or”; and

(b) by repealing subsection (2).

Division 5 of Part III repealed.

11. Division 5 of Part III of the principal Act is repealed.

Section 85 amended.

12. Section 85 of the principal Act is amended –

(a) in subsection (1) –

- (i) in the opening paragraph, by deleting the words “deposit bearer shares with a custodian, or”; and
- (ii) by deleting paragraph (e) and substituting the following paragraph –
 - “(e) where a certificate is issued to a voting trustee, an endorsement shall be made on the certificate that the registered shares are held by the person named therein pursuant to an agreement;”; and

(b) by repealing subsection (2).

Section 89 repealed and substituted.

13. Section 89 of the principal Act is repealed and substituted as follows –

“Service of notice on members.

89. Any notice, information or written statement required under this Act to be given by a company to members shall be served –

- (a) in the manner specified in the memorandum or articles; or
- (b) in the absence of a provision in the memorandum or articles, by personal service by mail addressed to each member at the address shown in the register of members or, where the member consents, by and in accordance with such electronic means as may be permitted by the Regulations.”.

Section 90 amended.

14. Section 90 of the principal Act is amended by adding after subsection (3), the following new subsections –

“(4) For purposes of –

- (a) the period of retention of records and underlying documentation under **section 98 (1) (b)**, and
- (b) updating and maintaining customer due diligence information in respect of a company within a prescribed period after the completion of a one-off transaction or termination of a business relationship pursuant to laws governing money laundering, terrorist financing and proliferation financing,

the company's registered office shall remain that which it had at the time of completion of the transaction or termination of the business relationship, and **section 92A** shall apply where the company's registered office is that of its registered agent.

- (5) The reference in subsection (4) to –
 - (a) “records and underlying documentation” has the meaning specified in **section 98 (7) (b)**; and
 - (b) “one-off transaction” and “business relationship” have the meanings ascribed to them in regulation 2 (1) of the Anti-money Laundering Regulations.”.

Section 93
amended.

15. Section 93 of the principal Act is amended –

- (a) in subsection (2) –
 - (i) by deleting from paragraph (a), the words “90 days” and substituting the words “60 days”; and
 - (ii) by deleting from paragraph (b), the word “Commission’s”;
- (b) by inserting after subsection (2), the following new subsections –
 - “(2A) A person shall resign as registered agent of a company if –
 - (a) the business relationship between the person and the company has been terminated in accordance with the laws relating to money laundering, terrorist financing and proliferation financing; or
 - (b) the company is dissolved in accordance with **section 216**.
 - (2B) Where a person resigns as registered agent of a company under subsection (2A), that person shall –
 - (a) file a notice of resignation in the approved form; and
 - (b) send a copy of the notice of resignation to the director of the company or, if the identity of the director is not known, the person from whom the registered agent last received instructions concerning the company, advising –
 - (i) the company that he or she is no longer eligible to be its registered agent;

- (ii) that the reason for his or her ineligibility to be the company's registered agent is the termination of the person's business relationship with the company in accordance with the laws relating to money laundering, terrorist financing and proliferation financing or the dissolution of the company under [section 216](#);
- (iii) that the company must appoint a new registered agent within 60 days of the date of the notice if the termination of the business relationship is pursuant to the laws relating to money laundering, terrorist financing and proliferation financing;
- (iv) that, on the expiration of the period specified in paragraph (c), he or she will cease to be the registered agent of the company, if the company had not previously changed its registered agent; and
- (v) that, in the case of –
 - (aa) termination of business relationship in accordance with the laws relating to money laundering, terrorist financing and proliferation financing, the list of all approved registered agents in the Virgin Islands with their names and addresses may be found on the Internet site; and
 - (bb) dissolution of the company, the company may be restored to the Register only in accordance with [sections 218 and 218A](#).”;

(c) by repealing subsection (4) and substituting the following subsection –

“(4) If a company does not change its registered agent in accordance with [section 92](#) on or before the date specified in the notice –

- (a) the Registrar may, unless the registered agent had prior to the date specified in the notice rescinded the notice in accordance with subsection (6), strike the name of the company off the Register in accordance with [section 213 \(1\) \(a\) \(i\)](#);
- (b) the registered agent shall be deemed to have resigned as registered agent of the company; and
- (c) the Registrar shall –

- (i) in the case of a notice of intent to resign under subsection (2), register the notice as if it were a notice of resignation; and
- (ii) in the case of a notice of resignation under subsection (2B) (a), register the notice.”;

(d) in subsection (6), by inserting in the opening paragraph before the words “(the “rescission notice””, the words “under subsection (2)”;

(e) by adding after subsection (8), the following new subsections –

“(9) For purposes of subsection (2) and (2A) (b), the fact that a company has been dissolved does not prevent the person who acted as its registered agent prior to its dissolution from resigning as its registered agent.

(10) A registered agent that contravenes this section commits an offence and is liable on conviction to a fine of \$2,000.”.

Section 94 amended.

16. Section 94 of the principal Act is amended –

(a) in subsection (2) (b), by deleting the word “90 days” and substituting the words “60 days”; and

(b) by repealing subsection (4) and substituting the following subsection –

“(4) A company which is sent a notice under subsection (2) through a director or other person specified in subsection (3) shall, within 60 days of the date of the notice, change its registered agent in accordance with **section 92**.”.

New section 98A inserted.

17. The principal Act is amended by inserting after section 98, the following new section –

“Filing annual return.

98A. (1) Without prejudice to **section 98**, a company shall, in respect of each year, file a financial return (referred to in this section as “annual return”) with its registered agent.

(2) The annual return shall –

(a) be filed within 6 months after the end of the year to which the annual return relates; and

(b) contain such information and be in such form as the Commission may, by an Order published on the Internet site, prescribe.

(3) Where a registered agent receives an annual return under subsection (1), he or she shall –

- (a) at the request of the Commission or any other competent authority in the Virgin Islands acting pursuant to the exercise of a power under an enactment, provide the Commission or other competent authority with a copy of the annual return; and
- (b) retain the annual return for a period of at least 5 years from the date it ceases to act as registered agent of the company.

(4) Where a company fails to file its annual return as required under subsection (1), the registered agent shall, not later than 30 days after the annual return was due, notify the Registrar in writing of that fact by stating –

- (a) the name of the company;
- (b) the year to which the annual return relates; and
- (c) the last time the company filed its annual return.

(5) This section shall not apply to–

- (a) a listed company; or
- (b) a company that is regulated under a financial services legislation and provides audited financial statements to the Commission.

(6) A company that fails to file an annual return within the period specified in subsection (2) (a) is liable to the penalty prescribed in Part II of Schedule 1.

(7) Where a registered agent fails to comply with a requirement under this section, he or she commits an offence and is liable on conviction to a fine of \$3,000.”.

Section 118
amended.

18. Section 118 of the principal Act is amended by adding after subsection (2), the following new subsection –

“(3) Where reference is made in this section and sections 118A and 118B to a company’s register of directors, the register of directors shall include the names of persons who are appointed as alternate directors in accordance with section 130.

(4) Subsection (3) shall not apply if the person appointed as an alternate director is, at the time of his or her appointment, already a director of the company.”.

Section 118B
amended.

19. Section 118B of the principal Act is amended –

(a) in subsection (1), by deleting the words “A company shall” and substituting the words “Subject to subsection (5), a company shall”;

(b) in subsection (2), by deleting the words “Subject to subsection (6), the initial copy” and substituting the words “The initial copy”;

(c) by repealing subsection (4) and substituting the following subsection –

“(4) A copy of a company’s register of directors filed pursuant to subsection (1), including any changes to the register filed under subsection (3), shall be maintained by the Registrar.”;

(d) by repealing subsections (5) and substituting the following subsection –

“(5A) Where a company that was dissolved is restored to the Register –

(a) in accordance with section 218B (3), or

(b) with the appointment by the Court of a receiver in respect of the company,

the company is not required to file for registration by the Registrar a copy of its register of directors.”.

(e) by repealing subsections (6), (7), (8), (9) and (10);

(f) by adding after subsection (11), the following new subsection –

“(12) A reference in subsections (1) to (4) to a copy of a company’s register of directors relates only to the directors of the company as of the date of filing of the copy of register of directors, and includes the filing of a copy of the register containing any changes to the register of directors.”.

Section 150
repealed.

20. Section 150 of the principal Act is repealed.

Section 184
amended.

21. Section 184 of the principal Act is amended –

(a) in subsection (1), by deleting the words “subsection (2)” and substituting the words “subsections (1A), (1B) and (2)”;

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

“(1B) Where a company intends to continue as a company incorporated under the laws of a jurisdiction outside the Virgin Islands, it shall –

(a) at least 14 days before making a filing under paragraph (b) –

(i) advertise a notice of such intention in the *Gazette* and on its website (if any) and specify the jurisdiction to which it intends to continue; and

(ii) notify the members and creditors of the company in writing of such intention; and

(b) file with the Registrar a notice of such intention in the approved form, which shall include a declaration that the requirements of paragraphs (a) and (b) have been complied with.

(1C) A company that has filed a notice of intention to continue as a company incorporated under the laws of a jurisdiction outside the Virgin Islands may, at any time before the Registrar takes any action under subsection (4), rescind the notice by filing a notice of rescission in the approved form.”.

Section 189A
amended.

22. Section 189A of the principal Act is amended –

(a) in subsection (2) –

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

“(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 Internet site; and”;

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

“(c) file a copy of the written notice.”;

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

“(2A) A person shall resign as registered agent of a foreign company if –

- (a) the business relationship between the person and the foreign company has been terminated in accordance with the laws relating to money laundering, terrorist financing and proliferation financing; or
- (b) the foreign company is removed from the Register of Foreign Companies in accordance with [section 193A](#).

(2B) Where a person resigns as registered agent of a foreign company under subsection (2A), that person shall –

- (a) file a notice of resignation in the approved form; and
- (b) send a copy of the notice of resignation to the director of the foreign company or, if the identity of the director is not known, the person from whom the registered agent last received instructions concerning the foreign company, advising –
 - (i) the foreign company that he or she is no longer eligible to be its registered agent;
 - (ii) that the reason for his or her ineligibility to be the foreign company’s registered agent is the termination of the person’s business relationship with the foreign company in accordance with the laws relating to money laundering, terrorist financing and proliferation financing or the removal of the foreign company from the Register of Foreign Companies under [section 193A](#);
 - (iii) that the foreign company must appoint a new registered agent within 60 days of the date of the notice if the termination of the business relationship is pursuant to the laws relating to money laundering, terrorist financing and proliferation financing;
 - (iv) that, on the expiration of the period specified in subparagraph (iii), he or she will cease to be the registered agent of the foreign company, if the foreign company had not previously changed its registered agent; and

- (v) that, in the case of –
- (aa) termination of business relationship in accordance with the laws relating to money laundering, terrorist financing and proliferation financing, the list of all approved registered agents in the Virgin Islands with their names and addresses may be found on the Internet site; and
 - (bb) removal of the foreign company from the Register of Foreign Companies, the foreign company may subsequently be registered only in accordance with **sections 186 and 193B.**”;
- (c) in subsection (3), by deleting the opening paragraph and substituting the following opening paragraph –
- “A written notice under subsection (2) shall be sent to –”;
- (d) by repealing subsection (4) and substituting the following subsection –
- “(4) If a foreign company does not change its registered agent in accordance with **section 188 (2) or (2B) (b) (iii)** on or before the date specified in the notice –
- (a) the Registrar may remove the name of the foreign company from the Register of Foreign Companies in accordance with **section 193A**;
 - (b) the registered agent shall be deemed to have resigned as registered agent of the foreign company; and
 - (c) the Registrar shall –
 - (i) in the case of a notice of intent to resign under subsection (2), register the notice as if it were a notice of resignation; and
 - (ii) in the case of a notice of resignation under subsection (2B) (a), register the notice.”; and
- (e) by adding after subsection (5), the following new subsections –

“(6) For purposes of subsections (2) and (2A) (b), the fact that a company has been removed from the Register of Foreign Companies does not prevent the person who acted as its registered agent prior to its removal from resigning as its registered agent.

(7) A registered agent that contravenes this section commits an offence and is liable on conviction to a fine of \$2,000.”.

Section 189B amended.

23. Section 189B of the principal Act is amended –

(a) in subsection (2), by deleting paragraph (b) and substituting the following paragraph –

“(b) advising the 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.”;

(b) in subsection (3), by deleting the opening paragraph and substituting the following paragraph –

“A notice under subsection (2) or (2A) shall be sent –”;

(c) by repealing subsection (4) and substituting the following subsection –

“(4) A foreign company which is sent a notice under subsection (2) through a director or other person specified in subsection (3) shall, within 60 days of the date of the notice, change its registered agent in accordance with **section 188.**”; and

(d) in subsection (6) by inserting after the words “subsection (2)”, the words “or (5A)”.

Section 193A amended.

24. Section 193A of the principal Act is amended –

(a) in subsection (1) –

(i) by deleting the word “or” at the end of paragraph (c) (ii); and

(ii) by inserting after paragraph (c), the following new paragraph –

“(ca) he or she receives notification under **section 189A (2B) (a)** that a registered agent has resigned as such as a result of termination of his or her business relationship with a foreign company pursuant to the laws relating to money laundering, terrorist financing and proliferation

financing, unless the foreign company has appointed a new registered agent; or”; and

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

“(7) For purposes of subsection (1) (ca), “business relationship” has the meaning ascribed to it under regulation 2 (1) of the Anti-money Laundering Regulations.”.

Section 193B amended.

25. Section 193B of the principal Act is amended by repealing subsection (2) and substituting the following subsection –

“(2) The Registrar shall not register a foreign company to which subsection (1) applies, unless the foreign company –

(a) has applied to be registered within a period of 5 years from the date it was removed from the Register of Foreign Companies; and

(b) has paid all fees and penalties that were due to the Registrar at the date that the foreign company was removed from the Register of Foreign Companies.”.

Section 196A amended.

26. Section 196A of the principal Act is amended in subsection (1) by inserting in its appropriate alphabetical order, the following definition –

“business relationship” has the meaning ascribed to it under regulation 2 (1) of the Anti-money Laundering Regulations;”.

Section 196B amended.

27. Section 196B of the principal Act is repealed and substituted by the following section –

“Filing of notices by voluntary liquidators.

196B. Where any notice or other document is required under this Part to be filed by a voluntary liquidator, the notice or document, as the case may be, may only be filed by –

(a) the voluntary liquidator;

(b) a person qualified to act as the registered agent of a company in accordance with [section 91 \(3\)](#); or

(c) a legal practitioner in the Virgin Islands, acting on behalf of the voluntary liquidator.”.

Section 199
amended.

28. Section 199 of the principal Act is amended, by repealing subsection (5) and substituting the following subsection –

“(5) The Regulations may –

(a) in respect of non-Insolvency Act liquidators, provide for the qualifications or categories of individuals who are eligible to be appointed, or to act, as voluntary liquidators; and

(b) without prejudice to **section 201**, provide the types of record voluntary liquidators must collect and retain and for what period.”.

Section 201
amended.

29. Section 201 of the principal Act is amended in subsection (3) –

(a) in subsection (3) –

(i) by deleting the word “and” at the end of paragraph (a);

(ii) by redesignating the existing paragraph (b) as paragraph (c); and

(iii) by inserting after paragraph (a), the following new paragraph –

“(b) provide the Commission with any record that a voluntary liquidator is required to collect and retain pursuant to Regulations made under **section 199 (5)**; and”;

(b) by adding after subsection (3), the following new subsections –

“(4) The voluntary liquidator of a company that is not a regulated person shall –

(a) send to the registered agent of the company a copy of every document that he or she is required under this Division to file with the Registrar or to send to the directors or members; and

(b) provide the registered agent of the company with any record that a voluntary liquidator is required to collect and retain pursuant to Regulations made under **section 199 (5)**.

(5) A registered agent that receives any document or record under subsection (4) shall keep and maintain such document or record for a period of at least 5 years from the date of receipt of the document or record.”.

Section 203
amended.

- 30.** Section 203 of the principal Act is amended in subsection (1) –
- (a) in the opening paragraph, by deleting the word “may” and substituting the word “shall”;
 - (b) by deleting the word “or” at the end of paragraph (d);
 - (c) by deleting the full-stop at the end of paragraph (e) and substituting the words “; or”; and
 - (d) by adding after paragraph (e), the following new paragraph –
 - “(f) the voluntary liquidator is not qualified pursuant to Regulations made under **section 199 (5)**.”.

Section 205C
amended.

- 31.** Section 205C of the principal Act is amended in subsection (7) by inserting after the word “Court”, the words “appoints or”.

Section 205D
amended.

- 32.** Section 205D of the principal Act is amended in subsection (3) by inserting after the words “voluntary liquidator” in the opening paragraph, the words “a replacement”.

Section 207A
amended.

- 33.** Section 207A of the principal Act is amended –
- (a) by repealing subsection (1) and substituting the following subsection –
 - “(1) Subject to **section 218B (3A)**, the Court may, at any time after the appointment of a voluntary liquidator under **section 199** and before completion of the voluntary liquidation and filing of a statement of completion of the liquidation in accordance with **section 208**, make an order terminating the liquidation if it is satisfied that it would be just and equitable to do so.”; and
 - (b) by repealing subsection (3A) and substituting the following subsection –
 - “(3A) An application for an order under subsection (1) shall be served –
 - (a) on the Registrar,
 - (b) on the voluntary liquidator, if the application is made by a person other than the voluntary liquidator, and
 - (c) on the Commission, if the application is made in respect of a company that is a regulated person and is made by a person other than the Commission,

and the Registrar, voluntary liquidator or Commission, as the case may be, is entitled to appear and be heard on the hearing of the application.”.

Section 212
amended.

34. Section 212 of the principal Act is amended by adding after the words “Register of Companies”, the words “maintained by the Registrar under **section 230 (1)**”.

Section 213
amended.

35. Section 213 of the principal Act is amended –

(a) in subsection (1), by inserting after paragraph (b), the following new paragraph –

“(ba) he or she receives notification under **section 93 (2B) (a) or 189A (2B) (a)** that a registered agent has resigned as such as a result of termination of his or her business relationship with a company pursuant to the laws relating to money laundering, terrorist financing and proliferation financing, unless the company has appointed a new registered agent;”;

(b) in subsection (3) –

(i) by deleting the words “subsection (1) (a) or (1) (b)” in the opening paragraph and substituting the words “subsection (1)”;

(ii) by deleting paragraph (a) and substituting the following paragraph –

“(a) send the company a notice stating that, unless the company shows cause to the contrary, it will be struck from the Register on a date specified in the notice which shall be no longer than 90 days after the date of the notice; and”;

(c) by inserting after subsection (3), the following new subsections –

“(3A) For purposes of subsection (3) (a), a notice sent by the Registrar listing more than one company liable to be struck off shall be considered sufficient notice to all the companies listed therein if the notice is sent to the registered agent of the companies concerned.

(3B) The registered agent of a company which the Registrar sends a notice under subsection (3) (a) shall, before the end of the period specified in the notice for striking the company off the Register, update (as necessary) and maintain all of the company’s information the registered agent is required to keep, including the company’s register of members, register of directors, and customer due diligence information required under the laws relating to money laundering, terrorist financing and proliferation financing.”.

Section 214
amended.

36. Section 214 of the principal Act is amended by repealing subsection (1) and substituting the following subsection –

“(1) Any person who is aggrieved by the striking off from the Register and dissolution of a company under **sections 213 and 216** respectively may, within 30 days of the date of the notice published in the *Gazette* under **section 213 (5)**, appeal to the Court.”.

Section 215
amended.

37. Section 215 of the principal Act is amended –

(a) in the heading to the section by adding the words “and dissolution”;

(b) in subsection (1), by deleting the opening paragraph and substituting the following opening paragraph –

“Where a company has been struck off the Register and dissolved, the company and the directors, members and any liquidator or receiver thereof, shall not –”;

(c) in subsection (2) –

(i) in the opening paragraph, by inserting after the words “the Register”, the words “and dissolved”; and

(ii) in paragraph (a), by adding at the end of the paragraph before the semi-colon, the words “in accordance with **section 217 or 218**”; and

(d) by repealing subsection (3) and substituting the following subsection –

“(3) The fact that a company is struck off the Register and dissolved does not –

(a) absolve the company from any liability –

(i) that arose or would have arisen prior to its striking off and dissolution; or

(ii) that arises as a consequence of the company acting in contravention of subsection (1);

(b) prevent any creditor from making a claim against the company and pursuing the claim through to judgment or execution; or

(c) affect the liability of any of the company’s members, directors, officers or agents.”.

Section 216
repealed and
substituted.

38. Section 216 of the principal Act is repealed and substituted by the following section –

“Dissolution of **216.** Where a company is struck off the Register under **section** company struck **213 (4)**, the company is dissolved on the date the Registrar off the Register. publishes a notice of the striking off in the *Gazette* under subsection (5) thereof.”.

Section 217
amended.

39. Section 217 of the principal Act is amended –

(a) by repealing subsection (1) and substituting the following subsection –

“(1) Where a company has been struck off the Register and dissolved, the Registrar may, subject to receipt of an application in the approved form and upon being satisfied that the conditions specified in subsection (2) have been met, restore the company to the Register.”;

(b) by repealing subsection (2) and substituting the following subsection –

“(2) The conditions referred to in subsection (1) are that –

- (a) the company was carrying on business or in operation at the date of its striking off and dissolution;
- (b) a licensed person has agreed to act as registered agent of the company;
- (c) the registered agent has made a declaration in the approved form that the company’s records have been updated as required under **section 213 (3B)**;
- (d) if, following the striking off and dissolution of the company, any property of the company has vested in the Crown *bona vacantia*, the Crown has signified to the Registrar its consent to the company’s restoration to the Register;
- (e) the company has paid the restoration fee and any outstanding penalties in relation to the company; and
- (f) the Registrar is satisfied that it would be fair and reasonable for the company to be restored to the Register.”;

(c) by inserting after subsection (2), the following new subsection –

“(2A) For the purposes of subsection (2) (d), the Crown is deemed to have consented to the company’s restoration to the Register if the consent is signified in writing by the Financial Secretary.”;

- (d) in subsection (3), by deleting the words “7 years” and substituting the words “5 years”;
- (e) in subsection (4), by deleting the words “90 days” and substituting “30 days”; and
- (f) in subsection (6), by adding at the end of the section before the full-stop, the words “and dissolved”.

Section 218 repealed and substituted.

40. Section 218 of the principal Act is repealed and substituted by the following section –

“Application to Court for restoration to the Register.

218. (1) A person specified in subsection (2) may make an application to the Court to restore a dissolved company to the Register if –

- (a) the company was struck off the Register and dissolved following the completion or termination of its voluntary liquidation under this Act or liquidation under the Insolvency Act;
- (b) on the date of dissolution, the company was not carrying on business or in operation;
- (c) the purpose of restoration is to –
 - (i) initiate, continue or discontinue legal proceedings in the name of the company;
 - (ii) defend legal proceedings initiated against the company; or
 - (iii) make an application for the company’s property that has vested in the Crown *bona vacantia* to be returned to the company, subject to subsection (4); or
- (d) in any other case not falling under paragraph (a), (b) or (c) or in which application cannot be made to the Registrar under **section 217**, the Court considers that, having regard to any

particular circumstances, it is just and fair to restore the company to the Register.

- by –
- (2) An application under subsection (1) may be made
- (a) the Attorney General or any other competent authority in the Virgin Islands;
 - (b) a creditor, former director, former member or former liquidator of the company;
 - (c) a person who but for the company's dissolution would have been in a contractual relationship with the company;
 - (d) a person with a potential legal claim against the company;
 - (e) a manager or trustee of a pension fund established for the benefit of employees of the company; or
 - (f) any other person who can establish an interest in having the company restored to the Register.
- (3) For purposes of subsection (2) (a) and the avoidance of doubt, nothing contained in this section or [section 217](#) shall be construed to prevent the Attorney General or any other competent authority from instituting against a 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 or dissolved.
- (4) An application under subsection (1) (c) (iii) shall not be made unless the application is accompanied by the written consent of the Crown signified by the Financial Secretary that the Crown has no objection to the company's restoration to the Register.
- (5) An application under subsection (1) may not be made more than 5 years after the date of dissolution of the company.
- (6) Where a person makes an application under subsection (1), he or she shall serve a notice of the application on –

- (a) the Registrar;
- (b) the Financial Secretary; and
- (c) the Commission if, at any time prior to its dissolution, the company was a regulated person.

(7) A person upon whom a notice is served under subsection (6) is entitled to appear and be heard on the hearing of the application before the Court.”.

Section 218A amended.

41. Section 218A of the principal Act is amended in subsection (1) by deleting paragraph (a) and substituting the following paragraph –

“(a) make an order to restore the company to the Register subject to –

- (i) the Court being satisfied that a licensed person has agreed to act as registered agent of the company;
- (ii) the registered agent making a declaration in the approved form that the company’s records have been updated as required under **section 213 (3B)**;
- (iii) the company paying the restoration fee and any outstanding penalties in relation to the company; and
- (iv) such other conditions as the Court considers appropriate; and”.

Section 218B amended.

42. Section 218B of the principal Act is amended –

(a) in the opening paragraph of subsection (1), by inserting after the word “shall”, the words “,within 30 days of the making of the order,”;

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

“(1A) If a sealed copy of the order made by the Court is not filed with the Registrar within the period specified in subsection (1), the order shall cease to be valid.”;

(c) by repealing subsection (2) and substituting the following subsection –

“(2) On receiving a filed copy of a sealed order under subsection (1), the Registrar shall restore the company to the Register –

(a) upon being satisfied that the company has complied with the terms and conditions of the sealed order;

(b) with the effective date of restoration being the date and time that the copy of the sealed order was filed; and

(c) by issuing a certificate of restoration to the Register.”; and

(d) by inserting after subsection (3), the following new subsection –

“(3A) Where a company that was dissolved is restored to the Register as provided in subsection (3), the company shall, if it is restored –

(a) in liquidation, file with the Registrar a statement of completion of liquidation when the liquidation is completed, and the company shall –

(i) be dissolved with effect from the date of filing of the statement of completion; and

(ii) not be restored to the Register to carry on business;

(b) with the appointment of a receiver, file with the Registrar a statement of completion of the receivership when the receivership is completed, and the company shall –

(i) be dissolved with effect from the date of filing of the statement of completion; and

(ii) not be restored to the Register to carry on business.”; and

(c) by repealing subsection (6) and substituting the following subsection –

“(6) Where a company is restored to the Register under this section, the company is deemed never to have been struck off the Register and dissolved.”.

Section 219
repealed.

43. Section 219 of the principal Act is repealed.

Section 230
amended.

44. Section 230 of the principal Act is amended –

(a) in subsection (1) –

- (i) by deleting the word “and” at the end of paragraph (b);
 - (ii) by deleting the full-stop at the end of paragraph (c) and substituting “; and”; and
 - (iii) by adding after paragraph (c), the following new paragraph –
 - “(d) a Register of Persons with Significant Control as shall be defined and kept in accordance with the Regulations.”;
- (b) by repealing subsection (3A) and substituting the following subsection –
- “(3A) The Regulations may –
- (a) provide that specified qualified documents or information, specified types or descriptions of qualifying documents or information, qualifying documents or information filed or provided by specified persons or by specified types or descriptions of persons or all qualifying documents or information may only be filed by electronic means;
 - (b) specify requirements concerning –
 - (i) the keeping by the Registrar of the Registers, and of documents and information filed or provided, in electronic or any other form;
 - (ii) the filing of documents or provision of information in both paper and electronic form; and
 - (iii) the issuance by the Registrar of certificates and other documents in electronic form;
 - (c) in relation to the Register of Persons with Significant Control (in this paragraph referred to as “the Register”) –
 - (i) require companies to record and transmit to the Registrar information relating to persons who have a significant control in companies incorporated or registered under this Act;
 - (ii) provide for the Register to contain information that –
 - (aa) is accurate and complete; and
 - (bb) is publicly accessible;

- (iii) outline the particulars that should be provided and entered in the Register in relation to an individual, a company and such other person as may be considered necessary;
- (iv) provide for exemptions from complying with any specified or general obligations as may be considered necessary including, exemption from the scope of the Register, companies –
 - (aa) with voting shares admitted to trading on regulated markets specified in the Regulations; or
 - (bb) which are subject to disclosure and transparency rules that are contained in established international standards recognised or approved by the Commission;
- (v) restrict access to the Register in relation to a person where such restriction is considered necessary –
 - (aa) in the public interest;
 - (bb) to ensure compliance with any law relating to data protection;
 - (cc) to protect the person from any risk specified in the Regulations; or
 - (dd) where the person is otherwise an individual that is a child or lacks legal capacity;
- (vi) exclude a competent authority from the application of any obligation, exemption or restriction provided in the Regulations where such exclusion is considered necessary for the effective discharge of the competent authority's functions;
- (vii) specify the category or class of persons in relation to whom information may be recorded in the Register;
- (viii) prescribe fees to be charged for a request or any other activity made or undertaken under the Regulations;

- (ix) provide for keeping information entered in the Register up-to-date and notifying any changes with respect to such information;
- (x) provide for inspection of the Register, with such conditions as may be considered necessary;
- (xi) make provision for rectifications to be effected to the Register;
- (xii) empower the Court to make such orders as may be specified in the Regulations or as may be consistent with the rules of court;
- (xiii) prescribe such offences and penalties as may be necessary for any contravention of a provision of the Regulations; and
- (xiv) provide for such other matters as are consistent with the purposes of the Regulations.”;

(c) by repealing subsection (3B) and substituting the following subsection –

“(3B) Regulations made in relation to subsection (3A) (a) shall not be enforced unless the Registrar has established systems and facilities that enable the specified documents or information to be filed or provided in electronic form.”;

(d) by inserting after subsection (3B), the following new subsection –

“(3C) Regulations made under subsection (3A) (c) may –

- (a) for the purposes of achieving the objectives of the Regulations, amend or disapply any provision of this Act;
- (b) provide for the delegation of functions and powers in such manner and to such extent as is not inconsistent with the provisions of the Regulations; and
- (c) be extended to apply to limited partnerships formed or registered under the Limited Partnership Act and, in such a case, the limited partnerships shall be treated as if they were companies incorporated or registered under this Act notwithstanding anything to the contrary contained in the Limited Partnership Act or any other enactment.”;

(e) by repealing subsection (4) and substituting the following subsection –

“(4) The Registrar shall –

(a) retain every qualifying document or information filed or provided for a period of at least 5 years from the date of dissolution of the company to which the qualifying document or information relates; and

(b) not retain any document or information filed or provided that is not a qualifying document or information.”;

(f) in subsection (5) –

(i) in paragraph (a), by deleting the words “document to be filed” and substituting the words “document or information to be filed or provided”;

(ii) in paragraph (b), by deleting the words “document to be filed” and substituting the words “document or information to be filed or provided”; and

(g) by adding after subsection (5), the following new subsection –

“(6) Regulations made under subsection (3A) (c) shall be subject to a negative resolution of the House of Assembly.”.

Section 235
amended.

45. Section 235 of the principal Act is amended in subsection (1) -

(a) in the opening paragraph, by deleting the words “The Registrar shall” and substituting the words “Subject to **section 98A (5)**, the Registrar shall”; and

(b) by deleting the word “and” at the end of paragraph (b);

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

(d) by adding after paragraph (c), the following new paragraph –

“(d) the failure to file an annual financial return.”.

Schedule 1
amended.

46. Schedule 1 of the principal Act is amended–

(a) in Part II by adding after paragraph 2A, the following new paragraph –

“Penalty for failure to file annual return

2B. (1) Where a company fails to file its annual return within the period specified in section 98A (2) (a), the following penalties shall apply –

(a) for the first month or part thereof after the filing of the annual return was due, the penalty shall be \$300; and

(b) for each month or part thereof after the first month referred to in subparagraph (a), the penalty shall be \$200, up to a maximum of \$5,000.

(2) Where a company is liable to the maximum penalty referred to in sub-paragraph (1) (b) and has not filed its annual return, the Registrar may strike the name of the company off the Register in accordance with section 213 (1) (a) (ii) of the Act.”;

(a) in Part III –

(i) in paragraph 3 –

(aa) by deleting the word “and” at the end of the definition of the abbreviation “IBC”; and

(bb) by inserting after the definition of the abbreviation “IBC”, the following new definition –

“effective date” means the [1st day of xxxxxxxxx, 2022]; and”;

(ii) by deleting paragraph 9 and substituting the following paragraph –

“Interpretation

9. For the purpose of paragraph 10, a company, however described or defined under this Act, is a bearer share company if –

(a) it is of a type specified in section 5 (a), (c) or (e); and

(b) the company was, prior to the effective date, not prohibited by its memorandum from issuing bearer shares, converting registered shares to bearer shares or exchanging registered shares for bearer shares.”; and

(iii) by deleting paragraph 10 and substituting the following paragraph –

“Fee payable by bearer share company

10. Where, prior to the effective date, a bearer share company was liable to the payment of an increased fee, it shall, from the effective date, be liable to pay the annual fee payable by a company that is not a bearer share company.

- (iv) by deleting paragraph 12; and
- (v) by deleting paragraph 13.

Schedule 2
amended.

47. Schedule 2 of the principal Act is amended –

(a) in Part I, paragraph 1 –

- (i) by converting the paragraph as subparagraph (1);
- (ii) in subparagraph (1) as converted –
 - (aa) by deleting the definition of “bearer share company” and substituting the following definition –

“bearer share company”, subject to subparagraph (2), has the meaning specified in **paragraph 9 of Schedule 1**.”;
 - (bb) by deleting the word “and” at the end of the definition of the abbreviation “CapCo”;
 - (cc) by deleting the full-stop at the end of the definition of the abbreviation “IBC” and substituting the words “; and”;
 - (dd) by adding after the definition of the abbreviation “IBC”, the following new definition –

“effective date” has the meaning specified in **paragraph 3 of Part III of Schedule 1**.”; and
- (iii) by adding after subparagraph (1), the following new subparagraph –

“(2) A reference in this Schedule to a bearer share company shall, from the effective date, be treated as a reference to a company whose memorandum is deemed amended by virtue of paragraph 34A (1).”;

(b) in Part II –

- (i) in paragraph 2, by deleting subparagraph (3) (b) (iii);
 - (ii) in paragraph 5, by deleting subparagraph (7) and substituting the following subparagraph –
 - “(7) In the case of a bearer share company, every bearer share in the company shall, from the effective date, be deemed to be converted to a registered share held by the company for and on behalf of the person who, prior to the effective date, owned the share.”; and
 - (iii) by deleting subparagraph (8);
- (c) in Part IV, Division 1 –
- (i) in paragraph 12 –
 - (aa) in subparagraph (1), by adding the word “and” at the end of sub-subparagraph (b);
 - (bb) by deleting subparagraph (1) (c);
 - (cc) in subparagraph (7), by adding the word “and” at the end of sub-subparagraph (a);
 - (dd) in subparagraph (7), by deleting the words “; and” at the end of sub-subparagraph (b) and substituting a full-stop; and
 - (ee) in subparagraph (7), by deleting sub-subparagraph (c).
- (d) in Part IV, Division 2 –
- (i) in paragraph 13 (1) –
 - (aa) by adding the word “and” at the end of sub-subparagraph (g);
 - (bb) by placing a full-stop at the end of sub-subparagraph (h); and
 - (cc) by deleting sub-subparagraphs (i), (j) and (k); and
 - (ii) by deleting paragraph 14;
- (e) in Part IV, Division 5 –

- (i) by deleting the words “Bearer Shares in Grandfathered Bearer Share Companies” in the heading and substituting the words “Bearer Shares in a Bearer Share Company”;
- (ii) by deleting paragraph 34 and substituting the following paragraph –

“Interpretation and application

34. (1) In this Division –

“effective date” has the meaning specified in **paragraph 3 of Part III of Schedule 1;**

“bearer share company” has the meaning specified in **paragraph 9 of Part III of Schedule 1;**

“custodian” means an authorised custodian or a recognised custodian approved or recognised as such by the Commission; and

“existing bearer share” means a share in a bearer share company that was issued as, converted to, or exchanged for, a bearer share prior to the effective date.

(2) For the avoidance of doubt, this Division does not apply to the transfer or delivery of a bearer share in a bearer share company where the share has, prior to the effective date, been –

- (a) converted to, or exchanged for, a registered share;
- (b) redeemed, purchased or otherwise acquired by the company and converted to a registered share; or
- (c) forfeited and cancelled, and the company does not hold the bearer share for or on behalf of any other person.”;

- (iii) by deleting paragraph 34A and substituting the following paragraph –

“Deemed amendment of memorandum

34A. (1) The memorandum of a bearer share company is deemed to be amended from the effective date to state that the company is not authorised to issue bearer shares, convert registered shares to bearer shares or exchange registered shares for bearer shares.

(2) The bearer share company referred to in subparagraph (1) shall, from the effective date, cease to be a bearer share company.”;

(iv) by deleting paragraph 35 and substituting the following paragraph –

“Existing bearer shares

35. Every existing bearer share of a bearer share company shall, from the effective date –

- (a) be deemed to be converted to a registered share and shall accordingly be treated as if it had been issued on or after the effective date as a registered share;
- (b) if the owner of the bearer share is unknown, be deemed transferred to the company which shall hold the share in trust for the owner thereof; and
- (c) cease to be regarded as an existing bearer share.”;

(v) by deleting paragraph 36 and substituting the following paragraph –

“Redemption of existing bearer shares

36. (1) Subject to subparagraph (2), a bearer share company may, where –

- (a) paragraph 35 applies in relation to an existing bearer share, and
- (b) the owner of the existing bearer share is unknown to the company,

redeem the share, notwithstanding [sections 59 to 62](#) or any provision in the memorandum or articles, in any shareholders’ agreement, or in any other agreement.

(2) The bearer share company shall, before redeeming an existing bearer share, publish a notice in the *Gazette* –

- (a) announcing its intention to redeem the share;
- (b) stating the redemption price of the share; and
- (c) indicating the manner in which the redemption is to be effected.

(3) The notice referred to in subparagraph (2) shall be published in at least 3 issues of the *Gazette* over a period of not less than 21 days.

(4) **Sections 176 (3) and 179** shall not apply to the redemption of an existing bearer share in respect of which the bearer share company exercises its power of redemption under subparagraph (1).

(5) Where the bearer share company redeems an existing bearer share, it shall hold the proceeds of redemption on trust for the owner of the share.”; and

(vi) by deleting paragraph 37 and substituting the following paragraph –

“Bearer shares held by a custodian

37. (1) A person who has been authorised or recognised by the Commission as a custodian of bearer shares and has custody of existing bearer shares in respect of a company shall, on or before the effective date, surrender the shares to the company and give notice of such surrender, in the approved form, to –

- (a) the registered agent of the company;
- (b) the owner of the bearer shares; and
- (c) any other person who has an interest in the bearer shares.

(2) The custodian shall, at the time of surrendering the existing bearer shares pursuant to subparagraph (1), provide a written statement –

- (a) stating the full name of the beneficial owner of the bearer shares;

- (b) stating the full name of any other person having an interest in the bearer shares, whether by virtue of a charge on the shares or otherwise;
- (c) where no other person has an interest in the bearer shares, indicating that fact; and
- (d) containing such other information that is in the custody of the custodian in relation to the bearer shares.

(3) The written statement referred to in subparagraph (2) shall be provided notwithstanding that the bearer share company may already have such information in its custody.

(4) If, prior to the effective date, a custodian had given the registered agent of a bearer share company, the beneficial owner of the bearer shares and any other person who has an interest in the shares, notice of intention to cease acting as custodian of the shares and the notice was due to lapse on or after the effective date, the notice shall be deemed to have lapsed from the effective date and the custodian shall comply with subparagraph (2) accordingly.

(5) A person who contravenes subparagraph (1) or (2) commits an offence and is liable on conviction to a fine of \$40,000.”; and

(vii) by inserting after paragraph 37, the following new paragraphs –

“Bearer shares transferred to registered agent

37A. (1) Where, prior to the effective date, a bearer share company or registered agent is in possession of a bearer share transferred to it by a custodian, the bearer share shall, if not redeemed or converted to, or exchanged for, a registered share before the effective date –

- (a) be deemed to be converted to a registered share on the effective date to be held by the company on trust for the owner of the share; and
- (b) in the case of a share transferred to the registered agent who had not transferred it to a custodian or the company on or before the effective date, the registered agent shall forthwith transfer the share to the company to be

held by the company on trust for the owner of the share.

(2) In the case of subparagraph (1) (b), the registered agent shall record and maintain a statement regarding –

- (a) the date the share was transferred to the company;
- (b) the full name of the beneficial owner of the bearer share;
- (c) the full name of any other person having an interest in the bearer share, whether by virtue of a charge on the share or otherwise;
- (d) where no other person has an interest in the bearer share, indicating that fact; and
- (e) containing such other information as is in the possession of the registered agent in relation to the share.

(3) Where a registered agent to whom this paragraph applies contravenes subparagraph (1) (b) or (2), it commits an offence and is liable on conviction to a fine of \$40,000.

Right to entitlements carried by a deemed registered share

37B. (1) Where a notice exists in relation to a bearer share deemed converted to a registered share in accordance with **paragraph 37A (1) (a)** specifying the name and address of a person who is to be regarded as having the right to the entitlements carried by that share, that right shall continue to vest in that person unless otherwise determined by the owner of the share.

(2) If there is no notice as specified in subparagraph (1), then the entitlements carried by the share shall vest –

- (a) in the owner of the share; or
- (b) in the company holding the shares on trust for the owner, if the owner does not claim the right to the entitlements.

Cessation of authorisation or recognition of custodian

37C. (1) A custodian who was authorised or recognised by the Commission as such shall, if his or her authorisation or recognition is subsisting on the effective date, cease to be authorised or recognised as a custodian the day following the effective date.

(2) A custodian who has ceased to be authorised or recognised as such under subparagraph (1) shall continue to be liable under **paragraph 37**, unless he or she had on or prior to the effective date, complied with the requirements of that paragraph.

Register of bearer shares

37D. The register maintained by a registered agent containing the bearer shares of a company shall be maintained by the registered agent for a period of at least 5 years from the effective date.

Mortgage or charge of bearer share

37E. (1) Where, on or after the effective date, a mortgage or charge exists in relation to a bearer share of a company, the mortgage or charge shall be deemed to exist with respect to a registered share of the company and may be dealt with in accordance with the provisions of the Act relating to the mortgage or charge of registered shares.

(2) Subparagraph (1) does not affect the date on which the bearer shares were registered prior to their deemed conversion to registered shares.”;

(f) in Part VI, paragraph 40 of Division 1 –

(i) in subparagraph (1), by deleting sub-subparagraph (c); and

(ii) in subparagraph (7) –

(aa) by adding the word “and” at the end of sub-subparagraph (a);

(bb) by deleting the words “; and” at the end of sub-subparagraph (b) and substituting a full-stop; and

(cc) by deleting sub-subparagraph (c);

(g) in Part VII –

(i) in paragraph 57, by deleting subparagraph (3) and substituting the following subparagraph –

“(3) An application under subparagraph (1) –

(a) may be made by –

- (i) the Attorney General or any other competent authority in the Virgin Islands;
- (ii) a creditor, former director, former member or former liquidator of the company;
- (iii) a person who but for the company’s dissolution would have been in a contractual relationship with the company;
- (iv) a person with a potential legal claim against the company;
- (v) a manager or trustee of a pension fund established for the benefit of employees of the company; or
- (vi) any other person who can establish an interest in having the company restored to the Register;

(b) shall be made within 5 years of the date that the company was dissolved; and

(c) may be made after the applicable re-registration date, or where the company has been struck off and dissolved prior to the applicable re-registration date, prior to that date.”;

(ii) in paragraph 58, by deleting subparagraph (2) and substituting the following subparagraph –

“(2) An application under subparagraph (1) may be made by –

- (a) the Attorney General or any other competent authority in the Virgin Islands;
- (b) a creditor, former director, former member or former liquidator of the company;
- (c) a person who but for the company’s dissolution would have been in a contractual relationship with the company;

- (d) a person with a potential legal claim against the company;
- (e) a manager or trustee of a pension fund established for the benefit of employees of the company; or
- (f) any other person who can establish an interest in having the company restored to the Register.”; and

(h) by inserting after Part VII, the following new Part –

“PART VIIA

TRANSITIONAL PROVISIONS APPLYING TO STRUCK OFF
AND DISSOLVED COMPANIES

Interpretation for this Part

60A. (1) For the purposes of this Part –

“effective date” means the [1st day of xxxxxxxxx, 2022];

“existing struck off company” means a company which, as at the effective date, was struck off from the Register and not restored;

“existing dissolved company” means a company which, as at the effective date, was dissolved but has up to 10 years from the date of dissolution within which it may apply to be restored to the Register;

“existing period” means –

(a) the period of 7 years from the struck off date within which an existing struck off company could apply to be restored to the Register under **section 217** of the Act; or

(b) the period of 10 years from the date of dissolution within which an existing dissolved company could apply to be restored to the Register under **section 218** of the Act;

“Register” means the Register of Companies maintained by the Registrar under **section 230 (1)** of the Act; and

“struck off date”, in relation to an existing struck off company, means the date of publication by the

Registrar of a notice striking the existing struck off company from the Register pursuant to **section 213 (5)** of the Act.

(2) For the purposes of the application of **sections 217, 218, 218A and 218B** of the Act to this Part, the references in those sections to “company” shall be construed as if the references were to an existing struck off company or existing dissolved company, as the case may be.

(3) For the avoidance of doubt, the reference in this Part to an existing struck off company or existing dissolved company includes a Capco or an IBC.

Restoration of existing struck off company to the Register

60B. (1) Subject to subparagraph (2) and notwithstanding anything to the contrary contained in any Part of this Schedule, every existing struck off company has, as of the effective date, 6 months within which it may apply to the Registrar under **section 217** to be restored to the Register.

(2) Where an existing period in respect of an existing struck off company comes to an end on any date (“the earlier date”) –

(a) within 6 months of the effective date, the existing struck off company has only up to the end of the earlier date to apply to be restored to the Register; and

(b) after 6 months from the effective date, the existing struck off company has only up to the end of that 6-month period within which it may apply to be restored to the Register.

(3) Where an existing struck off company makes an application to be restored to the Register, **section 217 (2) (a) or (d)** of the Act shall not apply.

(4) Where an existing struck off company is restored to the Register, the company is deemed never to have been struck off the Register.

Restoration of existing dissolved company to the Register

60C. (1) Subject to subparagraph (2) and notwithstanding anything to the contrary contained in any Part of this Schedule, every existing dissolved company has, as of the effective date, 5 years within which it may apply to the Court under **section 218** to be restored to the Register.

(2) Where an existing period in respect of an existing dissolved company comes to an end on any date (“the earlier date”)–

- (a) within 5 years of the effective date, the existing dissolved company has only up to the end of the earlier date to apply to be restored to the Register and not beyond; and
- (b) after 5 years from the effective date, the existing dissolved company has only up to the end of that 5-year period within which it may apply to be restored to the Register.

(3) Where an existing dissolved company makes an application to be restored to the Register, **section 218 (4)** of the Act shall not apply.

(4) Where an existing dissolved company is restored to the Register, the company is deemed never to have been dissolved.

Dissolution of existing struck off company

60D. (1) Where an existing struck off company is not restored to the Register as indicated in **paragraph 60B (2)**, it is deemed to be dissolved on the day following the end of the period specified in that paragraph.

Deemed resignation of registered agent

60E. (1) Where an existing struck off company is deemed dissolved in accordance with paragraph 60C, the registered agent of the existing struck off company shall, unless he or she had resigned earlier, be deemed to have resigned (“deemed resignation”) as registered agent of the existing struck off company on the date the company was dissolved.

(2) A deemed resignation of a registered agent under subparagraph (2) shall –

- (a) not attract the payment of a resignation fee under the Act; and
- (b) not be construed as absolving the registered agent of his or her obligations under the laws relating to money laundering, terrorist financing and proliferation financing in relation to the existing company.”.

Appeal under section 217 (4)

60F. The period specified in **section 217 (4)** in respect of an appeal to the Court from a refusal of the Registrar to restore a company to the Register shall

not apply in reckoning the periods specified in **paragraph 60B (1) and (2)** in relation to an existing struck off company.

Penalty on restoration of existing struck off company deemed dissolved

60G. (1) Where the Court, in the exercise of powers under **section 218** of the Act, makes an order to restore to the Register an existing struck off company that is deemed dissolved under **paragraph 60D**, the company is liable to pay a penalty of **\$5,000** in addition to complying with the requirements specified in **section 218A (1) (a)** of the Act.

(2) The penalty specified in subparagraph (1) shall not apply if the application for restoration was made by a person other than a creditor, former director, former member or former liquidator of the company.

(3) For the avoidance of doubt, the penalty specified in subparagraph (1) shall not be treated as a restoration fee or an outstanding penalty as provided in **sections 218A (1) (a) (iii) and 218B (2) (a) (iii)** of the Act.”.

Passed by the House of Assembly this day of , 2022.

Speaker

Clerk of the House of Assembly

OBJECTS AND REASONS
[To be Filled]

CONSULTATION DRAFT